BCA
Business Council of Australia

16 October 2026

Department of Employment and Workplace Relations
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RE: Potential Commonwealth Standards for the construction industry

Dear Consultation Team

The Business Council of Australia represents some of the largest companies across the Australian economy, including those operating in the construction, housing and infrastructure sectors. We appreciate the opportunity to provide a submission to the consultation on potential Commonwealth Standards for the construction industry.

The BCA supports action to lift productivity and remove criminal and unlawful conduct from the construction industry. We do not consider that Commonwealth Standards alone will achieve these objectives. Many of the issues raised in the discussion paper stem from criminal conduct and from industrial relations settings, and addressing them will require broader legislative and regulatory change.

On a gross value added per hour worked basis, labour productivity across Australia's market sector industries increased by around 4 per cent over the last ten years, while construction industry productivity fell by around 13 per cent over the same period. If Australia is to address the current housing crisis, then improving productivity and addressing some of the systemic problems in the construction sector must be a priority.

Government procurement should support these objectives by promoting competition and value for money. The BCA welcomes the Government's confirmation that it does not intend to require or preference union-covered enterprise agreements in government procurement for Commonwealth-funded building and construction work.[1] This commitment should be expressly reflected in the final Standards and their implementation. The same principle should apply to government procurement and funding across all sectors.

Last year, the BCA released *Building Australia's Tomorrow,* a report on infrastructure delivery across Australia, including opportunities to improve productivity in the construction industry. This included examination of the industrial relations settings currently applying to the industry.

[1] See Department of Employment and Workplace Relations, 'Potential Commonwealth Standards for the construction industry', Discussion Paper, p 6 ("The government has no intention of requiring employers to enter an enterprise agreement covered by a registered employee organisation as a condition of receiving Commonwealth government funding, or preferencing enterprise agreements covered by a registered employee organisation when considering contractors tendering for federally funded building and construction work. The government has no intention of replicating Queensland's former Best Practice Industry Conditions Scheme.")

As we made clear then, criminality, violence, threats and extortion have no place in our society, let alone on construction worksites. It is also clearly not acceptable for companies working in the sector.

The BCA remains concerned that the placement of the Construction and General Division of the Construction, Forestry and Maritime Employees Union (CFMEU) under administration has not been sufficient to address the culture of lawbreaking in parts of the construction industry.

These concerns are reinforced by police investigations into alleged corruption and raids on the offices of the CFMEU over the last few months in both Victoria[2] and Queensland.[3] Further, while the actions of the CFMEU have been by far the most egregious, allegations of misconduct extend beyond the actions of a single union. Media reporting of the activities of the Australian Workers Union (AWU) has alleged that it turned to "criminal linked companies" in the labour hire industry to help it "garner industrial power and combat the assertive CFMEU".[4] In addition, as the BCA noted in its March 2026 submission to the Closing Loopholes statutory review, reporting indicates that organisers permitted to resign from the CFMEU rather than being removed have subsequently obtained employment with other construction unions, including the Electrical Trades Union (ETU). This raises questions about whether the existing safeguards adequately address integrity risks across the industry when officials move between organisations.

Industrial relations settings should not give unions powers that can be used to facilitate corrupt and criminal conduct. The BCA is concerned that current settings have created opportunities for criminal and corrupt elements to take hold in parts of the construction industry, at significant cost to productivity and the taxpayer. The Government must deploy every legal measure at its disposal to stamp out criminal and unlawful behaviour that has infiltrated the industry. In this context, the abolition of a dedicated industry regulator should be reversed.

The current Queensland Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry is examining these issues. In submissions dated 3 July 2026, Counsel Assisting proposed (among other things) a properly resourced independent regulator to address unlawful and unproductive practices, reinforcing the case for specialist regulatory capability.[5] Construction misconduct can engage workplace, safety, criminal, competition and procurement laws simultaneously. Effective enforcement requires clear responsibility for coordinating investigations across these jurisdictions, supported by information sharing and specialist industry expertise. Workers and businesses must also be able to report misconduct without fear of intimidation, blacklisting or loss of future work.

Recommendation 1

Establish a new, well-resourced, dedicated regulator for the building industry with strong investigative powers and the ability to refer suspected criminal conduct to police. The regulator should have statutory independence, powers to compel evidence and documents, financial

[2] Melissa Brown and Jess Longbottom 24 August 2026, 'CFMEU headquarters in Melbourne raided by police investigating alleged corruption', ABC News.
[3] Jessica Black and Jessica Longbottom 9 September 2026, 'Labour contractor questioned by police amid probe into allegations Queensland CFMEU officials bribed', ABC News.
[4] Nick McKenzie and Kieran Rooney 13 June 2025, ''Not to be messed with': Criminals recruited for country's biggest wind farm', Sydney Morning Herald.
[5] Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, Counsel Assisting's further submissions on the re-introduction of a code of practice and independent regulator (3 July 2026), [2] and [12]–[14].

