



Submission in Response

to the

**Productivity Commission Draft Report on Public Infrastructure: Provision,
Funding, Financing and Costs (March 2014)**

4th April 2014

1. Introduction

- 1.1 On 13th March 2014 the Productivity Commission released its Draft Report on Public Infrastructure¹. The Draft Report had been prepared following a request from the Treasurer, Mr Hockey, for the Productivity Commission to:

“undertake an inquiry into ways to encourage private financing and funding for major infrastructure projects, including issues relating to the high cost and the long lead times associated with these projects.

Through this inquiry, the Commission is to conduct a broad ranging investigation into costs, competitiveness and productivity in the provision of nationally significant economic infrastructure and examine ways to: reduce infrastructure construction costs; address any barriers to private sector financing, including assessing the role and efficacy of alternative infrastructure funding and financing mechanisms, and recommending mechanisms and operating principles that may be applied to overcome these barriers; and, without limiting the generality of this reference, outline options to reduce construction costs.”²

- 1.2 On the release of the Draft Report the Productivity Commission invited comment from interested parties by way of written submission (to be lodged by 4th April 2014), and/or by attending a public hearing to be held in early April 2014. The CFMEU has taken up this invitation and provides this written response. We also advise that we would welcome the opportunity to attend one of the public hearings.
- 1.3 As the Draft Report covers a wide range of issues, and given the limited time within which to prepare a response, it is not the intention of the CFMEU to make comment on all of the Draft Report. Accordingly this submission will concentrate on those parts of the Draft Report dealing with productivity issues (chapter 9), industrial relations (chapter 12), and workforce skills (chapter 13).
- 1.4 Overall whilst the Draft Report is perhaps more sophisticated than previous reports, some of the analysis appears to ignore some obvious answers on basic issues and the proposed responses appear to be more political than economic.
- 1.5 For example the CFMEU is amazed to read and highly critical of what appears to be an attempt by the Productivity Commission to wade into political territory by

¹ Productivity Commission 2014, *Public Infrastructure*, Draft Inquiry Report, Canberra.

² http://www.pm.gov.au/sites/default/files/media/13-11-13_terms_of_reference.pdf

recommending that the Victorian Construction Code be adopted nationally. We found little or nothing in the report itself that could motivate such a recommendation. Moreover, we would submit that the Victorian Code is not an economic blueprint for improved productivity but a transparently political policy designed simply to reduce trade union influence. We thus find it an extraordinary outcome of the research that went into the report that the Productivity Commission declares its 'central message' is for individual governments to 'act immediately' and adopt the Victorian Construction Code when there is no evidence that the Victorian Code has been of economic benefit. For the public to have confidence in the Commission's work there has to be a sound basis for their recommendations and there is no economic basis or sufficient supportive content in the report for this recommendation.

2. Response to Chapter 9 – Productivity Issues

- 2.1 The Draft Report is correct in its observation that productivity “*can be difficult to measure in service sectors such as construction where the output (that is, the completed infrastructure) can vary in quality over time and frequently lacks a market price.*”³ Indeed infrastructure projects by their very nature are heterogeneous and the construction of them is usually affected by their nature, location, local conditions and value considerations (some of which may be of a political nature). We would submit that this difficulty has increased not decreased over time, not the least because of the vertical integration of head construction companies and the rise of build, own and operate projects, which clearly makes identifying the costs and values of the build component more difficult.
- 2.2 The Draft Report also correctly notes that most aggregate statistical data encompasses all construction activities - residential, commercial and infrastructure, and that each of these sub-sectors are different, producing different products, having different market structures, with activity cycling differently over time, and facing different regulatory environments.⁴
- 2.3 Having identified these problems of measurement and the structural differences of construction activities, it is somewhat surprising that the Productivity Commission then decided that there are a number of common elements (which are not identified), that make the use of the aggregate productivity trends a useful

³ Productivity Commission, op. cit., p.308

⁴ Ibid, p.310

tool in understanding the productivity performance of the infrastructure construction sector. We would suggest that the opposite is in fact the case, i.e. that the differences between the sectors are so significant that the aggregate data is compromised as a tool for assessing the productivity within one sector. One only has to compare the construction of the Sydney Harbour Tunnel to say a housing estate on the outskirts of Sydney, or a renovation project in the inner city, to begin to identify these differences which would include the complexity of the construction process, the size of the projects and area of land used, the regulatory environment, the size of the labour force, the labour co-ordination required, and the technology of the equipment required for the project.

