

**PRODUCTIVITY COMMISSION
INQUIRY INTO PUBLIC
INFRASTRUCTURE**

SUBMISSION: DECEMBER 2013



**CIVIL CONTRACTORS
FEDERATION**

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ABOUT THE CIVIL CONTRACTORS FEDERATION

The Civil Contractors Federation (CCF) is the peak industry body representing Australia's civil construction industry. It has branches in all states and territories and around 2000 contractor and associate members nationally.

CCF members are responsible for the construction and maintenance of Australia's infrastructure, including roads, bridges, pipelines, drainage, ports and utilities. Its members also play a vital role in the residential and commercial building construction industry by providing earthmoving and land development services including the provision of power, water, communications and gas.

CCF is an organisation registered under the *Fair Work (Registered Organisations) Act 2009*. It is governed by a National Board comprised of member-elected representatives from each state and territory.

A commitment to furthering its members' interests and helping them manage their businesses more effectively is at the core of CCF's operations. To that end, it offers effective business tools and management systems, as well as practical advice in areas such as taxation, industrial relations, workplace health and safety, human resources and environmental compliance.

CCF's mission is to be the voice of the industry and to provide a high level of benefit to its members. In particular, CCF is focused on ensuring the industry:

- **is professionally represented** - by representing and advocating for the views of the industry to all levels of government in a timely and effective manner.
- **is informed** - by delivering to members, effective and timely information about key issues.
- **has access to tools and resources that help businesses succeed** - by identifying, developing and delivering tools and resources that assist members in their day-to-day operations.
- **has access to high quality training** - by delivering best practice, training by the industry, for the industry.
- **has access to opportunities to network, learn and celebrate their achievements** - by delivering a range of events designed to provide members with opportunities to build relationships, be informed and have access to people of influence.
- **has access to supporting partners that extend the benefits of membership** - by developing networks and relationships with organisations, that can provide additional services to members beyond those provided directly by CCF; delivering real cost savings to members.

EXECUTIVE SUMMARY

This submission has been developed based on anecdotal and experiential feedback from members of CCF as well as other sources of data. In some areas, there may be a requirement for an issue to be investigated further due to the need for supporting data.

Generally, this submission provides the opinion of CCF and its members and is not intended to be an exhaustive research paper. CCF also acknowledges the limitations placed on organisations to provide in depth feedback when consultations are subject to short timeframes.

Like the inquiry, this submission has been divided into two sections for ease of analysis. The two sections are:

- ↳ part one: provision, funding and financing
- ↳ part two: infrastructure and construction costs.

Part one focusses on the likely economic activity Australia will experience over the coming years and the increasing reliance on infrastructure that will likely result. It also discusses some of the issues associated with financing and funding projects as well as the importance of sound planning.

Part two takes a look at those elements that are likely to impact on cost such as red tape, procurement, contracts administration and workplace relations. It provides some recommendations for improvement as well as identifying areas for additional consideration.

PART ONE:
PROVISION, FUNDING AND
FINANCING

FUNDING, FINANCING AND PLANNING

It is anticipated that by 2020, Asia's output will be greater than North America and Europe combined¹. While this presents its challenges, it also signifies exponential opportunity for Australia due to our proximity to this emerging market.

The development of Asia will create an increased demand on exports such as minerals and agriculture. With this increased demand there will be a greater need for Australia to develop, finance and fund infrastructure such as road, rail and ports to service the rising need.

In June 2013, Infrastructure Australia Chairman Sir Rod Eddington said: "there is a deep disconnect between the infrastructure we want, and the infrastructure we are willing to pay for²."

This could be elaborated further to say there is a disconnect between the infrastructure we need to increase productivity and stimulate advantageous economic outcomes and the infrastructure we are willing to pay for.

Given this disconnect is a complex issue, it is imperative that as policy making entities, government at all three levels focus on implementing reforms that address financing and ultimately funding infrastructure.

With government finances increasingly under pressure, the private sector will play an important role in financing infrastructure; notwithstanding the critical fact that public infrastructure is ultimately paid for by taxpayers or users. In recent years, some progress has been achieved in different jurisdictions across Australia in this regard but more needs to be done to attract private investment. More also needs to be done to influence public opinion about how infrastructure should be funded.

