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

Building Queensland's Future: Interim Report on a Queensland Construction Code

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

The Honourable David Crisafulli MP
Premier of Queensland and Minister for Veterans

The Honourable Jarrod Bleijie MP
Deputy Premier of Queensland, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations

The Honourable Deborah Frecklington MP
Attorney-General of Queensland, Minister for Justice and Minister for Integrity

Friday, 30 October 2026

Dear Premier, Deputy Premier and Attorney-General

In accordance with the *Commissions of Inquiry Order (No. 2) 2025,* notified in the Queensland Government Extraordinary Gazette No. 78 on 1 August 2025, as amended by the *Commissions of Inquiry Amendment Order (No. 2) 2026,* notified in the Queensland Government Gazette No. 43 on 26 June 2026, I submit this Interim Report of the Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry (**Commission**).

This Interim Report is submitted simultaneously to the Honourable Premier of Queensland and Minister for Veterans, the Honourable Deputy Premier and Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, and the Honourable Attorney-General, Minister for Justice and Minister for Integrity of Queensland.

While the Commission's work remains ongoing, I have concluded that consideration of the matters addressed in this Interim Report should not await delivery of the Commission's Final Report, due on 3 December 2027.

The evidence presently before the Commission demonstrates that a number of issues falling within its Terms of Reference warrant immediate attention. In my view, there is a compelling public interest in the Government receiving and considering the Commission's preliminary findings and recommendations at this stage, so that any necessary legislative, policy or administrative reforms may be assessed, and, where appropriate, implemented without delay.

I again express my gratitude for the opportunity to undertake this important inquiry in the service of the people of Queensland.

Yours faithfully



Stuart Wood AM KC
Commissioner

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

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Glossary

1997 C'th Code	*National Code of Practice for the Construction Industry 1997*, published by the Commonwealth, State and Territory Governments.
2013 C'th Code	*Building Code 2013* made under the *Fair Work (Building Industry) Act 2012* (Cth).
2013 Qld Code	*Queensland Code of Practice for the Building and Construction Industry*.
2013 Qld Guidelines	*Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry* issued in July 2013.
2014 Vic Code	*Victorian Code of Practice for the Building and Construction Industry* issued in 2014, which replaced the *Victorian Code of Practice for the Building and Construction Industry 1999* and *2013 Vic Guidelines.*
2013 Vic Guidelines	*Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry* issued in 2013 to supplement the *Victorian Code of Practice for the Building and Construction Industry 1999*.
2016 C'th Code	*Code for the Tendering and Performance of Building Work 2016* (Cth).
2023 – 2027 Building BPIC	Standard Best Practice Industry Conditions – Building Construction Projects 2023 – 2027.
ABCC	Australian Building and Construction Commission.
ABS	Australian Bureau of Statistics.
AWU	(a) The Australian Workers' Union (Qld & NT Branch), established under the FWRO Act; and/or (b) the Australian Workers' Union of Employees, Queensland, established under the IR Act.
BCCB	Building and Construction Compliance Branch, a branch established within the Queensland Department of Justice and Attorney-General in 2013 to administer the 2013 Qld Guidelines.
BCII Act	*Building and Construction Industry Improvement Act 2005* (Cth).

BIT	Building Industry Taskforce, the permanent successor to the IBIT, established in March 2004.
BPIC	Best Practice Industry Conditions, which were a policy instrument setting conditions for government procurement issued by State Government departments and agencies between approximately 2018 and 2024 according to industry (e.g. building, infrastructure, renewables) but also on a project specific basis from time-to-time. Note, BPIC is used throughout this Interim Report as a catch all for convenience to refer to the policy document styled as a BPIC.
Cairns Convention Centre Project	Cairns Convention Centre Expansion and Refurbishment Project which upgraded and expanded the convention centre in central Cairns, commissioned by the predecessor to the Department of Housing and Public Works.
Centenary Bridge Upgrade	The upgrade of the Centenary Bridge, a north-south crossing of the Brisbane River at Jindalee, commissioned by the Queensland Government's Department of Transport and Main Roads involving the construction of a new three-lane northbound bridge and rehabilitation of the existing Centenary Bridge.
CCCU	Construction Code Compliance Unit, a unit of the Victorian Government.
CCF QLD	Civil Contractors Federation Queensland Ltd, an organisation established under the FWRO Act.
CFMEU	As so defined in the Terms of Reference at paragraph 12.
CFMEU Administrator or Administrator	The administrator of the CFMEU's Construction and General Division under the Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024 and Part 15A of the IR Act (Mark Irving KC from 23 August 2024 to 1 June 2026, and then Michael Crosby AM from 22 May 2026).
COI Act	The *Commissions of Inquiry Act 1950* (Qld).
Cole Royal Commission	Royal Commission into the Building and Construction Industry overseen by Royal Commissioner, the Honourable Justice Terence Rhoderic Hudson Cole RFD QC.

Cross River Rail Project	The Cross River Rail Project as defined in the *Cross River Rail Delivery Authority Act 2016* (Qld).
Commission	Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry.
Commissioner	Stuart Wood AM KC.
CRRDA	The Cross River Rail Delivery Authority, established pursuant to s 8 of the *Cross River Rail Delivery Authority Act 2016* (Qld).
DHPW	Department of Housing and Public Works.
Draft Guidelines	Annexure 2 of Counsel Assisting's further submissions on the reintroduction of a code of practice and regulator dated 3 July 2026.
DTMR	Department of Transport and Main Roads.
EBA	Enterprise Bargaining Agreement.
ETU, CEPU, and PGEU	Means all of the following unions: (a) Electrical Trades Union of Employees Queensland established under the IR Act; (b) Electrical Trades' Union of Australia (Qld & NT branch) functioning as the Electrical, Energy and Services division of the CEPU under the FWRO Act; (c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, established under the FWRO Act; (d) Electrical Trades Union of Employees of Australia, Queensland and Gasfitters Employees Union of Australia, Queensland Branch established under the IR Act; (e) Plumbing and Pipe Trades Employees Union (PPTEU) as a division of the CEPU, established under the FWRO Act; and (f) Plumbers and Gasfitters Union Queensland, Union of Employees established under the IR Act.
Final Report	The Commission's report due 3 December 2027 as required by the Terms of Reference.

FW Act	*Fair Work Act 2009* (Cth).
FWRO Act	*Fair Work (Registered Organisations) Act 2009* (Cth).
FWBC	Fair Work Building and Construction, the operating name used by the Office of the Fair Work Building Industry Inspectorate.
FWBI Act	*Fair Work (Building Industry) Act 2012* (Cth).
FWC	Fair Work Commission.
FWO	Fair Work Ombudsman.
Gold Coast Light Rail Project	Gold Coast Light Rail Stage 3A Project.
Gyles Royal Commission	Royal Commission into Productivity in the Building Industry in New South Wales overseen by Royal Commissioner, the Honourable Roger Vincent Gyles AO KC.
Heydon Royal Commission	Royal Commission into Trade Union Governance and Corruption overseen by Royal Commissioner, the Honourable Justice Dyson Heydon AC KC.
HSR	Health and Safety Representative.
Human Rights Act	*Human Rights Act 2019* (Qld).
IBIT	Interim Building Industry Taskforce, a Commonwealth body established on 1 October 2002, during the Cole Royal Commission.
Interim Report	The Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry Building Queensland's Future: Interim Report on a Queensland Construction Code.
IR	Industrial relations.
IR Act	*Industrial Relations Act 2016* (Qld).
NECA	National Electrical and Communications Association Queensland Branch, an organisation established under the FWRO Act.
Proposed Recommendations	Counsel Assisting's Written Submissions (Exhibit JMC-1) that the Commissioner should consider recommending Draft Guidelines and the

	establishment of a regulatory body to administer and enforce the Draft Guidelines.
QCU	Queensland Council of Unions.
QPC	Queensland Productivity Commission.
QPC Final Report	Report of the QPC titled '*Opportunities to Improve Productivity of the Construction Industry*' submitted to the Queensland Government on 24 October 2025 and publicly released on 21 January 2026.
QPS	Queensland Police Service.
QBCC	Queensland Building and Construction Commission.
Recommended Code	Annexure D to the Interim Report being the Commissioner's recommended code which incorporates amendments to the Draft Guidelines.
RDOs	Rostered Days Off.
SMEs	Small and medium enterprises.
Stakeholder Engagement Report	Summary of consultation feedback annexed as Annexure 3 to Counsel Assisting's further submissions dated 3 July 2026, recording engagement to 30 June 2026.
Toombul Project	Toombul Shopping Centre project at 1015 Sandgate Road, Nundah.
Terms of Reference	The matters specified in paragraph 3 of the *Commissions of Inquiry Order (No. 2) 2025*, notified in the *Queensland Government Gazette Extraordinary*, No. 78, 1 August 2025, 663 (as amended by the *Commissions of Inquiry Amendment Order (No. 2) 2026*, notified in the Queensland Government Gazette, No. 43, 26 June 2026, 387).
Unions	Means the Administrator of the CFMEU, the ETU, CEPU, PGEU and the QCU.
Violence in the Queensland CFMEU Report	Violence in the Queensland CFMEU Report authored by Geoffrey Watson SC.
WHS	Workplace Health and Safety.

WHS Act	*Work Health and Safety Act 2011* (Qld).
WHSQ	Workplace Health and Safety Queensland.
Workplace Arrangements	As defined in the Recommended Code.
WRMP	Workplace Relations Management Plan.

1. Preface to this Interim Report

1.1. Overview

1.1.1. This Interim Report makes two recommendations.

1.1.2. These are for the Queensland government to:

(a) introduce the Recommended Code (see **Annexure D** of this Interim Report); and

(b) establish a regulator, suitably resourced, to monitor and enforce compliance with the Recommended Code.

1.1.3. After more than 50 hearing days and evidence from over 80 witnesses, I am satisfied that there is an urgent and pressing need to make these recommendations. I have now heard extensive and, at times, highly disturbing, evidence of misconduct by the CFMEU and a damaging policy of the former Queensland government known as BPIC.

1.1.4. At the core of these recommendations is the introduction of the Recommended Code. The Recommended Code sets certain standards and expectations in the workplace that ought to be uncontroversial. They are uncontroversial because they are aimed at: practices that ensure compliance with the law; cost, efficiency and productivity; achieving and maintaining high standards of work health and safety; and innovation and continuous improvement. These are sound policy objectives. They are particularly so for the building and construction industry, where large sums of taxpayers' money are at play.

1.1.5. The Queensland government is a large consumer of building and construction services. It is typical of state and federal governments in this regard. But its ambitious and unprecedented pipeline of anticipated expenditure, some $119 billion over the next four years, underscores two things:

(a) ***first***, the need for such investment and taxpayers' money to be protected from cost blowouts and delays as far as possible; and

(b) ***second***, the opportunity for the Queensland government to use its purchasing power to influence the very laudable objectives mentioned above.

1.1.6. The Recommended Code answers the call here on both fronts.

1.1.7. As to the first, governments do not have infinite resources at their disposal. It is the taxpayer who provides the government with funds in respect of which prudent resourcing decisions must be made. Cost blowouts on major project constructions are notorious. Indeed, I have heard evidence of such blowouts in respect of the Cross River Rail project, the Centenary Bridge project and the Gold Coast Light Rail project. Ultimately, it is the taxpayer that wears the cost here.

1.1.8. As to the second, the Recommended Code is not a novel idea. Indeed, as Section 6 of this Interim Report explains, such instruments of change have been in place variously for close to 30 years. And, as instruments of change, they have been largely directed to the type of objectives which the Recommended Code aims to address.

1.1.9. Indeed, the initiative is not novel to the State of Queensland. The 2013 Qld Guidelines represent a classic example of those instruments of change. The Recommended Code is modelled on those guidelines. But the 2013 Qld Guidelines were short-lived. The election of the Palaszczuk Government saw their removal in 2015, apparently without any consultation with industry and, in the words of Counsel Assisting, "*seemingly in the dead of night*".[1]

1.1.10. In simple terms, parties who wish to secure Queensland government funded work will be obliged to comply with the Recommended Code. These are the contractors and sub-contractors who engage labour. They are also the parties who may face union opposition to these objectives. Should they yield to such opposition, they risk the loss of future Queensland government building and construction work.

1.1.11. BPIC was an example of this purchasing power tool. But BPIC was predominantly directed to different ends from the codes of the past, and the Recommended Code. BPIC was a high-cost policy. It mandated higher wages. It mandated certain restrictive practices. It emboldened the CFMEU in its quest for control of large publicly funded civil construction projects. Something of a "*turf war*", a battle for union membership, ensued between the CFMEU and the union traditionally associated with the civil construction industry in Queensland, being the AWU. That turf war manifested itself in undesirable ways.

1.1.12. In this regard, I note the recent acknowledgement by the CFMEU Administrator that *"[t]he CFMEU in the past has behaved appallingly in relation to the AWU. No matter the merits of the demarcation argument, there can be no excuse for the physical and mental intimidation of officers of another Union*."[2]

1.1.13. BPIC effectively mandated its requirements across and down the contracting supply chain. As the evidence stands, the model was developed in DHPW and spread to other departments and agencies; and this occurred in the absence of public consultation and without precise modelling.[3] The reasons for this government policy will be the subject of the Final Report. So too, the Final Report will detail BPIC's actual effects on certain projects.

1.1.14. However, based on evidence of the cost associated with the BPIC policy on three projects which I have heard to date, namely the Cross River Rail Project, the Centenary Bridge

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1 Commission Transcript, 14 April 2026, P1396. L35. I make no finding at this stage.
2 Exhibit COG–5, Fourth Biannual Report to Parliament by CFMEU Administrator, 24 August 2026, [76].
3 See further Section 14.2.3 of this Interim Report.

Upgrade, and the Gold Coast Light Rail Project, I estimate that the cost of the BPIC policy on government infrastructure projects to be 20%, which I consider to be a conservative estimate

1.1.15. The Recommended Code represents something of an answer to BPIC. Indeed, it has a specific provision requiring contractors to identify improvements as against BPIC-driven outcomes, amongst other things. It has many other requirements that aim to reinforce its objectives.

1.1.16. Union parties have challenged the evidence relied on to support the Proposed Recommendations. Accordingly, they oppose the Proposed Recommendations. They provide a contrast with the views of other industry stakeholders who, in general terms, support the introduction of a code and regulator. But for the reasons identified in this Interim Report, and as summarised in Section 5 of this Interim Report, I make the recommendations set out above.

1.2. This Interim Report

1.2.1. This Interim Report provides a background to the establishment of the Commission (Section 2 of this Interim Report), followed by an explanation of the Terms of Reference which provide for the scope of the Commission's inquiries (Section 3 of this Interim Report). An overview of the hearings conducted and evidence to date is at Section 4 of this Interim Report. In Section 5 of this Interim Report, I provide a "roadmap" which sets out the basis for my recommendations. This serves as a summary of my reasons. In Section 7 of this Interim Report, I cover the way in which the process of hearings and submissions in relation to the 'Code' case study, the principal material relied upon here, unfolded. The parts which follow provide a more detailed explanation of my reasons.

2. Background to the Commission

2.1. Establishment of the Commission

2.1.1. The Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry was established by an order in council that commenced on 1 August 2025 (*Commissions of Inquiry Order (No. 2) 2025*).[4] The Commission's Terms of Reference are set out in paragraph 3 of that order.

2.1.2. By the making of the order, the Governor in Council appointed me as Commissioner. The Terms of Reference explain that I am entrusted with the conduct of an inquiry into matters which are of substantial public importance affecting Queensland's construction industry. In the performance of my functions and the exercise of my powers, I am to ensure that the inquiry is conducted fully and carefully and in an open and independent manner.

2.1.3. The Commission was directed to provide a report, together with recommendations arising from its inquiries, to the Premier, the Deputy Premier and the Attorney-General. The Commission's Final Report was originally required to be delivered by 31 July 2026.[5] Following amendment of the Order in Council, the reporting date was extended to 3 December 2027 to enable further investigation of the significant volume of evidence received and the broad range of issues falling within the Commission's mandate.[6]

2.2. Industry Context and the Need for the Commission

2.2.1. The Commission was established against a background of longstanding and escalating concerns about unlawful conduct, governance failures and misconduct within parts of the construction industry and, in particular, within the CFMEU. Those concerns emerged over many years through court proceedings, regulatory action, independent investigations and media reporting. Collectively, they raised serious questions about whether unlawful conduct had become entrenched in industry practices, whether existing systems of accountability were adequate, and whether misconduct was affecting the lawful, safe and productive operation of an industry of critical importance to Queensland.

2.2.2. Between 2019 and 2024, the CFMEU and its officers were found to have contravened federal industrial laws on at least 1,163 occasions across 62 proceedings, resulting in penalties exceeding $10.6 million.[7] At least 25 of those contraventions occurred in Queensland,

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4 'Commissions of Inquiry Order (No. 2) 2025' (Qld), notified in Queensland, *Queensland Government Gazette Extraordinary*, No 78, 1 August 2025, 663.

5 Ibid, 664, –[7].

6 'Commission of Inquiry Amendment Order (No. 2) 2026' in Queensland, Queensland Government Gazette Extraordinary, No 43, 26 June 2026, 387.

7 Commission Transcript, 1 October 2025, P6.L32–36; *Ravbar & Anor v Commonwealth of Australia & Ors* [2024] HCATrans 90, P77.L3404–3409; Exhibit GW–6, Violence in the Queensland CFMEU Report authored by Geoffrey Watson SC, [49].

attracting penalties of approximately $4.57 million against the CFMEU and a further $1 million against individual officials.[8]

2.2.3. Those concerns were amplified by judicial observations in proceedings involving the CFMEU. In 2016, Mortimer J, now Chief Justice of the Federal Court of Australia, concluded that the regularity with which the CFMEU abused its industrial power permitted only one inference: that there was "*a conscious and deliberate strategy*" to engage in disruptive, threatening and abusive behaviour towards employers, with those responsible "*impervious to the prospect of prosecution and penalties*".[9] Those observations raised an issue of fundamental importance: whether contraventions of the law had come to be regarded not as exceptional failures, but as an accepted means of pursuing industrial objectives.

2.2.4. In 2024, the "*Building Bad*" investigation by The Age, The Sydney Morning Herald and the Australian Financial Review published allegations of corruption, criminal infiltration, intimidation and misconduct within the CFMEU[10] On 14 July 2024, the Nine Network's *60 Minutes* program aired these allegations on free to air television.[11] In response, the CFMEU engaged Geoffrey Watson SC to undertake an independent investigation into the Victorian allegations, leading to the publication of an interim report which contributed to ongoing concerns about governance, culture and accountability in the construction industry.[12]

2.2.5. The seriousness of the allegations led to extraordinary intervention by the Commonwealth and Queensland Governments. On 23 August 2024, the then Commonwealth Attorney-General, Mark Dreyfus KC, placed the Construction and General Division of the federally registered CFMEU and its branches into a scheme of administration, appointing Mark Irving KC as Administrator.[13] This included the Queensland and Northern Territory Divisional Branch of the CFMEU.[14] On 24 August 2024, the Queensland Minister for Industrial Relations placed the Construction and General Division of the Construction, Forestry, Mining and Energy, Industrial Union of Employees Queensland into a scheme of administration, with Mr Irving KC as Administrator.[15] On 22 May 2026, Michael Crosby AM replaced Mr Irving KC as Administrator, following Mr Irving KC's resignation.

2.2.6. In February 2025, the Administrator of the CFMEU commissioned Geoffrey Watson SC to investigate allegations of violence and misconduct within the Queensland CFMEU.

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8 Ibid.

9 *Director of Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union. (CFMEU) (No 2)* [2016] FCA 436, [140].

10 'Building Bad' *The Age* https://www.theage.com.au/topic/building-bad-6gug.

11 'Building Bad' *60 Minutes* (Nine Network, 14 July 2024) https://www.9now.com.au/60-minutes/season-2024/episode-24.

12 Exhibit GW–11, Investigation into Allegations Against the CFMEU Interim report authored by Geoffrey Watson SC.

13 *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* (Cth); Exhibit MI–1, Statement of Mark Anthony Irving KC affirmed on 17 November 2025, [6].

14 Exhibit MI–1, Statement of Mark Anthony Irving KC affirmed on 17 November 2025, [7].

15 *Industrial Relations Act (CFMEUQ Construction and General Division Administration) Administration Notice 2024* (Qld); Exhibit MI–1, Statement of Mark Anthony Irving KC affirmed on 17 November 2025, [10]–[12].

Mr Watson SC's Violence in the Queensland CFMEU Report alleged a culture of intimidation, coercion, bullying and violence, together with threats against workers, public officials and others.[16] Mr Watson SC also observed that his investigation may have "*only scratched the surface of the violence in the Queensland CFMEU*".[17]

2.2.7. The publication of the Violence in the Queensland CFMEU Report was the immediate catalyst for the establishment of the Commission. In announcing the Commission, the Queensland Government described it as a landmark investigation into allegations of systemic violence, intimidation, misogyny and bullying exposed in the report.[18]

2.2.8. The reports prepared by Mr Watson SC remain significant to the Commission. The Order in Council establishing the Commission expressly requires that the Commission have regard to the Violence in the Queensland CFMEU Report, together with associated reviews and investigations.[19] In the course of hearings, the Commission also published Mr Watson SC's Rotting from the Top Report,[20] which had not previously been made public. At this stage, the Commission has not treated the findings, opinions or conclusions expressed in those reports as determinative of any issue arising for consideration. Rather, the reports provide allegations, intelligence and evidentiary leads that are being independently investigated and tested through the Commission's own processes and the exercise of its statutory powers.

2.2.9. The allegations giving rise to the Commission extend beyond the affairs of any single organisation. They concern the integrity, governance and lawful operation of Queensland's construction industry. The issues raised by Mr Watson SC's reports, the subsequent interventions of the Commonwealth and Queensland Governments, and the establishment of the Commission each reflect the seriousness with which those matters have been regarded.

2.2.10. The significance of the Commission is heightened by the critical role of the construction industry in Queensland's economic and social development. The industry is central to Queensland's infrastructure pipeline, delivering housing, transport, health and community infrastructure, including for the Brisbane 2032 Olympic and Paralympic Games. At a time of substantial population growth, housing demand and infrastructure investment, the integrity, productivity and lawful operation of the industry are matters of direct importance to Queensland's future prosperity.

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16 Exhibit GW–6, Violence in the Queensland CFMEU Report authored by Geoffrey Watson SC.

17 Ibid, [18].

18 Joint Ministerial Statement, *Commission of Inquiry launched into CFMEU Queensland Branch*, by the Premier and Minister for Veterans, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, and Attorney–General and Minister for Justice and Minister for Integrity, dated 13 July 2025.

19 Terms of Reference [10].

20 Exhibit GW–13, Rotting from the Top – The CFMEU in Victoria During the Setka Era Report authored by Geoffrey Watson SC.

3. Terms of Reference

3.1. Scope of the Commission

3.1.1. The Commission's Terms of Reference are broad in scope and of substantial public importance. While the Terms of Reference identify specific matters for investigation, those matters are united by a common concern: the integrity, safety, productivity and lawful operation of Queensland's construction industry. The Commission's task is therefore not confined to examining alleged misconduct, but extends to investigating the persons, organisations, practices and conditions that may have caused, facilitated or sustained it; its consequences for individuals, industry and the Queensland community; and the reforms necessary to protect the integrity, productivity and lawful operation of the industry.

3.2. Misconduct and its Consequences

3.2.1. The first and most extensive area of inquiry in the Terms of Reference is at paragraph 3(a). That paragraph concerns evidence and allegations of misconduct by the CFMEU against people employed in or otherwise involved in the Queensland construction industry.[21] The Commission is examining not only alleged acts of misconduct, but also the culture and behaviour by which such misconduct has been tolerated, accepted, promoted, fostered or encouraged.[22] While the Terms of Reference place particular emphasis on the CFMEU, the CFMEU is not the sole focus of the Commission, which is also examining misconduct in the construction industry perpetrated by others, including circumstances in which the CFMEU or its members may themselves have been victims of misconduct.[23]

3.2.2. "*Misconduct*" is defined broadly.[24] It includes any act (or threat of) or omission that amounts to abusive, blackmailing, bribing, bullying, corrupt, criminal, harassing, inflammatory, intimidatory, menacing, misogynistic, offensive, threatening, uncooperative, unlawful, violent or otherwise morally reprehensible behaviour. It also includes any scheme or arrangement designed to circumvent any law. The breadth of this definition reflects the Commission's responsibility to examine misconduct in all of its forms, including conduct that may not be confined to a single incident, actor or contravention, but may form part of a wider pattern or method of operation.

3.2.3. The Terms of Reference also direct attention to the consequences of misconduct, including its impact on stakeholders' physical, mental and financial wellbeing and whether it made workplaces unsafe or uncomfortable for women.[25] These matters concern the ability of

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21 Terms of Reference paragraph 3(a)(i)]. See, also paragraph 12 at 664, which defines "construction industry" and "stakeholder").

22 Ibid, 3(a)(ii).

23 Commission Transcript, 1 October 2025, P7.L14–16.

24 Terms of Reference [12].

25 Ibid, [3(a)(iii) and (iv)].

workers, contractors, public servants, inspectors, journalists, employers and other participants to perform their work safely, lawfully and without intimidation or reprisal. The Terms of Reference also identify specific matters for examination, including whether misconduct was systemic in nature and involved current or former CFMEU leadership figures;[26] whether intentional, deliberate or reckless breaches of the law formed part of the CFMEU's business model;[27] and whether organised crime or other criminal elements were involved in the affairs of the CFMEU or the construction industry.[28] The Commission is also directed to inquire into the payment of personal penalties by the CFMEU;[29] financial irregularities;[30] the activities of the "*Youth Crew*";[31] the use of social media to facilitate misconduct;[32] and the role of labour hire enterprise agreements, State laws or policies alleged to have rendered construction uncommercial.[33]

3.2.4. Paragraphs 3(b) and (c) require the Commission to examine conduct that may have contravened a law, policy or professional standard to procure an advantage or cause a detriment,[34] as well as payments or benefits arising from contracts, arrangements, understandings or dealings that may amount to misconduct.[35] These provisions recognise that improper conduct may occur through transactions that appear commercial or industrial in form but involve coercion, undisclosed influence or abuse of power.

3.2.5. Paragraph 3(d) separately directs the Commission to examine the misuse of CFMEU power and misconduct directed towards non-union enterprise bargaining employers. This concerns the lawful (or unlawful) exercise of industrial power, the integrity of enterprise bargaining and the capacity of employers and workers to make choices without improper pressure or detriment.

3.3. Economic, Community and Infrastructure Impacts

3.3.1. Paragraph 3(e) requires the Commission to examine the effects of misconduct on the Queensland workers' compensation scheme;[36] productivity in the Queensland economy and

26 Ibid, [3(a)(v)].
27 Ibid, [3(a)(vi)].
28 Ibid, [3(a)(vii)].
29 Ibid, [3(a)(viii)].
30 Ibid, [3(a)(ix)].
31 Ibid, [3(a)(x)].
32 Ibid, [3(a)(xi)].
33 Ibid, [3(a)(xii)].
34 Ibid, [3(b)(i)–(ii)].
35 Ibid, [3(c)].
36 Ibid, [3(e)(i)].

construction industry;[37] public and private infrastructure;[38] housing;[39] and transport infrastructure and its timely delivery.[40]

3.3.2. These issues assume particular significance in the context of Queensland's substantial infrastructure and construction program. As outlined in Section 2.2.10 of this Interim Report, Queensland has a significant pipeline of transport, housing, community and public infrastructure projects, including projects associated with the Brisbane 2032 Olympic and Paralympic Games. The Commission is required to examine whether misconduct identified in the Terms of Reference has affected, or has the capacity to affect, the efficient, timely and economic delivery of infrastructure of strategic importance to the State.

3.3.3. The Terms of Reference direct the Commission to inquire into four specific transport infrastructure projects and delays in the delivery of those projects. These are: (1) the Bruce Highway; (2) the Gold Coast Light Rail;[41] (3) the Cross River Rail Project;[42] and the Centenary Bridge.[43] The Commission is examining, by reference to the evidence concerning each project, whether misconduct affected or had the capacity to affect its cost, productivity, timing or delivery. These projects represent significant public investments and form part of Queensland's broader transport and infrastructure agenda. Any conduct that undermines their efficient delivery may increase costs to the public, delay the realisation of economic and community benefits, diminish productivity outcomes and impede the timely provision of infrastructure of strategic importance to the State.

3.4. Law and Policy Reform

3.4.1. The Terms of Reference also require the Commission to consider whether legislative, regulatory or policy reform is necessary to address matters identified during the Commission's inquiries. Paragraph 3(f) directs the Commission to examine potential reforms relating to criminal laws, fit and proper person requirements for union officials, measures directed to preventing misconduct, whistleblower protections, and any other changes revealed by the evidence.[44] Paragraph 3(i) further requires the Commission to consider whether any current or former law or policy enabled or supported the CFMEU. That might include, for example, a law or policy that enabled the CFMEU to engage in misconduct. Together, these provisions require the Commission to assess not only the conduct under inquiry, but also the adequacy of the legal and institutional frameworks intended to prevent, detect and respond to such conduct.

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37 Ibid, [3(e)(ii)].
38 Ibid, [3(e)(iii)], [(iv)].
39 Ibid, [3(e)(v)].
40 Ibid, [3(e)(vi)].
41 See sections 14.5.11 to 14.5.19 of this Interim Report regarding Gold Coast Light Rail Project.
42 See sections 14.5.3 to 14.5.7 of this Interim Report regarding Cross River Rail Project.
43 See sections 14.5.8 to 14.5.11 of this Interim Report regarding Centenary Bridge.
44 Terms of Reference [3(f)(i)–(v)].

3.4.2. Paragraphs 3(g), (h) and (j) are directed to questions of responsibility, accountability and enforcement. The Commission is required to examine whether any other person or organisation assisted the CFMEU in engaging in misconduct,[45] whether any individual or entity should be referred to the Office of the Director of Public Prosecutions for prosecution,[46] and whether enterprise agreements entered into with the CFMEU, including labour hire enterprise agreements, were entered into in good faith by all parties.[47] These matters recognise that misconduct, if established, may involve multiple participants, and that effective reform requires consideration not only of the conduct itself, but also of the arrangements, relationships and governance structures through which it occurred.

45 Ibid, [3(g)].
46 Ibid, [3(h)].
47 Ibid, [3(j)].

4. Hearings and Evidence

4.1. Overview of Hearings

4.1.1. The Commission held a hearing on 1 October 2025 to mark the opening of the Commission's proceedings and to outline its work.

4.1.2. Between 18 November 2025 and 20 November 2025, the Commission held its first public hearing block and heard evidence from Mr Geoffrey Watson SC, barrister and investigator appointed by the CFMEU, and Mr Mark Irving KC, then Administrator of the CFMEU.

4.1.3. To date, the Commission has heard evidence from more than 80 witnesses over a total of 53 days of public hearings.

4.1.4. Witnesses have given evidence in the form of written witness statements and oral evidence in public hearings. To ensure procedural fairness, witnesses were available for cross-examination by parties with leave to appear before the Commission, subject to leave being given to cross-examine a witness, in accordance with the Commission's *Practice Guideline No. 4.*

4.1.5. A copy of each witness' statement is available on the Commission's website, as is a copy of each document tendered in relation to each witness' evidence. A transcript of each public hearing day is available on the Commission's website, as is a recording of each public hearing. Again, those documents have been, and remain, available to ensure procedural fairness to interested parties and ready access to the public.

4.1.6. During the public hearings, the Commission has received evidence from many witnesses who have had dealings with the CFMEU. These have included senior executives from some of Australia's largest building and construction companies, project directors, senior public servants, subcontractors, construction workers, industrial relations professionals, human resources and safety professionals, regulators, academic experts and former board members of superannuation funds.

4.2. Case Study Model

4.2.1. Much like other Commissions of Inquiry and Royal Commissions that have come before the Commission, it would be impossible for the Commission to investigate and hear evidence about every instance of misconduct that falls within the scope of the Terms of Reference.

4.2.2. As outlined above in Section 2.2 of this Interim Report, before the establishment of the Commission, the CFMEU Administrator had commissioned Geoffrey Watson SC to investigate violence in the Queensland CFMEU.

4.2.3. Mr Watson SC stated in his Violence in the Queensland CFMEU Report that there is no doubt that "*there is violence in the Queensland construction sector and there is no doubt that the*

CFMEU was a big part of that violence".[48] Mr Watson SC observed that the CFMEU has consistently got its way in Queensland both on matters of policy and in practical negotiations through the use of intimidation and threats.[49]

4.2.4. Mr Watson SC concluded that:[50]

> *"The purpose of the violence is plain - the violence is used by the CFMEU to support a pursuit of political, industrial and financial power. This included, if necessary, destroying individuals and businesses. The CFMEU is ruthless – will crush anyone offering any resistance to it."*

4.2.5. The scope of Mr Watson SC's investigation was confined to violence in the CFMEU in Queensland. It did not extend to the breadth of misconduct that the Commission is required to investigate under the Terms of Reference. Nonetheless, Mr Watson SC's findings on the issue of violence in the CFMEU in Queensland indicated that there would be widespread, extensive and substantial instances of union misconduct that would require investigation by the Commission.

4.2.6. Indeed, Mr Watson SC said in his report that "*I fear this investigation only scratched the surface of the violence in the Queensland CFMEU. There are many other potential witnesses and many other stories which could have been told*".[51]

4.2.7. When announcing the Commission on 13 July 2025, the Premier, the Honourable David Crisafulli MP, the Deputy Premier, the Honourable Jarrod Bleijie MP and the Attorney-General, the Honourable Deborah Frecklington MP said in a joint statement that the Commission "*will focus on digging deeper into the CFMEU's systemic violence, intimidation, misogyny and bullying exposed in Watson report*".[52]

4.2.8. Not every case of misconduct by the CFMEU can be investigated by the Commission. Nor can the Commission hear evidence of every instance of misconduct at a public hearing.

4.2.9. The Commission (with the assistance of Senior Counsel Assisting, Counsel Assisting, the solicitors assisting the Commission, QPS personnel and investigators) was tasked with determining which instances of misconduct would be investigated.

4.2.10. The Commission has received nearly eight million documents in response to notices issued under s 5 of the COI Act. A careful and thorough review of the documents produced in response to notices identified patterns of conduct by unions, or specific union officials or

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48 Exhibit GW–6, Violence in the Queensland CFMEU Report authored by Geoffrey Watson SC, [5].

49 Ibid, [10].

50 Ibid, [6].

51 Ibid, [18].

52 Joint Ministerial Statement, Commission of Inquiry launched into CFMEU Queensland Branch, by the Premier and Minister for Veterans, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, and Attorney–General and Minister for Justice and Minister for Integrity, dated 13 July 2025.

personnel. In some instances, an isolated incident was identified that warranted a closer inquiry.

4.2.11. A significant number of persons have been interviewed by the Commission. The Commission is grateful to each of those individuals. The intelligence obtained from discussions between the Commission's staff and those individuals has been invaluable. In many instances it has enabled the Commission to identify the appropriate witnesses to give evidence in the Commission.

4.2.12. Throughout the investigative process described above, the Commission was constantly assessing and reassessing the intelligence and evidence it received. Careful judgement calls needed to be made about what matters would be examined further. Some leads did not progress beyond initial investigations. Others were carefully and thoroughly investigated but did not form part of a case study the subject of a public hearing.

4.2.13. The Commission has heard extensive evidence of union misconduct, impacts on productivity, impacts on budgets and costs, alleged regulatory capture and expert evidence in relation to the CFMEU engaging in conduct that exhibits traits associated with organised crime, corruption, and criminal governance.

4.2.14. When selecting the case studies to be examined in the course of public hearings the Commission had careful regard to identifying serious, systemic or widespread allegations of misconduct or disruption. This often involved focusing on significant public infrastructure projects.

4.2.15. Case studies that were ultimately chosen identified conduct or disruption that was so significant it could not be ignored.

4.2.16. Section 14 of this Interim Report focuses on the BPIC aspect of three case studies that were specifically identified in the Terms of Reference, namely the Centenary Bridge Upgrade[53], the Cross River Rail Project[54] and the Gold Coast Light Rail Project.[55]

4.3. Commissioner's Approach to Fact Finding

4.3.1. In setting out my approach to fact finding for the purpose of this Interim Report, I have been greatly assisted by the approach to fact finding as explained by the Hon Dyson Heydon AC KC as Commissioner of the Heydon Royal Commission in his Interim Report.[56]

53 Terms of Reference [3(e)(vi)(iv)].
54 Ibid, [3(e)(vi)(ii)].
55 Ibid, [3(e)(vi)(iii)].
56 *Royal Commission into Trade Union Governance and Corruption, Final Report* (December 2015), vol 1, ch 1[97]—[117].

4.3.2. In that respect, I note the Commission is not a court, nor is its work adversarial in nature. There are no parties, in a litigious sense, and no strict contradictor, although different parties may, at different times in the Commission's work, take on such a role.

4.3.3. The Commission is not bound by the rules of evidence.[57] The Terms of Reference contemplate that I will make findings of fact and require me to publish my findings in a Final Report, due to be published in December 2027. The Terms of Reference also permit, but do not require me, to publish an interim report. It is possible that some of my findings in the course of the Commission may cause serious damage to the reputation of a person or organisation. The possibility of that damage requires some standard to be applied in my approach to making findings. Consistent with my obligations to conduct an open and transparent inquiry, I must afford natural justice to any person or organisation if I intend to make an adverse finding against them.[58]

4.3.4. Similarly to the approach taken by the Hon Dyson Heydon AC KC as Commissioner of the Heydon Royal Commission, I have applied the civil standard of proof having regard to the principles in *Briginshaw v Briginshaw*.[59] That is, I must feel an actual persuasion of any asserted fact,[60] on the balance of probabilities, taking account of the seriousness of the allegation made, the inherent likelihood or unlikelihood of that factual allegation, and the gravity of the consequence that may follow, in order to come to the conclusions I have in this Interim Report.

4.3.5. Although the rules of evidence do not apply, I have used them as a guide where they reflect principles of fairness tested by time. In particular, a person should have notice of a proposition adverse to their evidence before it is relied on, though that need not be achieved in a pedantic way.[61] Moreover, this reinforces the principles of natural justice which also apply to the Commission's task.[62]

4.3.6. This Interim Report is being delivered while hearings continue and the findings of fact I make, for that reason, are limited. Many of them are conclusions drawn from documents,[63] most notably about what BPIC clauses required or permitted, which I deal with in Section 14 of this Interim Report. Where a document is clear on its face, I have relied on it for what it says.

4.3.7. On limited occasions, when, and only when, a witness has given evidence and was available for cross-examination by those with leave to appear, I have accepted that evidence for the

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57 COI Act, s 17.

58 *Annetts v McCann* (1990) 170 CLR 596, 598; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 576—578.

59 *Briginshaw v Briginshaw* (1938) 60 CLR 336.

60 Ibid. See particularly 361—362 (per Dixon J).

61 *Browne v Dunn* (1893) 6 R 67; TURC Interim Report, vol 1, ch 1, [22]—[23].

62 *Annetts v McCann* (1990) 170 CLR 596, 598; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 576—578.