- 2.4 Another complication of using the aggregate data is that the industry wide figures may disguise what is happening in a particular sector at a given time. It is widely recognised by economists that in an economic downturn labour productivity may decrease as employers attempt to hold on to their workforce for as long as possible (i.e. labour hoarding). On the other hand productivity often rises during a boom as with the increase in labour costs, reflected by higher wages, employers look to improve productivity by greater use of technology and increasing the skills of the workforce.
- 2.5 Over the last 5 years we have seen the commercial and residential sectors hit badly by the recessionary effects of the global financial crisis. Yet during the same period the mining and engineering construction sectors were buoyant. It is only in the last 18 months or so that commercial and residential activity has increased and even then it is not uniform across all States and Territories. Given that scenario it is not surprising that aggregate labour productivity growth in the building and construction industry has been mixed. But that is just as likely a statement about the compositional effects of activity than the technical efficiency of the sectors in the industry.
- 2.6 The statement in the Draft Report that labour productivity in the construction sector has, in particular, been below the market sector average for the period 1989-90 to 2011-12 would appear to be an overstatement, and perhaps reflect an over reliance on one metric. The findings of Price Waterhouse Cooper (PWC) in its *Productivity Scorecard for the Construction Industry* in 2013⁵ clearly differ. According to PWC:

⁵ <http://www.pwc.com.au/consulting/assets/publications/Productivity-Scorecard-Oct13.pdf>

“Growth in labour productivity in the construction industry has tracked closely with the market sector over the past 15 years aside from a dip around the introduction of the GST, when housing construction was brought forward”⁶

- 2.7 If the Productivity Commission is looking for other factors that have influenced productivity, particularly the relative low levels of capital deepening in the construction industry (Information Request 9.1) then we suggest they should look at the levels of economic activity over the last 15 years and more recently the effects of the global financial crisis on the commercial and residential sectors (including the problem of capital raising). Clearly, and to repeat, activity in different sectors of the industry can have a significant effect on the aggregate figures. If the commercial and residential sectors were experiencing low levels of activity and difficulty in raising capital for projects it is not surprising that they would experience low levels of capital deepening.
- 2.8 The Draft Report includes a section on international comparisons of aggregate performance and notes that the evidence is quite mixed and subject to varying levels of robustness. We would add that as with comparing productivity over time, which adds the complication as to the effects of inflation which must be taken out of the value measurement by the use of price deflators, international comparisons similarly need to factor in different exchange rates which can vary considerably over time (the relatively recent substantial increase in value of the Australian dollar compared to the US dollar and other currencies would obviously have an effect). Accordingly, as noted by the Commission, *“caution is needed with regard to methods of comparison and in interpreting results.”⁷*
- 2.9 In line with this cautious approach we would suggest that the 2012 study by Langston, *Comparing international construction performance*,⁸ that is referred to in the Draft Report should be treated in a similar manner. Langston attempts to create a new method for comparing international construction performance by integrating *“costs with time and quality to determine ratios capable of ranking projects, building contractors, cities and even entire industries – not only today, but retrospectively over time.”⁹* Time constraints in preparing this submission

⁶ Ibid, p.3

⁷ Productivity Commission, op. cit., p.315

⁸⁸⁸ Langston, Craig, “Comparing international construction performance” (2012). *Mirvac School of Sustainable Development*, Paper 150

⁹ Ibid., p.1

prevent us from providing a detailed critique of Langston, however given that the author identifies that none of the information on the US projects has been independently validated¹⁰ and that “*excessive use of overtime will improve CE scores and may be one reason for differences in perceived efficiency between projects*”¹¹ the results are hardly conclusive.

- 2.10 As for multifactor productivity growth, the Draft Report notes that the Australian construction industry has outperformed the market sector over the past two decades.¹² It is suggested that this growth is more likely to reflect technological developments linked to the generation and adoption of new ideas (i.e. innovation). The Draft Report then uses research and development intensity as a proxy for innovation and refers to OECD statistics to claim that the levels of research and development in the construction industry in Australia were well above the United Kingdom in 1999-2006 and the US for the period 2003-06.
- 2.11 Whilst Australia may have outperformed the UK and US in those periods, we would suggest that Australian data shows that the performance of the construction industry is not uniform and some companies are not pulling their weight. According to the ABS publication *Innovation on Australian Business 2003*¹³ (released on 17th February 2005) the construction industry had the second lowest proportion of businesses innovating (30.7% of businesses with 4 or more employees).
- 2.12 The Draft Report also refers to the level of international activity undertaken by Australian construction firms, particularly Leighton Holdings and Lend Lease, and suggests that this is a sign that Australian construction firms are well regarded and are able to compete in overseas markets. Whilst this type of generalist statement may be correct, the reasons behind the growth of international activity may have more to do with mergers and acquisitions than the productivity practices of these firms per se. In regard to Lend Lease their increased activity in the UK and US is largely due to the acquisition of the British international contractor Bovis in 1999. Leighton Holdings increased its activities in the Middle East by the acquisition of a 45% stake in the locally based Al Habtoor

¹⁰ Ibid., p.14 and 22

¹¹ Ibid.,p.22

¹² Productivity Commission, op. cit., p.319

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<http://www.abs.gov.au/AUSSTATS/abs@.nsf/7d12b0f6763c78caca257061001cc588/fff06c5fe91dcb78ca2572e20018c2f9!OpenDocument#6.1%20Release%20of%20'Innovation%20in%20Aus>