Notably: engineering construction leapt 33 per cent during the 2011/12 financial year, reaching a record \$116 billion. ...the vast majority of this growth was privately funded, growing 51 per cent to \$84 billion, while publicly funded work rose just 1.5 per cent, reflecting on-going fiscal tightening at all levels of government.³

... the largest segment of private sector activity is mining and heavy industry (which includes mines, oil platforms, minerals processing facilities and other heavy industrial facilities). When mining and heavy industry is excluded, leaving the 'infrastructure' categories, work funded by the public sector accounts for exactly 50 per cent of work⁴.

Long-term infrastructure plans will provide a platform to attract private investment; with a clear pipeline of investment opportunities which will stimulate confidence and help to encourage the flow of private capital.

Importantly, consideration will need to be given to unlocking capital from government assets to fund new infrastructure. Although there is still a prevailing attitude that government assets should not be privatised.

Of course, the challenges in this area do not simply relate to financing new infrastructure, but also to providing funding to maintain current assets; particularly roads and rail.

It is the view of CCF that effective financing solutions will involve all levels of government as well as the private sector, and that in order to be successful will involve consultation with communities. On the whole, Australia will need to change its ideology toward the role of government and government ownership of assets that may be better managed by the private sector.

¹ Australian Government, 2012, Australia in the Asian Century – White Paper

² Australian Government (Infrastructure Australia), 2013, National Infrastructure Plan

³ BIS Shrapnel, 2013, Engineering Construction in Australia, 2012/13 – 2026/2027

⁴ BIS Shrapnel, 2013, Engineering Construction in Australia, 2012/13 – 2026/2027

The role of the Federal Government in this regard will be to enable investment in infrastructure through empowering State, Territory and Local Governments to make sound decisions about how they finance and fund infrastructure.

FUNDING AND FINANCING INFRASTRUCTURE

It is unlikely that the challenge of providing infrastructure to meet demand can be met through current public appropriations. Consequently, financing infrastructure will likely be a mix of public and private sector funding delivered through different financing models which may include public borrowing.

Importantly, the funding of infrastructure will ultimately be constrained by revenues received from taxation and user charges, however, effective financing may allow important infrastructure to be delivered when a community most needs it; spreading the cost across future generations⁵.

The taxation system may also be able to provide incentives for financing and such options should be considered; particularly in relation to leveraging capital from superannuation funds.

Such solutions will require cooperation at all levels of government and consideration should be given to targeting some small projects as trials of the financing mix.

Over the coming years the private sector will play an increasingly important role in financing infrastructure. Recently, some progress has been achieved in different jurisdictions across Australia in this regard but more needs to be done to attract private investment.

CCF recommends that the Federal Government:

- **supports communities in assessing the need for public debt on infrastructure projects that will deliver benefits to local communities and that it assists communities to identify ways in which to fund such projects and ultimately repay debt.**
- **works collectively with State, Territory and Local Governments to identify ways to maximise and encourage private investment in infrastructure.**
- **replace the multitude of federal grants and funding programs with a single fund⁶.**

UNLOCKING CAPITAL

Over the coming years, consideration will need to be given as to whether government capital should be tied up in assets or whether that capital should be recycled to fund new infrastructure.

A key issue in this area is the prevailing public attitude that government assets should not be privatised and consequently more work will need to be done to influence public opinion if this is to be an option. This was most recently evident in Queensland, when the Queensland Commission of Audit recommended the sale of government assets and government reported that they would not action this recommendation due to dominant public views.

CCF recommends that the Federal Government:

- **complete a thorough review to determine if there are any opportunities to unlock capital by selling assets and that it encourages State, Territory and Local Governments to do the same.**
- **undertake a public education program aimed at increasing awareness of the potential for unlocking capital through the sale of assets.**

⁵ Federal Government, 2013, Department of Regional Australia, Local Government, Arts and Sport and Ernst and Young, National financing for local government, options assessment.

⁶ Australian Government (Infrastructure Australia), 2013, National Infrastructure Plan.