63 See, for example, sections 12 and 14 of this Interim Report.

limited purposes of this Interim Report. The evidence about the economic impact of BPIC on particular projects is an example of this, set out in Section 14 of this Interim Report. Further evidence and submissions on these topics may be received in the Commission before the publication of my Final Report. That may result in a closer assessment and more conclusive findings of fact on those issues. But, as at the date of publishing my Interim Report, the evidence to date can reliably show a trend, a range, or a pattern, and that is the only use I make of it here for the purpose of this Interim Report.

4.3.8. I make no findings in this Interim Report against any person or organisation about conduct, which they have not yet had the opportunity to challenge. Where I refer to evidence of such conduct, I do so only by way of illustration of an issue which is relevant for consideration of whether the Draft Guidelines ought to be adopted as contended for by Counsel Assisting.

4.3.9. Some material taken into account for the purpose of this Interim Report is not specifically referred to in submissions or expert reports received in relation to the proposed code, which are summarised in Section 7.1 of this Interim Report. For the reasons set out above, this material is quite limited in scope.

4.3.10. There are many factual questions which I have deliberately not addressed in this Interim Report, as I do not consider it necessary to do so and the findings of fact are best reserved for my Final Report after all evidence is called.

5. Roadmap to the Interim Report

5.1. Why I am Publishing This Interim Report

5.1.1. The Terms of Reference provide that I must deliver a Final Report by 3 December 2027 and that I am to determine if any interim reports are to be provided before that date.[64]

5.1.2. I set out below at Sections 5.3.1 to 5.3.35 of this Interim Report the seven reasons I recommend that the Recommended Code (**Annexure D** of this Interim Report) be adopted by the Queensland Government. Namely, this is because:

(a) its objectives and clauses are directed at improving cost, efficiency and productivity in the procurement of public infrastructure in Queensland;

(b) its clauses buttress existing freedom of association laws;

(c) its clauses buttress existing work health and safety laws;

(d) its content and clauses act as a counterweight to any legacy impact of BPIC-era arrangements, which were apt to entrench restrictive practices;

(e) the economic evidence relied on by Counsel Assisting and interested parties is inutile in answering the question of whether productivity benefits will flow from the introduction of the Recommended Code, which is better answered through the consideration of the objectives and clauses themselves;

(f) likewise, the statistical evidence relied on by Counsel Assisting and interested parties is inutile in answering the question of whether productivity benefits will flow from the introduction of the Recommended Code, which is better answered through the consideration of the objectives and clauses themselves; and

(g) the experience of two highly qualified experts and former regulators, Mr Hadgkiss and Mr Jenkinson, fortifies my conclusion of the benefits to be gained through the introduction of a code and regulator.

5.1.3. I have determined that it is in the public interest for this Interim Report to be delivered. This is for the following reasons:

(a) ***Firstly***, the Commission has been operating for over one year, with the Commission being established by Order in Council on 1 August 2025.[65] In this regard:

(i) to date, the Commission has heard serious allegations of:

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64 Terms of Reference [7]; 'Commission of Inquiry Amendment Order (No. 2) 2026' in Queensland, Queensland Government Gazette, No 43, 26 June 2026, 387, [4].

65 'Commissions of Inquiry Order (No. 2) 2025' in Queensland, Queensland Government Gazette Extraordinary, No 78, 1 August 2025.

(1) bullying, intimidation and violence on Queensland worksites; and

(2) the CFMEU's relationship with the former Labor Government.

(ii) the Commission has also received nearly eight million documents in response to statutory notices;

(iii) earlier this year, I requested an extension of the Commission's reporting date due to the volume of evidence and the additional time needed for relevant witnesses to be cross-examined;

(iv) on 26 June 2026, my request for an extension was granted. The Terms of Reference were amended,[66] and now require me to deliver my Final Report by 3 December 2027;

(v) the extension of time will allow for additional public hearings, the presentation of further case studies, procedural fairness (including cross-examination of key persons alleged to have engaged in wrongdoing), as well as further time and opportunity for additional submissions to be made prior to the delivery of my Final Report; and

(vi) I consider that it is in the public interest that I deliver this Interim Report now, rather than waiting until December 2027 to address the matters set out in this Interim Report as time is of the essence;

(b) ***Secondly***, it is estimated that the Queensland Government will spend $119 billion for government funded capital works in Queensland over the next four years.[67] That includes at least $7.1 billion[68] associated with delivering the venues alone for the 2032 Olympic and Paralympic Games;

(c) ***Thirdly***, none of the evidence that the Commission has heard in public hearings to date has caused me to believe that I should wait until December 2027 to publish a report and make these recommendations.

(d) ***Fourthly***, in this Interim Report I am recommending the introduction of a construction industry code that is effectively a government procurement policy, designed to ensure that the Queensland Government is obtaining value for money on publicly funded infrastructure projects and incentivising good behaviour through the threat of exclusion from government funded construction work. This is not a unique or novel

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66 'Commission of Inquiry Amendment Order (No. 2) 2026' in Queensland, Queensland Government Gazette, No 43, 26 June 2026, 387.

67 Queensland Government, Budget Paper 3, Budget Capital Statement, 2026–27, 1. See also the Joint Statement by the Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations the Honourable Jarrod Bleijie and Treasurer, Minister for Energy and Minister for Home Ownership, the Honourable David Janetzki dated 23 June 2026.

68 Queensland Government, Budget Paper 3, Budget Capital Statement, 2026—27, 5. The $7.1B figure is the estimated cost of delivering the Brisbane Stadium at Victoria Park and Games venues, funded jointly by the Commonwealth and Queensland, but excludes the athletes' villages in the Sunshine Coast, Gold Coast, Brisbane and Rockhampton, which are estimated to cost an additional **$348 million**.

concept. Industry codes and regulators of a similar nature have existed at the Commonwealth and State levels for at least 30 years.[69]

5.2. Summary of the Recommendations in this Interim Report

5.2.1. In this Interim Report I make two recommendations:

(a) ***firstly***, that the Queensland Government implement a Code of Practice for the Building and Construction Industry. A copy of my Recommended Code is at **Annexure D** of this Interim Report. The code will outline the Government's expectations for the principles and standards of behaviour to be observed within the building and construction industry in Queensland; and

(b) ***secondly***, that a well-resourced regulator be established to educate the building and construction industry about the code and to monitor and enforce compliance with the code.

5.2.2. These two recommendations are designed to:

(a) drive a whole of government approach to obtaining value for taxpayers' money that is to be spent on public infrastructure projects in Queensland including the $119 billion over the next four years; and

(b) reduce the risk of wasted government expenditure on public infrastructure projects, at the cost of taxpayers.

5.3. My Seven Reasons for the Recommendations in this Interim Report

5.3.1. ***Firstly***: ***cost efficiency and productivity***. The Recommended Code states that one of the objectives of the code is that "[p]*rojects are to be delivered on time and within budget with real value for money for the Government and the Queensland taxpayer*".[70] This objective is found under the heading "*Cost efficiency and productivity*".

5.3.2. In support of the objective of achieving real value for money, the clauses of the Recommended Code which purport to give effect to this objective do in fact do so. That the clauses are directed to improving productivity and ensuring real value for money are clear on their face.

5.3.3. For example, through clauses in Part 4 of the Recommended Code, there is an effective anti-"*jump up*" clause, a prohibition on Workplace Arrangements that restrict the efficient performance of work or productivity improvement, a ban on prescribing or limiting employee numbers, a ban on both "*one-in-all-in*" arrangements and "*no last on, first off*" clauses which

[69] See section 6 of this Interim Report.

[70] This might be contrasted with the objectives of BPIC. See section 14.3 of this Interim Report.

can otherwise prevent an employer from retaining whom it regards as its best employees in a redundancy scenario.

5.3.4. It stands to reason that individually or collectively these types of clauses are likely to enhance cost efficiency, improve productivity and help ensure value for money. I discuss the importance of cost efficiency and productivity and the likely effect of the Recommended Code in maximising "*taxpayer value for money on publicly funded building and construction projects*"[71] in Section 11 of this Interim Report and contrast it with the stated objectives and effects of the so-called BPIC policy in Section 14.3 of this Interim Report.

5.3.5. ***Secondly***, the Recommended Code attempts to assist in ensuring the promotion of freedom of association. In support of the objective of advancing freedom of association on construction sites in Queensland, the clauses of the Recommended Code which purport to give effect to this objective do in fact do so. That the clauses are directed to enhancing freedom of association are clear on their face. For example, in Part 9 of the Recommended Code,[72] there are prohibitions upon "*no ticket, no start signs*", "*show card days*", mandatory display of union paraphernalia, restrictions upon encouraging or discouraging employees to join a union, the protection of the privacy and identity of personnel, and the requirement to pay a bargaining fee to a union by a non-member.

5.3.6. Many of these clauses simply reflect the existing law, but this does not mean that they are superfluous or unnecessary, particularly where there is presently no Commonwealth regulator dedicated to the construction industry. Individually and collectively, these types of clauses are likely to enhance freedom of association. I discuss the importance of freedom of association and the likely effect of the Recommended Code in protecting freedom of association at Section 12 of this Interim Report.

5.3.7. ***Thirdly***, the Recommended Code seeks to "*maintain high standards in workplace health and safety and rehabilitation management and practices*". This objective is found under the heading "*Workplace Health and Safety and Rehabilitation*".

5.3.8. In support of the objectives of workplace health and safety, the clauses of the Recommended Code which purport to give effect to this objective do in fact do so. Part 8 of the Recommended Code requires tenderers to demonstrate a track record of delivering construction projects safely, as well as requiring tenderers to have policies in place to demonstrate commitment from senior leadership to health and safety, and demonstrate engagement with workers, employee representatives and regulatory authorities for issue resolution, which are requirements squarely directed to maintaining high standards of workplace health and safety and are clear on their face.

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71 Clause 1 of the Recommended Code.

72 Clause 9 of the Recommended Code '*Freedom of Association and Right of Entry*'.

5.3.9. Many of these requirements simply reflect the existing law, but this does not mean they are superfluous or unnecessary as their importance is only enhanced by their reinforcement in the Recommended Code. Individually and collectively, these types of clauses are likely to enhance workplace health and safety. I discuss the importance of workplace health and safety and the likely effect of the Recommended Code in maintaining high standards of workplace health and safety at Section 13 of this Interim Report.

5.3.10. ***Fourthly,*** much of the Recommended Code has a history stretching over three decades. One clause in the Recommended Code that is new is clause 5.1(q). The reason I recommend that clause specifically (and the code in general) is to try to ensure that the so-called BPIC policy[73] (and the clauses I refer to below) do not continue in operation.

5.3.11. Though it seems counterintuitive, whilst the BPIC policy was abolished on 1 January 2026, the arrangements that it gave rise to might live on. The reason I say that the continuing effect of the BPIC policy and its clauses should cease is not because the Queensland Government has repealed the policy, nor because the QPC has sought to quantify the damage that the policy did, but rather because there is sufficient evidence available to me to reach such conclusions based on:

(a) an analysis of the purpose of the BPIC policy as referred to below;

(b) an analysis of the clauses of that policy as referred to below; and

(c) the economic impact on the three projects as referred to below.

5.3.12. The stated objectives of BPIC focused on, amongst other things, improving safety and providing work/life balance and a comfortable standard of living to workers, which I set out in greater detail in Sections 14.3 and 14.4 of this Interim Report. This can be contrasted with the stated purpose of the Recommended Code, that is, cost efficiency and value for money for taxpayers.

5.3.13. BPIC clauses, on their face, were apt to entrench restrictive practices, including the requirement that every contractor in the supply chain meet the BPIC conditions (commonly described as "*jump up*" clauses);[74] the requirement for direct employment by contractors, restricting a contractor's ability to efficiently organise their workforce;[75] fixed, minimum rates of pay, applicable to both the contractor and all subcontractors on-site;[76] a fixed schedule of 26 RDOs, immovable without union agreement;[77] fixed hours of work, immovable without union

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73 See section 14.1 of this Interim Report.

74 2023–2027 Building BPIC, clauses 1 and 24. A copy is publicly available here: https://web.archive.org/web/20250505093427/https:/www.hpw.qld.gov.au/__data/assets/pdf_file/0014/20435/best-%09practice-industry-conditions.pdf

75 Ibid, clause 55.

76 Ibid, Appendix 1.

77 Ibid, clause 35; Appendix 3.

agreement;[78] and permitted paid union meetings with employees of up to two hours during working time, no more than once per shift.[79]

5.3.14. It stands to reason that individually or collectively these types of clauses are likely to reduce productivity, lead to inefficiency and cause excessive costs to be incurred. I am of the view that the continued operation of these BPIC-era clauses would be antithetical to the productive and effective delivery of Government construction projects in Queensland.

5.3.15. To date, I have heard evidence about the impact of BPIC on costs and delivery through evidence led about three major public infrastructure projects: the Cross River Rail Project, the Centenary Bridge Upgrade and the Gold Coast Light Rail Project.[80] The evidence to date suggests that each of these major projects was negatively impacted, to a greater or lesser degree, by the implementation of BPIC, which I discuss in Section 14 of this Interim Report.

5.3.16. Dealing only with the increase in costs (and leaving quantification of the delays until the Final Report) caused by the implementation of BPIC upon these projects (and leaving the quantification of the increase in costs and associated delays caused by BPIC on other government infrastructure projects until the Final Report), the evidence suggests that these costs were as follows:

(a) Cross River Rail Project: substantial cost increases in the order of $500 million: i.e., around 10%;

(b) Centenary Bridge Upgrade: substantial cost increases in the order of $21 million: i.e., around 15%; and

(c) Gold Coast Light Rail Project: substantial cost increases in the range of $150 million to $468 millionrepresenting, i.e., a range of 22 – 67%.

5.3.17. Doing the best I can, and in the knowledge that these estimates are subject to further refinement in the Final Report, my overall conclusion in this Interim Report is based only on these three data points (i.e. these three projects), further evidence is likely to be adduced about other projects impacted by BPIC, and with the awareness that further submissions and analysis directed to this issue in the Final Report may alter this conclusion, I form the view (and I believe this to be a conservative view) that the impact of BPIC upon the cost of the infrastructure projects delivered by the Queensland government during the operation of the BPIC policy was in the order of 10 – 30%. All things considered, I regard 20% as the best available estimate on the current evidence as it stands.

5.3.18. It is not necessary in this Interim Report to form a final view of the exact cost increase that the BPIC policy caused, or the precise impact it had upon the productive and efficient delivery of

78 Ibid, clause 33.
79 Ibid, clause 43.
80 Terms of Reference [3(e)(vi)(ii)–(iv)].

Government construction projects, in order to recognise that BPIC had a negative impact on significant government funded construction projects since its introduction. The exact quantification can await the Final Report. It is sufficient to note the apparent costs impact on the three projects above, the stated purposes of the policy and the clauses on their face justify in part the Recommended Code, and particularly the new clause 5.1(q) of the Recommended Code requiring work to be done to unwind any entrenchment of these BPIC-era clauses as the new normal for public infrastructure procurement in Queensland.

5.3.19. Relatedly, it is not necessary for me to form a final view about the evidence of Mr Damian Long, Chief Executive and Secretary of the CCF QLD, that BPIC was "*the most damaging policy to the productivity of the construction industry and affordability of capital works*" that he had come across in his career.[81]

5.3.20. Similarly, the QPC modelled the prospective impact of BPIC, if it were to remain unchanged. In my view, it is not necessary to determine at this stage whether the QPC estimates are reasonable as a basis now to recommend the Recommended Code. At the end of the Commission, I will have the advantage of a project-by-project analysis to enable the Commission to assess, in the most rigorous way possible, the actual impact of the BPIC policy over time and across different projects. At that stage, this will likely be the best evidence available, and its basis is different from the task which was set for the QPC.

5.3.21. ***Fifthly***, I have already found[82] that the clauses contained in the Recommended Code are likely to enhance productivity and deliver greater value for money on government construction projects. This approach is an evaluative not economic approach, and the evaluative approach – at least when it comes to making this type of assessment – is to be preferred. In fact except in detailed, unique and highly controlled situations, an evaluative type analysis is the only real approach one can deploy. The reason is simple: it is very difficult for an economist to isolate one factor from the multitude of other factors that could be sensibly said to contribute one way or another to productivity changes. For example, the factors that might impact upon productivity and cost effectiveness could include the level of capital investment, innovation, skills and education, competition, regulation, labour supply and management practices, among other factors. It is almost impossible to hold all these variables constant and try to isolate the impact of previous iterations at a federal and state level of a code and regulator upon the productivity of the construction industry whether in Queensland or nationally. A great deal of ink was spilled in attempting to show whether there was any causal link between earlier codes and regulators and changes in productivity.

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81 Exhibit DL–1, Statement of Damian Curnick Long affirmed 5 February 2026, [68]; Commission Transcript, 10 February 2026, P685.L15—20.

82 Section 11 of this Interim Report.

5.3.22. To give an example, how could one say even if there was a causal link between improvements in the productivity of the construction industry in Queensland or nationally and the presence of previous federal or state codes and regulators, that the latter caused the former? How could one ignore, for example, an increase in skills, technological improvement, changes to the health and safety planning or environmental laws? That is just to name a few examples of unstable, disparate variables.

5.3.23. Thus the econometric evidence adduced directly or through witnesses purporting to show some connection between earlier iterations of the code and previous regulatory regimes and changes in productivity, whether introduced by Counsel Assisting or the Unions, is to be given no weight. In this regard, the criticisms of the Unions of the econometric evidence, introduced through Mr Hadgkiss and Mr Jenkinson, are justified. In Section 16.1 of this Interim Report, I set out the competing contentions as to the so-called link between productivity in the construction industry and previous iterations of the code and regulator and my reasoning in support of my conclusion to reject the econometric evidence.

5.3.24. But, that changes nothing really. Not merely because no party showed or attempted to show that the introduction of a code would not improve productivity. But more substantially because my evaluation of the objectives and content of the Recommended Code remains unaffected by the rejection of the econometric evidence. For example, the question of whether the cumulative impact of jump up clauses, manning restrictions, inflexible RDOs and limitations upon the ability of building contractors to pay and organise their workforce with maximum flexibility, have a negative impact on productivity and value for money only has to be asked to be answered.

5.3.25. These dual conclusions, namely that the econometric evidence is inutile and that the clauses speak for themselves, were in effect supported by the Productivity Commission 2014 report. The report considered that, while using large aggregate metrics was not useful to determine the impact of previous regulators on productivity, it still considered regulators provided positive benefits. These included enforcement reducing the capacity for unions to act on certain stratagems and tactics to gain unreasonable bargaining leverage for high wages and conditions, manning ratios and membership numbers.[83]

5.3.26. ***Sixthly***, a similar point can be made about the statistical evidence concerning the asserted connection between the presence of a code and regulator and a decrease in industrial disputation and working days lost. It can be accepted that the number of variables impacting working days lost and levels of industrial disputation are less numerous than those that impact productivity but the same point remains. Thus, I give no weight to that statistical evidence but, again, this does not detract from my evaluation. That there is no statistical

[83] *Productivity Commission Inquiry into Public Infrastructure* (Final Report, May 2014) vol 2, p.537 (see also extracts in Exhibit A2) p. 771.

evidence showing that previous iterations of a code and regulator to enforce it impacted the number of working days lost and the level of industrial disputation is neither here nor there. I have found that the objectives and the content of the Recommended Code on its face are likely to have a beneficial impact upon the cost effectiveness of project delivery and on productivity.[84] I set out in Section 16 of this Interim Report the competing contentions as to the so-called link between the number of working days lost, the level of industrial disputation in the construction industry and previous iterations of the code and regulator. In doing so, I set out my reasoning in support of my decision to reject the statistical evidence.

5.3.27. ***Seventhly***, I am buttressed in my analysis of the impact of the Recommended Code (notwithstanding the dismissal of the econometric and statistical evidence) by the expert evidence of Mr Hadgkiss and Mr Jenkinson. I have given their evidence much weight because both are highly qualified former regulators with extensive experience working for the ABCC and BCCB. They are two of the most qualified experts in the country to provide evidence of the effectiveness of prior construction codes and regulators of such codes.

5.3.28. Mr Hadgkiss gave evidence of his observations from working in various roles with former regulators that:[85]

> *"in every jurisdiction where I have observed an active regulator administering an effective code, there have been corresponding improvements to productivity, safety, and freedom of association within the industry".*

5.3.29. Mr Hadgkiss attributed those improvements to the imposition of rules and standards that the industry was required to meet; the incentive of industry to comply with the rules in order to secure further public contracts; and the deterrent effect of a well-resourced regulator.[86]

5.3.30. I found Mr Hadgkiss' evidence particularly helpful with respect to the impact that the reintroduction of a code could have on the industry, particularly with respect to re-setting expectations of productivity, safety and compliance standards required to be met.

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84 In my view, working days lost and industrial disputation are not relevant metrics by themselves, but are merely some of the factors that might impact upon the overall objective of improved productivity and cost effectiveness.

85 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [21].

86 Ibid, [22]–[24].

5.3.31. Mr Jenkinson gave evidence that he observed construction companies taking a more active role in complying with the 2013 Qld Guidelines. On this point, Mr Jenkinson stated:[87]

> *"Because of the significant commercial implications that would follow from a contractor being excluded from government funded building work, I observed Boards and senior executives of construction companies take a much greater interest in, and adopt a far more active role in managing, the industrial relations practices being adopted on their projects. The risk of exclusion motivated contractors to prioritise compliance, and introduced a degree of self-regulation, without the BCCB needing to expend any particularly significant resources on enforcement."*

5.3.32. Mr Jenkinson's evidence on the commercial implications incentivising contractors to ensure compliance on their projects was particularly persuasive to me.

5.3.33. A detailed analysis of the evidence of Mr Hadgkiss and Mr Jenkinson, and my findings in relation to their evidence is set out in Section 17 of this Interim Report.

5.3.34. Taking into account the above reasons, my view is that, on balance, a code and regulator is likely to have a beneficial impact on the Queensland construction industry because such a code and regulator:

(a) prioritises value-for-money in procurement policy in Queensland;

(b) buttresses existing freedom of association and WHS laws; and

(c) resets any entrenchment of problematic clauses introduced through BPIC's introduction and implementation.

5.3.35. Therefore, I recommend a procurement code, together with a regulator (see **Annexure A** of this Interim Report).

5.3.36. I acknowledge the efforts of the Administrator in seeking to make cultural change within the CFMEU. However, it is too early to tell whether any success here will be enduring. I do not regard it as a reason not to make the recommendations.

87 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [22].

6. The History of Codes

6.1. The History of Industry Construction Codes in Australia

6.1.1. Industry codes in the construction industry have been implemented at the Commonwealth level in Australia and in both Victoria and Queensland variously since at least 1997.

6.1.2. *"The 1997 [Cth] Code was introduced as an intergovernmental administrative policy, being published jointly by the Commonwealth, State, and Territory Governments"*,[88] and represented the first attempt at a code at the federal level. The 1997 C'th Code established minimum standards in relation to, inter alia, the industrial relations practices of contractors who sought to work on government funded building projects.[89]

6.1.3. As set out in Counsel Assisting's submissions dated 14 April 2026, with the addition of the 2013 C'th Code and the 2014 Vic Code, the below table summarises the relevant history of industry codes in Australia since 1997:

Relevant History of Industry Codes in Australia since 1997

Year	Code / Legislation	State / C'th	Associated regulator(s)
1997	*National Code of Practice for the Construction Industry 1997* (**1997 C'th Code**)	C'th	Interim Building Industry Taskforce (**IBIT**)[90] Building Industry Taskforce (**BIT**)[91] Australian Building and Construction Commission (**ABCC**)[92]
2005	*Building and Construction Industry Improvement Act 2005* (**BCII Act**)	C'th	ABCC
2013	*Fair Work (Building Industry) Act 2012* (Cth) (**FWBI Act**)	C'th	Fair Work Building Industry Inspectorate (**FWBC**)
2013	*Building Code 2013* (Cth) (**2013 C'th Code**)	C'th	FWBC

88 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [7]; Exhibit NCH–1, Annexure NH–7, Statement of Nigel Clive Hadgkiss sworn 8 April 2026. The first example of such a code appears to have been the Code of Practice for the Construction Industry introduced by the New South Wales Government in 1992 in response to the findings of the Gyles Royal Commission – Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [15].

89 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [7]; Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [14].

90 Commenced operations in about October 2002, following a recommendation by the Cole Royal Commission; see below paragraph 6.1.4.

91 Announced in March 2005; see below paragraph 6.1.5.

92 Established in October 2005; see below paragraph 6.1.5; see also Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [15]; Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [4(a)], [15(b)].

Relevant History of Industry Codes in Australia since 1997			
Year	**Code / Legislation**	**State / C'th**	**Associated regulator(s)**
2013	*Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry* (**2013 Vic Guidelines**)	Vic	Construction Code Compliance Unit (**CCCU**)
2013	*Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry* (**2013 Qld Guidelines**)	Qld	Building and Construction Compliance Branch (**BCCB**)
2014	*Victorian Code of Practice for the Building and Construction Industry* (**2014 Vic Code**)	Vic	CCCU
2016	*Code for the Tendering and Performance of Building Work 2016* (**2016 C'th Code**)	C'th	ABCC

Figure 1: *Relevant history of industry codes in Australia since 1997*

6.1.4. In October 2002, the IBIT was set up following a recommendation in the Cole Royal Commission's interim report for an interim body to be established to monitor conduct in the construction industry, to investigate cases and, if appropriate, to proceed with prosecution to ensure that current laws were being upheld.[93]

6.1.5. From 2003, there were a number of further reforms introduced by the Howard Government to give effect to the recommendations of the Cole Royal Commission. Those reforms included the introduction of more prescriptive "*guidelines*" to supplement the 1997 C'th Code; the legislating of the BCII Act; and the establishment of the BIT and, subsequently, the ABCC to enforce the 1997 C'th Code and supplementary guidelines.[94]

6.1.6. Following the 2007 Federal Election, successive Federal Labor Governments progressively unwound the framework that had been established for regulating behaviour in the construction industry. This included the 1997 C'th Code being replaced with the diluted 2013 C'th Code, the ABCC being abolished and the BCII Act being replaced with the FWBI Act.[95]

6.1.7. As that framework was dismantled, a number of state governments sought to implement State based codes to minimise the resulting regulatory gap. The first comprehensive State based code introduced was the 2013 Vic Guidelines, which were complemented by the establishment of the CCCU and were subsequently further formalised in a 2014 Vic Code.[96]

93 Cole Royal Commission First Report dated 5 August 2002 at [11]; see also Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [4(c)].

94 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [15]; Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [4(b)]–[4(c)], [8].

95 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [16]; Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [9].

96 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [17]; Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [4(a)]; [15(b)].

Several months later, the Queensland Government introduced the 2013 Qld Guidelines,[97] which effectively replicated the content of the 2013 Vic Guidelines and were administered by the newly established BCCB.[98] Each of the 2014 Vic Code and 2013 Qld Guidelines was short-lived.[99]

6.1.8. Counsel Assisting submitted that the 2013 Qld Guidelines and the BCCB, the regulator of the 2013 Qld Guidelines, were seemingly removed without any consultation with industry, and without any explanation being offered by the then Labor Queensland Government as to why it was taking that course.[100] Counsel Assisting characterised this removal of the 2013 Qld Guidelines and the BCCB as occurring "*seemingly in the dead of the night*".[101]

6.1.9. That submission was supported by the evidence of Mr Jenkinson, who informed the Commission: "*I do not recall any particular justification being offered by the State Labor Government for the disbanding of the BCCB, however I recall from my discussions with colleagues and industry that a widely held view was that the Labor Government had disbanded the BCCB at the request of the CFMEU*."[102]

97 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [15(c)]; Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [9]. Counsel Assisting noted in submissions that whilst the Building and Construction Code of Practice 2000 (QLD Code) has applied to building and construction work in Queensland since 2000, the QLD Code is not a "code" in the sense referred to in Counsel Assisting's Proposed Recommendation. In each of its various iterations the QLD Code has consistently covered a broader range of matters, regulated the conduct of industry participants in far more general terms, and has never addressed workplace relations practices with any degree of prescription – see, in that regard Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [146]; Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [11].

98 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [13], [16].

99 Each of the Victorian Guidelines, Victorian Code and the QLD Guidelines were repealed following Labor winning government in Victoria and Queensland in November 2014 and January 2015 respectively.

100 Commission Transcript, 14 April 2026, P1396.L35.

101 Ibid, P1396.L35.

102 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [24]. As concerns this assertion, I do not consider there is sufficient evidence before me to determine whether that, in fact, occurred. However, my reasons for recommending the Recommended Code do not depend on an analysis on the abolition of the 2013 Qld Guidelines.

7. Timeline of evidence and submissions received by the Commission Overview

7.1. Overview

7.1.1. For the purposes of the Code Case Study, Counsel Assisting:

(a) tendered two witnesses statements, comprising 812 pages including annexures on behalf of Mr Hadgkiss and 207 pages including annexures on behalf of Mr Jenkinson;

(b) filed two sets of submissions comprising 95 pages in total.

7.1.2. During the cross-examination of Mr Hadgkiss and Mr Jenkinson on 11 June 2026, the CFMEU Administrator tendered:

(a) a 376 page bundle of documents comprising extracts of key statistical data; academic and policy material; newspaper articles; legislation and cases;[103]

(b) a 23 page additional bundle of material, comprising additional extracts of policy documents and newspaper articles;[104]

(c) a 22 page PowerPoint 'Construction Industry: Productivity and Safety' prepared for use during cross-examination displaying ABS and SafeWork Australia data.[105]

7.1.3. In response to Counsel Assisting's case, the Unions filed:

(a) 74 pages of submissions on behalf of the CFMEU Administrator dated 14 August 2026, accompanied by 29 pages of annexures;

(b) 38 pages of supplementary submissions on behalf of the CFMEU Administrator dated 21 September 2026;

(c) an 87 page expert report by Gerard de Valence on behalf of the CFMEU Administrator dated 21 September 2026, including annexures and modelling data prepared by Emeritus Professor David Peetz dated 20 September 2026;

(d) 25 pages of submissions on behalf of the ETU, CEPU and PGEU dated 14 August 2026;

(e) 4 pages of supplementary submissions on behalf of the ETU, CEPU and PGEU dated 25 September 2026;

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103 Exhibit A1 Part 1, Bundle of documents tendered by CFMEU Administrator for cross–examination of Mr Hadgkiss and Mr Jenkinson.

104 Exhibit A2, Additional bundle of documents tendered by CFMEU Administrator for cross–examination of Mr Hadgkiss and Mr Jenkinson.

105 Exhibit A1 Part 2, Bundle of documents tendered by CFMEU Administrator for cross–examination of Mr Hadgkiss and Mr Jenkinson.

(f) a 70 page expert report by Professor Martin O'Brien on behalf of the ETU, CEPU and PGEU dated 6 August 2026, including annexures;

(g) a 26 page supplementary expert report by Professor Martin O'Brien on behalf of the ETU, CEPU and PGEU dated 16 September 2026;

(h) a 35 page expert report by Emeritus Professor David Walters on behalf of the ETU, CEPU and PGEU dated 21 September 2026;

(i) 5 pages of submissions on behalf of the QCU dated 24 July 2026; and

(j) 14 pages of submissions on behalf of the QCU dated 21 September 2026.

7.1.4. Additionally, between 13 July 2026 and 21 September 2026, the Commission received fifteen other submissions from non-parties, including interested industry participants and members of the public. My analysis of this broader group of submissions is set out in Section 10 and **Annexure C** of this Interim Report.

7.2. Timeline of the receipt of submissions and material

7.2.1. Counsel Assisting first filed submissions in relation to a proposed code on 14 April 2026.[106] On the same day, Counsel Assisting called Mr Hadgkiss and Mr Jenkinson to give evidence in support of a proposed code and regulator.

7.2.2. Senior Counsel for the CFMEU Administrator had written to the Commission on 13 April 2026, indicating that the CFMEU Administrator would seek to cross-examine Mr Hadgkiss, but given the volume of material provided to the parties by Counsel Assisting on 8 April 2026,[107] the CFMEU Administrator sought further time to prepare any cross-examination of Mr Hadgkiss[108] and Mr Jenkinson.[109]

7.2.3. Counsel Assisting opposed the adjournment of each witness' cross-examination on the basis that the CFMEU Administrator had sufficient time to consider the material and prepare in advance of the hearing on 14 April 2026.[110]

7.2.4. Given the matters raised, and the fundamental basis for the CFMEU Administrator's application was to assist the Commission discharge its inquisitorial function, I allowed the applications to adjourn the cross-examination of Mr Hadgkiss[111] and Mr Jenkinson.[112]

106 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026.
107 Commission Transcript, 14 April 2026, P1439.L10–32.
108 Ibid.
109 Ibid, P1472.L35–41.
110 Commission Transcript, 14 April 2026, P1439.L36–P1441.L20–41.
111 Ibid, P1442.L45–47.
112 Ibid, P1472.L35–44.

7.2.5. On 11 June 2026, Mr Hadgkiss and Mr Jenkinson were recalled for cross-examination by the CFMEU Administrator. In the course of cross-examination, the CFMEU Administrator tendered:

(a) a 376-page bundle of documents comprising extracts of key statistical data; academic and policy material; newspaper articles; legislation and cases;[113]

(b) a 23-page additional bundle of material, comprising additional extracts of policy documents and newspaper articles;[114] and

(c) a 22-page PowerPoint 'Construction Industry: Productivity and Safety' prepared for use during cross-examination displaying ABS and SafeWork Australia data.[115]

7.2.6. At the conclusion of the hearing on 11 June 2026, I set a timetable for Counsel Assisting to file submissions by 3 July 2026 and for any responsive submissions to be filed with the Commission by 24 July 2026.[116]

7.2.7. On 18 June 2026, the Commission received a formal request from the ETU, CEPU and PGEU for an extension of time until 21 August 2026 to provide submissions and responsive material to Counsel Assisting's submissions due 3 July 2026.

7.2.8. On 24 June 2026, the Commission responded that while it was minded to afford the ETU, CEPU and PGEU additional time, that needed to be balanced against a timely report and it was unlikely that an extension until 21 August 2026 would be granted.

7.2.9. On 3 July 2026, Counsel Assisting filed submissions. On 4 July 2026, the Commission published an open call for responsive submissions to Counsel Assisting's submissions, inviting responses by 4pm on 24 July 2026.[117]

7.2.10. On 10 July 2026, the ETU, CEPU and PGEU reagitated the requested extension of time until 21 August 2026, noting they had briefed an expert economist to assist their responsive submissions. On 15 July 2026, the Commission granted an extension of time for the ETU, CEPU and PGEU to file its material and submissions by 14 August 2026.

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113 Exhibit A1 Part 1, Bundle of documents tendered by CFMEU Administrator for cross-examination of Mr Hadgkiss and Mr Jenkinson.

114 Exhibit A2, Additional bundle of documents tendered by CFMEU Administrator for cross-examination of Mr Hadgkiss and Mr Jenkinson.

115 Exhibit A1 Part 2, Bundle of documents tendered by CFMEU Administrator for cross-examination of Mr Hadgkiss and Mr Jenkinson.

116 Commission Transcript, 11 June 2026, P3023.L21–24.

117 Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, 'Commission Invites Responses to Counsel Assisting's Submissions on a Building and Construction Code', Commission of Inquiry into the CFMEU (Web Page, 4 July 2026) <https://www.cfmeuinquiry.qld.gov.au/news-media/commission-invites-responses-to-counsel-assistings-submissions-on-a-building-and-construction-code>.

7.2.11. At the same time, the Commission and the legal representatives for the CFMEU Administrator corresponded between 10 July 2026 and 15 July 2026 concerning further material sought by the CFMEU Administrator.

7.2.12. On 17 July 2026, the Commission received a formal request from the CFMEU Administrator for certain underlying data relevant to the QPC Final Report and an extension of time to provide submissions and responsive material.

7.2.13. On 21 July 2026, the Commission informed the CFMEU Administrator that it would make enquiries with QPC in respect of the underlying modelling data sought by the CFMEU Administrator, which was done by issuing a notice to produce pursuant to s 5 of the COI Act to the QPC, returnable on 30 July 2026.

7.2.14. On 27 July 2026, QPC requested an extension of time for compliance until 14 August 2026, which was accommodated.

7.2.15. On 30 July 2026, the CFMEU Administrator raised their requested extension before me in hearings and a commensurate extension was granted until 14 August 2026, as was also granted to the ETU, CEPU and PGEU.

7.2.16. On 4 August 2026, the Commission informed the CFMEU Administrator that given the extended time for compliance granted to the QPC until 14 August 2026, the Commission would advise a revised time frame for a further extension after the receipt of that material.

7.2.17. On 14 August 2026, the Commission received the requested material from the QPC, which was provided to the CFMEU Administrator on 21 August 2026, subject to the terms of a non-publication order, and to the ETU, CEPU and PGEU on 25 August 2026, subject to the terms of a varied non-publication order.

7.2.18. On 14 August 2026, the CFMEU Administrator filed 74 pages of submissions, together with 29 pages of annexures, and the ETU, CEPU and PGEU filed 25 pages of submissions and 70 pages of expert material, on the basis that supplementary submissions and expert material could be made after the requested QPC material was made available to them.

7.2.19. Given the timing of the receipt of the requested QPC material, understandably, I granted extensions to the CFMEU Administrator and the ETU, CEPU and PGEU for filing supplementary submissions and expert material until 21 September 2026.

7.2.20. On 25 August 2026, an issue was raised in the hearings as to the constraints of the non-publication order,[118] the terms of which were varied on 26 August 2026. Additionally, there was discussion between myself and Counsel Assisting about ensuring that all parties had an

[118] Commission Transcript, 25 August 2026, P4149.L21–29.

opportunity to be heard,[119] after which further submissions were received from the Queensland Council of Unions.

7.2.21. On 28 August 2026, the Commission received further correspondence from the CFMEU Administrator about the extent of the material provided, which prompted the Commission to confirm that all material had been provided by the QPC.

7.2.22. On 7 September 2026, the Commission confirmed to the CFMEU Administrator that the QPC had provided all responsive material and the deadline for supplementary submissions and material remained 21 September 2026.

7.2.23. On 15 September 2026, the ETU, CEPU and PGEU raised the need for an additional extension on the basis that an expert engaged had professional commitments which precluded him from providing his report until 24 September 2026, so an extension for filing of this expert material and supplementary submissions was sought until 25 September 2026. The Commission accommodated the requested extension of time.

7.2.24. On 21 September 2026, the CFMEU Administrator filed an 87 page expert report of Gerard de Valence dated 21 September 2026 including annexures as well as 38 pages of supplementary submissions dated 21 September 2026.

7.2.25. On 25 September 2026, the ETU, CEPU and PGEU filed two expert reports, a 26 page supplementary report of Professor Martin O'Brien dated 16 September 2026 and a 35 page expert report of Professor David Walters dated 21 September 2026 as well as 4 pages of supplementary submissions dated 25 September 2026.

[119] Ibid, P4149.L21–38.

8. The Case for a Code and a Regulator – Counsel Assisting's Case

8.1. Counsel Assisting's Submission on the Proposed Recommendations

8.1.1. On 14 April 2026, Counsel Assisting submitted that the Commissioner should consider recommending:[120]

(a) the introduction of a code of practice governing standards of behaviour in the construction industry (**Draft Guidelines**); and

(b) the establishment of a regulatory body to administer and enforce that code (the **Proposed Recommendations**).

