**COMMISSION OF INQUIRY**
**INTO THE CFMEU AND**
**MISCONDUCT IN THE CONSTRUCTION INDUSTRY**

# CEPU, ETUQ, AND PGEU SUBMISSIONS ON A CODE OF PRACTICE AND INDEPENDENT REGULATOR


INTRODUCTION AND SYNOPSIS ..... 1
WHAT IS THE CHARACTER OF THE PROPOSED CODE? ..... 2
PRODUCTIVITY ..... 4
FREEDOM OF ASSOCIATION, SAFETY, AND MISCONDUCT ..... 12
OTHER CONCERNS ..... 14
CONCLUSION ..... 24


## Introduction and synopsis

1. This **Commission** of Inquiry is tasked with, among other things, making a full and careful inquiry with respect to the impact of misconduct on productivity in the Queensland economy and the construction industry. In undertaking that task, the Commission should have regard to the Queensland **Productivity Commission** inquiry into construction productivity.

2. Counsel Assisting makes the case for the reintroduction of a **code** of practice and an independent regulator.[1] In doing so, Counsel Assisting relies principally on the final report issued by the Productivity Commission in October 2025 and the evidence of two witnesses called by Counsel Assisting, Messrs Hadgkiss and Jenkinson.

3. The CEPU, ETUQ, and PGEU (together, the **unions**) oppose the reintroduction of a code in the terms put forward by Counsel Assisting. For the reasons set out in these submissions, it is more likely than not that a code will not have the positive effects for which Counsel Assisting contends and its introduction will cause more problems than it is suggested it will fix.

4. Counsel Assisting has not addressed the legal character of the code and it is unclear from the further submissions whether the recommendation is that legislation or policy or a combination of the two be created. Silence on this issue makes it difficult for the unions to assist the Commission with evidence or submissions in response. Counsel assisting should provide further clarity about what is recommended and why. The unions ask for the opportunity to respond when that is done.

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[1] Counsel Assisting's **further submissions** on the re-introduction of a code of practice and independent regulator dated 3 July 2026.

5. Counsel Assisting submits that the evidence discloses three clear justifications for re-introducing a code of practice and an independent regulator.[2] *First*, and principally, it is said that such measures have historically served to improve productivity, reduce project costs, and ultimately deliver better value for money for taxpayers.[3] *Second*, such measures have advanced freedom of association on construction sites.[4] *Third*, such measures have otherwise reduced the incidence of misconduct.[5]

6. None of those justifications is supported by a careful analysis of the evidence. Rather, it is more likely than not that the proposed code will not address productivity in a meaningful way. Professor O'Brien's opinion, which is supported by a careful survey of academic work, is that if productivity is the key underlying issue, a new or revised code is not required.[6] Each of the justifications is addressed seriatim below.

7. There are other concerns that arise from Counsel Assisting's further submissions. At a high level, those concerns involve:

   (a) the extent to which there is inconsistency with Counsel Assisting's proposal and Commonwealth legislation, *viz.*, the *Fair Work Act 2009* (Cth);

   (b) the enforceability of the regulatory remedies set out in the Implementation Guidelines and public law issues that arise for how enforcement operates;[7]

   (c) consideration of the *Human Rights Act 2019* (Qld);

   (d) the interplay between Counsel Assisting's proposal and international instruments to which Australia is a party, *viz.*, ILO Convention 87 and ILO Convention 98;

   (e) the absence of any consideration of labour supply or skills shortage; and

   (f) the failure to address matters raised in the process of stakeholder engagement.

8. Those concerns are also addressed seriatim below.

**What is the character of the proposed code?**

9. Counsel Assisting does not explain whether the recommendation advanced involves legislation or policy or a combination of both. This is a fundamental problem because it is not possible to address with certainty the consequences of the proposal.

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2 Counsel Assisting's further submissions at page 5, [14].

3 Counsel Assisting's further submissions at page 5, [14](a) and pages 5 to 9, [16] to [28].

4 Counsel Assisting's further submissions at page 5, [14](b) and pages 9 and 10, [29] to [31].

5 Counsel Assisting's further submissions at page 5, [14](c) and page 10, [32].

6 Expert report of Professor Martin O'Brien dated 6 August 2026, page 7 (response to question 10) and pages 45 to 46, [149] to [158].

7 Counsel Assisting's further submissions, Annexure 2, **Implementation Guidelines** to the Queensland Code of Practice for the Building and Construction Industry.

10. As foreshadowed above, the unions are concerned about the extent of inconsistency between the proposal and Commonwealth legislation. Those concerns depend in part on the extent to which the proposal involves legislation or policy.

11. Likewise, the unions are concerned about how regulatory remedies would be enforced and public law issues that arise from that question, such as the reviewability of decisions contemplated by part 10 of the Implementation Guidelines. As presently tabled by Counsel Assisting, the Implementation Guidelines are confusing and have the capacity to be arbitrarily applied.

12. The Implementation Guidelines are drafted as a procurement instrument. Part 10 grounds sanctions on 'the Government's right as the client to choose with whom they do business.' Compliance is monitored under Part 2.2 using a framework of contractual consent obtained during the tender process. The proposed administering entity, the Building Construction Compliance Branch, or **BCCB**, is contemplated to be a branch of a department rather than a statutory authority. On its face, the Implementation Guidelines has the character of a policy.

13. But the proposal Counsel Assisting describes goes further than the Implementation Guidelines. Counsel Assisting seeks the establishment of an independent regulatory body with investigative and enforcement functions and 'appropriate powers.'[8] Counsel Assisting also seems to suggest that the code should apply to related entities of any entity covered by the code and require the regulator to notify the ASX if it finds that an entity has breached its obligations under the code.[9] Those are features that would require a statutory foundation—a fact that the Stakeholder Engagement Report records in several places.[10]

14. The proposal is also materially inconsistent with Commonwealth law and the *Human Rights Act 2019* (Qld). The unions are limited in the extent to which they can seek to assist the Commission in this respect, because the legal character and nature of the proposed code is unclear. Any submissions are therefore made on a hypothetical basis, and as such these submissions deal with the unions' concerns only at a high level. It is not fair or useful to the Commission for the unions or any other party to approach those questions on a hypothetical basis. With respect, Counsel Assisting should be required to explain the legal character of what is proposed with precision and permit interested parties to respond.

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[8] Counsel Assisting's further submissions at pages 21 and 22, [69], [70], and [76]. The 'appropriate powers' are not explained.

[9] Counsel Assisting's further submissions at pages 18 and 19, [64](c) and (d) and [65]. The reference to 'related entities' is presumably a reference to the concept of related body corporate in s 50 of the *Corporations Act 2001* (Cth).

[10] For example, see Counsel Assisting's further submissions, Annexure 3, **Stakeholder Engagement Report**: Queensland Code of Practice for the Building and Construction Industry at pages 35 and 36.

## Productivity

15. The first justification for a code advanced by Counsel Assisting is that such measures have historically served to improve productivity, reduce project costs, and ultimately deliver better value for money for taxpayers.[11] Counsel Assisting recommends the reintroduction of a code and a regulator as a means of increasing productivity and combating misconduct to pave the way for the significant volume of construction work required to build the infrastructure required for the Olympics.[12]

16. In its report, the Productivity Commission's terms of reference provided:[13]

> *… At the same time, the ongoing housing shortage and large Queensland Government capital program (including the delivery of Brisbane 2032 Olympics infrastructure) mean lifting construction productivity to deliver increased market capacity is more important than ever.*
>
> *To ensure the construction sector can meet Queensland's infrastructure and housing needs, the inquiry will examine policy and regulatory factors that are affecting the productivity of the construction sector in Queensland.*

17. To meet those goals, the Productivity Commission recommended the introduction of a code of practice. It recommended:[14]

> *Government should provide a clear market signal - via a code of practice - to industry on expectations in relation to site conduct and productivity for entities that choose to tender for Queensland Government funded construction work.*
>
> *The starting point for the code could be the current Building and Construction Code of Practice 2000, which is currently administered by OIR. The revised code should be supported by consultation with key stakeholders, including industry, unions and government …*
>
> *The Code should focus on productivity matters and not be used to achieve other objectives, duplicate other policy and regulation or mandate specific clauses or quotas.*

18. Counsel Assisting submits that a well-designed code, administered by a properly resourced regulator, has the potential to deliver improvements to productivity in the construction industry because:[15]

    (a) the Productivity Commission recently recommended re-introducing a code of practice;

    (b) the material that the CFMEU Administrator put before the Commission acknowledged that arrangements of the kind now proposed likely had a positive impact on productivity;

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[11] Counsel Assisting's further submissions at page 5, [14](a) and pages 5 to 9, [16] to [28].

[12] Counsel Assisting's further submissions at page 5, [13].

[13] **Productivity Commission report**, *Opportunities to Improve Productivity of the Construction Industry* (October 2025), page 390.

[14] Productivity Commission report, page 16.

[15] Counsel Assisting's further submissions at page 8, [27].

(c) none of the other parties represented before the Commission has to date called any witness to contradict Mr Hadgkiss or Mr Jenkinson's evidence; and

(d) the evidence of Messrs Hadgkiss and Jenkinson as to the potential productivity benefits and cost saving implications of a code of practice withstood robust cross-examination.

***The Queensland Productivity Commission report***

*19.* Counsel Assisting invites the Commission to find that re-introducing a code and independent regulator will improve productivity based upon the recent recommendation by the Productivity Commission. But Counsel Assisting does not grapple with limitations expressed in that report. In light of those limitations and the opinions expressed by Professor Martin O'Brien in response to the Productivity Commission report, the Commission ought to be careful about placing any weight upon the report and recommendations it contains.

*Limitations in the Productivity Commission Report*

20. There are limitations to the Productivity Commission report that are either described by its authors or are apparent on its face. Those limitations are not dealt with by Counsel Assisting. Professor O'Brien describes some of those limitations in his report, but there are others. For present purposes, it is useful to identify two examples.

21. *First*, in respect of its analysis of BPIC, the Productivity Commission describes its work as 'a stylised analysis'[16] with 'significant uncertainties' in the modelling.[17] The spread of the net economic cost forecast in the 'low scenario' of $5.7 billion and the 'high scenario' of $20.6 billion demonstrates how those forecasts are susceptible to the assumptions upon which they are based. Counsel Assisting relies upon those figures as a key integer of the justification for the reintroduction of a code.[18]

22. *Second*, there is a good reason to be circumspect about the estimates from stakeholders set out on pages 111 and 112 of the report, which are said to support the Productivity Commission's project cost estimates. Those estimates come from industry submissions and consultation.[19] They are untested estimates from parties with a commercial interest in the outcome.

*Professor O'Brien's expert report*

23. Professor O'Brien is a professor of economics at the University of Wollongong, where he has been employed for over 20 years. He has been a director of the MBA program at the university since 2018, has research expertise in labour economics, and has published widely in the field of labour economics and employment relations.

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[16] Productivity Commission report, page 111.

[17] Productivity Commission report, pages 14, 113, 405, 407 and 423.

[18] Counsel Assisting's further submissions at page 3, [7].

[19] The Civil Contractors Federation, Roads Australia, and a Queensland Economic Advocacy Solutions (QEAS) analysis commissioned by the Queensland Major Contractors Association.

24. Professor O'Brien gives evidence that:

    (a) a slowing productivity growth has been evident for both Queensland and Australia in recent years, in common with other developed countries;[20]

    (b) generally speaking, Queensland productivity growth across all industries exceeded that for Australia over most of the time period analysed;[21]

    (c) productivity in the Queensland construction industry grew by 13.5 per cent from 1994-95 to 2024-25 compared to 10.5 per cent for productivity in construction at the national level, and productivity growth in Queensland construction generally exceeded the broad Australian construction industry over most of the time period analysed and was relatively strong compared to other developed countries;[22]

    (d) slowing productivity is not the key underlying issue in the Queensland construction industry;[23]

    (e) prevalent productivity trends in Queensland construction are likely contributed to by not only industry fragmentation, increasing regulatory burden, and procurement policy, but also to productivity mismeasurement, boom-bust cycles, management and supervisor behaviour and skills, availability of materials, skills and equipment, worksite and project level issues, supply chain quality, workplace health and safety, and macroeconomic conditions.[24]

25. He also gives evidence about the methodology employed by the Productivity Commission for the composition of the Queensland construction industry productivity estimates reported in figure 2.9 of the Productivity Commission report.[25] On that topic, Professor O'Brien says that the precise methodology is not clear, is not elaborated in the report, and that he was unable to replicate the estimates of the Productivity Commission.[26]

26. Professor O'Brien's evidence directly contradicts the methodology, foundations, and conclusions expressed by the Productivity Commission in its report. Critically, Professor O'Brien disagrees with the underlying premise of the 'industry reset.' He rejects that there is something 'different' about the decline in Queensland construction productivity since 2018.[27] He says:[28]

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[20] Professor O'Brien's Expert Report at page 6 (response to question 2) and page 9, [7] to [10].

[21] Professor O'Brien's Expert Report at page 6 (response to question 2) and page 10, [11].

[22] Professor O'Brien's Expert Report at page 6 (response to question 3) and pages 11 to 13, [15] to [21].

[23] Professor O'Brien's Expert Report at page 6 (response to question 4) and pages 18 to 19, [37] to [42].

[24] Professor O'Brien's Expert Report at page 6 (response to question 5) and pages 22 to 29, [50] to [80].

[25] Productivity Commission report at page 82.

[26] Professor O'Brien's Expert Report at pages 11 and 12, [12] to [17].

[27] Professor O'Brien's Expert Report at page 6 (response to question 6) and page 30, [82] to [88].

[28] Professor O'Brien's Expert Report at pages 6 to 7 (response to question 6), emphasis added.

> ***Productivity has slowed across the market sector in general since 2018 and productivity trends for Queensland construction have been favourable relative to comparators at the national or international level****. Furthermore, much of the analysis that follows in this section of the Productivity Commission Final Report appears more focussed on costs rather than productivity, with much of the evidence being qualitative or subjective in nature. In particular, there are major flaws with the analysis presented of Best Practices Industry Conditions (BPICs). Furthermore, contrary to Productivity Commission analysis, there is some evidence that safety outcomes have improved in Queensland construction in recent years compared to appropriate control groups. As such, I disagree with the recommendation to remove BPICs permanently. I agree in principle with recommendations to improve the operation of workplace health and safety, however, given that the research suggests that safety is a driver of productivity and not vice versa, I caution that any changes to workplace health and safety regulations that are primarily driven by cost or employer imperatives may be adverse to both safety and productivity outcomes. I agree with the recommendation to improve dialogue and collaboration between parties in construction.*

27. Professor O'Brien disagrees that the key underlying issue is slowing productivity in the Queensland construction industry:[29]

> *I disagree that there has been a significant event or anomaly in the Queensland construction industry since 2018 that has led to abnormally low productivity levels. Rather, it is apparent that any productivity slowdown occurring in Queensland construction productivity since 2018 has also been experienced at the wider Australian level in the construction industry, but more so at the economy wide market sector level, and indeed internationally. In my opinion, the main feature of Queensland construction industry that stands out as an obstacle to addressing Queensland construction challenges is labour shortages.*

28. Professor O'Brien considers that the crucial issue in the industry is not productivity, but rather labour shortages.[30] Professor O'Brien concludes that:[31]

> *If productivity is the key underlying issue I disagree that a new or revised code is required.*

29. Professor O'Brien's ultimate opinion is that slowing productivity is not the key underlying issue in the Queensland construction industry. And even if it was, he considers that the proposed code 'has very little to do with labour productivity, nor is it likely to achieve marked improvements to measured productivity.'[32] In light of that evidence, the Commission would be very slow to adopt any of the recommendations suggested by the Productivity Commission—at very least in the absence of any cross-examination of the authors of the report. *A fortiori*, given the other limitations of the report.

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[29] Professor O'Brien's Expert Report at page 19, [42].

[30] Professor O'Brien's Expert Report at page 46, [156] and page 48, [169].

[31] Professor O'Brien's Expert Report at page 7 (response to question 10). And see page 45, [154].

[32] Professor O'Brien's Expert Report at page 48, [169].

30. Counsel Assisting also refers to a 2014 report from the Australian Government Productivity Commission. The 2014 report concludes that the work of BIT/ABCC improved productivity, but not to a degree that could be statistically demonstrated with any precision in aggregate data for the entire construction industry.[33] It seems the conclusion expressed in the 2014 report was based on:[34]

    (a) individual case studies; and

    (b) the 'proposition' that the ABCC reduced industrial disputes.

31. Importantly, the 2014 report acknowledges the absence of any reliable identification of robust and large parameters that causally link aggregate productivity gains to the creation of the BIT/ABCC.[35]

32. The conclusion is not robust and, in any event, is an insufficient basis to find that re-introducing a code of conduct and independent regulator will improve productivity. And it is contrary to published academic research that demonstrated no productivity gains when the ABCC existed.[36]

33. Finally, Counsel Assisting says at [7] of the further submissions, among other things, that (emphasis in original):

> *The QPC estimated that the **direct costs** of the BPICs to the Queensland community have been as high as $19.9 billion, with further, **indirect costs**, between $4.9 billion to $18 billion*

34. That is not correct. The Productivity Commission estimated that $19.9 billion as the 'high scenario' forecasted cost to taxpayers over the period 2024–25 to 2029–30, in net present value terms, in a hypothetical world where BPIC continued and was strictly applied.[37] It is not a cost that has been incurred at all. Likewise, the estimated indirect costs of between $4.9 billion and $18.8 billion are a forecasted cost in the same period in net present value terms on the same hypothetical basis.[38]

35. Ultimately, the Commission should not accept that re-introducing a code and independent regulator will improve productivity in the Queensland construction industry. No sufficient basis has been identified to justify such a conclusion and the Productivity Commission report is not a reliable foundation for such a recommendation.

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[33] Counsel Assisting's further submissions at [24], referring to Exhibit A2: *Additional bundle of four documents provided for the purpose of cross-examination of Mr Jenkinson and Mr Hadgkiss* (**CFMEU Administrator Bundle**) at 10.

[34] CFMEU Administrator Bundle at pages 10 to 12.

[35] CFMEU Administrator Bundle at pages 10 to 12.

[36] Professor O'Brien's Expert Report at page 47, [160]. Research that had previously claimed productivity gains during the ABCC era has been largely discredited.

[37] Productivity Commission report, page 112, Table 4.1; and pages 421 and 422, Tables C.16 and C.17.

[38] Productivity Commission report, page 112, Table 4.1; and pages 421 and 422, Tables C.16 and C.17.

### *The evidence of Messrs Hadgkiss and Jenkinson*

*No weight should be given to the evidence of Messrs Hadgkiss and Jenkinson*

36. Counsel Assisting repeatedly describes the evidence of Messrs Hadgkiss and Jenkinson as unchallenged or uncontradicted.[39] True it is that no party with leave to appear has called a witness to contradict the evidence of Mr Hadgkiss or Mr Jenkinson (or at all, yet). But that is orthodox— parties with leave to appear may apply to have evidence tendered or heard[40] but it is the function of Counsel Assisting to obtain and call probative evidence relevant to a commission's terms of reference (including exculpatory evidence).[41]

37. In exercising that function, in circumstances where the Commission has sought to deal promptly with any proposal about re-introducing a code of conduct,[42] Counsel Assisting has elected to call only Messrs Hadgkiss and Jenkinson, both of whom gave substantially similar evidence. That should not be understood as suggesting there is no available contrary probative evidence. That is particularly the case in circumstances where contrary submissions (although not contrary evidence[43]) were received by the Commission and recorded in the Stakeholder Engagement Report—a fact that was noted by Counsel Assisting.[44]

38. In those circumstances, the absence of any witness being called to contradict the evidence of Mr Hadgkiss and Mr Jenkinson is not a reason to otherwise accept their evidence or accord it any weight.

39. In any event, contrary to Counsel Assisting's further submissions at [23], the evidence of Messrs Hadgkiss and Jenkinson about the productivity implications of re-introducing a code of conduct and independent regulator should be treated with significant caution and given no weight in accordance with fundamental and long-standing principles about evaluating expert opinion evidence.[45]

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[39] For example, see Counsel Assisting's further submissions at page 8, [27](a), page 12, [38], page 14, [50], page 16, [56], page 18, [62], page 19, [65], page 21, [71], and page 22, [76].

[40] See CFMEU Commission of Inquiry, *Practice Guideline No 3: Leave to Appear at Public Hearings* (31 October 2025) at [15](a), and at [16]-[17]; CFMEU Commission of Inquiry, *Practice Guideline No 4: Public hearings and evidence* (5 November 2025) at [1](b)(i), and at [10].

[41] Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (2nd ed, 2019) at page 491, [8.235].

[42] See T 3021.18-44 (Commissioner Wood).

[43] See Stakeholder Engagement Report at page 8, noting that submissions are not treated as evidence.

[44] Counsel Assisting's further submissions at page 23, [81]: 'the feedback received discloses broad support from industry (**although admittedly not from unions**) for the re-introduction of a code of practice' (emphasis added).

[45] The Commission is not bound by rules of evidence and may inform itself on any matter in such manner as it thinks proper: *Commissions of Inquiry Act 1950* (Qld), s 17; see also, for example, *Cabinet Office v Chair of the UK Covid-19 Inquiry* [2023] EWHC 1702 at [52] per Lord Dingemans and Garnham J. However, rules of evidence should not be disregarded as of no account because they "represent the attempt made, through many generations, to evolve a method of inquiry best calculated to prevent error and elicit truth": *R v War Pensions Entitlement Appeal Tribunal; Ex parte Bott* (1933) 50 CLR 228 at 256

40. That is, the opinion evidence of Messrs Hadgkiss and Jenkinson about productivity implications ought to be given no weight because:[46]

    (a) analysing increases in productivity is a highly technical and complicated task;[47]

    (b) Mr Hadgkiss and Mr Jenkinson are not economists and have no expertise in economics;[48]

    (c) Mr Hadgkiss and Mr Jenkinson have not conducted any study of productivity in the construction industry in Queensland;[49]

    (d) their evidence is based solely on their 'experience', 'feelings', or 'feedback';[50] and

    (e) to the extent that their evidence relied upon external reports or analysis of data in support of their 'experience', Mr Hadgkiss and Mr Jenkinson both accepted that they had not compiled, reviewed, checked, or even read that evidence.[51]

41. It is accepted that each of Mr Hadgkiss and Mr Jenkinson have experience in regulatory roles and, in respect of some of the topics of their evidence,[52] have received feedback from industry representatives. But it must be borne in mind that the only foundation for their opinion evidence about the potential productivity implications of a code is that experience and such feedback.