PLANNING FOR INFRASTRUCTURE

With limited government resources available the infrastructure dollar must be spent in the most cost effective and efficient manner possible and it is for this reason that CCF supports infrastructure plans (pipeline of works) that are clear, transparent and achievable.

Infrastructure plans should include new projects as well as programs for capital maintenance and should never be wish lists, but rather carefully considered forward plans with funding mechanisms pre-planned.

Industry relies on infrastructure plans to provide it with a clear picture of the project pipeline which in turn drives how it manages various aspects of their businesses such as workforce, resources, procurement and the like.

CCF is supportive of the Federal Government's proposal for Infrastructure Australia to develop a 15 year plan for infrastructure and would contend that State and Territory Governments follow suit. Local Government's should also consider long-range plans.

There may also be other benefits to providing well-defined planning for infrastructure; as it may attract known private sector investment interest and would alleviate some need for government funding.

The recent introduction of the *Infrastructure Australia Amendment Bill 2013* designed to: *strengthen the role of Infrastructure Australia, as an independent, transparent and expert advisory body through a change in its governance structure and through better clarification of its functions*⁷ is likely to assist in this regard.

It is also imperative that State Territory and Local Governments are committed to thorough and thoughtful infrastructure planning to maximise local opportunities. The Federal Government may be able to play a role in this regard; particularly for Local Governments that may not have the tools and resources to appropriately plan for infrastructure. Local Governments may also benefit from assistance in understanding the financing and funding models available.⁸

CCF recommends that:

- **all projects be assessed based on their merit**
- **planning for infrastructure is independent and based on rigorous cost benefit analysis**
- **long-term infrastructure plans that are responsive to the best economic outcomes for the country, states and territories and local communities are developed**
- **one single, independent agency coordinate planning for infrastructure projects and that where applicable the Federal Government support states and territories to do the same.**
- **the Federal Government coordinate with State, Territory and Local Governments to develop plans for infrastructure which embrace potential changes in government..**

⁷ Warren Truss, 2013, Infrastructure Australia Amendment Bill 2013 Second Reading <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F674bc2a-82df-4a25-981b-1f2bab3d0b16%2F0005%22>

⁸ Federal Government, 2013, Department of Regional Australia, Local Government, Arts and Sport and Ernst and Young, National financing for local government, options assessment.

PART TWO:
INFRASTRUCTURE AND
CONSTRUCTION COSTS

EFFICIENT, COMPETITIVE AND EQUITABLE PROCUREMENT

It is the view of CCF that the Federal Government has a significant role to play in influencing and supporting procurement policies. State, Territory and Local Governments also have a significant role to play in this regard.

In order to support the development of the infrastructure Australia needs; a vibrant, sustainable and competitive contractor market is required and procurement policies and practices can help to support this.

There are a number of ways that government can encourage this including:

- ↘ robust procurement that provides for fair and open competition appropriate to the varying size of suppliers
- ↘ a prequalification system that is consistent and transparent; and
- ↘ encouraging open and fair competition.

VALUE FOR MONEY

In these times of fiscal constraint it is as important as ever to ensure value for money is achieved for all infrastructure projects.

When describing value for money (or best value) it is appropriate to consider the cost of building the infrastructure as well as the overall return the infrastructure provides on investment. Similarly, the whole of life costs should be considered in conjunction with the initial tendered build price.

All infrastructure projects should be subject to a rigorous cost benefit analysis in order to determine their merit. This is critical for national, state and territory allocation of funding and is also desirable at Local Government level.

Infrastructure plans should place an emphasis on economically sustainable infrastructure; that is infrastructure that will bring a return on investment either through revenue, royalty streams, or from the economic activity enabled by the construction of the infrastructure.

What is also clear is that the whole of life value for money concept must be embedded in procurement policies and practices to ensure that only the most appropriate models for construction are put to tender.

Another key element is ensuring that infrastructure that is subject to government funding is fit for purpose. A significant issue in this regard that needs to be addressed is the often used trend of gold plating designs in an attempt to cost out later life maintenance.

CCF recommends that:

- ↘ **all projects subject to government funding undergo rigorous cost benefit analysis**
- ↘ **all infrastructure that is subject to government funding is designed to be fit for purpose**
- ↘ **the most appropriate methods of construction be selected.**

COMPETITION

CCF believes that a level playing field which allows contractors to truly compete will lead to better outcomes for the community by providing value for money.