8.2. Counsel Assisting's Submissions

8.2.1. On 14 April 2026, Counsel Assisting made oral submissions in support of the Proposed Recommendations.

8.2.2. Counsel Assisting filed written submissions dated 14 April 2026 and 3 July 2026 in support of the Proposed Recommendations. A copy of the written submissions is available on the Commission's website, as is a recording of Counsel Assisting's opening submissions and a transcript of the oral submissions.[121]

8.3. Evidence Relied Upon by Counsel Assisting

8.3.1. In support of the Proposed Recommendations, Counsel Assisting relied on the evidence of:

(a) Mr Nigel Hadgkiss, the former[122]:

(i) Commissioner of the Australian Building and Construction Commission from December 2016 to September 2017;

(ii) Director of the Office of the Fair Work Building and Construction Industry Inspectorate from 2013 to 2016;

(iii) Director of the Victorian Government's Construction Code Compliance Unit from March 2012 to October 2013;

(iv) Deputy Commissioner of the ABCC from 2005 to 2009; and

(v) Director of the IBIT, and subsequently BIT, from 2002 to 2005.[123]

120 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026.
121 Ibid; see also Counsel Assisting's Further Submissions dated 3 July 2026.
122 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [2]–[4].
123 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [4(c)].

(b) Mr Wayne Jenkinson, the former[124]:

(i) State Director of Queensland Operations at the ABCC from December 2016 to November 2022;

(ii) Director of the Building and Construction Compliance Branch of the Queensland Government's Department of Justice, from August 2013 to July 2014 (as a secondee);

(iii) Investigator at the Office of the Fair Work Building Industry Inspectorate, from April 2012 to December 2016;

(iv) Inspector and State Director at the ABCC, from March 2005 to April 2012; and

(v) Investigator at the Interim Building Industry Taskforce and subsequent Building Industry Taskforce from October 2003 to March 2005.

8.3.2. Mr Hadgkiss and Mr Jenkinson gave oral evidence in the Commission on 14 April 2026.[125]

8.3.3. On 11 June 2026, Mr Hadgkiss and Mr Jenkinson were cross examined by Senior Counsel for the Administrator.[126]

8.3.4. In support of the Proposed Recommendations, Counsel Assisting also relied upon:

(a) the evidence of Mr Damian Long, Chief Executive Officer and Secretary of the Civil Contractors Federation Queensland Ltd;[127]

(b) the evidence of Mr Don Johnson, Managing Director, EIC Activities;[128]

(c) the evidence of Mr Graeme Newton, Chief Executive Officer, Cross River Rail Delivery Authority;[129]

(d) the evidence of Mr Geoffrey Watson SC, including his Violence in the Queensland CFMEU Report;[130]

(e) the evidence of Ms Stacey Schinnerl, Queensland Branch Secretary of the Australian Workers' Union;[131]

(f) the QPC Final Report;[132] and

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124 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [6]–[10].
125 Commission Transcript, 14 April 2026.
126 Commission Transcript, 11 June 2026.
127 Exhibit DL–1, Statement of Damian Curnick Long affirmed 5 February 2026.
128 Commission Transcript, 14 April 2026, P1389.L38; P.1340.L1–6; P.1406.
129 Ibid, P.1390.L17–19; P.1403.L1–10.
130 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [2].
131 Exhibit SLS–1, Statement of Stacey Schinnerl, affirmed 28 November 2025, [16]–[17]; see Counsel Assisting's Further Submissions dated 3 July 2026, [68(j)].
132 QPC Final Report.

(g) a 2014 report from the Australian Government Productivity Commission.[133]

8.4. Summary of Counsel Assisting's Submissions

8.4.1. Counsel Assisting drew my attention to my Terms of Reference, which direct me to make recommendations, including in relation to whether any law or policy change is required.[134]

Impact of BPIC and unlawful conduct

8.4.2. Counsel Assisting's submissions and Proposed Recommendations were underpinned by:

(a) the extensive evidence that the Commission had heard, as at 14 April 2026, detailing the prevalence of illegitimate and unlawful conduct within the Queensland construction industry;[135] and

(b) evidence that the Commission had heard, as at 14 April 2026, that the Labor Government's BPIC entrenched excess and unproductive work practices on major construction projects.[136]

8.4.3. In relation to above Section 8.4.2(b) of this Interim Report, Counsel Assisting relied on the evidence of Mr Long.[137] It was submitted that Mr Long's evidence was that, rather than supporting a best practice procurement process, BPIC had a negative impact on productivity and increased direct labour costs. Mr Long described BPIC generally as "*in effect, a pattern enterprise agreement which was intended to apply to all State agencies*".[138]

8.4.4. Counsel Assisting emphasised Mr Long's evidence that the BPIC was:[139]

> *"The most damaging policy to the productivity of the construction industry in this state that [Mr Long] had come across."*

QPC Final Report

8.4.5. Counsel Assisting submitted that Mr Long's evidence about the cost impacts of BPIC has some particularly compelling support from the QPC and that paragraph 11 of the Terms of Reference requires me to "*have regard to the* […] *QPC inquiry into construction productivity to ensure there is no duplication of the economic focus of that inquiry*".[140]

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133 *Productivity Commission Inquiry into Public Infrastructure* (Final Report, May 2014) vol 2 (see also extracts in Exhibit A2); see Counsel Assisting's Further Submissions dated 3 July 2026, [24].

134 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [5], referring to Terms of Reference paragraph 5; Terms of Reference paragraph 3(f).

135 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [2]; citing without limitation Exhibit GWN–1, Statement of Graeme Newton sworn on 9 March 2026; Exhibit DNJ–1, Statement of Don Johnson affirmed 12 March 2026; Exhibit GW–6, Violence in the Queensland CFMEU Report authored by Geoffrey Watson SC, [49].

136 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [3], citing Exhibit DL–1, Statement of Damian Curnick Long affirmed 5 February 2026, [64]–[76].

137 Counsel Assisting's Further Submissions dated 3 July 2026, [4]–[5].

138 Ibid, –[5].

139 Ibid, [25].

140 Terms of Reference paragraph 11.

8.4.6. Counsel Assisting submitted that the QPC Final Report modelled the cost impact of BPIC to the Queensland community, which estimated that the direct costs of the BPIC to the Queensland community have been as high as $19.9 billion, with further, indirect costs of between $4.9 billion and $18 billion.[141]

The mechanics of a code

8.4.7. Counsel Assisting submitted that the basic premise of a code is that the government will leverage its purchasing power to incentivise contractors to adopt practices that give effect to the government's priorities: for example, productivity, safety, freedom of association, and compliance with statutory obligations.[142]

8.4.8. It was submitted that a code can make a construction contractor's eligibility to tender for government funded building work conditional on the contractor complying with the requirements of the code.[143]

8.4.9. It was submitted by Counsel Assisting that this can be achieved by a code generally:[144]

(a) prescribing a set of rules or standards that reflect the government's goals in relation to best practice workplace relations;

(b) requiring contractors who wish to tender for, or be involved with, government funded construction work to comply with those rules or standards; and

(c) providing a mechanism by which contractors can be excluded from involvement with government funded construction work should they fail to commit or adhere to those rules or standards.

8.4.10. As at the date of that submission, the Commission had already received extensive evidence detailing the prevalence of illegitimate and unlawful conduct within the Queensland construction industry.[145]

8.4.11. The Commission had also heard how the Labor Government's BPIC entrenched excess and unproductive work practices on major construction projects. Counsel Assisting submitted that whilst the current Government has put an end to BPIC, many unproductive work practices persist, and productivity in the Queensland construction industry has decreased by 9% since 2018.[146]

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141 Counsel Assisting's Further Submissions dated 3 July 2026, [6]–[7]; referring to QPC Final Report, pp. 403–428.

142 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [8].

143 Ibid, [9].

144 Ibid, [10].

145 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [2] referring to Exhibit GWN–1, Statement of Graeme Newton sworn on 9 March 2026; Exhibit DNJ–1, Statement of Don Johnson affirmed 12 March 2026; Exhibit GW–6, Violence in the Queensland CFMEU Report authored by Geoffrey Watson SC, [49].

146 See, without limitation, Section 9.2.12 of this Interim Report; Exhibit DL–1, Statement of Damian Curnick Long affirmed 5 February 2026, [64]–[76]; QPC Final Report, p.5.

Benefits of an effective code

8.4.12. Counsel Assisting submitted that the evidence suggests that effective codes, administered by a regulator, consistently deliver improvements in productivity, protect freedom of association, and promote compliance with statutory IR obligations.[147]

8.4.13. It was submitted by Counsel Assisting that one of the most compelling empirical data points is the number of working days lost to industrial disputes. It was said that, at a federal level, there is a clear statistical correlation between the level of industrial disputation in the construction industry and the implementation of the 2016 C'th Code.[148]

8.4.14. In support of that submission, Counsel Assisting relied upon Mr Hadgkiss' evidence of a clear statistical correlation between the level of industrial disputation in the construction industry and the implementation of the 2016 C'th Code. Counsel Assisting specifically relied upon the following alleged trends:[149]

(a) in the four-year period from 2013 to 2016 (representing the period in which there was no effective code and no operational ABCC), the number of days lost to industrial disputes in the construction industry sat at 11.8 days per 1,000 employees. That was more than four times the "*all industries*" average of 2.5 days per 1,000 employees;

(b) in the six-year period from 2017 to 2022 (being the period in which the 2016 C'th Code was in effect and the ABCC was operational), the number of days lost to industrial disputes in the construction industry fell to 4.7 days per 1,000 employees. That was less than twice the all industries average of 2.4 days per 1,000 employees; and

(c) in the three-year period from 2023 to 2025 (following the abolition of the 2016 C'th Code and the disbanding of the ABCC), the number of days lost to industrial disputes increased to 6.8 days per 1,000 employees. That was more than two and a half times the "*all industries*" average of 2.6 days per 1,000 employees.

8.4.15. In support of that submission, Counsel Assisting relied upon Mr Hadgkiss' evidence of a statistical trend in data from the Australian Bureau of Statistics that was said to demonstrate that the number of industrial disputes:[150]

(a) was four times the "*all industries*" average during 2013 to 2016 (representing the period in which there was no operational ABCC);

(b) was less than twice the "*all industries*" average during 2017 to 2022 (during the period that the ABCC was operational); and

147 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [20].
148 Ibid, [21].
149 Ibid, [21].
150 Ibid, [21].

(c) more than two and a half times the "*all industries*" average during 2023 to 2025 (following the disbanding of the ABCC).

8.4.16. I pause to note that I did not accept that statistical evidence I address this in detail in Section 16 of this Interim Report.

8.4.17. Counsel Assisting submitted that the evidence of Mr Hadgkiss and Mr Jenkinson reflects these statistical trends, which is consistent with Mr Hadgkiss' observation that:[151]

> *"In every jurisdiction where I have observed an active regulator administering an effective code, there have been corresponding improvements to productivity, safety, and freedom of association within the industry".*

The need for a regulator

8.4.18. Counsel Assisting submitted that an industry code will deliver greater improvements in behaviour and productivity when administered by an independent regulator. An independent regulator serves a number of important functions: educating industry participants on the expected standards of conduct; monitoring suspected instances of non-compliance; and, where necessary, instituting appropriate enforcement action (including by recommending that non-compliant contractors be excluded from government funded building work).[152]

8.4.19. It was submitted that the observations of Mr Hadgkiss and Mr Jenkinson as to the need for an industry-specific regulator are consistent with the conclusions of each of the Gyles, Cole and Heydon Royal Commissions, the last of which justified such a recommendation in the following terms:[153]

> *"Given the high level of unlawful activity within the building and construction sector, it is desirable to have a regulator tasked solely with enforcing the law within that sector."*

8.4.20. Counsel Assisting further submitted that given the difficulties in detecting many of the practices and arrangements that a code is designed to prevent, it is also important that the regulator is vested with appropriate coercive powers. The regulator being vested with coercive powers shields a co-operating witness from the criticisms and pressure that might otherwise be applied if the witness' co-operation was seen as voluntary.[154]

8.4.21. In relation to the regulator, Counsel Assisting submitted that the regulator should be an independent body rather than sitting within any government department. Otherwise, the

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151 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [24].

152 Ibid, [40].

153 Ibid, [41]; citing D Heydon AC QC, Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, at paragraph 83. See also Cole Final Report Volume 1 at p 4.

154 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [42].

interests of government as a regulator and as a client of construction contractors may come into conflict.[155]

8.4.22. Counsel Assisting submitted that the evidence suggests a new regulatory body should be established to perform this role. The existing QBCC lacks the necessary experience and resources to enforce a code of practice relating to workplace relations matters, and indeed a further case study will be presented regarding the CFMEU's influence on the QBCC.[156]

A code of practice and a regulator should be reintroduced

8.4.23. Counsel Assisting submitted that the evidence disclosed three clear justifications for the reintroduction of a code of practice and a regulator:[157]

(a) ***firstly***, such measures have historically served to improve productivity, reduce project costs, and ultimately deliver better value for money for taxpayers;

(b) ***secondly***, such measures have advanced freedom of association on construction sites; and

(c) ***thirdly***, such measures have otherwise reduced the incidence of misconduct.

The productivity and cost-saving opportunity

8.4.24. Counsel Assisting submitted that, based on the evidence of Mr Hadgkiss and Mr Jenkinson, the reintroduction of a code of practice and regulator in Queensland would likely improve productivity and reduce project costs in the Queensland construction industry.

8.4.25. It was submitted that the respective evidence of Mr Hadgkiss and Mr Jenkinson in respect of their observations and suggestions was based on their extensive industry experience and the consistent feedback that they had received from other industry participants.[158]

8.4.26. Counsel Assisting drew my attention to Mr Hadgkiss' observation of the impact of a code and regulator:[159]

> *"In every jurisdiction where I have observed an active regulator administering an effective code, there have been corresponding improvements to productivity, safety, and freedom of association within the industry".*

155 Ibid, [44].
156 Ibid, [45].
157 Counsel Assisting's Further Submissions dated 3 July 2026, [14].
158 Ibid, [16].
159 Ibid [17]; referring to Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [21].

8.4.27. Mr Jenkinson gave similar evidence during cross-examination where he stated:[160]

> *MR JENKINSON: [M]y observations in my time in those roles leads me to believe that there is a correlation between an effective regulator in the industry and increased productivity on the ground.*
>
> *[…]*
>
> *MR JENKINSON: I can say from - again, just from my experiences and observations from time on the ground, is during that the time that there was an effective regulator in the industry, there was fewer days lost to unlawful industrial action.*

8.4.28. It was submitted by Counsel Assisting that I should accept Mr Hadgkiss' views as to the potential benefits of a code of practice, which were based on Mr Hadgkiss' experience as the Commissioner of the ABCC and Director of the CCCU, and on his observations during his tenure at the ABCC and CCCU.[161]

8.4.29. Attention was drawn to Mr Hadgkiss' ultimate assessment that a properly designed code:[162]

> *"…would almost assuredly deliver a marked improvement to productivity, safety, and compliance in the Queensland building and construction industry".*

8.4.30. Counsel Assisting submitted that Mr Jenkinson was similarly definitive in his view that a well-designed code and regulator would drive efficiencies on construction sites. Mr Jenkinson recalled how, during the period in which the 2013 Qld Guidelines were in force:[163]

> *"Industry representatives consistently remarked to me that the 2013 Qld Guidelines and the establishment of the BCCB were welcome developments for the industry and were contributing to improved productivity and more stable industrial environments on construction sites."*

8.4.31. Counsel Assisting submitted that I should accept that a well-designed code, administered by a properly resourced regulator, has the potential to deliver improvements to productivity and reduce inefficiencies, in the construction industry, in circumstances where:[164]

(a) none of the other parties represented before the Commission have to date called any witness to contradict the conclusions of Mr Hadgkiss and Mr Jenkinson;

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160 Counsel Assisting's Further Submissions dated 3 July 2026, [21]; referring to Commission Transcript, P2923.L16–19; P2924.L45–P2925.L2.

161 Counsel Assisting's Further Submissions dated 3 July 2026, [18].

162 Ibid, [19].

163 Ibid, [20].

164 Ibid, [27].

(b) the conclusions of Mr Hadgkiss and Mr Jenkinson as to the potential productivity benefits and cost saving implications of a code of practice withstood robust cross-examination;

(c) the QPC has recently recommended the reintroduction of a code of practice; and

(d) even the material that the CFMEU Administrator has put before the Commission acknowledged that arrangements of the kind now proposed likely had a positive effect on productivity.

The implications for freedom of association, safety and right of entry

8.4.32. Counsel Assisting submitted that the reintroduction of a code of practice and regulator should not depend solely on the potential productivity and cost saving benefits, but that I should also have regard to other benefits to the construction industry and its participants.[165]

8.4.33. Counsel Assisting submitted that Mr Hadgkiss and Mr Jenkinson gave extensive evidence as to how a code of practice would also serve to protect freedom of association.

8.4.34. Relevantly, Mr Hadgkiss' evidence on freedom of association was that:[166]

> *"Freedom of association, including the choice to be or not to be in a union or employer association, and the choice of which union or employer association to join, is a freedom that an effective code can do much to protect.*
>
> *Practices that impinge upon that freedom are alarmingly commonplace in the building and construction industry, due in large part to the highly unionised industrial environment and a historical practice of pressure being exerted on industry participants to join, support, and align with the building and construction unions in their various iterations.*
>
> *Again, the Victorian Code includes a number of clauses that proscribe practices and arrangements that undermine freedom of association."*

8.4.35. Mr Hadgkiss cited discrimination based on union membership, practices that exert pressure on employees to join a union, including "*no ticket, no start*" signs and practices that suggest "*no ticket, no start*" as examples of conduct contravening freedom of association. Mr Hadgkiss referred to the High Court decision of *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450.[167]

8.4.36. Counsel Assisting also submitted that there are other forms of conduct that infringe the freedom of association, including:

(a) requiring employees or employers to identify their union status; and

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165 Ibid, [27]–[39].

166 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [72]–[74].

167 Ibid, [79].

(b) displaying union logos, mottos or other indicia on company property, equipment and clothing.[168]

8.4.37. Mr Hadgkiss gave evidence that, in his view, a rule that prohibits the mere affixing of union symbolism to property provided by a company would protect the freedom of association.[169]

The components of any new code

8.4.38. Counsel Assisting submitted that the following components are integral to the success of any new code:

(a) prohibitions on certain unproductive work practices;[170]

(b) measures that protect freedom of association;[171]

(c) rules that preserve the integrity of right of entry laws;[172]

(d) a requirement that contractors prepare workplace relations management plans;[173] and

(e) mechanisms to assist with the code's implementation.[174]

The role of any new regulator

8.4.39. Counsel Assisting submitted that the evidence of Mr Hadgkiss and Mr Jenkinson established that the regulator:[175]

(a) should be established to serve educative, investigative, advisory, and enforcement functions;

(b) must be vested with appropriate powers to enable it to effectively discharge, at the least, its investigative and enforcement functions; and

(c) should be established as an independent body.

Time is of the essence

8.4.40. Counsel Assisting submitted that the imminent re-negotiation of a number of significant enterprise agreements covering construction work on many of the State's largest infrastructure projects means that, without prompt action, there is a risk inefficient and unproductive work practices will become entrenched for a further four years.[176]

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168 Ibid, [88]–[91].
169 Ibid, [91].
170 Counsel Assisting's Further Submissions dated 3 July 2026, [35]–[39].
171 Ibid, [51]–[56].
172 Ibid, [57]–[59].
173 Ibid, [60]–[63].
174 Ibid, [64].
175 Ibid, [70]; referring to Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [104]–[135].
176 Counsel Assisting's Further Submissions dated 3 July 2026, [77].

8.4.41. It was submitted that the significant volume of construction work forecast in Queensland over the coming years amplifies the potential cost to Queensland taxpayers of inefficient and unproductive work practices.[177]

8.4.42. Lastly, Counsel Assisting referred to consultation undertaken with industry stakeholders in relation to a discussion paper that was released on 31 March 2026.

8.4.43. That discussion paper was distributed to some 106 stakeholders, who were each invited to lodge written submissions in relation to seven issues.Those issues were as follows:

(a) the desirability of Queensland having a building and construction code;

(b) the key elements that should be included in, or excluded from such a code;

(c) the benefits of using a code relative to other mechanisms such as legislation or regulation;

(d) the costs and/or benefits of specific parts of existing or previous construction codes;

(e) the timing of implementation of such a code;

(f) the mechanisms and costs of implementation and enforcement of such a code; and

(g) what is needed to make a code work effectively if it were introduced into Queensland.

8.4.44. The feedback provided by the stakeholders has been anonymised, as was promised to participants as part of the consultation process.

8.4.45. Counsel Assisting did not rely on the feedback received,[178] save for the fact that the feedback from industry broadly supported the reintroduction of the code (although the unions did not support its reintroduction) and that the unions had emphasised the importance of measures to advance the recruitment and retention of women (for example, by way of introducing a requirement in WRMPs directed at that aim).

177 Ibid, [77].

178 I do not rely on the feedback.

9. Unions' Positions on Counsel Assisting's Proposed Recommendations

9.1. Submissions Received from the Union Parties

9.1.1. The Commission received two sets of written submissions from the Administrator of the CFMEU, dated 14 August 2026 and 21 September 2026, respectively. The Administrator's submissions totalled 112 pages, excluding annexures.

9.1.2. The Administrator's submissions cogently set out the Administrator's position. I found the submissions helpful and I am grateful to Senior Counsel and Junior Counsel for the Administrator for their efforts in preparing the written submissions.

9.1.3. The Administrator relied on the expert report of Mr Gerard de Valence, filed under a covering letter dated 21 September 2026 (about the QPC's cost-benefit modelling and productivity data), and the paper of Emeritus Professor David Peetz dated 20 September 2026 (about agreement and award pay rates).

9.1.4. The Commission also received written submissions from:

(a) Jacqueline King (on behalf of the QCU) dated 24 July 2026 and 21 September 2026;

(b) the QCU dated 21 September 2026;

(c) the ETU, CEPU and PGEU dated 14 August 2026, accompanied by expert evidence of Professor Martin O'Brien; and

(d) the ETU, CEPU and PGEU dated 25 September 2026, accompanied by supplementary expert evidence of Professor O'Brien and expert evidence of Professor David Walters.

9.1.5. The submissions from the QCU and the ETU, CEPU and PGEU were similarly helpful and well-reasoned. I am likewise grateful to Counsel for these union parties for their written submissions.

9.2. Overview of the Administrator's Position

9.2.1. The Administrator opposes the reintroduction of a code and regulator.

9.2.2. The Administrator's submissions may be summarised, broadly, as follows:

Counsel Assisting's case did not survive

(a) Counsel Assisting's case changed between the opening and the closing of the Code Case Study. It was watered down from a position that a code and regulator *would* improve productivity, to a position that it *may* improve productivity.[179]

The evidence of Mr Hadgkiss and Mr Jenkinson

9.2.3. Mr Hadgkiss and Mr Jenkinson are not qualified to give economic opinions.

(a) Mr Hadgkiss and Mr Jenkinson are not economists and are not qualified to provide opinion evidence on statistical trends in productivity, working days lost or any economic analysis at all.[180]

9.2.4. Mr Hadgkiss and Mr Jenkinson:

(a) had not reviewed the underlying data in relation to the statistics that they cited in their written witness statements;[181] and

(b) did not give evidence at arm's length, as they each gave evidence of a regime that they administered as employees of the former ABCC and BCCB.[182]

9.2.5. Taking into account the above, the only evidence before the Commission of a benefit of reintroducing a code and regulator is the impression of two former regulators who are not economists.[183]

9.2.6. Mr Hadgkiss and Mr Jenkinson's opinion evidence consisted of asserted conclusions.

(a) Evidence of Mr Hadgkiss' and Mr Jenkinson's experience should be given limited weight because:[184]

(i) their work histories are set out at length in the evidence, but:

(1) the experience relied upon in those roles is not disclosed; and

(2) what they observed within those roles is not stated;

(ii) an opinion drawn from experience can be tested only if the experience is described, and Mr Hadgkiss and Mr Jenkinson do not describe their experience; and

179 CFMEU Submissions, [2]–[13].
180 Ibid, [24]–[27].
181 Ibid, [28]–[30].
182 Ibid, [33].
183 Ibid, [33]–[34].
184 Ibid.

(iii) the industry participants whose feedback is said to support the conclusions are not identified, no project is named, and no measurement is produced.

(b) Because of those deficiencies, the evidence of Mr Hadgkiss and Mr Jenkinson does not permit a finding that a code improves productivity, or even has the potential to improve productivity, in the construction industry.

Economic data does not support submissions in relation to productivity decreases

9.2.7. The following material tendered by the Administrator discloses no consistent relationship between the presence of a code and a regulator and productivity in the construction industry:[185]

(a) the ABS estimates on construction industry productivity;

(b) the 2014 report of the Productivity Commission;

(c) the Independent Economics report upon which Counsel Assisting and Mr Hadgkiss relied; and

(d) the published criticism of the Independent Economics report.

9.2.8. The conclusion from Counsel Assisting's April submissions (at [23]) – that the Independent Economics report concluded that the BIT and ABCC produced productivity gains of between 10% and 21% – should not be accepted, as:[186]

> *"The 2013 IE Report does not conclude what Counsel Assisting says it concludes. The figures of 10 and 21.1 per cent are not a measurement of any single thing. They are the lowest and the highest of five numbers Independent Economics collected, which measure different things over different periods: labour productivity, multifactor productivity, total factor productivity, the cost penalty for commercial as against domestic construction, and case studies of individual projects. The Report says of those numbers that they are "not directly comparable", and that the range depends "on the measure and the source of information that is used".*

9.2.9. The 2014 Productivity Commission report found no "*large aggregate impact*" of the BIT/ABCC regimes and warned that "*the use of unconvincing evidence of a large effect [of IR changes] may undermine the credibility of proposals for IR policy change*".[187]

9.2.10. Days lost is not a measure of productivity; further, the Queensland series covers all industries and the pandemic period, and is not confined to the construction industry.[188]

185 Ibid, [22], [28].
186 Ibid, [35]–[44].
187 Ibid, [42], [48].
188 Ibid, [49]—[59].

The QPC Report

9.2.11. Counsel Assisting focused on the upper end of the QPC Final Report's *range* of *estimated* costs that BPIC caused to the Queensland community.[189]

9.2.12. In relation to the QPC Final Report:

(a) the $19.9 billion is the high end of a "*stylised*" six-year projection, about nine-tenths of which rests on assumed lost time, and that nothing has been weighed against the cost;[190]

(b) the QPC projected what BPIC might cost if it ran for six years to June 2030, on the assumption that the State did not suspend it, and the projection is therefore an imperfect forward-looking estimate;[191] and

(c) the QPC did not attribute the productivity decline to BPIC, and measured from 2016-17 the fall is 3.5%[192] and only 2017-18 produces a figure approaching 9%.[193]

Misconduct is already unlawful

9.2.13. The misconduct that the code seeks to regulate is already unlawful.[194]

9.2.14. Since the Administrator was appointed, misconduct has ceased or substantially abated.[195]

9.3. Overview of the Position of the QCU

9.3.1. The QCU resists the reintroduction of a code and regulator broadly for the following reasons:

Existing regime is adequate

9.3.2. There is an existing and adequate State and Federal regime under the FW Act, the IR Act and the WHS Act which governs the building and construction industry.[196]

There is no probative value in the evidence of Mr Hadgkiss and Mr Jenkinson

9.3.3. The evidence on productivity given by Mr Hadgkiss and Mr Jenkinson is based on personal observations and anecdotal industry feedback rather than empirical data.[197]

9.3.4. The macroeconomic data that the Commission received in evidence does not show any correlation between the introduction of the ABCC and improvements in productivity.[198]

189 Ibid, [8].
190 Ibid, [77]–[79], [82]–[85], [98]–[101]; CFMEU Further Submissions, [33], [70], [72], [77], [79].
191 CFMEU Submissions, [99]–[101].
192 Ibid [82(a)].
193 Ibid, [83].
194 Ibid, [10].
195 Ibid, [128].
196 QCU Submissions, [5]–[8].
197 Ibid, [9]–[16].
198 Ibid, [14].

Code risks undermining worker representation

9.3.5. The code would diminish the role of worker representatives, including by prohibiting non-working delegates, which overlooks the important function of workplace delegates in representing the industrial interests of members.[199]

Positive change since Administrator's appointment

9.3.6. The CFMEU is under administration and significant cultural change has occurred since the Administrator was appointed.[200]

Urgency a concern

9.3.7. The Draft Guidelines' stated urgency is a concern because it suggests the purpose of the code is to directly intervene in enterprise bargaining processes regulated by the FW Act.[201]

Stakeholder feedback not unanimous

9.3.8. The Stakeholder Engagement Report records that there was non-consensus amongst stakeholders and that the question of whether an administering body should be created "*remained unresolved*".[202]

No compelling case for regulator's coercive powers

9.3.9. No compelling case has been advanced for the regulator having coercive powers.[203]

9.4. Overview of the Position of the ETU, CEPU AND PGEU

9.4.1. The ETU, CEPU and PGEU[204] resist the reintroduction of a code and regulator broadly for the following reasons:

Issues with the QPC Final Report

9.4.2. There are limitations with the QPC Final Report, on the basis of significant uncertainties in its modelling.

9.4.3. Professor O'Brien's evidence demonstrated that:

(a) Productivity in the Queensland construction industry grew by 13.5% from 1994-95 to 2024-25 compared to 10.6% productivity in construction at the national level;[205]

199 Ibid, [23].
200 Ibid, [40].
201 Ibid, [42].
202 Ibid, [46]—[47].
203 Ibid, [59]—[61].
204 ETU Submissions, [20]—[35].
205 Ibid, [24(c)].

(b) Queensland productivity growth across all industries exceeded that for Australia over most of the time of the period analysed;[206] and

(c) Slowing productivity is not the key underlying issue in the Queensland construction industry.[207]

The evidence of Mr Hadgkiss and Mr Jenkinson

9.4.4. The evidence of Mr Hadgkiss and Mr Jenkinson was uncontradicted by evidence of other witnesses; however, that is orthodox as although parties with leave to appear in the Commission may apply to have evidence tendered or heard, it is the function of Counsel Assisting to obtain and call probative evidence relevant to a Commission's Terms of Reference, including exculpatory evidence.[208]

9.4.5. The econometric and statistical evidence given by Mr Hadgkiss and Mr Jenkinson in relation to productivity trends should be given no weight because neither of them is an economist or otherwise suitably qualified to give an expert opinion on those matters.[209]

Freedom of Association is already protected

9.4.6. Discrimination based on union membership is already prohibited by the FW Act and Mr Hadgkiss did not give any examples of union officials being emboldened by union paraphernalia on site.[210]

Right of Entry

9.4.7. Academic consensus is that HSRs and unions play a positive role in preventative health and safety, even in hostile labour relations climates.[211]

9.4.8. Counsel Assisting's submission 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 construction sites is:[212]

(a) asserted without evidence in support of this proposition; and

(b) contrary to academic consensus.

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206 Ibid, [24(b)].

207 Ibid, [24(d)].

208 Ibid, [36]; referring to CFMEU Commission of Inquiry, *Practice Guideline No 3: Leave to Appear at Public Hearings* (31 October 2025), [15](a), [16]—[17]; CFMEU Commission of Inquiry, *Practice Guideline No 4: Public hearings and evidence* (5 November 2025) [1](b)(i), [10]; and Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (2nd ed, 2019), p. 491, [8.235].

209 ETU Submissions, [39]—[47].

210 Ibid, [53]—[55].

211 Ibid, [57], referring to 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.

212 ETU Submissions, [56], quoting Counsel Assisting's Further Submissions dated 3 July 2026, [31].

Stakeholder feedback seemed unanimous against restriction on union logos

9.4.9. Consultation feedback "*seemed to be unanimous*" against restrictions on union logos, mottos or insignia.[213]

The code would infringe freedom of association, which is already protected

9.4.10. Mr Hadgkiss accepted that the FW Act's general protections provisions already apply and that a logo restriction "*is itself a restriction on freedom of association*".[214]

9.4.11. The prohibitions on paid union time, non-working delegates and delegates administering inductions are *directly contrary* to ss 350C and 205A of the FW Act.[215]

9.4.12. The logo prohibition restricts expression under s 21 of the Human Rights Act, and the delegate provisions restrict freedom of association under s 22 of the Human Rights Act.[216]

10. Other Submissions

10.1.1. Apart from the Unions, there were fifteen other submissions received by the Commission that were generally in favour of the reintroduction of a code with a regulator with one party not expressing a view. All submissions are available on the Commission's website.

10.1.2. However, that support is qualified to the extent that the submissions raised many and varying suggestions as to the content of a code and the work of a regulator. Some of those suggestions were of a general nature and some quite specific. A summary of these is set out at **Annexure C** of this Interim Report. The Housing Industry Association proposes that the Draft Guidelines only apply to publicly funded building work and, in any event, is concerned that any recommendations of the Commission be reconciled and therefore await the federal government's proposal to introduce some type of federal building code.[217] The Housing Industry Association's request for delay stands it apart from the other non-union party submissions.

213 Ibid, [53].
214 Ibid, [54].
215 Ibid, [76]–[79].
216 Ibid, [106]–[108].
217 Housing Industry Association Submissions dated 4 August 2026, p. 1 [3]—[4].

10.1.3. The positive support received for a code is reflected in many of the submissions. For instance, the CCF QLD said as follows:[218]

> *"[T]he most important positive change the State has made in the civil construction sector is the abolition of BPIC and the introduction of the new, clearer, more equitable procurement policy. The examination of a potential Code of Practice for the Building and Construction Industry is another important step in ensuring productivity and capacity are maximised for the civil industry in the lead up to the 2032 Brisbane Olympic Games."*
>
> *"A Building Code is critical bulwark against improper conduct, including collusion, violence and intimidation."*

10.1.4. NECA Queensland submitted that:[219]

> *"A code can provide clear expectations for publicly funded construction work and assist in restoring confidence that Queensland Government projects will be delivered safely, lawfully, efficiently and with appropriate regard to taxpayer value."*
>
> *"NECA Queensland supports the establishment of a Queensland construction industry code and associated regulator with appropriate scope, expertise and powers. A well-designed framework can improve lawful conduct, protect freedom of association, preserve the integrity of right-of-entry laws, reduce disruptive conduct and support productivity and value for money on publicly funded construction projects."*

10.1.5. These views are echoed by the Property Council of Australia[220] and Master Builders Queensland,[221] which respectively noted that:

> *The code should "[i]mprove productivity and project delivery outcomes", "[p]rotect workers from intimidation, coercion and unlawful behaviour" and "[c]ontribute to the efficient delivery of housing and infrastructure." … It "provides an opportunity to establish consistent expectations around lawful conduct and workplace behaviour while reinforcing procurement settings that encourage value for money and better project outcomes."*

> *"The reintroduction of a construction code of practice in a smart and balanced way, combined with other legislated responses and the continuation of the CFMEU Administration, has the potential to significantly improve productivity on Queensland's construction worksites."*
>
> *"Master Builders supports the reintroduction of a well-designed construction code of practice and industry specific independent regulator as part of a suite of reforms to sustainably improve productivity, union behaviour and help build the workforce needed to deliver the massive pipeline of construction work ahead."*

218 Civil Contractors Federation Queensland Submissions, pp. 1—–2.
219 NECA Queensland Submissions, pp. 4, 7.
220 Property Council of Australia Submissions, p. 2.
221 Master Builders Queensland Submissions, pp. 1—2.

10.1.6. The submissions also made comments in respect of the regulator proposed to put the code into effect. In that regard, the Rosenlund Group[222] and Master Builders Queensland[223] respectively noted that:

> *"[U]nlawful and illegitimate conduct is too often treated by contractors as simply the cost of doing business, and acquiescence is frequently the path of least resistance. A code backed by an active regulator changes that: it gives a contractor a lawful, commercially defensible basis to refuse illegitimate demands, and an independent body to report them to."*

> *"Without a strong regulator, the reality is that bad behaviour will again be able to flourish, to the detriment of the entire industry and the Queensland community."*

10.1.7. Some of the submissions provided by various industry bodies turned their minds to the impact of the code on the 2032 Olympic and Paralympic Games. NECA Queensland[224] and the Australian Constructors Association[225] observed, respectively, that:

> *"Queensland's construction pipeline, including major public infrastructure and works associated with the 2032 Olympic and Paralympic Games, requires a construction industry that is safe, lawful, productive and accountable. A construction industry code and properly empowered regulator would make a meaningful contribution to that objective."*

> *"With a significant pipeline of work, including infrastructure to be delivered for the 2032 Olympic and Paralympic Games, certainty is needed. To realise the benefits of reform as this pipeline is delivered action must be decisive and quick."*

10.1.8. Finally, in reference to Mr Watson SC's report, 'Rotting from the Top' calling for "*an investigation supported with coercive powers*",[226] Master Builders Queensland "*believes that this demonstrates the clear need for a powerful industry-specific regulator with coercive powers as a priority*".[227] Further to that, the Queensland Major Contractors Association submitted that a "*well-resourced and effective Independent Regulator, able to investigate and pursue right of entry non-compliance in the appropriate courts and jurisdictions, and to refer criminality and corruption to the relevant agency, would act as an effective deterrent*".[228]

222 Rosenlund Group Submissions, p. 1.
223 Master Builders Queensland Submissions, p. 1.
224 NECA Queensland Submissions, p. 8.
225 Australian Constructors Association Submissions, p. 4.
226 See Exhibit GW–13, Rotting from the Top – The CFMEU in Victoria During the Setka Era Report authored by Geoffrey Watson SC, [396].
227 Master Builders Queensland Submissions, p. 5.
228 Queensland Major Contractors Association Submissions, p. 3.

10.1.9. It is not the intent of this Interim Report to canvass all the submissions made to the Commission. As noted above, they are available on the Commission's website and a summary of the various suggestions is in **Annexure C** of this Interim Report. However, the positive sentiment expressed towards a code was, generally speaking, directed towards a number of common themes, as illustrated above.

10.1.10. To the extent that, speaking generally, there is a reasonable degree of support for the reintroduction of a code with a regulator, I am further encouraged to make the Recommendations. That is the extent to which I rely on those submissions.

10.1.11. As to the various suggestions made, I have had regard to them in framing my Recommended Code.

11. First Reason: Code Objectives As to Cost, Efficiency and Productivity

11.1. The Objectives

11.1.1. The Recommended Code has four key objectives. One of those objectives is:

> ***Cost, Efficiency and Productivity***
> *Projects are to be delivered on time and within budget with real value for money for the Government and the Queensland taxpayer*

11.1.2. This objective is reflective of a commitment to "*productivity within the State's building and construction industry to ensure that the Queensland Government maximises taxpayer value-for-money on publicly funded construction and building projects*". The scale of anticipated Queensland Government expenditure on such projects, as mentioned in Section 5.1.3(b) of this Interim Report above, makes this objective crucial and obvious.

11.1.3. This objective is patently sound. Governments do not have infinite resources at their disposal. It is the taxpayer who provides government with funds in respect of which prudent resourcing decisions must be made. In major construction projects, cost "*blowouts*" are notorious. Such blowouts are felt keenly by governments in respect of project construction financed by them. This Commission has heard evidence of such blowouts in respect of the Cross River Rail Project, the Centenary Bridge Upgrade, and the Gold Coast Light Rail Project.

