MASTER BUILDERS QUEENSLAND
The home of building

24 July 2026

Commission of Inquiry into the CFMEU
Email: legal@cfmeuinquiry.qld.gov.au

Dear Commissioner

Response to the submission and guidelines on a proposed Building and Construction Code and Independent Regulator

Master Builders is the peak industry body for building and construction in Queensland and represents the interests of 10,000 building and construction related members. Our membership spans the full spectrum of the industry – from residential and commercial builders to subcontractors, manufacturers, and consultants.

Master Builders has long called for an appropriate, industry-specific regulatory response to address union behaviour in the building and construction industry. CFMEU administration was a first step to tackling the systemic cultural and alleged criminal issues which had long existed within the industry but were either denied or overlooked. However, history shows that unless permanent and lasting changes are made, there is a very real risk that the sector will return to the behaviours called out over the past decades. Without a strong regulator, the reality is that bad behaviour will again be able to flourish, to the detriment of the entire industry and the Queensland community.

Master Builders submission to the Queensland Productivity Commission's (QPC) Inquiry to improve productivity of the construction industry called for a new mechanism that minimises third-party interference in the on-site delivery of government projects, specifically targeting the management of industrial relations. The resulting recommendations 6 and 7 of the QPC's Final Report, which called for implementation and enforcement of a code of practice, go a long way to addressing our concerns.

The reintroduction of a construction code of practice in a smart and balanced way, combined with other legislated responses and the continuation of the CFMEU Administration, has the potential to significantly improve productivity on Queensland's construction worksites.

A detailed response to the Commission's submission details how this can be achieved in practice.

I am available to discuss our response further, please contact me on [redacted] or [redacted].

Regards,

[redacted]

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Summary

Master Builders supports the re-introduction of a well-designed construction code of practice and industry specific independent regulator as part of a suite of reforms to sustainably improve productivity, union behaviour and help build the workforce needed to deliver the massive pipeline of construction work ahead. The establishment of an independent regulator to administer such a code is a critical component of the code implementation.

A construction code implemented by the Queensland Government should be:

- Clear, achievable and predictable about the compliance obligations. Builders must be able to understand with confidence what is required of them and not be held accountable for outcomes or behaviours that are beyond their control. A code under which the builder cannot know whether they are compliant (because, for example, they're obligations depend on the practices of third parties, or because they must ensure outcomes they cannot control) is a code that cannot be complied with. Clause 4(a) of the draft guidelines is an example which requires greater clarification before the final code and guidelines is implemented.
- Clear about roles and responsibilities. Builders should not be expected to act as a regulator or police the conduct of third parties. Builders should only be accountable for matters within their control and should not face sanctions for the actions of third parties. Enforcement of misconduct must remain the responsibility of the relevant regulator.
- Clear in the distinction between obligations of the code on government-funded work and privately funded work.
- Supportive of productive workplace relationships. Builders should not be penalised for resolving issues through consultation, collaboration and constructive engagement with workers and their representatives. Positive workplace relationships are critical to productivity, safety and project outcomes.
- Proportionate in its enforcement approach. Sanctions should be graduated, reflect the seriousness of any breach, and prioritise remediation where appropriate. Exclusion from tendering should be reserved for deliberate or repeated non-compliance, subject to independent merits review, and include an opportunity to rectify issues before significant penalties are imposed.
- Constitutionally robust and legally durable. A code that exceeds constitutional limits is likely to be challenged, creating uncertainty and undermining its effectiveness. The code should be designed to withstand legal scrutiny and provide long-term certainty for industry and government.
- Clear in its treatment of project agreements and greenfield agreements. The code should provide certainty regarding the status and operation of these arrangements.
- Mindful of demarcation risks. The code should not inadvertently create or exacerbate demarcation disputes, which can disrupt projects and undermine productivity.

Many of these elements have begun to be addressed in the current version of the Draft Guidelines. However, there is more work needed to fully satisfy each of these principles, as detailed below.

Master Builders supports the elements set out in the Draft Guidelines because they realign the ground rules of bargaining and engagement around acceptable workplace practices and will assist builders to negotiate more productive enterprise agreements.

Master Builders therefore, encourages the Commissioner to recommend the adoption of a code and amended guidelines, supported by an independent industry specific regulator, to the Queensland government.

However, Master Builders' support is conditional on the benefits not being undermined in the detail – and the reforms creating new burdens – either through unclear, overreaching rules or discretionary or opaque enforcement practices, which the Draft Guidelines, as currently drafted, risk imposing.