For example, where there are very large companies involved in tendering processes, smaller companies with less experience in government projects may be excluded. While there are obvious reasons why larger companies may be more successful in tender processes than smaller ones; it does create an environment of reduced competition and ultimately leading larger project oligopolies or similar.

In some circumstances there has been a move to encourage foreign contractors into the market in order to reduce the domination of tier one companies based in Australia. While at surface value, this approach would appear to increase competition and improve infrastructure affordability, CCF has major concerns with it in operation.

The award of contracts to foreign companies takes money away from local industry and the local economy. Furthermore, foreign companies do not benefit the local economy as any profits made locally are returned to the parent company's country of origin.

Foreign companies add little to the capacity available in Australia and add limited or no value to either the local construction industry skill set. There is also a strong albeit anecdotal argument that their operation places upward pressure on wages as they are required to entice local labour by offering higher wages.

CCF members believe there is untapped capacity within the tier two and three civil contractor markets that may be maximised with the right procurement policies and practices and that the engagement of them is likely to drive down cost. When a tier one company – Australian or otherwise – is awarded a contract, it is ultimately the lower level contractors that complete the work. In these circumstances business add additional cost through the layering of margins.

Consideration should be given as to whether projects or parts of projects can be delivered by different contractual arrangements to encourage broader industry participation.

For example, it is highly feasible for many contracts to be delivered by several medium sized contractors in partnership rather than one major contractor. Another option may be for some contracts to be unbundled into a number of smaller contracts. Such approaches can have positive flow-on effects including development of business capacity and skills, increased competition at the tender box and subsequent cost saving.

In this area competitive neutrality principles should also apply so that government and government agencies do not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership.

CCF recommends that the Federal Government:

- ✚ **undertakes a complete review of procurement policies that encourage packaging up of project segments to remove the opportunity for smaller organisations to bid on works.**
- ✚ **undertakes a complete review of the potential impacts of encouraging foreign companies into the Australian market as well as the potential benefits of encouraging smaller companies to compete through smaller packages or flexible models that allow arrangements such as joint ventures.**
- ✚ **identify a set of criteria to be implemented in procurement policies to encourage broader industry participation through alternative forms of contracting.**
- ✚ **develop and implement local industry policies and apply them consistently.**
- ✚ **develop a definition of local content and apply consistently to procurement processes.**
- ✚ **identifies a set of competitive neutrality and that government at all levels implements these in procurement policies.**

EFFECTIVE CONTRACT ADMINISTRATION AND ACCOUNTABILITY

In relation to issues of contract administration members common concerns include lack of experience of the project procurer and administrator, slow decision making, lack of appropriate delegation to superintendents representatives and in some cases a bureaucratic approach to the process.

Procurement processes must ensure that both procurement authorities and contractors have a clear and appropriate understanding of their responsibilities at each stage of a project, with a focus on best practice to ensure efficient delivery of projects.

Where contracts are not effectively administered there may be a significant impact on cost.

Today's best practice in dispute resolution requires swift, proactive issue resolution processes designed to resolve disputes as they arise and before a dispute forms. In particular, CCF supports the *CRC Guide to Leading Practice for Dispute Avoidance and Resolution*.

CCF recommends that the Federal Government works to ensure consistency in contract administration processes.

RISK MANAGEMENT AND APPROPRIATE ALLOCATION OF RISK

Risk management and the appropriate allocation of risk is a critical concern for CCF and its members. Generally, risk should be managed by the party in the best position to do so, however in recent times Government has become far more adverse to accepting project and/or construction risk; this is effectively adding considerably to the cost of infrastructure construction as the contractor naturally moves to offset this risk.

This reallocation of risk occurs in a number of areas but particularly in limitation of liability, warranties, indemnities and insurance. There are also issues associated with environmental matters.

Additionally, securities for project completion must be proportionate and appropriate to the inherent risk; as this all adds cost to projects and ultimately the tax payer.

CCF recommends that Government works with industry to ensure appropriate allocation of risk for all parties in Government contracts.