Engineering, one of the largest contractors in the region in 2007. As for the reputations of these companies overseas both have taken a battering in recent times due to questionable practices. In 2012 Lend Lease admitted to a huge fraud scheme in which it overbilled clients for more than a decade and agreed to pay US\$56 million in fines and restitution to avoid criminal charges.¹⁴ Leighton Holdings is currently being investigated over allegations that it paid multi-million dollar bribes to win contracts overseas.¹⁵

- 2.13 Indeed, in their domestic activities, we know that the integration of head contractors across the financing, development, construction and ownership sectors of the property value chain has given them considerably increased power in construction. This has been recognised in earlier inquiries and is on record by a range of participants in the construction industry, including the Property Council of Australia, and the Institute of Engineers. Indeed, the report makes passing mention of the market power of head contractors, albeit without sufficient development.
- 2.14 We understand that many mid-tier sub-contractors that move in and out of large construction projects might find the rigors and demands of a cost cutting head contractor on a large and complex site, and an organised workforce, difficult. We understand that they may even feel like the proverbial “meat in the sandwich”. But the alternative is that this pernicious cost cutting culture gets translated directly downward to the workforce. We have already seen a large growth in sham contracting, and research has shown its deleterious effects on health and safety, training and skills and a greater sense of precariousness in an already highly casualised industry. We submit that an organised workforce acts as a discipline on managerial performance, supports safety and acts as a spur to innovation.
- 2.15 The final point that we wish to make on productivity is that we believe that construction workers in Australia are as productive as, if not more so than construction workers in other countries. They work long hours averaging 56 hours per week, and they demand and receive good wages, and demand safe working conditions. The union and our members recognise the need to improve productivity, where possible, and that is why we are supportive of the use of new

¹⁴ http://www.nytimes.com/2012/04/25/nyregion/lend-lease-expected-to-admit-to-fraud-scheme.html?_r=0

¹⁵ <http://www.theage.com.au/national/asic-to-quiz-leighton-witnesses-over-bribery-accusations-20140401-35wgp.html>

technology, innovation, and having a skilled workforce that is open to further education and up skilling. What we will not accept is a trumped up claim of a false productivity crisis created by campaigns to reduce costs at the expense of workers' wages and conditions. Unfortunately this has been the continued blinkered focus of conservative governments in Australia (both at a Federal and State level) and their cheer squad of employer organisations. It would also appear from the Draft Report chapter on Industrial Relations, which we respond to next, that the Productivity Commission is in danger of joining this confederacy.

3. Response to Chapter 12 – Industrial Relations

- 3.1 As set out in our introduction the CFMEU is highly critical of The Draft Report chapter on industrial relations and what appears to be an attempt by the Productivity Commission to wade into political territory by recommending that the Victorian Construction Code be adopted nationally. To repeat, the Victorian Code is not an economic blueprint for improved productivity but a transparently political policy designed to reduce trade union influence.
- 3.2 There is no evidence that changing the industrial relations environment, particularly through attacks on trade unions and the wages and conditions of workers, has any effect on productivity, yet this one issue continues to receive relentless attention.
- 3.3 The reality is that removing the influence of unions and reducing wages and conditions will not increase productivity, but may indeed have the opposite effect. As Allan, Dungan and Peetz pointed out in a recent article:

“Twenty years on, the general consensus among those who reviewed the literature was of no consistent relationship evident between unions and productivity, with a wide variety of results but the average impact tending towards zero (Addison and Belfield, 2004; Freeman, 2005; Hirsch, 2004; Kaufman, 2005). Similarly, studies that effectively contrasted union collective bargaining with non-union individual contracting showed no advantage for individual contracting (Fry et al., 2002; Gilson and Wagar, 1997; Hull and Read, 2003; Peetz, 2005).

There is one consistent positive relationship that comes through the literature: ‘what matters is not unionism per se but the interaction of unions with management’ (Freeman, 2005: 657), as ‘union plants with cooperative labor relations and high-performance HRM practices have above-average productivity, whereas union plants with adversarial relations and traditional

“job control” HRM practices have below-average productivity’ (Kaufman,2005 citing Hirsch, 2004). Black and Lynch (2001) showed that among workplaces promoting joint decision-making and incentive-based pay, unionized workplaces had higher productivity than non-union workplaces, whereas among workplaces without any innovations, the reverse was the case. In Australia, the intensity of collaboration between management and workers (via unions) has a positive effect on workplace performance (Alexander and Green, 1992).”¹⁶