In short, Master Builders recommends review of the Guidelines to provide for:

- more regulatory clarity on the rules of engagement; and
- less regulatory intervention on day-to-day worksite issues, which are better managed by those most directly affected.

The following sections discuss key issues that have been identified with the Draft Guidelines and where possible has provided suggested solutions.

Master Builders' urges further industry consultation on these issues as they are reflected in the drafting of both the code and guidelines before their final adoption and implementation.

Key Issues

Workplace Relations Management Plans (WRMP)

Master Builders supports the broad WRMP framework set out in section 5 of the Draft Guidelines. WRMPs are project-specific, forward-looking, and genuinely related to government's interest in ensuring that publicly funded projects are delivered productively, safely, and on time. They provide government with a meaningful basis for assessing the industrial management capability of tenderers without requiring government to dictate bargaining outcomes or interfere with federally approved enterprise agreements.

Master Builders submits that the WRMP should be the primary compliance and assessment mechanism of any new code on government projects, rather than a supplementary feature. A well-designed WRMP gives government all the information it needs to assess whether a contractor can deliver a project efficiently and provides the contractor with certainty as to its compliance status once the WRMP is approved.

However, the draft guidelines currently:

- provide no detail or guidance on the acceptable content of WRMPs. It would assist the implementation of the code if a draft template WRMP was released prior to the

commencement of the code, and further consultation with industry occur on the draft template prior to its adoption.

- provide no details as to how the plans will be administered – there should be a transparent and consistent system for their implementation and enforcement.
- impose potentially substantial WRMP obligations on builders after the plan is approved; in particular, substantial 'policing' obligations. 'Policing' concerns are addressed in detail later in this submission.
- do not provide guidance on whether WRMPs are required for projects which have already commenced construction prior to the commencement of the code. Master Builders submits that where government has approved a WRMP (or similar document), as part of a procurement process prior to the commencement of the code, that the existing document satisfies the requirement of the code and guidelines.

Freedom of association

Master Builders supports the freedom of association provisions in section 9 of the Draft Guidelines. All workers on construction sites should be free to join or not join an industrial organisation of their choice, without coercion, discrimination, or disadvantage. The provisions provide a solid framework within which builders can negotiate productivity-enhancing enterprise agreements.

Specifically, Master Builders supports the proposed specific prohibitions on:

- 'no ticket, no start' signs and similar practices,
- 'show card' days,
- discrimination against or disadvantage to elected employee representatives,
- forms requiring disclosure of union membership status,
- the hiring of non-working shop stewards or job delegates,
- requirements to display union logos on employer-supplied property, and
- union officials administering site induction processes.

However, Master Builders is concerned that builders will be subjected to onerous associated 'policing' obligations (discussed below).

A particular area of concern is the inclusion in the Draft Guidelines of the display of union logos or signage at worksites as being inconsistent with freedom of association. From past experience, similar provisions have resulted in a disproportionate enforcement effort, detracting significantly from productivity.

Master Builders proposes instead that a solution to manage the display of union logos and signage on construction sites is to establish signage criteria and an approval mechanism which controls and regulates the display of union logos and signage in a way which complies with the requirements of the code and guidelines. An approval mechanism would require unions to submit an application to display logos and signage, demonstrate how this complies with the criteria, and importantly establish a point of contact who would be held accountable if this section of the code is breached. This mechanism would avoid the need for the builder to act as the logo and signage police on a building site.

Right of entry

Master Builders supports provisions that preserve the integrity of the legislated right of entry frameworks. The requirement that entry by union officials be in accordance with Part 3-4 of the *Fair Work Act* (FWA) and the *Work Health and Safety Act 2011 (Qld)* is appropriate. Arrangements that circumvent the statutory notice, permit, and purpose requirements undermine both the safety of active construction sites and the legislative scheme that Parliament has established to balance the interests of occupiers and permit holders.

However, Master Builders recommends a carve-out for genuine consultations. In a fluid working environment, workers (and their unions) often raise matters of concern in good faith, without collateral agenda, and in the spirit of constructive and positive engagement. Blanket prohibitions that curtail builders' ability to interact as they judge matters 'on the ground' is antithetical to the productive working relationships required to deliver projects efficiently and safely.

We request that consideration be given to allowing access to sites for the purposes described above with appropriate conditions and safeguards which maintain control of access to site by the builder and in accordance with the approved WRMP, provided these arrangements do not contravene legislated right of entry laws.

