

QLD Building and Construction Code – Counsel Assisting's further submissions and draft implementation guidelines

HIA Submission the Commission of Inquiry into the CFMEU

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Executive Summary

HIA's Position:

- HIA does not oppose 'in principle' a properly scoped, evidence-based Code of Practice for **publicly funded** building and construction work in Queensland.
- **HIA strongly opposes clause 2.4 of the Draft Guidelines** (annexed to Counsel Assisting's submissions), which extends core obligations to privately funded work, including residential construction, wherever an expression of interest or tender is called after commencement. This is a fundamental and unjustified expansion beyond both the 2013 precedent and the public-procurement rationale advanced by Counsel Assisting.
- **HIA** is concerned that Queensland is moving ahead of, and potentially inconsistently with, developments at the Commonwealth level (including the prospect of a revised or competing federal Building Code), and **calls on the Commission to require that any recommendation be expressly reconciled with the federal position before it is finalised in its Report to Government.**

Further to the Housing Industry Association's (HIA) April 2026 submission to the Commission's Discussion Paper, we welcome the opportunity to respond to the Council Assisting's further submissions and draft guidelines. We note Council Assisting's recommendation to the Queensland Government in its Final Report that a Building and Construction Code (the Code) be reintroduced and that an Independent Regulator be established.

HIA further notes the evidence before the Commission, in particular the unchallenged evidence of Mr Hadgkiss and Mr Jenkinson, and the Queensland Productivity Commission's modelling of the cost of Best Practice Industry Conditions (BPICs). This puts the direct cost at up to $19.9 billion and $4.9 - $18 billion in indirect costs to Queensland, with a further $5.7 - $20.6 billion in forecast net costs to 2030. While the direct and indirect costs are not insignificant, and will be a factor in determining whether the Code proceeds, this should not be the only consideration. HIA's concerns extend beyond this to the scope of the Code.

As proposed in the Stakeholder Engagement Report (Annexure 3), an appropriate test for assessing any final instrument via the framework is that any Code, if one were to be introduced, must be necessary, clear, enforceable and proportionate. On this test, HIA contends that the Draft Guidelines as presented by Counsel Assisting, fail in terms of clause 2.4, which must be corrected to ensure that residential and other private work is not captured by the Code.

HIA further cautions against designing an instrument to correct the problems identified by the Commission today, which can readily be repurposed by future governments to reintroduce BPIC-style obligations or conditions without community, industry or parliamentary scrutiny. HIA accordingly asks that any recommendation include safeguards against this risk.

HIA's Response to Counsel Assisting's further submissions

Clause 2.4 scope must be narrowed to exclude residential and private funded work

Counsel Assisting propose that a Building and Construction Code is warranted and necessary, and proposes a re-enlivening of the former 2013 Code of Practice as the most appropriate mechanism to achieve this aim. At [12] of their further submission, Counsel Assisting submits that:

> ***"… having regard to the evidence received by the Commission to date, the Commissioner can be satisfied that a well-designed code of practice, administered by a properly resourced independent regulatory body, has the potential to address various unproductive, unlawful, and illegitimate industrial relations practices that persist in the Queensland construction industry."***

Clause 2.4 of the proposed Draft Guidelines provides that a party must comply with Sections 3, 4, 7, 8 and 9 of the Guidelines (covering legal obligations, prohibited Workplace Arrangements, dispute and industrial action reporting, WH&S, and freedom of association/right of entry) in respect of privately funded building and construction work in Queensland, where expressions of interest or tenders are called after the commencement date.

HIA contends that this is an unnecessary and inappropriate extension of the Code into the residential sector that HIA members operate in, by a mechanism entirely absent from the 2013 Guidelines on which this instrument is otherwise modelled. This matters for three reasons:

- The entire productivity and cost-saving case advanced by Counsel Assisting is built on the estimated public spend of $119 billion in forecast government-funded work over the next four years, including Olympics-related infrastructure. Nothing in the evidence of Mr Hadgkiss or Mr Jenkinson, or in the QPC modelling, addresses residential building or establishes any comparable rationale for capturing private work.
- The residential sector's industrial relations dynamics are materially different from those examined by this Inquiry. CFMEU coverage and influence on residential sites is not prevalent nor did it provide the impetus for this Commission. Accordingly, there is simply no evidentiary foundation in Counsel Assisting's submissions for extending the Code to that sector.
- As a practical matter, clause 2.4 would require HIA's approximately 5000 Queensland member businesses (the overwhelming majority being small or micro businesses and employing fewer than 10 people) to demonstrate compliance with a "Workplace Arrangement" – as described by Counsel Assisting as "a newly defined term [in the Code] extending to any agreement, understanding, practice, policy, procedure or arrangement, whether written or otherwise." This compliance obligation is arguably designed to address dispute-reporting and right-of-entry obligations for large commercial and civil projects. HIA contends that the imposition of this additional burden, at exactly the moment the sector is absorbing up to a 40 per cent increase in construction costs since 2019, in conjunction with the introduction of the most significant rewrite of the National Construction Code since the Code's adoption (1988), would be manifestly unfair and create an elevated insolvency risk for our small business members.

Further to the above, the overwhelming majority of residential builders simply do not have the compliance expertise, administrative resources or reporting systems that this framework presupposes, and extending it to their businesses is not likely to lift behaviour or performance standards but rather set the sector up to fail. Respectfully, HIA has little confidence that if supported, the government will provide industry assistance with transitioning to a new Code. Notwithstanding HIA's own repeated representations, the Queensland government has to date taken no meaningful steps to build residential-sector compliance capability ahead of successive rounds of new regulation, and there is no reason to expect that pattern of inaction would change here.

