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## **Submission in response to Productivity Commission Draft Report on Public Infrastructure**

**April 2014**

### **Overview**

1. The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 workers electrical and electronics workers across the country and the CEPU as a whole represents approximately 100 000 workers nationally, making us one of the largest trade unions in Australia.
2. Our members are an integral part of the construction sector and the broader national economy contributing significantly to the productivity and sustainability of key sectors of economy such as energy, resources and construction.
3. We welcome the opportunity to submit to the Commission on matters arising from the Draft Report on Public Infrastructure as the recommendations and findings have the potential to directly impact members.
4. Comments and issues raised in this submission are made in a constructive and good faith context and we would welcome the opportunity to make further submissions during the scheduled public hearings.

5. The productivity commission is right to examine the efficiencies of specific private sector projects as well as the sector as a whole, as it is often the case that there is just as much, if not more, inefficiency in the private sector when it comes to large infrastructure delivery.
6. However, we acknowledge that due to the very narrow and specific terms of reference set by the government, the Commission has been prevented from examining the broader picture of efficiency in across the broader industry. That is extremely unfortunate.
7. One major area of concern when considering private sector involvement in the provision of public infrastructure through investment and funding vehicles such as PPPs is the past record of these projects in Australia.
8. The private sector record on public infrastructure projects such as airports, toll roads, trains, and power networks has been one that is defined by cost cutting and under investment to maximise profits during construction and poor build quality that has contributed significantly to ongoing high prices for end users and consumers.
9. It is unfortunate as it is predictable, that a small number of submissions to this review thus far have chosen to attack the wages and conditions of workers in the construction industry along with current industrial relations legislation as drivers of inefficient costs in the construction industry. More unfortunate still is that Commission seems to have given these submissions credence as reflected in many of the reports draft findings and recommendations.

10. We note that in an earlier report<sup>1</sup> in 2009 into public infrastructure investment and finance, the Commission found that in order to make sound decisions when trying to identify the most efficient financing vehicle regard must be given to the nature of the investment, accuracy of available information, potential for competition and negotiation and project management capacity.
11. We particularly note the finding that while PPPs can offer potential to reduce project risk they are extremely costly to transact due to the high costs involved in arranging and managing financing in addition to the potential for negotiations and contracting can be time consuming and costly, and outcomes may not always be as expected.
12. Given the Commission's familiarity with the significant drawbacks associated with PPPs in the delivery and management of public infrastructure we find it difficult to see how the Commission has arrived at many of the findings and recommendations, particularly around PPPs and privatisation, that are contained in the draft report.

### **Privatisation**

13. In particular we note with alarm Draft Recommendation 2.1 of the report:

*There is no continuing case for retention of certain infrastructure in public hands. Accordingly, State and Territory Governments should privatise their government-owned electricity generation, network and retail businesses and major ports subject to appropriate processes to ensure value for money.*

14. The ETU rejects draft Recommendation 2.1 and asks that it be removed from the final report.

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<sup>1</sup> Productivity Commission, 'Public Infrastructure Financing – An International Perspective'.

15. There is a very strong case, financially and socially for the retention of critical public infrastructure to remain in public hands, especially energy assets.
16. Proponents of privatisation or any variant thereof, such as PPPs, have long argued that the problems arising from public provision of infrastructure include issues such as immunity from market signals and little or no incentive for commercial disciplines that have often resulted in inefficient construction and low productivity with high costs and poor quality services. Privatisation is often justified on, among other grounds such as paying down government debt, that it will lead to better productivity outcomes through increased efficiencies and increased competition benefits.
17. The ETU rejects these assertions completely. Privatisation of essential service assets or agencies such as electricity, which are usually natural monopolies, is not in the long term economic interests of governments or consumers and will not deliver increased productivity.
18. This is particularly true in the energy industry where infrastructure investment in transmission and distribution, which account for around half of total infrastructure spend, are subject to a heavy regulatory environment via the National Electricity Laws, Regulations and Rules.
19. The energy industry is unique as compared to industries such as roads, rail and ports because under the market laws and rules, approximately 70% of the capital cost of investment in transmission and distribution infrastructure is recoverable via the allowable pass on cost to consumers. This includes a determined revenue allowance. In the case of the wholesale generation market there is a mature and fully operational competitive set of market operations, and in the case of transmission and distribution.