11.1.4. In support of the taxpayer value-for-money objective, there are clauses of the Recommended Code which, on their face, give effect to this. This is dealt with in two key parts of the Recommended Code to which I turn to next.

11.2. The Clauses

11.2.1. ***Firstly***, Part 4 deals with "*Workplace Arrangements*". Sub-clause 4(e) deals directly with avoiding Workplace Arrangements that restrict the efficient performance of work or contain provisions that restrict productivity improvement. The sub-points in 4(e) serve as examples and are not intended to be exhaustive. Subpoints (i), (ii), (iii) and (iv) all concern the utilisation of labour and limiting the restrictions on such use.

11.2.2. **Subclause 4(e)(i) – No ratios of employees**. This prevents a Workplace Arrangement that prescribes or limits the number of employees or workers that a company may engage on a particular site or work area, or within their company in general. It is obvious that fixed resourcing can limit the efficient performance of work where there are insufficient numbers, or otherwise add to cost where there are excessive numbers.

11.2.3. **Subclause 4(e)(ii) – No one-in-all-in arrangements**. Such arrangements effectively dictate that all workers must have the same working arrangement outcomes (such as in relation to overtime). These too can provide a limit on the effective use of resources. To take the overtime example, where additional work is offered to one individual it must be offered to all in a particular crew or site. Similarly, such arrangements can dictate that the same amount of overtime must be offered to all employees over a particular period of time. Therefore, to get a particular piece of work done comes with baked-in higher cost. Given the costs, a contractor may wish to avoid the overtime being worked. But this could have downstream workflow effects and, in turn, impact the efficiency/productivity of the sequencing of work.

11.2.4. **Subclause 4(e)(iii) – "No last on, first off" clauses.** This goes to certain selection criteria that ignore an employer's operational requirements in the context of a redundancy situation. They typically require that longer serving employees be retained in a redundancy situation, at the expense of more recent hires. The impact of such clauses on cost efficiency and productivity is not immediately obvious. However, the impact follows from the inability of an employer to retain its best people for the job as opposed to being based on some arbitrary rule which dictates otherwise. It stands to reason that the ability of an employer to retain its preferred employees is more likely to contribute to better workplace outcomes than would otherwise be the case. Put simply, a recent hire may have proven themselves to be a better performer than a less recent hire. In those circumstances, the employer should not be prevented from retaining the more recent hire in a redundancy situation.

11.2.5. Professor O'Brien (for the ETU, CEPU and PGEU) acknowledged "*that Ratios of employees (4(e)(i)) and perhaps RDOs (4(e)(vi)) could have productivity implications, however the others I interpret more as to cost and otherwise as management prerogative rather than productivity*." To the extent any of these relate to cost and the management thereof, the Recommended Code is of benefit and serves its objectives. If the utilisation of labour is to be maximised, and/or cost is to be managed, it ought to be within the prerogative of the employer who is the party responsible for delivering on outcomes.

11.2.6. Part 4 also contains restrictions on Workplace Arrangements that will impact on the cost of the project.

11.2.7. First and foremost, there are restrictions on what are colloquially termed "*jump up*" clauses. Jump up clauses provide an automatic right to certain terms and conditions (typically pay and allowances) conditioned on working on a particular project. They aim to standardise terms across a project for all relevant workers. As a result, the price of labour is removed as a point of competition amongst subcontractors with subcontractor rates of pay being effectively tied to that of the principal contractor. Clauses 4(c) and 4(d) deal directly with this, thereby creating greater opportunity for competition in the supply of labour.

11.2.8. Clause 4(a) prevents coercion to make over-award payments, whilst clause 4(b) prohibits payments to industry superannuation, redundancy and income protection funds which provide for excess contributions, unless decided by each employer. These clauses are aimed at avoiding a situation where above-minimum contributions are mandated. These go directly to cost.

11.2.9. So too does clause 4(h) which prohibits a mandated right for employees to cease work to attend union activities. Obviously, any time directed away from work as required is unproductive and costly. This prohibition is echoed in Part 9 which prohibits a requirement to employ non-working job delegates. The prohibition here guards against a standing entitlement beyond the existing legal rights that employees have. I say more about non-working delegates in Section 12 of this Interim Report.

11.2.10. Cost is also dealt with in clause 4(k) which deals with the specification of site allowances. This provides for greater clarity and certainty in respect of the setting of site allowances and can be beneficial when it comes to the pricing of labour cost.

11.2.11. I accept that there may well be benefits associated with these types of clauses. The Administrator refers to the "*possibility*" that minimum manning may be directed to safety, supervision, fatigue management or emergency responses.[229] The Administrator also seeks to highlight the benefit of apprentice ratios,[230] and effectively takes issue with the ability of a contractor to be unrestricted in the engagement of casual and daily hire workers.[231] Whether or not there are other benefits, the point remains that, all other things being equal, the presence of such restrictions runs counter to the cost, efficiency and productivity objective on the face of these clauses. To the extent there are safety considerations that bear upon minimum manning requirements, or indeed any other restrictions on the engagement of workers, there are WHS obligations which exist and, as I explain in Section 13 of this Interim Report, which are buttressed by requirements in the Recommended Code.

11.2.12. ***Secondly***, Part 5, under the heading "*Cost, efficiency and productivity*" includes a requirement for contractors to provide a WRMP as part of any tender response. Such a requirement is not new and is common in major project contracting in my experience. Again, it seems obvious that such a plan, properly developed and adhered to, can yield greater benefits than would otherwise be the case. Indeed, a project owner, such as a government, who is spending large sums of taxpayer money on a major project, is well justified in calling for details of how a contractor will deliver the project on time and on budget from a productivity and cost perspective. Indeed, I regard such a plan as a basic risk management

229 CFMEU Submissions, [155]—[158].
230 Ibid, [159]—[163].
231 Ibid, [164]—[167].

tool in circumstances where the workplace, particularly in construction, carries risk beyond WHS, extending to the all-too-obvious risks of delay and higher cost.

11.2.13. I need not address all of the matters required in a WRMP according to the Recommended Code. There are eighteen specific matters to be addressed and, in respect of four of these, there are further specific matters. A fair characterisation of these requirements is that the vast majority of them are aimed at the taxpayer value for money objective. The following are illustrative examples: sourcing of labour requirements; approach to developing and maintaining a productive workforce (which extends to the approach to managing inclement weather, heat and RDOs); the utilisation of major plant and equipment and the minimisation of unproductive time; the approach to the use of labour hire; the approach to performance and conduct management; demonstrating how the contractor will deliver the project on time and within budget; and demonstrating a track record of delivering construction projects on time and within budget.

11.2.14. It seems plain that a code containing these requirements on contractors will, all other things being equal, provide the opportunity to maximise higher efficiency/productivity outcomes and the potential for better value for the Queensland taxpayer.

12. Second Reason: Freedom of Association

12.1.1. Freedom of association was dealt with by Counsel Assisting's submissions, and various of the Union submissions (mentioned above in Sections 8 and 9 of this Interim Report, respectively). The United Nations recognises freedom of association as an international human right.[232]

12.1.2. It is also recognised in the FW Act, which protects freedom of association by providing that persons are free to become, or not become, members of industrial associations, have their interests represented, or not represented by industrial associations, and are free to participate, or not participate in lawful industrial activities.

12.1.3. Those protections are found in s 336(1)(b) of the FW Act, which relevantly provides that the objects of Part 3-1 of the FW Act are:

> *(b) "to protect freedom of association by ensuring that persons are:*
> *(i) free to become, or not become, members of industrial associations; and*
> *(ii) free to be represented, or not represented, by industrial associations; and*
> *(iii) free to participate, or not participate, in lawful industrial activities;"*

12.1.4. It is worth emphasising that freedom of association entails:[233]

(a) the right to be a union member (of a union of an employee's choosing); and

(b) the right not to be a union member (of a particular union or otherwise any union at all).

12.1.5. The Explanatory Memorandum to the *Fair Work Bill 2008 (Cth)* contained the following explanation in relation to the freedom to associate:[234]

> *1338.*
>
> *The principal protections in Part 3-1 have been divided into protections relating to workplace rights (which can be broadly described as employment entitlements and the freedom to exercise and enforce those entitlements) and engaging in industrial activities (which encompasses the freedom to be or not be a member or officer of an industrial association and to participate in lawful activities, including those of an industrial association).*
> (emphasis added)

232 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948), Article 20.
233 FW Act, s 336(1)(b)(i).
234 Explanatory Memorandum, Fair Work Bill 2008 (Cth), [1338], [1400].

> *1400.*
>
> *Division 4 provides protections in relation to a person's freedom of association and participation or non-participation in industrial activities. The protections in the Division revolve around the right to engage or not engage in certain industrial activities - namely, being a member or officer of an industrial association or engaging in activities of industrial associations. The Division prevents adverse action, coercion and misrepresentations in connection with these industrial activities. It also prevents inducements to be, or not be, a member of an industrial association.*
>
> (emphasis added)

12.1.6. Construction employees, as with any employees, ought to enjoy the freedom to choose whether or not to be a member of a union consistent with the law. If they choose to be a member, then it ought to be a union of their choice, assuming of course the union can cover the work they perform under the relevant union rules. The importance of this basic right cannot be overstated.

12.1.7. The potential for this right to be abused warrants the type of requirements set out in Part 9 of the 2013 Qld Guidelines (and in turn the Draft Guidelines). Those requirements provide guardrails against the abuse of this right. They provide that certain practices, by way of example, were inconsistent with the guidelines, which examples are restated below:

(a) providing the names of new staff, job applicants, contractors or subcontractors to unions other than as required by law;

(b) "*no ticket, no start*" signs, "*show card*" days or any other similar practices that imply that union membership is anything other than a matter for individual choice;

(c) employers unlawfully encouraging or discouraging employees to join a union;

(d) using employee representatives, site delegates or other union representatives to administer site induction processes. Administering site induction processes is a responsibility of site management and cannot be delegated. These processes are to be undertaken by site management. Where there is a requirement in any enterprise agreement for employee representatives, site delegates, or other union representatives to administer site induction processes, then any such process must be overseen by, and actively involve, site management;

(e) discriminating against or disadvantaging elected employee representatives;

(f) using forms requiring the employee to identify their union status, or requiring employers and contractors to identify the union status of employees or subcontractors;

(g) refusing to employ, or terminating an employee's employment, because of their union status;

(h) an employer refusing a reasonable request from a workplace delegate to represent an employee or employees in relation to grievances and disputes or discussions with members;

(i) the request, threat or imposition, or attempted imposition, of a requirement for any contractor, subcontractor or employer to hire any individual nominated by a union or to employ a non-working shop steward or job delegate. Practices or arrangements which facilitate non-working shop stewards or job delegates are inconsistent with the Queensland Code and Guidelines;

(j) a requirement by a Union that an employer display Union or other logos, mottos or other signage at the worksite or on property or equipment supplied by an employer; and

(k) any requirement that a person pay a bargaining fee, however described, to an industrial association of which he/she is not a member, in respect of services provided by it.

12.1.8. As to (c), (e), (g), (h) and (k) above, these merely reflect the position applicable under the FW Act.

12.1.9. As to (a) and (d), these guard against the potential for undue and potentially unlawful pressure being applied to employees upon the commencement of their employment. It remains open to a union to exercise right of entry with a view to having discussions with members and potential members on site. As such, the restrictions posed by (a) and (d) do not prevent unions exercising their lawful rights to recruit members.

12.1.10. As to (b), this effectively supports the legislative objective in circumstances where the practice of enforcing "*no ticket, no start*" (which is generally understood to mean "*no membership, no work*") is unlawful. As such, it is merely a practical application of the current law.

12.1.11. The resolutions of the CFMEU Qld/NT Branch's 34th Delegates Convention in 2020 record:[235]

(a) a resolution moved by delegates from the Queen's Wharf project that "*in building and construction, all delegates are to strive to achieve 'No Ticket, No Start*'";

(b) a resolution moved by Mr Ingham that "t*he primary focus of all delegates is to fully unionise their workplace*" and "f*reeloaders must be vigorously resisted and directly challenged by delegate at every workplace*";

[235] Exhibit MS–1, BPIC Case Study Tender Bundle 1 (Cairns Convention Centre), pp. 112, 131, 133 and 207 (items 4, 58, 66 and 196).

(c) a resolution was moved by "*Council*" that called for a campaign for legislation under which "*only Union members get the benefits of Union negotiated EBAs*" and non-union members "*should be entitled to the award and nothing else*"; and

(d) a further resolution was moved by Council to "*keep attacking*" two named non-union builders "u*ntil they sign up or f… off*".

12.1.12. The running sheet for the Branch's delegates convention dinner on 18 August 2022 records that Mr Hayden Jones, the CFMEU delegate for Lendlease on the Cairns Convention Centre Project, was awarded the "*Joe McDonald Award (No Ticket No Start Award)*".[236] Two years earlier, Mr Jones had received the Branch's "*Outstanding Recruitment*" award.[237]

12.1.13. Mr Rhys Carmady, Director and owner of Status Signs, a Cairns signage subcontractor engaged on the Cairns Convention Centre Project, gave evidence that Mr Jones regularly pressed Mr Carmady's employees to join the CFMEU, telling them "*[y]ou should sign up*" and "*you need to sign up*".[238]

12.1.14. Similarly, Mr Ryan Creighton, the former Director and operator of Global Hire Services, which supplied equipment to subcontractors on the Cairns Convention Centre Project, gave evidence that his understanding was that "*you basically had to have a CFMEU EBA and be a union member to work on site*", although he also stated this was never explicitly said to him.[239]

12.1.15. I do not seek to overstate that evidence. A convention resolution is not conclusive proof that such practices were employed on site – it may be that the resolution was never implemented on site. I also note that neither the CFMEU nor Mr Jones has yet been heard on these matters. I make no adverse findings against them.

12.1.16. However, that does not prevent me from observing that as recently as 2020 and 2022, "*No Ticket, No Start*" appeared to be an objective set by the CFMEU and publicly rewarded. The resolutions are evidence of what the CFMEU sought to achieve and its objectives. Likewise, the "*No Ticket, No Start*" award is evidence of what the CFMEU chose to celebrate.

12.1.17. The prohibition on "*No Ticket, No Start*" is dealt with in point (b) above, and is included in the Recommended Code.

12.1.18. As to (f), an employee should not be required to produce evidence of union membership and nor should employers/contractors be so required. If an employee wishes to acknowledge his or her union membership to others, that ought to be a matter of free choice. Conversely, the decision not to be a member and not say anything about this ought to be respected. There might be many reasons why this is so. It is self-evident that union membership can be a

236 Exhibit MS–1, BPIC Case Study Tender Bundle 1 (Cairns Convention Centre), p. 24.
237 Ibid, pp. 13—14, 22.
238 Exhibit RWDC–1, Statement of Rhys William Darcy Carmady affirmed 8 May 2026, [57].
239 Exhibit RJC–1, Statement of Ryan John Creighton affirmed 8 May 2026, [26(e)]—[27].

sensitive matter when there are differences in views about its merits as between work colleagues. The position is analogous to one's political affiliations. The potential for discordant views and the obvious unrest that may follow warrants this restriction.

12.1.19. Indeed, the Commission has heard evidence of a CFMEU campaign against the AWU, in addition to repeated instances of aggression by CFMEU members or officials directed to the AWU. For example, the harassment of AWU officials as they departed the Centenary Bridge Upgrade site on 22 February 2024, which was recorded and played during Commission hearings.[240]

12.1.20. I make no adverse findings in this Interim Report in respect of the conduct of any particular individuals, but I observe that such alleged conduct is entirely inconsistent with a worker's right to freedom of association, namely to:

(a) be a member of the AWU; and

(b) not be a member of the CFMEU.

12.1.21. As to (i), there is an obvious interest in having employees perform actual work and for which they are paid. The Commission has heard evidence of non-working delegates and the imposition of non-working delegates in the Toombul Shopping Centre Case Study, but I reserve my factual findings in respect of the Toombul Shopping Centre Case Study until a later time.

12.1.22. The effective ban on non-working delegates must, of course, be read subject to those obligations under the FW Act that afford the right of delegates to perform legitimate union business.[241]

12.1.23. Further, the requirement at (i) effectively extends to allowing employers and contractors to choose their own labour. It stands to reason that if such parties wear the risk of such engagement (be it the quality of work, the degree of output, and of course health and safety), they ought to have the ability to control the recruitment process unencumbered.

12.1.24. As to (j), I consider that the prominent display of CFMEU or other union paraphernalia throughout a site and staff rooms, with the effective sanction of contractors/employers who are in legal control of the site, can create the impression that:

(a) the union or unions enjoy particular status; and

(b) work can only be performed by union members.

12.1.25. In the Toombul Shopping Centre Case Study, the Commission heard evidence of Mr Broadhurst, the non-working delegate imposed on Rosenlund Contractors, covering the site

240 Exhibit GW–7, Video of AWU vehicle being blocked from exit at Centenary Bridge Site, 22 February 2024; Exhibit GW–8, Video of AWU vehicle being blocked from exit at Centenary Bridge Site, 22 February 2024.

241 FW Act, s 350C.

in CFMEU flags, posters, stickers and branding,[242] and that the "*staff room walls were also covered in stickers, like a shrine to the CFMEU*".[243] Mr Rosenlund gave evidence that, at least to him, the message seemed to be that upon Mr Broadhurst's arrival, the Toombul Project site had become a CFMEU site and the CFMEU had control of the site and its workers.[244] I make no findings about Mr Broadhurst in this Interim Report.

12.1.26. Evidence of a similar nature was heard in Cairns. A CFMEU flag on a tower crane signified a CFMEU site according to a former Operations Manager at WHSQ.[245] Safety inspectors believed certain companies were aligned with the CFMEU as they had CFMEU flags and banners on their machinery and equipment.[246] The Cairns Convention Centre Project was a unionised site as indicated by CFMEU flags, according to Mr Creighton.[247]

12.1.27. It needs to be remembered that the "*ban*" proposed by Counsel Assisting in the Draft Guidelines on union paraphernalia is directed towards an underlying requirement by a union that an employer display such material. The point here is that it is really a matter for those in control of the workplace to determine whether and what logos, mottos, or other signage be present in the workplace.

12.1.28. Where the site is dominated by the paraphernalia of one particular union, then the suggestion is that union membership of that union is expected. The potential for this, and the resultant impact this can have on freedom of association justifies this measure. The inevitable criticism of this requirement that it is "*anti-union*" is misguided, if not mischievous. If an employer flew flags suggesting it was a "*non-union*" site, one would expect unions to be rightfully concerned. Given freedom of association extends to the right to not be a union member, why should the converse not be a concern?

12.1.29. The issue of union paraphernalia may require consideration in my Final Report as to whether an outright ban of display of union paraphernalia is a desirable recommendation, but I have not yet formed a view on that issue. However, at this stage I consider that the Recommended Code adequately balances the core of freedom of association, that is, removing any requirement of union paraphernalia display by contractors or employers and reinforcing an individual worker's freedom of association.

12.1.30. At this point it would be remiss of me not to mention a recent amendment to the FW Act by the federal government. That amendment effectively allows the Commonwealth to discriminate against suppliers to the Commonwealth who do not have an enterprise

242 Exhibit ROS–6, Statement of Ryan Rosenlund affirmed 14 April 2026, [81].
243 Ibid.
244 Ibid.
245 Commission Transcript, 12 May 2026, P2372.L46—47, P2373.L1—4.
246 Commission Transcript, 13 May 2026, P2449.L28—30.
247 Exhibit RJC–1, Statement of Ryan John Creighton affirmed 8 May 2026, [26(d)].

agreement.[248] Without the amendment, it seems that were the Commonwealth to reject a supplier on the basis that they did not have an enterprise agreement with union involvement, this would give rise to a breach of the FW Act. The amendment enables the Commonwealth to, in effect, bypass such a breach. It allows the Commonwealth to favour suppliers who have enterprise agreements involving unions over those that do not. Whilst this does not in and of itself require employees to be union members, the practical reality is that an employer who wishes to secure Commonwealth work will need to make an enterprise agreement involving a union and, in turn, one or more employees will need to be members of that union. The amendment runs counter to the principles of freedom of association. The very fact that it is an express exception to provisions of the FW Act which are otherwise aimed at protecting freedom of association bears this out.

12.1.31. Despite this change, it remains important for the State of Queensland to do what it can to protect this important freedom. Accordingly, I see no good reason to qualify the requirements above aimed at protecting such rights.

12.1.32. As noted above, the Unions' submissions are to the effect that the code would constrain lawful union activity and freedom of association. But, as I also said above, the FW Act's prescription for freedom of association extends to the right to be or not be a member of a union and the right to engage or not engage in industrial activity, which is the same right as is prescribed by s 22(2) of the Human Rights Act, to which the ETU, CEPU and PGEU refer in their joint submissions.[249] The balance lies in the freedom to choose without undue pressure, including from an employer.

12.1.33. The ETU, CEPU and PGEU rely on the Human Rights Act in opposition to aspects of the Draft Guidelines that deal with restrictions on: union paraphernalia; non-working delegates; delegates administering inductions; and union-nominated hires.[250] But the Human Rights Act does not extend to effectively allowing a union to require an employer to display union paraphernalia. An employer at a construction site is a lawful occupier who is entitled to control what comes onto the site. As an occupier, the construction employer or head contractor owes a duty of care as well as a duty under the WHS Act to ensure the site is a safe place of work. Nor does the Human Rights Act extend effectively to allowing a union to administer site inductions, which are "*the responsibility of management and cannot be delegated*" under the Draft Guidelines; or allowing union delegates the freedom to simply not perform work for an employer.[251]

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248 See *Workplace Relations Legislation Amendment (Building Cooperative Workplaces No. 1) Act 2026* (Cth), s 55; see also FW Act, s 354(2A).

249 Section 22(2) of the Human Rights Act provides: "*Every person has the right to freedom of association with others, including the right to form and join trade unions*."; ETU Submissions, [10]–[115].

250 ETU Submissions, [106], [108].

251 2013 Qld Guidelines, p.15.

12.1.34. As to union-nominated labour, there are sound reasons for ensuring that a contractor is free to choose when it comes to hiring workers and, again, the Human Rights Act does not effectively dictate otherwise. At [108] the ETU, CEPU and PGEU say:

> *"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)."*

12.1.35. This proposition cannot be accepted. The right to freedom of association with others, including the right to form and join trade unions, enshrined by s 22(2) of the Human Rights Act, is not infringed by not permitting those matters. Workers are still free to associate as they like, and to form, join or not form whatever associations they choose.

12.1.36. The ETU, CEPU and PGEU also seek to rely on s 21 of the Human Rights Act, which they set out at [105] of their submission dated 14 August 2026. Subsection (2) of s 21 provides:

> *(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.*

12.1.37. The ETU, CEPU and PGEU jointly submit in [106] that "*Prohibiting the display of union logos, mottos, and signage, which Part 9 of the [Draft] Guidelines does, is a restriction on expression imposed by a government instrument*." For the reasons stated above, this does not restrict freedom of expression in general, but in effect prioritises the lawful rights and obligations of a construction employer or head contractor who is the occupier of a construction site during construction in relation to items that may be brought onto that site. In my view, it does not infringe s 21 of the Human Rights Act.

12.1.38. The ETU, CEPU and PGEU also rely, albeit very briefly, on international conventions, namely the International Labour Organisation Conventions 87 (Freedom of Association and the Right to Organise, 1948) and 98 (Right to Organise and Collective Bargaining, 1949). They submit that both conventions "*are fundamental conventions under the ILO 1998 Declaration on*

Fundamental Principles and Rights at Work".[252] The ETU, CEPU and PGEU note that 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;....*

12.1.39. As noted above, in my view the Recommended Code does not restrict freedom of association, nor does it infringe s 22 of the Human Rights Act. International conventions are only enforceable in domestic law if they have been incorporated into or enacted in domestic law (except to the extent that they may create a legitimate expectation for administrative law purposes (which is not relevant here)): see *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273. In any event, the international obligations to promote freedom of association and recognise the right to collective bargaining are met by the FW Act and are not removed or diminished by the Recommended Code.

12.1.40. To the extent there is a call for the "relaxation" of right of entry laws, it is sufficient to note that the evidence to date does not suggest this to be a wise course. Pending delivery of the Final Report, the prudent approach would appear to be to maintain the guardrails as expressed in the 2013 Qld Guidelines.

[252] ETU Submissions, [116].

13. Third Reason: Safety

13.1.1. The Recommended Code's third objective is:

> ***Workplace Health and Safety and Rehabilitation***
> *Parties shall achieve and maintain high standards in workplace health and safety and rehabilitation management and practices*

13.1.2. In support of the workplace health and safety objective, clause 8 of the Recommended Code provides that workplace health and safety obligations must be actively addressed by all industry participants, and that all parties must meet their WHS obligations according to relevant laws.

13.1.3. This obligation requires participants to have effective workplace health and safety risk management processes, and to be able to demonstrate how they will achieve the safety objectives of the Recommended Code.[253] It also requires senior managers to be proactively involved in, and committed to, achieving safety objectives, and to consult with other parties about resolving safety issues.[254]

13.1.4. As I have explained earlier in this Interim Report, the Recommended Code is effectively a government procurement policy.[255] The Recommended Code seeks to improve productivity and obtain value for money for public infrastructure projects. But that is not its sole aim. The Recommended Code also seeks to use the Queensland Government's significant purchasing power to "*promote the highest standards of safety practice in the industry*"[256] on construction sites across Queensland. That objective is in the interests of the broader Queensland community.

13.1.5. Safety-related objectives are not novel to industry codes of practice. Prior industry codes have included safety objectives as part of their requirements. Indeed, Mr Hadgkiss gave evidence in the Commission to this effect. Relevantly, Mr Hadgkiss explained that:[257]

> *"The basic premise of the various codes and guidelines…that have been introduced, at least at the Federal level, has been for the Commonwealth Government to use its significant purchasing power to encourage building and construction industry participants who intend to tender for Commonwealth Government funded work to implement and invest in practices that promote productivity, safety, freedom of association, and compliance with statutory obligations."*

253 Clauses 8.1 and 8.2 of the Recommended Code.
254 Clauses 8.3 and 8.4 of the Recommended Code.
255 See above Section 5.1.3(d) of this Interim Report.
256 See clause 8.1 of the Recommended Code.
257 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [16].

13.1.6. The Recommended Code seeks to achieve its safety-related objectives by both reinforcing and supplementing the existing health and safety obligations under the WHS Act.

13.1.7. Mr Hadgkiss and Mr Jenkinson both gave evidence that they had observed safety improvements during the operation of the ABCC and prior codes. Specifically, Mr Hadgkiss gave evidence that in every jurisdiction where he had observed an active regulator administering an effective code, there had been corresponding improvements to productivity, safety, and freedom of association within the industry.

13.1.8. In addition to improvements in safety, Mr Jenkinson gave evidence that during his experience of enforcing prior codes, he observed contractors and senior executives take an active role in complying with the code requirements.

13.1.9. Relevantly, Mr Jenkinson gave evidence that:[258]

> *"Because of the significant commercial implications that would follow from a contractor being excluded from government funded building work, I observed Boards and senior executives of construction companies take a much greater interest in, and adopt a far more active role in managing, the industrial relations practices being adopted on their projects. The risk of exclusion motivated contractors to prioritise compliance, and introduced a degree of self-regulation, without the BCCB needing to expend any particularly significant resources on enforcement."*

13.1.10. That a contractor would be incentivised to comply with a code in order to secure further government construction contracts may seem obvious on its face. Indeed, that is what prior codes have sought to achieve.

13.1.11. However, hearing evidence from a qualified former regulator, of the active role taken by board members and executives of construction companies to comply with prior codes, reinforces the notion that the financial incentive of securing future government construction contracts is an effective mechanism of encouraging compliance.

13.1.12. Given this, it seems prudent to me for the Recommended Code to include provisions designed to improve safety on construction sites in Queensland. In any event, seeking to reinforce outcomes directed towards WHS is plainly a sound objective. As a matter of good policy it makes sense for government, as a project owner, to insist upon compliance with safety legislation and reinforce this with certain specific requirements. In my view it would be remiss of a procurement process, involving major project construction, to do otherwise. Similarly, it would be remiss of me, if not somewhat perverse, to remove from the 2013 Qld Guidelines those provisions aimed at reinforcing safety outcomes.

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258 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [22].

13.1.13. In cross-examination, Senior Counsel for the Administrator put to Mr Hadgkiss that:

(a) he had not undertaken any analysis of safety in the construction industry;[259] and

(b) statistics recorded that "there was a significant increase in the rate of workplace deaths in industry during the first iteration of the ABCC and a decrease after the ABCC was closed."[260]

13.1.14. In response to this line of questioning, Mr Hadgkiss confirmed that he had not undertaken any empirical analysis of safety and stated that safety on sites has a multitude of causal factors.[261]

13.1.15. That Mr Hadgkiss had not performed an analysis of the safety benefits of prior codes or the ABCC does not diminish his evidence of safety improvements that he observed during his close to two decades of administering and enforcing prior codes in the construction industry.

13.1.16. Mr Hadgkiss was presented to the Commission as an expert witness with significant industry expertise. He served as the Commissioner of the ABCC from 2 December 2016 to September 2017 and as Director of the Office of the Fair Work Building and Construction Industry Inspectorate from 2013 to 2016. Prior to those senior positions, Mr Hadgkiss had served as a Director of the Victorian Government's Construction Code Compliance Unit from March 2012 to October 2013 and as the Deputy Commissioner of the ABCC from 2005 to 2009.[262]

13.1.17. A witness with those credentials is qualified to provide evidence of their observations working in the field. Mr Hadgkiss' evidence, based on his observations, assisted my decision to recommend the Recommended Code.

13.1.18. The Administrator's cross-examination was aimed at demonstrating that there was no positive correlation between the ABCC's operations and safety outcomes. Mr Hadgkiss' response was instructive: there are a multitude of factors that contribute to safety on construction sites.[263] In my opinion, these factors include safety policies and practices, the identification and implementation of relevant safety-related controls, management, training, weather conditions, scheduling and the degree of high risk work being performed (such as working at heights).

13.1.19. Similar to the limitations of statistical analysis of productivity, it would be difficult to isolate the impact of an industry code or regulator on the safety outcomes in any statistical analysis.

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259 Commission Transcript, 11 June 2026, P2985.L15—21; P2961.L5—10.
260 Ibid, P2960.L30—46.
261 Ibid, P2997.L36—46; P2988.L6 – 12.
262 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [2]—[4].
263 Commission Transcript, 11 June 2026, P2962.L10—15.

13.1.20. Given this, I am not persuaded that the absence of any empirical or statistical analysis by Mr Hadgkiss of the safety benefits of a code is a reason to not include clauses in the Recommended Code that have the objective of improving safety on construction sites in Queensland. Further, as mentioned earlier, there are good policy reasons to have in place a requirement to meet safety standards as part of a procurement process in respect of major project construction.

13.1.21. In their written submissions dated 14 August 2026, the Commission has already heard extensive evidence of safety matters in various case studies. However, those case studies are not yet the subject of findings. Findings in respect of those case studies, and safety, will occur in my Final Report, once all interested parties have been afforded procedural fairness with respect to those case studies.

13.1.22. Further, the unions contended that the academic consensus is that health and safety representatives and unions play a positive role in preventative health and safety, even in hostile labour relations climates.[264] I assume, without deciding, that this is correct. However, the Recommended Code does not remove any statutory rights that union delegates or health and safety representatives have under the FW Act or the WHS Act.

13.1.23. Any inconsistency between the Recommended Code and the FW Act is dealt with in clause 2.6 of the Recommended Code, which provides that:

> *"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."*

13.1.24. That position is consistent with s 109 of the Constitution, which provides that where 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.

[264] ETU Submissions, [57].

14. Fourth Reason: BPIC was Bad

14.1. Introduction

14.1.1. Much of the Recommended Code has a history stretching over three decades.[265] One clause that is new is clause 5.1(q).[266] I recommend that clause specifically (and the Code in general) to try to ensure that the so-called BPIC policy and the clauses I refer to below do not continue in operation, or their effect is otherwise moderated.

14.2. What was BPIC?

14.2.1. BPIC began with the Best Practice Principles in May 2018.[267] In November 2018, the Best Practice Principles were first applied retrospectively to the North Queensland Stadium by a Deed of Variation signed between DHPW and Watpac.[268] In October 2019, the "*Minimum Conditions*" were trialled on the refurbishment of the Cairns Convention Centre Project,[269] as an early model of a draft BPIC document which were later developed by different departments for different sectors. In February 2020, this was shortly followed by the implementation of project-based BPIC for the Southern Queensland Correctional Precinct.[270]

14.2.2. I have heard evidence of how the model developed in DHPW spread to other departments and agencies, for example, DTMR developed a BPIC applicable to transport projects and applied it from late 2020.[271]

14.2.3. As can be seen from the brief history above, trying to identify, with precision, the terms of the BPIC policy is a difficult exercise. The reason for this is that as a policy, it developed in a way that is presently unclear. The evidence, as it is, suggests that it was developed largely in the absence of public consultation,[272] without precise modelling,[273] and further as it expanded from one department to another, it changed, at least in part, in form.

14.2.4. Nevertheless, it is possible to identify some broad aspects of BPIC policy at least insofar as this Interim Report is concerned. To that end, it seems that it is appropriate to examine the latest iteration of the BPIC policy being the 2023 - 2027 Building BPIC. It runs close to 270 pages and was one of the last versions of BPIC published by the previous State Labor government before the policy was suspended on 14 November 2024 and eventually abolished from 1 January 2026.

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265 See Part 6 of this Interim Report.
266 See Annexure D, p.10.
267 BPIC–1, p. 2.
268 Ibid.
269 Ibid.
270 Ibid.
271 Commission Transcript, 15 July 2026, P3338.L22—L23; Commission Transcript, 27 August 2026, P4310.L12—17.
272 Commission Transcript, 10 February 2026, P649.L1—25; Commission Transcript, 15 July 2026, P3351.L20—P3352.L.4.
273 Commission Transcript, 15 July 2026, P3362.L14—30; P3362.L32 – P3363.L29.

14.2.5. Given not all evidence has yet been heard in the BPIC Case Study, I make no findings in this Interim Report about the reasons why the former government introduced BPIC; the process by which it did so; how it was implemented by individual departments and agencies; or the conduct of any person or organisation in connection with BPIC and reserve my full findings in respect of it until my Final Report.

14.2.6. Though it seems counterintuitive, even though the BPIC policy was abolished on 1 January 2026, the arrangements that it gave rise to might live on. The reason I say that the continuing effect (if any) of the BPIC policy and its clauses should cease is not because the Queensland Government has repealed the policy, nor because the QPC has sought to quantify the damage that the policy did, but rather because there is sufficient evidence available to me based on:

(a) an analysis of the aims and objectives of the BPIC policy as referred to below;

(b) an analysis of the clauses of that policy as referred to below; and

(c) the economic impact on the Cross River Rail Project, the Centenary Bridge Upgrade and the Gold Coast Light Rail Project as referred to below.

14.3. The stated aims and objectives of BPIC

14.3.1. By clause 2 of the 2023 – 2027 Building BPIC, the key objectives of BPIC are identified as setting minimum employment terms on government-funded projects so that those projects "*conform with best practice industrial relations*", promoting safe working conditions, work/life balance and a comfortable standard of living, and maximising productivity and minimising lost time through genuine consultation and collaboration.

14.3.2. In contrast to the Recommended Code which pursues cost-effectiveness and value for money for taxpayers as the primary aim, BPIC put workforce-orientated objectives ahead of cost-effectiveness.

14.4. BPIC Clauses in the Building BPIC 2023 – 2027

14.4.1. Before turning to those clauses, I will explain the nature of this assessment. It is an assessment of what the plain text of the clauses required and permitted, it is not an assessment of how they were applied on any particular project.

14.4.2. Looking at the plain meaning of these clauses, the 2023 – 2027 Building BPIC contains the following features:

The requirement that every contractor in the supply chain meet the BPIC conditions (clauses 1 and 24)

14.4.3. The mechanism that gives BPIC its reach is found in clauses 1 and 24 whereby contractors were required to have in place "*legally binding and enforceable workplace arrangements with*

conditions of employment that meet or exceed the minimum Conditions of Employment required by this BPIC Policy" and were "*required to have subcontractors/suppliers implement such workplace arrangements*". That requirement extended to labour hire.

14.4.4. These provisions, commonly described as "*jump up*" clauses, mean that the BPIC conditions were a mandatory condition of being able to work on a State project, at every level of the supply chain. A subcontractor whose existing enterprise agreement provided different rates or arrangements was required to "*jump up*" to the BPIC conditions to take part in the work. This matters to each of the clauses that follow. It is the reason each entitlement in the BPIC operated as a mandatory, uniform term, not as one option among others. It also means that the effect of each clause was felt not only by large head contractors, which may be well placed to absorb it, but by smaller subcontractors and suppliers for whom the required change would be proportionately much greater.

Rates of pay

14.4.5. Appendix 1 sets the rates of pay to be paid to workers on BPIC projects. In tandem with clauses 1 and 24, those rates apply to effectively every contractor on site.

14.4.6. One way a contractor can offer the State a better price is through the terms on which it engages and organises its workforce. Appendix 1 takes that component out of competition. Every tenderer must price on the same mandated rates, whatever its existing arrangements, the location or scale of the project, or the state of the local labour market. Where a contractor's existing rates are below the Appendix 1 rates, the difference must be priced into its tender and is ultimately borne by the State.

14.4.7. The mandated rates are, moreover, well above the relevant modern award rates. I accept that there is debate about the right comparison for measuring how far BPIC rates exceeded what would otherwise have been paid, but the concern is not only that the rates are high, it is that a single mandated rate removes the competitive tension that would otherwise bear on the price the State pays. A mechanism of that kind has an evident capacity to result in higher costs than one in which contractors are free to compete on the terms they offer.

Rostered days off (RDOs)

14.4.8. Appendix 3 of the 2023 – 2027 Building BPIC establishes that RDOs are subject to a fixed calendar and change can only follow consultation and agreement with the applicable union, per clause 35 of the 2023 – 2027 Building BPIC.

14.4.9. A contractor cannot stagger RDOs across its workforce to keep the site operating, or move an RDO to recover time lost to wet weather, without the union's agreement. RDO arrangements are common in the industry, and I make no criticism of RDOs as such. The concern is the combination of a fixed calendar, imposed on every contractor, and a requirement for a third

party's agreement before it can be adjusted. That combination limits a contractor's ability to manage the program of work and has a clear capacity to add time and cost to a project.

Hours of work

14.4.10. By clause 33 of the 2023 – 2027 Building BPIC, the ability to work outside the ordinary "*span of hours*" between 6:00am and 6:00pm, alter start and finishing times, or work on a Saturday following a Monday RDO are all subject to union agreement.

14.4.11. Requiring a union's agreement before any of these steps can be taken gives a third party, which is not a party to the construction contract and does not bear its risks, the capacity to delay or prevent decisions about how the work is to be carried out. Even where agreement is given, the need to obtain it adds time and uncertainty. Where it is withheld, or made conditional, the contractor has no means of recovering lost time. In an industry where the timely sequencing of work is critical to cost and completion, I regard that as a significant concern.

