



# Productivity Commission

National Competition Policy  
Analysis  
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## Introduction

The Housing Industry Association (HIA) provides this submission in response to the Productivity Commissions call for submissions in relation to a study to assess the economy effects of national competition reforms.

HIA represents a membership of 60,000 throughout Australia. HIA members work and operate all across aspects of the residential building industry.

The residential building industry includes detached home building, low, medium and high-density multi-unit housing developments, home repairs, renovations and additions, along with the manufacturers and suppliers of building products and related building professionals. The industry has important linkages with other sectors, such as manufacturing, finance, real estate and retailing, meaning its impacts on the economy go well beyond the direct contribution of construction activities.

For example, it is estimated that the residential building industry employees over 1 million people representing tens of thousands of small businesses and over 200,000 subcontractors reliant on the industry for their livelihood.

The residential building industry contributes over \$100 billion per annum to the economy and accounts for 6.9 per cent of Gross Domestic Product.

In principle, it is HIA's view that the current competition laws are adequate, however the consistent encroachment on commercial relationships by governments serves to undermine the current regulatory framework.

Excess regulation brings high costs and those operating in such an environment will never be able to produce outcomes as efficient as a well-functioning market. The regulatory process is inherently time consuming to administer and requires considerable expenditure of resources. Regulation is usually accompanied with unintended consequences often detrimental not only to consumers but the public interest.

Over the long term an interventionist approach will simply dilute the very basis on which our economic productivity and sustainability is based.

An effective competition framework should be focused on:

- improving productivity;
- increasing market efficiency; and
- delivering better prices for consumers.

These factors impact the efficiency of the residential building industry and cannot be underestimated particularly when residential building activity slows.

New home sales, housing finance, and building approvals continue to show decade-low levels of work entering the pipeline, but encouragingly, all indicators appear to have reached a trough in 2023. From this low point, the recovery will be slow and inconsistent across the jurisdictions and influenced by policy decisions at a state and local level.



The major markets of New South Wales and Victoria face additional challenges with the cost of land and changes in migration patterns. At the other end of the spectrum, Queensland, Western Australia and South Australia appear set to recover sooner, from more modest troughs.

With a large volume of detached houses set to be completed in 2024, competition for skilled trades will ease, but the cost of these trades is likely to continue to rise as competition from other construction sectors remains strong.

There are significant economic growth opportunities for those regions that are able to lower the cost of delivering a completed home to market. An increase in the supply of homes will have a catalytic impact on broader economic activity, which will in turn result in increased demand for homes.

Detached commencements in the final two quarters of 2023 were the weakest since March 2013. There were 23,820 detached houses that commenced construction in the December quarter 2023. This is expected to bounce along at these very low levels and reach a trough in mid-2024, before recovering, albeit weakly.

As a result, there are 95,380 detached homes that are expected to commence construction in 2023/24. This is 13.4 per cent weaker compared to the previous year and marks the trough in detached commencements. A weak 2.5 per cent recovery is expected, to see 97,770 commencements in 2024/25, followed by another 9.2 per cent rise in 2025/26. It is expected that detached commencements will reach 112,310 by 2027/28 before moderating subsequently.

Multi Unit commencements fell by 4.8 per cent in the December quarter 2023 to 14,450, the second-weakest quarterly result since mid-2012. There was a total of 64,050 multi-units that commenced construction in 2023, up by 1.1 per cent from the decade-low in the previous year. From very low levels, multi-unit commencements are expected to recover by 17.4 per cent in the March quarter 2024 before modestly increasing by 4.9 per cent in the June quarter 2024 to 17,780.

This will produce a financial year total of 64,350 multi-unit commencements in 2023/24, up by 2.0 per cent compared to the previous year. From this low point, an increase in multi-unit commencements is anticipated to occur in the low and medium density sector.

A 21.6 per cent increase in 2024/25 will take multi-unit commencements to 78,280 as rental yields, price growth and a pause to interest rate increases restore some confidence. A subsequent 19.4 per cent increase in 2025/26 will be sustained with policy reform and ongoing low levels of unemployment and migration sustained well above government forecasts.