Independent regulator

Master Builders supports the establishment of an independent regulatory body to administer the code, such as the proposed Building Construction Compliance Branch (BCCB) or equivalent.

A key aspect of the powers of the Australian Building and Construction Commisssion (ABCC) was that they possessed coercive powers to permit compulsory examination, production of documents and imposed significant penalties including imprisonment for a failure to comply. We note that in his report, 'Rotting from the Top', Geoffrey Watson SC called for "an investigation supported with coercive powers" to get to the bottom of the problems identified. Master Builders believes that this demonstrates the clear need for a powerful industry-specific regulator with coercive powers as a priority.

In the recent Queensland context, major contractors broadly agree that, since the CFMEU was placed into administration in July 2025 and the Commission of Inquiry, with coercive, compulsory examination and production of document powers, commenced its work, there has been a marked and measurable improvement in productivity on building sites.

The regulator should serve educative, investigative, advisory and enforcement functions. Specifically, the regulator must:

- have clearly defined functions that complement, rather than duplicate, roles undertaken by other stakeholders,
- have a clearly defined charter, within those functions, clarifying its powers around site visits, inspections, audits, and cooperation, for reasons of efficiency, transparency, safety, productivity and fair treatment,
- clearly articulate its priorities and focus areas, so that industry can plan effectively and collaborate with the regulator as required,

- be strongly supported by the Queensland Police Service and other relevant authorities where the regulator identifies breaches of the law or other regulatory matters through its investigations,
- not seek or be empowered to subcontract its policing role to builders, and
- be adequately resourced to perform its functions, especially in being able to respond to complaints and disputes rapidly.

Critically, it is the regulator and not the builder that should bear primary responsibility for monitoring on-site conduct, investigating complaints, and enforcing the code against persons who breach it. This allocation of responsibility is fundamental to the code's workability. Although Master Builders supports the establishment of a regulator, it does not support builders acting as the police (This is discussed in further detail below.)

Standing commission as an ongoing oversight mechanism

The role of the independent regulator can be supplemented by a standing commission on misconduct as permanent oversight body.

This body would:

- Be forward looking. It should not have powers to examine matters prior to its establishment: that is the role of this Commission of Inquiry.
- Have jurisdiction into misconduct in the building and construction industry, including corruption, coercion, unlawful industrial action, misuse of safety provisions as a pretext for industrial pressure, interference with freedom of association, and serious or systemic non-compliance with applicable laws.
- Be limited to serious misconduct and should not duplicate the role of the code administrator.
- Not replace a code and guidelines but would serve as the enforcement body of last resort, investigating matters that the BCCB cannot effectively address through its powers, and providing the deterrent that a bureaucratic compliance branch cannot.
- Consider referrals from the BCCB, builders, unions, and individual workers where they involve conduct that is beyond the BCCB's capacity to investigate or address.
- Have the power to publish reports on its investigations, including findings and recommendations, subject to procedural fairness requirements.
- Include in its design, appropriate protections for civil liberties and procedural fairness.

If this model is not accepted by the Commission, similar powers should be provided to the BCCB.

Builder as 'police'

The Draft Guidelines impose a materially greater policing burden on builders than either the 2016 Commonwealth Code or the former Queensland Guidelines on which they are based. The expansion occurs across multiple dimensions.

Annexure A (Implementation Guidelines) of this submission includes a summary of provisions in the Draft Guidelines that require builders to police, report, monitor or enforce compliance in relation to union conduct or industrial activity, either directly or through the subcontractor chain. Self-evidently, this is oppressive without good reason.

We note that the Commission has already received consistent industry feedback that it should not be the police.

Master Builders submits that, irrespective of the breadth of the code finally adopted, its enforcement should not be the responsibility of builders or subcontractors due to:

- Industrial disputation is disruptive and costly enough for construction projects without imposing additional burdens.
- The express purposes of implementing a code, as Counsel Assisting has submitted, are “to address various unproductive, unlawful, and illegitimate industrial relations practices that persist in the Queensland construction industry”. The preferred approach of Counsel Assisting was for the code to be “well-designed” and “administered by a properly resourced independent regulatory body”.
- A code that imposes additional reporting, monitoring, and related burdens axiomatically reduces productivity rather than enhances it.
- A code that requires builders to make decisions about the lawfulness of third-party conduct delegates an enforcement decision to a person not qualified to make it and who has no authority or ability to ensure any corrective action is taken.
- The outsourcing of primary enforcement could engender collusive behaviour between unions and builders or inadvertently give rise to new coercive conduct against builders.

