

PRODUCTIVITY COMMISSION

FIRST HOME OWNERSHIP INQUIRY

Response of the
Construction, Forestry, Mining and Energy Union
Construction & General Division
to claims made in submission by the
Housing Industry Association and Urban Development Institute of
Australia

In the course of their submissions to this Inquiry, and their responses to the Discussion Draft of the Inquiry, both the Housing Industry Association, and the Urban Development Institute of Australia made a number of claims as to the impact of union activity on affordability in the housing industry.

The Union takes this opportunity to identify those claims in turn, and to respond to them.

Claim No. 1

The Housing Industry Association (the HIA), at page 24 of its Response to the Discussion Draft of this Inquiry, claims that the recent Royal Commission into the Building and Construction Industry showed the increased costs borne in the commercial construction industry because of union activity. The HIA also claims that an Econtech report, released by the Federal Government in 2003, also showed that if union activity were to spread from the commercial construction sector to the housing sector, then costs would rise by up to 20%. The HIA goes on to say that unions are involved in efforts to bring the independent contract sector into the realm of industrial relations legislation, to increase union power. The effect of this, they argue, would be to drive up costs.

The HIA has executed this scare campaign over many decades by making exaggerated assertions about increased costs. Typically in the 1980s, the HIA would assert that any moves by state or federal legislatures to regulate dependant contractors would add 15% to the cost of constructing new houses. The HIA never provided any empirical material to support their self-serving campaigns then, nor do they now supply hard data for the assertions made to this Inquiry.

The Royal Commission into the Building and Construction Industry reached no specific conclusions as to the impact of union activity on costs in the industry as a whole. It made specific findings of unlawfulness and inappropriateness, very few of which have successfully proceeded to prosecution. It also made a series of recommendations, resulting in government legislation, currently the subject of a major Senate Inquiry. It is simply dishonest of the HIA to argue that the Cole Report constitutes evidence to support the proposition that union activity drives up costs in the industry.

Secondly, the Econtech report referred to by the HIA was a document released by Minister Abbott in 2003, during the political heat of the Cole Royal Commission. It is a report commissioned to suit the Government's political purposes. The Union notes that this report has been the subject of review by the Employment Studies Centre of the University of Newcastle. The report, by Dr Phil Toner, is an analysis of the Econtech report, and concludes that the analytical methodology used by Econtech is largely flawed. The Union attaches that report for the Commission's convenience.

Finally, the issue of the treatment of independent contractors at the hands of industrial legislation is seriously misrepresented by the HIA.

The Union has released large amounts of evidence over the years showing the systemic and endemic misclassification of employees as contractors, by employers in the industry, with the direct objective of avoiding industrial, legal and taxation responsibilities. The characterisation of employees as contractors allows employers to avoid obligations under awards and OHS legislation, and represents a taxation black hole in Commonwealth

revenue of up to \$2.2 billion a year. It is an organised rort, veiled in the language and rhetoric of freedom of contract.

For the convenience of the Commission, the Union encloses a sworn statement of Dr John Buchanan of the Australian Centre for Industrial Relations Research and Training (ACIRRT), given in evidence to the recent Cole Royal Commission. It is an excellent summary of these issues as they relate to the impact of misrepresented contracting arrangements as they relate to taxation. Also included is a submission by Professor Andrew Stewart of Flinders University to the Cole Commission. It deals with the impact of the proliferation of contracting arrangements on employment conditions.

The legislation referred to by the HIA, that presently exists in Queensland, and is proposed to be introduced in South Australia, will have nowhere near the impact on cost that is foreshadowed by the HIA. The Queensland legislation, almost mirrored in the South Australian Bill, exists as section 275 of that state's *Industrial Relations Act, 1999*. It provides for the state's Industrial Relations Commission to deem a class of workers, otherwise characterised as independent contractors, to be employees, on the basis that to allow the status quo to exist would result in unfairness, injustice or disadvantage to that class of workers. The legislation has operated in Queensland since 1999 with no consequence for the housing industry. Other legislative provisions proposed in South Australia, such as unfair contract provisions, have been in operation in NSW for over forty years. Unfair contract provisions also exist at a federal level, and have had no impact on the industry in the way described by the HIA.

Workers are entitled by law to certain entitlements and conditions. Where employers abuse that entitlement, and mischaracterise employees as contractors to their advantage, those workers and their unions are entitled to pursue industrial justice, without being the subject of an hysterical campaign by self-serving employers and their representatives to prevent them from doing so.