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per Evatt J. And see *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390 at [17] per French CJ. In an inquisitorial process, such as a Commission, expert opinion is generally to be tested and evaluated in substance as in inter partes litigation on the basis that common law rules governing expert evidence rest on good sense and fairness: *R v Doogan; Ex parte Lucas-Smith* [2004] ACTSC 91 at [8] to [13] per Whitlam J. And see *Makita v Sprowles* (2001) 52 NSWLR 705 at [85] per Heydon JA.

46 *Makita v Sprowles* (2001) 52 NSWLR 705 at [85] per Heydon JA.

47 T 2947.1-6 (Hadgkiss XXN).

48 T 2922.33-35 (Jenkinson XXN); T 2923.16 (Jenkinson XXN); T 2946.22-24 (Hadgkiss XXN); T 2956.46 (Hadgkiss XXN). See also at T 2947.13-15 (Hadgkiss XXN), T 2980.10-12 (Hadgkiss XXN). Their evidence on such topics would not be admissible in *inter partes* litigation: *Makita v Sprowles* (2001) 52 NSWLR 705 at [85] per Heydon JA; *Dasreef Pty Ltd v Hawchar* (2011) 243 CLR 588 at [37].

49 T 2922.37-40 (Jenkinson XXN). See also at T 2923.16-17 (Jenkinson XXN), T 2923.21-25 (Jenkinson XXN), T 2927.42-44 (Jenkinson XXN), T 2929.10-27 (Jenkinson XXN).

50 See T 2922.42-45 (Jenkinson XXN), T 2933.43-45 (Jenkinson XXN), T 2929.10-22 (Jenkinson XXN); T 2945.46-T 2946.1 (Hadgkiss XXN), T 2979.13-35 (Hadgkiss XXN), T 3001.9-10 (Hadgkiss XXN).

51 See T 2926.42- T2927.15 (Jenkinson XXN); T 2978.27-47 (Hadgkiss XXN); T 2980.34-37 (Hadgkiss XXN).

52 T 2934.4-6 (Jenkinson XXN): 'Oh, I don't know that I've spoken to too many people from industry about project agreements. That's probably more my observations and feelings, Commissioner.'

42. Contrary to Counsel Assisting's submissions,[53] that does not mean that the foundation of their opinions was not meaningfully disturbed. The foundation is disturbed because irrespective of the extent of their experience or the feedback received from industry, such experience and feedback is simply incapable of being a sound or sufficient basis upon which such opinion evidence can be given.

43. Productivity is not a metric that can be directly observed.[54] It cannot be reliably measured by 'observations' or 'gut feeling.' Professor O'Brien explains that productivity is a concept that is frequently misunderstood and confused with related concepts such as labour costs, work intensity, profitability, efficiency, and individual employment or output levels.[55] It may be possible to make loose (and unreliable) observations about certain related concepts, such as labour costs, or the frequency of industrial disputes, or even workforce shortages. But any opinion regarding productivity based on loose 'observations' or 'feelings' about related concepts is necessarily premised on assumptions, which are unstated and untested, about the relationship between those concepts and productivity.

44. The evidence of Mr Hadgkiss and Mr Jenkinson about their 'observations,' 'feelings,' or 'feedback' about productivity is not a sound evidentiary basis for any finding about productivity and should be given no weight.

45. The risk of relying on such evidence was made clear in an exchange between Mr Jenkinson and Mr O'Grady KC in cross-examination. When it was put to Mr Jenkinson that a decrease in days worked says nothing in itself about productivity, Mr Jenkinson did not seem to accept this basic proposition and instead said that 'because I'm not an economist, I'm not going to try and split those hairs.'[56] That is not to criticise Mr Jenkinson—he does not have any expertise in economics or econometrics and does not purport to have such expertise. Rather, that evidence emphasises the importance of exercising significant caution in placing any weight on his or Mr Hadgkiss's 'observations' about productivity.

46. To the extent that Messrs Hadgkiss and Jenkinson sought to support their 'observations' and 'feelings' about productivity with external reports and data, it became apparent during cross-examination that they were not in fact familiar with material they said supported their views.

47. For example, Mr Hadgkiss did not recall whether he read the Queensland Productivity Commission Report into Public Infrastructure, referred to in footnote 5 of his statement, or whether somebody else made that reference for him.[57]

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[53] Counsel Assisting's further submissions at page 7, [23].

[54] See Professor O'Brien's Expert Report at page 8, [1]-[6].

[55] Professor O'Brien's Expert Report at page 8, [6].

[56] T 2923.27-T 2924.18 (Jenkinson XXN).

[57] T 2980.34-37 (Hadgkiss XXN).

48. Similarly, Mr Hadgkiss accepted that he had not read the Independent Economics report that he relied upon,[58] he was not familiar with the Independent Economics report,[59] he did not recall the basis on which he referred to the report,[60] and he presented only his opinion about the improvement in 'productivity,' which is based on 'feedback from the industry' that 'to their mind, the productivity was improving.'[61]

49. The table at paragraph 33 of Mr Jenkinson's statement was said to support a significant correlation between a reduction in working days lost to industrial disputes in Queensland and the operation of the ABCC. But Mr Jenkinson gave evidence that he did not: [62]

    (a) compile the table himself (people from the Commission did);

    (b) independently verify that the table was accurate; or

    (c) look at the raw data sources from the ABS itself.

50. In any event, Mr Jenkinson accepted that the data in that table were subject to the limitations that:

    (a) it did not distinguish between lawful and unlawful industrial action, noting that enterprise bargaining can be cyclical and protracted;[63]

    (b) it did not account for the COVID period which had a significant depressive effect on industrial activity;[64] and

    (c) it was not industry specific and said nothing specifically about the construction industry.[65]

51. The evidence of Messrs Hadgkiss and Jenkinson about productivity should be treated with significant caution and should be given no weight.

**Freedom of association, safety, and misconduct**

52. Counsel Assisting does not seem to place much reliance upon the alternative justifications offered for the proposal to reintroduce a code and an independent regulator.[66] That being the case, the unions deal with the remaining justifications at a high level and would be pleased to make further submissions if it would assist the Commission.

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58 T 2978.27-30 (Hadgkiss XXN).

59 T 2978.43-47 (Hadgkiss XXN).

60 T 2978.32-35 (Hadgkiss XXN).

61 T 2979.15-16 and 31-35 (Hadgkiss XXN).

62 T 2926.42- T2927.15 (Jenkinson XXN).

63 T 2924.20-T 2925.18 (Jenkinson XXN). See also T 2984.27- T 2985.15 (Hadgkiss XXN).

64 T 2925.20-T 2926.7 (Jenkinson XXN).

65 T 2926.9-30 (Jenkinson XXN); T 2928.1-5 (Jenkinson XXN).

66 See Counsel Assisting's further submissions at page 9, [29].

***Freedom of association***

53. Critically, feedback from the consultation engaged in by the Commission seemed to be unanimous that a code should not include restrictions on the display of union logos, mottos, or insignia.[67]

54. In any event, Mr Hadgkiss accepted that discrimination based on union membership is already protected by the general protections provisions of the Fair Work Act, and such provisions apply whether or not there is a code in operation.[68] Mr Hadgkiss also accepted that a code that restricts the display of union logos, mottos or insignia is itself a restriction on freedom of association.[69] The substance of that topic is dealt with further below.

55. Finally, the evidence that Mr Hadgkiss gives that he would be happy to provide 'in spades' particular conduct of union officials being emboldened by union paraphernalia on site is in stark contrast with his concession, at the same time, that no examples are in his statement. Mr Hadgkiss was not re-examined on that topic, or on any topic.[70]

***Workplace health and safety and right-of-entry***

56. Counsel Assisting says at [31], that it is '*axiomatic that reducing the frequency with which non-essential personnel are moving around an active construction site will in turn reduce the incidence of preventable accidents*.' On that basis, it is said that a code may improve safety on construction sites.[71] No evidence is cited for this proposition.[72] It is contrary to the norms recognised by workplace health and safety legislation, that scrutiny of work practices leads to better safety outcomes. It is that fundamental norm that underpins the right-of-entry regimes that exist in such legislation across the country. Section 3(1)(f) of the *Work Health and Safety Act 2011* (Qld) relevantly provides that one of the main objects of the act is to provide for a framework to secure the health and safety of workers and workplaces by ensuring appropriate scrutiny and review of actions taken by persons performing functions under the act.

57. It is also contrary to academic consensus, which is that health and safety representatives and unions play a positive role in preventative health and safety even in hostile labour relations climates.[73]

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[67] See Stakeholder Engagement Report at pages 19 and 33.

[68] T 3009.31-40.

[69] T 3014.45- T 3015.10.

[70] T 3018.41. See also at T 3019.15- T 3020.30.

[71] Counsel Assisting's further submissions at pages 9 to 10, [31].

[72] It is noted that Mr Hadgkiss accepted in cross-examination that he has not done any empirical assessment of safety issues in the construction industry: T 2988.7-13.

[73] See, for example, Walters et al (2016) 'Safeguarding Workers: A Study of Health and Safety Representatives in the Queensland Coalmining Industry 1990–2013' 71(3) *Relations Industrielles / Industrial Relations*, 418–441; Quinlan and Johnstone (2009) 'The implications of de-collectivist industrial relations laws and associated developments for worker health and safety in Australia, 1996–2007' 40(5) *Industrial Relations Journal*, 426–443; and Johnstone et al (2005), 'Statutory Occupational Health and Safety Workplace Arrangements for the Modern Labour Market' 47(1) *Journal of Industrial*

### *Misconduct*

58. The foundation for the submission that re-introducing a code and independent regulator would reduce incidence of misconduct rests on supposition expressed by Mr Hadgkiss.[74] For the reasons already advanced, his evidence should not be given any weight. In any event, Mr Hadgkiss seemed to accept that unlawful conduct persisted despite the work of the ABCC, and that the culture had not improved notwithstanding a coercive regulator with the power to compel the giving of testimony.[75] There is otherwise no evidence to support the contention that the proposed code will address misconduct in the construction industry.[76]

59. At present, no cogent explanation has been offered about how a code—much less one that, as currently drafted, has no enforcement mechanism that could apply to unions or union officials—will reduce misconduct in the Queensland construction industry. It is not a sufficient justification for Counsel Assisting's proposal.

## Other concerns

60. There are six other concerns with the proposed code.

61. *First*, there is a fundamental issue regarding inconsistency and duplication between a proposed code and existing federal legislation and regulation.

62. *Second*, the code appears to be inconsistent with International Labour Organisation Conventions to which Australia is a party.

63. *Third*, there are problems with how the code contemplates enforcement.

64. *Fourth*, there has been no assessment of the *Human Rights Act 2019* (Qld) requirements.

65. *Fifth*, important matters raised in the consultation process and recorded in the Stakeholder Engagement Report are ignored.

66. *Sixth*, the code does not address labour shortages in any way.

### *Inconsistency with the Fair Work Act 2009 (Cth)*

67. As set out above, the unions do not know the legal character of what Counsel Assisting proposes. It is unclear whether the proposal involves legislation, policy, or a combination of the two.

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*Relations*, 93–116. See also Underhill et al (2016) *Evaluating the role of CFMEU OHS representatives in improving occupational health and safety outcomes in the Victorian construction industry: Interim Report.*

[74] Counsel Assisting's further submissions at page 10, [32], referring to the Hadgkiss statement at [18] to [20].

[75] T 2956.4-24 (Hadgkiss XXN). See also T 2911.38- T 2912.10 (Jenkinson XXN).

[76] Counsel Assisting's further submissions at page 5, [14](c) and page 10, [32].

68. The construction companies who contract for work with the State and who will therefore be covered by the proposed code are almost certain to be constitutional corporations. Their employees will therefore be national-system employees for the purposes of the *Fair Work Act 2009* (Cth). It is highly unlikely that the *Industrial Relations Act 2016* (Qld) will apply to any of the contracting parties who would be required to comply with the proposed code. That raises the spectre of whether provisions of the code are inconsistent with the *Fair Work Act 2009* (Cth) or duplicate aspects of that act.

69. The problems of inconsistency and duplication remain even if the form of the code is only as a procurement policy. The introduction of a regulator to enforce the code with a suite of powers to ensure compliance must be done by legislation.

*Possible inconsistencies*

70. There are at least three areas of inconsistency that arise from the Implementation Guidelines:

    (a) the rights of delegates;

    (b) the content of Enterprise Agreements in Part 2-4 of the *Fair Work Act 2009* (Cth);

    (c) the general protections in Part 3-1 of the *Fair Work Act 2009* (Cth).

*The legal framework*

71. Section 26(1) of the *Fair Work Act 2009* (Cth) provides:

> ***26 Act excludes State or Territory industrial laws***
>
> *(1) This Act is intended to apply to the exclusion of all State or Territory industrial laws so far as they would otherwise apply in relation to a national system employee or a national system employer.*

72. The balance of s 26 and ss 27 to 30 then create a regime that deals with how the *Fair Work Act 2009* (Cth) interacts with state laws.

73. Section 109 of the Commonwealth Constitution deals with inconsistences between state and Commonwealth laws. It provides:

> ***109 Inconsistency of laws***
>
> *When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*

74. Section 109 was considered in *Dickson v The Queen* (2010) 241 CLR 491. In that case, the High Court unanimously held a State law invalid in its operation where it attached liability to conduct that Commonwealth law had deliberately excluded because the State law invaded an 'area of liberty designedly left' by the Commonwealth and thereby altered, impaired and detracted from its operation.[77] In the unanimous decision of *Bell Group NV (in liq) v Western Australia* (2016) 260 CLR 500, a State law was struck down in its entirety because its practical operation stripped rights arising under Commonwealth tax law of the characteristics Commonwealth law gave them.[78]

75. Taken together, those cases demonstrate that the effect of section 109 of the Commonwealth Constitution is that a State law may not impose detriment on, or recharacterise, a right or conduct which Commonwealth law confers, protects, or deliberately leaves free.

*Delegates*

76. Section 350C of the *Fair Work Act 2009* (Cth) confers statutory rights on workplace delegates. Those rights include the right to represent the industrial interests of members and eligible members, to communicate reasonably with them, and (unless the employer is a small business employer) reasonable access to the workplace and workplace facilities, and paid time during normal working hours for related training.

77. Section 205A requires an enterprise agreement to include a delegates' rights term. If that term is less favourable than the delegates' rights term in the relevant modern award, the agreement term has no effect and the award term is taken to be a term of the agreement.[79]

78. The Implementation Guidelines contain terms that are directly contrary to the rights conferred by ss 350C and 205A of the *Fair Work Act 2009* (Cth).

79. Relevantly, the Implementation Guidelines require that a Workplace Arrangement:[80]

    (a) 'must not provide an entitlement for employees to take paid time off to attend union activities';[81]

    (b) 'must not provide for non-working workplace delegates';[82] and

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[77] *Dickson v The Queen* (2010) 241 CLR 491 at [25] per French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel, and Bell JJ, and see [22] to [35].

[78] *Bell Group NV (in liq) v Western Australia* (2016) 260 CLR 500 at [9] and [60] per French CJ, Kiefel, Bell, Keane, Nettle, and Gordon JJ.

[79] See, for example, *Construction, Forestry and Maritime Employees Union v Australian Industry Group* (2025) 314 FCR 187; [2025] FCAFC 187.

[80] Defined in part 11 of the Implementation Guidelines as an agreement, understanding, practice, policy, procedure or other arrangement whether written or not.

[81] Implementation Guidelines, part 4(h).

[82] Implementation Guidelines, part 4(l).

(c) treat as non-compliant the use of delegates to administer inductions and other delegate practices.[83]

80. Part 4(h) is qualified by the words 'subject to modern award and legislative obligations.' Presumably, that is intended to avoid inconsistency with the relevant provisions of the *Fair Work Act 2009* (Cth). But that qualification is apt to cause confusion and the result is that:

(a) the prohibition is without function insofar as it contradicts s 350C and the term of any modern award; or

(b) the prohibition has some application in respect of entitlements that exceed s 350C or an award, but if that is the case, then the code would impose a detriment on a right or conduct that the Commonwealth has deliberately left free.

81. Regardless, in operation, the proposed code is so uncertain as to be inutile.

*Enterprise Agreements*

82. Part 2-4 of the act deals with the content of enterprise agreements.

83. Section 172 deals with how enterprise agreements are made. Section 172(1) relevantly provides (bolding in original):

> *(1) An agreement (an **enterprise agreement**) that is about one or more of the following matters (the **permitted matters**) may be made in accordance with this Part:*
>
> > *(a) matters pertaining to the relationship between an employer that will be covered by the agreement and that employer's employees who will be covered by the agreement;*
> >
> > *(b) matters pertaining to the relationship between the employer or employers, and the employee organisation or employee organisations, that will be covered by the agreement;*
> >
> > *(c) deductions from wages for any purpose authorised by an employee who will be covered by the agreement;*
> >
> > *(d) how the agreement will operate.*

84. Enterprise agreements made under the *Fair Work Act 2009* (Cth) are not permitted to contain unlawful terms, which are dealt with in s 194.

85. Once made, an enterprise agreement is then approved by the Fair Work Commission under Division 4 of Part 2-4 of the act. Sections 186 and 187 set out the method by which approval occurs.

86. The Implementation Guidelines purport to proscribe certain terms in enterprise agreements, such as terms about minimum crewing, apprentice ratios, limits on casual and labour hire engagement, consultation over resourcing, RDO calendars, site allowances, above-minimum fund contributions, and jump-up clauses.

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[83] Implementation Guidelines, part 9.

87. All of those terms are terms that have been approved by the Fair Work Commission in enterprise agreements that are presently in operation.[84] In that way, the Implementation Guidelines are likely to be inconsistent with the *Fair Work Act 2009* (Cth) in the same way the '*Bell Act*' was unanimously held to be inconsistent with Commonwealth legislation in *Bell Group NV (in liq) v Western Australia* (2016) 260 CLR 500.

*General Protections*

88. The general protections regime established by Part 3-1 of the *Fair Work Act 2009* (Cth) has a broad application. Under s 338, the General Protections regime applies to constitutional corporations and the Commonwealth, among others.

89. Division 3 deals with Workplace Rights conferred by the legislation and adverse action.

90. Section 340 prohibits a person from taking adverse action against another person because the other person has, exercises, or proposes to exercise, a workplace right. Under s 341 being entitled to the benefit of an enterprise agreement is a workplace right and so is making, or proposing to make, an enterprise agreement.[85]

91. Item 4 of section 342(1) of the act then provides that adverse action is taken by 'a person (the principal) proposing to enter into a contract for services with an independent contractor against the independent contractor, or a person employed or engaged by the independent contractor' if the principal '(a) refuses to engage the independent contractor; or (b) discriminates against the independent contractor in the terms or conditions on which the principal offers to engage the independent contractor; or (c) refuses to make use of, or agree to make use of, services offered by the independent contractor; or (d) refuses to supply, or agree to supply, goods or services to the independent contractor.'

92. The difficulty for the proposal advanced by Counsel Assisting is that it places contractors on the horns of a dilemma. For example, if a head contractor is covered by the proposed code and decides, on the basis of the prohibitions in that code, not to engage a subcontractor because of terms in that contractor's enterprise agreement, the head contractor will have taken adverse action prohibited under s 340 of the *Fair Work Act 2009* (Cth). But if the head contractor decides to engage that subcontractor, it will be subjected to the possibility of very serious regulatory action taken by the proposed regulator.

93. Other sections in Part 3-1 are also relevant, including:

    (a) section 343, which prohibits organising or taking action against another person with intent to coerce them to exercise or not exercise a workplace right (for example, to vary an enterprise agreement);

[84] Examples of such enterprise agreements appear in Annexure 1 to the further submissions.

[85] See, for example, *Qantas Airways Ltd v Transport Workers Union of Australia* (2023) 278 CLR 571.

(b) sections 346 and 347, which prohibit a person from taking adverse action against another person because that person engages in industrial activity, which includes being an officer, member, or delegate of a union and participating in its lawful activities; and

(c) section 355, which prohibits coercing a person to employ or not employ a particular person, or to engage or not engage a particular independent contractor.

94. Under the proposed code, contractors across the whole hierarchy of government work would be at risk of contravening the General Protections provisions of the *Fair Work Act 2009* (Cth) by taking steps to comply with the code. That is obviously undesirable.

*Part 2.6 of the Implementation Guidelines*

95. Part 2.6 of the Implementation Guidelines relevantly provides:[86]

> ***2.6 Relationship with the Fair Work Act 2009***
>
> *a) These Guidelines do not require, encourage or promote conduct that would constitute a contravention of the Fair Work Act 2009 (Cth).*
>
> *b) To the extent that any provision of these Guidelines, or a party's compliance with any provision of these Guidelines, would, but for this Section 2.6, require, encourage or promote conduct that would constitute a contravention of the Fair Work Act 2009 (Cth), that provision is of no effect.*
>
> *c) Subject to paragraph (f) below, if any party that is required to comply with these Guidelines considers that a provision of these Guidelines would, but for this Section 2.6,*
>
> *i) require, encourage or promote conduct by them or any of their contractors, or*
>
> *ii) apply to or in relation to them or any of their contractors in a manner, that would constitute or give rise to a contravention of the Fair Work Act 2009 (Cth),*
>
> *that party must within 7 days give notice to the BCCB of the reasons why and circumstances in which that party considers the provision would so require or apply, and must thereafter provide the BCCB with any further details of the reasons and circumstances that the BCCB may reasonably require.*
>
> …

96. This extract identifies the problems with the proposed code but does not solve them. Part 2.6 (a) and (b) raise an important question which has not yet been addressed: what parts of the Implementation Guidelines could require, encourage, or promote conduct that would constitute a contravention and therefore are of no effect? That question itself raises a further, more fundamental question, why does the code include such provisions in the first place? Those are not questions that contractors should have to answer, which is what Part 2.6(c) requires.

[86] Implementation Guidelines, page 5. The formatting is slightly different in the Implementation Guidelines—the unions anticipate that the final, hanging paragraph should be separate from (c)(ii).