Paid union meetings

14.4.12. By clause 43 of the 2023 – 2027 Building BPIC, paid union stop work meetings of up to two hours ("*or more by agreement*") may be held during working time but "*no more than 1 meeting per shift*". In tandem with this, in respect of metal and engineering workers, per Part 5 which applied to those workers, "*each quarter, the Union may convene a meeting of Union members of up to 30 minutes duration during working hours*".

14.4.13. I accept that there may be good reasons for union meetings, and value in them, in particular circumstances. The question is whether it is appropriate for the State to require, as a condition of every contract, that such meetings be paid for and held in working time. Imposed universally, and permitted at such a regular frequency, these provisions have an evident capacity to reduce available working time and so to add to the cost and duration of projects.

Direct employment

14.4.14. Clause 55 mandates that certain roles, namely union delegates, first aid attendants, amenities attendants, hoist drivers, crane crews (except where supplied by a specialist company or subcontractor), gate persons, primary traffic attendant roles (except where supplied by a subcontractor as ancillary to the scope of works), and a reasonable number of labourers and tradespeople, be engaged by a principal contractor directly as employees only, which leaves no room to engage such workers through indirect means which may be required to fulfil certain needs at different times.

14.4.15. A contractor's need for particular skills could vary over the life of a project, and from one project to another. However, BPIC requires a contractor to carry the fixed costs of permanent employees for work that may only be needed intermittently. That is a further constraint on the contractor's ability to organise its workforce efficiently, and one with a capacity to add to cost.

14.4.16. These clauses should not be considered individually, but together. Their effect is cumulative. A contractor engaged on a BPIC project was required to pay mandated rates; to stop work according to a fixed RDO calendar; to obtain the union's agreement before working outside standard hours or recovering lost days; to provide paid meetings in working time; to fill certain roles only with direct employees; and to ensure that each of its subcontractors and suppliers did the same. Each requirement limits the contractor's flexibility in a different way, and each removes from competition a matter on which tenderers might otherwise have offered the State a better cost outcome.

14.4.17. Taken together, and applied uniformly across every State building project and its supply chain, they have, in my view, a clear and substantial capacity to increase the cost and time of delivering public infrastructure.

14.4.18. This view was supported by the evidence of Mr Long on behalf of the CCF QLD, who similarly described the restrictive impact these clauses had on contractors, which "*resemble a pattern enterprise agreement with highly restrictive and costly provisions*".[274]

14.4.19. It is important to be clear about the nature of my conclusion. It is a conclusion about what the clauses required and permitted. It is not a finding that any particular clause was causative of particular delay or cost on any particular project.

14.4.20. Many of the matters the clauses deal with, such as rates of pay, RDOs, meetings, and hours of work are commonly dealt with in enterprise agreements. The difficulty with BPIC is different. It removed those matters from bargaining at the enterprise level and from competition between tenderers, and in several instances it gave a third party, the relevant union, the power to agree to or withhold changes to how work is organised.

14.4.21. It is that combination of uniformity, compulsion and third-party control that gives rise to the concerns I have identified. Whether, and to what extent, that capacity was realised on particular projects is a matter that the further evidence called in the BPIC Case Study may illuminate and its full assessment is best left for determination in the Final Report after all the evidence is heard.

14.4.22. I do not need to wait for the rest of the BPIC Case Study to reach these conclusions about the nature of these clauses. They rest on the terms of the document, which further evidence cannot change. That evidence will go to how and why BPIC was introduced and implemented, and to the extent of its effect on particular projects. It may bear on the extent of concerns I have identified, but not on whether they exist.

274 Commission Transcript, 10 February 2026, P678.L35—41.

14.5. Estimating the cost of BPIC

14.5.1. The Commission's Terms of Reference require me to inquire into the Cross River Rail Project; the Centenary Bridge Upgrade and the Gold Coast Light Rail Project.[275] In respect of each of those three case studies, relevant evidence has been heard from the contractor, the State, or both, which attempted to quantify in some way the cost of BPIC, which is the best evidence of the cost of BPIC before the Commission, to date. On each project, the evidence at this stage suggests that BPIC contributed to increased cost in delivery of government-funded infrastructure.

14.5.2. There have been other projects referred to in the evidence which can be classified as BPIC projects, such as the Cairns Convention Centre, but at this stage, the most extensive evidence as to project cost has been led in relation to the Cross River Rail Project, the Centenary Bridge Project and the Gold Coast Light Rail Project, which is why each has been selected for analysis for this Interim Report. I anticipate that other evidence will be led in respect of the other relevant projects, which will be dealt with in my Final Report.

Cross River Rail Project Case Study

14.5.3. The Commission has heard evidence in relation to the Cross River Rail Project, one of the most significant civil infrastructure projects being constructed in and around the Brisbane CBD. The works encompass construction of new rail lines from Dutton Park to Bowen Hills via the boring of twin 5.9km rail tunnels underneath the Brisbane River and the CBD, as well as the construction of new train stations and upgrades to existing train stations (underground and above surface), together with related infrastructure.[276]

14.5.4. The Cross River Rail Project was originally forecast in the Queensland Government's Capital Statement for 2016/2017 to cost approximately $5 billion.[277] However, the cost has increased as follows:

(a) $6.888 billion in 2019/2020 (reflecting the addition of a $1.479 billion private finance component);[278]

(b) $7.85 billion in 2023/2024;[279] and

(c) $9.83 billion in 2025/2026.[280]

14.5.5. Combining the impacts of BPIC and associated union activity, Mr Sanfilippo's evidence was that the estimated additional cost on the Tunnel, Stations and Development component of the

275 Terms of Reference paragraph 3(e)(vi)(ii)—(iv).
276 Exhibit VSTS–1, First Statement of Vincenzo Sanfilippo sworn 10 March 2026, [18].
277 Exhibit GWN–1, Statement of Graeme Newton sworn on 9 March 2026, [508]—[509]; see also Queensland Government, Budget Paper 3, Budget Capital Statement, 2016—2017, 22.
278 Exhibit GWN–1, Statement of Graeme Newton sworn on 9 March 2026, [511].
279 Ibid, [512].
280 Ibid, [511]–[513].

Cross River Rail Project was as at about August 2024 approximately $580 million,[281] which comprised $351 million between July 2023 – July 2024,[282] and $229 million for earlier years.[283]

14.5.6. Cross River Rail was not a BPIC project as such. But Mr Sanfilippo described BPIC as having raised labour and subcontractor costs across South East Queensland, including on projects to which it did not apply. He attributed this to fewer subcontractors being willing to tender and higher margins among those who remained.[284] Therefore the evidence about BPIC on this project concerns the ripple effect the BPIC policy had on the broader market. In my view, this followed the mandatory nature of BPIC's clauses and conditions on projects to which it applied. This accords with evidence given by other witnesses, Mr Long and Ms Hawkswood.[285]

14.5.7. Mr Sanfilippo was cross-examined by Senior Counsel for the CFMEU Administrator on the methodology adopted and conclusions reached in the report.[286] Mr Sanfilippo's evidence, supported by the accounts of other witnesses who have given similar evidence about the effect on the broader market, is capable of supporting a conclusion that BPIC, through its effect on the broader market, materially increased costs on the project. Doing the best I can, I estimate the impact of BPIC upon the scale of cost increases in the order of $500 million. This estimate is not precise and is merely my best guess at this stage. No doubt, by the time of the Final Report, greater precision will be achieved. This rough estimate amounts to an approximately 10% increase in cost.

Centenary Bridge Upgrade Case Study

14.5.8. The Centenary Bridge Upgrade was the first DTMR project to incorporate BPIC into the tender process.[287] The Centenary Bridge Upgrade involves the construction of a new three-lane northbound bridge, rehabilitation of the existing Centenary Bridge in Brisbane's western suburbs to create three-lanes southbound as well as upgrades to pedestrian and cyclist pathways.[288]

14.5.9. The initial budget for the Centenary Bridge Upgrade was $298.5 million.[289] The successful tenderers' bid to deliver the construction contract was $149,208,876.74.[290] The evidence was

281 Exhibit VSTS–1, Annexure VS–22, First Statement of Vincenzo Sanfilippo sworn 10 March 2026, p. 267.
282 Ibid, p. 268; Commission Transcript, 29 April 2026, P2142—P2145.
283 Exhibit VSTS–1, Annexure VS—22, First Statement of Vincenzo Sanfilippo sworn 10 March 2026, p. 268; Commission Transcript, 29 April 2026, P2143—P2144.
284 Exhibit VSTS–1, Annexure VS–22, First Statement of Vincenzo Sanfilippo sworn 10 March 2026, p.258; Commission Transcript, 28 April 2026, P2022.L5–31.
285 Commission Transcript, 10 February 2026, P679; Commission Transcript, 15 July 2026, P3359.L44–P3390.L4.
286 Commission Transcript, 29 April 2026, P2111–2146.
287 Exhibit LRH–1, Statement of Leigh Hahn affirmed 22 July 2026, [68]; Exhibit JJR–1, Statement of John (Jack) Joseph Ryan sworn 17 July 2026, [8]
288 Exhibit LRH–1, Statement of Leigh Hahn affirmed 22 July 2026, [32].
289 Exhibit JJR–1, Statement of John (Jack) Joseph Ryan sworn 17 July 2026, [70].
290 Ibid, [69(a)].

that the incorporation of BPIC into the tender process added an additional $21,920,000.[291] (later reduced to $20,298,400).[292]

14.5.10. This amounts to an approximately 15% increase in cost.

Gold Coast Light Rail Case Study

14.5.11. The Gold Coast Light Rail Project involves the extension of a light rail system from Broadbeach South to Burleigh Heads in the Gold Coast area, through the construction of 6.7 kilometres of dual track light rail, eight new stations and the procurement of five additional light rail vehicles.[293]

14.5.12. John Holland Pty Ltd became the preferred tenderer for the Gold Coast Light Rail Project in August 2020.[294] BPIC did not apply to Gold Coast Light Rail Project when the project was tendered, or when John Holland was announced as the preferred tenderer for the project. It was applied retrospectively to the agreement.[295]

14.5.13. Evidence presented to the Commission shows that the pre-BPIC design and construct contract value for Gold Coast Light Rail Project was $663 million.[296]

14.5.14. After some negotiation as there was disagreement between John Holland and the State of Queensland about the assessment of the impact of BPIC,[297] John Holland and the State of Queensland ultimately agreed to a "*Reimbursable Cost*" mechanism under which John Holland was entitled to be "*fairly and reasonably compensated*" for additional costs attributable to BPIC, with a target not to exceed $150 million.[298]

14.5.15. There was a contest between John Holland and the State of Queensland as to the correct interpretation of that clause and whether it allowed for an uncapped amount, or not. It is not necessary to make findings in this Interim Report as to that dispute, and I consequently do not do so other than to note the existence of the dispute.

14.5.16. The estimated impact on BPIC cost on Gold Coast Light Rail Project has been quantified on different bases over time. The former Director-General of DTMR, Mr Neil Scales, gave evidence which shows that by November 2021, DTMR provided an update to the Queensland Government on the negotiations of the Transport BPIC on Gold Coast Light Rail Project and

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291 Ibid, [73].
292 Ibid 9, [75]; JR–10.
293 Exhibit TLS–1, Statement of Trent Smith affirmed 30 June 2026, [58].
294 Ibid, [62].
295 Ibid, [64]–[66].
296 Exhibit DMH–1, Annexure DH–39, Statement of Deanne Hawkswood affirmed 3 July 2026, p.396.
297 Exhibit TLS–1, Statement of Trent Smith affirmed 30 June 2026, [97]–[110].
298 Ibid, [110]; see also Commission Transcript, 16 July 2026, P3517.L16 - 18

the impacts expected. At that time, it was estimated that the overall increase in costs for Gold Coast Light Rail Project due to BPIC was $206.3 million.[299]

14.5.17. By February 2024, however, John Holland had forecast, under an Improvement Framework Agreement agreed by John Holland and the State, a total BPIC claim of $428.7 million as the additional cost required to complete the project, against the original BPIC target of $150 million.[300]

14.5.18. The competing contentions as to causation and quantum – and the extent to which the costs claimed by John Holland are properly attributable to BPIC, to the conduct of the CFMEU and other unions, or to other causes – will be addressed in the Final Report. I do not need to make any such finding at this stage.

14.5.19. However, the extent to which even the agreed sum of $150 million represented an additional cost to the State procuring BPIC, I consider that a significant sum given the initial pre-BPIC contract was accepted for $663 million and $150 million represents a 22% increase on the pre-BPIC contract price. On John Holland's increased estimate by February 2024, that is an additional $428.7 million said to be causative by the application of BPIC, that would represent an increase of 67% of the original tender price

Best estimate of BPIC impact to date

14.5.20. The three projects above provide some evidence of the costs associated with the BPIC policy. They are the best evidence before the Commission to date and serve as a vehicle for me to arrive at a best estimate of the cost impact of BPIC.

14.5.21. Thus, all things considered, I estimate that the cost of the BPIC policy on government infrastructure projects to be in the order of 10 - 30% and therefore regard the figure of 20% as the best estimate available on the evidence to date. This estimate is subject to further refinement in the Final Report. Further evidence is very likely to be adduced about other projects impacted by BPIC and further submissions and evidence will be directed to this in the Final Report. Accordingly, this estimate may be altered one way or another in the Final Report.

14.5.22. However, I consider the estimate of 20% to be a conservative view. In coming to this view, I am dealing only with the increase in costs caused by the implementation of BPIC, leaving aside for the moment any quantification as to delays caused by BPIC. In summary, that estimate, based on the three projects above, is derived from estimates of substantial costs increases in the case of:

(a) the Cross River Rail Project: in the order of $500 million: i.e., around 10%;

299 Exhibit NS–1, Statement of Neil Scales sworn 19 December 2025, [95].

300 Exhibit GXL–1, Statement of Glynn Ladbrooke affirmed 2 July 2026, p.2, [11]-[14]; Annexure GL–2, pp.12, 88–91.

(b) the Centenary Bridge Upgrade: in the order of $21 million: i.e., around 15%; and

(c) the Gold Coast Light Rail Project: within the range of $150 million to $468 million: i.e., a range of around 22 – 67%.

14.6. The Use of the QPC Final Report as an Assessment of BPIC's Utility

14.6.1. Given my conclusions based on the actual evidence before the Commission in relation to the three projects I have discussed above, it is unnecessary at this stage to have regard to the conclusions expressed by the QPC in relation to its assessment of the costs of BPIC. That assessment, it should be noted, was different to the one I am performing here, and was an assessment which relied on a key assumption being a 30 – 50% increase in wages to then derive a prospective assessment of the cost of BPIC.

14.6.2. On the evidence available to me, and for the very limited purposes of this Interim Report (i.e. recommending the adoption of the Recommended Code), it does not matter whether the QPC's estimate is accurate or not. This is not to say that the Unions' criticisms of the way in which the QPC modelled its estimate are not without foundation. Merely, that it is unnecessary at this stage to deal with these criticisms as, on any view, given the evidence before the Commission, and the findings I have made above, the impact of BPIC's legacy upon the construction program envisaged by the Queensland Government would be profoundly deleterious. To put it another way, if the impact of the BPIC policy in terms of the costs of construction is in the order of 20% (as I have found on this preliminary basis in this Interim Report) then the costs of the Queensland Government's construction program would increase by approximately $24 billion (i.e. 20% increase upon $119 billion spend predicted over the next four years). This is more than sufficient to justify clause 5.1(q), in particular, and the recommendations in general.

15. Fifth Reason: Econometric Data is Irrelevant

15.1. Overview

Counsel Assisting's position

15.1.1. The Commission heard evidence from various witnesses that was said to demonstrate that previous iterations of an industry code and regulator improved productivity in Queensland's construction industry.

15.1.2. Counsel Assisting adduced four types of evidence through Mr Hadgkiss and Mr Jenkinson:

(a) econometric evidence said to show improvements in productivity caused by prior industry codes,[301] including that the 2013 Independent Economics Report assessed the productivity gains caused by the BIT and the ABCC at a range of between 10% and 21%;[302]

(b) statistical evidence said to show a reduction of working days lost in Queensland during the tenure of the ABCC;[303]

(c) statistical evidence said to show a reduction in the rate of industrial disputes in Queensland during the tenure of the ABCC;[304] and

(d) observational and opinion evidence, based on the industry experience and expertise of Mr Hadgkiss and Mr Jenkinson.[305]

15.1.3. In submissions dated 14 April 2026, Counsel Assisting submitted that the econometric and statistical evidence set out above supported Counsel Assisting's case for the Recommended Code.[306]

15.1.4. In this Section, I address the limitations of the econometric data. I address similar limitations of the statistical data in below Section 16 of this Interim Report. Lastly, I address the

301 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [26], referring to Independent Economics *Economic Analysis of Building and Construction Industry Productivity: 2014 Updated* 26 August 2013 at p vi.

302 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [26]; Exhibit A1, Bundle of documents for purposes of cross examining Mr Jenkinson and Mr Hadgkiss, p.76. Counsel Assisting, in reliance on the evidence presented through Mr Jenkinson and Mr Hadgkiss, submitted that Federal working days lost per 1,000 employees were 11.8 in 2013–2016, 4.7 in 2017–2022 (2016 Code and ABCC eras) and 6.8 in 2023–2025 (Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [27]); and that a similar correlation appears in Queensland (Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [33]–[34]).

303 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [33], [34]. The data showed a correlation which Counsel Assisting initially asserted was causative (see Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [20]–[21]). In his written further submissions dated 3 July 2026, Counsel Assisting softened his language (see Counsel Assisting's Further Submissions dated 3 July 2026, [12(a)], [26]): see also Section 16 of this Interim Report.

304 Ibid.

305 See for example, Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [22], [25], [31], [32], [40]; Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026,

306 Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026.

observational and opinion evidence of Mr Hadgkiss and Mr Jenkinson in Section 17 of this Interim Report.

The Unions' position: rejection of 2013 Independent Economics report

15.1.5. The Unions submitted that there was a significant shift in Counsel Assisting's case between opening the Code Case Study on 14 April 2026 and filing its further written submissions on 3 July 2026.[307] The Administrator submitted that, in April 2026, Counsel Assisting opened its case for the reintroduction of a code and a regulator as one of "*cause and effect*".[308] The Commission was told that a code and a regulator "*would drive improvements to safety and productivity on construction sites in Queensland*",[309] and that the evidence suggested that effective codes, administered by an independent regulator, "*consistently deliver improvements in productivity, protect freedom of association, and promote compliance with statutory industrial relations obligations*".[310]

15.1.6. The Administrator submitted that, following cross-examination of Mr Hadgkiss and Mr Jenkinson on 11 June 2026, nothing of that case survived.[311] It was said that the case had instead been replaced by the "*language of possibility*".[312]

15.1.7. The Administrator submitted that ultimately Counsel Assisting's case had changed from a position of certainty that a code would bring about productivity increases, to a position that it would be sufficient for me to recommend a code if I found that a code presented "*an opportunity*" or had the "*potential*" to improve productivity or safety.[313]

15.1.8. The Administrator characterised this change as "*an abandonment of the causal case*" and an invitation for the Commission to recommend significant regulatory intervention on the chance that it *might* work.[314]

15.1.9. The Administrator submitted that Counsel Assisting's change in position occurred following the cross-examination of Mr Hadgkiss and Mr Jenkinson, which the Administrator submitted established that:[315]

(a) neither Mr Hadgkiss nor Mr Jenkinson had the expertise to measure productivity;[316]

(b) neither had conducted his own independent analysis;[317] and

307 CFMEU Submissions, [2].
308 Ibid, [2]–[5].
309 Ibid, [2]; referring to Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [5].
310 CFMEU Submissions, [2]; referring to Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [20].
311 CFMEU Submissions, [3].
312 Ibid, [3].
313 Ibid, [3]; referring to Counsel Assisting's Further Submissions dated 3 July 2026, [26]
314 CFMEU Submissions, [3].
315 Ibid, [5], [6].
316 Ibid, [6].
317 Ibid, [6].

(c) neither had verified the underlying data or statistics in their respective witness statements.[318]

15.1.10. To the extent that Mr Hadgkiss and Mr Jenkinson were merely the witnesses through whom econometric and statistical data was introduced, the criticisms of their expertise,[319] their own independent analysis[320] and their own verification of the underlying data have no merit.[321] The underlying econometric and statistical data is either useful or not, or reliable or not. The identity and qualifications of the witness through whom this evidence came to be put before the Commission are neither here nor there.[322]

15.1.11. The Administrator also submitted that the econometric and statistical evidence did not support the contentions advanced by Counsel Assisting.

15.1.12. I agree with the Administrator in part.[323] I have no regard to the 2013 Independent Economics report. Thus, it is not necessary for me to have regard to the Peetz Anomalies Article.[324] This is not to say that the Peetz criticisms are not valid. But fundamentally, my reason for rejecting the 2013 Independent Economics report is that it is very difficult for an economist to isolate one factor from the multitude of other factors that could sensibly be said to contribute one way or another to productivity changes. For example, the factors that might impact upon productivity and cost effectiveness could include the level of capital investment, innovation, skills and education, competition, regulation, labour supply and management practices, among a multitude of other factors. It is almost impossible to hold all these variables constant and try to isolate the impact of previous federal and state codes and regulators on the productivity of the construction industry, whether in Queensland or nationally. A great deal of ink has been spilled in attempting to establish whether there was any causal link between earlier codes and regulators and changes in productivity. If only for this reason, it is not surprising to me that Peetz was unable to replicate the findings contained in the 2013 Independent Economics report.[325]

15.2. Recommended Code Likely to Improve Productivity

15.2.1. However, my rejection of the 2013 Independent Economics report does not mean that Counsel Assisting's case that the Recommended Code would improve productivity "*was not*

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318 Ibid, [6].

319 Ibid, [6], [25], [33].

320 Ibid, [26], [27].

321 Ibid, [28]–[30].

322 In Section 16.2 of this Interim Report. I discuss the utility of and weight to be given to the expert evidence of Hadgkiss and Jenkinson independent of any academic statistical or econometric data introduced as evidence in the Commission either through them or through others.

323 See Sections 16 and 17 of this Interim Report.

324 Referred in CFMEU Submissions, [39] – footnote 69 – C Allan, A Dungan and D Peetz, '"Anomalies", Damned "Anomalies" and Statistics: Construction Industry Productivity in Australia' (2010) 52(1) *Journal of Industrial Relations* 61 at 66–67 (**Peetz Anomalies Article**); see also Senior Counsel for the Administrator's cross examination of Mr Hadgkiss at Commission Transcript, 11 June 2026, P2972; L40–45, P2977; L0–30.

325 See CFMEU Submissions, [39]; referring to Peetz Anomalies Article.

made out". In my view, the Recommended Code does have "t*he potential to address*" unproductive practices and does represent "*an opportunity to improve productivity and efficiency*".[326] Indeed, in my view it is likely to do so. In other words, my rejection of the 2013 Independent Economics report does not alter my decision to propose the Recommended Code. As I outlined above in Section 11 of this Interim Report, I have performed an evaluation of the objectives and content of the Recommended Code. This evaluation is unaffected by the rejection of the econometric evidence. In my view, the cumulative impact of jump up clauses, manning restrictions, inflexible RDOs and limitations upon the ability of building contractors to pay and organise their workforce with maximum flexibility can plainly have a detrimental impact on productivity and value for money. That proposition is self-evident and requires no econometric proof.

15.2.2. The 2014 Productivity Commission report is broadly supportive of my rejection of the 2013 Independent Economics report in the sense that the Productivity Commission found that it was likely that "*the BIT and ABCC had net positive productivity and cost impacts*" but that "*the degree to which their impacts did or even reasonably could show up as large improvements in aggregate construction industry productivity is another matter*".[327]

15.2.3. Indeed, the Productivity Commission made the related point that "*Interactions among work arrangements make it impossible to quantify how individual work arrangements affect the partial performance indicators or performance overall. As well, other factors such as design, project planning, building regulations, tendering practices and the behaviour of clients affect workplace performance. For these reasons, the impacts of work arrangements can be assessed in terms of direction only*".[328]

15.2.4. Similarly, I have found that on an analysis of the objectives and the content of the Recommended Code, the implementation of such a code supported by a regulator (to use the words of the 2014 Productivity Commission report) is likely to have "*net positive productivity and cost impacts*".[329] This is notwithstanding that such net positive productivity and cost impacts might be impossible to isolate from the many other factors impacting productivity and cost into the future.

15.2.5. Finally, one of the bases upon which the 2014 Productivity Commission report thought it likely that the previous iteration of a federal code and regulator had "net positive productivity and

326 See Counsel Assisting's Further Submissions dated 3 July 2026, [12(a)]; [26]; [28]; and [31].

327 *Productivity Commission Inquiry into Public Infrastructure* (Final Report, May 2014) vol 2, p.542 (see also extracts in Exhibit A2).

328 Ibid, p.543.

329 Ibid, p.542.

cost impacts"[330] was, in part, the type of expert evidence that I refer to later in Section 17 of this Interim Report (Seventh Reason).[331]

330 Ibid, p.543; the Productivity Commission had regard to case studies, industry surveys and other evidence, including observations of industry participants in the field.

331 *Productivity Commission Inquiry into Public Infrastructure* (Final Report, May 2014) vol 2, p.543 (see also extracts in Exhibit A2).

16. Sixth Reason: Statistical Evidence is Irrelevant

16.1. Overview

Counsel Assisting's Position

16.1.1. As I stated in the previous Section, Counsel Assisting relied upon:

(a) statistical evidence said to show a reduction of working days lost in Queensland during the tenure of the ABCC;[332] and

(b) statistical evidence said to show a reduction in the rate of industrial disputes in Queensland during the tenure of the ABCC.[333]

16.1.2. This statistical evidence comprised extracts from Australian Bureau of Statistics surveys purporting to show during certain timeframes a decrease in working days lost and a reduction in the level of industrial disputation.[334] Counsel Assisting sought to show that these datasets supported the reintroduction of a code and regulator on the basis that previous iterations of a code (whether federal or state, and supported by a regulator) had caused a reduction in working days lost and a diminution in the level of industrial disputation in the construction industry in Queensland.[335] As the level of working days lost and industrial disputation have the potential to affect productivity (depending upon the nature and extent of these factors), Counsel Assisting thus sought to draw a link between previous iterations of a code and regulator and historic improvements in productivity.[336]

Unions' Position

16.1.3. The Unions' position on this point is set out at Section 15 of this Interim Report.[337] In short, I agree with the Unions' criticisms of the statistical data and have no regard to it. My reason is not that the data was introduced through Mr Hadgkiss and Mr Jenkinson. As I stated in the previous Section, the data is either good or bad – it is either fit for purpose or it is not. It is irrelevant that it has been received in evidence through one witness as opposed to another.

16.1.4. I have no regard to this evidence for three reasons:

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332 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [33], [34].

333 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [25]–[27].

334 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [33], [34]; relying on data from the Australian Bureau of Statistics in relation to working

335 Counsel Assisting submitted that "*the evidence suggests that effective codes, administered by an independent regulator, consistently deliver improvements in productivity, protect freedom of association, and promote compliance with statutory industrial relations obligations*" (Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [21]); Counsel Assisting referred to number of working days lost as "*one of the most compelling empirical data points*" in support of this, stating that it showed a "*clear statistical correlation*" between industrial disputation and the 2016 Code.

336 See Exhibit JMC–1, Counsel Assisting's Written Submissions dated 14 April 2026, [20]–[24].

337 See specifically Sections 15.1.5 to 15.1.12 of this Interim Report.

(a) ***firstly***, similarly to the reason for rejecting the 2013 Independent Economics report, a similar point can be made about the statistical evidence concerning the asserted connection between the presence of a code and regulator and a decrease in industrial disputation and working days lost. It can be accepted that the variables impacting working days lost and levels of industrial disputation are fewer than those that impact productivity but the same point remains;[338]

(b) ***secondly***, even if it were possible to isolate previous codes and regulators as factors which, by themselves, caused changes in the aggregate data (which I do not regard as possible), the particular datasets deployed by Counsel Assisting were not fit for that purpose. To give an example, one of the datasets recorded working days lost across all industries in Queensland but was not focused on the construction industry.[339] There is no utility in this data; and

(c) ***thirdly***, the Unions' criticisms of the failure to account for the COVID-19 pandemic as a potential cause of a diminution of industrial disputation and, relatedly, a failure to differentiate between lawful and unlawful industrial action were points well made. In a sense, they highlight the overarching point made above, namely the inutility of this type of analysis in attempting to isolate one factor from many possible factors.

16.1.5. Thus, I give no weight to that statistical evidence, but again this does not detract from my evaluation. That the statistical evidence does not reliably show that previous iterations of a code and regulator impacted the number of working days lost and the level of industrial disputation is neither here nor there. I have found that the objectives and content of the Recommended Code are, on their face, likely to have a beneficial impact upon the cost effectiveness of project delivery and on productivity.[340]

16.2. Are Mr Hadgkiss and Mr Jenkinson Experts?

16.2.1. There have been competing submissions from Counsel Assisting[341] and the Administrator for the CFMEU in relation to whether Mr Hadgkiss and Mr Jenkinson should be characterised as "*experts*".[342]

16.2.2. The first step in determining this contest is to note that the rules of evidence do not apply to the Commission.

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338 See for example, above Section 15.1.12 of this Interim Report where I set out my views that there are various factors that might impact upon productivity and cost effectiveness, including the level of capital investment, innovation, skills and education, competition, regulation, labour supply and management practices, among a multitude of other factors.

339 See CFMEU Submissions, [51]–[52]; see also Commission Transcript, 11 June 2026, P2692.L16–19, P2926.L6, where Mr Jenkinson conceded that the graph regarding working days lost in Queensland was not industry specific.

340 Working days lost and industrial disputation rates are not relevant measures of productivity, but are merely some of the factors that might impact upon the overall objective of improved productivity and cost effectiveness.

341 Commission Transcript, 14 April 2026, P1439.L45–P1440.L18.

342 CFMEU Submissions, [6], [24].

16.2.3. Section 17 of the COI Act provides that a commission, in the exercise of any of its functions or powers, "*shall not be bound by the rules or practice of any court or tribunal as to procedure or evidence, but may conduct its proceedings and inform itself on any matter in such manner as it thinks proper*".

16.2.4. In accordance with s 17 of the COI Act, the Commission has not rigidly applied the rules of evidence; rather, it has used the rules of evidence as guidance in its public hearings. That guidance has extended to permitting counsel to object to a line of questioning, and has informed my decisions in relation to various objections in the course of public hearings.

16.2.5. A similar approach with respect to using the rules of evidence as a guideline has been adopted in previous royal commissions and commissions of inquiry.[343]

16.2.6. However, as is made clear by s 17 of the COI Act, the rules of evidence do not strictly apply. Other than using the rules of evidence as a guide, particularly to ensure that procedural fairness and natural justice were afforded to parties and interested persons, the Commission has operated consistently with s 17 of the COI Act.

16.2.7. Strictly speaking, the Commission is not obliged to identify whether a witness is a lay witness or an expert witness, within the meaning of the ordinary rules of evidence. However, characterising certain witnesses as experts assists in assessing the weight to be attributed to a particular witness' evidence. Below in Section 17 of this Interim Report, I explain why I regard both Mr Hadgkiss and Mr Jenkinson as experts in relation to implementing, monitoring and enforcing prior industry codes.

[343] See for example, *Royal Commission into Trade Union Governance and Corruption, Final Report* (December 2015), vol 1, [119]–[122]; *Royal Commission into the Building and Construction Industry, Final Report* (2003), vol 2, pp.49–51.

17. Seventh Reason: Expert Evidence of Mr Hadgkiss and Mr Jenkinson

17.1. Overview

17.1.1. I have found that both the objectives and the substance of the Recommended Code are likely to improve productivity and the cost effectiveness of the Queensland Government's upcoming large scale construction programme. Moreover, I have found that, on balance, the objectives and the contents of the Recommended Code are likely to enhance the effectiveness of the schemes promoting freedom of association and occupational health and safety in Sections 12 and 13 of this Interim Report. I have found that this is largely an evaluative exercise and can be undertaken without historic econometric or statistical data (or indeed without econometric modelling which attempts to isolate the effectiveness or impact of one factor among many). Indeed, I have found above that an evaluative approach is the preferred approach.

17.1.2. My conclusions in this regard are supported at least in part by the expert evidence given by Mr Hadgkiss and Mr Jenkinson.[344] Despite my dismissal of econometric and statistical evidence – much of which was introduced through Mr Hadgkiss and Mr Jenkinson – they remain qualified industry experts. Indeed given their history and experience (particularly that of Mr Hadgkiss), it is difficult to contemplate witnesses with greater expertise.

17.2. Mr Hadgkiss and Mr Jenkinson are experts

17.2.1. Mr Hadgkiss was the inaugural Director of the BIT from 2002 to 2005[345] and later the Deputy Commissioner of the ABCC from 2005 to 2009.[346] He was in effect the creator of the Victorian Building Code and the inaugural Director of the Victorian Government's Construction Code Compliance Unit from March 2012 to October 2013.[347] That Victorian Code was the basis for the Queensland Code and supporting regulator which was in operation from (Insert dates). Mr Hadgkiss then became the Director of the Office of the Fair Work Building and Construction Industry Inspectorate from 2013 to 2016,[348] and thereafter, the Commissioner of the ABCC from 2016 to 2017.[349] In short, he has held every important position concerning the operation of the type of building codes currently being considered by the Commission and indeed was the principal architect of the code upon which the Recommended Code is based and further was the person who, in effect, shaped this model of regulation as the inaugural Director of the

344 Other witnesses gave evidence about the positive impacts of prior industry codes, including Mr Long, who gave evidence that "*the overwhelming view of CCF members is that the Building Codes were a net positive for industry which contributed to productivity and helped reduce unlawful behaviour*". See Exhibit DL–1, Statement of Damian Curnick Long affirmed 5 February 2026, [85]. However, as set out above, I will reserve my findings in relation to Mr Long's evidence for my Final Report.

345 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [4(c)].

346 Ibid, [4(b)].

347 Ibid, [4(a)].

348 Ibid, [3].

349 Ibid, [2].

BIT over two decades ago. He has had experience at both the federal and state levels in this regard.

17.2.2. Mr Jenkinson is a highly qualified former regulator with extensive experience working for the ABCC, the IBIT and the BIT.[350] He was an investigator at the IBIT and BIT from 2003 to March 2005.[351] From March 2005 to April 2012 he was employed by the ABCC as an Inspector and also as a State Director of the ABCC's Queensland Operations.[352]

17.2.3. Mr Jenkinson also worked as the Director, Building and Construction Compliance Branch at the Queensland Government's Department of Justice from August 2013 to July 2014, and from 2016 to 2022 he was again employed by the ABCC in the role of Director of Operations for the ABCC's Northern Region. In that role he had oversight of the ABCC's investigative function across Queensland and the Northern Territory.[353]

17.3. The Criticisms of Mr Hadgkiss and Mr Jenkinson's Observational Evidence

17.3.1. The Administrator does not suggest that the expertise of Mr Hadgkiss and Mr Jenkinson should have been expanded upon. This concession is correct. Clearly they are experts; Mr Hadgkiss particularly so.

17.3.2. But the Administrator does suggest that the basis for the conclusions expressed by Mr Hadgkiss and Mr Jenkinson should have been developed in greater detail.[354] The Administrator submitted that whilst their work histories are set out at length in the evidence, what they observed within those roles is not and that an opinion drawn from experience can be tested only if the experience is described.[355] There is some force in this submission but one has to be careful that the necessity for an expert to set out the basis for his conclusions does not become a triumph of form over substance.

17.3.3. Neither Mr Hadgkiss nor Mr Jenkinson described the observations underlying the opinions they expressed. Nor did they identify the industry participants whose feedback they relied on, or the projects to which they referred,[356] in support of their observations that previous codes improved productivity in the construction industry. No doubt it would have been preferable for the witnesses to set out the substance of what they observed, so that the factual foundation for their opinions could be examined, and I accept that these omissions may have made it harder for the Administrator to test that part of their evidence in cross-examination. That

350 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [6]–[10].
351 Ibid, [6].
352 Ibid, [7].
353 Ibid, [10].
354 CFMEU Submissions, [33]; see also the submissions of the ETU, [41], [44].
355 Ibid.
356 Ibid, [33].

shortcoming, does not detract from the fact that their opinions were grounded in their experience. Mr Hadgkiss and Mr Jenkinson have a combined total of more than 30 years' experience in regulating the construction industry, and I regard the evidence of witnesses who have, in effect, devoted their careers to that work as being of real value. This is particularly so in a commission of inquiry, where the rules of evidence do not apply.

17.4. Their Evidence is Based on Their Extensive Experience

17.4.1. As I set out earlier, Mr Hadgkiss and Mr Jenkinson each have long and significant professional experience in administering and enforcing industry codes in the building and construction sector. Their evidence is based on that extensive experience, including their discussions with, and feedback from, other industry participants. Despite its shortcomings, the evidence is relevant and probative to the matters I must determine. More detail would have strengthened the evidence and made it easier to assess. However, the absence of that further detail does not deprive the evidence of probative value or justify the evidence being ignored. Accordingly, I have had regard to the evidence of Mr Hadgkiss and Mr Jenkinson as experts in the field, while taking into account the limitations the Administrator identified. That evidence buttresses the conclusions I have reached on my own reading of the purposes and content of the Recommended Code and its predecessors.

17.4.2. Noting the limitations on the use of the econometric and statistical data identified above, I have found evidence from industry participants with experience in the field both relevant and useful.

17.4.3. For example, Mr Hadgkiss gave evidence of his observations from working in various roles with former regulators that:[357]

> *"in every jurisdiction where I have observed an active regulator administering an effective code, there have been corresponding improvements to productivity, safety, and freedom of association within the industry".*

17.4.4. Further, Mr Hadgkiss attributed those corresponding improvements to:[358]

(a) the imposition of rules and standards that industry participants are required to meet;

(b) industry participants being incentivised to ensure they adhere to those rules and standards so as to better position themselves to secure involvement with government funded construction projects; and

(c) the deterrent effect of a regulator that is empowered to investigate instances of non-compliance.

357 Ibid, [21].

358 Ibid.

17.4.5. The Recommended Code in this Interim Report also seeks to achieve similar results through a carefully considered set of enforceable requirements.

17.4.6. Another aspect of Mr Hadgkiss' evidence that I found compelling and which supports my recommendation to reintroduce a code and regulator, was Mr Hadgkiss' opinion that the:[359]

> *"implementation of an effective code also sends an important message to industry participants – it signals that reform and improvement is expected, and places a renewed focus on productivity, safety, and compliance".*

17.4.7. This evidence goes beyond statistical attempts to quantify productivity improvements and considers the flow-on effects from a code. The message of reform and expectation around improved productivity, safety and compliance is an important component of ushering in change.

17.4.8. I found this aspect of Mr Hadgkiss' evidence particularly helpful with respect to the impact that the reintroduction of a code could have on the industry, especially with respect to re-setting expectations of productivity, safety and compliance standards required to be met.

17.4.9. My decision to make the recommendations in this Interim Report are also supported by the evidence of Mr Jenkinson.