A relatively modest 9.5 per cent increase is expected in 2026/27 and before the volume of units returns to exceed 100,000 per year, with the support of government investment for the Olympics. This remains well short of the volume necessary to meet government targets or underlying demand.

For a number of historic reasons, residential building remains vulnerable and susceptible to sudden shocks or changes in the external environment including for example, changes to the competition landscape.

The current housing supply challenges along with the Federal Government commitment to build 1.2 million homes over the next 5 years is both well documented and regularly reported on and HIA would not endorse further regulatory change that may hamper competition within this environment.



## Competition in the Residential Building Industry

Competition arrangements in the residential building industry are generally sound and working well.

The industry is characterised by a large number of small to medium sized building firms, operating in a marketplace which is defined by a handful of major home builders. However no two dwellings are exactly the same, if only because their location differs.

There is almost unlimited scope for variation in terms of size, setting, design and materials. Such a large amount of heterogeneity in the market is a natural impediment to competition in the industry. Competition is most easily facilitated in the case of products which are homogenous because comparison between the output of different suppliers much easier. Any uncompetitive pricing behaviour is readily identifiable,

Despite this inherent structure, the evidence suggests that the Australian residential building industry is highly competitive.

The strong degree of competition in the housing industry can also be gauged through analysing the distribution of its firms by size. The vast majority of firms in building construction are sole trading operations with no employees.

The industry also remains one of the most highly taxed and regulated sectors of the Australian economy. These high taxes and regulation detrimentally impact on the price that builders are able to offer their products and services to consumers. Independent research by the Centre for International Economics (CIE) found that new dwelling construction is the second-most heavily taxed of Australia's 27 economic sectors.

### Subcontracting in the Residential Building Industry

The majority of residential building projects are carried out using the subcontracting system; it is common for 80-90 per cent of the total work value being performed by subcontractors.

Contracting is the key to affordability in the residential construction industry, which has special characteristics which lend itself to the use of contractors rather than use of employees.

The use of subcontracting in the residential building industry is mainly one of necessity.

There are around 25 to 30 different trades involved on-site in the building of a house.

The familiar ones are concreters, bricklayers, framing carpenters, plumbers, electricians, roof tilers and painters. In addition, there are contractors who peg out the site, backhoe operators, drainers, plasterboard fixers, plasterers, floor tilers, glaziers, the fitting out carpenter, the floor sander, the brick cleaner and finally the garage door fixer and Hills hoist installer.

The builder/main contractor usually cannot internally supply all of these trades, competencies and skills needed to complete a construction project and therefore has to rely on third party subcontractors.

The working relationship between contracting firm and subcontractors is typically on a short term, project by project basis, although in the residential building industry it is not uncommon for subcontractors to be concurrently engaged on a number of projects. The relationship between the building firm and the trade subcontractors begins during the estimating and bidding process, i.e. tendering stage. It ends when the final payment is made to the subcontractor.



On larger projects, during the tendering process, the main contractor invites tenders from a number of different special trade contractors. Tenders from the various subcontractors are evaluated according to a range of selection criteria such as price/cost, experience, financial situation and ability to deliver.

Technical expertise is a key factor in ability to deliver; the subcontractor must possess the required skills to carry out the subcontracted work. In the end, price is the determining factor.

The subcontract system endures for a simple but obvious reason. It offers substantial advantages both to the builder, the contractor and end consumer:

- Subcontract prices are negotiated between builders and subcontractors before construction commences.
- Accurate budgeting is essential because the builder has by law to provide to the residential client fixed price contract.
- Prices paid for subcontract work are not set by a small oligopoly of a few builders.
- The predominant prices are an outcome of prevailing demand for and the availability of skilled trades.
- Because housing demand conditions can vary sharply at the regional level, so too can prices for skilled labour.
- The emergence at times of wide differences in earnings achievable by contractors encourages them to move from regions of low activity to areas where the demand for skilled trades is strong.
- Home builders can adjust their workforce according to work in hand.
- In an industry where annual production requirements can swing by anywhere between 10 and 30 percent, smaller builders cannot absorb the administration and overheads of an employed workforce.
- By comparison with commercial building, little supervision of contractors is required.
- Subcontractors are highly self-motivated, which is reflected in their high productivity levels.
- The amount of income contractors earn depends on their ability and preparedness to work.
- They create substantial value to our economy supplying innovation, wealth creation and economic growth.
- They play a particularly important role in their willingness to take up new technologies, methods and materials, since they have a direct incentive to minimise construction costs.
- Contractors have the independence to arrange their own work program. The number of hours they work and the pace at which they work are of their choosing.
- Their future earnings depend on establishing a reputation for quality and reliability.
- Many trade contractors go on to establish their own home building business.
- The housing industry is characterised by harmonious industrial relations.
- Contractors don't get paid for delays so there is a strong incentive to get on with the job.