97. Simply asserting that a provision is 'of no effect' is not an antidote to conduct which is undertaken by a contractor in breach of the *Fair Work Act 2009* (Cth). And it is fundamentally unfair to contractors because it creates significant uncertainty. A contractor must, within seven days, tell the regulator which parts of the code it believes it cannot lawfully comply with, and then wait to learn whether the regulator agrees. The compliance burden and uncertainty this creates are extremely undesirable and undermine the requirement for clarity that every stakeholder group made a condition of support for the code:[87]

> *… clarity of purpose and drafting, involving the unions, an identified enforcement body, durability against legal change, and a managed and reviewed introduction.*

*Duplication*

98. Putting aside concerns of inconsistency, there is also a risk of duplication and ensuing confusion. This is consistent with the consistent feedback from the Commission's consultation process that urged for any code to avoid duplication with existing laws.[88]

***Regulatory enforcement and public law***

99. There are substantial difficulties with how the proposed Implementation Guidelines deal with sanctions for breaches of the code under Part 10.[89] The sanctions regime creates uncertainty for contractors and has the capacity to be applied arbitrarily with no mechanisms for review. The consequences for individual contractors could be dire, with contractors not only missing out on work but also facing notifications to the ASX—the effect of such sanctions could well be to significantly decrease the revenue of contractors facing such sanctions, which in turn decreases how many employees such a contractor could retain.

100. *First*, the 'commercial sanctions' proposed in the Implementation Guidelines are without statutory foundation. Those sanctions include a 'full exclusion from tendering for any work for an unspecified period,' publication of breaches, and review of prequalification accreditation.[90] Those sanctions are in substance penalties. The mechanism contemplated by the Implementation Guidelines involves the imposition of the 'commercial sanctions' on the recommendation of the BCCB, which is contemplated to be a departmental branch, after an internal process.

101. The review process is set out at pages 17 and 18 of the Implementation Guidelines:

> ***Review of a decision made under these Guidelines***
>
> *Any party wishing to contest or appeal any action or decision made by the BCCB under these Guidelines in relation to alleged non-compliance with these Guidelines may request a review of that action or decision by writing to the Director-General, Department of Justice and Attorney-General within 14 days of the date of the letter advising of the action or decision.*

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87 Stakeholder Engagement Report, page 25.

88 See Stakeholder Engagement Report at pages 13, 15 to 16, and 34. And see also the concerns of stakeholders noted at page 10 of the report.

89 Implementation Guidelines, page 16.

90 Implementation Guidelines, page 16.

*The review will be conducted by a person appointed by the Director-General Department of Justice and Attorney-General who, in the Director-General's opinion, has relevant experience.*

*The review is to be conducted in an informal manner and taking into account those matters considered during the process in light of the matters raised in the letter requesting the review. It is intended that there will be no delay to a project as a result of the conducting a review (sic).*

*The person conducting the review shall provide a written report to the Director-General who, in turn, will respond to the person requesting the review and provide the report to the Attorney General. The report and response must be completed within 28 days of the request for review.*

102. There is no independent internal merits review of decisions made by the BCCB. Nor is there any external merits review by the Queensland Civil and Administrative Tribunal. The process lacks oversight and has the capacity to be arbitrarily invoked. That is obviously undesirable.

103. *Second*, the code is contemplated by Counsel Assisting to apply to related entities[91] of any code-covered entity and require the regulator to notify the ASX if a code-covered entity is found to have breached its obligations under the code.[92] The notification process is also in substance a penalty and broadening the application of the code to any related entity gives the State power over companies with whom it has no relationship. That creates even broader, market-sensitive risks to contractors.

### *The Human Rights Act 2019 (Qld)*

104. Counsel Assisting does not deal with the operation of the *Human Rights Act 2019* (Qld) in respect of a proposed code. Regardless of the legal character of the scheme proposed by Counsel Assisting, the *Human Rights Act 2019* (Qld) has work to do.

*The relevant rights*

105. Section 21 of the *Human Rights Act 2019* (Qld) provides:

> ***21 Freedom of expression***
>
> *(1) Every person has the right to hold an opinion without interference.*
>
> *(2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether-*
>
> *(a) orally; or*
>
> *(b) in writing; or*
>
> *(c) in print; or*
>
> *(d) by way of art; or*
>
> *(e) in another medium chosen by the person.*

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[91] Again, this is assumed to be a reference to s 50 of the *Corporations Act 2001* (Cth).

[92] Counsel Assisting's further submissions at page 18, [64], referring to the statement of Mr Hadgkiss at [138]. See also at T 1411.30-41.

106. Prohibiting the display of union logos, mottos, and signage, which Part 9 of the Implementation Guidelines does, is a restriction on expression imposed by a government instrument.

107. Section 22 is modelled on protections in articles 21 and 22 of the International Covenant on Civil and Political Rights and provides:

> ***22 Peaceful assembly and freedom of association***
>
> *(1) Every person has the right of peaceful assembly.*
>
> *(2) Every person has the right to freedom of association with others, including the right to form and join trade unions.*

108. The prohibitions on non-working delegates and on paid time for union activities in Part 4 of the Implementation Guidelines, and on delegates administering inductions and union-nominated hires in Part 9 all restrict the practical exercise of trade unionism and the freedom of association enshrined by s 22 of the *Human Rights Act 2019* (Qld).

*The operation of the Human Rights Act 2019 (Qld)*

109. Section 58 of the act makes it unlawful for a public entity to act or make a decision in a way that is not compatible with human rights, or, in making a decision, to fail to give proper consideration to a human right relevant to the decision.[93] A department administering the code, and the BCCB, are public entities. The obligation created by s 58 will arise in respect of many of the decisions the relevant department or the BCCB are likely to make under the code. Taking a step back, the decision to implement the code in the first place is also a decision captured by s 58.

110. Section 13(1) provides:

> ***13 Human rights may be limited***
>
> *(1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.*

111. Section 13(2) then sets out the factors that may be relevant to determine whether a limit on a human right is reasonable and justifiable. Three of those considerations are relevant here: the nature of the purpose of the limitation (s 13(2)(b)); the relationship between the limitation and its purpose (s 13(2)(c)); and whether there are any less restrictive and reasonably available ways to achieve the purpose (s 13(2)(d)). Those considerations are dealt with seriatim.

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[93] See, for example, the discussion in *Bobeldyk v Moreton Bay City Council; Eichin v Moreton Bay City Council* [2026] QSC 27 at [301]ff per Smith J.

112. The principal justification advanced by Counsel Assisting for the introduction of the proposed code, as set out above, is that such measures have historically served to improve productivity, reduce project costs, and ultimately deliver better value for money for taxpayers. The foundation for that justification is not supported by the evidence and should not be accepted for the reasons set out above. It follows that, in assessing the purpose of the limitation for s 13(2)(b), there is no purpose of any weight to demonstrably justify a limit on human rights.

113. Even assuming one of the justifications for the code is made out, there is also no rational relationship between that purpose and the limitations for the reasons set out above.

114. As for whether there are any less restrictive and reasonably available ways to achieve the purpose, Counsel Assisting concedes that existing laws already prohibit the mischief but are 'often not enforced.'[94] Enforcement of an existing law is by its very nature a less restrictive means.

115. There is no explanation from Counsel Assisting as to how the proposed code will operate consistently with the important rights Parliament has recognised and protected by the enactment of the *Human Rights Act 2019* (Qld).

***Inconsistency with international instruments***

116. Australia has ratified International Labour Convention 87 (Freedom of Association and Protection of the Right to Organise, 1948) and Convention 98 (Right to Organise and Collective Bargaining, 1949).[95] Both instruments are fundamental conventions under the ILO 1998 Declaration on Fundamental Principles and Rights at Work.

117. Article 2 of the 1998 Declaration relevantly provides:

> *Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:*
>
> > *(a) freedom of association and the effective recognition of the right to collective bargaining;....*

118. For the same reasons as set above regarding the *Human Rights Act 2019* (Qld), it is more likely than not that the proposed code will be inconsistent with the obligations required by international instruments.

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[94] Counsel Assisting's further submissions, page 9, [30](a) and page 15, [53].

[95] See the recent treatment of those conventions by the International Court of Justice in its Advisory Opinion of 21 May 2026: *191 - Right to Strike under ILO Convention No. 87.*

### *Other matters arising from the Stakeholder Engagement Report*

119. In Part 11(j) of the Implementation Guidelines 'party' is defined to include 'unions including their officials, employees and members.' But those are people with whom the State would never have a contract. As policy, the code can bind only those who contract with, or tender to, the State. The code cannot impose obligations on a union, an official, a delegate, or a worker. Every sanction in Part 10 operates against contractors. This is relevant to concerns raised by industry and union respondents in the Stakeholder Engagement Report that a code designed in this way 'binds only the contracting party' and cannot deliver standards 'enforceable across everybody.'[96] As that document records:[97]

> *One industry stakeholder observed that compliance with a code binds only the contractor and pressed for a Code that applies to all parties to a construction project. Similarly, unions emphasised the importance of shared duties.*

120. Multiple industry stakeholders made clear that union involvement and genuine consultation was a necessary condition to the success of the implementation of any code.[98] That has not yet occurred.

### *The code does not address labour supply or skills shortage*

121. Professor O'Brien considers that the issue of labour shortages is at least as large an issue as productivity is for the construction industry in Queensland. Even Mr Hadgkiss accepted that there is a looming skills shortage, and one of the biggest drivers of cost in the construction industry is skills shortages.[99] For that reason, any code that is to be recommended by this Commission should address that key issue. The proposed code does not.

## Conclusion

122. There are real and substantial difficulties with the foundation for Counsel Assisting's further submissions about re-introducing a code and independent regulator. The conclusions expressed by the Productivity Commission in its report should be doubted and the evidence of Messrs Jenkinson and Hadgkiss is of so little weight that it should be ignored. Counsel Assisting practically disavows any reliance on the Stakeholder Engagement Report and has chosen to lead evidence only from Messrs Jenkinson and Hadgkiss, rather than calling any of the stakeholder respondents as witnesses.

123. Although there is concern for the Commission to report on this matter promptly, that concern must be balanced against the Commission's duty to make a full and careful inquiry. For the reasons set out above, the Commission cannot be satisfied that it has made a full and careful inquiry with respect to the impact of misconduct on productivity in the Queensland economy and the construction industry.

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[96] See, for example, Stakeholder Engagement Report at pages 3, 13, and 26

[97] Stakeholder Engagement Report at page 3.

[98] See the Stakeholder Engagement Report at pages 25 and 26.

[99] T 2993.23-33 (Hadgkiss XXN).

124. The Commission ought not make the recommendations suggested by Counsel Assisting. There are persuasive reasons to doubt that the code Counsel Assisting urges the Commission to recommend will address productivity in the construction industry. More work must be done before it is possible to say with any certainty what must be done to address productivity.

125. The unions would be pleased to assist the Commission in addressing the matters in these written submissions orally.

**Hamish Clift**
**Susanna Connolly**

Counsel for the CEPU, ETUQ, and PGEU
14 August 2026

UNIVERSITY
OF WOLLONGONG
AUSTRALIA

# EXPERT REPORT OF PROFESSOR MARTIN O'BRIEN

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

## Table of Contents


| Section | Page |
|---|---|
| Introduction and Compliance Statement | 3 |
| Qualifications, materials relied upon, and assumptions | 4 |
| List of Questions | 5 |
| Summary of Findings | 6 |
| Question 1 | 8 |
| Question 2 | 9 |
| Question 3 | 11 |
| Question 4 | 14 |
| Question 5 | 22 |
| Question 6 | 30 |
| Question 7 | 38 |
| Question 8 | 43 |
| Question 9 | 44 |
| Question 10 | 45 |
| Question 11 | 47 |
| Declaration | 48 |
| Reference List | 49 |

## Introduction and compliance statement

My name is Martin O'Brien. I am a Professor of Economics at the University of Wollongong, with research expertise in labour economics.

I have been retained by Hall Payne Lawyers to provide an independent expert opinion to assist the Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry (the "Commission of Inquiry") in relation to eleven questions set out in the letter of instruction dated 28 July 2026 (the "Letter of Instruction"). Those questions concern productivity measurement, productivity trends in Queensland and Australia, and the findings, conclusions and recommendations of the Queensland Productivity Commission's Final Report, *Opportunities to Improve Productivity of the Construction Industry* (October 2025) (the "QPC Final Report"), together with the Feedback Sought items in the discussion paper concerning a Queensland Code of Practice for the Building and Construction Industry (the "Discussion Paper"), and Counsel Assisting's Further Submissions on the Re-introduction of a Code of Practice and Independent Regulator (July 2026) ("Counsel Assisting's Further Submissions").

I have read the Federal Court of Australia's Harmonised Expert Witness Code of Conduct (Annexure A to Practice Note GPN-EXPT) and I agree to be bound by it. In particular, I confirm that:

- I have made all the enquiries that I believe are desirable and appropriate to answer the questions put to me, and that no matters of significance which I regard as relevant have, to my knowledge, been withheld from this report;
- this report has been prepared independently of the party retaining me, for the assistance of the Commission of Inquiry, and not as advocacy for any party;
- I understand my paramount duty is to the Commission of Inquiry, and not to any party who has retained me;
- I have endeavoured in this report to be impartial and to address the matters required of me objectively, and to give an opinion based wholly or substantially on my specialised knowledge;
- where my opinion is on a matter on which I do not have specialised knowledge but which has otherwise been verified by me through research, I have identified the research on which I have relied;
- I have made clear the factual matters and assumptions on which each opinion expressed in this report is based; and
- I have, where possible, set out my reasoning in a manner that would allow a person without legal or economic training to understand the basis for each opinion.

This report has been prepared for the purpose of assisting the Commission of Inquiry and is intended to be read in its entirety. Section headings correspond to the eleven questions set out in the Letter of Instruction.

## Qualifications, materials relied upon, and assumptions

**Qualifications.** I hold a PhD in Economics (2004) from the University of Newcastle. I have been employed as an academic at the University of Wollongong since 2002, as Director of the Master of Business Administration (MBA) program since 2018 and a Professor since 2024. I have published widely in the field of labour economics and employment relations. In addition I have served as an expert witness in numerous cases for the Fair Work Commission, NSW and WA Industrial Relations Commissions, including those focused on labour productivity. A curriculum vitae should be annexed as Annexure 1.

**Materials relied upon.** In preparing this report I have relied upon:

(a) the Letter of Instruction dated 28 July 2026;
(b) the Queensland Productivity Commission (QPC) Final Report, *Opportunities to Improve Productivity of the Construction Industry* (Queensland Productivity Commission, October 2025), and the QPC's earlier Interim Report;
(c) the discussion paper, *Queensland Code of Practice for the Building and Construction Industry* (Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry);
(d) the document *Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry: Counsel Assisting's further submissions on the re-introduction of a code of practice and independent regulator* dated 17 July 2026.
(e) published Australian Bureau of Statistics (ABS) data on multifactor and labour productivity, national accounts, labour force, and census of population and housing was used, as well as Jobs and Skills Australia job vacancy data, and Safe Work Australia workers' compensation injury frequency data;
(f) the academic and policy literature on productivity measurement, construction productivity and occupational licensing identified in the reference list, copies of which are held on file; and
(g) my own analysis of the above data, including an independent re-estimation of Queensland construction labour productivity growth since 1994-95.

**Assumptions.** Unless otherwise stated, I have assumed that:

(a) the data and figures published by the QPC, the ABS and Safe Work Australia are accurate as published, save where I expressly identify a measurement or interpretive concern;
(b) "the construction industry" is as defined by the QPC in section 2.1 of the Final Report, comprising building construction, heavy and civil engineering construction, and construction services. This definition is consistent with that used by the ABS for the Construction Division in the Australian and New Zealand Standard Industry Classification (ANZSIC); and
(c) I have not been asked to, and do not, express any opinion on matters of fact concerning the conduct of any individual, union, employer or organisation that may be the subject of evidence before the Commission of Inquiry. My opinions are confined to economic questions concerning productivity measurement, productivity trends, and the merits of the QPC's economic findings and recommendations.

## List of Questions

**Question 1.** What is productivity and how is it measured?

**Question 2.** How has productivity changed in Queensland and Australia over the last 30 years?

**Question 3.** How has productivity in the construction industry (using the definition of construction industry described by the QPC in part 2.1 of the Final Report) changed in Queensland and Australia over the last 30 years?

**Question 4.** In section 2.3 of its final report, the QPC sets out that the key underlying issue at the State-level is slowing productivity. Do you agree with the QPC in this regard? Please explain your reasons in your answer.

**Question 5.** In section 2.4 of its final report, the QPC sets out what it considers to be the causes of slow productivity growth in the construction industry. Do you agree with the QPC in this regard? Please explain your reasons in your answer.

**Question 6.** In section 4 of its final report, the QPC deals with the idea of an 'industry reset' and concludes with a series of recommendations (recommendations 1 to 9) focussed on regulation. Do you agree with the QPC conclusions about an 'industry reset' and the recommendations it makes? Please explain your reasons in your answer.

**Question 7.** In section 17 of its final report, the QPC deals with occupational licensing and concludes with two recommendations. Recommendation 53 involves a review of occupational licensing. Recommendation 54 involves removing what the QPC considers to be barriers to labour mobility. Do you agree with the QPC conclusions about occupational licensing and the recommendations it makes? Please explain your reasons in your answer.

**Question 8.** In section 18 of its final report, the QPC deals with skilled overseas migration and concludes with recommendation 55, which involves opportunities to better utilise skilled overseas migration. Do you agree with the QPC conclusions about skilled overseas migration and the recommendations it makes? Please explain your reasons in your answer.

**Question 9.** The QPC concludes that productivity growth in the construction industry has been weak. It attributes slow productivity growth to (a) growing regulatory burdens; and (b) sub-optimal procurement practices. Do you agree with the QPC conclusions? Please explain your reasons in your answer.

**Question 10.** In the Discussion Paper, the Commission notes that the QPC indicate that a code could include certain requirements regarding enterprise agreements and workplace health and safety regulations. With that in mind and having regard to the answers you have given to questions one to nine above, please provide any response to items 1 to 7 of the Feedback Sought section of the Discussion paper that you consider would assist the Commission. In doing so, please explain your reasons for any response you provide.

**Question 11.** Do any of the opinions you have expressed in respect of Questions 1 to 10 change in light of Counsel Assisting's Submissions? Please explain your answer.

## Summary of Findings

**Question 1.** Productivity is defined as the ratio of output divided by input and can be measured at the economy, state, industry, project or activity level. In theory, productivity growth is linked to real wage growth and living standards. Productivity is often confused with other concepts such as labour costs, work intensity, profitability, efficiency, and individual employment or output levels

**Question 2.** From 1994-95 to 2024-25 labour productivity growth across all industries increased by 66 per cent for Queensland and 64 per cent for Australia. Generally speaking, Queensland productivity growth exceeded that for Australia over most of the time period analysed. A slowing of productivity growth has been evident for both Queensland and Australia in recent years, in common with other developed economies.

**Question 3.** Productivity in the Queensland construction industry grew by 13.5 per cent from 1994-95 to 2024-25, compared to 10.6 per cent for construction at the national level. As with the analysis associated with Question 2, productivity growth in Queensland construction generally exceeded that for the broader Australian construction industry over most of the time period analysed. In addition, productivity growth in Queensland construction was relatively strong compared to that observed for other developed economies.

**Question 4.** I disagree that the key underlying issue at the State-level is slowing productivity. In my opinion, labour shortages for construction trades workers and as well as labourers, is at least as large an issue as productivity. Jobs and Skills Australia vacancy data shows that vacancy rates have stabilised for Queensland as a whole and for construction trades workers in Australia since COVID-19, however, vacancy rates for construction trades workers in Queensland remain at both a much higher level and continue to grow. Other analysis of labour market data shows that Queensland accounts for approximately 20 per cent of employment of construction trade workers in Australia, but approximately 30 per cent of all job vacancies in that occupation.

**Question 5.** I agree that industry fragmentation, increasing regulatory burden and Queensland's procurement policy have likely contributed to prevalent productivity trends in Queensland construction. However, there is strong evidence from Australian construction productivity research that there are other significant contributing factors such as productivity mismeasurement, boom-bust cycles, management and supervisor behaviour and skills, availability of materials, skills and equipment, worksite/project level issues such as the quality of drawings and design, supply chain quality, workplace health and safety, as well as macroeconomic conditions.

**Question 6.** I generally disagree with the underlying premise of the proposed industry reset. Namely, that there is something "different" about the decline in Queensland construction productivity since 2018. Productivity has slowed across the market sector in general since 2018 and productivity trends for Queensland construction have been favourable relative to comparators at the national or international level. Furthermore, much of the analysis that follows in this section of the QPC Final Report appears more focussed on costs rather than productivity, with much of the evidence being qualitative or subjective in nature. In particular, there are major flaws with the analysis presented of Best Practices Industry Conditions (BPICs). Furthermore, contrary to QPC analysis, there is some evidence that safety outcomes have improved in Queensland construction in recent years compared to appropriate control groups. As such, I disagree with the recommendation to remove BPICs permanently. I agree in principle with recommendations to

improve the operation of workplace health and safety, however, given that the research suggests that safety is a driver of productivity and not vice versa, I caution that any changes to workplace health and safety regulations that are primarily driven by cost or employer imperatives may be adverse to both safety and productivity outcomes. I agree with the recommendation to improve dialogue and collaboration between parties in construction. However, for most of the other recommendations I was unable to offer an informed opinion due to the lack of commentary, evidence and analysis provided in the QPC Final Report.

**Question 7.** In my opinion, the evidence in support of reviewing occupational licensing was weak. Most research referred to in the QPC Final Report was based on unrelated industries and focussed on costs and benefits rather than productivity itself. Likewise, most of the stakeholder input was based on issues other than productivity. As such, my opinion is that occupational license reviews are unlikely to result in any significant improvement to productivity. Furthermore, I am concerned with the proposed evaluation framework. Namely, having market failure as a critical evaluation criteria takes an overly narrow orthodox economics perspective and ignores key fundamental issues associated with health, safety, and quality. Similarly, having maximisation of net benefits as the final evaluation criteria also takes an overly narrow orthodox perspective and ignores the accepted finding that benefits of occupational licensing are notoriously difficult to quantify.

A further recommendation for increasing labour mobility could not be attributed to a solid evidence based, with ABS data showing a high level of interstate labour mobility for construction trades workers, and Queensland being the main benefactor of this labour mobility. I am not opposed to harmonisation and mutual recognition of interstate licensing, however, in the context of labour shortages in Queensland, I believe that favourable wages and conditions compared to others states is likely to be a more effective attractor for workers.

**Question 8.** The available evidence does not support an inference that increasing the use of skilled migrant labour would, in itself, benefit productivity. In fact, the available research suggests that an increase in migrant labour may be associated with a decrease in productivity. Research also suggests that if skilled migration is to be encouraged it may be unwise to concurrently reduce occupational licensing requirements due to safety concerns, while there should also be mechanisms in place to monitor exploitation and worksite conditions.