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investigation capabilities, and formal arrangements for information sharing, joint investigations and the clear allocation of responsibilities with other enforcement bodies.

Recommendation 2

Ensure whistleblower laws adequately protect workers and businesses reporting construction industry misconduct, particularly those without a qualifying relationship with the organisation concerned. Close any gaps with targeted reform, strengthen confidential reporting mechanisms and protect against intimidation, blacklisting and loss of future work, so that fear of commercial reprisals does not prevent evidence reaching regulators.

Union approach to the industry

Geoffrey Watson SC's report, *Rotting from the Top*, details practices through which CFMEU officials exerted control over subcontractor selection and favoured particular labour hire companies.[6] Standardised enterprise agreement terms also provide mechanisms for union influence over commercial decisions and access to worksites, including through provisions regulating subcontractor and labour hire engagement, requiring contributions to specified industry funds, and giving union officials rights to attend workplace inductions.

Workers must be free to choose whether to join a union, and businesses must be able to select contractors without coercion. Union control over contractor selection and access to worksites can entrench coercion and conflicts of interest, and reinforce the culture of intimidation associated with criminal conduct in parts of the construction industry. The risks of union influence over access to work are illustrated by the convictions of former NSW CFMEU officials for accepting cash in exchange for helping a company win building contracts.[7]

The risk of coercion also extends to enterprise bargaining. Standardised terms can be pursued across separate enterprise agreements, even where multi-employer bargaining is unavailable. Where intimidation or threats to access to work are used to secure acceptance, smaller contractors may have little practical scope to negotiate terms suited to their operations.[8] Beyond these integrity concerns, restrictive agreement terms can also substantially harm productivity,[9] for example, through clauses that restrict rostering and task allocation.

Recommendation 3

Amend the *Fair Work Act 2009* (Cth) to prohibit enterprise agreement terms that require separate mandatory union consultation over individual provider-selection decisions, give unions approval or veto rights over subcontractor or labour hire engagement, or require the engagement of union-nominated providers. Such terms should be excluded from agreements approved by the Fair Work Commission and have no legal effect.

Equivalent prohibitions should apply to requirements imposed through memoranda of understanding, side agreements, or other written or unwritten arrangements or practices.

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[6] Geoffrey Watson SC, Rotting from the Top: The CFMEU in Victoria During the Setka Era (**Watson Report**), [163], [376]–[386] and [458]–[472].
[7] Jamie McKinnell, 'Former NSW CFMEU leaders, Darren Greenfield and son Michael, jailed over corruption', ABC News, 21 November 2025.
[8] Watson Report, paragraphs 377–379.
[9] Productivity Commission, Public Infrastructure report, volume 2 (27 May 2014), appendix I, p 771.

Sensible transitional arrangements should give businesses reasonable time and a lawful pathway to remove affected terms from existing agreements and arrangements.

The construction Standards should also make compliance with the same restrictions a condition of eligibility to tender for or be awarded Commonwealth-funded construction work, including where the requirements are imposed through memoranda of understanding, side agreements, or other written or unwritten arrangements or practices. These procurement restrictions should not depend on prior enactment of the legislative reforms. Both regimes should provide sensible transitional arrangements.

Recommendation 4

Strengthen enforcement of existing prohibitions on coercion in bargaining, recruitment and subcontracting, and on conduct that makes union membership a condition of access to work, with penalties sufficient to deter repeat breaches.

Right of entry

Since December 2023, union officials entering a workplace to assist a health and safety representative under state or territory work health and safety laws no longer need a Fair Work Act entry permit. As a result, entry under this pathway does not require the federal permit's 'fit and proper person' assessment.[10] This is despite reports that convicted criminals have been appointed as CFMEU health and safety officials.[11]

Recommendation 5

Reinstate the requirement for union officials entering a workplace to assist a health and safety representative under state or territory work health and safety laws to hold a Fair Work Act entry permit.

