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

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

Dear Sir/Madam,

Re: Australian Industry Group Response to Commission of Inquiry Counsel Assisting's further submission regarding the introduction of a Proposed Code and Independent Regulator

The Australian Industry Group has a large membership in the construction industry including major builders as well as large and small subcontractors primarily within civil construction sector. Notably, we also represent the labour hire industry in this sector.

In principle, we support the following proposed recommendations contained in the Commission of Inquiry Counsel Assisting's further submission dated 4 July 2026:

(a) "the introduction of a code of practice governing standards of behaviour in the construction industry; and
(b) the establishment of an independent regulatory body to administer and enforce that proposed code."

The following issues we raise are intended to ensure that any Code and Guidelines do not place all of the burden on employers in the sector. They must also, where possible, pose specific requirements on unions. This is particularly important in the context of the demarcation controversy and the weaponisation of work health and safety (**WHS**) processes by the CFMEU.

Reducing or eliminating the misuse of work health and safety laws or raising of false concerns to further a union's industrial relations agenda.

Unions have an important and entirely legitimate role to play in the identification and management of WHS risks. The existence of widespread industry concern that this role has been systematically misused by the CFMEU is notorious and should also be addressed by the Code.

The Australian Industry Group has an extended history of being heavily involved in both the development of, and supporting employers to implement, various similar Codes and Guidelines in both the Federal and State jurisdictions. Based on that prior experience, a key concern we hold is that historically, the presence of a well-resourced regulator supported by a strong Code and Guidelines has not resulted in meaningful change within militant unions.

A limitation of the past Codes of this sort, which will potentially be replicated by the adoption of the proposed Code, is that they have lacked the ability to have a direct impact on union conduct by requiring the union to be held to account for its misbehaviour. This deficiency should not be replicated in the proposed Code.

The Australian Industry Group proposes that the Code and Guidelines expressly prohibit unions from breaching or misusing applicable State laws relating to WHS (or making false or misleading claims in relation to WHS matters). Appropriate mechanisms should also be developed to enforce this prohibition. The weaponisation of WHS processes as an industrial relations strategy for some unions, particularly the CFMEU, poses a major threat to employers.

Addressing and curtailing unions inappropriately using health and safety as means to achieve their industrial relations objective is well within the powers of the State Government.

We also recommend that a requirement be put in place obliging *both* WorkSafe QLD and the proposed Regulator to ensure that unions' right of entry in relation to WHS matters is not misused.

The penalty to be enforced against unions and their officials for breach of the proposed Code prohibition on misusing applicable WHS laws should include both a pecuniary component, and suspension or permanent removal of an individual's WHS right of entry permit.

Demarcation

We are pleased to see that the Guidelines seek to address demarcation issues. It is crucial that meaningful measures to address this issue are taken.

To further facilitate this, we proposed that the Regulator is empowered to require the union to demonstrate (both to the Regulator and the relevant employer) the basis under its rules as to why it has the right to represent interests of any relevant cohort of workers in any context where the union is or has:

- sought to negotiate or be covered by an enterprise agreement;
- sought to utilise right of entry; or
- sought to represent worker/s in a dispute or any other proceedings.

Any failure to provide such information, or misrepresentation of a union's rights (including with respect to membership and rights of representation), should be subject to a penalty. The Regulator should also be empowered to refer any concern over misrepresentations by a union or official of their right to represent employees to the Fair Work Commission or Fair Work Ombudsman.

An employer should not be held to have breached the Guidelines where any conduct by the employer which may otherwise amount to a breach is a consequence of the employer not having the appropriate information to verify the union's right to represent interests of any relevant cohort of workers.

Transitional arrangements

Transitional arrangements should be put into place to enable employers with non-expired agreements to be able to tender for work. As a result of changes to the *Fair Work Act 2009* (Cth) since the previous Queensland Code and Guidelines were implemented, employers have very little practical capacity to seek termination or variation to enterprise agreements within their nominal term if this is opposed by a union. Many top tier construction companies and their subcontractors with current enterprise agreements in place may be unable to comply with the Guidelines without appropriate transitional arrangements.

The Australian Industry Group requests a further consultation process be undertaken to obtain industry's feedback about any transitional arrangements.
At the least, the Guidelines should ensure that:

- Enterprise agreements made prior to the commencement date of the Guidelines do not result in non-compliance with the Guidelines, until at least the nominal expiry date of the agreement; and
- Where a particular site practice is mandated by a provision in an enterprise agreement made prior to the commencement date of the Guidelines, such site practice does not result in non-compliance with the Guidelines until at least the nominal expiry date of the agreement.

Commencement date

Once the terms of the Guidelines are finalised and published, at least three months' notice should be given of the commencement date to enable time for contractors to be advised of the requirements and to implement the necessary systems to ensure compliance.

Concerns regarding the draft Implementation Guidelines

The Australian Industry Group seeks amendments to be made to the draft Implementation Guidelines as follows:

<u>Part 6 - Project agreements</u>
This section requires that *"Subcontractors must be involved in the process of developing a project agreement before it is finalised".*
Project agreements are usually negotiated as greenfield agreements with the relevant union, prior to any employees being employed or subcontractors being nominated and/or engaged. It is often impractical to have a subcontractor involved in the development of a project agreement before it is finalised.
There is a risk that implementing such provisions would likely increase delays in commencing projects and/or create increased costs in tendering. We seek that this requirement is deleted.

Part 9 — Freedom of association and right of entry

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

As the Code and Guidelines applies to employers, this provision puts an employer at risk of being non-compliant based on actions taken by the union. In many circumstances, the employer will simply not able to make the determination as to a union's coverage and any endeavour to obtain clarity over such matters will often be likely to be unreasonably costly and time consuming.

Ultimately, it should presently be incumbent on the CFMEU Administrator to ensure that the union is operating in accordance with its rules. There has, to date, been a concerning lack of action by the Administrator in this regard.

The Code, Guidelines and new independent regulator should ensure that in relation to State Government funded work, unions seeking to enter into enterprise agreements, exercise rights of entry or represent employees in disputes, must demonstrate that they have the right to represent the relevant employee. A failure to do so should result in penalty or action against the relevant union by the regulator.

Definition

Finally, we wish to address the scope of the Code and Guidelines. Our position is that the Code and Guidelines should reflect an appropriate definition of building and construction work, as follows:

'Building and construction work means:

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

but excludes

- *Mining operations, maintenance, landscaping such as mowing, pruning and other horticultural activities and cleaning buildings.'*

Conclusion

The Australian Industry Group seeks to have a Code and Guidelines that provides the outcomes stated by the submissions made by Counsel Assisting. We need this to be done in a manner that does not:

- lock out employers needing to transition out of existing non-compliant agreements where there is otherwise no viable path to address this;
- create undue impediments to employers ensuring that they can commence work in a timely and efficient manner;
- impose on employers additional costs of pursuing union compliance with their own rules;
- fail to create a mechanism for ensuring union misbehaviour is investigated and penalised by regulators.

We look forward to continuing to work with the Government to achieve high levels of productivity and greater harmony on Queensland construction projects.

Yours sincerely



Innes Willox
Chief Executive Officer



Brent Ferguson
Head of National Workplace Relations Policy