REGULATION, RED TAPE AND TAXATION

The regulatory burden now faced by the construction industry is adding considerable costs both for contractors and procuring agencies alike.

Cutting red tape has the potential to increase the value for money and the capacity of the civil construction industry which will enable infrastructure projects to be delivered in a timely, efficient manner and for them to be cost effective.

Recently there has been work done across different jurisdictions to cut red tape. For example, the Queensland Government has been implementing a rigorous program that has resulted in productivity gains across government. In its August 2013 report card, the Queensland Government reported it had identified *more than 400 specific red tape reduction initiatives with almost 250 of these reforms now fully implemented*⁹. The outcomes of the red tape cutting initiatives have ranged from cost savings to the removal of unnecessary regulation.

Many CCF members operate across state and territory boundaries, and separate regulatory regimes and compliance obligations are a source of unnecessary burden, cost and inefficiency. This is also the case in some circumstances where dealing with the Federal Government involves different regimes from those of the states.

⁹ Queensland Government, 2013, Report Card on Red Tape Reduction, No. 2 August 2013, Department of Treasury and Trade.

In principle, CCF supports harmonisation and accordingly advocates for national uniformity and consistency of legislation and regulation across a variety of areas such as development applications and approvals, contract management and work health and safety.

It is acknowledged however that this in principle approach is not without substantial qualification. CCF does not support harmonisation processes which impose the highest or most rigorous standard as the template starting point. This up-scaling of obligations would - under the guise of harmonisation - have the capacity to increase the regulatory burden on industry rather than providing efficiencies and creating cost savings.

This practice also fosters a reduction in competition as only the upper tiers of suppliers have the opportunity to participate at this unnecessarily enhanced level of requirement.

CCF's fundamental position is that there should be better not more regulation. All new legislation and regulations must be subject to a rigorous regulatory impact assessment, including an assessment of the impact of the regulations on small business. Existing regulations should be regularly reviewed and repealed if found to be placing an excessive or unnecessary burden on business.

HARMONISATION

Where appropriate, CCF strongly advocates for national uniformity and consistency of regulation and the involvement of the Federal Government is essential in gaining cohesion in this regard.

There are three key areas where harmonisation is an issue for contractors:

1. work health and safety
2. standard contracts
3. prequalification
4. standardisation of procurement policy
5. environmental approvals and permits
6. building and construction industry codes and guidelines.

WORK HEALTH AND SAFETY

While some states and territories are currently harmonised under the *Work Health and Safety Act 2011*, there is still a lot of work to be done to ensure consistency and to bring all states and territories across to the harmonised legislation.

Contractors that work across jurisdictions are constantly thwarted by differing regimes and this is an area where consistency could bring cost efficiencies, increased productivity and importantly real outcomes in improving the safety of workers not just business systems.

CCF does however note while harmonisation is preferred, the default position for the harmonised legislation in this area has resulted in over regulation and prescription to the highest possible standards without flexibility or sometimes regard for common sense. This approach is never preferred as it reduces productivity rather than improving it.

Another related issue in this area is the Federal Safety Accreditation Scheme. This Scheme is a constant frustration for contractors that seek to work with the Federal Government. The frustration stems from the variability in assessment of compliance and the cost of compliance when contractors may only intermittently work in the government funded sector. It seems unreasonable and unwarranted that an additional layer of safety requirement is applied to the requirements they are already subject to in order to work for State and Territory Governments, and in fact Australia's recognised AS-NZ 4801-2001 standard.

CCF is highly supportive of an approach that supports improved safety in the workplace, whilst being cost accessible to all contractors. This could be delivered by redirecting the efforts of the Federal Safety

Commissioner towards undertaking regular witness auditing of auditors engaged by conformity assessment bodies to improve their auditing processes. It naturally follows that a licensing system for approved auditors should be implemented (similar to that done by the Federal Safety Commission on the companies it currently audits), this would significantly improve the safety performance of all organisations seeking certification of their AS 4801 or international equivalent health and safety systems.