17.4.10. Relevantly, Mr Jenkinson gave evidence that:[360]

> *"In my experience, building and construction companies operating in Queensland were almost all receptive to the work of the BCCB. Industry representatives consistently remarked to me that the 2013 QLD Guidelines and the establishment of the BCCB were welcome developments for the industry and were contributing to improved productivity and more stable industrial environments on construction sites."*

17.4.11. In relation to compliance with the code, Mr Jenkinson observed construction companies taking a more active role in complying with the code. On this point, Mr Jenkinson said that:[361]

> *"Because of the significant commercial implications that would follow from a contractor being excluded from government funded building work, I observed Boards and senior executives of construction companies take a much greater interest in, and adopt a far more active role in managing, the industrial relations practices being adopted on their projects. The risk of exclusion motivated contractors to prioritise compliance, and introduced a degree of self-regulation, without the BCCB needing to expend any particularly significant resources on enforcement."*

359 Exhibit NCH-1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [29].
360 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [21].
361 Ibid, [22].

17.4.12. Mr Jenkinson's evidence on the commercial implications incentivising contractors to ensure compliance on their projects was particularly persuasive to me.

17.4.13. There was additional evidence that addressed the utility and benefits of prior codes, including the evidence of Mr Long.[362] However, consistent with my approach to evidence given in other case studies, as explained above in Section 4 of this Interim Report, I make no findings in relation to Mr Long's evidence in this Interim Report. Findings in relation to Mr Long's evidence have been reserved for my Final Report.

17.4.14. Therefore, having regard to the evidence of Mr Hadgkiss and Mr Jenkinson and doing the best I can with the evidence before the Commission, my view is that on balance a code and regulator is likely to have a beneficial impact on the Queensland construction industry. The evidence of Mr Hadgkiss and Mr Jenkinson buttresses and supports my views.

362 Exhibit DL–1, Statement of Damian Curnick Long affirmed 5 February 2026, [79]–[82]. The effect of Mr Long's evidence was that "*the overwhelming view of CCF members is that the Building Codes were a net positive for industry which contributed to productivity and helped reduce unlawful behaviour*".

ANNEXURE A:

Recommendations

1. Recommendations

1.1. Introduction

1.1.1. This Interim Report makes two recommendations. These are for the Queensland government to:

(a) introduce the Recommended Code (see **Annexure D** of this Interim Report); and

(b) establish a regulator, suitably resourced, to monitor and enforce compliance with the Recommended Code.

1.1.2. In this **Annexure A**, I deal with the content of the code (sections 1.2 – 1.4) and explain the recommendation in relation to the regulator (section 1.5).

1.2. Content of the Code

1.2.1. The Draft Guidelines draw heavily from the 2013 Implementation Guidelines. However, the Draft Guidelines differ from the 2013 Qld Guidelines in ten respects. I deal with these next in section 1.3 of this Annexure by explaining the additions to the 2013 Qld Guidelines. In section 1.4 of this Annexure, I then explain changes that I have made to the Draft Guidelines so as to become the Recommended Code.

1.3. Additions to 2013 Qld Guidelines

1.3.1. I set out the submissions of Counsel Assisting at Section 8 with additional observations following those submissions as pertinent:

> *at Part 2.5, it is proposed to delete the reference to the Federal Building Code [2013 C'th Code], as there is presently no such code in existence;*

(a) As noted above in Section 6 of this Interim Report, the 2013 C'th Code has since been removed. An amendment is made to cater for this.

> *at Part 3.1, it is proposed to remove the requirement that a contractor demonstrate compliance with the code in respect of its past activities;*

(b) I expect that it will be very difficult for many contractors to comply with the code to the extent that it captures "*past activities*". This is particularly so given the presence of BPIC type arrangements.

> *at Part 4, it is proposed to proscribe that the sorts of unproductive and/or inefficient practices with which Part 4 is concerned must not be given effect by a "Workplace Arrangement" – a newly defined term extending to any agreement, understanding, practice, policy, procedure or arrangement, whether written or otherwise;*

(c) This amendment is simply to make it plain that any practice, however so found, is captured by a newly defined and broad term "*Workplace Arrangement*".

> *at Part 4, it is proposed to introduce an express prohibition on Workplace Arrangements that restrict the ability of a contractor to substitute RDOs for another day. That clause is intended to balance the employee's right to a day off work with the need for the efficient arrangement (and, if desired, continuous performance) of work on the site;*

(d) It is an obvious benefit to the progress of a construction project for there to be flexibility in the taking of RDOs. Whilst in any project various different work occurs in parallel, there is also the sequencing of work which demands that certain parcels of work be performed and completed before another can follow. To adopt a farming analogy, the crops cannot be sown until the soil is tilled. The ability of contractors to have control over when work is performed to meet the inevitable delays associated with work whether caused by weather, supply chain problems, a workplace dispute, or whatever the reason, is of obvious importance and value to the efficient progress of a project.

> *at Part 4, it is proposed to explicitly confirm that the requirement that there be no relaxation of right of entry provisions extends to the right of entry provisions contained in the Work Health and Safety Act 2011 (Qld);*

(e) This serves as a sensible extension to the requirement that there be no relaxation of right of entry provisions with that extension capturing right of entry under the WHS Act.

> *at Part 4, it is proposed to introduce a new requirement that a Workplace Arrangement not provide for non-working workplace delegates;*

(f) As mentioned above, it is important to ensure that employees who are paid to work actually work. This seems obvious and uncontroversial. However, this requirement will be subject to the FW Act in so far as it provides for certain rights for workplace delegates.

> *at Part 5, it is proposed to introduce a requirement that WRMPs detail the measures the contractor will have in place to advance the recruitment and retention of women. The importance of such measures was a matter emphasised during consultations with union representatives;*

(g) It seems uncontroversial that there is a benefit in encouraging recruitment and retention of women. Indeed, I understand this objective was a matter raised by at least one union as part of the consultation process.

> *Part 7.1, it is proposed to introduce a requirement that lost time through any work health and safety matter, or purported work health and safety matter, is reported. This is an extension of the requirement to report any lost time through industrial action and ensures that safety-related lost time is reported, lest it is not otherwise done so.*

(h) This amendment is a sensible extension to the requirement to report lost time. That extension being to lost time through any WHS matter or purported WHS matter. Given the importance of WHS, it is sensible for such reporting to occur to the relevant authority such that appropriate action can be taken and, beyond any immediate issue, trends can be captured and better understood.

> *at Part 8, it is proposed to require that WRMPs detail the measures the contractor will implement to improve productivity and/or cost outcomes as against any previous BPIC Arrangement that may have been in place. This requirement is introduced in response to the concerns that the Queensland Productivity Commission identified as to the enduring consequences of BPIC Arrangements, as well as the evidence received by this Commission as to the implications BPIC Arrangements had for the completion cost of major construction projects and*

(i) A review of BPIC type conditions bears out the importance of measures being put in place to improve upon their outcomes at an enterprise level (see Section 14 of this Interim Report above).

> *at Part 9, it is proposed to introduce a proscription on Workplace Arrangements that undermine the demarcation of union eligibility and coverage. Whilst questions of coverage are ultimately determined by union rules, this addition is intended to ensure that the boundaries of union coverage are not practically undermined on construction sites as a consequence of an arrangement entered into between a union and contractor. The Commission has heard evidence of a "turf war" between the CFMEU and AWU on civil construction projects that has disrupted productive work and been the catalyst for a variety of unacceptable behaviours. Prohibiting Workplace Arrangements that circumvent the boundaries of union coverage may help cool inter-union tensions and the poor behaviours and disruptions that result.*

(j) Based on the evidence, this is a sensible amendment which, once again, is an important ingredient in the quest for freedom of association and here, the right of an employee to be a member of a union of their choice but subject to their work being covered by applicable union rules.

(k) I note too, here again, the acknowledgement by the Administrator that in the past the CFMEU has behaved appallingly in relation to the AWU and that the merits of any demarcation argument are no excuse for the physical and mental intimidation of officers of another union.[363]

1.4. Changes to the Draft Guidelines

1.4.1. Having regard to the various submissions made by parties I see merit in making some changes to the code as proposed by Counsel Assisting.[364] They are as follows (and are reflected in the Recommended Code (**Annexure D** of this Interim Report)):

1.4.2. The 2013 Implementation Guidelines were read in conjunction with a separate code of practice. For simplicity, I refer to the Recommended Code as the Queensland Code of Practice for the Building and Construction Industry.

1.4.3. It is a matter for the Queensland government as to whether it seeks to reintroduce a 'Code', in which case the Recommended Code can be referred to as a set of 'guidelines' as it did back in 2013.

Application thresholds

1.4.4. Given the code relies on the 2013 Implementation Guidelines, I see merit in raising the value of the thresholds. However, I consider this a matter for the government having regard to the pipeline of projects and their value. Clearly, the higher thresholds the more the benefits of the code are diluted. But I accept that a balance has to be struck between ensuring the efficacy

363 Exhibit COG–5, Fourth Biannual Report to Parliament by CFMEU Administrator, 24 August 2026, [76].
364 Counsel Assisting's Further Submissions dated 3 July 2026, Annexure 2.

of the code with the needs of industry, appreciating that the WRMP creates something of an impost. Having regard to inflation, perhaps a doublling or trippling of the dollar values might be appropriate.

Olympic Infrastructure

1.4.5. The Recommended Code applies from the date that party first expresses an interest in, tenders for, or enters into a contract to perform public building and construction work to which these Guidelines apply.

1.4.6. However, in respect of any Olympics related infrastructure, the Recommended Code will apply from the date on which it comes into effect.

1.4.7. This exception is warranted in light of the scale of infrastructure construction needed for the 2032 Brisbane Olympic and Paralympic Games, the critical time frame for delivery of that infrastructure and the public funds involved. The Commonwealth and Queensland Governments have agreed to fund a $7.1 billion Games Venue Infrastructure Program to deliver 17 new or upgraded venues across Queensland.[365]

1.4.8. These include 7 new venues and 10 upgraded venues, to be overseen by the Games Independent Infrastructure and Coordination Authority (GIICA). The new venues include the new Brisbane Stadium (to seat 63,000 people), the new National Aquatic Centre, the new Para Sport Facility at the Chandler Sports Precinct, and the Moreton Bay and Logan Indoor Sports Centres. The upgraded venues include the Brisbane Aquatic Centre and the Chandler Sports Precinct, Anna Meares Velodrome, Queensland Tennis Centre and the Sunshine Coast Stadium.[366]

1.4.9. The Commonwealth has committed $3.435 billion towards the program, with the remainder to be funded by the Queensland Government.[367]

1.4.10. Early construction works have begun at the Brisbane Stadium site and initial works have begun at the National Aquatic Centre, according to the GIICA's website.[368] Given the scale of construction works scheduled at all of these venues in the next 5 years, and the international spotlight that will be on Queensland in the lead-up to the 2032 Brisbane Olympics, it is

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365 Queensland Government, Budget Paper 3, Budget Capital Statement, 2026–27, 5; Australian Government Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, 'A new way forward to Brisbane 2032' (Media Release, 4 July 2025) <https://www.infrastructure.gov.au/department/media/news/new-way-forward-brisbane-2032 [infrastructure.gov.au]>.

366 https://giica.au/.

367 Australian Government Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, 'A new way forward to Brisbane 2032' (Media Release, 4 July 2025) <https://www.infrastructure.gov.au/department/media/news/new-way-forward-brisbane-2032 [infrastructure.gov.au]>; The Honourable Anika Wells MP, '2032 Games infrastructure funding deal confirmed' (Media Release, 2 July 2025) <https://minister.infrastructure.gov.au/wells/media-release/2032-games-infrastructure-funding-deal-confirmed [minister.infrastructure.gov.au]>; Queensland Government Delivering for Queensland, 'Brisbane 2032 Infrastructure Agreement Sets Stage for Lasting Legacy' (WebPage, 25 August 2025). <https://www.delivering2032.com.au/delivery-updates/brisbane-2032-infrastructure-agreement-sets-stage-for-lasting-legacy [delivering2032.com.au]>.

368 GIICA's (webpage) https://giica.au/.

imperative that the efficiencies and protections that the Recommended Code will provide be in place as soon as possible so as to minimise delays and costs.

1.4.11. The scale of the infrastructure program is compounded by the fixed deadline for its completion. The Olympic Games are scheduled to commence on 23 July 2032, immediately followed by the Paralympic Games on 24 August 2032.[369] With major infrastructure projects to be built, there is a limited period in which to complete the required works, leaving no time to waste. The Queensland and Commonwealth Governments have committed to delivering the Games projects "on time and within budget".[370]

1.4.12. Queensland must therefore deliver a substantial program of major construction works within a fixed timeframe, leaving little room for error. This places significant pressure on the planning and delivery of these projects. As the Commission has heard, productivity must increase if Queensland is to meet its current infrastructure needs and deliver the 2032 Olympic Games.[371] The timely completion of these works is a matter of critical public importance. The immediate implementation of the Recommended Code from its date of taking effect, in respect of Olympic-related infrastructure, is justified accordingly.

1.4.13. To the extent that this exception causes a contractor difficulty in circumstances where it may already have Workplace Arrangements in place, it will be for the regulator to administer the Recommended Code in a way that balances the need for its objectives to be met in the long term with any practical challenges faced in meeting its requirements in the short term.

Extension to private work

1.4.14. Extending the application of the code to private work is a key ingredient in ensuring sustained benefits across the construction industry and in the words of Mr Hadgkiss "[t]*o fully realise the benefits of a code*".[372]

1.4.15. However, an amendment will be made to the Recommended Code to make clear when the requirement will extend to privately funded work, lest there be doubt about this.

Workplace arrangements

1.4.16. Clauses 4(e)(iv) and (g) of the Recommended Code provide respectively as follows:

> 4(e)(iv)
>
> *Parties shall not negotiate or implement Workplace Arrangements that restrict the efficient performance of work or contain provisions that restrict productivity*

369 Brisbane 2032 Olympics (WebPage) <https://www.olympics.com/en/brisbane-2032>.

370 Queensland Government Delivering for Queensland, 'Brisbane 2032 Infrastructure Agreement Sets Stage for Lasting Legacy' (WebPage, 25 August 2025) <https://www.delivering2032.com.au/delivery-updates/brisbane-2032-infrastructure-agreement-sets-stage-for-lasting-legacy>.

371 See e.g. Commission Transcript, 1 October 2025, P13.L41–44.

372 Exhibit NCH–1, Statement of Nigel Clive Hadgkiss sworn 8 April 2026, [139].

improvement. Without limiting the foregoing, the following will be non-compliant with the Queensland Code ~~and these Guidelines~~ if the Workplace Arrangement is not otherwise required by a relevant Commonwealth or state law:

…

(iv) no restrictions on labour. A Workplace Arrangement must not contain a provision that restricts an employer's short or long-term labour requirements (including casual labour; part-time labour; labour hire or the source of labour etc) nor provisions that stipulate the terms and conditions for the labour of any person not a party to the industrial instrument. Accordingly, a Workplace Arrangement must not include provisions that require an employer to consult or seek the approval of a third party to the employment relations (such as a union) over the number, source, type (for example casual, contract) or payment of labour required by the employer.

4(g)

An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code.

(a) Clause 4(e)(iv) prohibits consultation over certain resourcing matters. However, this may conflict with section 205A of the FW Act which mandates consultation terms be included in enterprise agreements extending to "*a change to their regular roster or ordinary hours of work*". An amendment is made to cure this.

(b) Clause 4(g) restricts "*monitoring*". To the extent this prevents a contractor "*monitoring*" a sub-contractor, an amendment is made to cure this.

Project Agreements

1.4.17. The restriction on project agreements is aimed at preventing all contracting entities on a project from being subject to the same workplace conditions and thereby allowing for a more competitive market. The language in clause 6 speaks of a time when such agreements were readily made and with legislative support. There remains good sense in avoiding such agreements. However, clause 6 cannot curtail the use of project-specific greenfield agreements under the FW Act and, in any event, there are other requirements in place that effectively guard against project-wide Workplace Arrangements. I propose to replace clause 6 with:

> *"The Queensland Code prohibits Project Agreements. Project Agreements are Workplace Arrangements that seek to dictate terms and conditions for all employers on a project and therefore prevent an employer and its employees from agreeing to different terms and conditions that may suit their arrangements on that project. This prohibition is not intended to restrict the use of single enterprise project-specific greenfields agreements under the Fair Work Act 2009 (Cth)."*

Dispute settlement

1.4.18. In clause 7.1, there are obligations to report "*any threatened, possible, probable or impending dispute...*".

1.4.19. An amendment will delete "*possible, probable*" lest this calls for a degree of speculation that goes beyond the intention here. However, an assessment as to when a dispute ought be notified is a matter for judgement. The aim here is prevention and notification ought be conditioned accordingly.

Reporting of Misconduct

1.4.20. The code has certain reporting obligations on contractors. In light of the evidence to date, I see merit in reporting obligations extending to Misconduct (as defined in the Terms of Reference to mean any act (or threat of) or omission that amounts to abusive, blackmailing, bribing, bullying, corrupt, criminal, harassing, inflammatory, intimidatory, menacing, misogynistic, offensive, threatening, uncooperative, unlawful, violent or otherwise morally reprehensible behaviour, and without limitation to the above, also includes any scheme or arrangement designed to circumvent any law).[373]

1.4.21. An addition is made at clause 7.3 to this end.

Reporting of right of entry breaches

1.4.22. The Recommended Code does not expressly call for the reporting of breaches or suspected breaches of right of entry by union officials. Whilst the amendment above in relation to Misconduct effectively captures this, an express requirement to this effect is sensible.

1.4.23. An addition should be made to clause 9 as follows: "*The head contractor must report to a BCCB the breach or suspected breach of right of entry by a union within 24 hours of this arising.*"

[373] Terms of Reference [12].

Freedom of association and right of entry

1.4.24. In clause 9, certain practices are mentioned which do not promote freedom of association. These include "*refusing to employ, or terminating an employee's employment because of their union status*." I see benefit in adding the word "*engage*" which can therefore relate to a particular piece of work, together with this guidance being extended to "*non-union status*". Accordingly, it shall read (with the addition in mark-up) "*refusing to employ, or engage, or terminating an employee's employment, because of their union or non-union status*."

References to "Fair Work Building and Construction" and "National Code"

1.4.25. These references will be removed in light of both the "*National Code*" and "*Fair Work Building and Construction*" no longer being in existence.

1.4.26. In addition, at this interim stage, I recommend that the code should be an administrative rather than legislative instrument, to allow for flexibility in the early stages of its adoption and implementation.

1.5. Establishing a regulator

1.5.1. I recommend the establishment of a regulator to oversee the implementation and application of the Recommended Code. I envisage the regulator will issue guidance to, and educate industry, about the application of the Recommended Code in practice. The role will include scrutiny of relevant conduct and the taking of any necessary and appropriate action as part of its compliance role. In keeping with the 2013 Qld Guidelines, I have continued to refer to the regulator as the "BCCB", and its head as the "Director". However, this is a matter for the State government.

1.5.2. As to tender oversight, it will be imperative that the regulator has the ability to ensure that procurement processes of State government departments do not undermine or avoid the requirements of the Recommended Code. If these were easily bypassed, its benefits would be substantially diminished.

1.5.3. I recommend that for an initial interim period, like the code itself, the regulator be an administrative body with its own powers rather than enshrined in legislation, to allow for flexibility to adapt while the new system is bedded down.

1.5.4. As to the independence of a regulator, this objective has merit. However, to the extent the existence of a regulator sitting within a government department raises or might raise questions as to its independence, I do not see this as a reason not to proceed now with such a body. What is important, is that the regulator has suitable scope to perform its functions effectively having regards to the relevant interests. As mentioned above, this extends to ensuring it has the requisite authority in respect of government procurement processes.

1.5.5. I accept that the regulator must be adequately resourced to discharge its functions effectively. Mr Hadgkiss opined in his evidence that a code capable of delivering meaningful improvements depends on an *"active, empowered, and independent regulator"*.[374] Mr Hadgkiss identified the regulator's principal functions as educating industry, investigating possible non-compliance, recommending sanctions and taking enforcement action in courts and tribunals.[375]

1.5.6. The evidence of Mr Hadgkiss and Mr Jenkinson provides useful guidance as to the appropriate staffing levels of the regulator. Mr Jenkinson considered that an effective regulator might require *"20 or 30 people"*.[376] He estimated that the Brisbane office of the ABCC had approximately 30 staff, comprising 10 inspectors, three lawyers, several officers dedicated to the 2016 Code, an administrative officer and a communications team.[377] By way of comparison, the FWBC employed 135 people nationally, including 17 in Brisbane as at 30 June 2014, increasing to 145 people nationally, including 16 in Brisbane as at 30 June 2017.[378] I have also considered Mr Jenkinson's evidence as to the initial staffing levels of the BCCB. This was the body which administered the 2013 Qld Guidelines. Mr Jenkinson said that the BCCB had five administrative and investigative staff during its early stages. Although that was initially adequate, it constrained the BCCB's ability to deliver the desired reform, and the body operated only briefly with very limited resources.[379] The proposed regulator should therefore be established with sufficient resources from the outset. I consider that staffing of between 20 to 30 people provides an appropriate starting point for the regulator. Ultimately, the regulator's staffing should reflect the extent of its workload and statutory functions.

1.5.7. The regulator's geographic footprint must reflect the scale of Queensland's construction industry. Mr Jenkinson considered that, in addition to a Brisbane office, the regulator should have an office in either Townsville or Cairns.[380] I accept that the regulator should maintain an appropriate presence in North Queensland so that its investigative, compliance and education functions are not confined to South-East Queensland. The evidence heard in Cairns supports that conclusion. A regulator with a presence in the far north of this State is better placed to service the industry in North Queensland.

1.5.8. The regulator should have a multidisciplinary workforce. It will require investigators and administrative staff, in-house lawyers and access to external lawyers, and personnel capable

374 Exhibit NCH–1, Statement of Nigel Hadgkiss sworn 8 April 2026, [104].
375 Ibid, [104]–[105].
376 Commission Transcript, 14 April 2026, P1468.L24–27.
377 Ibid, P1468.L9–20, 33–44.
378 Exhibit NCH–1, Annexure NH–15 and Annexure NH–18, Statement of Nigel Hadgkiss sworn 8 April 2026, p.508 and pp.722–723.
379 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [20]; Commission Transcript, 11 June 2026, P2930.L1–16.
380 Commission Transcript, 14 April 2026, P1469.L34, P1470.L5.

of performing other specialised functions. Industry experience is vital. In Mr Jenkinson's words, the regulator should *contain "a wide range of people in the agency doing different things"* and should not be short-staffed.[381]

1.5.9. The regulator's investigative capability will be particularly important. Investigators should be able to interview witnesses, take statements, conduct records of interview and compile briefs of evidence. They may be recruited from police, customs, Australian Securities and Investments Commission, the Australian Taxation Office, state agencies or other investigative bodies, although police experience is not essential, and aptitude, work ethic and willingness to learn may be more valuable than lengthy industry experience.[382]

1.5.10. The regulator must also have a substantial legal function. Mr Jenkinson opined that a future regulator would *"need a team of lawyers"*.[383] I accept that the regulator should have ready access to legal expertise sufficient to support investigations, advise on the exercise of regulatory powers and conduct enforcement proceedings.

1.5.11. Finally, the regulator will require dedicated education, communication, audit and compliance capabilities. Mr Hadgkiss regarded education as essential given the varying size and sophistication of industry participants and the cultural and operational change required.[384] The regulator should also have personnel dedicated to assessing WRMPs, conducting site inspections and auditing contractors' performance against their stated commitments.[385]

1.5.12. Finally, the Recommended Code needs to be administered in a commonsense, practical way having regard to the needs of the construction industry. To create a code that caters for every eventuality would be unwieldy. I expect the Regulator will provide regular and updated guidance on the application of the Recommended Code and with due on-going consultation with industry stakeholders.

1.6. Impact on Bargaining

1.6.1. The Unions submit that the Recommended Code will have an impact on enterprise bargaining.[386] The upshot of this is that enterprise agreement content, whether current or to be negotiated, and which is otherwise lawful under the FW Act, will be restricted if the Recommended Code is to be complied with.

1.6.2. As to this, it is not the intent of a code to impinge upon bargaining rights per se. It is the intent to encourage workplace arrangements that facilitate more positive outcomes than would otherwise be the case, absent a code. This includes seeking to achieve greater flexibility,

381 Ibid, P1468.L1–7.
382 Ibid, 14 April 2026, P1466.L38–45; P1467.L6–27.
383 Ibid, 14 April 2026, P1467.L1–5.
384 Exhibit NCH–1, Statement of Nigel Hadgkiss sworn 8 April 2026, [107].
385 Exhibit WXJ–1, Statement of Wayne Jenkinson sworn 8 April 2026, [20]; Commission Transcript, 14 April 2026, P1463.L1–20; P1468.L1–7.
386 CFMEU Further Submissions, [88]–[89]; QCU Submissions, [21]–[22], [42]–[43]; ETU Submissions, [82]–[87].

innovation and productivity within the State's building and construction industry with the ultimate aim of ensuring that the Queensland Government maximises taxpayer value for money on publicly funded building and construction projects, consistent with the objectives of prior codes, including the 2013 Qld Guidelines.

ANNEXURE B:

List of submissions from parties in response to Counsel Assisting's submissions

Code submissions from parties		
Tab	**Document**	**Date**
1.	Sandra Atkinson, BEng (Civil) (Hons), BGeol, CPEng, NER, RPEQ	13 July 2026
2.	Albert Smith, Group Managing Director, Universal Cranes	17 July 2026
3.	Georgia Holmes and Kate Raymond, Master Electricians Australia	23 July 2026
4.	Patrick Murphy, NECA Queensland	24 July 2026
5.	Ryan Rosenlund, Rosenlund Group	24 July 2026
6.	Peter Colacino, Australian Constructors Association	24 July 2026
7.	Narelle Hinchcliffe, NHC Infrastructure Consulting	24 July 2026
8.	Jacqueline King, Queensland Council of Unions (**King Submissions**)	24 July 2026
9.	Damian Long, Civil Contractors Federation QLD	24 July 2026
10.	Jess Caire, Property Council of Australia	24 July 2026
11.	Andrew Chapman, Queensland Major Contractors Association	24 July 2026
12.	Michael Hopkins, Master Builders Queensland	24 July 2026
13.	Dean Cameron, Workforce Advisory Lawyers	24 July 2026
14.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	24 July 2026
15.	Innes Willox and Brent Ferguson, Australian Industry Group	27 July 2026
16.	Housing Industry Association	4 August 2026
17.	ETU, CEPU and PGEU including expert report of Martin O'Brien, Professor of Economics, University of Wollongong (**ETU Submissions**)	14 August 2026
18.	Michael Crosby, CFMEU Administrator (**CFMEU Submissions**)	14 August 2026
19.	Jacqueline King, Queensland Council of Unions (**QCU Submissions**)	21 September 2026
20.	Michael Crosby, CFMEU Administrator including expert report of Gerard de Valence, Economist, Construction Economic Research and the paper of Emeritus Professor David Peetz (**CFMEU Further Submissions**)	21 September 2026

Code submissions from parties		
Tab	**Document**	**Date**
21.	ETU, CEPU and PGEU including supplementary expert report of Martin O'Brien, Professor of Economics, University of Wollongong and expert report of David Walters, Emeritus Professor for the School of Social Sciences, Cardiff University (**ETU Further Submissions**)	25 September 2026

ANNEXURE C:

Suggestions arising from non-union party submissions in response to Counsel Assisting's submissions

NOTE: This document summarises the suggestions received from the submissions of non-union parties in relation to a code of practice. As a summary it is not intended to be a complete extract of all suggestions, but rather a fair summary of them.

C.1. Establishment of the Code and powers of regulator

Suggestions	Submission from	Submission Page
The Code must be administered by an independent and properly resourced regulator with educative, advisory, investigative and enforcement functions.	Patrick Murphy, NECA Queensland	NECA, page 3
An appropriate regulator should be tasked with ensuring productivity, safety and compliance with the law and ethical principles on State Government infrastructure projects only, including monitoring of the proposed Building Code on State Government projects.	Damian Long, Civil Contractors Federation QLD	CCF, page 14
The Independent Regulator should: • be able to issue a contractor with a determination, in the form of a compliance certificate, that a specified enterprise agreement complies with the Code. • provide preliminary advice on whether a proposed enterprise agreement, if approved by the Fair Work Commission, would comply with the Code. These mechanisms could be readily inserted into the Guidelines at clause 10.1 – Monitoring compliance.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 1-2
An Independent Regulator should be able to investigate and pursue right of entry non-compliance in the appropriate courts and jurisdictions, and to refer criminality and corruption to the relevant agency.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 3
Where a union or union official repeatedly breaches Code requirements, the regulator should be empowered to suspend entry privileges to Queensland Government-funded projects for a specified period.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 6
Recommended pillars for State Regulator: • A capacity to front end compliance documents through tendering. • Sufficient resources and powers to conduct audits as to compliance with the Code. • Protections for whistleblowers including a dedicated mechanism to raise complaints safely. • Powers to issue sanctions for non-compliance. • Sufficient resourcing to assess compliance with WRMP and other documentation required under the Code and Guidelines at the front end of a project, including providing contractors with easy to submit tender documentation similar to the former Australian Building and Construction Commission (ABCC). • Sufficient resourcing to conduct proactive education and provide easy to understand guidance materials on the Code to contractors.	Damian Long, Civil Contractors Federation QLD	CCF, page 10

Suggestions	Submission from	Submission Page
The regulator must: • have clearly defined functions that complement, rather than duplicate, roles undertaken by other stakeholders, • have a clearly defined charter, within those functions, clarifying its powers around site visits, inspections, audits, and cooperation, for reasons of efficiency, transparency, safety, productivity and fair treatment, • clearly articulate its priorities and focus areas, so that industry can plan effectively and collaborate with the regulator as required, • be strongly supported by the Queensland Police Service and other relevant authorities where the regulator identifies breaches of the law or other regulatory matters through its investigations, • not seek or be empowered to subcontract its policing role to builders, and • be adequately resourced to perform its functions, especially in being able to respond to complaints and disputes rapidly. Critically, it is the regulator and not the builder that should bear primary responsibility for monitoring on-site conduct, investigating complaints, and enforcing the code against persons who breach it.	Michael Hopkins, Master Builders Queensland	Master Builders, page 5-6
The role of the independent regulator can be supplemented by a standing commission on misconduct as permanent oversight body. If this model is not accepted by the Commission, similar powers should be provided to the BCCB.	Michael Hopkins, Master Builders Queensland	Master Builders, page 6

C.2. Scope and application of the Code

Suggestions	Submission from	Submission Page
The Code and Guidelines should reflect an appropriate definition of building and construction work, as follows: *Building and construction work means:* • All organised activities concerned with demolition, building, landscaping, civil engineering, process engineering, mining and heavy engineering; and • Building refurbishment or fit out, installation of building security systems, fire protection systems, air conditioning systems, computer and communication cabling, building and construction of landscapes, but excludes • Mining operations, maintenance, landscaping such as mowing, pruning and other horticultural activities and cleaning buildings.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 4
The Code should apply equally to all participants engaged in Government-funded construction projects. The Code should expressly require unions, union officials, workplace delegates and employee representatives operating on Code-covered projects to comply with the Code's behavioural and conduct standards.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 5-6
The extension into privately funded work at Part 2.4 should apply only from award of public work, for a defined period, and subject to the same value threshold as publicly funded work.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA, page 6; AMCA, page 10

Suggestions	Submission from	Submission Page
The extension of the code to privately funded building work (section 2.4, Draft Guidelines) will also extend the administrative burden, compliance obligations, reporting, and auditing obligations of the code to private projects. Master Builders does not support these obligations extending to all private projects without some reasonable limitations being applied in the code. The administrative obligations of the code should only apply to major private projects above a clearly specified threshold.	Michael Hopkins, Master Builders Queensland	Master Builders, page 9
Clause 2.4 should be amended so that the Guidelines apply only to publicly funded building and construction work as defined by the relevant financial thresholds, with no extension to privately funded work, residential or otherwise, by virtue of a contractor's parallel involvement in public work, and that no application is triggered merely by the timing of a private tender.	Housing Industry Association	HIA, page 3
Various suggestions about what could be included in the Code including a Code of Practice, "*tap-on and tap-off*" or facial recognition security turnstiles, site working calendars, restrictions on site productivity allowances, a safety-driven approach to on-site management of heat and inclement weather issues and excluding the payment of expense related or disability related allowances when no expense or disability is incurred.	Dean Cameron, Workforce Advisory Lawyers	WAL, page 2-3

C.3. Enterprise agreements and workplace arrangements

Suggestions	Submission from	Submission Page
The final code and Guidelines should place particular emphasis on ensuring that enterprise bargaining agreements and related workplace arrangements support productivity and flexibility.	Patrick Murphy, NECA Queensland	NECA, page 3
The Code should address coercion, intimidation, corrupt conduct, unjustified work stoppages, misuse of site access, artificial restraints on labour deployment and workplace arrangements that interfere with lawful and efficient project delivery.	Patrick Murphy, NECA Queensland	NECA, page 4
The Guidelines should expressly state that enterprise agreements and workplace arrangements must support safe, productive and flexible work organisation.	Patrick Murphy, NECA Queensland	NECA, page 7
Limiting union intervention in commercial decisions of constructors – The drafting of the Code should focus on (amongst other things) addressing the unreasonable level of influence unions have on the commercial decisions of a constructor through enterprise bargaining agreements resulting in unproductive work practices.	Peter Colacino, Australian Constructors Association	ACA, page 2
Various suggestions in respect to the powers of unions at the workplace, including union insignia, access to sites and their role in safety matters.	Albert Smith, Group Managing Director, Universal Cranes	Universal Cranes, page 2-3
It should be made clear under any Code and attached guidelines, that tenderers are obliged to demonstrate evidence that they have any of the following applicable to the project: • A registered enterprise bargaining agreement; or • A registered greenfields agreement or an agreement with the client to create one upon award of a tender; or • Full compliance with the relevant award framework. This could be more effective than a ban on unregistered agreements. This, along with copies of labour hire contracts should be sufficient for the sources of labour being explained in Workplace Relationship Management Plan.	Damian Long, Civil Contractors Federation QLD	CCF, page 5-6; CCF, page 9

Suggestions	Submission from	Submission Page
Coercion in all its forms should be explicitly banned under the Code, extending to coercion around workplace arrangements	Damian Long, Civil Contractors Federation QLD	CCF, page 6
The Guidelines should include a carve-out permitting head contractors to undertake reasonable monitoring of a subcontractor's compliance with its enterprise agreement, for the purpose of ensuring that subcontractors comply with the Code and with applicable legislation.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 4
The restriction on requiring site allowances contained in enterprise agreements to have an objective and predictable method of determining the allowance amount is unnecessarily prohibitive.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9
Ensuring major plant and equipment is used as productively as possible is a sensible requirement, however, it should be the choice of contractors to resource how they see fit, so this requirement ought to focus on delivery rather than box-checking style metrics.	Damian Long, Civil Contractors Federation QLD	CCF, page 9
The breadth of the definition of "*workplace arrangement*" creates serious practical and constitutional difficulties, in relation to certainty, characterisation, enforcement, and perverse consequences for productive working relationships. For Workplace Arrangements, the code should distinguish between: • practices that implement or give effect to union coercion or unproductive restrictions (which the code should target); and • practices that facilitate orderly consultation, dispute resolution, and relationship management (which the code should protect). Master Builders recommends that the evidence the code should rely on includes: • Enterprise agreements; • Formal written agreements, policies and site rules issued by the contractor and within their control; and • Conduct that has been directed, authorised or required by the contractor and has the purpose or effect of implementing a restriction of the kind described in section 4 of the Draft Guidelines. Critically, the code should include an express carve-out for good faith consultation and engagement, such as: *Nothing in these Guidelines prohibits a party from engaging in good faith consultation with a building association, or an officer or representative of a building association, for the purpose of:* a) *meeting obligations under the Fair Work Act 2009 (Cth) or an enterprise agreement;* b) *resolving disputes at the enterprise level in accordance with a dispute settlement procedure;* c) *discussing matters relating to workplace health and safety;* d) *managing the orderly deployment, redeployment, or redundancy of workers across projects; or* e) *maintaining an ongoing working relationship that supports the productive delivery of projects, provided that such consultation does not confer upon the building association a right of approval or veto over operational decisions.*	Michael Hopkins, Master Builders Queensland	Master Builders, page 11

Suggestions	Submission from	Submission Page
Section 4(e)(iv) of the Draft Guidelines provides that a Workplace Arrangement "*must not include provisions that require an employer to consult or seek the approval of a third party to the employment relations (such as a union) over the number, source, type (for example casual, contract) or payment of labour required by the employer*." Master Builders submits that this provision, as drafted, is constitutionally problematic because it potentially conflicts with s 205 of the FWA. Master Builders recommends that the provision be reformulated to target approval rather than consultation: *A Workplace Arrangement must not require the approval or consent of a building association, or an officer, delegate or other representative of a building association, in relation to decisions about the number, source, or type of employees or subcontractors to be engaged. For the avoidance of doubt, this provision does not limit:* a) *any obligation to consult that is required by the Fair Work Act 2009 (Cth) or a term of an enterprise agreement approved by the Fair Work Commission in accordance with that Act; or* b) *a party's ability to engage in good faith discussions with a building association about matters affecting the workforce, including the orderly deployment and redeployment of labour across projects, provided that such discussions do not confer upon the building association a right of approval or veto over operational decisions.*	Michael Hopkins, Master Builders Queensland	Master Builders, page 13
Various suggestions in respect to the operation of enterprise bargaining agreements, including "*Enterprise Bargaining Agreements ('EBAs') that require union agreement in relation to matters that should be at management discretion, should be deemed unenforceable*."	Albert Smith, Group Managing Director, Universal Cranes	Universal Cranes, page 2 -3

C.4. Superannuation

Suggestions	Submission from	Submission Page
Agreements should not prescribe payments to any funds above legislative requirements (excluding voluntary contributions)	Damian Long, Civil Contractors Federation QLD	CCF, page 6
Section 4: Workplace Arrangements: The clause indicates that making super payments above award would be considered illegal, unless the employer agrees to it. Whilst this is important to ensure that it's not being done under coercion, this is one of the many areas used in negotiations with employees and their representatives, and industry would like to ensure that that flexibility remains.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9-10
An important component of negotiating Workplace Arrangements is payments made to industry superannuation funds, redundancy and income protection funds. Fair negotiation between employers and employees on these matters should remain a matter which can be addressed in Workplace Arrangements. Section 4(b) of the Draft Guidelines appears to limit these payments but then provides an exclusion if "*decided by each employer*". This exclusion effectively means this clause has no impact. Master Builders requests that this clause be removed in its entirety from the code and Draft Guidelines.	Michael Hopkins, Master Builders Queensland	Master Builders, page 12

