24 July 2026

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

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By email: legal@cfmeuinquiry.qld.gov.au

Dear Counsel Assisting the Commission

Re: Feedback on the introduction of an amended Building and Construction Code in Queensland

We refer to Counsel Assisting's submissions of 3 July 2026 regarding the introduction of a Building and Construction Code in Queensland (**Code**), an independent regulator (I**ndependent Regulator**), and the proposed Implementation Guidelines to the Code (**Guidelines**).

The Queensland Major Contractors Association (**QMCA**) appreciates the opportunity to provide feedback on the Code and Guidelines and reaffirms its support for an effective and well-administered Code as a means of addressing union misconduct and unproductive practices within the industry.

The QMCA represents the largest employers operating in Queensland's infrastructure construction sector. The QMCA submits the following feedback.

Determination of compliance with the Code regarding enterprise agreement content

The Guidelines outline several prohibited "Workplace Arrangements", including express restrictions on certain enterprise agreement content and clauses.

Given the complexities anticipated in implementing the Code and Guidelines, and the varying levels of industrial relations expertise across the sector, the QMCA submits that a key function of the Independent Regulator should be to provide employers with certainty as to whether an enterprise agreement meets the

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requirements of the Code. The QMCA proposes that this could be achieved through two mechanisms:

(1) The Independent Regulator should be able to issue a contractor with a determination, in the form of a compliance certificate, that a specified enterprise agreement complies with the Code. A determination of this nature would give head contractors certainty in meeting their obligations to ensure subcontractor compliance under the Code.

(2) The Independent Regulator should provide preliminary advice on whether a proposed enterprise agreement, if approved by the Fair Work Commission, would comply with the Code. Preliminary advice of this kind would give contractors a means to vet a proposed agreement before lodgement with the Fair Work Commission, and to address any inconsistency while it can still be readily remedied.

A determination and advisory function of this kind is consistent with compliance mechanisms that have previously operated in the building and construction sector, including under the *Code for the Tendering and Performance of Building Work 2016* (Cth) (**2016 Building Code**), and would provide an effective and practical means of achieving the Code's objectives. The QMCA recommends that these mechanisms could be readily inserted into the Guidelines at clause 10.1 – Monitoring compliance.

Positive obligation to report union non-compliance with right of entry legislation, including violence, criminal conduct and corruption

One of the most significant and ongoing challenges facing our members is responding to and managing union rights of entry under the *Fair Work Act 2009* (Cth) (**FW Act**) and the *Work Health and Safety Act 2011* (Qld) (**WHS Act**). These rights are frequently misused by union officials to gain access to a workplace with the intent of inflicting psychosocial harm and disrupting work in furtherance of industrial objectives.

The QMCA submits that the Guidelines do not adequately support employers in responding to these challenges, do not assist employers in discharging their duty to maintain a safe workplace, and fail to reinforce compliance with the applicable requirements of the FW Act and the WHS Act, including site safety requirements, permit and notice requirements, and conduct requirements.

Consistent with the other reporting obligations contained in the Guidelines, the QMCA recommends that the Guidelines require mandatory reporting to the

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Independent Regulator, within 24 hours, where it is suspected that a union official has failed to comply with an applicable right of entry requirement. The QMCA further recommends that this obligation extend to actual or suspected instances of criminal conduct and corruption occurring at, or in connection with, a relevant workplace, whether perpetrated by a union or a contractor.

A well-resourced and effective Independent Regulator, able to investigate and pursue right of entry non-compliance in the appropriate courts and jurisdictions, and to refer criminality and corruption to the relevant agency, would act as an effective deterrent.

Importantly, a reporting scheme of this kind would give employers a practical compliance tool with which to deter the misuse of entry rights and reinforce appropriate behaviour, backed by the prospect that non-compliant conduct will be reported.

Limitations on a head contractor's ability to audit a subcontractor's compliance with its industrial instrument

The Guidelines restrict a person or entity that is not covered by an industrial instrument from monitoring the operation of that instrument. While the QMCA recognises the intent of this restriction and supports it in principle, the absence of a carve-out permitting a head contractor to audit a subcontractor's compliance with its industrial instrument, particularly as it relates to the payment of wages, is likely to be contrary to the Code's objectives. It also undermines a head contractor's ability to ensure that its subcontractors are acting ethically and in compliance with industrial law.

The QMCA proposes that the Guidelines include a carve-out permitting head contractors to undertake reasonable monitoring of a subcontractor's compliance with its enterprise agreement, for the purpose of ensuring that subcontractors comply with the Code and with applicable legislation.