- 3.4 Attempts to reduce union influence at the workplace through the introduction of regulatory codes, increased financial penalties and draconian institutions with coercive powers, such as the ABCC, will not increase productivity. They may however stifle the political voice of workers alter the distribution of capital by increasing the employers share and reducing the share going to workers. Seen in this light the real intentions of the conservative forces become blindingly obvious.
- 3.5 In this chapter the Draft Report adopts its own definition of industrial relations as a system – a complex array of laws, regulations, conduct, norms, actors and institutions.¹⁷ We suggest that this definition seeks to over complicate the issue as industrial relations in its basic form is the relationship between workers and their employers. It is how these two groups operate in the workplace over wages and conditions of employment. It is therefore both an economic relationship and a human relationship. Unfortunately most economists and it would appear the Productivity Commission, based on the Draft Report, forget the latter of the two.
- 3.6 The Draft Report’s discussion on sham subcontracting is somewhat troubling as although it clearly states that sham subcontracting is unlawful, it also implies that there is a degree of acceptance within the industry of some legitimacy because the practice is rife and some of the misclassification is unintentional. The Draft Report also suggests that unions exercising excessive bargaining power to drive up employees’ wages and conditions are to blame for the prevalence of sham contracting, and that *“the prevalence of sham contracting would probably decline were that market power reduced in the construction industry.”*¹⁸

¹⁶ Allan, C, Dungan, A and Peetz, D [2010] ‘Anomalies’, Damned ‘Anomalies’ and Statistics: Construction Industry Productivity in Australia, *Journal of Industrial Relations*, 52 [1] pp.61-79

¹⁷ Productivity Commission, op. cit., p.407

¹⁸ Ibid., p.419

- 3.7 The union rejects this analysis as not only morally objectionable, i.e. attempting to defend in some way sham subcontracting, but also absurd. There is no evidence of any relationship between the wages paid to building and construction workers and the rate of sham contracting. Sham contracting has been around for decades and is a result of greedy individuals, the majority of whom are employers, who want to minimise costs by not paying for annual leave, sick leave, workers compensation insurance, superannuation and payroll tax. They are unscrupulous people who will continue to exploit legal uncertainty or indeed intentionally break the law, knowing that they are unlikely to be caught because the ATO does not have the resources to catch them. They also know that they are not a political priority for the Federal government¹⁹ even though the government is missing out on billions of dollars that could be recouped by stamping out the illegal practice (the CFMEU has estimated the loss to be in the order of \$2.475 billion per annum²⁰).
- 3.8 The union also rejects the suggestion that the features of the construction industry that make it distinctive are grounds for a specialist regulator arm of some form to achieve a good quality IR environment.²¹ Most if not all industries have features that make them distinctive from others but no-one argues that the agriculture industry, hospitality industry or the financial industry for example should have a separate specialist IR regulator.
- 3.9 In this chapter the Draft Report also delves into the content of enterprise agreements and attempts to provide some assessment of the variations in pay and conditions. The union is somewhat surprised at this shoddy assessment as it demonstrates that the authors have no idea of the industrial relations system and the legislative requirements for approving enterprise agreements. For example of the similarities in EBA conditions identified on page 432, except for the 36 hour week the rest are standard award conditions that are part of the safety net against which enterprise agreements are to be assessed by the Fair Work Commission (the RDO system of working ordinary hours is contained in clause 33 of the Building and Construction General On-site Award 2010 (“the award”); the overtime rates are contained in clause 36 of the award; the annual leave entitlements and 17.5% leave loading are contained in clause 38 of the award;

¹⁹ *Tax Office told: lay off contractors*, *Balance needed in push for contracting*: AFR 23 September, 2013

²⁰ CFMEU 2011, *Race to the Bottom: Sham Contracting in Australia's Construction Industry*, March

²¹ *Ibid.*, p.427

and the casual loading of 25 % is contained in clause 14 of the award). Indeed the entitlement to four weeks annual leave, with an extra weeks leave for shiftworkers, is part of the National Employment Standards which applies to all workers including award free workers under the Fair Work Act 2009.²²

- 3.10 In regard to the differences identified on page 433, the level of LAFHA payments and first aid allowances are not remarkable given that the minimum award rates are currently \$438.25 per week for LAFHA and \$2.61 per day for the minimum qualification and \$4.13 per day for the higher qualification for first aid. Also the existence of jump up clauses is not unusual in the industry as it works both ways in that they also allow employers to pay lesser rates on smaller projects but pay the higher rates when their workers are engaged on large scale projects.
- 3.11 What the Productivity Commission analysis does not recognise is that the wages and conditions in the construction industry EBA's vary depending on a number of factors such as the location (e.g. wage rates under EBA's tend to be higher in QLD, WA and Victoria than in NSW, NT, TAS and the ACT); the region (rates in country areas tend to be lower than for capital city projects), the type of project (wage rates on commercial building projects tend to be higher than civil construction projects but less than major infrastructure and engineering projects), and whether or not the project is established as a greenfield project (greenfield projects tend to have higher wage rates).
- 3.12 It should also be noted that it is usually the head contractor or developer that decides if a project is to be a greenfield project and that common conditions are to apply on the project to all subcontractors. This decision is normally taken to minimise the risks on the project. This type of practice is not unusual, indeed in the US the prevailing wages standard has applied to all federal government funded projects covered by the provisions of the Davis-Bacon Act since 1931²³, and project labour agreements commonly apply to major infrastructure projects²⁴.
- 3.13 The CFMEU is at a loss to understand why the Productivity Commission decided to compare the wages and conditions in the 31 EBA's it chose (out of approximately 35,000 EBA's made in the construction industry between 1999 and 2013), and why they went looking for their own reasons to explain any differences

²² See s.87 of the Fair Work Act 2009

²³ <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf>

²⁴ <http://www.transcanada.com/5493.html>

in wages and conditions instead of asking the parties to the agreements for an explanation. The unions and indeed the employers who are parties to the agreements would have quickly provided the answers and saved the Productivity Commission from any potential embarrassment from making incorrect comparisons. The comparison on the nominal wage rates of the lowest paid construction workers is a case on point, as the suggestion that they have fallen since 2010 would have been greeted with great mirth in the industry.