The better enforcement model would be to directly shift from "sanction the builder for failing to police the union" to "investigate and hold the union accountable for its own conduct. Here the builder's interests would be aligned with the regulator's, rather than being placed in opposition to its own workforce.

The builder's role should be confined to:

- maintaining compliant enterprise agreements,
- lodging satisfactory WRMPs,
- cooperating with the regulator's investigations, including providing access, documents, and information when requested, and
- not facilitating or directing conduct that breaches the code.

Functions such as monitoring on-site conduct, assessing the lawfulness of union entries, determining whether safety stoppages are genuine or pretextual, investigating subcontractor practices, and commencing proceedings against non-compliant parties should be the responsibility of the regulator. The builder should not be sanctioned for failing to perform a function that properly belongs to government.

The potential consequences for builders breaching a code only by reason of failing to enforce the breaches of others are disproportionate, inconsistent with the rule of law, and will produce one of two outcomes:

1. Over-reporting and over-policing: Builders will report every interaction with a union official, refuse every request for consultation, reject every delegate's suggestion, and commence proceedings at every opportunity, not because doing so serves any productive purpose, but because the consequences of not doing could be ruinous. The result will be an epidemic of industrial conflict on state-funded projects.

2. Under-tendering: Builders will decline to tender for state-funded work, preferring the lower risk private market. The result will be reduced competition, higher costs to government, and fewer capable builders willing to deliver the $119 billion in government construction planned for the next four years.

Neither outcome serves government's procurement interests. Both are the predictable consequence of imposing extraordinary policing obligations on builders, backed by disproportionate sanctions, without providing any defence, safe harbour or proportionality framework.

If the Commissioner accepts the evidence of Messrs Hadgkiss and Jenkinson that the 2016 Code "delivered improvements" through a combination of procurement conditions and active regulation by the ABCC, then the appropriate conclusion is that the improvements were delivered by the regulator's enforcement activity and not by the builder's policing role.

Project Agreements (section 6, Draft Guidelines)

The draft guidelines contain various commentary on project agreements which has created inconsistencies within the Draft Guidelines, and also between the Draft Guidelines and Counsel Assisting's submission. There are several issues relevant to project agreements which are set out below:

"Project agreements" or "Greenfield agreements"

The FWA does not use the terminology "project agreements" and instead defines a "greenfield agreement". For reference, ss.172(4), 178B of the FWA defines a greenfield agreement as follows:

> *A **greenfields agreement** is an enterprise agreement relating to a genuine new enterprise (including a new business, activity, project or undertaking) which is made at a time when the employer or employers have not yet employed any of the persons who will be necessary for the normal conduct of the enterprise and who will be covered by the agreement.[1]*

It would assist clear interpretation of the code and guidelines if the term "greenfield agreement" was used, and its adopted definition align exactly with the definition in the FWA.

If this approach is supported by the Commission, then the process to produce a greenfield agreement outlined in the FWA should prevail, and the content of agreements allowed under the FWA, should not be further limited by the code.

When is it appropriate to use a greenfield agreement?

Section 6 of the Draft Guidelines appropriately limit the code's influence on project agreements (greenfield agreements) to government-funded projects only. This limitation is supported by Master Builders.

However, section 4(j) of the Draft Guidelines restricts a Workplace Arrangement from making provision for "project agreements to apply in whole or part, other than for major contracts as defined by the client". This section appears to restrict the use of project agreements (greenfield agreements) on privately funded projects. This limitation is not supported by Master Builders. The

code and guidelines should allow parties to utilise the provisions of the FWA in relation to greenfield agreements without restriction on privately funded projects.

Role of Attorney-General and Responsible Minister

Section 6 of the Draft Guidelines limit the use of project agreements on government-funded projects to circumstances where the use of a project agreement is approved in advance by the Attorney-General on the recommendation of the Responsible Minister.

While Master Builders does not object to this requirement, it is appropriate that clear criteria be established in the code or guidelines that would be considered by the Attorney-General and Responsible Minister. Establishing a minimum project value as proposed in the Draft Guidelines is supported, however $100 million value is considered too low and should be reconsidered.

Extension to privately funded building work (section 2.4, Draft Guidelines)

Counsel Assisting's submission [paragraph 64(a)] outlines that the contractors should be required to demonstrate that they comply with the code on any privately funded building projects on which they are engaged.