CCF recommends that the Federal Government:

- ✎ **work with all State and Territory Governments to achieve harmonisation.**
- ✎ **review related legislation, regulation and codes of practice to identify areas of unnecessary regulatory burden and inefficiency.**
- ✎ **Redirect the Office of the Federal Safety Commissioner to monitor and improve the audit performance of accredited systems certification bodies (the organisations that certify health and safety management systems based on the Australian Standard AS/NZ 4801).**
- ✎ **require the States and Territories to subscribe to an improved harmonised Federal Safety Accreditation, aligned with AS/NZ4801-2001 and implemented much like the National Prequalification System.**

CONTRACT ADMINISTRATION

There are a number of reforms to contract documentation and the way in which contracts are administered which could have the capacity to increase productivity in the civil construction industry, reduce cost and drive the infrastructure dollar further.

Standard form contracts are common place in the building and construction industry. The suite of Australian Standards for contract conditions (AS4000) provides a guide to the general conditions of contracts for a range of contractual agreements including design and construct, minor works, major works and supply of equipment.

Whilst members in principle support the practicality and usefulness of standard form contracts; some difficulties do arise in relation to the interpretation, construction and workability of standard form contracts in general.

The issues for members range from a standard form contract which is anything but standard, through to lack of consistency in drafting, modifying, adding and deleting clauses, as well as interpretation to specific clauses in the AS 4000 series.

CCF recommends that:

- ✎ **the Productivity Commission undertakes a broad review of the variations from the accepted Australian standard format of general conditions of contract (AS4000/AS2124 etc.) that are in use among Government Departments.**
- ✎ **following the above mentioned review; that a whole of Government transition to a nationally harmonised standard conditions of contract model (potentially based on a revised AS4000 model) takes place.**
- ✎ **the current Standards Australia review of AS4000 continues. In particular the review should ensure that:**
 - ✎ **payment provisions reflect the security of payment regime by excluding damages and other claims from the calculation of progress payments.**
 - ✎ **payment schedules be amended so that certification is required within seven days of a claim being submitted and payment by the principal within seven days of certification.**
 - ✎ **the provisions dealing with superintendents are strengthened to further support the role of the superintendent in being fair and impartial by imposing a positive duty to do so.**
 - ✎ **the clause which provides for retention of payments and/or bank guarantees is strengthened to ensure prompt return of retention payments and/or guarantees occurs within a specified timeframe.**
 - ✎ **the definition of practical completion is rewritten to reflect the fact that not all of the documents and information is under the control of the contractor.**

- **any divergence from the standard conditions contained within AS4000 should be noted as a special condition of contract and contained in the contract documents as a special conditions addendum.**

PREQUALIFICATION

For civil works, CCF supports a whole of industry (i.e. whole of civil construction industry) prequalification system that is segmented into specific categories and is either based on a nationally consistent model or at the very least mutual recognition between the Federal Government and the States and Territories.

Differing prequalification requirements across states and territories causes unnecessary red tape and regulatory burden. It is for this reason that prequalification by one agency or authority should be accepted by equivalent others.

Transparency should be applied to how to become qualified, how to move between qualification grades and how the criteria for qualification are applied.

In particular the prequalification system must be able to accommodate joint ventures and other alliance arrangements so that the combination of the parties to the contracting arrangements satisfies the prequalification requirements.

CCF recommends that the Federal Government work with all State and Territory Governments to achieve a national prequalification system in order to reduce red tape and cost on industry.

STANDARDISATION OF PROCUREMENT POLICIES

The non-aligned procurement policies of the Federal Government as well as State, Territory and Local Governments add significant confusion and cost to the process of tendering for government works. This cost is ultimately atomised across all tenders by the contractor with a view to recovering this business overhead.

Standardisation of procurement policy will provide not only a far more level playing field across government departments - through reduced cost to administer a tender - but will also reduce costs for both the client and contractor.

Similarly, standardisation of procurement policy will lead to a far stronger procurement process across the whole of government. It should also link to CCF's positions on standardisation of general conditions of contract (AS4000) and harmonisation of contractor prequalification.

CCF recommends that the Federal Government undertakes a program of standardisation across all Departments and encourages State, Territory and Local Government to similarly align their procurement policies.