There is no evidence that contractor deeming legislation will have any impact on costs in the housing sector.

Claim No. 2

The Urban Development Institute of Australia (the UDIA) claims, both in its initial submission and again in its response to the Discussion Draft, that “it has been widely reported in the media that the cost of construction in Victoria is somewhere between 20% and 30% higher than in Sydney”

The Union responds by pointing out that widespread, and unsourced media reports of increased costs in the industry in Victoria in comparison to elsewhere, are not a sufficient evidentiary basis for the Commission to draw any conclusion. The Union puts these remarks by UDIA, at best, no higher than an assertion. There have been speculations by members of the Federal Government and others in the industry as to higher costs in Victoria, but there is no substantial data to show this.

Arising from the Econtech report, and other evidence brought before the Cole Royal Commission, there have been reports that productivity in Victoria is lower than in New South Wales, by up to 18.9% (Toner:2003 p2). Dr Toner addressed this issue in his report, previously referred to above:

“The data used to support the proposition that productivity is lower in Victoria than NSW ignored key differences in sectoral composition of the construction industry in each of the states.” (Toner:2003 p(i))

We commend the Toner report to the Commission if it wishes to reach any conclusion as to productivity or cost on a state by state basis. More generally, the Union would argue that if any hard data can be said to have come to light on costs in Victoria against other states, then a myriad of reasons could be put forward to explain this. The industry is often different from state to state. There are different regulatory frameworks in place, there are

also varying costs associated with supply bottlenecks, input shortages and differences in various infrastructure costs.

The inference that union activity in the industry in Victoria is the cause of increases in costs in that state has not to our knowledge been proven. The Union repeats its submission that the Commission has insufficient material before it to draw such a conclusion.

Claim No.3

In the same section of both its submission to this Inquiry, and repeated in its response to this Inquiry's Discussion Draft, the UDIA argues that "When residential developments reach a certain size in Victoria, defined by dollars, areas or height, they are classified as 'commercial building sites.' As a result, they become a compulsory union site, and are subject to additional cost imposts...It is estimated within the industry that the classification as a 'commercial site' will contribute approximately 40% in additional construction costs, and a similar delay in the duration of construction".

The Union utterly rejects these sweeping claims.

Firstly, there is no such thing as a compulsory union site. Part XA of the *Workplace Relations Act (Cth)* 1996 deals comprehensively with this issue. It provides for freedom of association for workers to join or choose not to join a registered trade union such as the CFMEU. To date, the Union is unaware of any prosecutions under this section. The simple fact is that workers on certain work sites choose to exercise not only their legislative right, but their fundamental human right to join a trade union in protection of their interests in what is a dangerous, insecure and often exploitative industry.

As to the issue of costs, the Union submits that the UDIA has answered its own proposition. Large commercial construction sites are obviously different from small house building jobs. Dr Toner, in his report cited above, deals with this issue:

Finally, the (Econtech) report does not consider alternative explanations for the cost differences evident in the Rawlinson's data across (NSW and Victoria). The report simply assumes that the 'cost disadvantage' is due to lower labour productivity in Non-residential construction. The 'cost advantage' could reflect causes unrelated to comparative levels of labour productivity between the two sectors...Casual observation would suggest, for example, that the flow of materials and waste on a multi-story site with very limited space for storage, involving the scheduling of cranes, hoists and delivery vehicles is likely to be much more complicated than the same tasks for a single-storey residence. The cost differentials may also reflect higher capital intensity on Non-residential sites. Indeed, the Econtech report notes that on Non-residential projects 'cranes, hoists, jump forms, concrete pumps...and other capital-intensive equipment and techniques are more prevalent in commercial building than in domestic, residential building'(Econtech:2003 p5).The assumption, that cost per unit of work should be identical across the different industries producing very different products and using different production techniques, is unfounded. (Toner:2003 p3)

In conclusion, the UDIA is right to point out the increased costs associated with the scale of construction projects. It is wrong, however, to assert that increased costs are directly or indirectly associated with union arrangements. The Union would argue that its presence on most large commercial construction sites results in greater efficiency; a greater focus on safety; prevention of lost time due to injury, and a more organised, professional, highly trained workforce.

The Union trusts that this brief response will assist the Commission in more broadly understanding the issues raised by the HIA and the UDIA. We respectfully request that in drawing any conclusions in relation to the impact of industrial relations on affordability in the housing industry, the information we have provided here be taken into account by the Commission.