Master Builders acknowledges that government is entitled to impose its own procurement conditions on projects funded by state taxpayers. We do not oppose the establishment of project-specific arrangements on terms suitable to government as a principal for those projects. This enables government to achieve its project-specific procurement objectives and builders to manage their Workplace Arrangements, including being able to renegotiate enterprise agreements as required, with certainty.

However, we would like to raise several issues if this approach is extended to private projects, which require clarification:

- Because of the combination of the code's influence on enterprise agreements and the requirement [Counsel Assisting's submission, paragraph 64(c)] that the code apply to "related entities" of any code covered entity, the benefits of the code delivered through the content of enterprise agreements will by extension apply to all projects undertaken by the company. Master Builders supports this element of the code.
- However, the extension of the code to privately funded projects will also extend the administrative burden, compliance obligations, reporting, and auditing obligations of the code to private projects. This could place an unreasonable burden on contractors who undertake smaller projects. In these cases, the benefits of the code could be outweighed by the administrative cost. Master Builders does not support these obligations extending to all private projects without some reasonable limitations be applied in the code. The administrative obligations of the code should only apply to major private projects above a clearly specified threshold.
- Clarification should be provided as to the reach of the independent regulator to private projects so that the standards of union behaviour are consistently applied across Queensland, without duplicating the functions of existing regulators that effectively cover private projects.

Related entities (paragraph 64(c))

Master Builders accepts that, if a related entity is subject to an exclusion sanction, the corporate group may be ineligible to tender for state-funded work during the exclusion period. This is a legitimate procurement integrity measure. However, the extension of substantive code obligations to related entities performing only private work (which follows from the combination of section 2.4 and the related entity definition) is an overreach and possibly constitutionally untenable.

"Workplace Arrangement" definition

Counsel Assisting proposes to extend the code's prohibitions to Workplace Arrangements (paragraph 68(c)). This is defined as "any agreement, understanding, practice, policy, procedure or arrangement, whether written or otherwise." This represents a significant expansion beyond the 2016 Commonwealth Code, which primarily targeted the content of enterprise agreements, and the former Queensland Guidelines.

Master Builders submits that while the intent of this expansion is understandable in aiming to prevent circumvention in shifting offending terms from formal agreements into informal practices, the breadth of the definition creates serious practical and constitutional difficulties:

- Certainty: A builder cannot know with confidence at the tender stage whether an informal 'understanding' or unwritten 'practice' on one of its sites might constitute a Workplace Arrangement that breaches the code. Enterprise agreements are documented and reviewable, while informal practices are inherently ambiguous.
- Characterisation: By extending to all forms of workplace conduct, whether written or not, the code ceases to regulate agreement content and begins to regulate workplace behaviour generally; an area already comprehensively addressed by the FWA's general protections, enterprise bargaining, and industrial action provisions.
- Enforcement: How does a builder demonstrate, at the pre-qualification stage, that no informal 'understanding' exists on any of its sites? The provision converts compliance from a documentable assessment into an ongoing, subjective inquiry.
- Perverse consequences for productive working relationships: The definition is broad enough to capture informal but established practices of engagement between a builder and a union that have developed over time and that serve legitimate operational purposes, reduce conflicts and improve productivity.

For Workplace Arrangements, the code should distinguish between:

- practices that implement or give effect to union coercion or unproductive restrictions (which the code should target); and
- practices that facilitate orderly consultation, dispute resolution, and relationship management (which the code should protect).

Master Builders recommends that the evidence the code should rely on includes:

- Enterprise agreements;
- Formal written agreements, policies and site rules issued by the contractor and within their control; and

- Conduct that has been directed, authorised or required by the contractor and has the purpose or effect of implementing a restriction of the kind described in section 4 of the Draft Guidelines.

Informal practices by third parties, such as union officials, individual workers, should be the subject of the BCCB's monitoring and enforcement function. It should not be grounds for sanctioning the builder unless the builder directed or facilitated the practice.

Critically, the code should include an express carve-out for good faith consultation and engagement, such as:

> *Nothing in these Guidelines prohibits a party from engaging in good faith consultation with a building association, or an officer or representative of a building association, for the purpose of:*
>
> *a. meeting obligations under the Fair Work Act 2009 (Cth) or an enterprise agreement;*
> *b. resolving disputes at the enterprise level in accordance with a dispute settlement procedure;*
> *c. discussing matters relating to workplace health and safety;*
> *d. managing the orderly deployment, redeployment, or redundancy of workers across projects; or*
> *e. maintaining an ongoing working relationship that supports the productive delivery of projects,*
>
> *provided that such consultation does not confer upon the building association a right of approval or veto over operational decisions.*

Subcontractor compliance obligation (sections 2.2 and 5.2)

The Draft Guidelines require the head contractor to "require and actively ensure compliance" by subcontractors and to ensure that "subcontractor compliance with the workplace relations requirements will be monitored and enforced by the head contractor."