- 3.14 The union also takes issue with the Draft Report discussion on Industrial disputes in the construction industry and the effect on productivity. The reality is that the number of days lost to industrial disputes in the construction industry has declined significantly over time, as it has for all industries. In terms of the number of industrial disputes, working days lost to industrial action, and working days lost per thousand employees, putting aside some short term increases in some years, the trend for all measures and across all industries, has been strongly downward. After reviewing 90 years of official statistical data on Australian industrial disputes one author described the more recent trend as ‘unprecedented’, observing that disputes per employee were now lower than at any other time in the country’s history.²⁵
- 3.15 In terms of the contention that any reduction in construction industry disputes can be attributed to the existence of the ABCC, it should be noted that the construction industry’s share of disputes rose from 14% of the total in the period 1985-86 to 2001-02 (pre-ABCC), to 25% during the ABCC period. In the last 12 month period of the ABCC (to June 2012) the total number of working days lost was 23,800. In the most recent 12 month (non-ABCC) period for which figures are available, the figure is higher at 29,600; although in the 12 months to September 2013 it is slightly lower than the last ‘ABCC period’ at 23,700.²⁶
- 3.16 Figures for working days lost can fluctuate significantly from quarter to quarter. Any assessment of these figures needs to take into account the fact that enterprise bargaining and agreement-making is encouraged by the Fair Work Act 2009, and protected industrial action in support of such agreements is sanctioned by that Act. Common expiry dates for agreements and major bargaining rounds may involve a rise in the level of legally protected industrial action.

²⁵ L.J Perry ‘A Long Term Perspective on Industrial Disputes in Australia: 1913 - 2003’ – Economic Papers Vol 24 No. 3 September, 2005 pp 263-279

²⁶ ABS 6321.0.55.001 - Industrial Disputes, Australia, Dec 2013

3.17 Caution must also be exercised in drawing a direct causal link between dispute levels and productivity. Tasman Economics Pty Ltd provided a Report to the Cole Royal Commission titled 'Productivity and the Building and Construction Industry' dated 12 November, 2002. That Report posed the direct question – Is there a link between industrial disputes and changes in productivity? - The report said:

“Reversing the high level of industrial disputes is not a panacea for improving productivity. There is a poor direct correlation between the average number of days lost to industrial disputes and changes in the three productivity measures.”

3.18 The draft finding 12.1 contained in this chapter states the following:

“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.”

3.19 Whilst the union supports the first sentence of the draft finding and notes that it is based on detailed analysis of the so called evidence of the Econtech/Independent Economics research (although surprisingly the criticism by Justice Wilcox²⁷ is not included), we take issue with the second sentence as the Draft Report provides no similar level of analysis to support such a finding particularly for the industry the subject of the inquiry.

3.20 Apart from the reference to the submissions of the BCA and MBA, who do not have reputations of being strong advocates for wage increases for workers, and a single specialist contractor (McLeod Rail), there is no substantial evidence of overly generous enterprise bargaining arrangements in the infrastructure construction sector. The sample of EBA's considered by the Productivity Commission and the poor analysis of them is hardly conclusive evidence. The workers covered by these agreements would not consider their wages and conditions to be overly generous compared to the wages of engineers and senior

²⁷ Justice Wilcox found *“The 2007 Econtech report is deeply flawed. It ought to be totally disregarded”* (Wilcox, M. 2009, *Transition to Fair work Australia for the Building and Construction Industry Report*, Australian Government).

management who work in the industry and wages paid in a number of other industries (e.g. mining, electricity and gas, telecommunications, finance).