**Question 9.** This question was largely addressed earlier in relation to Question 5.

**Question 10.** The discussion paper provided little detail regarding a new or revised code of practice, apart from three requirements described earlier in the QPC Final Report as "… principles and practices that will improve the industry's productivity performance" (QPC Final Report p120), being productivity limiting clauses, "jump up" clauses, and right of entry. In my opinion this represents another example of the economic term productivity being used in an opaque or incorrect context. If productivity is the key underlying issue I disagree that a new or revised code is required.

**Question 11.** My opinions on Questions 1 to 10 remain unchanged after reviewing Counsel Assisting's Submissions.

## Question 1. What is productivity and how is it measured?

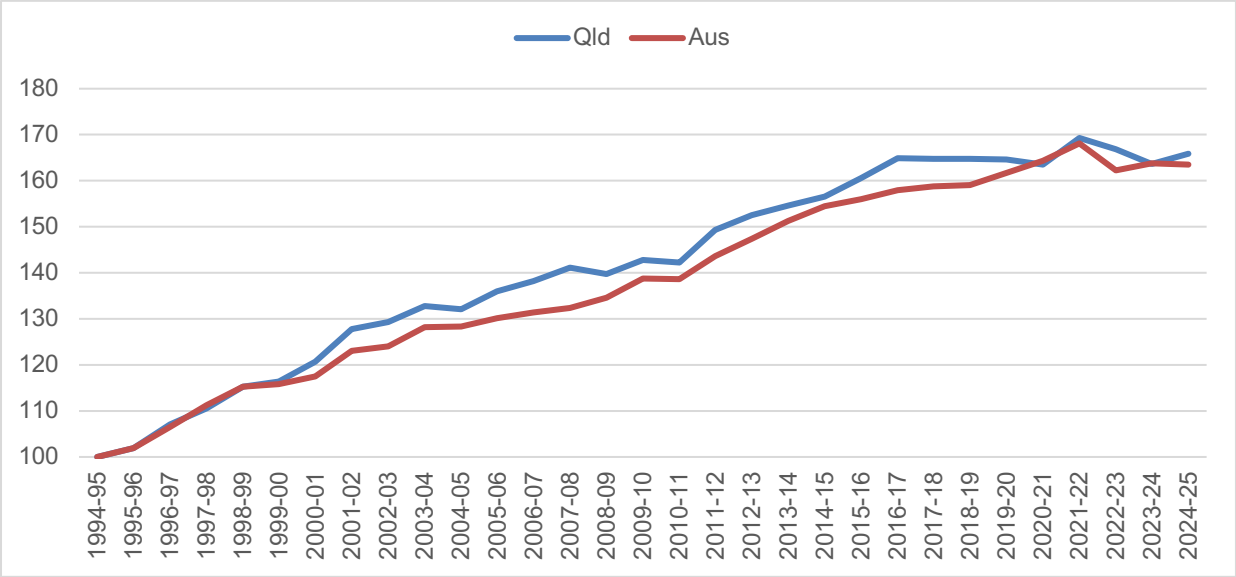
1. Put simply, productivity is the ratio of output divided by input ($\frac{\text{Output}}{\text{Input}}$) (Reserve Bank of Australia nd). It may be measured at the country, state, industry, project or activity level and is used to measure how effectively an economy, industry or firm converts its inputs or resources into output. Basic economic theory links labour productivity growth to real wage growth and thus living standards.
2. The output variable is typically measured using the concept of value added (the value of goods and services produced minus the costs of inputs, adjusted by a price deflator).
3. The input variable can consist of any input resource such as labour, capital or land (or a combination of all resources, known as multi-factor productivity). Typically, the focus is on labour productivity, where labour is measured by the number of workers (headcount or full-time equivalent), or hours worked, with the latter generally preferred.
4. Productivity data is published by the Australian Bureau of Statistics (ABS) at the national level via the Australian National Accounts, with state and industry level estimates provided in the Estimates of Industry Multifactor Productivity publication, and business level productivity also able to be calculated from various confidentialised unit record data sources (ABS 2026a).
5. Although the concept of productivity is relatively simple, there are some difficulties in practice regarding its accurate measurement, particularly for services related industries as well as the public sector (Reserve Bank of Australia nd, Richardson 2026). Productivity measurement issues specific to the construction industry are explored below in relation to Question 5.
6. Finally, the concept of productivity is frequently misunderstood and confused with related concepts such as labour costs, work intensity, profitability, efficiency, and individual employment or output levels (Skinner 1986, Tangen 2005, Kelindos 2020, Peetz 2025).

## Question 2. How has productivity changed in Queensland and Australia over the last 30 years?

7. To address this question, annual labour productivity index data for Australia and Queensland over the period 1994-95 to 2024-25 was taken from the ABS Estimates of Industry Multifactor Productivity publication[1] (ABS 2026b). Figure 1 shows that labour productivity has grown substantially over this period, increasing by 66% for Queensland and 64% for Australia. A prominent feature of Figure 1 is that labour productivity growth in Queensland often outpaced that for Australia.

8. Labour productivity growth appears to be slower over the last decade compared to earlier years. This is particularly so for Queensland, with labour productivity growing by only one percentage point since 2016-17.[2]

**Figure 1. Labour Productivity Indices for Queensland and Australia - 1994-95 to 2024-25**




Source: ABS (2026b).

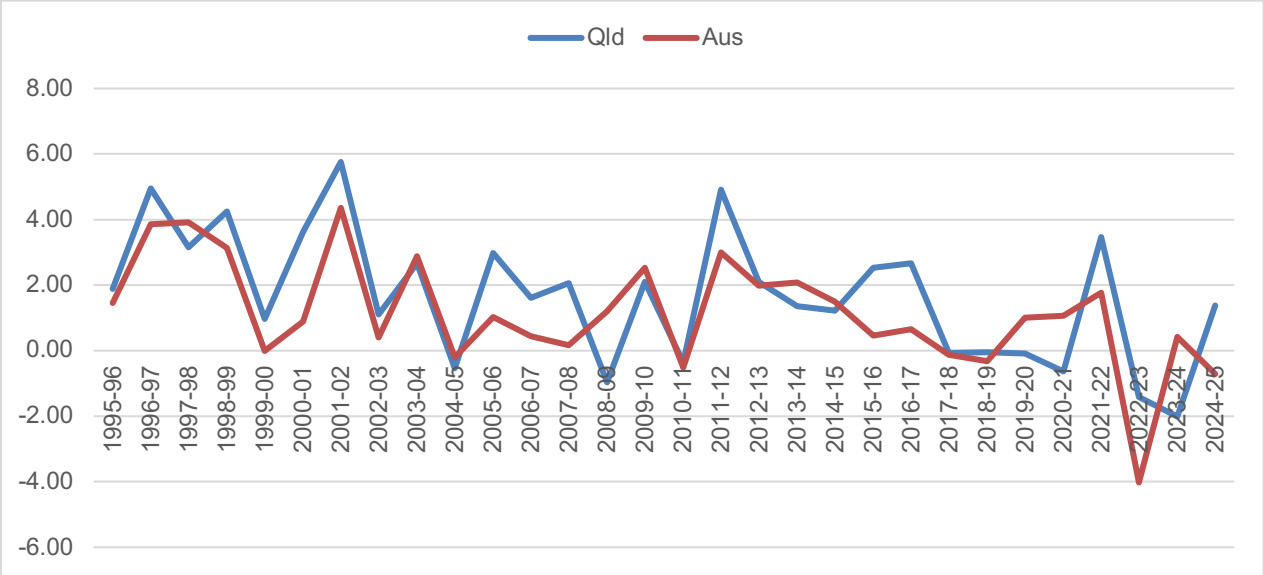
9. The slowdown in labour productivity growth is more apparent when viewing annual growth rates. Figure 2 displays the annual growth rate of labour productivity over the same period. Growth rates from year to year are relatively volatile, however, as with Figure 1 it is apparent that annual labour productivity growth in Queensland are generally greater than that for Australia in most years.

10. Looking at trend pattern in the data, a downward approximately linear trend is apparent over time. Annual growth in labour productivity was only 0.58% per annum, on average, from 2015-16 to 2024-25 in Queensland compared to 2.24% per annum, on average,

[1] The specific index used was for Market Sector Industries, calculated on an hours worked basis. The base of the index was recalibrated to 1994-95 = 100.
[2] The labour productivity index for Queensland was 165 in 2016-17 and 166 in 2024-25 (ABS 2026b).

between 1995-96 and 2014-15. Similarly, labour productivity growth in Australia was 0.02% per annum, on average, from 2015-16 to 2024-25 compared to 1.71% per annum, on average, from 1995-96 to 2014-15.

**Figure 2. Annual Growth Rates for Labour Productivity for Queensland and Australia 1995-96 to 2024-25**




Source: ABS (2026b).

11. This longer term slow down in labour productivity is not unique to Australia. It has been widely documented across OECD economies and is the subject of an extensive economics literature on the "productivity puzzle" or "productivity slowdown," variously attributed to the exhaustion of the gains from earlier reforms, a slowing pace of diffusion of digital technology into measured output, rising market concentration in some sectors, and measurement difficulties associated with intangible and digital output (OECD 2015, Andrews et al. 2016, Brynjolfsson et al. 2019).

## Question 3. How has productivity in the construction industry (using the definition of construction industry described by the QPC in part 2.1 of the Final Report) changed in Queensland and Australia over the last 30 years?

12. Construction industry[3] productivity estimates for Australia are reported directly in the ABS *Estimates of Industry Multifactor Productivity* publication (ABS 2026b). The same publication reports productivity estimates by state, however, estimates disaggregated by both state and industry are not reported, nor directly available from other ABS sources. It was apparent that the QPC faced the same issue. In a footnote to Queensland construction productivity estimates reported in Figure 2.9 in the QPC Final Report, they state:

> *"Market sector labour productivity is from ABS, Queensland construction labour productivity is a QPC estimate. For consistency with official statistics, Queensland's construction inputs are calculated by allotting labour account hours worked using labour force data."* (QPC Final Report, p 82)

13. However, the precise methodology employed for the composition of the Queensland construction industry productivity estimates reported in Figure 2.9 is not clear from this quote, nor is the methodology elaborated elsewhere in the QPC Final Report.

14. The QPC estimates of Queensland construction productivity are crucial to the motivation, purpose and context of the QPC Final Report, with Figure 2.9 referred to at least five times in the report. Furthermore, there are more than ten references to Queensland construction productivity falling by 9 per cent since 2018, including a full section devoted to the potential benefits of Queensland construction returning to 2018 productivity levels on pages 84 – 85. In short, the QPC estimates of Queensland construction productivity, either in comparison to the market sector in general and / or decline since 2018, appear to be central to the QPC Final Report arguments for recommendations for action.

15. However, I was unable to replicate the estimates of the QPC. Below I have manually produced estimates of labour productivity using gross value added data for the Queensland construction industry from the ABS State Accounts[4] (ABS 2026c) to capture output, divided by hours worked in Queensland construction taken from the ABS labour force data as the input (ABS 2026d).

16. These estimates of labour productivity in Queensland construction, along with those for construction in Australia, are displayed in Figure 3. Over the full period of analysis from 1994-95 to 2024-25 labour productivity in Queensland construction industry rose by approximately 13.5 per cent, compared to 10.6 per cent for Australia. In comparison,

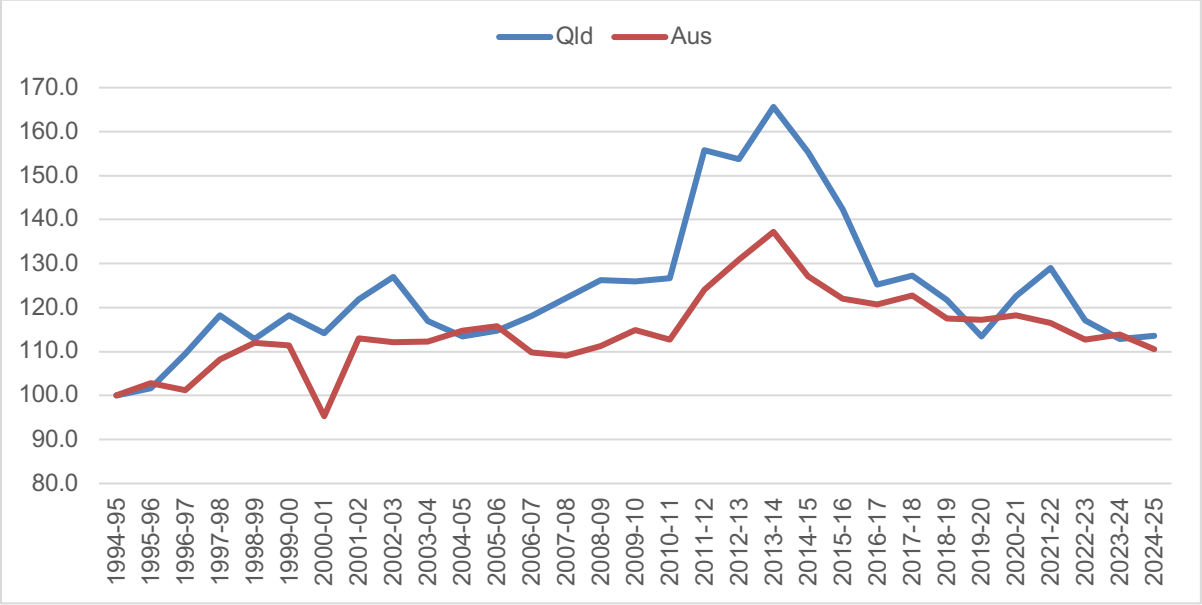
[3] The construction industry is defined as ANZSIC Construction Division (Division E), consisting of Building Construction, Heavy and Civil Engineering Construction, and Construction Services Subdivisions, consistent with the definition used by the QPC.

[4] The chain volume measure aligns with the economic concept of "real" output such as real GDP, whereas the alternative current prices measure aligns with the concept of nominal output. Real output is designed to capture quantity only whereas nominal captures both quantity and price changes.

estimates produced by the QPC quantified the increase in Queensland construction productivity as only 5 per cent over a similar time period.[5] As the precise methodology used by the QPC for their productivity calculations was not reported, it is unclear what the source of this discrepancy is.

17. The QPC did not report Queensland construction productivity alongside that for Australia. However, in my opinion this context is important. One of the main features of Figure 3 is that in nearly every year between 1994-95 to 2024-25, labour productivity in the Queensland construction industry outpaced that for the Australian construction industry as a whole.

**Figure 3. Labour Productivity Indices for the Construction Industry in Queensland and Australia - 1994-95 to 2024-25**

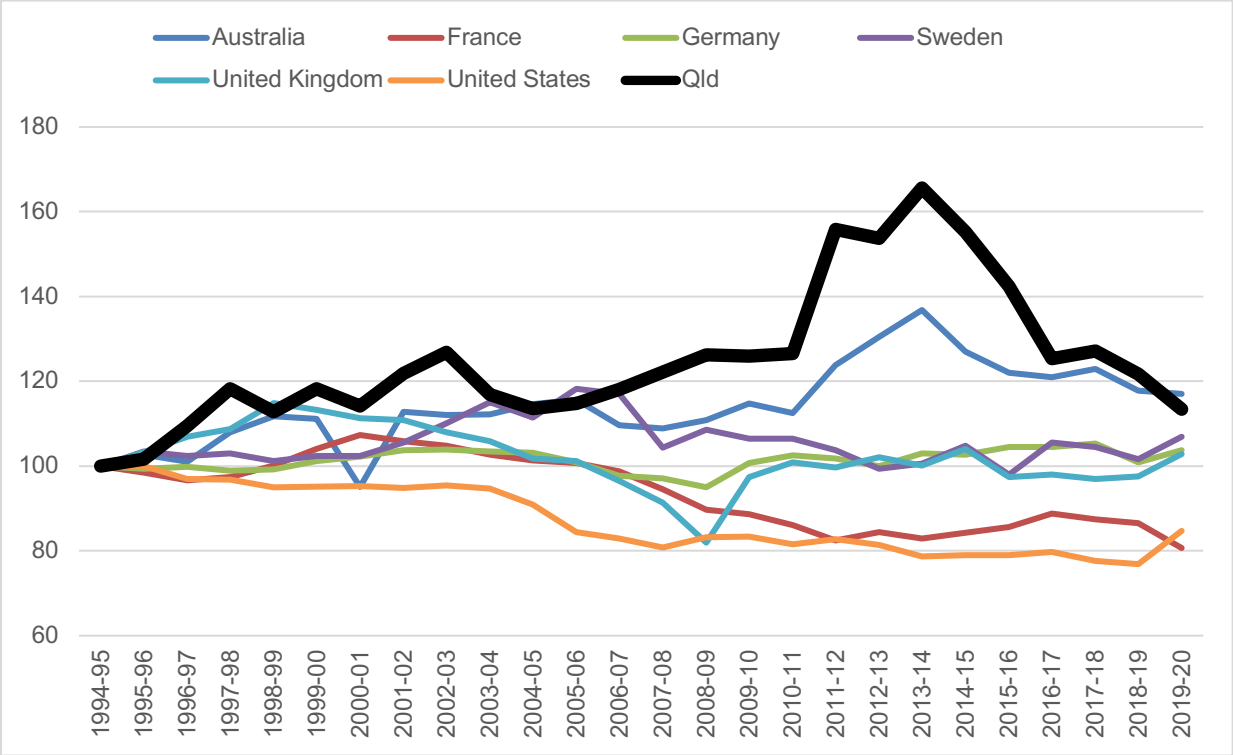



Source: ABS (2026b, 2026c, 2026d)

18. Providing further context, labour productivity in Queensland construction is compared to that for a selection of countries reported in a 2025 Productivity Commission report in Figure 4.[6] Here we see that construction productivity growth in Australia, and more so that for Queensland in particular, is relatively favourable compared to the other countries.

[5] The QPC Final Report stated that the analysis of Queensland construction productivity commenced in 1994-95, however, the final period of analysis was not stated. It may be inferred from ABS references cited in the source to Figure 2.9 that the final period may be 2023-24.
[6] The data provided in Productivity Commission (2025) was only up until 2019-20.

**Figure 4. Labour Productivity Indices for the Construction Industry in Queensland (bold), Australia and Selected Countries - 1994-95 to 2019-20**




Source: ABS (2026b, 2026c, 2026d), Productivity Commission (2025)

19. In my opinion labour productivity growth in Queensland construction is relatively favourable compared to both Australia as a whole as well as other major economies. Based on these productivity growth statistics, an argument could be made for Queensland construction to be used as a productivity exemplar for other jurisdictions rather than as providing justification for reform.

20. In addition, with regard to the decline in labour productivity in Queensland construction since 2018, it is important to place this in context of the rest of the market sector. Labour productivity for the market sector as a whole in Queensland has grown by only one percentage point since 2016-17 after growing by over sixty per cent since 1994-95.

21. In summary, it is clear that poor productivity growth in construction is an international economic issue rather than something specific to Queensland. Furthermore, any recent decline in Queensland construction productivity is part of an overall structural decline in productivity growth across the full market sector. Putting these issues into perspective, there does not appear to be anything specifically problematic in Queensland construction compared to the broader economic landscape.

## Question 4. In section 2.3 of its final report, the QPC sets out that the key underlying issue at the State-level is slowing productivity. Do you agree with the QPC in this regard? Please explain your reasons in your answer.

22. Section 2.3 of the QPC Final Report is entitled "Industry conditions are difficult, but poor productivity is the key issue". A number of matters in this section title requiring unpacking. Starting with the context of the key underlying issue, I am assuming this primarily relates to "Queensland's construction challenges" outlined in Section 2.2 of the QPC Final Report. Namely, rising demand for construction services for residential housing, energy infrastructure and the 2032 Olympics, coupled with major concerns regarding the construction industry's ability or capacity to meet these needs.

23. Specific issues addressed in Section 2.3 fall within four sub-sections entitled "Capacity constraints are having adverse impacts, but are not unique to construction"; "While demand is high, it is not unprecedented"; "The key underlying issue is slowing productivity"; and "Returning productivity to 2018 levels would provide large benefits". With reference to the main heading, presumably the first two sub-headings reflect other "difficult" industry conditions, while the third represents the conclusion that the crucial or most significant issue faced by the Queensland construction industry is that of productivity. Therefore, in order to address this research question it is important to first address the other "difficult" issues identified in the first two sub-headings before assessing slowing productivity as "the key" issue.

### Capacity constraints are having adverse impacts, but are not unique to construction (QPC Final Report Section 2.3 sub-heading)

24. Starting with capacity constraints, the QPC largely dismiss the role of labour shortages. Figure 2.6 of the QPC Final Report displays vacancy data for the construction industry versus other industries and is titled "Figure 2.6 Trades vacancies escalated sharply from 2021, but have since eased" (QPC Final Report p79).

25. Furthermore, the QPC state:

> "*Workforce shortages are also not unique to construction. Labour market conditions across the economy remain historically tight, with little evidence that shortages in the construction industry are worse than the economy average. For example, vacancy rates in construction are lower and easing more quickly than in other industries (Figure 2.6).*" (QPC Final Report p 80).

26. It is important to note that the construction vacancy data displayed in Figure 2.6 of the QPC Final Report was for Australia rather than Queensland. QPC documented in the footnote to Figure 2.6 that job vacancies were not available at the state-industry level. In contrast to labour productivity statistics, the QPC did not attempt to derive their own state-industry estimates.

27. While state-industry vacancy data may not be available, relevant vacancy or skill shortage data for Queensland construction is available at the occupation level via *Jobs and Skills Australia*, a statutory body hosted within the Federal Department of Employment and

Workplace Relations. Two relevant occupations for the construction industry are construction trades workers,[7] and construction and mining labourers.[8]

28. Figure 5. shows the internet vacancy index for construction trades workers for Queensland (Qld CTW) and Australia (Aus CTW), as well as a Queensland all occupations comparator (Qld Tot). The job vacancy pattern for construction trades workers in Australia as well as for all occupations in Queensland is quite similar. That is, a dramatic increase in vacancy growth starting in mid-2020 and peaking between 2022 and 2023, but gradually subsiding and stabilising thereafter.

29. In contrast, the pattern for Queensland construction trade workers is quite distinct from these comparators. First, the relative scale of growth for Queensland construction trade workers vacancies has been consistently and significantly higher. Second, from 2024 onwards the rate of vacancy growth have been increasing in an approximate linear fashion. That is, contrary to patterns observed for the Australian construction industry and the aggregate Queensland labour market, the skills shortages for construction trades workers in Queensland are becoming worse.