ENVIRONMENTAL APPROVALS AND PERMITS

CCF members often work across jurisdictions (state to state, local government to local government). When neighbouring governments enforce legislative requirements that differ in terms of environmental management, contractors may be forced to obtain extra permits, added approvals, drastically change their environmental management techniques, purchase or hire new equipment, or simply be unable to undertake the works.

Where ever possible government at all levels should limit such inconsistencies by through harmonisation or alignment of relevant processes, procedures and standards.

CCF recommends that the Federal Government work with all State, Territory and Local Governments to achieve harmonisation in environmental legislation, regulation and the like in order to reduce red tape and cost on industry.

BUILDING AND CONSTRUCTION INDUSTRY CODES AND GUIDELINES

Following the abolishment of the Australian Building and Construction Commission (ABCC), CCF advocated on behalf of members for the return of a strong and effective regulator dedicated to the building and construction industry, with rigorous enforcement powers based on tough sanctions.

The Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 sought to re-establish the ABCC and its powers as well as repeal the Fair Work (Building Industry) Act 2012 and other acts as described.

Given the goals of the legislation and its previous position, CCF provided the Federal Government with in principle support of both Bills and welcomed the move of the Government to re-establish the ABCC swiftly.

CCF has however cautioned that whenever a change such as this takes place there should be a complete review of its impacts.

Since the abolition of the ABCC the landscape of the industry has changed. In particular, the Victorian, New South Wales and Queensland Governments have all introduced implementation guidelines to their codes of practice for the building and construction industry, and established compliance units to monitor and enforce the codes and guidelines. These state-based initiatives have been in direct response to the void created by the ABCC's demise and their operation is likely to duplicate the requirements implemented by the new ABCC.

CCF recommends that:

- **the Federal Government work with State and Territory Governments to undertake a review aimed at understanding the impact of the re-establishment of the ABCC to identify any potential conflicts with these recent changes at State and Territory level.**
- **where red tape and regulatory burden has been placed on contractors the Federal Government work with State and Territory Governments to remove.**

ENVIRONMENTAL APPROVALS

CCF promotes environmental sustainability within the civil construction industry. This includes reducing emissions, cutting waste and improving energy efficiency on civil construction work sites and projects. CCF believes this not only benefits the environment but also lowers business costs through the more efficient use of resources.

CCF is concerned with the impact that meeting environmental laws and regulations can have on project approval timeframes. This is particularly the case with large projects that can face significant delays as environmental impacts, licenses or permits are assessed.

In this regard, CCF notes that Federal Government environmental approval in many circumstances is unnecessary and duplicative.

It should also be noted that CCF is aware some progress is being made in this area to delegate approvals to State and Territory Governments and CCF is supportive in this regard.

CCF recommends that where appropriate the Federal Government delegate environmental approvals for projects to State and Territory Governments to administer.

ENVIRONMENTAL STANDARDS

CCF is opposed to unfeasible, unreasonable and impractical government environmental standards, specifications and the like, that impose unfair demands on contractor provisions and activities.

When developing and implementing new environmental standards, specifications and regulations, government bodies must consult with industry in order to analyse the costs versus benefits to business.

CCF recommends that when implementing new environmental standards, regulation and the like, that rigorous regulatory impact statements be conducted and where possible red tape burdens are removed or reduced.

CARBON PRICING, TAXATION REBATES AND LIABILITY

CCF does not support carbon pricing schemes that increase costs for its members'. It is the belief of CCF that the flow on of additional costs may have a disproportionate impact on small to medium sized contractors. The added reporting requirements and administrative complexity involved with existing carbon pricing schemes is also of concern.

CCF endeavours to provide its members with up-to-date advice and information regarding carbon pricing, carbon reporting requirements, fuel rebates and legislative changes relating to any such matters, and believes this to be the best way of encouraging compliance.

CCF recommends that:

- ✎ **any additional taxation relating to emissions be subject to rigorous cost benefit analysis to ensure the impact on businesses.**
- ✎ **civil contractors consider adopting alternative technologies in order to reduce fuel consumption which lessens the carbon impact and ultimately saves them money.**

WORKPLACE RELATIONS AND LABOUR

Historically, the building and construction industry has been subject to industrial disputation that is beyond what is experienced in many other sectors.