Safety dispute resolution procedure requirements

The Guidelines require parties to comply strictly with the dispute resolution procedure contained in the WHS Act. The QMCA understands this to be a reference to the default procedure in Division 2 of Part 2.2 of the *Work Health and Safety Regulation 2011* (Qld) (**WHS Regulation**).

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The QMCA submits that its members may have agreed their own safety dispute resolution procedures, as permitted under section 81(2) of the WHS Act, which may differ from the default procedure in the WHS Regulation.

Accordingly, the QMCA proposes that the Guidelines be amended to accommodate such arrangements, rather than confining parties to the default procedure in the WHS Regulation, provided that any alternative procedure complies with the requirements of the WHS Act and the WHS Regulation.

Restrictions on the use of project agreements

Section 6 of the Guidelines limits the use of 'project agreements', unless approved in advance by the Attorney-General. The QMCA is of the view that this is an unreasonable restriction on businesses who are ultimately responsible for managing industrial relations on their projects.

Project agreements, often entered into using the *Fair Work Act 2009* (Cth) greenfield enterprise agreement provisions, are an effective means of ensuring industrial stability on major infrastructure projects. Having in place a settled industrial relations framework before the employment of a workforce is a crucial mechanism and should not be impeded by State Government intervention.

Further, the Guidelines require subcontractor involvement in the development of a project agreement. This requirement is nonsensical and fails to consider the reality of project agreements, namely:

(1) Project agreements, usually in the form of a greenfields enterprise agreement, are made between the employer(s) and the union(s) with majority coverage of the prospective workforce. Subcontractors are not a party to these industrial instruments.

(2) Project agreements are made before substantive construction activities have commenced and often before subcontractors have been engaged.

The QMCA proposes the removal of this prohibitive requirement under a proposed Code.

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Timing and transitional arrangements

The QMCA supports Counsel Assisting's submission that the Commissioner make any recommendations concerning the Code and Guidelines as "promptly as possible", and endorses the reasons given.

Notwithstanding that support, and consistent with other stakeholder feedback, it is essential that the Code and Guidelines contain adequate transitional provisions so that our members have certainty as to their compliance obligations.

In this respect, the QMCA proposes:

(1) The prohibitions on enterprise agreement content should not apply to an enterprise agreement made before the Code and Guidelines commence, provided the agreement has not passed its nominal expiry date.

(2) Contractors on projects awarded before commencement, for which a Workplace Relations Management Plan (**WRMP**) would be required, should be afforded three (3) months from commencement to prepare and provide a WRMP. It should further be made clear that compliance with an enterprise agreement made before the Code commenced does not of itself constitute non-compliance with a WRMP.

Lack of Consequences for union non-compliance

While the QMCA supports the proposed introduction of the Queensland Building and Construction Code and the establishment of an independent regulator, the draft framework contains a fundamental imbalance. The Code should apply equally to all participants engaged in Government-funded construction projects. Compliance obligations and enforcement consequences must be directed not only at contractors and subcontractors, but also at unions, union officials, workplace delegates and any other parties whose conduct may impact project productivity, lawful workplace relations, freedom of association, safety or value for money for taxpayers.

The proposed sanctions regime creates significant commercial consequences for contractors, including:

- Formal warnings;
- Partial or complete exclusion from government tendering opportunities;
- Review of prequalification status;

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- Publication of breaches;
- Contractual remedies and enforcement action.

However, the draft Code does not provide corresponding consequences for unions, union officials or other industrial representatives whose conduct may contribute to breaches of the Code or undermine its objectives.

This creates a regulatory framework where one party bears the entire compliance burden while another party may engage in conduct that undermines productivity, freedom of association, lawful right of entry requirements or project delivery without any direct Code-related consequence.

If the stated purpose of the Queensland Code is to improve productivity, promote lawful conduct, protect freedom of association and ensure value for money for taxpayers, then accountability must apply equally to all participants in the construction industry.

The Code should expressly require unions, union officials, workplace delegates and employee representatives operating on Code-covered projects to comply with the Code's behavioural and conduct standards. These obligations should include compliance with requirements relating to:

- Lawful right of entry;
- Freedom of association;
- No coercion, intimidation or threats;
- Respectful workplace behaviour;
- Demarcation requirements;
- Industrial action provisions; and
- Workplace health and safety processes.

Where a union or union official repeatedly breaches Code requirements, the regulator should be empowered to suspend entry privileges to Queensland Government-funded projects for a specified period. This may occur where there has been repeated unlawful right-of-entry conduct; failure to comply with regulator

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directions; intimidation or coercion of workers or repeated interference with freedom of association rights.

This would not remove statutory rights generally but could limit access to government-funded projects where conduct is inconsistent with the objectives of the Code.