C.5. Project agreements

Suggestions	Submission from	Submission Page
Removal of the limits in the Guidelines on the use of '*project agreements*', unless approved in advance by the Attorney-General.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 4
Removal from the Guidelines of the requirement for subcontractor involvement in the development of a project agreement.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 4
Guidelines - Part 6 - Project agreements – Delete the requirement that "*Subcontractors must be involved in the process of developing a project agreement before it is finalised*".	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 3
The FWA does not use the terminology "*project agreements*" and instead defines a "*greenfield agreement*". It would assist clear interpretation of the code and guidelines if the term "*greenfield agreement*" was used, and its adopted definition align exactly with the definition in the FWA. If this approach is supported by the Commission, then the process to produce a greenfield agreement outlined in the FWA should prevail, and the content of agreements allowed under the FWA, should not be further limited by the code.	Michael Hopkins, Master Builders Queensland	Master Builders, page 8
Section 4(j) of the Draft Guidelines restricts a Workplace Arrangement from making provision for "*project agreements to apply in whole or part, other than for major contracts as defined by the client*". This section appears to restrict the use of project agreements (greenfield agreements) on privately funded projects. This limitation is not supported by Master Builders. The code and guidelines should allow parties to utilise the provisions of the FWA in relation to greenfield agreements without restriction on privately funded projects.	Michael Hopkins, Master Builders Queensland	Master Builders, page 8-9
Section 6 of the Draft Guidelines limit the use of project agreements on government-funded projects to circumstances where the use of a project agreement is approved in advance by the Attorney General on the recommendation of the Responsible Minister. Clear criteria should be established in the code or guidelines that would be considered by the Attorney-General and Responsible Minister. Establishing a minimum project value as proposed in the Draft Guidelines is supported, however $100 million value is considered too low and should be reconsidered.	Michael Hopkins, Master Builders Queensland	Master Builders, page 9

C.6. Procurement, tendering and Workplace Relations Management Plans

Suggestions	Submission from	Submission Page
Proactive notification requirements in exceptional circumstances should be expanded from what is in the guidelines to include proactive notification of anything that constitutes an inducement, intimidation or incitement, even if it is potentially within the limits of the law. The code should go beyond the black letter of the law and ensure that tendering is as open and transparent as possible. Tendering must be done on its merits, with absolute oversight and publicly defensible outcomes. Inducements under the Code and Guidelines should include: • Transferring monetary funds or commissions to procurement personnel, evaluators, sub-contractors, or secondary suppliers. • Forgiving liabilities or extending credit terms to procurement personnel or supply chain parties. • Allocating shares or ownership options to decision-makers or sub-contracted entities. • Transferring physical goods, equipment, or inventory to officials or supply chain agents. • Funding transit, lodging, meals, or event access for evaluators or procurement personnel. • Offering future employment or advisory contracts to officials or their designated sub-contractors. • Subcontracting or employing individuals or entities related to evaluation personnel or key suppliers. • Directing financial resources to third-party entities, sub-contractors, or organizations designated by officials. • Applying price reductions, rebates, or side agreements outside formal proposal documentation. • Supplying additional goods, works, or services beyond stated procurement specifications. • Submitting bid values below marginal cost through prime or sub-contractor pricing structures. • Transmitting confidential tender metrics, sub-contractor pricing, or competitor submissions to officials or suppliers. • Granting restricted supply rights or market access to specific sub-contractors to secure bid selection. • Structuring sub-contracting agreements to divide market share, rotate bids, or fix prices across suppliers.	Damian Long, Civil Contractors Federation QLD	CCF, page 3-4
Guidelines around procurement methods should not just extend to onsite activities but should to "*any work, negotiations or discussions around tendering for work to be procured by the abovementioned methods, including on and off site work.*" This would include negotiations, discussions and other matters, to ensure that the full life cycle of the project is covered.	Damian Long, Civil Contractors Federation QLD	CCF, page 4-5
A removal of rights to tender for companies which engage in serious breaches of this code should be considered.	Damian Long, Civil Contractors Federation QLD	CCF, page 13
Section 5.1 (Obligation to develop a WRMP) is an overly cumbersome and costly exercise that should only be undertaken by the preferred or shortlisted contractors. Requesting that this be undertaken during the bid phase (either EOI or RFP) would be counterproductive.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9

Suggestions	Submission from	Submission Page
The project value thresholds setting out the requirement to provide a WRMP is too low ($10m for building and $20m for civil). The QMCA is of the view that this threshold level should be closer to $100m.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9
The Guidelines should define High Risk/Significant for both PQC and TMR projects by reference to identified and current assessment instruments. State clearly: a) the relevant financial threshold; b) whether the amount includes GST; c) whether it applies to program, project, head contract or package value; d) how bundled or staged projects are treated; and e) where and when the classification will be disclosed, including in early market engagement, forward procurement pipelines, expressions of interest, tender documents and contract documents.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 7, NHC, page 12
Monitor supplier-pathway effects Include supplier participation and market-access measures in the formal review of the Code. Measures should include: a) number and value of tenders submitted by SMEs, regional suppliers, social enterprises and Aboriginal and Torres Strait Islander businesses; b) bid and compliance costs; c) reasons suppliers decline to tender; d) use of blanket flow-down clauses; e) audit and reporting hours by supplier size; f) market concentration and competition; and g) exclusion, remediation and sanction outcomes by supplier category.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 13
Head contractors should only be obliged to note that they will maintain a proactive attitude to compliance with the Code, and that all contracts with subcontractors contain an express provision noting that work conducted by subcontractors will be done in accordance with the Code and Guidelines.	Damian Long, Civil Contractors Federation QLD	CCF, page 9

C.7. Subcontractors, SMEs and proportionality

Suggestions	Submission from	Submission Page
Express proportionality principle Insert an overarching provision stating that obligations imposed on a downstream party must be proportionate to: a) its role and scope of work; b) contract or package value; c) workforce size and composition; d) the relevant risk; and e) its practical ability to control or influence the conduct.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 12
Controlled and relevant flow-down Clarify that head contractors must flow down applicable standards, but must not transfer responsibility for project-wide systems or outcomes to a party that does not control them. Downstream contractual provisions should identify: a) the specific obligations applicable to the supplier; b) the evidence required; c) the information and access the head contractor will provide; d) reporting and escalation pathways; and e) the responsibilities retained by the head contractor.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 12
Section 2.3 of the Draft Guidelines requires the head contractor to notify the BCCB of "*any threatened, impending, possible or probable or actual unlawful industrial conduct or breach of these Guidelines within 24 hours of becoming aware of the threatened, impending, possible, probable or actual unlawful conduct or breach*." Section 7.1 extends this to "*any grievance or dispute, including any threatened, possible, probable or impending dispute, relating to workplace relations or WH&S matters... that may impact on project costs, related contracts or timelines*." Master Builders submits that these obligations are excessive. Master Builders recommends that reporting be limited to: • actual industrial action, whether protected or unprotected, that has commenced or is imminent (i.e. formally notified); • actual unlawful conduct on site of which the head contractor becomes aware; • any matter that causes or is reasonably likely to cause actual delay to the delivery of the state-funded project; and • any request by a building association for payment of any kind in relation to industrial conduct. The threshold should be actual conduct or imminent and formally notified threats, not speculation about what is "*possible*" or "*probable*."	Michael Hopkins, Master Builders Queensland	Master Builders, page 13-14

Suggestions	Submission from	Submission Page
Replace or qualify "*actively ensure*" Amend the requirement to "r*equire and actively ensure compliance*" by replacing it with, or defining it to mean, an obligation to take reasonable and proportionate steps to require, support, monitor and respond to non-compliance. This would preserve active responsibility without creating an apparent absolute warranty over conduct beyond the party's control.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 12
The Code should provide a route for a subcontractor to raise a suspected breach with the regulator directly, and provide that a subcontractor not be sanctioned for site conditions determined by the head contractor.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA, page 5; AMCA, page 10
That a subcontract package value threshold be introduced, below which a subcontractor is bound by the substantive prohibitions but not by the plan, audit and reporting requirements.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA, page 6; AMCA, page 10
The Code should provide expressly for an educative first response with independent review, commercial sanctions reserved for deliberate or systemic conduct, and specialist subcontractor representation included as of right in the code's development, implementation and ongoing review.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA, page 8; AMCA, page 10
Subcontractors should have a practical and confidential pathway to raise concerns with the regulator where they experience coercion, pressure, intimidation, disruption or indirect retaliation.	Patrick Murphy, NECA Queensland	NECA, page 7
The requirement of the head contractor to "*require and actively ensure compliance*" by subcontractors and to ensure that *"subcontractor compliance with the workplace relations requirements will be monitored and enforced by the head contractor*" is unworkable to the extent it requires the builder to ensure (rather than promote) subcontractor compliance. Master Builders recommends the following, where a head contractor must: • include in its subcontracts a requirement that the subcontractor comply with the code and the Guidelines to the extent applicable, • not knowingly engage a subcontractor that is subject to an exclusion sanction or that the head contractor knows to be non-compliant with section 4 at the time of engagement, • cooperate with any investigation by the BCCB into subcontractor non-compliance, and • take reasonable steps to promote compliance by subcontractors, including by communicating the code's requirements during project inductions. A failure by a subcontractor to comply with the code does not constitute a breach by the head contractor unless the head contractor directed, facilitated, or had actual knowledge of and failed to report the non-compliance.	Michael Hopkins, Master Builders Queensland	Master Builders, page 11-12
Equivalent evidence pathways Allow suppliers to demonstrate capability and compliance through proportionate and equivalent evidence, rather than relying only on extensive prior corporate project history.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 13
That apprentice engagement be addressed through the Queensland Procurement Policy 2026 and assessed on training outcomes, in place of the ratio clauses the code would prohibit.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA, page 7; AMCA, page 10

Suggestions	Submission from	Submission Page
The Code (whether through the Guidelines themselves or a complementary instrument) include measures requiring head contractors to demonstrate a commitment to responsible progress payments, including the timely payment of progress claims and prompt return of retention or security on practical and final completion.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 6
Rosenlund asks that implementation of the WRMP framework be proportionate for smaller contractors: the model WRMP contemplated by Part 5.1 of the Draft Guidelines, plain-English guidance, and an accessible education and advisory function within the regulator will be essential for family businesses that do not retain in-house industrial relations resources. Commencement should be accompanied by the model WRMP, template contract clauses, and plain-English guidance, and the regulator's advisory function should be resourced from day one so that small contractors can seek guidance before tendering rather than face sanction after the fact.	Ryan Rosenlund, Rosenlund Group	Rosenlund, page 5, [27]; Rosenlund, page 7, [33]
WRMP requirements should be practical, proportionate and focused on outcomes. The Code should avoid creating unnecessary procurement burden and should ensure requirements are scalable to project size, complexity and risk.	Jess Caire, Property Council of Australia	PCA, page 3
The Code critically overlooks the importance of fair contracting practices and appropriate risk allocation across the construction supply chain. The Code provides an opportunity to establish clearer expectations around responsible contracting behaviours.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 6
Large contractors, particularly on government funded projects, should play a greater role in workforce development. One way to achieve this is to require a WRMP to include measures to support the engagement of first year apprentices and retention of apprentices.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 8
The reporting obligation should be recalibrated to a materiality or credibility threshold (rather than any conceivable possibility), and, where a subcontractor's conduct is the subject of a report, the head contractor should be permitted to report on the subcontractor's behalf, rather than requiring parallel reports from every tier of the contracting chain.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 10

C.8. Demarcation and union coverage

Suggestions	Submission from	Submission Page
Demarcation – The drafting of the Code should focus on (amongst other things) reinforcing the demarcation between different unions in terms of their respective memberships.	Peter Colacino, Australian Constructors Association	ACA, page 2
Clear demarcation provisions should be embedded into the Code.	Damian Long, Civil Contractors Federation QLD	CCF, page 12

Suggestions	Submission from	Submission Page
The Regulator should be empowered to require the union to demonstrate (both to the Regulator and the relevant employer) the basis under its rules as to why it has the right to represent interests of any relevant cohort of workers in any context where the union is or has: • sought to negotiate or be covered by an enterprise agreement; • sought to utilise right of entry; or • sought to represent worker/s in a dispute or any other proceedings. The Regulator should also be empowered to refer any concern over misrepresentations by a union or official of their right to represent employees to the Fair Work Commission or Fair Work Ombudsman.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 2
Guidelines - Part 9 – Freedom of association and right of entry – Instead of "A Workplace Arrangement that recklessly or deliberately ignores or seeks to undermine the boundaries of union coverage as defined by union rules of membership is inconsistent with these Guidelines," the Code, Guidelines and new independent regulator should ensure that in relation to State Government funded work, unions seeking to enter into enterprise agreements, exercise rights of entry or represent employees in disputes, must demonstrate that they have the right to represent the relevant employee. A failure to do so should result in penalty or action against the relevant union by the regulator.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 5
The proposed demarcation prohibition should extend to any Workplace Arrangement or site practice conditioning the performance of contracted work on union membership or coverage, where the worker holds the qualification, licence or ticket the work requires.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA page 8; AMCA page 10

C.9. Right of entry and freedom of association

Suggestions	Submission from	Submission Page
NECA Queensland broadly supports the draft Implementation Guidelines contained in Annexure 2 to Counsel Assisting's submissions. The Guidelines provide a workable procurement-based framework for workplace relations management, dispute settlement, productivity, right of entry, freedom of association and government oversight.	Patrick Murphy, NECA Queensland	NECA, page 3
Disputes raised by permit entry holders should be managed lawfully, proportionately and with appropriate containment. Genuine safety and workplace concerns must be respected, but they should not be allowed to become vehicles for unnecessary escalation, site-wide disruption or productivity loss at unrelated sites.	Patrick Murphy, NECA Queensland	NECA, page 3
In relation to the Guidelines, Workplace relations management plans should require tenderers to explain how they will manage permit-holder disputes without unnecessary escalation or disruption to unrelated subcontractors, work areas, project stages or other sites.	Patrick Murphy, NECA Queensland	NECA, page 7
In relation to the Guidelines, the regulator should publish guidance on compliant and non-compliant enterprise agreement clauses, including clauses relating to RDOs, labour hire, subcontracting, project allowances, right of entry, union consultation, dispute escalation and union involvement in site processes.	Patrick Murphy, NECA Queensland	NECA, page 7

Suggestions	Submission from	Submission Page
Additional Powers for WorkSafe Queensland: • Immediately suspend or place conditions on a WHS right of entry permit holder if it determines that they are raising illegitimate or nuisance safety claims with the intention of disrupting or stopping works or to achieve outcomes unrelated to the health and safety of workers. • Immediately suspend and apply to disqualify a Health and Safety Representative (HSR) where there is unlawful conduct or evidence that powers have been routinely used to disrupt and interfere with activity where there is not a proportional risk to safety. • Attend site to conduct/ monitor HSR elections. • Prosecute unions for WHS psychosocial risk breaches in relation to the conduct of their officials on work sites/ within workplaces. Prosecute unions, delegates and their elected officials for psychosocial risk breaches in relation to their conduct on a worksite or in any environment that is related to a workplace. • Require a WHS entry permit holder, HSR or other person to leave a site where they are creating an immediate health and safety risk. • Issue improvement notices to WHS entry permit holders who create psychosocial hazards or risks to workers at a worksite.	Peter Colacino, Australian Constructors Association	ACA, page 3
A criterion should be developed outlining what standard must be met for a person to be deemed a fit and proper person to be able to receive a permit for entry onto a state government job-site, factoring in criminal history, financial standing, legal compliance and competence.	Damian Long, Civil Contractors Federation QLD	CCF, page 12
The Guidelines should require mandatory reporting to the Independent Regulator, within 24 hours, where it is suspected that a union official has failed to comply with an applicable right of entry requirement. This obligation should extend to actual or suspected instances of criminal conduct and corruption occurring at, or in connection with, a relevant workplace, whether perpetrated by a union or a contractor.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 2-3
A requirement should be put in place obliging both WorkSafe QLD and the proposed Regulator to ensure that unions' right of entry in relation to WHS matters is not misused.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 2
The penalty to be enforced against unions and their officials for breach of the proposed Code prohibition on misusing applicable WHS laws should include both a pecuniary component, and suspension or permanent removal of an individual's WHS right of entry permit.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 2
Dispute-settlement provisions related to permit-holder disputes should incorporate the principles of specificity, proportionality, containment and continuity of work where safe and lawful.	Patrick Murphy, NECA Queensland	NECA, page 6-7
In relation to right of entry, Master Builders recommends a carve-out allowing access to sites for the purposes of genuine consultations, with appropriate conditions and safeguards which maintain control of access to site by the builder and in accordance with the approved WRMP, provided these arrangements do not contravene legislated right of entry laws.	Michael Hopkins, Master Builders Queensland	Master Builders, page 5

C.10. Work health and safety

Suggestions	Submission from	Submission Page
Health and Safety – The drafting of the Code should focus on (amongst other things) addressing the issue where Safety representatives can be (and often are) conscripted into industrial relations matters, which undermines workplace safety and the regulation aimed at protecting workers.	Peter Colacino, Australian Constructors Association	ACA, page 2
No agreement should be able to restrict subcontractor selection, nor prescribe how WHS matters are to be dealt with.	Damian Long, Civil Contractors Federation QLD	CCF, page 7
The Guidelines should be amended to accommodate arrangements where safety disputes have been resolved through their own safety dispute resolution procedures, as permitted under section 81(2) of the WHS Act, rather than confining parties to the default procedure in the WHS Regulation, provided that any alternative procedure complies with the requirements of the WHS Act and the WHS Regulation.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 4
In addition to the proposed Code and Guidelines, the QMCA is of the view that the WHS Act should also be amended to ensure the only parties, beyond the employer, that can affect a cessation of work are appointed Workplace Health and Safety Inspectors.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 10
The Code and Guidelines should expressly prohibit unions from breaching or misusing applicable State laws relating to WHS (or making false or misleading claims in relation to WHS matters). Appropriate mechanisms should also be developed to enforce this prohibition.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 2
That Part 4 address expressly the allocation of labour, covering redeployment to unaffected work following a safety stoppage, weather event, disruption or delay without qualifying any decision to stop work in an affected area; selection for redundancy on skills, licences, forward workload and operational requirement; restrictions on labour hire; and site-specific delegate appointment.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA page 7-8; AMCA page 10
Part 4 of the Draft Guidelines should be extended to expressly proscribe Workplace Arrangements that mandate blanket, site-wide stand-downs, or automatic full-day payments, on account of inclement weather irrespective of actual conditions, the location of the affected work, or the ability to safely redeploy labour to unaffected work (including work performed in enclosed plant). Any such provision should preserve genuine safety protections and lawful employee entitlements.	Ryan Rosenlund, Rosenlund Group	Rosenlund, page 5, [25]

C.11. Compliance, enforcement, sanctions and reporting

Suggestions	Submission from	Submission Page
In relation to the Guidelines, any sanctions regime should preserve procedural fairness and review rights, while ensuring that repeated or deliberate non-compliance attracts meaningful consequences.	Patrick Murphy, NECA Queensland	NECA, page 7
The duty to report cannot become an onerous compliance burden.	Damian Long, Civil Contractors Federation QLD	CCF, page 4
Substantial fines for noncompliance with the code for unions and workers which have the effect of genuinely dissuading inappropriate conduct must be considered.	Damian Long, Civil Contractors Federation QLD	CCF, page 13

Suggestions	Submission from	Submission Page
The Code should establish escalating financial penalties for substantiated misconduct by unions and union officials on Government-funded projects, aligned with sanctions for contractors. The regulator should have power to seek recovery of demonstrable costs through a tribunal or court process.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 7
Section 2.3 calls for the contractor to notify of any "*possible or probable*" unlawful industrial conduct. This is unnecessarily broad and should be limited to actual or threatened industrial action. The QMCA proposes consideration be given to utilising the wording contained in the 2016 Building Code analogous clause.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9
The Guidelines should state clearly whether a subcontractor reports to the head contractor or directly to the regulator, that the reporting trigger be confined to conduct the reporting party can reasonably identify, and that reporting of safety-related lost time not require the reporting party to characterise whether the underlying safety matter was genuine.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA page 6; AMCA page 10
Except in cases involving serious, deliberate, repeated or unlawful conduct, provide an opportunity to clarify, correct or remediate administrative non-compliance before commercial sanctions or tender exclusion are imposed. Publish a transparent, graduated sanctions and escalation framework that distinguishes administrative non-compliance from serious, deliberate, repeated or unlawful conduct and ensures that the consequence is proportionate to the nature and seriousness of the breach.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 13
The employment, contracting, sub-contracting or involvement with recognised criminals or criminal organisations in any capacity should be regarded as a breach of the Code, and members of such organisations should be specifically precluded from being employed by any entity tendering for government work.	Damian Long, Civil Contractors Federation QLD	CCF, page 4
Master Builders submits that, irrespective of the breadth of the code finally adopted, its enforcement should not be the responsibility of builders or subcontractors. The better enforcement model would be to directly shift from "*sanction the builder for failing to police the union*" to "*investigate and hold the union accountable for its own conduct*". (See Annexure A of submission for a summary of provisions in the Draft Guidelines that require builders to police, report, monitor or enforce compliance in relation to union conduct or industrial activity, either directly or through the subcontractor chain.	Michael Hopkins, Master Builders Queensland	Master Builders, page 6-7
Section 7.2 of the Draft Guidelines provides that "*Contractors will be required to use their best endeavours to pursue legal remedies to protect their rights and obligations under the Code and Guidelines. A failure to instigate appropriate legal remedies may be considered to be a breach of the Guidelines*." Master Builders recommends that the obligation to pursue legal remedies be reframed as follows: *A contractor must report unprotected industrial action to the BCCB in accordance with section 2.3. The contractor must cooperate with any application made by the BCCB or other regulatory body in relation to that action. Nothing in this section requires a contractor to commence legal proceedings in its own name; however, a contractor must not obstruct or frustrate any proceedings commenced by the BCCB or other regulatory body.*	Michael Hopkins, Master Builders Queensland	Master Builders, page 14
Master Builders submits that the sanctions regime should be graduated, proportionate, subject to independent review and remediation focused.	Michael Hopkins, Master Builders Queensland	Master Builders, page 15

Suggestions	Submission from	Submission Page
The Code should require contractors to demonstrate effective governance systems, including: • documented processes for identifying applicable awards, enterprise agreements and employee classifications; • confidential and accessible worker reporting mechanisms • strong protections against adverse action, victimisation and exclusion from future employment for workers who raise genuine concerns; • clear internal complaint resolution processes; • psychosocial risk management, including organisational justice, procedural fairness and timely dispute resolution; • regular review of employment compliance systems.	Sandra Atkinson	Atkinson, page 1-2
Where a receiving agency cannot determine a matter because it falls outside its jurisdiction, responsibility for referring the matter to the appropriate authority should not rest solely with the worker. Complaints should move through a coordinated regulatory pathway rather than requiring workers to identify the correct regulator themselves.	Sandra Atkinson	Atkinson, page 3-4
A proposal to establish a Queensland Construction Commissioner. This reflects the structural failures identified across safety, industrial conduct, coercion, corruption, and dispute resolution.	Dean Cameron, Workforce Advisory Lawyers	WAL, page 13-19
Commercial sanctions (exclusion, publication) will be reserved for repeated, systemic, or deliberate non-compliance.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 9
Any enforcement mechanism must attach to demonstrated, systemic non-compliance, as opposed to a single or isolated incident, consistent with witness evidence that sanctions should be applied "*on a case-by-case basis,*" and not for a single instance of non-compliance.	Housing Industry Association	HIA, page 4-5
Rosenlund recommends that: a) the code and Guidelines prohibit a code-covered party from subjecting a person or entity to adverse action because that person or entity reported suspected non-compliance, cooperated with the regulator, or lawfully assisted a court, tribunal, regulator or commission of inquiry - while preserving the right of every party to bring genuine claims through lawful processes; b) the regulator be expressly empowered to receive, investigate and act on complaints of reprisal, including by referral to the appropriate enforcement agency; and c) reporting channels protect the confidentiality of smaller contractors wherever practicable, recognising that fear of commercial and industrial repercussions is a real deterrent to reporting.	Ryan Rosenlund, Rosenlund Group	Rosenlund page, 6, [29]
Rosenlund recommends that the Guidelines identify procedurally fair consequences for proven non-compliance by every category of Party, including referral to any body with statutory responsibility for entry permits or industrial-law enforcement, so that the code is not experienced by smaller contractors as a one-sided compliance burden.	Ryan Rosenlund, Rosenlund Group	Rosenlund, page 6, [31]

Suggestions	Submission from	Submission Page
Rosenlund recommends the Commission consider measures under which a person who has been convicted of a serious relevant offence, or who has been found after a fair process to have seriously or repeatedly contravened the code or industrial laws on a code-covered project, may be restricted from acting in a code-covered representative or right-of-entry role, with any entry-permit issue referred to the appropriate tribunal or regulator. Where an employer is asked to employ or accommodate a representative in a safety-critical role, the employer should be entitled to apply its ordinary, lawful recruitment and suitability processes.	Ryan Rosenlund, Rosenlund Group	Rosenlund, page 6, [32]
Introduce additional reporting of WHS right of entry to WHSQ and minimum standards to exclude the abuse of generic allegations.	Dean Cameron, Workforce Advisory Lawyers	WAL, page 4
Education and guidance will be the default response to minor or first-instance breaches.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 9

C.12. Guidance, education and implementation support

Suggestions	Submission from	Submission Page
Role-specific guidance and model clauses Require the regulator or administering body to publish plain-English guidance, model clauses and evidence checklists for: a) client agencies; b) head contractors; c) subcontractors; d) consultants; e) suppliers; and f) smaller and emerging businesses. Model clauses should distinguish between compliance with a relevant standard and responsibility for operating the project-wide compliance framework.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC, page 12
The regulator should provide guidance and templates to assist industry, recognising the various levels of capacity and maturity amongst contractors.	Damian Long, Civil Contractors Federation QLD	CCF, page 3
Prior to commencement: • contractors should receive practical guidance; • education and training should be available; • auditing capability should be established; • regulators should have clearly defined responsibilities.	Sandra Atkinson	Atkinson, page 3
The regulator should serve not only an enforcement function but also an education and advisory role. The Property Council also supports industry calls for greater certainty around compliance requirements and practical implementation guidance.	Jess Caire, Property Council of Australia	PCA, page 3
Standard form Workplace Relations Management Plans provided by the regulator would be beneficial.	Albert Smith, Group Managing Director, Universal Cranes	UC, page 3

Suggestions	Submission from	Submission Page
The details of an enforcement mechanism must be made clear by the Commission at the same time it makes any recommendation to Government to establish a Code.	Housing Industry Association	HIA, page 4
The Code should be regularly assessed against measurable outcomes including: • Productivity improvements. • Housing delivery outcomes. • Project cost performance. • Delivery timeframes. • Market competition. • Investment confidence.	Jess Caire, Property Council of Australia	PCA, page 4
Implementation should be accompanied by: • Clear guidance materials. • Industry education programs. • Practical implementation support. • Ongoing consultation with industry stakeholders. • Regular review of the Code's effectiveness.	Jess Caire, Property Council of Australia	PCA, page 5
MEA recommends that implementation of the Code be supported through: • Clear education and communication materials tailored to small businesses; • Practical templates, tools and guidance documents to assist contractors in meeting compliance obligations; • A reasonable transition period for small businesses to allow businesses time to understand and adapt to new requirements; and • Ongoing support mechanisms to assist industry in navigating implementation challenges.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 11
MEA recommends that a formal review be undertaken within two to three years of commencement.	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 10
For small contractors the educative and advisory functions are as important as enforcement.	Ryan Rosenlund, Rosenlund Group	Rosenlund, page 5, [28]

C.13. Transitional arrangements

Suggestions	Submission from	Submission Page
The prohibitions on enterprise agreement content should not apply to an enterprise agreement made before the Code and Guidelines commence, provided the agreement has not passed its nominal expiry date.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 5
Contractors on projects awarded before commencement, for which a Workplace Relations Management Plan (WRMP) would be required, should be afforded three (3) months from commencement to prepare and provide a WRMP. It should further be made clear that compliance with an enterprise agreement made before the Code commenced does not of itself constitute non-compliance with a WRMP.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 5

Suggestions	Submission from	Submission Page
Transitional arrangements should be put into place to enable employers with non-expired agreements to be able to tender for work. The Guidelines should ensure that: • Enterprise agreements made prior to the commencement date of the Guidelines do not result in non-compliance with the Guidelines, until at least the nominal expiry date of the agreement; and • Where a particular site practice is mandated by a provision in an enterprise agreement made prior to the commencement date of the Guidelines, such site practice does not result in non compliance with the Guidelines until at least the nominal expiry date of the agreement.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 3
Once the terms of the Guidelines are finalised and published, at least three months' notice should be given of the commencement date to enable time for contractors to be advised of the requirements and to implement the necessary systems to ensure compliance.	Innes Willox and Brent Ferguson, Australian Industry Group	AIG, page 3
That the Commissioner recommend the reintroduction of a Queensland code of practice for the building and construction industry administered by an independent regulator, settled before the next enterprise agreement bargaining round concludes, with the model Workplace Relations Management Plan and subcontractor guidance published at the same time the code is made, and with contracts already on foot unaffected.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA page 4; AMCA page 10
That compliance be assessed against practice rather than against the text of an industrial instrument, consistent with the definition of Workplace Arrangement, so that a contractor whose enterprise agreement was made before the code was published is not excluded from tendering where its practices comply.	Benjamin Fogerty, Air Conditioning and Mechanical Contractors Association of Australia	AMCA page 4; AMCA page 10
Implementation should allow sufficient time for industry to prepare.	Sandra Atkinson	Atkinson, page 3
Rosenlund recommends that the Guidelines state expressly that eligibility for code-covered work depends on the compliance of the Workplace Arrangements a tenderer will give effect to, whenever those arrangements were made; that no blanket grandfathering apply; and that a defined transition period be allowed for existing arrangements to be brought into compliance, following the approach of the former Commonwealth Building Code 2016.	Ryan Rosenlund, Rosenlund Group	Rosenlund, page 7, [34]

C.14. Drafting considerations and regulatory alignment

Suggestions	Submission from	Submission Page
Avoid overlap or duplication in regulation or the role of regulators.	Peter Colacino, Australian Constructors Association	ACA, page 4
Commonwealth equivalence mechanism Include a mechanism allowing equivalent Commonwealth plans, audits, declarations and evidence to satisfy Queensland requirements where the underlying obligation is materially equivalent.	Narelle Hinchcliffe, NHC Infrastructure Consulting	NHC page 11; NHC page 13
Clarification should be provided (regarding section 2.4, Draft Guidelines) as to the reach of the independent regulator to private projects so that the standards of union behaviour are consistently applied across Queensland, without duplicating the functions of existing regulators that effectively cover private projects.	Michael Hopkins, Master Builders Queensland	Master Builders, page 9

Suggestions	Submission from	Submission Page
The Commission should delay any recommendation to the Queensland Government until after the Commonwealth work has progressed. Alternatively, any such recommendation should be expressly conditioned on the Queensland Government obtaining and publishing current advice on how the instrument reconciles with current and prospective Commonwealth building code settings, to avoid Queensland entrenching a broader or divergent regime to which industry will be subject.	Housing Industry Association	HIA, page 1; HIA, page 3-4
Further clarity is required regarding the interaction between the proposed independent regulator (the Building Construction Compliance Branch (BCCB)) and existing bodies such as the Office of Industrial Relations (OIR) and the Queensland Building and Construction Commission (QBCC).	Georgia Holmes and Kate Raymond, Master Electricians Australia	MEA, page 9
The WHS Right of Entry legislation should be amended to provide WHSQ and QPS the ability to give a move-on order to Entry Permit holders from a particular construction site.	Dean Cameron, Workforce Advisory Lawyers	WAL, page 4
Section 3.4 – independent contractors: The QMCA is supportive of the need for employment flexibility, particularly with the use of independent contractors and labour hire; however, would caution that this clause does not fall foul of recently introduced Federal legislation such as "*Same Job Same Pay*" laws. The QMCA would like to see an inclusion of a blanket ban on "*subbie Jump-up clauses*".	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9
Clause 10.1 of the Guidelines requires the BCCB to "*liaise with relevant Commonwealth and other government agencies, including Fair Work Building and Construction*". The QMCA submits that the Fair Work Building and Construction Agency were abolished in 2016, and the Guidelines should be updated accordingly.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 9
Flexible, inclusive workplaces – The drafting of the Code should focus on (amongst other things) working arrangements which prioritise inclusion, diversity and time for life as set out in the Construction Industry Culture Taskforce Culture Standard.	Peter Colacino, Australian Constructors Association	ACA, page 2
The capitalised term "*National Code*" is used throughout the Guidelines. It appears to be a defined term introduced at clause 2.5, although Counsel Assisting has removed that clause and thereby rendered the term obsolete. To avoid confusion, the QMCA recommends that references to the "*National Code*" be removed from the Guidelines in their entirety. Clause 4(f) of the Guidelines incorrectly references the *Work Health and Safety Act 2001* (Qld). The QMCA submits that this should be '*2011'* and recommends the Guidelines be corrected accordingly.	Andrew Chapman, Queensland Major Contractors Association	QMCA, page 8
Many major enterprise agreements covering Queensland construction work have nominal expiry dates falling between July 2026 and July 2027 (as demonstrated by Annexure 1 to Counsel Assisting's submission). Master Builders recommends that the code include a transitional provision to the following effect: *Sections 3 and 4 of these Guidelines do not apply to a party in respect of an enterprise agreement made before the commencement of these Guidelines until the earlier of:* a) *the nominal expiry date of that enterprise agreement; or* b) *twelve months after the commencement of these Guidelines.*	Michael Hopkins, Master Builders Queensland	Master Builders, page 15

Suggestions	Submission from	Submission Page
Master Builders submits that section 2.5 be strengthened by adding: *For the avoidance of doubt, a party does not breach these Guidelines by complying with the terms of an enterprise agreement that has been approved by the Fair Work Commission in accordance with the Fair Work Act 2009 (Cth), provided that the party has not directed, facilitated, or procured the inclusion of the relevant term for the purpose of circumventing these Guidelines.*	Michael Hopkins, Master Builders Queensland	Master Builders, page 16

ANNEXURE D:

Recommended Code



~~Implementation Guidelines to~~ The Queensland Code of Practice for the Building and Construction Industry

[insert date]

~~Implementation Guidelines to~~ The Queensland Code of Practice for the Building and Construction Industry

Contents

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1. Introduction

The Queensland Code of Practice for the Building and Construction Industry (the **Queensland Code**) ~~was published in [insert date]. The Code~~ outlines the Government's expectations for the principles and standards of behaviour to be observed within the building and construction industry in Queensland.

~~The Queensland Code provides for the development of Implementation Guidelines (**Guidelines**) to expand on the priorities and objectives of the Queensland Code~~ The ~~following Guidelines have~~ Queensland Code has been developed to assist effective workforce management at all levels of the building and construction industry. ~~that achieves the objectives of the Queensland Code~~ In particular, ~~these Guidelines~~ the Queensland Code supports:

- **Proactive management of workplace relations.**
  Workplace relations practices shall ensure the strict rule of law applies so all parties are protected from unlawful conduct.
- **Cost efficiency and productivity**
  Projects are to be delivered on time and within budget with real value for money for the Government and the Queensland taxpayer.
- **Workplace Health and Safety and Rehabilitation**
  Parties shall achieve and maintain high standards in workplace health and safety and rehabilitation management and practices.
- **Innovation and continuous improvement**
  Parties are to demonstrate a commitment to innovation and continuous improvement in workplace and workforce management practices at the enterprise and project levels, and in the industry generally.

~~These Guidelines~~ This Code reflects the Queensland Government's commitment to greater flexibility, innovation and productivity within the State's building and construction industry to ensure that the Queensland Government maximises taxpayer value-for-money on publicly funded building and construction projects.

2. Application and Scope

2.1 Application

~~These Guidelines~~ The Queensland Code shall apply from [insert date] to all publicly funded building and construction work, as defined in section 11, exceeding [insert] million in value that is the subject of an expression of interest or request for tender by the Queensland Government.

For the purposes of the application of the requirements of Section 5 (the requirement to provide a Workplace Relations Management Plan), publicly funded building and construction work shall mean:

a) **building construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding [insert].

b) **road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding [insert].

Subject to section 2.1A, from [insert date], all parties and related entities must comply with ~~these Guidelines~~ the Queensland Code from the date on which that party first expresses an interest in, tenders for, or enters into a contract to perform public building and construction work to which ~~these Guidelines~~ the Queensland Code applies ~~apply~~.

2.1A Olympic Infrastructure

From [insert date] all parties and related entities who have entered into a contract for, or who have tendered for and remain in contention to be awarded a contract for, Olympic Infrastructure must comply with the Queensland Code.

2.2 Contract documentation and project management procedures

Client agencies and head contractors are responsible for ensuring the application of, and compliance with, ~~these Guidelines~~ the Queensland Code by:

- ensuring that compliance with ~~these Guidelines~~ the Queensland Code is an integral component of their contract management systems and procedures; and
- all expressions of interest, tender and contractual documents clearly set out the requirements specified in ~~these Guidelines~~ the Queensland Code.

While the form of wording may vary according to the contract form and the type of service supplied, the relevant contractual documents must incorporate a warranty by the head contractor, subcontractors, other contractors, consultants and/or related entities (as applicable) to comply with all aspects of the Queensland Code ~~and these Guidelines~~.

Relevant contractual documents must also incorporate the consent of the head contractor, subcontractors, other contractors, consultants and/or related entities (as applicable) to allow Building Construction Compliance Branch (**BCCB**) officials and other Queensland Government authorised personnel to:

- inspect any work, material, machinery, appliance, article or facility;
- inspect and copy any record or document relevant to the project; or

- interview any person, as is necessary to demonstrate compliance with the Queensland Code ~~and these Guidelines~~.

Head contractors will be required to ensure that their subcontractors consent to and allow BCCB officials and other Queensland Government authorised personnel to monitor and investigate compliance as indicated in ~~these Guidelines~~ the Queensland Code through relevant contractual provisions and documentation.

2.3 Notification of any threatened, impending, possible or probable, or actual unlawful industrial conduct.

Head Contractors and consultants undertaking work covered by the Queensland Code ~~and these Guidelines~~ must notify the Director, BCCB and the client agency of any threatened, impending, possible, probable or actual unlawful industrial conduct or breach of ~~these Guidelines~~ the Queensland Code within 24 hours of becoming aware of the threatened, impending, possible, probable or actual unlawful conduct or breach.

Parties with an obligation under the Queensland Code ~~and Guidelines~~ will also be required to provide the BCCB with advice of their response (actual and/or proposed) to the threatened, impending, possible, probable or actual unlawful industrial conduct or remedy to the breach as soon as practicable after becoming aware of the threatened, impending, possible, probable or actual unlawful industrial conduct or remedy to the breach.

2.4 Scope

A party interested in performing public building and construction work is expected to strictly comply with ~~these Guidelines~~ the Queensland Code from the date that party first expresses interest in, tenders for, or enters into a contract to perform public building and construction work to which ~~these Guidelines~~ the Queensland Code ~~apply~~ applies. A party will also be required to comply with Sections 3, 4, 7, 8 and 9 of ~~these Guidelines~~ the Queensland Code (except where expressly exempted) when undertaking privately funded building and construction work in Queensland where expressions of interest or tenders are called for after [insert date]. To avoid doubt, the Queensland Code applies in respect of a party's privately funded work from this time.

~~These Guidelines apply~~ The Queensland Code applies solely to parties who participate in on-site activities.