- 3.21 The Draft Reports discussion on the scope for improving the IR environment (12.7), and the draft recommendations that follow, appear to have an ulterior motive and hint at a pre-determined outcome for the report (which would be well received by their political masters). Despite there being no demonstration of a concrete link between the industrial environment in the construction industry and productivity and costs; no substantiated evidence of criminal conduct and intimidation on infrastructure construction projects; no evidence of bargaining pressures increasing projects costs on infrastructure construction projects and no credible evidence of the use of building code guidelines having any impact on productivity and costs, the Draft Report miraculously suggests the adoption of the Victorian building code guidelines. They go on to claim that using governments' procurement power as a countervailing measure against conduct that leads to high costs, 'sweetheart deals' and coercion "*mimics normal market conditions, in that businesses that strike costly bargains would lose out to others that more closely aligned productivity and labour costs*". Please excuse us for thinking that the use of monopolistic powers was not to be considered normal market conditions.
- 3.22 But the Draft Report does not stop there. Instead they echo the voices of the employer organisations and the Federal government, and call for an increase of the ceiling of penalties for unlawful industrial relations conduct in the construction industry. In other words bankrupt the unions, remove the collective voice of construction workers, and drive down wages and condition.
- 3.23 It is a disservice to the tax payers of Australia (which includes the hard working building and construction workers and their families and not the tax avoiding sham contractors), who pay for the work done by the Productivity Commission, to have that body then turn round and attack the decent wages and conditions of construction workers and be complicit in the development of a strategy to reduce them.

4. Response to Chapter 13 – Workforce Skills

- 4.1 Much has been written about skills shortages in the construction industry and whilst there is always debate as to whether a skills shortage exists at any given time, there is a general consensus that the construction industry needs to do more to attract, train and retain workers in the industry.

- 4.2 For the infrastructure construction sector there are no detailed statistics on the size of the total workforce required. This is complicated by the fact that a significant proportion of the workforce are mobile between sectors and indeed industries due to the skills that they have (e.g. formwork carpenters, riggers, crane drivers, plant operators, etc., can move between the commercial construction, civil (infrastructure) construction and heavy engineering construction sectors). Another problem is that two separate industry skills councils (Skills DMC and the Construction and Property Services Industry Skills Council) are responsible for developing the relevant training packages and providing information on industry skill needs (in the early 1990's there was only one).
- 4.3 The Draft Report in box 13.1 refers to the infrastructure construction workforce and states that infrastructure construction projects require several types of specific occupations and gives examples of managers, engineers, surveyors, technicians, tradespersons, plant operators, constructors, or labourers. It says that these occupations are generally specialised according to the types of infrastructure constructed. The union would suggest that the level of specialisation is overstated. Whilst it may be true for some engineers and very specialised plant operators such as tunnellers (i.e. tunnel boring machine operators), most of the other occupations have no real difficulty transferring between projects and sectors. Therefore for these occupations it is the supply of labour in the overall construction industry that is important when considering whether or not skill shortages exist.
- 4.4 In terms of the size of the civil infrastructure construction workforce the figure of 350,000²⁸ used in the Draft Report is way off the mark. The 2014 SkillsDMC Environmental Scan prepared for the Australian Government identifies the size of the workforce for the civil infrastructure sector (i.e. engineering construction that is not mining and heavy industry construction) as remaining steady in 2012/13 at 68,000.²⁹ As the total construction industry workforce is currently at 1,037,500³⁰ this represents less than 7%. Civil infrastructure construction employment is

²⁸ Productivity Commission, op. cit., p.464

²⁹ http://www.skillsdmc.com.au/files/Services/Growth_Outlook_Analysis/skillsdmc_2014_environmental_scan_1.pdf at p.29

³⁰ ABS Cat. 6291.055.003

forecast to remain stable, although at a slightly higher level over the next 5 years and average 72,500 persons through to 2017/18.³¹

- 4.5 It is disappointing that a substantial part of this chapter is taken up by a discussion on engineers and there is little detailed analysis of the other occupations in the industry. For example only looking at the recent trends in apprenticeships does not tell the full story on training in the construction industry. The number of apprentices in the building trades is only slightly higher than the number in the early 1990's (in 1990 there were 32,727 building trades apprentices)³² when the industry workforce was only about 60% of what it is today (in November 1990 the total construction industry workforce was 582,500³³). Clearly there has been a significant reduction in the industry's training rate. Part of the reason is the decline in the number of apprentices taken on by the public sector, but another reason is that the squeezing of costs in the industry make those companies that do train uncompetitive compared those that don't train. If the Draft Reports recommendations that are focused on reducing contractor prices (under the guise of productivity) are accepted, it will only make the situation worse.
- 4.6 In regard to the pay rates of apprentices we are surprised that the Draft Report contains incorrect figures. The new award rates for apprentices now provide for competency based wage progression, with time served acting as the default. The rates for the 3rd and 4th stages/years are unchanged at 75% and 90% respectively. The rates for the 1st and 2nd stages/years are 50% and 60% for apprentices who commence from the 1st January 2014, with an increase to 55% and 65% for apprentices who have completed year 12 who commence on or after 1st January 2014.³⁴
- 4.7 The draft Report suggests that the geography of major infrastructure projects is a potential challenge to attracting and retaining a workforce. Reference is made to telecommuting but no mention is made of fly in/fly out (FIFO) or drive in/drive out (DIDO) arrangements. This is surprising as working on distant projects has been a consistent feature of the construction industry throughout its history. There would not be many construction workers that have not lived away from home at some time in their careers. The real issues affecting productivity and attracting

³¹ Ibid., p.30

^{32,33} Toner P, 2003, *Declining Apprentice Training Rates: Causes, Consequences and Solutions*, UWS, July.