Consumers ultimately benefit from the competitive subcontracting environment.



## Competition law and workplace relations

Unfortunately, particularly in the commercial construction sector, competitive tendering and subcontracting arrangements are undermined by outdated, anti-competitive industrial relations arrangements.

HIA is extremely concerned with the use of anticompetitive and unproductive enterprise bargaining agreements that contain provisions that restrict or prevent the engagement of independent contractors in the construction industry.

Workplace relations have been largely excluded from the reach of competition and trade practices laws. This broad exclusion is found at section 51(2)(a) of the Competition and Consumer Act (CCA) and has historically been based on the notion that labour is a different market to other goods and services and should be regulated discretely.

At the same time, free enterprise and improved productivity essentially depends on effective competition in all markets, including the employment market. However, the prevalence of pattern bargaining and the inclusion of terms in enterprise bargaining agreements that restrict or prevent the engagement of different forms of labour are fundamentally at odds with principles of competition. They drive up costs and reduce productivity.

While a line remains between these complex areas ignoring their interplay continues to have consequences.

For example, on the issue of secondary boycotts, section 45DD of the CCA states that if conduct relates to employment matters, a person's activity is not deemed to fall under the illegal secondary boycotting provisions.

In HIA's view whilst this might exempt legitimate strike activity, it should not cover or enable aggressive picketing that prevents material suppliers entering or leaving premises or subcontractors entering site.

In the Interim Report of the Royal Commission into Union Corruption and Governance, Commissioner Heydon observed that:

*'The current secondary boycott provisions in the CC Act were ineffective to deter illegal secondary boycotts by trade unions.'*

Commissioner Heydon was specifically referring to allegations surrounding alleged 'black banning' of building products manufacturer Boral by the CFMEU. Whilst the ACCC issued, ultimately successful Federal Court proceedings, their intervention was belated and well after the conduct had occurred impacting the supply of product to the market.

Add to this that the current enterprise bargaining framework under the Fair Work Act fails to support productivity, flexibility and efficiency gains.

Historically productivity improvements or considerations of productivity were always an expected feature of enterprise bargaining, as highlighted by the AIRC:

*'In our view the essence of enterprise bargaining designed to achieve increased efficiency and productivity also requires the parties to demonstrate that they have considered a broad agenda in their enterprise negotiations. We do not intend that that agenda be limited only to matters directly related*



*to normal award prescriptions. It should cover the whole range of matters that ultimately determine an enterprise's efficiency, productivity and continuing competitiveness.*

*These could involve such things as:*

- *short and long term plans for the enterprise including plans for future investment, product or service development, restructuring and greater emphasis on the needs requirements of suppliers and needs of customers;*
- *the current and future operational needs of the enterprise including requirements for improved performance in relation to quality, cost, delivery reliability and cycle time; and*
- *the needs of employees including skills development, job satisfaction and improved employment opportunities.'*

Notwithstanding recent legislation changes said to 'improve' the bargaining framework it is HIA's view that more need to be done to ensure that there are tangible productivity outcomes from enterprise bargaining arrangements.

Further HIA supports the Harper Competition Review, which recommended repealing Part X of the CCA in addition to:

- Amending sections 45E and 45EA of the CCA so that they apply to awards and industrial agreements, except to the extent they relate to the remuneration, conditions of employment, hours of work or working conditions of employees.
- Removing the present limitation in sections 45E and 45EA, such that the prohibitions only apply to restrictions affecting persons with whom an employer 'has been accustomed, or is under an obligation,' to deal.
- Applying the maximum penalty for breaches of sections 45E and 45EA should be the same as that applying to other breaches of the competition law.