Master Builders submits that this obligation is unworkable to the extent it requires the builder to ensure (rather than promote) subcontractor compliance:

- A head contractor cannot unilaterally alter a subcontractor's enterprise agreement. If the subcontractor's agreement contains clauses that are non-compliant with section 4 of the Draft Guidelines, the head contractor faces an impossible choice: exclude the subcontractor, reducing competition and increasing costs to government, or breach the code.
- The FWA gives the subcontractor's workforce the right to bargain for, and have approved by the Fair Work Commission, clauses that may be "offending" under the code. The head contractor cannot override that federal statutory right.
- Making the builder liable for the conduct of third parties over whom it has no lawful control converts the builder from a contractor into a de facto regulator, a function that properly belongs to the BCCB.

Master Builders recommends the following, where a head contractor must:

- include in its subcontracts a requirement that the subcontractor comply with the code and the Guidelines to the extent applicable,

- not knowingly engage a subcontractor that is subject to an exclusion sanction or that the head contractor knows to be non-compliant with section 4 at the time of engagement,
- cooperate with any investigation by the BCCB into subcontractor non-compliance, and
- take reasonable steps to promote compliance by subcontractors, including by communicating the code's requirements during project inductions.

A failure by a subcontractor to comply with the code does not constitute a breach by the head contractor unless the head contractor directed, facilitated, or had actual knowledge of and failed to report the non-compliance.

Inclusion of requirements for recruitment and retention of women and other workers

Master Builders supports the proposed inclusion of measures addressing the recruitment and retention of women and apprentices.

The submission from Counsel Assisting [paragraph 68(g)] proposes that requirements for the recruitment and retention of women be included in the WRMP. We also note that similar requirements are included in some enterprise agreements and government procurement policies.

Similarly, some enterprise agreements and government policies also consider requirements for the recruitment of apprentices.

Consideration should be given to whether these requirements are most effectively addressed in enterprise agreements, WRMP's or other government policy. Whichever mechanism is ultimately recommended by the Commission should provide clear and certain requirements for industry while retaining sufficient flexibility to accommodate the specific circumstances of individual projects.

Industry superannuation, redundancy and income protection funds (section 4(b))

An important component of negotiating Workplace Arrangements is payments made to industry superannuation funds, redundancy and income protection funds. Fair negotiation between employers and employees on these matters should remain a matter which can be addressed in Workplace Arrangements.

Section 4(b) of the Draft Guidelines appears to limit these payments but then provides an exclusion if "decided by each employer". This exclusion effectively means this clause has no impact.

Master Builders requests that this clause be removed in its entirety from the code and Draft Guidelines.

We acknowledge that these funds have been subject to review in previous Royal Commissions. Importantly, since those reviews, Australian Securities and Investments Commission (ASIC) has commitment to implement additional governance requirements on these funds. Master Builders supports the additional ASIC requirements.

Prohibition on consulting with unions about resourcing decisions (section 4(e)(iv))

Section 4(e)(iv) of the Draft Guidelines provides that 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."

Master Builders submits that this provision, as drafted, is constitutionally problematic because it potentially conflicts with s 205 of the FWA, which requires every enterprise agreement to include a term providing for consultation with employees (and, in practice, their representatives) about major workplace changes. The difficulty is compounded by the fact that "major workplace change" under model consultation clauses typically includes changes to the size or composition of the workforce.

Master Builders acknowledges the legitimate concern—identified by Mr Hadgkiss at paragraph 44 of Counsel Assisting's submissions—that consultation obligations are frequently exploited as a mechanism for union veto over resourcing decisions.

Master Builders recommends that the provision be reformulated to target approval rather than consultation:

> *A Workplace Arrangement must not require the approval or consent of a building association, or an officer, delegate or other representative of a building association, in relation to decisions about the number, source, or type of employees or subcontractors to be engaged. For the avoidance of doubt, this provision does not limit:*
>
> *a. any obligation to consult that is required by the Fair Work Act 2009 (Cth) or a term of an enterprise agreement approved by the Fair Work Commission in accordance with that Act; or*
> *b. a party's ability to engage in good faith discussions with a building association about matters affecting the workforce, including the orderly deployment and redeployment of labour across projects, provided that such discussions do not confer upon the building association a right of approval or veto over operational decisions.*

Reporting obligations (sections 2.3 and 7.1)

Section 2.3 of the Draft Guidelines requires the head contractor to notify the BCCB of "any threatened, impending, possible or 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."