³³ ABS, op. cit.

³⁴ <https://www.fwc.gov.au/documents/awardsandorders/html/PR545521.htm>

workers to these projects are the rostering arrangements, with workers wanting less time away from their families, and the increasing prevalence of gate starts³⁵ being forced on workers by head contractors seeking to reduce costs.

- 4.8 The issue of on the job training and learning before a level of competence is reached is a poor excuse for employers to use for shortages of skilled workers. All of the qualifications in the Skills DMC and CPSISC training packages are competency based and require competency to be demonstrated on the job. The lack of any commitment to take on apprentices and trainees (exacerbated by the focus on the lowest tender price) is the main issue that must be addressed.
- 4.9 In section 13.4 the Draft Report discusses policy options for skills shortages in infrastructure construction. The first recommendation (13.1) suggests that the Australian Workforce and Productivity Agency should make and publish regular projections of labour demand from public infrastructure construction, and that the private sector and State and Territory Governments be invited to participate in providing data pertaining to non-Commonwealth-funded projects. The union supports this recommendation.
- 4.10 The second recommendation (13.2) deals with construction industry training funds. The Draft Reports discussion on the industry training funds is at best described as brief and again demonstrates poor research. The State based building and construction industry training funds were established mainly at the instigation of the unions and indeed in Victoria contributions to the fund are only made under union EBA's. There is no training fund in operation in NSW due to opposition by the main employer organisations. The funds constantly review where they allocate funds so the suggestion that any further review activity is needed is an affront to those involved in the governance and administration of the funds. Further the suggestion that a number of specialised jobs do not have any recognised certification is rejected. The overwhelming majority of occupations in the construction industry do have a qualification that covers the work.
- 4.11 In the discussion on facilitating apprenticeships the Draft Report exposes the double standards adopted by the Productivity Commission on procurement processes. The Draft Report dismisses governments using their procurement processes to encourage the hiring and training of apprentices (and local content

³⁵ Gate starts occur when employees finish on one project and are then told by their employer that if they want to work on the next project they must have a local address for the new project. This is to avoid having to pay workers living away from home allowances.

rules)³⁶, yet the Draft Report has no difficulty in recommending the use of procurement policies for industrial relations purposes.

- 4.12 The only comment we would make on the information request 13.1, on the effectiveness of the National Apprenticeships Program and whether it should be extended to trades in the infrastructure construction sector, is that the NAP should not be used at the expense of the recruitment of young people into apprenticeships. Providing training for young people is especially important given the high rates of youth unemployment in Australia, and these workers would have a significantly longer working life span in the industry.
- 4.13 In the section headed 'Impact of 457 visas', the draft report correctly states that *'the role of temporary skilled migration is to supplement the workforce in areas where there are genuine short-term shortages of appropriately skilled workers.'* However, the report fails to mention that the 457 visa program as it currently operates does not in practice perform this role. The 457 program in fact permits construction employers to engage temporary foreign workers on 457 visas where there is no shortage of qualified and willing Australian workers (Australian citizens and permanent residents). This is because the 457 visa program does not include effective mechanisms to ensure visas are granted only where there is a genuine shortage of qualified and willing Australian workers. Since 23 November 2013, the program includes Labour Market Testing (LMT) provisions but these apply to only around 35% of all 457 visa nominations, i.e. for occupations in Skill level 3 (most trades and some technicians), engineering and nursing.
- 4.14 In any event, even in these occupations, the 457 LMT provisions are themselves ineffective in ensuring that visas are only approved in shortage situations. The CFMEU submission to the Productivity Commission Inquiry into Geographic Labour Mobility listed the main reasons for this assessment, as follows:
- Employers have no obligation even to advertise jobs for which they nominate foreign nationals for 457 visas – 'other recruitment efforts' (unspecified) will suffice, according to FAQs on the Department's website.
 - Job ads can be put on Facebook or buried on obscure company websites, for only a few minutes, then taken down. There is no minimum advertising time (the CFMEU proposed 28 days).
 - The so-called 'job ads' can be 'placed' any time in the last 12 months. This means employers can use job ads placed in February 2013 to

³⁶ Productivity Commission, op. cit., p.489

justify their bid for 457 visa workers in February 2014 –regardless of the number of Australian workers who become available or unemployed in that time.

- Employers have no obligation to keep any records of the number of Australian applicants, the number who got jobs and those who didn't, and the reasons why the Australian candidates missed out while temporary foreign workers did not. The Department simply 'encourages' them to do so.
- Employers simply have to 'declare' this information to the Immigration Department and that's the end of it. They have no obligation to prove they made good faith efforts to employ Australians first or keep records of any job interviews.³⁷

4.15 The so-called 'market price signals' built into the 457 visa program also fail to achieve the primary intent of the program and restrict visas to situations where employers face genuine shortages of Australian resident workers. This is largely because of the growth of 'onshore' 457 visas where visas are granted to foreign nationals already in Australia on other temporary visas, in many cases already working for the employer sponsoring them for 457 visas. Unpublished DIBP data shows that in the construction trades, some 75% of all 457 visa grants are onshore visa grants, the second highest of all trade groups.