~~These Guidelines are~~ The Queensland Code is intended to apply to all forms of procurement methods including but not limited to: traditional fully documented/lump sum contracts, public private partnerships (**PPPs**), alliance contracts, managing contractor arrangements -design and construct (**D&C**); construction management procurement method and any other project funding arrangements or other procurement methods that may be introduced from time to time to reflect changes in Queensland Government contractual and delivery practices.

To achieve the objectives of ~~these Guidelines~~ the Queensland Code outlined in section 1, a party must require and actively ensure compliance with ~~these Guidelines~~ the Queensland Code by any party with whom it contracts, or enters into an arrangement, to undertake public building and construction work.

A client agency may seek to waive elements of ~~these Guidelines~~ the Queensland Code, but only in exceptional circumstances where it is considered in the public interest to do so. In instances where waiver is sought, the client agency chief executive officer must fully document the reasons for seeking the waiver and submit these to the Responsible Minister for consideration. Following a request from the Responsible Minister, the [insert the appropriate Minister] may either approve or not approve the waiver.

Related entities of any party that first expresses interest ~~for~~ in, tenders for, or enters into a contract to perform public building and construction work are also required to comply with ~~these Guidelines~~ the Queensland Code in respect of any building and construction work they undertake in, or connected with, Queensland.

An entity is a related entity of a tenderer if it is engaged in building and construction work and:

- the entity is connected with the tenderer as defined below; or
- it is a body corporate which is related to the tenderer as defined below.

Connected means the entity:

a) can control, or materially influence, the tenderer's activities or internal affairs; or

b) has the capacity to determine or materially influence the outcome of the tenderer's financial and operating policies; or

c) is a member of the tenderer; or

d) is financially interested in the tenderer's success or failure or apparent success or failure.

Related means the body corporate—within the meanings in the *Corporations Act 2001* (Cth):

a) is a holding company of the tenderer; or

b) is a subsidiary of the tenderer; or

c) is a subsidiary of a holding company of the tenderer; or

d) has one or more directors who are also directors of the tenderer; or

e) without limiting the above, controls the tenderer.

~~2.5 Relationship with the Federal Building Code [insert date]~~

~~The Commonwealth Government issued the Building Code 2013 (the National Code) effective from 1 February 2013. The National Code is a statutory instrument pursuant to s.27(1) of the Fair Work (Building Industry) Act 2012 (Cth).~~

~~These Guidelines support the Queensland Code of Practice for the Building and Construction Industry. and are to be interpreted in a manner that ensures that they do not contravene the National Code.~~

2.5 Relationship with the *Fair Work Act 2009* (Cth)

a) ~~These Guidelines~~ The Queensland Code does ~~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~~ the Queensland Code, or a party's compliance with any provision of ~~these Guidelines~~ the Queensland Code, would, but for this Section ~~2.6~~ 2.5, 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~~ the Queensland Code considers that a provision of ~~these Guidelines~~ the Queensland Code would, but for this Section ~~2.6~~ 2.5,

   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.

d) Without limiting the generality of paragraphs (a) and (b) above, if the BCCB considers at any time that a provision of ~~these Guidelines~~ the Queensland Code would or may, but for this Section ~~2.6~~ 2.5, require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth), the BCCB may issue (and may modify or withdraw from time to time) a Practice Direction declaring the extent to which and the circumstances in which the relevant provision is inoperative while the Practice Direction is in force, and the relevant provision is inoperative and is to be disregarded accordingly.

e) For the avoidance of doubt, if a party acts in reliance on a Practice Direction issued by the BCCB, conduct undertaken in such reliance does not constitute non-compliance with the ~~Guidelines~~ Queensland Code.

f) Parties are not required to notify the BCCB under paragraph (c) in relation to provisions of the ~~Guidelines~~ Queensland Code where the BCCB has issued a Practice Direction specifying that the provision is inoperative in the relevant circumstances.

3. Legal and Related Obligations

3.1 Legal obligations relating to employment

As a minimum, a party must comply, and demonstrate ~~past~~ compliance required by ~~these Guidelines~~ the Queensland Code, with all applicable:

- legislation
- court and tribunal orders, directions, and decisions; and
- industrial instruments.

An industrial instrument is an award or agreement, however designated, that:

- is made under or recognised by an industrial law; and
- concerns the relationship between an employer and the employer's employees.

Where a party cannot demonstrate ~~past~~ compliance required by ~~these Guidelines~~ the Queensland Code, consideration will be given to the extent of non-compliance and the capacity for future compliance.

3.2 Practices designed to avoid compliance with legal obligations

A party must not enter into, participate in, or facilitate arrangements or practices designed to avoid its own legal obligations, or the legal obligations of others. Without limiting the foregoing, this includes arrangements or practices:

- that are sham contracting arrangements;
- that are designed to avoid or circumvent strike pay obligations;
- that are designed to avoid or circumvent strict conformance with their right of entry requirements in accordance with applicable legislation; or
- that undermine freedom of association.

When undertaking building and construction work, contractors must implement on-site practices and procedures which:

- ensure proactive management of industrial relations for compliance with the objectives of the Queensland Code ~~and these Guidelines~~;
- encourage cost efficiency and productivity
- provide workplace health, safety and rehabilitation management and practices;
- promote innovation and continuous improvement.

3.3 Unregistered written agreements

A party must not enter into an unregistered written agreement with any third party or parties. An unregistered written agreement is an individual or collective agreement that has not been certified, registered, lodged or otherwise approved under an industrial law, but is concerned with the relationship between an employer and its employees and/or registered or unregistered industrial association.

However, it does not include common law agreements made between an employer and an individual employee.

3.4 Independent contractors

Genuine independent contractors undertake a legitimate form of work on Queensland Government building and construction sites and must not be discriminated against.

Arrangements that constrain or otherwise constrict the use of independent contractors and the terms of their engagement are inconsistent with the ~~Guidelines~~ Queensland Code.

This includes terms of an enterprise agreement that (in effect) requires a contractor to ensure where it engages subcontractors, that these subcontractors and their employees will receive terms and conditions of engagement (or terms no less favourable) as they would receive if they were engaged as employees of the head contractor.[1]

4. Workplace Arrangements

The Queensland Code ~~stipulates~~ requires that workforce management will ensure workplace health and safety; industrial relations; training and skill development are integrated within the organisational procedures, practices and performance standards of the organisation.

Effective workforce management at all levels of the construction industry is a key contributor to achieving the key priorities and objectives of the Queensland Code. The Queensland Government is committed to continuous improvement by ensuring service providers achieve an effective workforce-management focus at the enterprise and project levels and in the industry generally.

The following Workplace Arrangements, however described or implemented, are inconsistent with the requirements of the ~~Guidelines~~ Queensland Code:

a) Parties are prohibited from applying direct or indirect coercion or pressure on another party to make over-award payments. Further, no contractor or consultant is allowed to unduly influence, enter into any agreement, or issue a contract, subcontract or industrial instruction that directly or indirectly binds or otherwise pressures or coerces another party into making over-award payments.

b) Payments to industry superannuation, redundancy and income protection funds which provide for contributions in excess of award and legislative requirements are prohibited ~~are matters to be~~ unless decided by each employer subject to applicable legislation.

c) Provisions should not require, or have the effect of coercing or pressuring, any third party including labour-hire firms or group apprenticeship schemes or similar providers to set particular terms and conditions, including the making of an over-award payment.

[1] Agreements that invoke an 'average' of wages from enterprise agreements other than the agreement of the head contractor would also be inconsistent with the Queensland Code ~~these guidelines~~.

d) Parties are prohibited from requiring or attempting to unduly influence another party to have particular Workplace Arrangements in place. This includes, but is not limited to, the imposition, or attempted imposition, of a requirement for a contractor to apply project-specific wages and conditions. It is the responsibility of a contractor to negotiate with its employees the form and content of their Workplace Arrangements free of any coercion or undue influence. Provisions that impose a site allowance by the head contractor will be non-compliant with the Queensland Code ~~and these Guidelines~~.

e) Parties shall not negotiate or implement Workplace Arrangements that restrict the efficient performance of work or contain provisions that restrict productivity improvement. Without limiting the foregoing, the following will be non-compliant with the Queensland Code ~~and these Guidelines~~ if the Workplace Arrangement, is not otherwise required by a relevant Commonwealth or state law:

i) no ratios of employees. A Workplace Arrangement must not prescribe or limit the number of employees or workers a company may engage on a particular site or work area, or within their company in general. This includes references to permanent, temporary and casual employees, or the source of labour a company may engage;

ii) no one-in-all-in arrangements. A Workplace Arrangement must not allow for situations where one-in-all-in practices occur, such as in relation to overtime;

iii) no last on, first off clauses. A Workplace Arrangement must not contain selection criteria for redundancy that ignore the employer's operational requirements, such as last on, first off clauses. Similarly, an industrial instrument should not contain clauses that determine redundancy solely by reference to the seniority of employees, or by reference to the engagement of other sources or types of labour;

iv) no restrictions on labour. A Workplace Arrangement must not contain a provision that restricts an employer's short or long-term labour requirements (including casual labour; part-time labour; labour hire or the source of labour etc) nor provisions that stipulate the terms and conditions for the labour of any person not a party to the industrial instrument. Accordingly, a Workplace Arrangement must not include provisions that require an employer to ~~consult or~~ seek the approval of a third party to the employment relations (such as a union) over the number, source, type (for example casual, contract) or payment of labour required by the employer; and

v) no prohibiting of all-in payments. A Workplace Arrangement must not preclude the employer from making all-in payments. For this purpose, all-in payments mean payment to an employee for work done that is made on an hourly, daily or weekly basis and which is in lieu of payment for all or some entitlement specifically provided for by legislation or awards, such as annual leave loading or overtime. A payment to a subcontractor is not an all-in payment for the purpose of this definition. All-in payments are not to include statutory obligations, such as superannuation contributions. Arrangements where the intended outcome is to avoid employer/ employee obligations are illegal and inconsistent with ~~these Guidelines~~ the Queensland Code.

vi) no restrictions on the arrangements of rostered days off (RDOs). A Workplace Arrangement must not prevent an employer from substituting an RDO for another day.

f) No relaxation of the right of entry provisions for officials of industrial organisations. A Workplace Arrangement must not seek to relax or circumvent the legislative provisions or processes in relation to the right of entry for officials of industrial organisations and/or provide for a person or entity that is not a party to the instrument to monitor its operation. For this purpose, any reference in an industrial instrument to right of entry must provide for entry in the same terms as Part 3-4 of the *Fair Work Act 2009* (Cth) and/or any relevant and applicable Queensland legislation. These procedures govern access to employer and employee records and/or the holding of discussions with employees. Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to have access to employer and employee records and/or the holding of discussions with employees, and/or the exercise of a right of entry under the *Work Health and Safety Act 2011* (Qld) are inconsistent with ~~these Guidelines~~ the Queensland Code. Any breaches of this requirement may be deemed a significant breach of the contract.

g) An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code ~~and these Guidelines~~. This is not intended to prevent a contractor from monitoring in respect of a subcontractor.

h) No 'standing' authorisation to cease work. A Workplace Arrangement must not provide an entitlement for employees to take paid time off to attend union activities (subject to modern award and legislative obligations).

i) A Workplace Arrangement that attempts to negate or render ineffective the application of the Queensland Code ~~and these Guidelines~~ is inconsistent with ~~these Guidelines~~ the Queensland Code.

j) An industrial instrument must not make provision for project agreements to apply in whole or in part, other than for major contracts as defined by the client. (See Section 6 for further details on project agreements.)

k) If an industrial instrument provides for a site allowance (howsoever described), the amount of the allowance must be specified in the industrial instrument, or the instrument must contain an objective and predictable method of determining the allowance amount.

l) A Workplace Arrangement must not provide for non-working workplace delegates.

5. Cost, efficiency and productivity

~~The Queensland Code states that key~~ Key contributors to quality and value for money outcomes in the building and construction industry are an improved workplace and management culture, better employer and employee relationships, and improved industrial relations planning and management.

All parties must ensure their tenders or expressions of interest strictly comply with the Queensland Code ~~and Guidelines~~.

5.1 Obligations in Expressions of Interest or tender response

The requirement to provide a Workplace Relationship Management Plan (**WRMP**) as specified in this section will apply to:

a) **building construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding [insert].

b) **Road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding [insert].

The requirement to provide a WRMP does not extend to future privately funded building and construction work or to publicly funded building and construction work under the aforementioned threshold although the tenderer is encouraged to adopt a WRMP to meet the obligations of ~~the Guidelines~~ the Queensland Code.

The WRMP must address the following matters:

a) Sourcing of labour requirements (e.g. trade packages, direct employees, labour hire, apprentices)

b) how Workplace Arrangements will be regulated, including the provision of any industrial instruments;

c) how the head contractor will ensure subcontractors will comply and remain in compliance with the Code ~~and Guidelines~~;

d) engagement of the required labour including, but not limited to, selection processes for engaging contractors, apprentices and other labour procurement arrangements; reference checks and inductions;

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;

f) utilisation of major plant and equipment and the minimisation of unproductive time;

g) approach to relationship management with employees, employee representatives and/or unions including, but not limited to, the approach and process for communicating and consulting with the workforce;

h) approach to the use and engagement of labour hire;

i) approach to managing third party site access;

j) approach to ensuring compliance with statutory workplace rights including, but not limited to, freedom of association, freedom from unlawful coercion and freedom from unlawful discrimination;

k) approach to performance and conduct management of labour (e.g. disciplinary process to be applied);

l) identification of industrial relations risks in relation to the project and details as to the proposed approach to managing those risks, including but not limited to, the following:

   i. approach to dispute resolution;

   ii. approach to dealing with demarcation disputes;

   iii. response to industrial action (both threatened, impending, probable and actual, lawful and unlawful; protected and unprotected) including in respect of subcontractors;

   iv. approach to management of disputes in relation to rights of entry; and

   v. approach to minimising lost time or limitations due to industrial disputes.

m) approach to the management of subcontractors, outlining:

   i. the measures to be taken to select subcontractors who have the skills, capacity and resources to comply with legislative requirements, employment obligations and the WRMP (to the extent relevant);

   ii. contractual conditions to be imposed on subcontractors to ensure they comply with legislative requirements, employment obligations and the WRMP (to the extent relevant);

   iii. how dealings with subcontractors and other contractors are to be managed including, but not limited to, identification of representatives and methods for engaging with those representatives; and

   iv. how subcontractor compliance with the workplace relations requirements will be monitored and enforced

n) Be able to demonstrate how it will:

   i. achieve the objectives of the Queensland Code ~~and these Guidelines~~ on the project; and

   ii. deliver the project on time and within budget.

   For example, a tenderer must be able to demonstrate how the objectives of the Queensland Code ~~and these Guidelines~~ relating to costs and improved efficiency and productivity can be met in the context of any of the following (if applicable to the tenderer):

   1. restrictions on when work can be performed, such as mandated or fixed rostered day off schedules and one-in-all-in arrangements;

   2. the potential for unexpected costs or increased costs during the life of a project, such as site allowances which are not quantifiable at the time of contracting;

3. adoption of a pattern agreement to a project or an industry and which has terms and conditions that are not specific to, or reflect, the needs of the enterprise; and
4. impositions or restrictions on the engagement and/or utilisation of labour.

o) Demonstrate that it has a track record of delivering construction projects on time and within budget. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such objectives in the future.

   For example, where a tenderer has failed to deliver construction projects on time and within budget in the past as a result of industrial relations matters, that tenderer must be able to identify:

   i) the reasons for the failure; and

   ii) the steps it has taken to address those matters for future projects.

p) Demonstrate that it has a track record of adopting efficient and productive work practices. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such objectives in the future.

q) Demonstrate what Workplace Arrangements a contractor will institute to provide improved productivity and/or cost outcomes as against a BPIC Arrangement that a contractor was or is subject to upon entering into the Workplace Arrangements.

r) Measures to support the recruitment and retention of women.

A model WRMP is available at [insert link].

5.2 Contractor obligations

A successful contractor must:

- Comply with its WRMP.
- Act in accordance with its tender response.
- Require compliance with these matters set out above by any party with whom it contracts, or enters into an arrangement, to undertake public building and construction work, to the extent applicable to that party.
- Comply with any reasonable request for access and information from the BCCB or other authorised Government officer.
- Submit to and cooperate with any investigation process by the BCCB or other authorised Government officer on any matters pertaining to compliance with the Queensland Code ~~and Guidelines~~, including investigations into claims made by a contractor as to its ability to comply with the Queensland Code ~~and Guidelines~~.

6. Project Agreements

The Queensland Code prohibits Project Agreements.

Project Agreements are Workplace Arrangements that seek to dictate terms and conditions for all employers on a project and therefore prevent an employer and its employees from agreeing to different terms and conditions that may suit their arrangements on that project.

This prohibition is not intended to restrict the use of single enterprise project-specific greenfields agreements under the *Fair Work Act 2009* (Cth).

~~The Queensland Code provides that certified agreements, project agreements and multi-employer agreements can provide scope for employers and their employees to improve working conditions and gain a competitive edge by ensuring value for money and quality outcomes. Parties are encouraged to make certified agreements appropriate to their circumstances.~~

~~*This section does not apply to privately funded building and construction work.*~~

~~Project agreements on public building and construction projects may only be considered for major contracts as defined by the client. Consideration of a project agreement will be at the discretion of the client agency. Other than in exceptional cases, project agreements will not be permitted on projects worth less than $100 million.~~

~~In relation to public building and construction work, the client must not agree to project agreements or project awards unless there is a clear and demonstrable benefit to the Queensland Government in doing so and the use of a project agreement is approved in advance by the Attorney-General on the recommendation of the Responsible Minister. Approval for the use of a project agreement rests with the Attorney-General.~~

~~In deciding whether to seek [insert approving Minister] approval for the use of a project agreement, the following must be considered:~~

- ~~the degree of commitment demonstrated by the parties to the proposed agreement to improving productivity and workplace relations;~~
- ~~the form of improved time or cost performance compared to what might reasonably be expected in the absence of a project agreement; and~~
- ~~past performance and the parties' history of maintaining strict compliance and abiding by agreements.~~

~~The client agency Chief Executive Officer is accountable for decisions to seek approval of a project agreement and must state the reasons for seeking approval for such an agreement in writing to the responsible Minister. The reasons must satisfy the public interest and include objective and detailed grounds and clearly demonstrate the benefit to the project and the Queensland Government.~~

~~Subcontractors must be involved in the process of developing a project agreement before it is finalised.~~

7. Dispute settlement, industrial action, strike pay and payments~~2~~

The Queensland Code ~~provides~~ requires that

- all parties are required to make every effort to resolve grievances or disputes with their employees and applicable unions at the enterprise level, in accordance with the procedure outlined in the relevant award or workplace arrangements.
- the client of the head contractor shall be advised during the progress of the work, and at the earliest opportunity within 24 ~~hrs~~ hours, of any industrial relations or WH&S matter which may have an impact on the construction program, the head contract, other related contracts or project costs.
- no payment shall be made to employees for time spent engaged in industrial action, unless payment is legally required or properly authorised by an industrial tribunal (where this is permitted by relevant industrial legislation).
- No payments, commissions, gratuities or similar payments shall be made directly or indirectly by any contractor or their representatives to a union delegate, union official, union representative or agent or to any union-controlled account or fund however described, for any reason. Payment of any monies is a breach of ~~these guidelines~~ the Queensland Code.

7.1 Dispute Settlement

Grievances or matters under dispute are to be dealt with at the workplace between the appropriate level of management, employees and where applicable, union representatives.

Agreements should contain arrangements providing graduated steps for discussion of disputes involving higher levels of authority to which the matter in dispute can be referred if it cannot be resolved.

[2] ~~This section replaces Section 5.3.2 of the Queensland Code of Practice for the Building and Construction Industry.~~

Reasonable time limits should be allowed for each stage of relevant dispute settlement processes. While dispute settlement procedures are being followed the parties are to ensure that:

- industrial action does not occur;
- the circumstances that existed prior to the dispute prevail; and
- work continues as normal without detriment to any of the parties.

Dispute settlement provisions must allow an employee to have freedom of choice in deciding whether to be represented, and, if so, by whom. Accordingly, dispute settlement provisions must allow for an employee to raise an issue either directly with their employer or through a representative of their choice.

An enterprise agreement may contain its own dispute settlement process that gives a third party the ability to arbitrate or otherwise impose an outcome to settle the dispute. In such cases, the clause must contain an express limitation that any outcome determined by the third party cannot be inconsistent with the Queensland Code ~~and these Guidelines~~ or inconsistent with legislative obligations.

Where a dispute relates to WH&S issues, the procedures contained in the relevant WH&S legislation shall be strictly followed. Parties must take all reasonable steps to resolve grievances or disputes at the enterprise level at the earliest opportunity, in accordance with the procedures outlined in the relevant industrial instrument or other workplace arrangement. Any time lost through industrial action, either lawful or unlawful, and/or through any WH&S matter or purported WH&S matter must be reported to the BCCB as soon as practicable or within 24 hours of the commencement of the lost time.

The head contractor must report any grievance or dispute, including any threatened~~, possible probable~~ or impending dispute, relating to workplace relations or WH&S matters (purported or otherwise) that may impact on project costs, related contracts or timelines to the BCCB and the client agency within 24 hours of it becoming aware of the grievance or dispute. The head contractor must provide regular updates to the BCCB and the client agency about the steps being taken to resolve such grievances or disputes.

The head contractor must implement procedures to enable such reporting to occur at the earliest opportunity. All lost time information as a consequence of lawful and unlawful industrial conduct must be accurately recorded and provided to the BCCB and client agency on a timely basis.

7.2 Industrial Action

Parties must take all reasonable steps to resolve industrial action which adversely affects, or has the potential to adversely affect, the delivery of a project or other related contracts on time and within budget.

Contractors must report any threatened or actual industrial action that may impact the project, project costs, related contracts or timelines to the BCCB and the client agency as soon as practicable and within 24 hours of the threatened or actual industrial action. The contractor must provide regular updates to the BCCB and the client agency about the steps being taken to resolve the threatened or actual industrial action.

Contractors must take all steps reasonably available to them to prevent or bring to an end unprotected industrial action occurring on, or affecting the project, including by pursuing legal action where possible. Contractors will be required to use their best endeavours to pursue legal remedies to protect their rights and obligations under the Queensland Code ~~and Guidelines~~. A failure to instigate appropriate legal remedies may be considered to be a breach of the ~~Guidelines~~ Queensland Code.

Contractors must also report any request by any industrial organisation or their representative for payment of any kind in relation to a threatened, impending, possible, probable or actual industrial dispute.

7.3 Reporting of Misconduct

Where a contractor becomes aware of Misconduct it must report such Misconduct to the BCCB within 24 hours of it becoming so aware.

For this purpose, Misconduct means:

- any act (or threat of) or omission that amounts to abusive, blackmailing, bribing, bullying, corrupt, criminal, harassing, inflammatory, intimidatory, menacing, misogynistic, offensive, threatening, uncooperative, unlawful, violent or otherwise morally reprehensible behaviour, and without limitation to the above, also includes any scheme or arrangement designed to circumvent any law.

8. Workplace health and safety and rehabilitation

~~Consistent with the National Code,~~ The Queensland Code provides that workplace health and safety obligations must be actively addressed by all industry participants.

All parties must meet their WH&S obligations according to relevant laws.

8.1 Achievement of the workplace health and safety objectives of the Queensland Code ~~and these Guidelines~~

A tenderer must have policies and practices and be able to demonstrate how they will achieve the objectives of the Queensland Code ~~and these Guidelines~~ in relation to workplace health, safety and rehabilitation including how it will promote the highest standards of safety practice in the industry.

8.2 Effective workplace health and safety risk management

A tenderer must have policies and practices and be able to demonstrate:

- detailed risk management processes that can be applied to both the design and construction phases of the project;
- processes for reviewing, updating and communicating the WH&S and Rehabilitation Management Plans
- a documented 'Fit-for-Work' policy and procedures applicable on all projects.[3]
- provision of adequate WH&S and rehabilitation resources during the project, including human resources, financial resources and technical resources;
- emergency response and incident management processes, including identification of personnel with specific responsibilities and proposed engagement with emergency services prior to and during the project;
- processes for the preparation and communication of task specific safety procedures (e.g. SWMSs), including sample procedures for addressing high risk construction activities (e.g. work at heights);
- processes for ensuring all persons working on the project receive necessary information and training, including general induction training, site induction training and task-specific training;
- reporting and investigation of incidents resulting in (or with the potential to result in) personal injury and property damage;
- strict adherence to lawful right of entry provisions;
- appropriate WH&S and rehabilitation performance monitoring, auditing and reporting processes for the project, including frequency and responsible personnel;

[3] A framework for alcohol and drug management in the workplace is available at [insert link].

- appropriate systems for case management and rehabilitation of injured workers;
- appropriate record-keeping and document management systems.

A tenderer must be able to demonstrate that it has a track record of delivering construction projects safely. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such a track record in the future.

For example, where a tenderer has failed to deliver construction projects safely in the past, that tenderer must be able to identify:

- the reasons for the failure; and
- the steps it has taken to address those matters for future projects.

8.3 Commitment of senior management to safety

A tenderer must have policies and practices that demonstrate its senior managers are proactively involved in, and committed to, achieving safety objectives and improving safety outcomes on the project.

Such commitment may be demonstrated by:

- recognition under the Queensland Government prequalification systems and/or WH&S Queensland's Zero Harm at Work Program;
- the tenderer's WH&S policy;
- governance structures and reporting requirements that enable senior management to understand and respond to WH&S issues on the project including the identification of WH&S and rehabilitation personnel, WHS and rehabilitation responsibilities and accountabilities and WHS and rehabilitation reporting lines.

8.4 Consultation and issue resolution

A tenderer must have policies and practices and demonstrate how it will engage with other parties about safety on the project and resolve safety issues that arise in order to achieve the objectives of the Queensland Code ~~and these Guidelines~~, including how it will promote the highest standards of safety practice in the industry as well as the delivery of the project on time and within budget.

A tenderer must have a process for each of the following:

- **Consultation with workers and employee representatives,** which addresses: determination of designated work groups, election/training of health and safety representatives, establishment of health and safety committees, agreement on specific roles/rights for Health and Safety Representatives (**HSRs**) and committee members, establishment of WH&S right of entry protocols and the procedural requirements for consultation (e.g. how consultation is to occur – in person, via email, through HSR)
- **Consultation, cooperation and coordination with other stakeholders**, which addresses: transfer of knowledge and information before and during the project, allocation of WH&S roles and responsibilities, collaboration about risk management and emergency response and communication/reporting protocols. Relevant stakeholders may include (depending on the project) other contractors/consultants, residents or occupiers near the project site; utility/asset owners and emergency services;
- **WH&S issue/dispute resolution**, which addresses: reporting of WH&S issues to the tenderer, roles and responsibilities for responding to issues reported, consultation requirements, protocols for involving third parties (including regulators, employee representatives, other stakeholders, independent bodies/experts, etc) and timelines for resolution/escalation; and
- **Engagement with regulatory authorities**, which addresses: proactive engagement and relationship building with relevant regulators; consultation with regulators regarding safety issues and best practice, provision of information regarding the project to regulators and responding to the exercise of regulatory powers and/or enforcement action.

9. Freedom of association and right of entry

~~Consistent with the National Code,~~ Under the *Fair Work Act 2009* (Cth) and the Queensland *Industrial Relations Act* *2016* ~~*1999*~~, all parties have the right to freedom of association. This means that parties are free to join or not to join an industrial organisation of their choice and that they are not to be discriminated against or victimised on the grounds of membership or non-membership of an industrial organisation. A person cannot be forced to pay a fee to an industrial organisation if not a member.

The ~~Guidelines~~ Queensland Code requires:

- All contractors must adopt policies and procedures that promote freedom of association;
- Practices which do not promote freedom of association are inconsistent with ~~these Guidelines~~ the Queensland Code. By way of example, the following practices are inconsistent with ~~these Guidelines~~ the Queensland Code:
  - providing the names of new staff, job applicants, contractors or subcontractors to unions other than as required by law;
  - no ticket, no start signs, show card days or any other similar practices that imply that union membership is anything other than a matter for individual choice;
  - employers unlawfully encouraging or discouraging employees to join a union;
  - using employee representatives, site delegates or other union representatives to administer site induction processes. Administering site induction processes is a responsibility of site management and cannot be delegated. These processes are to be undertaken by site management. Where there is a requirement in any enterprise agreement for employee representatives, site delegates or other union representatives to administer site induction processes, then any such process must be overseen by, and actively involve, site management;
  - discriminating against or disadvantaging elected employee representatives;
  - using forms requiring the employee to identify their union status, or requiring employers and contractors to identify the union status of employees or subcontractors;
  - refusing to employ, or engage, or terminating an employee's employment, because of their union or non-union status;
  - an employer refusing a reasonable request from a workplace delegate to represent an employee or employees in relation to grievances and disputes or discussions with members;
  - the request, threat or imposition, or attempted imposition, of a requirement for any contractor, subcontractor or employer to hire any individual nominated by a union or to employ a non-working shop steward or job delegate. Practices or arrangements which facilitate non-working shop stewards or job delegates are inconsistent with the Queensland Code ~~and Guidelines~~;
  - a requirement by a Union that an employer display Union or other logos, mottos or other signage at the worksite or on property or equipment supplied by an employer; and
  - any requirement that a person pay a bargaining fee, however described, to an industrial association of which he/she is not a member, in respect of services provided by it.
- A Workplace Arrangement must not seek to relax or circumvent the legislative provisions or processes in relation to the right of entry for officials of industrial organisations (see further, part 4 above) and/or provide for a person or entity that is not a party to the instrument to monitor its operation. For this purpose, any reference in an industrial instrument to right of entry must provide for entry in the same terms as Part 3-4 of the *Fair Work Act 2009* (Cth) and/or any relevant and applicable Queensland legislation. These procedures govern access to employer and employee records and/or the holding of discussions with employees. Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to have access to employer and employee records and/or the holding of discussions with employees are inconsistent with ~~these Guidelines~~ the Queensland Code. Any breaches of this requirement may

be deemed a significant breach of the contract.

- An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring for this purpose does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code ~~and these Guidelines~~.
- A Workplace Arrangement that recklessly or deliberately ignores or seeks to undermine the boundaries of union coverage as defined by union rules of membership is inconsistent with ~~these Guidelines~~ the Queensland Code.
- The head contractor must report to the BCCB, ~~the~~ a breach or suspected breach of right of entry by a union within 24 hours of this arising.

10. Queensland Government oversight and administration of ~~these Guidelines~~ the Queensland Code[4]

The Queensland Government and its agencies are committed to the implementation of the Queensland Code ~~and these Guidelines~~. Breaches of the Queensland Code ~~and these Guidelines~~ may result in sanctions being imposed. These may include:

- Commercial sanctions;
- Remedies under the contract;
- Disciplinary action where the breach is by a public sector employee.

Commercial sanctions

Commercial sanctions for breaches of the ~~Guidelines~~ Queensland Code are based on the Government's right as the client to choose with whom they do business. Sanctions will depend on the nature and seriousness of the breach and on any lack of commitment shown to the requirements of the Code. The sanction imposed may involve one or more of the following:

- A formal warning;
- Partial exclusion from tendering for a specified period (i.e. a reduction in the number of tendering opportunities);
- Full exclusion from tendering for any work for an unspecified period;
- Review of prequalification accreditation;
- Publication of the breach.

Contractual remedies

Client agencies may choose to exercise the right to seek remedies under relevant clauses of the contract.

Where it is suspected that the breach of the ~~Guidelines~~ Queensland Code involves an infringement of a law or statute, the matter will be referred to the relevant administering agency. The monitoring of compliance with specific statutory requirements remains the responsibility of the relevant government agencies that administer those requirements.

10.1 Monitoring compliance

~~Attorney-General~~

The [insert the appropriate Minister] has overall responsibility for the implementation and management of ~~these Guidelines~~ the Queensland Code. The ~~Attorney-General~~ [insert the appropriate Minister] will report on performance and incidents of non-compliance with the ~~Guidelines~~ Queensland Code to Cabinet at least annually.

[4] The following section replaces the monitoring and compliance provisions contained in Section 6 of the Queensland Code.

The Building Construction Compliance Branch (BCCB)

The BCCB, within the [insert Department] will have operational responsibility for monitoring compliance with the ~~Guidelines~~ Queensland Code, investigating suspected breaches and reporting non-compliance.

Monitoring activity will include desktop and field audit activities, site visits, site inspections, inspection and copying of any relevant documentation, interviewing relevant stakeholders and post contract review and any other activity that will enable the BCCB to determine a party's compliance or otherwise with the Queensland Code ~~and Guidelines~~.

Where a tenderer is required to submit a WRMP the BCCB will assess the WRMP for compliance with the ~~Guidelines~~ Queensland Code and report to the client agency on its findings.

The BCCB will also:

- promote awareness of the Queensland Code ~~and these Guidelines~~ to all stakeholders through a range of information products and educational activities;
- liaise with relevant Commonwealth and other government agencies~~, including Fair Work Building and Construction,~~ on matters relating to the operation and compliance with the ~~Guidelines~~ Queensland Code;
- make recommendations for sanctions in the event of a proven breach of the ~~Guidelines~~ Queensland Code; and
- make recommendations to further develop the effectiveness of the ~~Guidelines~~ Queensland Code to deliver improved productivity and value for money for publicly funded projects.

The BCCB will respond to reports of alleged breaches of ~~these Guidelines~~ the Queensland Code and conduct audit activity on its own initiative.

The avenues already available to individuals in the private sector who wish to raise issues associated with the performance of government agencies, including representations to government Ministers, Members of Parliament and the Ombudsman are unaffected by ~~these Guidelines~~ the Queensland Code.

The BCCB will provide feedback to the head contractor and client agency as appropriate, including where alleged breaches of the ~~Guidelines~~ Queensland Code are identified.

The BCCB must give the party alleged to have breached the ~~Guidelines~~ Queensland Code an opportunity to make submissions to the BCCB. The BCCB may, or will if requested by a party, liaise with the relevant industry association representing the party alleged to have breached ~~these Guidelines~~ the Queensland Code.

After the party has been given the opportunity to respond to the alleged breach of the ~~Guidelines~~ Queensland Code, the Director, BCCB or delegate will provide a notice of the outcome of the investigation to the party and to the client agency. Notification of any proven breach may be accompanied by a recommendation for any sanction or remedial action. Action in response to the notification, including sanction, is to be timely to ensure the breach is remedied and future breaches are discouraged. Such action is to be reported to the BCCB within 14 days of receipt of the notice of outcome from the Director, BCCB.

Review of a decision made under ~~these Guidelines~~ the Queensland Code

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

The review will be conducted by a person appointed by the Director-General Department of Justice and ~~Attorney-General~~ [insert the appropriate Minister] 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.

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 [insert the appropriate Minister]. The report and response must be completed within 28 days of the request for review.

Breaches by agencies and agency employees

The Government has made adherence to ~~these Guidelines~~ the Queensland Code a key measure of agencies' performance. Chief Executive Officers are responsible for ensuring their agency's compliance with the ~~Guidelines~~ Queensland Code. Proven breaches by a client agency will be reported to the Chief Executive Officer of the client agency. The client agency CEO will provide advice to the BCCB of remedial action taken to remedy the breach and stop a recurrence (including any disciplinary action where the breach is by a public sector employee).

Industry associations

Industry Associations are expected to contribute towards making the Queensland Code ~~and Guidelines~~ operate effectively. Where a Head contractor, contractor, consultant or related entity is found to have breached the Code, the circumstances of the breach may be referred to the relevant association for appropriate action under the association's rules or code of practice.

Notification to client agencies

Where a tendering party is to be subject to an industrial instrument that has been approved by Fair Work Commission, the party must include details of any areas wherein the instrument does not conform with the requirements of ~~these Guidelines~~ the Queensland Code and for any related entity or entities in any declarations it makes to client agencies in relation to compliance with ~~these Guidelines~~ the Queensland Code.

11. Definitions[5]

The following are explanations of terms used in ~~these Guidelines~~ the Queensland Code:

a) **Building and construction work** includes:

i) all organized activities concerned with demolition, building, landscaping, civil engineering, process engineering, mining and heavy engineering; and

ii) building refurbishment or fit out, installation of building security systems, fire protection systems, air conditioning systems, computer and communication cabling, building and construction of landscapes;

but excludes

iii) mining operations, maintenance, landscaping such as lawn mowing, pruning and other horticultural activities and cleaning buildings.

[5] Definitions are to be drawn from the Section 7 of the Queensland Code of Practice for the Building and Construction Industry.

For the purposes of the application of the requirements of Section 5 (Workplace Relationshiip Management Plan) publicly funded building and construction work shall mean:

i) **building construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding [insert].

ii) **Road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding [insert].

b) **BPIC Arrangement** means a Workplace Arrangement that was implemented in the period 2019 – 2025 and that gave effect to some aspect of the Best Practice Industry Conditions (or an earlier iteration thereof).

c) **Building and Construction Compliance Branch (BCCB)** means the Branch established within the ~~Department of Justice~~ [Insert appropriate Department] and ~~Attorney-General~~ [insert the appropriate Minister] which has operational responsibility for the administration of the ~~Guidelines~~ Queensland Code.

d) **Client** means the project, building or facility owner or their agent. In relation to public building and construction work means the client agency.

e) **Client agency** means any department or statutory body as those expressions are defined in the *Financial Accountability Act 2009* and any government owned corporation and its subsidiaries where the shareholding Minister has given a notification pursuant to section 123 of the *Government Owned Corporations Act 1993* that enters into a contract for building and construction work with the head contractor.

f) **Consultant** means a professional acting as an organisation or individual such as an architect, engineer, quantity surveyor, project manager, building scientist or the like, commissioned to advise on or undertake planning, design, supervision or specific technical advisory activities relevant to a project or building.

g) **Contractor** means an organisation, entity or individual responsible for the performance of the work specified under a contract.

h) **Olympic Infrastructure** means any building and construction work that involves or is related to the delivery of the 2032 Olympic and Paralympic Games.

i) **On-site** includes the primary construction site(s) or any auxiliary or holding sites, where building and construction related work is performed.

j) **Over-award payment** means any payment and/or benefit above that set out in the relevant award, registered agreement and/or legislation and includes payments provided for in workplace arrangements.

k) **Party** includes, but is not limited to, clients, agents of clients, head contractors , subcontractors, suppliers, consultants, employees, unions including their officials, employees and members and industry associations while undertaking a representative role.

l) **Head contractor** means the party with whom the client agency enters into a contract for building and construction work as nominated under the Queensland *Work Health and Safety Regulation 2011.*

m) **Privately funded building and construction work** means building and construction work in Queensland that is not publicly funded building and construction work.

m) **Public building and construction work** means publicly funded (in whole or in part) building and construction work undertaken by, or on behalf of a client agency.

n) **Responsible Minister** means, in relation to a client agency, the Minister responsible for the portfolio within which the client is located.

o) **Tender** means an offer in writing, which includes price, bids, quotations and consultant

proposals in response to an invitation to execute work or supply goods.

p) **Tenderer** means any party responding to an expression of interest or submitting a tender for public building and construction work, including head contractors, contractors, subcontractors and suppliers.

q) **WH&S** means work, health and safety.

r) **Workplace Arrangement** means an agreement, understanding, practice, policy, procedure or other arrangement whether written or not.

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