Section 7.1 extends this to "any grievance or dispute, including any threatened, possible, probable or impending dispute, relating to workplace relations or WH&S matters... that may impact on project costs, related contracts or timelines."

Master Builders submits that these obligations are excessive:

- The extension to "possible" or "probable" conduct requires the builder to report on speculation. Every robust negotiation, every animated toolbox talk, every forthright exchange between a delegate and a supervisor could be characterised as "possible" unlawful conduct. This is unworkable.
- The requirement to report "any grievance or dispute... that may impact on project costs" captures virtually every workplace relations matter of any substance. The practical consequence is that the builder must report routine industrial relations management to the BCCB, converting the regulator into a surveillance mechanism and ending the builder's capacity to resolve matters informally.

- Excessive reporting obligations poison the relationship between the builder and their workforce. If every grievance must be reported rather than resolved at the enterprise level, this will be counter-productive to the code's objectives.

Master Builders recommends that reporting be limited to:

- actual industrial action, whether protected or unprotected, that has commenced or is imminent (i.e. formally notified);
- actual unlawful conduct on site of which the head contractor becomes aware;
- any matter that causes or is reasonably likely to cause actual delay to the delivery of the state-funded project; and
- any request by a building association for payment of any kind in relation to industrial conduct.

The threshold should be actual conduct or imminent and formally notified threats, not speculation about what is "possible" or "probable."

Obligation to pursue legal remedies (section 7.2)

Section 7.2 of the Draft Guidelines provides that "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."

Master Builders submits that this provision makes the builder the enforcement arm of the code against the union. Requiring a builder to commence proceedings in the Fair Work Commission or Federal Court against the union, on pain of losing government work if it does not, places the builder in an impossible position:

- Litigation against the union can provoke industrial retaliation across the builder's entire project portfolio, including private projects.
- The cost of that retaliation, in lost productivity, disruption, and workforce instability, may far exceed any benefit from the legal remedy obtained.
- The builder will be required to litigate not in its own commercial interest but in government's regulatory interest, which is properly the function of the independent regulator.

Master Builders recommends that the obligation to pursue legal remedies be reframed as follows:

> *A contractor must report unprotected industrial action to the BCCB in accordance with section 2.3. The contractor must cooperate with any application made by the BCCB or other regulatory body in relation to that action. Nothing in this section requires a contractor to commence legal proceedings in its own name; however, a contractor must not obstruct or frustrate any proceedings commenced by the BCCB or other regulatory body.*

If government wishes unprotected industrial action to be the subject of legal proceedings, the independent regulator should bring those proceedings. The builder's role is to report and cooperate.

Sanctions regime (section 10)

Master Builders accepts that a sanctions regime is necessary for the code to have effect. However, Master Builders submits that the sanctions regime should be:

- Graduated: the Draft Guidelines provide for a range of sanctions from formal warnings to "full exclusion from tendering for any work for an unspecified period." An unspecified period of full exclusion is disproportionate; it provides no certainty and no pathway back to compliance. Master Builders recommends a maximum exclusion period of six months for a first breach and twelve months for repeated breaches.
- Proportionate: the sanctions should distinguish amongst breaches attributable to the builder's own conduct; breaches arising from a subcontractor's conduct that the builder did not direct or facilitate (less serious); and breaches arising from third-party conduct (union officials, individual workers) over which the builder had no lawful control (no sanction unless the builder facilitated the conduct).
- Subject to independent review: the Draft Guidelines provide for internal review by "a person appointed by the Director-General" of the administering department. This is insufficient. Master Builders submits that any exclusion sanction should be subject to merits review by the Industrial Court of Queensland.
- Remediation focused: the primary response to a first breach should be a direction to remedy within a specified timeframe, not immediate exclusion. Exclusion should be reserved for serious, deliberate, or repeated non-compliance.

Further, there should be clearly defined enforcement thresholds; that is, the threat of any sanctions (beyond a speeding ticket) should be reserved for more egregious breaches. Ultimately, it is in the regulator's interests that builders cooperate. Builders who fear arbitrary sanctions will be reluctant to proactively engage with the regulator to achieve improved practices.