20. Further, the market rules that dictate that the NEM regulator determine what costs for investment public energy infrastructure are recoverable make no distinction between public and private ownership. The only difference being that in the case of private owned ship the revenues earned do not go back to an Australian government, rather they go into the pockets of overseas owners.
21. In Australia thus far this has meant driving revenue into the pockets of overseas owners that wholly or partly owned by foreign governments, with SP Ausnet, Alinta Energy, Zinfra, Jemena being just a few examples of Australian private energy companies that have part or whole ownership structures that can be traced to Chinese and Singaporean government ownership.
22. Examination of construction productivity through the deliberately narrow lens of facilitating privatisation of state assets simply for the sake of freeing up capital equity to be re-invested in the private sector via public infrastructure projects completely ignores the strongest and most compelling reasons to keep vital infrastructure, such as energy assets, in public ownership.
23. Privatisation of the Queensland energy assets was mooted by a 1996 Commission of Audit by the then LNP government, but thankfully it did not take place. A recent independent expert analysis<sup>2</sup> of the 1996 proposal has revealed that Queensland has gained approximately \$15 billion by keeping energy assets under public ownership. The consequent benefits to the Queensland state economy of an extra \$15 billion would have been of enormous benefit to both the public and private infrastructure industry over that time.

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<sup>2</sup> Quiggan, J. 'Electricity Privatisation in Australia – A Record of Failure', John Quiggan Consulting, 2014.

24. Further, recent independent economic analysis<sup>3</sup> has revealed that, in the case of one Queensland state owned energy distributor (Energex) for every billion invested the state has received returns of \$41.6 million per annum for the last 50 years.

### **Workforce Matters**

25. With regards to draft Finding 8.1 that:

*Aggregate data indicate that the costs of construction inputs, particularly labour, fuel and land, have risen substantially recently. While such data shed little light on design, environmental and many other cost elements, other evidence suggests that there have recently been periodic increases in these elements.*

26. The ETU rejects that labour costs have risen in the manner that is being implied and requests that the word 'labour' be removed from Draft Finding 8.1.

27. With regards to draft Recommendation 11.7;

*Australian, State and Territory Governments should remove the requirement for local content plans, such as the Australian Industry Participation plans, from tenders for all projects.*

28. The ETU believes that stimulating local communities not only helps create opportunities at a local level but is essential to our ongoing overall national economic and social sustainability. As such we request that Draft Recommendation 11.7 be deleted from the final report.

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<sup>3</sup> Orion Consulting 2014.

29. There is an urgent need to invest in training and apprenticeships to boost industry specific and economy-wide productivity. Proper training enables employees to work smarter with more skills thus boosting productivity. This axiom holds true for the entire staff hierarchy, as managers so they also know how to work smarter, not just cheaper – particularly when it comes to HR and industrial matters.

30. However, despite the high value proposition of investment in training and apprenticeships through increased output, quality, efficiency and productivity, the appropriate training needs are rarely met by employers.

31. Unfortunately some employers in the construction industry are avoiding training their employees with skills that are transferable outside of that particular business, which drags down overall industry productivity, efficiency and leads to inherently anti-competitive labour force outcomes.

32. Productivity growth in the economy as a whole depends not only on productivity growth in individual industries but also on the changing composition of the economy. For instance, if productivity within each industry is unchanged the productivity of the economy can change if the relative sizes of different industries and their workforces change.

### **Overseas Labour**

33. The Federal Government recently announced plans to dilute the requirements for temporary overseas workers brought to Australia on 457 visas. We are concerned that this will have a negative impact on sector labour productivity,

workplace safety standards, higher unemployment in local communities and exploitation of overseas workers.

34. Proponents of large public infrastructure projects must move beyond a reliance on global supplies of 'just in time' skilled migrant workers to meet demand for future labour.
35. This is particularly pertinent considering there are high levels of labour under utilisation in our domestic economy (including among migrant groups) which has a downward effect on productivity.
36. The real challenge and priority must be on domestic training and apprenticeships, whilst ensuring that temporary skilled migration programs occur within a clear industry workforce development framework.
37. The ETU believes that skilled migrants make a valuable and substantial positive contribution to Australia's economic, social and cultural productivity and must be treated with equity and respect - particularly with reference to wages and industrial conditions - as compared to Australian citizens. Unfortunately there continues to be anecdotal evidence of this not always being the case.
38. With reference to draft finding 12.1;

*There is no robust evidence that the new industrial relations environment specific to construction had significant effects on the costs and productivity performance of the construction industry as a whole. However, for some segments of the industry and specific project sites, there remains evidence of unlawful conduct, overly generous enterprise bargaining arrangements, and other problematic industrial relations arrangements that are inimical to productivity and costs.*



39. The ETU rejects Draft Finding 12.1 and requests that it be omitted in its entirety from the final report.

### **Workplace Productivity**

40. While productivity is important as it is the primary means by which Australian incomes can grow over time, current workplace relations laws has been fallaciously pin pointed as one of the underlining causes of past poor labour productivity and portrayed as a major 'challenge' going forward.