30. The findings from this data are at odds with the QPC conclusion that:

> "*vacancy rates in construction are lower and easing more quickly than in other industries*." (QPC Final Report p 80)

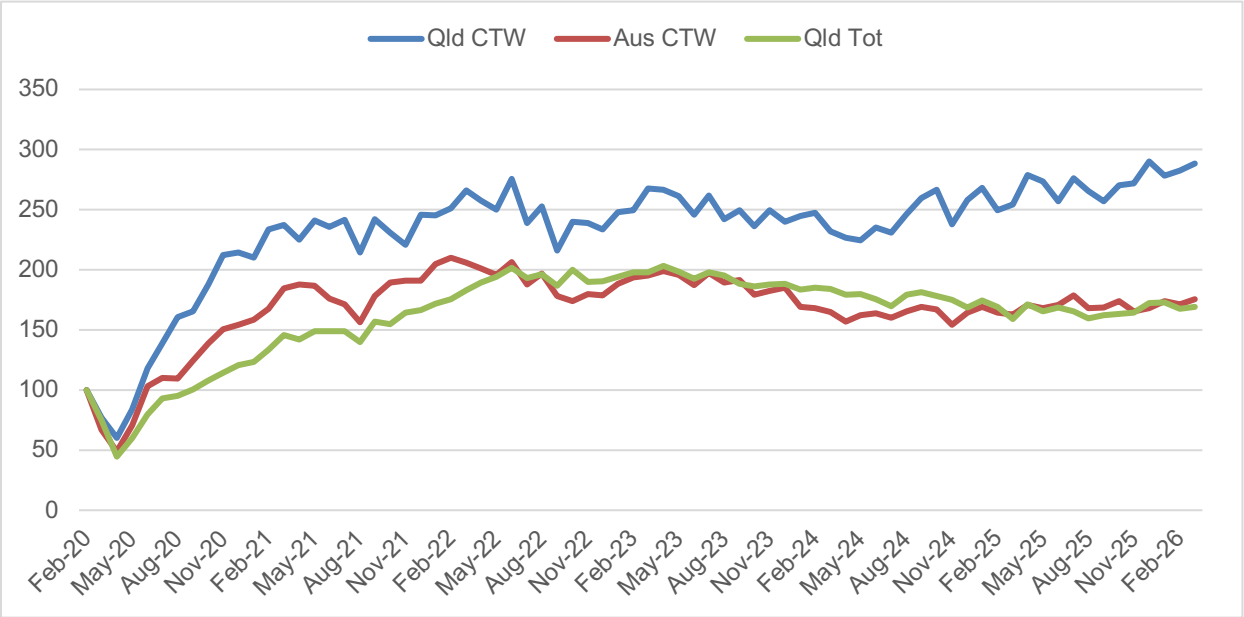
31. To the contrary, whereas vacancies have stabilised at between 150 to 200 per cent of pre-COVID levels for Queensland as a whole and for construction trades workers in Australia, vacancies for construction trades workers in Queensland are now nearly 300 per cent and growing.

32. Further evidence that labour shortages in Queensland construction are more acute that elsewhere in Australia, ABS Characteristics of Employment data (ABS 2026e) shows that Queensland accounts for approximately 20 per cent of employment in construction trade workers in Australia, but 29 per cent of all job vacancies in that occupation area in Australia (Jobs and Skills Australia 2026). A time series of this data is presented in Figure 7, showing that Queensland construction trades worker vacancies as a proportion of Australia construction trades worker vacancies has been increasing over time since 2024.

[7] Australian and New Zealand Standard Classification of Occupations (ANZSCO) Sub-Major Group 33.

[8] ANZSCO Sub-Major Group 82. Further disaggregation at the 4 digit level does not clearly disaggregate between construction vs mining occupations.

**Figure 5. Internet Vacancy Index - Construction Trades Workers (CTW) Queensland and Australia – Feb 2020 to Mar 2026**

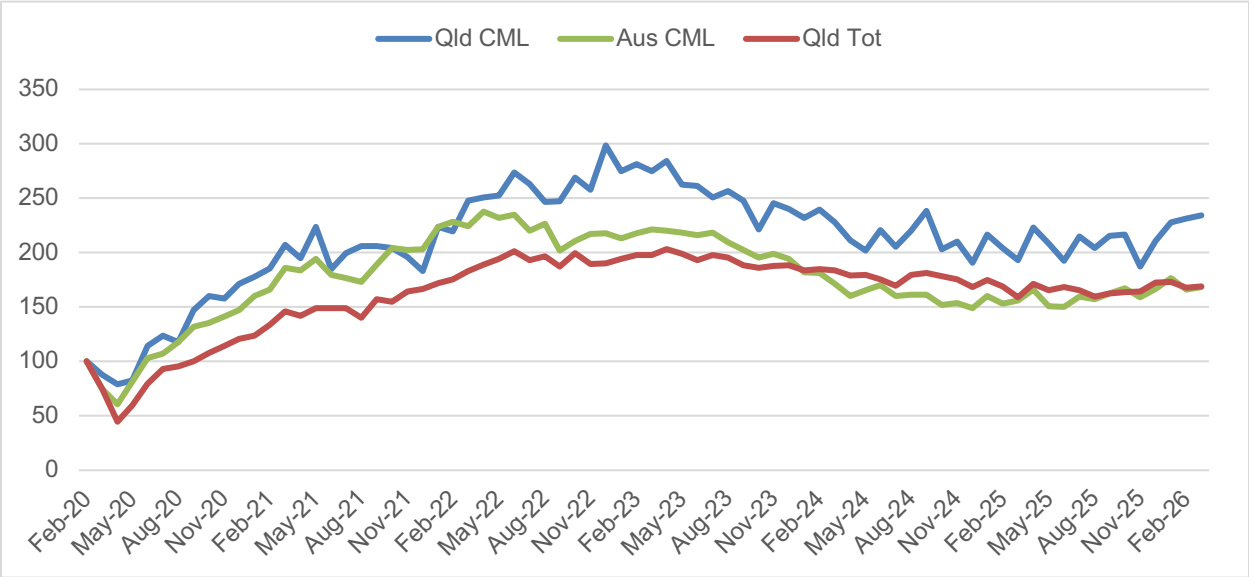



Source: Jobs and Skills Australia (2026)

33. With respect to construction and mining labourers, Figure 6 shows that initially after COVID-19 vacancy patterns for Queensland (Qld CML) and Australia (Aus CML) were similar, however, since 2022 vacancies growth for construction and mining labourers in Queensland has consistently been above that for Australia. Furthermore, vacancy growth for construction labourers in Queensland have consistently been at higher rates than that for Queensland (Qld Tot) overall throughout the whole period.

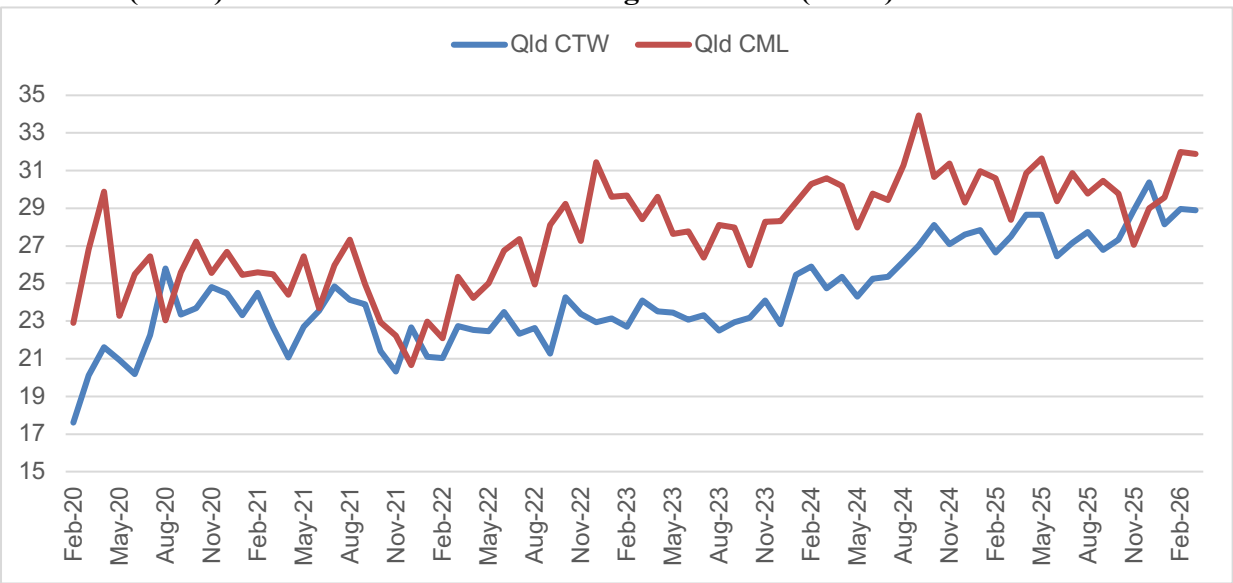
34. Similar to construction trade workers, construction and mining labourers in Queensland account for approximately 20 per cent of construction and mining labourer employment in Australia (ABS 2026e), however, currently account for over 30 per cent of vacancies (Jobs and Skills Australia 2026).

**Figure 6. Internet Vacancy Index - Construction and Mining Labourers (CML) Queensland and Australia – Feb 2020 to Mar 2026**




Source; Jobs and Skills Australia (2026)

**Figure 7 Queensland Vacancies as a Proportion of Australia (%) – Construction Trades Workers (CTW) and Construction and Mining Labourers (CML) – Feb 2020 to Mar 2026**




Source; Jobs and Skills Australia (2026)

35. In summary, skills shortages in Queensland construction are both relatively high and generally increasing. These patterns are not consistent with the wider Australia construction industry, nor the aggregate Queensland labour market. Therefore, in my opinion skills shortages are a major factor in Queensland's ability to meet its construction challenges. In conjunction with the relatively favourable productivity statistics for Queensland compared to Australia and other countries, I contend that skills shortages are a least as large an issue for Queensland's construction challenges as productivity.

### While demand is high, it is not unprecedented (QPC Final Report Section 2.3 sub-heading)

36. The second sub-section of Section 2.3 is brief in nature, providing data on construction work yet to be done as a proportion of nominal gross state product. The major point made was that this metric had been higher in the past, but able to be cleared relatively easily due to higher levels of productivity, particularly during the LNG construction boom. Therefore, returning to this higher level of productivity should clear the current construction backlog. However, that conclusion is inconsistent with other analysis that attributes the high productivity in the past to the type of construction activities associated with the LNG construction boom itself, whereas the productivity associated with the type of construction required for the Olympics and housing are quite different.

### The key underlying issue is slowing productivity (QPC Final Report Section 2.3 sub-heading)

37. In reaching the conclusion that the key underlying issue is slowing productivity, the QPC display their estimates of Queensland construction productivity compared to those for the market sector for Australia in Figure 2.9. As documented in Question 3 above, the conclusion that Queensland construction productivity has risen by only 5 per cent since 1994-95 is at odds with independently derived estimates presented in Figure 3 that productivity has risen by 13.5 per cent in this time.

38. The QPC reiterate that the increase and subsequent decline in Queensland productivity is "almost all" due to the rise and fall of heavy and civil engineering associated with the LNG construction boom. However, a counterfactual analysis was then presented in Box 2.1 of the QPC Final Report that showed that the productivity decline from 2018 could not be explained by compositional change in the Queensland construction industry, and that their hypothetical productivity index would be above 120 under the assumption of a constant industry composition, rather than the observed productivity index of 105. Two important points are evident.

39. First, key aspects of the methodology for this counterfactual exercise are not detailed. Estimates are described as "experimental", with labour productivity being "approximated" by work done per hour, however, specific assumptions used in this hypothetical scenario are not explained, nor do we know how sensitive the findings are these assumptions. The absence of a clear methodology allowing one to replicate this counterfactual analysis, as well as the methodology allowing one to replicate the original QPC estimates of Queensland construction productivity displayed in Figure 2.9 in the first place is extremely important given that the quantification of productivity growth or decline, as well as its attribution or otherwise to compositional change in the industry, underpins the major conclusion of the QPC that productivity is the key underlying issue and requires urgent attention.

40. Second, while industry composition itself is expected to influence Queensland construction productivity, it would not be the only influence, with other causes explored in relation to Question 5 of this report. Therefore, to attribute a significant structural change or turning point to the time period 2018 simply from an unexplained component of a hypothetical

counterfactual exercise represents an incomplete statistical analysis of the issue. It therefore follows that conjecture based upon returning to 2018 productivity levels is also flawed.

41. Third, as discussed in Question 2 of this report, other data shows that any decrease or slowing in labour productivity growth occurring since 2018 has not been confined to the construction industry only. The comparison of productivity growth of 5 per cent for Queensland construction compared to productivity growth of 65 per cent for the Australian market sector in general is often cited in the QPC Final Report as representing the productivity problem faced. However, while there was an increase in labour productivity of approximately 65 per cent in the Australian market sector from 1994-95 to 2024-25, productivity increased by only 1 percentage point from 2017-18 to 2024-25 (ABS 2026b).[9] The QPC is correct to subsequently concede in Section 2.4 of the QPC Final Report that poor construction productivity performance is not unique to Queensland, however, a more accurate depiction is that poor productivity performance is not even unique to the construction industry, but representative of the economy in general in the post-2018 era.

42. In summary, I agree that productivity growth in Queensland construction has been relatively poor compared to the market sector since 1994-95. However, the exact magnitude of such productivity growth is contestable. I disagree that there has been a significant event or anomaly in the Queensland construction industry since 2018 that has led to abnormally low productivity levels. Rather, it is apparent that any productivity slowdown occurring in Queensland construction productivity since 2018 has also been experienced at the wider Australian level in the construction industry, but more so at the economy wide market sector level, and indeed internationally. In my opinion, the main feature of Queensland construction industry that stands out as an obstacle to addressing Queensland construction challenges is labour shortages. As such, I disagree that the key underlying issue is slowing productivity.

### Returning productivity to 2018 levels would provide large benefits (QPC Final Report Section 2.3 sub-heading)

43. I also disagree with the conclusions of subsequent analysis of the "large" benefits that would emanate from returning to 2018 productivity levels.

44. First, QPC claim that the 9 per cent improvement to productivity from returning to 2018 productivity levels would be the equivalent of adding 25,000 workers to the industry, which in turn could have produced 77,000 dwellings and eliminated the current shortfall in housing supply. Although a hypothetical scenario, this claim is inconsistent with other economic data available. The latest employment statistics from the ABS Characteristics of Employment survey was that residential building ANZSIC group employment comprised 20,100 jobs from a total of 257,000 jobs in the construction ANZSIC division in Queensland (ABS 2026e). Therefore, while it may be acceptable to hypothesise that a 9 per cent improvement to productivity may be equivalent to approximately 25,000 workers in the industry as a whole in Queensland, for 100 per cent of the 25,000 jobs to end up in residential building when this ANZSIC subcategory currently accounts for only 20,100

[9] Analysis presented in Question 3 discussed similar trends for the market sector in Queensland rather than Australia.

jobs, and 8 per cent of Queensland construction industry, represents an extremely unrealistic situation.

45. Second, the QPC then claim that increasing productivity will result in improved financial sustainability and alleviate the current high insolvency rates in the industry. However, research by the Queensland University of Technology submitted to the QPC Construction Productivity Inquiry (O'Neill et al. 2025) postulates that the direction of causality runs from financial issues and insolvencies to productivity, not vice versa. That is, that insolvencies influence productivity in the sector, not productivity influencing insolvencies. In turn, the authors attribute the high rate of insolvencies to financial structures, the regulatory environment and limited financial and business acumen by business owners across the residential construction sector due to the absence of training and/or education, in turn citing Australian Securities and Investment Commission (ASIC) data showing that 49.5% of insolvencies in the construction industry are attributable to poor strategic decisions of management (O'Neill et al. 2025, p 8).

46. Third, the QPC then dedicate Box 2.2 and Figure 2.12 of the QPC Final Report to demonstrating a statistical association between productivity growth in Australia with increased earnings for workers, safer work environments, and reduced working hours. Similar to the analysis of insolvency data above, one must be careful to distinguish between correlation vs causation. That is, simply because there appears to be a positive or negative movement between two variables does not imply that one variable causes or affects the other to occur. The QPC are quite careful in using the term "association" which implies correlation only. However, my interpretation of the statement "While there is some scepticism that productivity growth is good for workers, the evidence suggests this scepticism is misplaced." (QPC Final Report p 85) is that the QPC are implying that an increase in Queensland construction productivity is likely to lead to better wages, hours and safety outcomes.

47. Starting with productivity and wages, marginal productivity theory implies that an improvement in productivity should result in higher wages, however, efficiency wage theory implies that higher wages is the catalyst for improvement to productivity. Therefore, the direction of causality between wages and productivity is uncertain or ambiguous.

48. However, with regard to safety and productivity, Gurmu (2021) uses data of Australian constructions sites to postulate that the appropriate direction of causality is from safety management practices to productivity outcomes via econometric modelling. Similarly, much European research emphasises the impact of safety towards productivity (Cooper 2005, Kazaz et al. 2008, Robles et al. 2014, Kazaz and Acıkara 2015). Finally, using New Zealand construction industry data Ghodrati et al. (2022) provided modelling results showing that some management practices focussed on improving labour productivity can have unintended detrimental effects on safety outcomes. Therefore, the research suggests that the causality runs from safety to productivity rather than vice versa.

49. In conclusion, labour shortages are a major issue for Queensland construction, being relatively large in size compared to prevailing trends in the broader labour market, as well as becoming worse in recent years. Job vacancy statistics for Queensland construction trades workers as well as construction and mining labourers have grown at a greater rate

than those for the Australian construction industry or the aggregate Queensland labour market. Furthermore, vacancies in these construction occupations are increasing as a proportion of Australian vacancies. In short, the data for Queensland is at odds with QPC conclusions that "vacancy rates in construction are lower and easing more quickly than in other industries" (QPC Final Report p 80). In contrast, Queensland construction labour productivity growth has been generally better than that for Australia over the last few decades, and furthermore, any decline in recent years has been consistent with that observed in the broader labour market. Therefore, in my opinion labour shortages are at least as much a concern as labour productivity for meeting Queensland's construction challenges. Finally, there are significant flaws in the analysis and logic presented by the QPC that restoring productivity to 2018 levels will provide large economic benefits.

## Question 5. In section 2.4 of its final report, the QPC sets out what it considers to be the causes of slow productivity growth in the construction industry. Do you agree with the QPC in this regard? Please explain your reasons in your answer.

50. The QPC lists three main causes of slow productivity growth, being industry fragmentation and the sequential nature of construction; increased regulatory burden; and Queensland procurement policy. They also list a variety of causes that are subsequently ruled out, being mismeasurement, boom and bust cycles, lack of competition, and changes in the composition of labour inputs. I mostly agree with three causes identified by the QPC, however, I also believe that mismeasurement and boom and bust cycles are significant causes. Furthermore, a literature review of international and Australian research on construction productivity conducted for this report shows that there are other relevant causes of slow productivity growth in the construction industry that are not considered by the QPC.

### Fragmentation and the sequential nature of construction

51. Starting with the first main causes of slow productivity growth identified by the QPC, industry fragmentation and the sequential nature of construction implies that a key influence is the prevalence of small businesses and contractors performing separate discrete tasks within the supply chain. Furthermore, these firms generally operate on modest profit margins, in turn driving a short-sighted focus on survival rather than innovation and growth. QPC produce ABS data to demonstrate a low level of innovation in construction for these firms compared to similarly sized firms in other industries. I largely agree that industry fragmentation and the sequential nature of construction is a significant influence on (slow) productivity growth in construction. However, if the QPC is arguing that Queensland construction productivity has declined, there is no evidence to suggest that industry fragmentation has increased over time to contribute to this outcome.

### Increased regulatory burden

52. Increased regulatory burden is then explored as a factor by the QPC under the three sub-themes of regulations keeping construction firms small; land availability and regulation of land use; and regulation of construction practices, outputs and workforce. The QPC cite both Productivity Commission and Committee for Economic Development of Australia (CEDA) research in support of the opinion that regulation encourages construction businesses to stay small, with the implicit argument above that small businesses are less productive. I have no major disagreement with the economic rational provided by the Productivity Commission or CEDA, although I note the lack of empirical or quantitative analysis in support of their conjectures.

53. However, in my opinion the concentration of construction industry employment within small firms is probably more related to the workforce composition within the industry, being dominated by those in technician and trades occupations, rather being a consequence of the regulatory environment. For example, across all industries, technician and trade workers account for approximately 14 per cent of employment in Australia (ABS 2026e). However, in the construction industry, technician and trades workers account for

approximately 50 per cent of employment. Other labour force data shows that, regardless of industry, technician and trades workers are more likely to be self-employed or employed in small businesses. For example, across all occupations approximately 24 per cent of workers are employed in businesses with fewer than 20 employees, however, more than 40 per cent of technician and trades workers are employed in such businesses (ABS 2026f). Similarly, across all occupations, 15 per cent of workers are self employed,[10] however, this increases to approximately 25 per cent of technician and trades workers (ABS 2026e). Put simply, regardless of regulations in the construction industry, those with trades qualifications are more likely to go into business for themselves or to work for small businesses rather than for larger employers.

54. Land use regulations are also argued to have reduced development opportunities or made development more challenging. To the extent that land use regulations have become more restrictive or complex, this may have contributed to worsening productivity outcomes. The evidence presented is generally in support of this argument, however, care must be taken with the data provided by the Centre for International Economics (CIE 2025) and Box 2.3, which is largely related to cost estimates rather than for productivity.

55. Regulation of construction practices, outputs and workforce is then put forth as an additional regulatory burden impeding productivity. QPC state that "layers of regulation imposed by every layer of government" (QPC Final Report p 91) are applicable to where and how housing construction can occur, who can undertake building and under what conditions, and for compliance with health and safety, environmental and hazard management. Although there may be merit to this general argument, scant evidence is provided in the form of specific examples or empirical research by the QPC in support of this theme, with the exception of occupational licensing. I generally agree with the argument that regulation of construction practices and outputs may impede labour productivity. However, it is unclear from the (lack of) evidence presented how this has become worse or more extreme in recent years to contribute to worsening productivity outcomes. Furthermore, I disagree with the specific arguments and evidence provided by the QPC that occupational licensing is an impediment to productivity or is driving lower productivity outcomes in the construction industry. In my opinion there are major flaws relating to the relevance, methodologies and findings of the occupational licensing research cited by the QPC (namely, Cox & Foster 1990, Bona 2011, Kleiner 2006, Kleiner & Soltas 2019, CEDA 2022, and Bowman et al. 2024). Furthermore, available statistics for Queensland construction do not supporting the main propositions of this research. I address these issues in greater detail in Question 7 below.