Transitional provisions

The Draft Guidelines do not include a transitional period for existing enterprise agreements. Many major enterprise agreements covering Queensland construction work have nominal expiry dates falling between July 2026 and July 2027 (as demonstrated by Annexure 1 to Counsel Assisting's submission). A builder cannot unilaterally vary an existing enterprise agreement to remove clauses that may be non-compliant with section 4 of the Draft Guidelines. Variation requires employee agreement and Fair Work Commission approval under the FWA.

Master Builders recommends that the code include a transitional provision to the following effect:

> *Sections 3 and 4 of these Guidelines do not apply to a party in respect of an enterprise agreement made before the commencement of these Guidelines until the earlier of:*
>
> *a. the nominal expiry date of that enterprise agreement; or*
> *b. twelve months after the commencement of these Guidelines.*

This approach gives builders a reasonable period to renegotiate their agreements at the next bargaining cycle, without penalising them for the content of agreements that were lawfully made and approved before the code commenced.

Savings clause (section 2.6)

Master Builders strongly supports the inclusion of section 2.6, which provides that the Guidelines do not require conduct that would contravene the FWA. This clause is constitutionally essential for a state code. Without it, the code would be directly inconsistent with the FWA wherever it prohibits conduct that the FWA permits or requires.

However, Master Builders submits that section 2.6 be strengthened by adding:

> *For the avoidance of doubt, a party does not breach these Guidelines by complying with the terms of an enterprise agreement that has been approved by the Fair Work Commission in accordance with the Fair Work Act 2009 (Cth), provided that the party has not directed, facilitated, or procured the inclusion of the relevant term for the purpose of circumventing these Guidelines.*

Annexure A

Summary of provisions in the Draft Guidelines require the builder to police, report, monitor, or enforce compliance in relation to union conduct or industrial activity, either directly on its own workforce or through the subcontractor chain.

Reporting obligations

Provision	Obligation
Section 2.3	Report "any threatened, impending, possible or probable or actual unlawful industrial conduct" to BCCB within 24 hours
Section 2.3	Report "any... breach of these Guidelines" within 24 hours
Section 7.1	Report "any grievance or dispute, including any threatened, possible probable or impending dispute, relating to workplace relations or WH&S matters... that may impact on project costs, related contracts or timelines" to BCCB and client agency within 24 hours
Section 7.1	"The head contractor must report any grievance or dispute... that may impact on project costs" and "provide regular updates to the BCCB and the client agency about the steps being taken to resolve such grievances or disputes"
Section 7.1	"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"
Section 7.2	"Contractors must report any threatened or actual industrial action that may impact the project" and "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"
Part 8 (paragraph 68(h))	"lost time through any work health and safety matter, or purported work health and safety matter, is reported"

Intervention obligations

Provision	Obligation
Section 7.2	"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"
Section 7.2	"Contractors will be required to use their best endeavours to pursue legal remedies... A failure to instigate appropriate legal remedies may be considered to be a breach of the Guidelines"
Section 4(f) and Section 9	"No relaxation of the right of entry provisions for officials of industrial organisations" and the builder must ensure that entry is in compliance with Part 3-4 FW Act"
Section 9	The builder must ensure that "no ticket, no start" signs are not displayed, show card days do not occur, union logos are not applied to employer-supplied property, and union officials do not administer inductions

Monitoring and enforcement of subcontractor obligations

Provision	Obligation
Section 2.2	Head contractors must "ensure... compliance with these Guidelines" by subcontractors and ensure "all expressions of interest, tender and contractual documents clearly set out the requirements specified in these Guidelines"
Section 5.2	The successful contractor must "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"
WRMP content (section 5.1(m)(iv))	The WRMP must address "how subcontractor compliance with the workplace relations requirements will be monitored and enforced"
WRMP content (section 5.1(c))	The WRMP must address "how the head contractor will ensure subcontractors will comply and remain in compliance with the Code and Guidelines"
Section 2.4 (scope)	"To achieve the objectives of these Guidelines... 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"

Obligations to suppress lawful but code-non-compliant union activity

Provision	Obligation
Section 4(e)(iv) combined with "Workplace Arrangement" definition	A "practice" must not "require an employer to consult or seek the approval of a third party (such as a union) over the number, source, type or payment of labour"
Section 9 / freedom of association	The builder must ensure that "using employee representatives, site delegates or other union representatives to administer site induction processes" does not occur. "These processes are to be undertaken by site management"
Section 7.1	"Dispute settlement provisions must allow an employee to have freedom of choice in deciding whether to be represented, and, if so, by whom" and dispute settlement outcomes "cannot be inconsistent with the Queensland Code and these Guidelines"