41. It has been poorly argued by employer group submissions which provid a general narration of recycled criticisms regarding the industrial relations system. They have provided no or little evidence to substantiate the allegations that the system is inhibiting the construction of future infrastructure projects; consequently labour productivity.

42. As quoted by widely respected Australian economist Saul Eslake, '*Workplace relations reforms introduced by the Howard Government under the title 'Workchoices' in its last term in office were not, primarily, 'productive-enhancing'*<sup>4</sup>.

43. As has been the case in submissions to the Commission, when employers appeal for the return of *Work Choices*<sup>5</sup> like legislation, for the sake of increased labour productivity, we propose that those contentions should be

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<sup>4</sup> S Eslake, *Productivity: The Lost Decade*, The Australian Economy in the 2000s (2011) Reserve Bank of Australia.

<sup>5</sup> *Workplace Relations Act 1996* (Cth).

thoroughly be assessed. The connection from increased profits to increased productivity is erroneous.

### **Productivity Growth**

44. We accept the role that productivity growth plays a driving factor for economic growth, and the material standards of living of society and potential workers. When the impact workplace legislation and practices on Australian productivity is considered, it is important to ensure that people are debating the same concept.

45. When we discuss productivity, the concept is described as a measure of economic output relative to inputs and consequently, it can be expressed that productivity describes the value of the total output produced during a period of time divided by the number of hours of labour spent producing that output during that period.<sup>6</sup>

46. In the context of labour productivity, more outputs might be generated from fewer hours worked, or more output might be generated from the same hours worked.

47. What labour productivity is *not* is simply producing the same output for less money. What that might do is increase the profits that a business might make from their workers, but not the productivity of their labour.

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<sup>6</sup> K Hancock, *IR offers no Panacea for Productivity*, Australian Financial Review, 16<sup>th</sup> February 2012, p63.

48. Inherent in Australia's national workplace and industrial relations legislation intentions is the promoting productivity and economic growth<sup>7</sup> which will in turn generate jobs and boost wages and revenues, whilst simultaneously providing security and protections for workers. This dual beneficial outcome for employees and employers is critical to producing outcomes that boost productivity.

49. It would be skewed and deceptive to view Australia's productivity growth rate remotely. Points of low productivity growth can be associated to unrelated effects beyond the domestic economy. It must be acknowledged that Australian labour productivity has been at its strongest in recent years. On an international scale, Australia's labour productivity exceeds the OECD average and exceeds countries like Canada, the UK, New Zealand and Japan. In 2012, Australia recorded faster labour productivity growth than any G7 country (including USA). Between 2007- 2012, Australia's productivity growth increased by 6.78%, higher than any G7 country and more than doubled the OECD average.<sup>8</sup>

### **Productivity and Industrial Arrangements**

50. What has been put forward by many employers is that they would like to return to the bargaining regime under Work Choices. Specifically, some employers would like to resort back to employee collective agreements or employer greenfield agreements.

51. The years in which the Work Choices legislation was in operation were not years of strong productivity growth, either for the total economy or for the construction industry. We don't claim that the poor productivity performance of

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<sup>7</sup> *Fair Work Act 2009* (Cth) s 3(a).

<sup>8</sup> OECD.Stat < <http://stats.oecd.org/>>.

the mid-2000s was caused by IR arrangements, nor that the subsequent improvement is due to the repeal of Work Choices.

52. There are far bigger economic forces at work affecting the rate of productivity growth, like the mining boom, the investment in electricity generation capacity, and natural disasters such as floods, droughts and bushfires.

53. Since the introduction of the Fair Work legislation there has been a significant increase in agreement making and registered agreement coverage coupled with a significant decline in disagreements.

54. Collective agreements provide fairness to employees as they provide above wages and increases, engage transparency, support ongoing union representation and enables a means to address dispute resolution.

55. Employers that have argued to reform aspects of right of entry, protected and adverse actions and re-introduce employer-greenfield agreements seem incapable or unwilling to acknowledge the clear intention of the *Fair Work Act*.

56. The *Fair Work Act* was intended to balance the interest of both the employer and employees. It enables representation at work by recognising freedom of association and the right to be represented<sup>9</sup> and when both parties approach negotiations in good faith, respecting the spirit of the framework, mutually beneficial outcomes for both workers and employers are usually achieved.

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<sup>9</sup> *Fair Work Act 2009* (Cth) s 3(e).

57. It only fair or reasonable that negative and obstreperous industrial relations tactics that are employed by some employers should take responsibility of the negative effects it has on the productivity within their business rather than being blamed on the overall industrial relations environment and thus creating a reason for change.

58. Employers often frustrate employee's attempts to meet with unions at work. They even attempt to stagger breaks to make it difficult for workers to have a common break to meet and talk with union officials or make places for union officials to meet inconvenient for their employees.