Additionally, the Code should establish escalating financial penalties for substantiated misconduct by unions and union officials on Government-funded projects.

A suggested framework:

Breach Level	Penalty
Minor breach	Formal warning
Repeated breach	Monetary penalty
Serious breach	Significant monetary penalty and public notice
Systemic breach	Project exclusion and referral to relevant regulator

This mirrors the escalating sanctions available against contractors.

Where unlawful conduct directly causes:

- Project shutdowns;
- Delays to critical works;
- Additional security costs;
- Dispute management expenses;

The regulator should have power to seek recovery of demonstrable costs through a tribunal or court process. This would align consequences with the economic impacts borne by taxpayers.

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National Construction Industry Forum (NCIF) Charter

Caution should be exercised against placing undue reliance on the NCIF as the primary mechanism for driving behavioural reform within the Queensland construction industry.

The Commission's consultation report notes that some stakeholders view the NCIF Charter as a vehicle for cultural change and industry collaboration. Whilst these objectives are commendable, the NCIF is fundamentally a voluntary framework that relies on goodwill, cooperation and self-regulation. It does not possess the powers necessary to investigate misconduct, compel compliance or impose meaningful sanctions where behaviour falls short of expected standards. The very existence of the Commission of Inquiry demonstrates that voluntary commitments and industry-led initiatives alone have not been sufficient to eradicate unlawful conduct, coercion, intimidation, freedom of association breaches, unlawful right-of-entry activity or productivity-reducing practices.

While industry culture is important, there is a risk that excessive reliance upon the NCIF could result in a return to a "soft regulation" model that relies on consensus rather than accountability. The NCIF may contribute to industry collaboration and relationship building; however, it is not designed to investigate or manage misconduct or unlawfulness, enforce compliance or resolve systemic breaches.

These objectives require an enforceable Code supported by an Independent Regulator.

Other feedback

The QMCA further notes the following:

(1) The capitalised term "National Code" is used throughout the Guidelines. It appears to be a defined term introduced at clause 2.5, although Counsel Assisting has removed that clause and thereby rendered the term obsolete. To avoid confusion, the QMCA recommends that references to the "National Code" be removed from the Guidelines in their entirety.

(2) Clause 4(f) of the Guidelines incorrectly references the *Work Health and Safety Act 2001* (Qld). The QMCA submits that this should be '2011' and recommends the Guidelines be corrected accordingly.

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(3) Clause 10.1 of the Guidelines requires the BCCB to "liaise with relevant Commonwealth and other government agencies, including Fair Work Building and Construction". The QMCA submits that the Fair Work Building and Construction Agency were abolished in 2016, and the Guidelines should be updated accordingly.

(4) The restriction on requiring site allowances contained in enterprise agreements to have an objective and predictable method of determining the allowance amount is unnecessarily prohibitive. Employers require the freedom to respond to market forces as they deem appropriate and should not be confined to inflexible frameworks.

(5) With regard to section 5.1 (Obligation to develop a WRMP), the QMCA is of the view that this is an overly cumbersome and costly exercise that should only be undertaken by the preferred or shortlisted contractors. Requesting that this be undertaken during the bid phase (either EOI or RFP) would be counterproductive. The current suggestion of a WRMP in the tender phase was also a feature of BPIC, particularly on projects such as Centenary Bridge.

(6) The QMCA is of the view that the project value thresholds setting out the requirement to provide a WRMP is too low ($10m for building and $20m for civil). The QMCA is of the view that this threshold level should be closer to $100m.

(7) Section 2.3 calls for the contractor to notify of any "possible or probable" unlawful industrial conduct. This is unnecessarily broad and should be limited to actual or threatened industrial action. The QMCA proposes consideration be given to utilising the wording contained in the 2016 Building Code analogous clause.

(8) Section 3.4 – independent contractors: The QMCA is supportive of the need for employment flexibility, particularly with the use of independent contractors and labour hire; however, would caution that this clause does not fall foul of recently introduced Federal legislation such as "Same Job Same Pay" laws. The QMCA would also like to see an inclusion of a blanket ban on "subbie Jump-up clauses".

(9) Section 4: Workplace Arrangements: The clause indicates that making super payments above award would be considered illegal, unless the employer

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agrees to it. Whilst this is important to ensure that it's not being done under coercion, this is one of the many areas used in negotiations with employees and their representatives, and industry would like to ensure that that flexibility remains.

(10) In addition to the proposed Code and Guidelines, the QMCA is of the view that the WHS Act should also be amended to ensure the only parties, beyond the employer, that can affect a cessation of work are appointed Workplace Health and Safety Inspectors.

The QMCA looks forward to continuing to work with the Commission in the consultation and implementation of a Code and Guidelines.

Regards



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