Queensland Unions

Response to

# *Building and Construction Code: Counsel Assisting's further submissions on the re-introduction of a code of practice and independent regulator*

24 July 2026

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The Queensland Council of Unions (**QCU**) does not support the introduction of the Building and Construction Code proposed by Counsel Assisting (the **proposed Code**).

While we acknowledge that the Queensland Government has the right to determine the conditions upon which it procures publicly funded infrastructure, we reject the use of procurement policy to improperly regulate and influence workplace relations, enterprise bargaining and the employment relationship between employers and employees for the entire construction industry in Queensland. These are matters regulated by the *Fair Work Act 2009* (Cth) (the **FW Act**).

We are supportive of sound procurement policy that seeks to improve contractor performance in critical areas such as work health and safety standards and to promote strategies that address critical industry skills shortages like workforce development, skills and training and inclusion and diversity, including the attraction and retention of First Nations workers and women. But we do not support any conditions which infringe on the legal rights of parties to bargain in relation to matters which employers and employees (whether represented by a union or not) may lawfully, and in good faith, genuinely agree to. The scope of the proposed Code extends beyond immediate government contracts and seeks to regulate and influence these matters even in relation to privately funded projects. This is overreach, infringes upon the freedom of employers to determine the terms of their employment relationship with their employees, which has been a criticism of BPIC, and is an attempt to regulate workplace relations on government projects in a far more prescriptive way than BPIC ever did.

Counsel Assisting suggest that the introduction of the proposed Code should occur promptly because several enterprise agreements covering major construction contractors are soon approaching their nominal expiry date. It is evident from this suggestion that the Code has been designed to attempt to influence the next round of enterprise bargaining across the construction industry, regardless of whether those agreements will ever apply to Queensland Government projects.

The QCU cautions the Commission against hastily implementing the proposed Code for this reason alone. It does not represent a ‘get out of jail free’ card for employer bargaining representatives in the renegotiation of enterprise agreements. The proposed Code will not provide major construction contractors immunity from the industrial disputation that will arise from efforts to reduce their employees’ lawful entitlements, including protected industrial action, which will have obvious impact on productivity.

Save for minor amendments, the proposed Code is a cut and paste of the 2013 *Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry*. Its content does not sufficiently have regard to the major changes that have been made to the FW Act since 2013, including expanded regulation of matters which the proposed Code seeks to regulate (e.g., workplace delegates and delegates' rights, and same job, same pay). Without sufficient regard to contemporary federal workplace relations regulation, the proposed Code risks requiring, encouraging or promoting conduct by employers that would constitute a contravention of the FW Act, despite the claim that it does not. By way of a very simple example (and there are many more), the dispute settlement provisions appear inconsistent with the model term for dealing with disputes for enterprise agreements.

In respect of the productivity-related justification for the introduction of the proposed Code, and the workplace arrangements it seeks to proscribe, Counsel Assisting relies on the evidence of Mr Nigel Hadgkiss and Mr Wayne Jenkinson which is based principally on 'feedback they had consistently received from industry participants'. This amounts to nothing more than unverified anecdotal evidence.

Further, Messrs Hadgkiss and Jenkinson have not provided any evidence which demonstrates how and to what extent each of the proscribed workplace arrangements affects productivity. Given the proscribed workplace arrangements are being framed as 'unproductive work practices', evidence of this nature is a relevant consideration. If this cannot be demonstrated in any meaningful way, it weighs against any productivity-related justification for their inclusion in the proposed Code. These are matters that should be relevantly considered by the Commission when weighing the evidence.

The QCU notes that the CEPU and ETUQ have sought leave to file expert evidence to contest matters relating to the Queensland Productivity Commission's (**QPC**) findings in its inquiry into opportunities to improve the productivity of the Queensland construction industry. This evidence is relevant to any productivity-related justification for the introduction of the proposed Code and should be heard before any recommendation is made.

Despite the absence of demonstrable evidence, the underlying assumption in Counsel Assisting's submissions is that the removal of specific clauses in enterprise agreements will lead to improved productivity in the construction industry in Queensland. The QCU submit that this assumption is erroneous. What has not been properly considered is the underlying basis for the existence of these provisions.

Insecure work is widespread in the construction industry, and several of the 'unproductive work practices' that the provisions seek to address relate to job security matters, such as restrictions on the use of casual and daily hire employment. The impact that job insecurity has on employee well-being and work engagement is well founded in research, and it is widely accepted that these matters diminish worker motivation and in turn lower productivity. In that regard, it is unreasonable to label them 'unproductive work practices', and for the proposed Code to infringe on the rights of parties to agree to interest-based solutions such as these to address job insecurity.

Ultimately, the proposed Code is a reverse BPIC. Rather than addressing the real causes of declining productivity in the construction industry, such as planning delays, procurement failures, skills shortages and project management, the proposed Code focuses on prohibiting lawful bargaining outcomes and industrial arrangements that are already regulated under, and lawfully permitted by, the FW Act. These include arrangements aimed at addressing skills shortages such as trainee and apprentice ratios.

This prohibition on supportive skills and workforce development initiatives within enterprise agreements also comes at the same time as, following a recommendation from the QPC, the Queensland Government has ceased, from 1 July 2026, the former Building and Construction Training Policy which required that 15% of total labour hours on large government projects (building and/or civil construction projects with a contract sum of $100 million or greater) and other eligible projects (e.g., public private partnership building projects with a contract sum of $500,000 or greater, and civil construction projects with a contract sum of $3 million or greater) be dedicated to apprentices, trainees, or workforce training.[1]

In its response to the QPC recommendation,[2] the Queensland Government agreed to repeal the training policy to facilitate the development of a new policy focused on upskilling the workers Queensland needs to deliver the volume of construction work projected in the lead up to the 2032 Olympic and Paralympic Games and to address the projected skills shortages across the industry. The Queensland Government committed to developing an alternative policy but are yet to live up to that commitment and have instead made general announcements such as the TradieStart program aimed at 4,500 apprentices in the general industry.[3] This is not good enough in the context of a skills shortage of around 38,000

[1] Queensland Government Building and Construction Training Policy, p. 2–3. Accessed via: https://web.archive.org/web/20251130032439/https://dtet.qld.gov.au/__data/assets/pdf_file/0023/8339/qg-building-construction-training-policy.pdf.
[2] https://www.treasury.qld.gov.au/files/QPC-Construction-Industry-Response.pdf, p. 16.
[3] https://statements.qld.gov.au/statements/105638.

construction workers in 2027-28 and effectively leaves no levers for workforce development on government infrastructure projects for at least the next four years.

This issue is further exacerbated by the prohibition on jump up contractor clauses aimed at creating equitable wages for all workers on the same project and to incentivise secure work. The proposed Code and the prohibition of labour and workforce development initiatives will only further deplete a fragile industry expected to carry a significant load until 2032 and will place the safe and productive building of government and Olympic infrastructure at risk.

Given the matters required to be addressed in a Workplace Relationship Management Plan (**WRMP**) relate to mandatory terms of an enterprise agreement and permitted matters enterprise agreements may be made about, it is unclear how a model WRMP would be any different, in effect, to a pattern agreement. If it is setting out the model approach to matters such as consultation, recruitment and selection, the use and engagement of labour hire, performance management, and dispute resolution (to name a few), it is, in effect, prescribing common terms employers would seek to include in all of their relevant enterprise agreements to ensure their obligations under the proposed Code can be met.

For these reasons, the QCU submits that the proposed Code should not be introduced.

**Queensland Council of Unions**
**24 July 2026**