### Queensland procurement policy

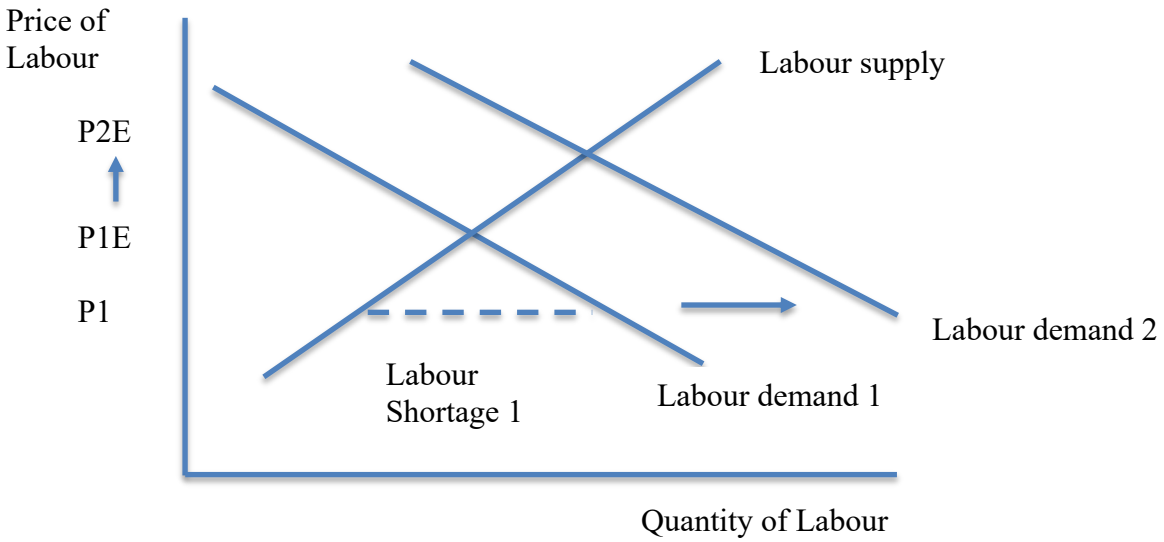
56. Queensland's procurement policy is argued to affect productivity via three avenues: directly by imposing conditions on how site works are conducted; indirectly, by influencing the broader sector through the establishment of standards and expectations; and by inflating demand for construction when the industry is close to capacity. I agree in principle that the first two avenues could potentially affect productivity, with some caveats. Specifically, the discussion presented in section 2.4 appears mostly focused on Best Practices Industry

[10] Defined by the ABS as own account workers with or without employees.

Conditions (BPICs). However, as with the CIE (2025) research cited above, in my opinion care should be taken in distinguishing cost vs productivity implications of BPICs. This issue is explored in more detail in relation to Question 6 below.

57. Similarly, in my opinion the final avenue suggested, focused on demand and capacity in the industry, is more related to fundamental labour and skills shortages in the industry adding to cost pressures rather than being a productivity issue. A basic depiction of labour supply and demand in the construction industry is shown in Figure 8. Starting with Labour demand 1, a labour shortage implies that the price of labour P1 is set below the market clearing rate of P1E, with labour demand exceeding labour supply. An increase in labour demand from Labour demand 1 to Labour demand 2 that may be the result of increased public sector construction activity will place further pressure on the labour price (ie. wage) to increase to the new market clearing rate of P2E and / or result in increased labour shortages. In these circumstances, the key issue is the imbalance between labour demand and labour supply in the first place rather than reflecting a productivity issue.

**Figure 8. Basic Labour Market Supply and Demand Analysis**




58. In summary, the three main causes of slow labour productivity provided by the QPC, industry fragmentation, regulatory burden, and Queensland procurement policy, all have a potential role for explaining slow productivity growth in Queensland construction. However, care must be taken when analysing the cost vs productivity implications of these potential causes, and whether changes have occurred since 2018 that may explain the worsening labour productivity trends argued by the QPC. Care must also be taken as to whether these causes reflect productivity issues or labour shortages. In my opinion, the three main causes put forth by the QPC do not adequately capture the full range of relevant drivers of (low) productivity growth.

## Causes dismissed by the QPC

59. Other potential factors dismissed on page 87 of the QPC Final Report were mismeasurement; boom and bust cycles; a general lack of competition; and change in the composition of labour inputs. Starting with mismeasurement, QPC cite US based research by Garcia and Molloy (2023) and Goolsbee and Syverson (2023), as well as the Productivity Commission (2025), in support of the proposition that any mismeasurement would be too small to explain the construction industry's poor productivity performance. However, other research has shown that measurement issues associated with price deflators, construction quality and even the definition of what activities constitute the construction industry can have a significant influence on the quantification of construction industry productivity. For example, Ahmad et al. (2020) concluded that Norwegian construction productivity had not been in decline as the statistics suggested but, in contrast, was a productive industry. Similarly, Allen (1985) concluded that half of the decline in construction productivity in the US between the 1960's and 70's could be attributed to over-deflation, while Pieper (1990) concluded that over-deflation decreased construction productivity by 0.5 per cent per year between 1963 and 1982.

60. Mismeasurement may be categorised under five main causes:

    (a) **Output measurement and deflation.** Construction output is measured in current-price terms (the value of work done) and converted to a "real" or volume measure using a price deflator. If the deflator does not fully capture quality improvements in what is built (for example, more energy-efficient, more durable, or more complex buildings), then real output and hence measured productivity will be understated. Similarly, if there is rapid increase in input prices in the construction industry, as has been observed in recent years, this may have a large influence on deflating the value of output.

    (b) **Heterogeneity and project-based output.** Unlike a factory producing a standard unit repeatedly, construction output is a sequence of bespoke projects. Comparing "a building" in one year with "a building" in another year is inherently more difficult than comparing identical manufactured units, and small changes in scope, location mix, or project type can move the aggregate statistic without reflecting any change in underlying efficiency.

    (c) **Compositional change.** Aggregate construction productivity statistics combine sub-industries with very different productivity trends (residential building, non-residential building, heavy and civil engineering, and construction trade services). Shifts in the mix of activity between these sub-industries — for example, a shift toward more complex, lower-productivity-growth residential building, or toward more sub-contracted trade services — will move the aggregate statistic even where productivity within each sub-industry is unchanged. The QPC itself acknowledges this measurement issue (Box 2.1 of the QPC Final Report).

    (d) **Capital and intermediate input measurement.** Multifactor productivity estimates depend on accurately measuring the capital stock and its rate of utilisation, and on appropriately treating intermediate inputs (materials, sub-contracted services). Errors in any of these inputs flow through to the productivity residual.

(e) **Informal or "shadow economy" activity.** A significant share of residential trade work in particular is likely conducted on a cash, undeclared, or informally arranged basis. To the extent that this work is unevenly captured in official statistics over time, measured productivity trends may not accurately reflect the productivity of all work actually performed.

61. In the context of Australia, Richardson (2014) presents productivity data showing that productivity growth in the construction industry from 1994-95 to 2012-13 was greater than that for the market sector in general. Chancellor and Abbott (2015) present evidence that the shadow economy, such as "cash in hand" activities, were both significant and growing in the construction industry, accounting for approximately 10 per cent of economic activity, and not captured by ABS productivity estimates. Finally, it should be noted that the Productivity Commission (2025) mismeasurement analysis appeared to assess quality issues only.

62. Finally, in analysis presented in this current report, quite different productivity estimates were presented for Queensland construction productivity by the QPC and myself, indicating that productivity estimates using standard definitions and official ABS data can be quite sensitive to assumptions and methods used. In conclusion, I do not discount or dismiss mismeasurement as an issue for explaining Queensland construction productivity estimates and trends.

63. Next, boom and bust cycles were dismissed as a significant cause of low productivity, with QPC citing New Zealand Infrastructure Commission (2022) research showing an insignificant econometric relationship between a variable measuring the standard deviation in construction activity and productivity. A number of factors can contribute to a statistically insignificant coefficient in an econometric model,[11] and as such my opinion is that this finding from one study does not present strong evidence for the failure of boom and bust cycles to explain labour productivity trends in construction. In fact, recent Australian research conducted by RMIT academics has found that market volatility is both significant as well as a major influence on both labour shortages as well as productivity in the Australian construction industry:

> "*Market volatility is the most significant factor driving constraints in the Australian housing construction sector… This creates a labour and skills retention problem that constrains capacity once the market recovers. Demand for labour and materials during booms also results in inflated costs. Less skilled workers are attracted to the sector during booms, which further increases risk of rework and delays.*" (Sharam et al. 2026, piii-iv)

[11] For example, multicollinearity, whereby explanatory variables are correlated with each other, is a common problem when modelling macroeconomic variables and results in inflated standard errors, which in turn increases the chances of an insignificant coefficient. Another issue may be the measurement of the boom/bust variable, being the standard deviation of construction activity, simply does not adequately capture the salient features of the boom/bust phenomenon.

64. Next, the QPC dismiss the role for lack of competition, citing research by Bakhtiari (2020), Hambur (2021) and the Productivity Commission (2014). In general, I have no disagreement with this research or conclusion by the QPC.

65. Finally, the QPC dismiss the potential role for changes to the composition of labour within the construction industry, such as a shift towards white collar jobs, as a contributor to slow or declining productivity. A high level view of ABS Characteristics of Employment occupation data for Queensland construction (ABS2026e) shows no major shift between major occupation categories from 2014 to 2025. As such, I have no major disagreement with this conclusion by the QPC.

66. In summary, mismeasurement, as well as boom bust cycles, may help explain labour productivity trends in construction. However, lack of competition and composition of labour are unlikely causes.

### Other relevant research and causes

67. There is an abundance of international and Australian research analysing productivity in the construction industry, much of it motivated by the desire to explain low productivity in the industry. The main causes of slow productivity identified by the QPC fail to incorporate the principal drivers of construction productivity identified and analysed in this research.

68. Starting with international literature reviews, Hasan et al. (2018) conducted a systematic literature review of 30 years of construction productivity research covering 46 studies. The major factors affecting construction productivity were identified (in order of importance) as non-availability of materials, inadequate supervision, skills shortages, lack of proper tools or equipment, incomplete drawing and specifications, poor communication, rework, poor site layout, adverse weather, and change orders. Similarly, Hamza et al. (2022) conducted a literature review of 88 studies, identifying the most critical factors as incompetent supervisors/poor management and planning, followed by lack of materials/tools/equipment, worker efficiency/skills, lack of commitment/motivation, and work effectiveness/experience. Therefore, management and supervisor behaviour and skills are prominent causes of poor productivity outcomes in published international research, as well as equipment, materials and labour availability. Management and supervisor behaviour and skills do not receive any mention as potential causes by the QPC, while materials and labour availability was dismissed as a significant issue in Section 2.3 of the QPC Final Report. A summary of Australian construction productivity research follows, presented in chronological order.

69. Doloi (2008) conducted surveys of construction managers in Victoria. Of the three themes explored, being project planning, incentives, and job satisfaction, it was determined that human and capital resource planning was the most important for productivity.

70. Hughes and Thorpe (2014) conducted surveys with 89 construction project managers in Queensland, with the top fifteen factors influencing productivity (in order) being rework, incompetent supervisors, incomplete drawings, work overload, lack of materials, poor communication, poor site conditions, poor site layout, overcrowding, inspection delay, absenteeism, worker turnover, accident, tools/equipment breakdown, and lack of tools and equipment.

71. Similarly, Loosemore (2014) conducted focus groups with 71 sub-contractors, with the main determinants of productivity being identified as the quality of relationships with principal contractors, opportunity for early involvement in design, transparency of tender practices, growing administration and document control, design management, project management and supervisory skills, particularly in planning, scheduling and coordination, risk management and industrial relations.

72. Bohme et al. (2018) investigated two case studies in mid-rise residential construction, with the drivers of construction productivity identified as incomplete documentation, design changes, inefficient project management, and supply chain fragmentation.

73. Nasirzadeh et al. (2022) analysed the opinions of eight construction experts, with the most significant factors affecting productivity identified as level of skill and experience, fatigue, inadequate supervision, award rates and communication problems with foreign workers.

74. Finally, research by Argaw Gurmu of Deakin University emphasises the role of workplace health and safety (Gurmu 2019), human resource management (Gurmu and Ongkowijoyo 2020), and safety management practices (Gurmu 2021) for construction productivity in Australia.

75. In summary, much of this research places the onus or focus on management and supervisory behaviour and practices as the main influence on productivity outcomes. In addition, many of the issues identified are worksite/project issues such as the quality of drawings and design, availability of materials, skills and equipment, as well as supply chain management and workplace health and safety issues.

76. The above research generally consisted of analysis of interviews or survey data. A much smaller subset of research exists estimating econometric models as the main form of analysis. Chancellor (2015) modelled construction productivity growth as a function of wages, research and development, safety regulation, unionisation and prevalence of apprenticeships. In my opinion, the specification of the model was rather weak. For example, safety regulation was measured by the number of serious injury claims per year rather than any metric reflecting regulation itself. Furthermore, there were significant inconsistencies between country and state/territory model results. For example, the unionisation coefficient was negative in the Australian model but positive in three out of four state /territory level models. Previous research in Australia had found a positive association between unionisation and construction output (Webber and Knight 1996).

77. More recently, the econometric modelling of Gurmu (2026) showed that macroeconomic variables such as GDP growth as well as various input price indices[12] play a significant role in causing labour productivity trends in construction in Australia. Given that Australia has experienced low GDP growth as well as relatively high growth in construction input costs since 2018, this may explain the decrease in Queensland construction labour productivity observed by the QPC.

[12] Namely, appliances, timber and plumbing.

## Conclusion

78. In conclusion, I agree with the QPC that industry fragmentation, regulatory burden and Queensland procurement policy may play a role in constraining productivity growth in the construction industry. While high rates of self-employment and employment in small businesses in construction creates a form of industry fragmentation that may in turn constrain innovation and productivity, there is no evidence that such fragmentation in the industry is becoming worse and can explain the decrease in productivity asserted by the QPC. Similarly, while I agree in principle that regulatory burden may constrain business growth, I contend that the prevalence of self-employment and employment in small businesses is as much a reflection of the high rate of technician and trades occupations in the industry. Furthermore, I disagree occupational licensing is a significant contributor to low construction productivity and articulate the reasons for this more fully when addressing Question 7. I also have some concerns regarding the attribution of BPICs to low productivity outcomes and analyse this more fully in relation to Question 6.

79. Furthermore, I believe that both mismeasurement and boom-bust cycles are significant influences on productivity outcomes and should not have been dismissed as causes, as was done in the QPC Final Report. Research shows that labour productivity estimates are very sensitive to the assumptions used in the measurement methodology and this has also been in the current report with discrepancies between QPC and my estimates for labour productivity in Queensland construction. Furthermore, recent research in Australia has attributed boom and bust cycles as the most significant constraint in the Australian housing construction industry and as such should not be discounted as a significant cause of productivity trends.

80. Finally, a number of other causes for low productivity growth in construction are prominent in Australian research. Namely, the role of management and supervisor behaviour and practices, availability of materials, skill and equipment, as well as a range of worksite/project level issues such as the quality of drawings and design, and supply chain quality. The role of workplace health and safety and safety management practices as a significant influence on productivity has also been established. Finally, in the most recent research, macroeconomic influences have been estimated to be a significant driver of productivity and as such sluggish macroeconomic growth coupled with high input prices may be a plausible explanation of declining labour productivity in Queensland construction since 2018.

## Question 6. In section 4 of its final report, the QPC deals with the idea of an 'industry reset' and concludes with a series of recommendations (recommendations 1 to 9) focussed on regulation. Do you agree with the QPC conclusions about an 'industry reset' and the recommendations it makes? Please explain your reasons in your answer.

81. The conclusions and recommendations regarding an industry reset are contained in Section 4 of the QPC final Report, with six sub-sections devoted to BPICs; improving the operation of the workplace health and safety regime; an updated code of practice; improving industry culture; improved dialogue and collaboration; and additional action may be required. Approximately eight pages were devoted to BPICs, four pages to workplace health and safety, two pages each for the code of practice and improving culture and only one page each for improved dialogue and additional action. I shall address each of these sub-sections separately.

82. Before doing so, it is important to examine the context or premise provided by the QPC for the industry reset. The QPC state:

> "*Queensland is not alone, with other state and overseas economies having also experienced slow construction productivity growth.*
>
> *However, the recent decline in construction productivity observed in Queensland is different — since 2018, construction industry productivity has declined by around 9 per cent*." (QPC Final Report p 106)

83. My interpretation of this statement is that the QPC are arguing that construction productivity decline in Queensland is unique compared to the rest of Australia and overseas, and furthermore that 2018 represents the commencement of a structural break in labour productivity.

84. However, I reiterate earlier findings from the current report:

85. First, with reference to my productivity estimates I contend that the construction productivity performance of Queensland has not been as bad as that estimated by the QPC.

86. Second, productivity growth in Queensland construction has been superior to that of the rest of Australia and overseas.

87. Third, productivity growth from 2018 has been slow across the market sector in general in both Queensland and Australia.

88. In my opinion 2018 is an arbitrary point in time to assess productivity change in Queensland construction productivity and has not been established as a statistically significant structural break.

## BPICs

89. BPICs are alleged to increased costs and reduce productivity in the Queensland construction industry. In my opinion it is important to differentiate between these separate outcomes as much of the commentary and analysis provided by stakeholders and the QPC is in relation to cost rather than productivity outcomes. Remembering that productivity is measured as output divided by input, many of the items submitted as affecting productivity would not in fact be picked up in its measurement. For example, an RDO or a safety related site shutdown results in zero output and zero hours worked as an input. It may result in a delay in project completion and be associated with additional costs but would not be picked up in productivity statistics. Furthermore, the assertion from QPC that BPIC results in a diversion of resources away from the private sector and results in higher costs and project delays is predominantly a result of scarcity of labour and skills shortages in the construction industry rather than an implication of any productivity issue.

90. The issue of BPICs and productivity is addressed directly via four stakeholder quotes on pp108-109 of the QPC Final Report. These quotes are qualitative in nature and simply state that productivity has been decreased by BPICs rather than providing clear detail regarding the transmission mechanisms of how this occurred nor providing any quantitative estimates of such decrease in productivity.

91. In contrast, purported quantitative evidence of productivity effects of BPIC worksites operating for only three effective workdays per week is provided by reference to Master Builders Queensland (MBQ) et al. (2024), Paris (2025) and Queensland Economic Advisory Solutions (2024) on p109 of the QPC Final Report. In my opinion this may reflect a poor productivity outcome if this reflects three days of output but the input is paid for a standard five days, however, this point is not clear. Another key issue is that I cannot locate any reference to three effective days of work at BPICs worksites in the references cited.

92. Master Builders Queensland et al. 2024 is described as a letter to the Hon Meaghan Scanlon but is not contained in the QPC Final Report reference list. I have located two open letters from the MBQ to Meaghan Scanlon (MBQ 2024a, 2024b), however, neither mention three effective workdays per week nor indeed any quantitative estimate of effective workdays. Paris (2025) is published in the Urban Developer, a property developer's newsletter, quoting Julian Sammut of the Sammut Group that their Gold Coast site is running at 3.5 days per week, but also citing issues with workforce availability and weather delays which would seem to be significant issues affecting productivity and effective days or work apart from BPICs. Finally, Queensland Economic Advisory Solutions (2024) provided quantitative analysis of cost differences between a CFMEU Queensland EBA and non-EBA construction projects. I could not find any reference to BPICs worksites operating for three effective days per week, with the data referred to in this report appearing to be based on hypothetical scenarios regarding the application of the EBA rather than actual observed data.

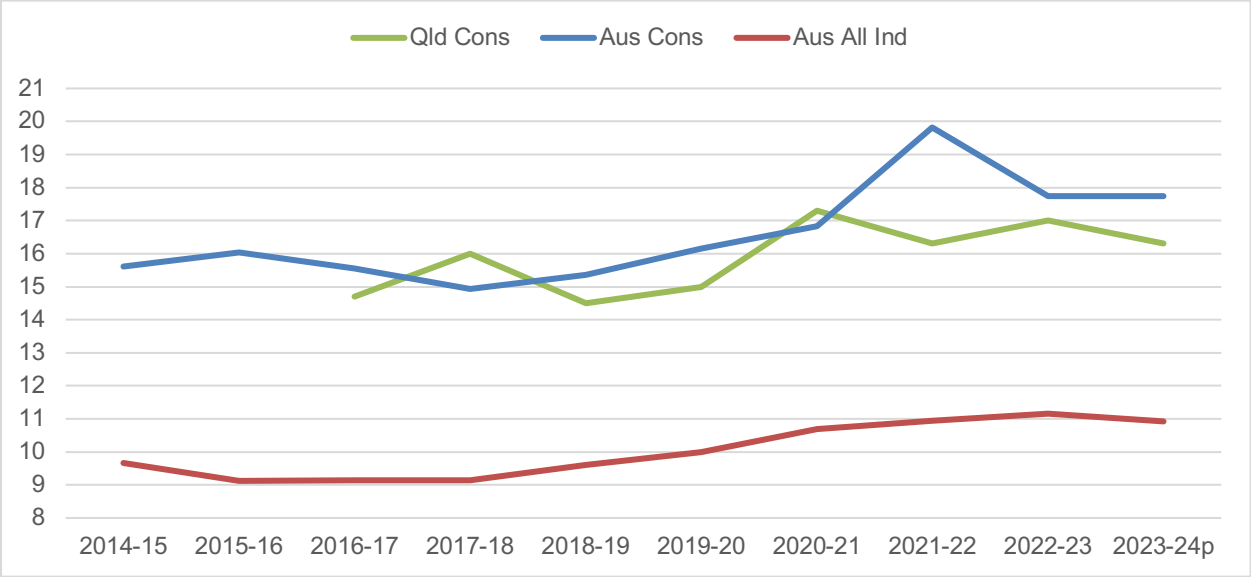
93. Finally, in separate commentary on p109 the Air Conditioning and Mechanical Contractors Association of Australia note that high productivity outcomes are possible under BPICs where all parties (head contractors, subcontractors and unions) engage and cooperate with each other. This conclusion would seem to be very relevant to Recommendation 8 below.