59. Unfortunately it seems that the effects of employer tactics are falsely being attributed to employees and their representatives actions.

60. With regards to Draft Recommendation 12.1;

*All Australian governments should adopt the Victorian building code guidelines (or ones with an essentially similar framework) for their own major infrastructure purchases. The Australian Government should require compliance with these guidelines as a precondition for any infrastructure funds it provides to State and Territory Governments.*

61. The ETU rejects this recommendation in its entirety and requests that it be omitted for the final report.

62. The Victorian Building Code model has led to increased industrial disputation and lengthy and expensive court proceedings that are a burden on all parties involved. In our experience the Victorian model has been extremely difficult and costly to work with, particularly so in circumstances of multiple agreements. The fact that the code requires legal action to be launched in

certain circumstances belies not only the inherent cost of the system, but also that it is predicated on an outdated foundation of adversarial behaviour, rather than interest based negotiation.

63. We note that the Victorian model involves code administration by a government unit within the Treasury Department, which if mirrored at a federal level will, we contend, be in direct conflict with the Commission's recommendations to improve planning, delivering and monitoring of major projects tenders by ensuring an arms-length approach to proponents procurements and regulatory units and functions.

64. With regard to Draft Recommendation 12.2;

*The Australian Government should increase the ceiling of penalties for unlawful industrial relations conduct in the construction industry.*

65. The ETU rejects this recommendation in its entirety and requests that it be omitted for the final report.

### **Australian Building and Construction Commission**

66. Having previously been in existence from 2005 to 2012 and the ABCC was officially abolished on 31 May 2012 whereupon a new independent regulator, Fair Work Building & Construction, commenced operation on 1 June 2012 after being created to take on, improve and extend many of the functions and aims of the ABCC. This recent reform process was undertaken at significant cost to the taxpayer and now, less than 18 months later, we find that due to

the vagaries of partisan politics the newly current government has signalled an intent to re-establish the ABCC<sup>10</sup> at further cost to the taxpayer.

67. Re-establishment of this body has been met with apprehension from many quarters, including employers in the construction industry, and has the potential drive a large increase in conflict and dispute numbers which will have a negative effect on productivity.

68. Various employers have used the reports and claims that the improvement in labour productivity was due to the ABCC. As carefully examined in ACTU's submission the statistical means deduced from the 2007 Econtech report is flawed and is to be disregarded<sup>11</sup>.

69. The major issue with the proposed bills for a new ABCC is that it includes more coercive powers than its predecessor. The powers seem to impinge on the civil liberties such as new powers of coercive investigation, extension of the scope of jurisdictional means, retrospective prosecutorial power and an increase in penalties<sup>12</sup>.

70. The return of the ABCC is not about the interest of productivity growth, rather it simply uses productivity growth as a screen for another agenda that is outside the scope of this particular investigation. The powers seem to extend beyond the construction industry jurisdiction.

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<sup>10</sup> [http://www.afr.com/p/australia2-0/coalition\\_to\\_press\\_restoration\\_of\\_6z4mWhYf97YOi5XI06Be9J](http://www.afr.com/p/australia2-0/coalition_to_press_restoration_of_6z4mWhYf97YOi5XI06Be9J)

<sup>11</sup> Murray Wilcox, *Transition to Fair Work Australia for the Building and Construction Industry*, 2009 <[http://services.thomson.com.au/cpdnews/docs/Workforce/\\_20090304WilcoxReport.pdf](http://services.thomson.com.au/cpdnews/docs/Workforce/_20090304WilcoxReport.pdf)>.

<sup>12</sup> Building and Construction Industry (Improving Productivity) Bill 2013 & Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013.

71. Industrial disputation in the construction industry has been recorded at being at the lowest level over the past two decades<sup>13</sup>.
72. The current *Fair Work (Building Industry) Act 2012* already has enforceable grounds to prohibit industrial disputation practices such as adverse or coercion action. To see employers support for the return of the ABCC seems to reflect the 1800s Master and Servant Acts where employers have greater influence to apply punitive measures on employees and trade unions. There is little evidence to support any of the Bills claiming their aim is to improve productivity.
73. There is no objective reason to re-introduce the ABCC or substantially change the industrial relations arrangements in the construction industry. Can improvements be made? Yes, of course and we would be willing to engage in discussions that were aimed at an evolution of the current environment as that would deliver far greater positive outputs for the industry.
74. It is desirable that the Commission makes recommendations to government advising against the re-establishment of the ABCC as it will drive down sector productivity and efficiency and be costly to establish and maintain.

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<sup>13</sup>ABS 6321.0.55.001 - Industrial Disputes, Australia, Dec 2013  
<<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6321.0.55.001>>.