4.16 In the construction trades, these onshore 457 visa grants mainly involve foreign nationals on Working Holiday visas (visa subclasses 417 and 462). The 'price signal' fails in the case of onshore 457 visas because the employer faces no recruitment costs (let alone overseas recruiting) in 'hiring' the 457 visa worker who is already working for the sponsoring employer. The only additional costs are minimal – 457 sponsorship approval by DIBP (application cost \$425) plus 457 visa nomination fee of \$245 per 457 worker, and (possibly) a registered migration agent's fee for assistance in shepherding the visa through DIBP processing.

4.17 These costs are not only minimal but are easily recouped by the sponsoring employer through the visa-holder working unpaid extra hours. With over 50% of 457 visa-holders eventually going through to a permanent residence (PR) visa, mostly employer sponsored PR visas, 457 visa-holders have a strong incentive to comply with even unreasonable and unlawful requests from employers on whom the 457s are relying for the 'holy grail' of an Australian PR visa. In addition, the Regulations concerning 457 visa workers progressing to employer-sponsored PR

³⁷ CFMEU Second Submission to the Productivity commission Inquiry into Geographic Labour Mobility, p.5

visas were changed in July 2012 to require the visa-holder to work for the sponsoring employer for a minimum of 2 years (previously only one year), before becoming eligible for PR visa sponsorship. This effectively gives the employer a captive and compliant 457 visa-holder employee for at least 2 years, where the 457 visa holder's preferred or only PR visa option is via such employer-sponsorship. This is a major reason why 457 visa-holders are an attractive option for many employers in construction.

- 4.18 The cost of recruiting and hiring an Australian skilled worker in these situations can in fact be greater than the cost of simply retaining the existing foreign employee but changing their visa status from e.g. a Working Holiday visa to a 457 visa. This is why the CFMEU believes a robust LMT system for the 457 visa program is essential, to ensure the intent of the program is actually achieved.
- 4.19 The Draft Report correctly notes that the ability to hire 457 visa workers '*may reduce employers' incentives to provide the training that may reduce or avoid future skill shortages*' and that '*the use of 457 visas for technicians and trades workers may be an attractive alternative to hiring and training apprentices*'.³⁸ There is evidence that employers' easy access to 457 visa workers does reduce apprentice training. For example, data for the key construction trades of Bricklaying, Plasterers, Wall and Floor tilers show that between 2009-10 and 2012-13, total apprenticeship commencements fell by 28% (982 starts) while 457 and other visa grants in these occupations grew by 98% (or 431 grants).
- 4.20 The above analysis of 457 visas clearly demonstrates that significant reform in this area is needed if we are to protect the jobs of existing workers and ensure that job opportunities remain for young workers to enter the construction industry.
- 4.21 The final point we wish to make in regard to this chapter is that the ageing of the workforce only receives a very brief mention on page 481. The Draft Report refers to factors that may contribute to the ageing construction workforce, and that in the future it may affect several jobs in construction such as those involving more physical labour. There is however no consideration of what could be done to utilise this skilled workforce to our advantage. Keeping older construction workers in the industry can be beneficial in that they can not only continue to do productive work, but can also act as on the job trainers to young people entering the industry, and act as mentors to help the recently qualified gain the industry experience that others say is lacking (as identified on page 480 of the Draft Report). There is also a social benefit to society as keeping the older construction

³⁸ Productivity Commission, op cit., p.497

workers employed will encourage them not take early retirement and seek social security benefits (or do so sooner than others once their superannuation assets are exhausted). We submit that the human factor is an equally important consideration (to the economic factor) for government to contemplate when expending taxpayer money on infrastructure projects.

5. Concluding Remarks

- 5.1 The union recognises that this inquiry by the Productivity Commission is governed by the terms of reference issued by the Treasurer, and that the main focus has been on funding and reducing costs. The Draft Report does this however from a narrow perspective and it would appear that in the preparation there was no on-site research, no analysis of the changing contracting and commercial relations of the industry, of the changing skills and demographic makeup of on and offsite construction, or of how different sectors of the industry operate. In other words, knowing that productivity measurement is a problematic way of understanding even technical efficiency, it did not look at the social relations of production which would have helped to give a dramatically richer picture of how construction occurs on the ground. More alarmingly, it fails to even recognise that the absence of such research was a major limitation.
 - 5.2 Further the Draft Report makes recommendations in regard to industrial matters for which there is no economic basis or sufficient supportive content in the report. This action can only be perceived as a political statement to suit the government of the day. The CFMEU remains committed to a productive construction industry but this will not be achieved with short sighted policies that seek to attack the wages and conditions of construction workers and diminish their effective workplace representation. Real productivity can only be achieved in the long run by co-operation and a shared vision for the industry.
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