94. Further evidence of the purported negative effects of BPICs on the economy are summarised in Figure 4.1 on p110 of the QPC Final Report. Any negative economic consequences are argued to be the result of fewer workers in the private sector. However, again I contend that this outcome is more the consequence of labour shortages in the industry in the first place rather than as a direct result of BPIC, or indeed a productivity issue, and furthermore, that the natural economic consequence of any shortage in a market is to exert upward pressure on costs or prices.

95. The QPC then focus on safety outcomes, arguing that one of the main the purposes of BPICs was to improve safety outcomes but this has not occurred. The evidence provided consists of quotes from three organisations that are qualitative in nature, in addition to Safe Work Australia data showing that neither fatality rates nor serious injury claims have "materially" decreased in the Queensland construction industry since 2018. However, this evidence is deficient for a number of reasons. In order to determine whether a particular policy intervention has been effective for a particular group of workers, we need to compare outcomes against an appropriate control group (Angrist and Pischke 2009). In other words, a simple review of serious claims or fatalities data for Queensland construction over time tells us little about the effectiveness of BPICs unless we have an appropriate group to compare this against. An appropriate analysis would be to compare safety outcomes on BPICs worksites with outcomes on non-BPICs worksites, however, this data is not available.

96. The data provided in Figure 4.2 of the QPC Final Report shows that the serious claims rate in 2018 in Queensland construction was approximately 16 claims per 1000 construction workers, which subsequently marginally declined then increased before ending again at approximately 16 claims per 1000 workers in 2024. This data is not available publicly and is described as a QPC estimate based on Office of Industrial Relations (OIR) data. I have approximated the OIR data below based upon a visual observation of Figure 4.2. Figure 9 shows the serious claim rate at the Australian level for the construction industry and for all industries. It is clear that the serious claim rate in Australian construction is consistently higher than that for all industries, reflecting the inherent dangers in the construction industry. However, the main feature of this figure is that post-2018 the serious injury rate in Queensland construction is consistently below that of Australian construction. That is, if we use Australian construction as our control group the safety outcomes in Queensland construction after 2018 are relatively favourable.

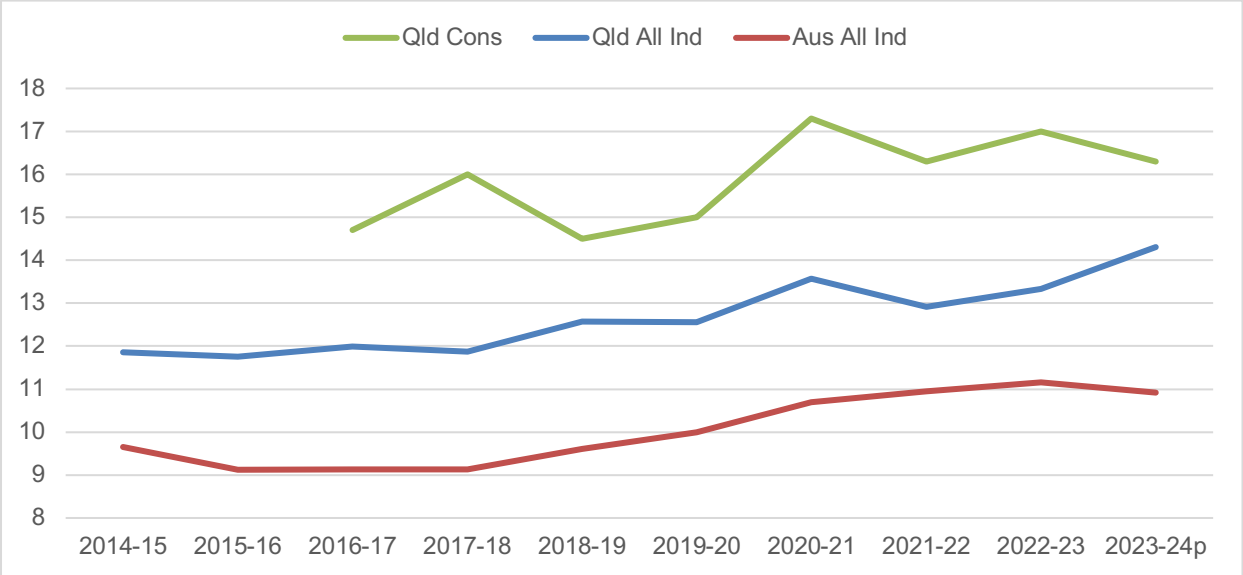
**Figure 9. Serious Claims per 1000 Workers, Queensland and Australian Construction and Australian All Industries – 2014/15 to 2023/24**




Source: Safe Work Australia (2025)

97. Alternatively, if we use serious claims across all industries in Queensland as our control group, as is shown in Figure 10, we see a consistent increase in serious claims in Queensland from approximately 12 per 1000 workers in 2018 to over 14 in 2024. However, the rate of serious claims in Queensland construction was relatively constant at approximately 16 claims per 1000 workers and was flat or even marginally declining from 2021 onwards. Again, this demonstrates that the serious claims rate observed in Queensland construction over this same period represents a relative favourable outcome compared to our control group. In conclusion, I contend that safety outcomes in Queensland construction have improved since 2018 when compared to appropriate control groups.

**Figure 10. Serious Claims per 1000 Workers, Queensland Construction and Queensland and Australia All Industries – 2014/15 to 2023/24**




Source: Safe Work Australia (2025)

98. The QPC then conduct a cost benefit analysis to demonstrate "high" net costs of BPICs on the community, also concluding that:

> "… *BPICs established conditions that allowed significant declines in site productivity*." (QPC Final Report p114)

99. However, the cost benefit analysis is a hypothetical exercise that is entirely dependent upon the assumptions used in the modelling process. The cost benefit analysis methodology is detailed in Appendix C of the QPC Final Report. The Appendix commences with a statement that the purpose of BPICs was to ensure quality, safe workplaces for people engaged on major state government projects. In my opinion, safety improvements in Queensland construction have been observed compared to appropriate control groups.

100. QPC state that the analysis has been "*informed by observed market performance and stakeholder evidence*" (QPC Final Report p404). However, in my opinion it is clear that the modelling performed by QPC relies primarily on assumptions of the hypothetical scenarios relating to the use of BPICs on worksites rather than reflecting collected data of outcomes reflecting their application in practice. The QPC acknowledge some of the uncertainty regarding the impact of BPICs on worksites on p406 of the QPC Final Report and address this with the use of "high" and "low" scenarios in their modelling, however, these scenarios are also not based on realised data and fail to acknowledge the full range or scope of outcomes that may occur within BPICs. For example, even the low scenario factors in higher costs, longer construction times, worker shortages and only a 1 per cent improvement in productivity.

101. A relatively small financial benefit is attributed to safety improvements in this modelling (approximately $15,000 per avoided claim). Furthermore, all BPICs items such

as RDOs, union meetings, and weather related delays that could potentially be associated with beneficial safety outcomes and related productivity improvements are treated as additional costs. Similarly, relatively high financial values are placed on highly uncertain hypothetical spillover events in the private sector that are alleged to be indirectly attributable to the BPICs such as workforce shortages, impacts on residential construction and business investment. In summary, I am sceptical of these cost benefit analysis results as different plausible assumptions can produce substantially different estimates of net benefits and costs.

102. **Recommendation 1** calls for BPICs to be permanently removed from Queensland Government procurement policy. In my opinion, the evidence provided by the QPC did not clearly demonstrate and quantify poor productivity outcomes. In addition, the cost benefit was subjective in nature and furthermore did not have clear implications for productivity measurement. I further contend that the main purpose of BPICs, being safety improvement, has been observed for Queensland construction when compared to appropriate control groups. Based upon these findings I do not agree with Recommendation 1.

103. **Recommendation 2** relating to prequalification of sub-contractors was also included in the BPICs sub-section of the QPC Final Report. Due to the lack of evidence or analysis provided I have no major opinion or comment in relation to this recommendation.

## Improving the operation of the workplace health and safety regime

104. The QPC document concerns from employers that workplace health and safety provisions, and health and safety representatives in particular, have been misused by trade unions resulting site closures and disruptions in time sensitive construction activities. In response, union representatives have contended that health and safety representatives have been highly effective in improving safety on site. The evidence on both sides is largely qualitative in nature.

105. Due to the inherent dangers of construction, workplace health and safety is of vital importance to the industry. Australian research has shown that safety management practices are positively related to construction productivity (Gurmu 2021). Other research shows that safety and health policy, safety and health plan, hazards analysis, safe work method statement, toolbox safety meetings, safety and health training and housekeeping are all deemed as important by Australian contractors in improving labour productivity in the construction industry (Gurmu 2019a). Similarly, a wealth of international research supports the proposition that safety drives labour productivity outcomes both in the construction industry specifically as well as more generally across other industries (Cooper 2005, Lamm et al. 2007, Kazaz et al. 2008, Robles et al. 2014, Kazaz and Acıkara 2015, Buhai et al. 2017, Katz et al. 2019).

106. **Recommendation 3** calls on the OIR to work with stakeholders to develop agreed guidance for unions, Person Conducting a Business or Undertaking (PCBU), health and safety representatives and construction workers on the interpretation of mechanisms available under existing legislation to deal with workplace health and safety issues. In principle I have no objection to this recommendation. However, based on Australian and international research emphasising the direction of causality from safety to productivity, I caution that any changes to workplace health and safety regulations that are primarily

driven by cost or employer imperatives may be adverse to safety outcomes thus ultimately detrimental to productivity outcomes.

107. **Recommendation 4** relates to workplace health and safety specifically for weather events. No commentary, evidence or analysis of the workplace health and safety implication of weather events was provided by QPC in this sub-section, although stop work conditions were previously mentioned in relation to BPICs. There is a wealth of recent research on dangers of heat exposure and heat stress relevant to the construction industry (Fatima et al. 2023, 2026, Esfahani et al. 2024, Nazneen et al. 2025, Carolina and Wijaya 2025). Therefore, my conclusion is identical to that for Recommendation 3.

108. **Recommendation 5** focusses on more effective use of existing arbitration and conciliation provisions by the OIR for resolving workplace health and safety disputes in relation to PCBU or health and safety representative powers and responsibilities. I have insufficient evidence before me to expressed an informed opinion.

## An updated Code of practice

109. The QPC describe a code of practice as "… a set of rules or guidelines laying out the principles, requirements or expectations for acceptable industry behaviour or practices on public sector projects. (QPC Final Report p119). They further state that the government should revise the existing Building and Construction Code of Practice, or develop a new code, in order to send a "clear signal to industry on productivity" (QPC Final Report p120). However, the commentary, analysis or evidence in support of this proposition is limited.

110. **Recommendation 6** is thus for an updated code of practice. The only details regarding the content of this revised code in Recommendation 6 are prohibiting unnecessary productivity precluding clauses and jump up clauses, as well as right of entry provisions to prevent the misuse of WHS procedures. Based on this level of detail, I disagree with Recommendation 6.

111. In my opinion, there has been an opaque understanding of actual labour productivity trends in Queensland construction, factors that influence productivity versus costs, as well as the causes of construction productivity trends throughout the QPC Final Report.

112. First, the specific detail of what constitutes "productivity limiting" clauses is unclear to me. Most of the analysis presented in the QPC Final Report thus far relates to cost implications or project completion times, rather than productivity per se. No examples of productivity limiting clauses are specified by the QPC and as such I am unsure about the scope of these clauses and whether they encompass wage rates, RDOs, WHS matters, union meetings and so on.

113. Second, the specific detail of right of entry provisions and misuse of workplace health and safety procedures is also unclear and somewhat of a contested issue between stakeholders.

114. Third, management and supervisor behaviour was consistently identified by research as a major inhibitor of construction productivity in Australia, along with a host of

other workplace and project level issues, however, they seem to be absent from the suggested revisions to the code.

115. Finally, in my opinion the major challenge faced by the Queensland construction industry is labour shortages. It is unclear to me how limiting EBAs and employee rights or conditions addresses this major cause. It may in fact have the effect of making Queensland a less attractive workplace for employees.

116. **Recommendation 7** relates to enforcement of the code of practice. Given the above commentary I do not express view on this recommendation.

### Improving Industry Culture

117. I agree that improvements to industry culture may have benefits to both productivity as well as with worker attraction and retention and thereby addressing workforce and skills shortages. However, no recommendation was made for this sub-section.

### Improved dialogue and collaboration

118. Similarly, improved dialogue and collaboration between key stakeholders should provide positive productivity outcomes.

119. **Recommendation 8** is that the government should find ways and mechanisms to encourage and facilitate greater collaboration between the parties directly engaged on large construction sites. I agree with this recommendation.

### Additional action may be required

120. Finally, there is a **Recommendation 9** for a review of regulator powers. Given the limited consideration of this matter by the QPC I am not in a position to offer an informed view.

## Question 7. In section 17 of its final report, the QPC deals with occupational licensing and concludes with two recommendations. Recommendation 53 involves a review of occupational licensing. Recommendation 54 involves removing what the QPC considers to be barriers to labour mobility. Do you agree with the QPC conclusions about occupational licensing and the recommendations it makes? Please explain your reasons in your answer

121. Recommendation 53 is for a review of occupational licensing and Recommendation 54 is for removing barriers to labour mobility. On the surface both appear to be rather innocuous recommendations. However, it is important to address the evidence and analysis in support of these recommendations before providing my opinion on their utility and worth.

### Occupational licensing research

122. In Box 17.1 of the QPC Final Report occupational licensing is summarised as consisting of qualifications, experience, continuing professional development and character (QPC Final Report p342). Taking a standard economics approach, QPC then argue that benefits from such licensing should outweigh the costs if these licenses are to be justified. Benefits are listed as addressing market failure relating to information asymmetry and negative externalities. However, other research not mentioned by QPC also cites health, safety and quality as the main potential benefits (Bona 2011). Costs are listed by the QPC as reduced labour supply and mobility, lower innovation, and higher costs for both businesses and consumers. A range of evidence is provided by the QPC in support of their position in terms of published research, including Cox and Foster (1990), Bona (2011), Kleiner (2006), Kleiner and Soltas (2019), CEDA (2022), Bowman et al. (2024), Productivity Commission (2023 and 2024), as well as quotes from stakeholders.

123. Starting with the published research cited, Cox and Foster (1990) provide a literature review of studies assessing the costs and benefits of occupational licensing. Of the eighteen studies considered, only one was based on the construction industry, being Carrol and Gaston (1981). Attempting to link occupational licensing with negative quality outcomes, the authors attribute increases in occupational licensing for electricians to increases in accidental deaths by electric shock per kilowatt hour of non-industrial electricity consumption. Similarly in modelling for plumbing, the authors link increases in plumbing licensing to increases in DIY plumbing retail sales and “dilapidated” housing. The choice of model specification for this study contain a number of major flaws that undermine the conclusions made.

124. Bona (2011) also assesses the benefits and costs of occupational licensing, with empirical analysis consisting of the two case studies of dentistry and teeth whitening, and vets and horse dental treatment. Based upon the industry context it is difficult to assess the relevance of this work to the construction industry.

125. A number of studies by Kleiner address occupational licensing, particularly its effect upon wages (for example, Kleiner and Soltas 2019[13]). Kleiner (2006) confirms that only two studies analysing the economic effects of occupational licensing were based on the construction industry, being Carrol and Gaston (1981) and Maurizi (1980). Using electricians in California as the case study, Maurizi (1980) used time series econometric modelling to show that both a reduction in electrician license standards, as well as rapid increases in the number of electrician licensees, decreased electrician quality outcomes proxied by complaints to the California Contractors' State License Board.

126. CEDA (2022) use a methodology of the OECD (von Rueden and Bambalaite 2020) to classify the stringency of occupational entry regulations (OER) for NSW and Queensland. CEDA estimate that occupational restrictions on personal services, which include building trades such as electricians, plumbers and painters, equate to a OER indicator of 1.3 for Queensland, which was greater than seventeen out of twenty countries analysed in the original von Rueden and Bambalaite (2020) OECD study. The methodology for the OER indicator in von Rueden and Bambalaite (2020), consists of separate components for administrative burden, qualification requirement, and mobility restrictions. In my opinion the OER indicator methodology is both crude in scope and sensitive to subjective inputs. There are only three survey questions for administrative burden, four for qualification requirements, and three for mobility restrictions, with all questions except one requiring a yes/no response. Notably, the responses used by CEDA to obtain their OER estimate for Queensland were not reported to verify the robustness of their result.

127. Using an identical methodology, Bowman et al. (2024)[14] estimate a significantly lower estimate of OER for Queensland of less than one. Whereas CEDA (2022) concluded that occupational restrictions were higher for personal services in Queensland compared to NSW, the results from Bowman et al. (2024) listed Queensland with the lowest stringency compared to the other two states analysed (NSW and Victoria), although this was still estimated to be above the OECD average. As a sidenote, the QPC also acknowledged that Queensland had the lowest occupational stringency compared to NSW and Victoria in nine out of fourteen construction related occupations listed in Table 17.1 of the QPC Final Report.

128. Bowman et al. (2024) then went further in asserting that OERs make businesses "less dynamic", where dynamism is measured by business entry and exit rates in specific industries. Model results showed that business entry and exit rates were negatively related to an industry's OER, and thereby that industries with higher OERs were less dynamic. Notwithstanding the econometric deficiencies in the modelling, such as having one explanatory variable and only 42 observations, I would think that it is entirely expected and economically rational that business entry and exit rates are lower in industries with high OERs. The qualifications needed for occupational licenses imply an initial investment in human capital such as a certificate III TAFE qualification as well continuing professional

[13] This study was later published as Kleiner and Soltas (2023).
[14] This study was later published as Bowman et al. (2024).

development. This necessarily restricts entry to those willing to obtain these qualifications, but also would also be expected to result in relative business stability and fewer exits.

129. Bowman et al. (2024) then assert that OERs make it harder for productive businesses to expand, estimating another econometric equation with employment change at the firm level as the dependent variable and an interactive variable capturing productivity and OER as an explanatory variable. A negative coefficient on this interactive variable is interpreted that employment growth is weaker for firms with higher OERs. The authors go further by stating if OERs were reduced to the OECD average that these results imply that labour would move from low to high productivity firms. In my opinion this conclusion is flawed on a number of levels. First, on an econometric level, the OER itself should have been included as an explanatory variable in the model as it was in the entry and exit rate models. This is the only way we would know if a decrease in OER would result in an increase in employment growth in a firm. Second, the model only explains around 5 per cent of the variation in employment growth, meaning that the vast majority of firm level employment growth is left unexplained, possibly by other variables not included in the specification. Third, the model does not capture employment dynamics between firms. As such it is impossible to determine that a reduction in OERs would shift employment from low to high productivity firms as was argued by the authors. Fourth, disregarding these other issues for the moment and assuming that a lowering of OERs results in an increase in employment, the model does not account for any health, safety or quality implications that may arise from lower OERs, as was modelled in Maurizi (1980).

130. Finally, Bowman et al. (2024) show that skill shortages are more prevalent in occupations with high OERs. However, the authors then take this result from a simple correlation and infer a form of causality. That is, that OERs may exacerbate skills shortages, with the implication that reducing OERs would reduce such shortages. This may well be the case, however, again ignores any health, quality and safety implications that may follow. In summary, there are multiple flaws in the research of Bowman et al. (2024) that affect the utility of any policy implications made.

131. In the finale piece of research cited by the QPC, Productivity Commission (2023) argue that that claimed benefits of occupational licensing have not been realised in the research conducted in this area. However, in common with other studies cited by the QPC above, this research cited by the Productivity Commission was not focussed on the construction industry. Namely, Kleiner and Kudrie 2000 (dentistry), Powell and Vorotnikov (real estate), Kounmenta et al. 2019 (accountants, engineers, architects, lawyers, real estate agents, tourist guides and patent agents) and Farronatao et al. 2020[15] (online platform for residential home services). The Productivity Commission also emphasised the difficulty in measuring the benefits of occupational licensing. Finally, the Productivity Commission cited only one reference to a study based on US and EU data purporting to show any relationship between occupational licensing and productivity and did not produce any empirical evidence themselves to support the proposition that occupational licensing may decrease labour productivity.

[15] This study was later published as Farronatao et al. (2024)

132. In summary, most research cited by the QPC is not related to the construction industry and it is unclear if the research findings would be transferable to this industry given the importance of health, safety and quality outcomes. Of the research that is focused on the construction industry, Maurizi (1980) showed that efforts to relax licensing stringency and increase the number of licensed electricians in California resulted in an increase in the frequency of complaints. The most relevant research was that of Bowman et al. (2024), however, there were major flaws with the methodology, results and conclusions made in this research.

### Stakeholder input

133. The QPC also listed eight examples of occupational licensing impeding productivity in Box 17.3 of the QPC Final Report. In my opinion, only two of these examples may be related to productivity. The first is from the Fire Protection Association Australia, indicating that fire protection contractors may need to send three technicians to a job whereas it used to be only two, although the reasons for this were not clearly articulated. The second example was in relation to newly qualified electrical workers who potentially face a period of downtime while waiting for both TAFE and Electrical Safety Office approval. However, using the standard definition of productivity, it was unclear how the remaining examples provided in Box 17.3 had any implications for a relationship between occupational licensing and productivity.

134. **Recommendation 53** of the QPC Final Report was to conduct reviews of occupational licensing. I am not opposed to the reviews per se, however, I have reservations to the proposed manner in which these may take place. The rationale for the review is described as so not to impose "unnecessary barriers on those seeking to enter the workforce". Furthermore, the framework for evaluation occupational licensing described in Figure 17.1 of the QPC final Report focusses on market failure (information asymmetry and negative externalities), with a final criteria that licensing generates the greatest possible net benefits.

135. First, barriers to entering the workforce should not be the driving force for these reforms. While workforce shortages are an important impediment to Queensland addressing its construction challenges, barriers such as education, training and continuing professional development exist for a good reason due as many of these occupations can be inherently dangerous.

136. Second, using market failure as the only criteria for making a case for occupational licensing takes an overly narrow orthodox economics perspective and is likely to skew the outcome of the occupational licensing review. Research has shown that health, safety, and quality are the main benefits and rationale for occupational licensing and thus the evaluation criteria should emphasis these three issues rather than market failure.

137. Third, maximising net benefits as the final evaluation criteria also takes an overly narrow orthodox perspective and is likely to lead to unnecessary licensing reform or removal. Research shows that costs are relatively easy to quantify, however, the benefits in terms of health, safety and quality are more difficult.