HIA notes, in support of this position, that the Commission's own Stakeholder Engagement Report records industry peak bodies seeking, as its primary recommendation, a narrow and clearly defined scope for the Code confined to 'government project' work where the State is the principal procuring entity and majority funder, with no retrospective or flow-on application to privately financed work.

HIA endorses that formulation and urges the Commissioner, if they choose to adopt the recommendation to propose a Code and supportive Guidelines to Government, that it adopt the narrower scope as defined above, in preference to clause 2.4 as presently drafted.

HIA's Position: Clause 2.4 be amended so that the Guidelines apply only to publicly funded building and construction work as defined by the relevant financial thresholds, with no extension to privately funded work, residential or otherwise, by virtue of a contractor's parallel involvement in public work, and that no application is triggered merely by the timing of a private tender.

Queensland must not get out of step with the Commonwealth

Further to our April 2026 submission, HIA notes that a state-based Code is being proposed at a time when the Commonwealth continues to progress the National Construction Industry Forum's (NCIF) *Blueprint for the Future*. On 16 July 2026, the Federal Government tabled its response to the final report of the *Secure Jobs, Better Pay Review*, in which it recommits its support for NCIF to continue implementing the *Blueprint* and more broadly for its role as an advisory body in driving long-term cultural change in the building and construction industry.[1] HIA continues to support our previously stated position that the objective to lift standards in the construction industry is best achieved by implementing the Blueprint, rather than by creating a parallel state instrument that the industry must navigate alongside it. This risks uncertainty, duplication and regulatory burden on industry which will ultimately negatively impact compliance and enforcement. This concern around duplication with the Blueprint remains unaddressed by Counsel Assisting.

[1] Australian Government; *Australian Government response to the final report of the Secure Jobs, Better Pay Review*, Recommendation 2 (2026).

HIA notes this concern is shared by other representative bodies, as the Stakeholder Engagement Report records both an industry stakeholder and union representatives separately identifying the NCIF charter, rather than a Code, as the instrument most likely to shift culture and behaviour.

HIA's concerns about a standalone Queensland Code settled ahead of, and out of alignment with, federal reform, include the risks of:

- the potential of creating two divergent or conflicting compliance frameworks for contractors operating across state and Commonwealth-funded work. This would result in additional complexity and duplication of workplace relations management plans, reporting lines and audit burdens that both the Commission's evidence and stakeholder consultation identify as the principal cost of earlier codes;
- Queensland locking in settings that a subsequent, differently designed Commonwealth instrument then overrides or duplicates. This would mean duplicative and wasteful implementation and transition costs industry will have already incurred in complying with the state instrument; and
- the entrenchment of a broader-than-necessary Queensland instrument (particularly as to clause 2.4) that a national Code, built around public procurement, is not likely to contain. This would then mean Queensland's settings become the de facto ceiling rather than the floor, out of step with other jurisdictions.

Accordingly, HIA asks the Commission to delay any recommendation to the Queensland Government until after the Commonwealth work has progressed. Alternatively, any such recommendation should be expressly conditioned on the Queensland Government obtaining and publishing current advice of how the instrument reconciles with current and prospective Commonwealth building code settings, to avoid Queensland entrenching a broader or divergent regime that industry will be subject to.

Other matters

HIA maintains the following positions from our April 2026 submission:

- HIA supports the Draft Guidelines, as proposed by Counsel Assisting, in rejecting the re-enlivening of project trust account obligations. HIA reiterates that we will strongly oppose any future amendment introducing such obligations via this instrument, consistent with the Queensland Government's own January 2025 pause rationale (industry vulnerability and insolvency risk), which remains unaddressed and, on current data presented, has deteriorated.
- Counsel Assisting has not provided any clear guidance on proposed enforcement mechanisms regarding compliance, other than its proposal for an Independent Regulator role be established and an assessment of stakeholder feedback on the matter (in its annexed Stakeholder Engagement Report). HIA contends that the details of an enforcement mechanism must be made clear by the Commission at the same time it makes any recommendation to Government to establish a Code. It is not sufficient for the details to be left unclear so that industry and the community have limited ability to provide feedback or consult with Government on the proposal.
- HIA further contends that in response to witness evidence referred to by Counsel Assisting, any enforcement mechanism must attach to demonstrated, systemic non-compliance, as opposed to a

single or isolated incident, consistent with witness evidence that sanctions should be applied “on a case-by-case basis,” and not for a single instance of non-compliance.

- HIA again urges the Commissioner to ensure that any recommended Code must be supported by a commitment from Government that it will carry out informed consultation prior to implementing a Code. This should include the preparation of an exposure draft of the proposed instrument; targeted consultation (specifically to incorporate the residential sector’s feedback); published guidance and model clauses; a defined transition period before enforcement; and a formal review within 18 months directed at whether the Code has in fact improved productivity and value for money, and has not adversely captured private residential work. HIA reiterates our position, supported by a substantial body of other stakeholders based on the feedback contained in the Stakeholder Engagement Report, that we could not support the proposal without a drafted instrument and regulatory impact assessment.

Conclusion

While HIA is unable to support the proposal by Counsel Assisting in its present form, HIA would not oppose a Code of Practice that is strictly confined to publicly funded building and construction work, provided it is reconciled and not duplicated with Commonwealth settings, proportionate to the conduct this Inquiry has been established to examine and consider, and safeguards against the risk of future government’s reintroducing BPIC-style obligations without appropriate scrutiny.

HIA cannot support the Draft Guidelines in their current form while clause 2.4 remains capable of capturing residential and other privately funded work. HIA asks the Commissioner to correct this before any final recommendation is made to the Queensland Government.