The operation of the *Fair Work Act 2009* (FW Act) does not seem to have an impact on industrial disputation as was evident in a recent Fair Work Australia (FW Australia) case.¹⁰ This is of particular concern to CCF and as such the Federation has advocated for specific legislation as well as a regulator specifically for the construction industry.

INCREASING WAGES IN CIVIL CONSTRUCTION

Over the past few years, CCF members in some states and territories report that there has been a trend to increasing wages beyond what would be considered reasonable. This is particularly so in places such as Queensland where large resource projects create competition for labour.

Some of the impacts on increased wages are:

- ✎ competition for labour from large infrastructure projects
- ✎ collective bargaining
- ✎ changes to allowances and penalty rates.

¹⁰ [Lend Lease Building Contractors Pty Ltd v Construction, Forestry, Mining and Energy Union \[2013\] FWC 8659 \(1 November 2013\)](#)

It is recommended that the Productivity Commission undertakes a complete review of the average wages for civil construction occupations across all states and territories in the civil sector as well as heavy and mining over the past five to ten years.

INDUSTRIAL ACTION

It is the view of CCF, that all parties including employers, employees, unions or employer associations should exercise respect for the rule of law. In this regard compliance should be facilitated by meaningful sanctions, speedy enforcement mechanisms and a strong regulator to enforce sanctions for unlawful action.

Over the past few years, there have been a number of cases where construction sites have been brought to a halt due to unlawful industrial action. This has potential to significantly increase the overall cost of a project and ultimately impact on project affordability.

CCF supports genuine freedom of association; that is, the right to join or not join a union or an employer association. It supports the rights of employees to be represented by a union, however the choice must be a free one and to that end the CCF opposes legislation that mandates automatic union representation.

CCF recommends that:

- **a party should not be able to go on strike without first undertaking proper and meaningful discussion; or**
- **a party should not be able to go on strike without first mediation conducted by an independent umpire such as the FW Australia. In such cases, parties should only go on strike once they have obtained prior approval and undertaken a vote to do so.**
- **any legislation or regulation dealing with the relationship between: unions and employees; employer associations and businesses; facilitates for genuine freedom of association.**

INDEPENDENT CONTRACTORS

A productive workplace relations system should recognise a legitimate place for individual contractors. Further it should allow such parties to be free to enter into contractual arrangements appropriate to the task they are engaged for.

CCF opposes agreements and provisions designed to disincentivise the employment of independent contractors for construction and project work. It considers that such provisions should be specifically prohibited.

CCF recommends that provisions designed to provide a disincentive or penalty for the engagement of independent contractors be expressly outlawed under the FW Act.

SKILLED MIGRATION

The ability for civil contractors to access skilled labour through skilled migration programs such as Enterprise Migration Agreements and the sub-class 457 Visa program is currently limited.

A number of highly skilled civil construction occupations are not recognised on the present sub-class 457 Visa program, due to the way in which civil skills are recognised within the ANZSCO framework.

Skilled migration, both permanent and short term, complements other training initiatives as it will enable the industry to support labour market mobility, particularly for short-term projects.

In this area, CCF believes that the government may be able to better measure labour shortages so that skills need can be met effectively.

Skilled migration programs should be administered with clear accountability mechanisms, so that the objectives of the Australian economy and the community are met without unnecessary red tape being imposed on employers.

CCF recommends that:

- **civil construction skills that are linked to Certificate III qualifications be recognised as equivalent to trade qualifications; i.e. Australian and New Zealand Standard Classification of Occupations (ANZSCO) skill level three.**
- **the national skills needs list be reviewed, so that it does not rely on the ANZSCO classifications or that the ANZCO classifications be reviewed to recognised civil construction occupations or that civil construction skills that are linked to Certificate III qualifications be recognised as equivalent to trade qualifications; i.e. ANZSCO skill level three.**
- **the list of occupations eligible for the 457 Visa program be expanded to include at a minimum plant operators, drainers and pipe-layers.**
- **skills demand in civil construction be the subject of separate data collection to highlight if and when the industry is in skills shortage.**
- **there be a reduction in the paperwork and administrative red tape associated with skilled migration.**

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