138. In summary, a clear relationship between occupational licensing and productivity has not been made in either the research or stakeholder feedback and as such I am not convinced that there will be improvements in productivity resulting from occupational licensing reform. In my opinion, the framework for evaluation may even be self-defeating for productivity. Given the importance of safety as an influence on productivity, any reforms that result in the decrease or removal of health and safety protections may result in poor productivity outcomes. As such, caution should be exercised when reviewing occupational licensing where reform or removal may expose both workers and the public to detrimental health, safety and quality outcomes.

## Labour mobility

139. Finally, the QPC argue that occupational licences provide unnecessary restrictions to labour mobility across state borders. However, available data shows that interstate labour mobility is relatively high for construction trades workers and furthermore, that Queensland has been the main benefactor. Using the latest ABS Census (ABS 2026f), there were 65,802 construction trades workers in Queensland in 2021. Of these, only 64,303 were in Queensland in 2020, representing a net inflow of 1,499 workers,[16] or 2.33% of 2020 employment levels. In fact, Queensland experienced the highest net inflow of construction trades workers of any state or territory. Putting these results into perspective, across all occupations the net inflow of full-time workers into Queensland represented 1.14% of 2020 employment levels. Over a five year period, the net inflow of construction trades workers from other states and territories to Queensland was 5,272, representing 8.71% of 2016 employment levels. Therefore, the labour mobility of construction trades workers was relatively large compared to the that experienced at the aggregate labour market level.

140. **Recommendation 54** focusses on removing barriers to labour mobility via harmonisation and mutual recognition of interstate licensing. In principle I do not have an objection to this recommendation, however, my main contention is that interstate job mobility for construction trades workers is already relatively high so I am not convinced this will lead to an influx of workers. Favourable wages and conditions compared to others states is likely to be a more effective attractor for workers.

[16] This was the result of gross inflow of 2,585, and outflow of 1,086, workers.

## Question 8. In section 18 of its final report, the QPC deals with skilled overseas migration and concludes with recommendation 55, which involves opportunities to better utilise skilled overseas migration. Do you agree with the QPC conclusions about skilled overseas migration and the recommendations it makes? Please explain your reasons in your answer.

141. As labour shortages are major factor in the construction industry, increasing labour supply via migration appears to be an appealing proposition. However, it is the most lightly evidenced of the substantive policy areas covered by the QPC Final Report. Commentary provided is largely descriptive of existing visa pathways (the skilled nominated and skilled work regional visa subclasses, and Queensland's State Nominated Migration Program) and notes that Queensland's allocation of state-nominated migrant places is comparatively underutilised relative to its population share, and furthermore that relatively few construction trades workers migrate to Queensland permanently each year under these programs.

142. The QPC provide a reference to one piece of research only in support of their arguments (Schiff 2022). In the literature reviewed by Schiff (2022), related research by Jaffe & Chappell (2018) found that construction New Zealand firms employing a higher proportion of recent migrant workers tended to be associated with low productivity firms, but attributed this difference to characteristics of the firms themselves (for example, the types of projects or contracts such firms take on) rather than to the characteristics or productivity of the migrant workers themselves.

143. Conducting my own literature review, I could find little research on the relevant effects of high skilled migrant labour in the construction industry. Huber et al. (2010) note that most migrant labour used in the EU is low skilled. Furthermore, other research in the context of developing and middle income countries may not be applicable (Narayana and Lai 2005, De Silva et al. 2014, Swider 2015). Although not directly related to productivity, Kim et al. (2020) find that migrant labour in Korea is more likely to be involved in accidents on site, while Buckley et al. (2016) show that migrant labour in construction are often vulnerable to exploitation or substandard working conditions.

144. **Recommendation 55** focusses on opportunities to better utilise skilled overseas migration. However, the available evidence does not support an inference that increasing the use of skilled migrant labour would, in itself, improve productivity. In contrast, it could reasonably be expected to ease some specific skill shortages. However, if skilled migration is to be encouraged it may be unwise to concurrently reduce occupational licensing requirements due to safety concerns, while there should be mechanisms in place to monitor potential exploitation and working conditions.

## Question 9. The QPC concludes that productivity growth in the construction industry has been weak. It attributes slow productivity growth to (a) growing regulatory burdens; and (b) sub-optimal procurement practices. Do you agree with the QPC conclusions? Please explain your reasons in your answer.

145. This question was largely addressed as part of Question 5. The QPC Final Report identifies both regulatory burdens and Queensland procurement policies as two of three main causes of slow productivity growth in Queensland construction.[17] These factors were identified from a combination of stakeholder evidence and partial quantitative analysis.

146. Based upon the research and data discussed elsewhere in this report, other causes that significantly influence productivity growth in construction include mismeasurement, boom and bust cycles, workplace health and safety, the macroeconomic environment, management and supervisor behaviour and practices, availability of materials, skills and equipment, as well as a range of worksite/project level issues such as the quality of drawings and design, and supply chain quality.

147. In my opinion it was incorrect of the QPC to attribute labour productivity growth to three causes only when a wide range of other plausible causes were evident. In the only quantitative analysis of productivity patterns conducted by the QPC,[18] they attributed prevalent trends since 1994-95 to compositional changes between building, heavy and civil engineering, and construction services. Their main finding from this analysis was that productivity patterns since 2018 were found to be unexplained by these compositional changes. However, while slowing productivity was deemed to be the "key underlying issue", no further analysis was conducted by the QPC to attribute a quantitative estimate to any of the three causes alleged to explain Queensland construction productivity.

148. In contrast, other data and analysis presented in this report suggested that labour shortages were a primary contributing factor to prevalent trends in the Queensland construction industry. The combination of strong demand (a function of both private and government-led activity), constrained labour supply, and the resulting reliance on less experienced or less optimally allocated labour is a separate channel through which measured productivity can be depressed, distinct from regulatory burden or procurement settings as such, although it may interact with both (for example, occupational licensing settings affect the speed with which labour supply can respond to a shortage, and an expanded government procurement pipeline directly affects the tightness of that labour market).

[17] The third cause identified by the QPC was industry fragmentation and the sequential nature of construction.

[18] See Box 2.1 of the QPC final Report.

## Question 10. *Building and Construction Code Discussion Paper* — In the Discussion Paper, the Commission notes that the QPC indicate that a code could include certain requirements regarding enterprise agreements and workplace health and safety regulations. With that in mind and having regard to the answers you have given to questions one to nine above, please provide any response to items 1 to 7 of the Feedback Sought section of the Discussion paper that you consider would assist the Commission. In doing so, please explain your reasons for any response you provide.

149. The Building and Construction Code Discussion Paper is extremely brief and provides little detail of what may be included in a new code apart from requirements that:

> "*Contractors preclude any unnecessary productivity limiting clauses in their EBAs*
> *Contractors do not include EBA provisions that pass-through conditions to subcontractors (that is, jump up clauses)*
> *Right of entry provisions prevent the misuse of workplace health and safety procedures*." (Building and Construction Code Discussion paper p3)

150. These three requirements are identical to those put forth in Recommendation 6 of the QPC Final Report where they were described as "principles and practices that will improve the industry's productivity performance" (QPC Final Report p120).

151. As outlined previously, in my opinion there has generally been an opaque understanding of quantitative changes Queensland construction labour productivity, productivity versus cost or project time issues, as well as the main causes of construction productivity trends in the QPC Final Report. The specific detail of what constitutes "productivity limiting" clauses is unclear to me and is not defined in the QPC Final Report or the Building and Construction Code Discussion Paper.

152. Furthermore, the specific circumstances of what constitutes "misuse" of workplace health and safety procedures is also unclear to me. Given the importance of safety to productivity outcomes, in general I caution that any changes to workplace health and safety regulations that are primarily driven by cost or productivity imperatives may in turn be associated adverse safety outcomes and thus be ultimately self-defeating for productivity.

153. My subsequent comments are relevant to items 1, 2, and 7 of the Feedback Sought section of the Building and Construction Code Discussion Paper.

### 1. The desirability of Queensland having a building and construction code.

154. I have reviewed the existing *Building and Construction Code of Practice 2000 - Updated March 2025* (OIR 2025) which already includes a relatively wide scope. If the focus is meant to be on productivity, in my opinion the incorporation of three requirements specified above into a new or revised construction code will not be successful in increasing productivity.

155. There are numerous examples in the QPC Final Report where either the concept or quantification of productivity in the construction industry is poorly understood. The "productivity limiting clauses" in EBAs have not been specified and I am concerned that in these circumstances a range working conditions may erroneously be determined to be productivity limiting. Furthermore, jump up clauses appear to be focussed more on costs rather than productivity. Similarly, workplace health and safety is a crucial issue for the industry and misuse of workplace health and safety procedures appears to be a contested issue between employers and the unions. In summary, there appears to be a high level of subjectivity in terms of what these requirements consist of and how they would be interpreted.

156. Furthermore, in my opinion labour shortages are the crucial issue in the industry. A poor culture in the industry has also been identified. Initiatives that may have the influence to potentially suppress working conditions is unlikely to going to assist labour shortages or productivity.

### 2. The key elements that should be included / excluded from such a code.

157. Based upon the above reasoning I recommend that the three requirements specified by the QPC are excluded from the code. Indeed, most of the research conducted on construction productivity in Australia points toward management and supervisor behaviour and should be the focus if productivity is the main underlying focus of the code.

### 7. What is needed to make a Code work effectively if it were introduced into Queensland?

158. Recommendation 8 of the QPC Final Report was for improved dialogue and collaboration between parties and this would seem crucial to improved relations and productivity. However, I am not convinced that a code of practice is the appropriate mechanism to achieve this.

## Question 11. Do any of the opinions you have expressed in respect of Questions 1 to 10 change in light of Counsel Assisting's Submissions? Please explain your answer.

159. Four main issues or observations stood out in Counsel Assisting's Submissions.

160. First, the assertion in paragraph 14 that codes of conduct historically have had the effect to improve productivity, with the specific case of the Australian Building and Construction Commission (ABCC) raised in paragraph 18. To the contrary, published research from Allan et al. (2010) showed that no productivity gains were made in the ABCC era and research that has previously made this claim (for example Econtech 2008) was largely discredited.

161. Second, Messrs Hadgkiss and Jenkins defined a range of "unproductive work practices" in paragraph 37. I assume these are equivalent to the "productivity limiting clauses" expressed in the QPC Final Report and Building and Construction Code Discussion Paper. Namely,

> "*(a) minimum manning arrangements;*
> *(b) restrictions on the use of casual and daily hire employment;*
> *(c) restrictions on the order of redundancies;*
> *(d) obligations to consult with unions on resourcing decisions;*
> *(e) limitations on a contractor's freedom to allocate work;*
> *(f) prescriptions on the terms on which subcontractors may be engaged; and*
> *(g) the use of unregistered written agreements.*" (Counsel Assisting's Submissions paragraph 37)

162. More detail on these work practices was contained in paragraphs 40 to 50. In my opinion, if minimum manning arrangements prescribes a level of labour supply that exceeds that necessary for the safe completion of a given task, this may result in a lower level of productivity compared to that with an optimal supply of labour. However, remembering that productivity is measured as value added (output) divided by hours worked (input) I fails to see an obvious connection of any of the other alleged "unproductive work practices" to measured productivity unless, *ceteris paribus*, they reduce value added output or increase worker hours.

163. Furthermore, other features of a code identified by Messr Hadgkiss and Jenkins that would allegedly improve productivity were listed in paragraph 64 as:

> "(*a) contractors should be required to demonstrate that they are also complying with the code on any privately funded building projects on which they are engaged;*
> *(b) contractors should be required to ensure that any subcontractors they engage on government funded building work are also complying with the requirements of the code;*
> *(c) the code should apply to "related entities" of any code covered entity; and*
> *(d) the code should require the regulator to notify the ASX if a code-covered entity is found to have breached its obligations under the code*." (Counsel Assisting's Submissions paragraph 64)

164. Again, I fail to see the connection between these features and improving productivity as measured by output divided by input.

165. Third, Annexure 2 provides the Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry. The aforementioned "unproductive work practices" are listed in 4(e) as practices that may "restrict the efficient performance of work or contain provisions that restrict productivity improvement". Ratios of employees (4ei) and perhaps RDOs (4evi) could have productivity implications, however, the others I interpret more as relating to cost or otherwise as management prerogative rather than productivity.

166. Furthermore, Section 5 relates to "Cost, efficiency and productivity", however, of the eighteen matters to be included in a workplace management action plan, only one seems to relate to labour productivity:

> "e*) approach to developing and maintaining a productive workforce, ensuring the optimal use of labour requirements (e.g. approach to managing inclement weather and heat, RDOs); and sourcing, selection and training of suitably experienced construction supervisors;*" (Counsel Assisting's Submissions, Annexure 2, matter 5.1e)

167. Matter (5.1f) relates to capital or equipment productivity, while (5.1q) relates to productivity "and/or" cost.

168. Finally, with regard to Annexure 3, the main takeaway is that employers were unanimous in their supported the introduction of the code and unions opposed it for a variety of reasons.

169. In summary, the Counsel Assisting's Submissions provide further examples of the misuse and misunderstanding of the productivity concept. Furthermore, my interpretation of the proposed code contained in the is that its content has very little to do with labour productivity, nor is it likely to achieve marked improvements to measured productivity. Rather, the proposed code appears to be focussed on limiting union influence and power, as well as employee conditions, in an attempt to reduce the cost and time associated with building projects. Finally, the code is unlikely to address the key underlying issue of labour shortages in Queensland construction. My opinions expressed in Questions 1 to 10 have not changed in any substantial fashion.

## Declaration

I confirm that the opinions expressed in this report are wholly my own and represent my genuine, independent, and impartial professional opinion on the matters addressed.

[redacted]

Professor Martin O'Brien

6 August 2026

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# Professor Martin John O'Brien – Curriculum Vitae

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## Qualifications

PhD in Economics University of Newcastle (2004) – Thesis entitled "Older Male Labour Force Participation: An Empirical Analysis", awarded in the Discipline of Economics.

BCom (Hons – 1st class) University of Newcastle (1995)

BCom University of Newcastle (1994)

## Employment Positions Held

Professor 2024 to present
MBA Director 2018 to present
Director Centre for Human and Social Capital Research 2017 to present
Director of STEP Micro-credentials and Short Courses 2022 to 2024
*Faculty of Business and Law / Faculty of Arts Society and Business*
*University of Wollongong*

Associate Professor 2019 to 2023
Senior Lecturer 2009 to 2018
Head of Discipline 2014
Head of School 2013
Associate Head of School of Economics 2010 to 2012
Head of Postgraduate Studies 2009 to 2010
*School/Discipline of Economics*
*Sydney Business School*
*University of Wollongong*

Lecturer 2004 to 2008

Director of Postgraduate Studies 2005 to 2008
*School of Economics*
*University of Wollongong*

Associate Lecturer 2002 to 2003
*School of Economics and Information Systems*
*University of Wollongong*

Casual/Part-time Lecturer and Tutor 1998, 2000 to 2002
*Department of Economics / School of Policy*
*University of Newcastle*

Statistical Analyst 1996-1997, 1999
APS level 6
*Australian Bureau of Statistics*

# RESEARCH

## Research Interests

The Australian labour market, the nexus between industrial relations policy and labour market outcomes, wage dynamics, older worker employment issues, workplace redundancy, ageing society policy, welfare reform, youth employment issues, hidden unemployment, economic restructuring, applied econometrics.

## Journal Articles

O'Brien, M.J. and Gollan, P.J. (2025) "If the (wage) cap fits? An empirical analysis of private and Public wage leadership", *The Economic and Labour Relations Review*, 36, 546-62.

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Commercial Research Contract (2025) "NSW Public Sector Nurse and Midwife Wage Analysis", for NSW Nurses and Midwives Association, $17,325.

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28 July 2026

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Our Ref: LMT:4251429

Professor Martin O'Brien

**By Email:** [redacted]

Dear Professor O'Brien

**Re: Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry**

We act for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and the Electrical Trade Union of Employees Queensland in the above matter.

We enclose:

1. Terms of Reference of the Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry (August 2025) (**Terms of Reference**);
2. Queensland Productivity Commission, *Opportunities to Improve Productivity of the Construction Industry*, Final Report (October 2025) (**QPC Final Report**);
3. Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, *Queensland Code of Practice for the Building and Construction Industry*, Discussion Paper (March 2026) (**Discussion Paper**);
4. Counsel Assisting's submissions on the re-introduction of a code of practice and independent regulator dated 3 July 2026 (**Counsel Assisting's Submissions**);
5. Queensland Economic Advisory Solutions 2024, Economic analysis of the impact of the CFMEU Queensland EBA on Queensland apartment construction prices (**QEAS Report**);
6. Multiplex Australasia Pty Ltd and CFMEU Union Collective Agreement 2023–2027 (**Multiplex and CFMEU Agreement**); and
7. Federal Court of Australia Expert Witness Code of Conduct.

## Background

The **Commission** of Inquiry into the CFMEU and Misconduct in the Construction Industry is an independent investigation launched by the Queensland Government to probe alleged corruption, systemic violence, bullying and intimidation within the CFMEU in Queensland and the Queensland construction industry more broadly.

As part of its Terms of Reference, the Commission must review whether any law or policy change is needed, and consider the making of recommendations as considered appropriate.

The Commission has now released the Discussion Paper (2026) in respect of a proposed building code framework.

Prior to establishing the Commission, the Queensland Government asked the Queensland Productivity Commission (**QPC**) to undertake an inquiry into opportunities to improve the productivity of the Queensland construction industry. The inquiry examined how policies and regulation affect productivity in the construction industry and consider opportunities for reform that will provide net benefits for the community. The QPC Final Report was submitted to the Queensland Government on 24 October 2025 and publicly released on 21 January 2026.

The QPC Final Report refers to the QEAS Report. This has been included in your materials for your review and consideration.

The Commission's Terms of Reference provide that the Commission should have regard to the QPC inquiry to ensure there is no duplication of the economic focus of that inquiry.

The Commission has indicated that it will adopt the findings of the QPC if its report is not the subject of any challenge by a person or organisation who has been given leave to appear before the Commission.

On 3 July 2026, Counsel Assisting provided their submissions on the re-introduction of a code of practice and independent regulator. Counsel Assisting's Submissions include Draft Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (**Annexure 2**), and a Stakeholder Engagement Report regarding the Commission's Discussion Paper on a Queensland Code of Practice for the Building and Construction Industry (**Annexure 3**).

## Questions to be addressed in your report

In answering the following questions, please refer to any academic or policy literature that you consider would assist the Commission to understand your answers.

In answering the following questions, we ask that should you need to refer to any Enterprise Bargaining **Agreement,** please use the Multiplex and CFMEU Agreement. This is consistent with the approach of the Agreement used and referred to by the QPC and the Commission, which both consistently use the Multiplex and CFMEU Agreement as an example or case study.

***Preliminary Questions***

1. What is productivity and how is it measured?
2. How has productivity changed in Queensland and Australia over the last 30 years?
3. How has productivity in the construction industry (using the definition of construction industry described by the QPC in part 2.1 of the Final Report) changed in Queensland and Australia over the last 30 years?

***The Queensland Productivity Commission Final Report***

4. In section 2.3 of its final report, the QPC sets out that the key underlying issue at the State-level is slowing productivity. Do you agree with the QPC in this regard? Please explain your reasons in your answer.

5. In section 2.4 of its final report, the QPC sets out what it considers to be the causes of slow productivity growth in the construction industry. Do you agree with the QPC in this regard? Please explain your reasons in your answer.

6. In section 4 of its final report, the QPC deals with the idea of an 'industry reset' and concludes with a series of recommendations (recommendations 1 to 9) focussed on regulation. Do you agree with the QPC conclusions about an 'industry reset' and the recommendations it makes? Please explain your reasons in your answer.

7. In section 17 of its final report, the QPC deals with occupational licensing and concludes with two recommendations. Recommendation 53 involves a review of occupational licensing. Recommendation 54 involves removing what the QPC considers to be barriers to labour mobility. Do you agree with the QPC conclusions about occupational licensing and the recommendations it makes? Please explain your reasons in your answer.

8. In section 18 of its final report, the QPC deals with skilled overseas migration and concludes with recommendation 55, which involves opportunities to better utilise skilled overseas migration. Do you agree with the QPC conclusions about skilled overseas migration and the recommendations it makes? Please explain your reasons in your answer.

9. The QPC concludes that productivity growth in the construction industry has been weak. It attributes slow productivity growth to (a) growing regulatory burdens; and (b) sub-optimal procurement practices. Do you agree with the QPC conclusions? Please explain your reasons in your answer.

***Building and Construction Code Discussion Paper***

10. In the Discussion Paper, the Commission notes that the QPC indicate that a code could include certain requirements regarding enterprise agreements and workplace health and safety regulations. With that in mind and having regard to the answers you have given to questions one to nine above, please provide any response to items 1 to 7 of the Feedback Sought section of the Discussion paper that you consider would assist the Commission. In doing so, please explain your reasons for any response you provide.

***Counsel Assisting's submissions on the re-introduction of a code of practice and independent regulator***

11. Do any of the opinions you have expressed in respect of Questions 1 to 10 change in light of Counsel Assisting's Submissions? Please explain your answer.

## Form and content of your report

The Commission has not prescribed any requirements with respect to expert witnesses. For that reason, we have enclosed the Expert Witness **Code of Conduct** that is used in the Federal Court of Australia. Please review the Code of Conduct carefully and comply with it when preparing your report. Please also confirm in your report that you have reviewed the Code of Conduct and have complied with it.

While the whole of the Code of Conduct is important, we emphasise the following requirements:

1. As an expert your role is to assist the Commission by providing an independent opinion. Your role is not to advocate for one side or another.

2. Your report must explain the reasoning which underpins each opinion you state. Your explanation should allow a layperson to understand how and why you hold the opinion.
3. Your report must identify the assumptions and material facts on which your opinion is based.

Please provide your report by 28 July 2026, or sooner if you are able.

## Other matters

The contents of this brief are confidential and prepared for the purpose of legal proceedings, being the Commission of Inquiry. The brief and these instructions are therefore subject to legal professional privilege. The documents in the brief may only be used for the purpose of the proceeding.

We confirm that our client will be responsible for your reasonable fees associated with the above. We request that you please provide a fee estimate for the work described above.

We request that you please acknowledge receipt of this correspondence by return email.

If you have any questions in relation to this matter, please do not hesitate to contact the writer or Alexandra Jarrett.

Yours faithfully



Luke Tiley
**Hall Payne Lawyers**