Evidence to the Queensland inquiry illustrates the difficulty of securing timely intervention where union officials' authority to enter or remain on a worksite is disputed. The inquiry heard that police would not remove CFMEU officials from the Centenary Bridge site without written confirmation from the safety regulator that their presence was unlawful. That confirmation could not be obtained, and police left the contractor to manage the situation.[12] Evidence to the Queensland inquiry indicates that existing laws and processes do not reliably deliver timely and practical remedies when union entry to a worksite is disputed.

The CFMEU has a history of misusing entry rights to disrupt time-critical activities such as concrete pours,[13] [14] [15] causing damage, additional cost, and productivity loss to a worksite. Stronger penalties are

[10] Department of Employment and Workplace Relations, 'Entry to assist Health and Safety Representatives', December 2023 (commencement and continuing conduct safeguards).
[11] Nick McKenzie et al, 13 July 2024 'Bikies, underworld figures and the CFMEU takeover of construction' Australian Financial Review.
[12] Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, transcript of public hearing, 30 July 2026, p. 3699.
[13] Danny Tran 21 December 2017, CFMEU fined $242,000 for 'arrogant' union action over Footscray concrete pour, ABC News.
[14] Vanda Carson 17 December 2023, CFMEU and organisers Andrew Blakeley and Luke Gibson fined for blocking massive concrete pour, Courier Mail.
[15] David Marin-Guzman 21 June 2024, Setka's 'obnoxious and rude' CFMEU fined for wet wipes blockade, Australian Financial Review.

required because, as demonstrated by their repeated actions, the financial penalties levied on the union and its representatives have not been an effective deterrent.

The Federal Court in 2024 noted that the CFMEU had contravened the right of entry conduct provisions of the Fair Work Act more than 170 times in at least 50 proceedings since 2010, underscoring the need for effective enforcement and deterrence.[16] The High Court has previously emphasised the need for penalties sufficient to make continued non-compliance with workplace laws too expensive to maintain.[17]

> Recommendation 6
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> Establish clear protocols between police and workplace regulators to resolve uncertainty promptly and ensure that officials without lawful authority to enter or remain on worksites can be removed. Stronger penalties and enforcement are also needed to deter unlawful entry onto worksites or remaining on site without lawful authority.

Disqualification from union office

Court findings of unlawful conduct should also inform whether an individual remains suitable to hold union office. Disqualification should be available where the Federal Court considers it justified.

> Recommendation 7
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> Extend the Federal Court's disqualification power under section 307A of the *Fair Work (Registered Organisations) Act 2009* (Cth) to cover contraventions of civil remedy provisions of the *Fair Work Act 2009* (Cth), including provisions governing right of entry and compliance with industrial action stop orders, where the Court considers disqualification justified in the circumstances.

Compliance with industrial action orders

Orders to stop or prevent unprotected industrial action must provide effective protection against project disruption. Deliberate or repeated breaches undermine their authority and require penalties that deter further non-compliance.

> Recommendation 8
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> Increase penalties to deter deliberate or repeated breaches of Fair Work Commission orders to stop or prevent unprotected industrial action.

Intractable bargaining

The 'Closing Loopholes No 2' intractable bargaining reforms are already a live issue in enterprise negotiations, with employers reporting that the prospect of arbitration that preserves existing conditions weakens incentives for union compromise and makes productivity-enhancing changes harder to negotiate. If negotiations fail and the Fair Work Commission determines the outcome under the intractable bargaining rules, it generally cannot impose disputed conditions that are less favourable to employees than those in their existing agreement (except in relation to wage increases).[18] Unions

[16] *Fair Work Ombudsman v Construction, Forestry and Maritime Employees Union (The Mordialloc Freeway Project Case)* [2024] FCA 655 at [78].
[17] *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13, [9]–[10].
[18] See *Fair Work Act 2009* (Cth), ss 270(3) and 270A.

therefore have less incentive to accept changes to existing conditions during negotiations, knowing those conditions are protected if the Commission decides the outcome. This makes it harder for employers to negotiate changes to work practices in exchange for higher pay. Member feedback indicates a marked shift in bargaining behaviour, including more expansive claims, more protracted negotiations and greater resort to protected action ballot orders and protected industrial action.

These reforms should not impede bargaining that delivers practical improvements for employers and employees, such as multiskilling linked to assessed competencies, higher classifications and remuneration.

> Recommendation 9
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> Repeal section 270A of the Fair Work Act to ensure that the intractable bargaining determination framework operates effectively and appropriately, having regard to its stated objectives, and to mitigate unintended consequences.

Alongside these integrity and enforcement reforms, the Standards should support timely payment, safe working conditions and clear responsibilities across construction supply chains.

The Standards should protect freedom of association, prevent coercion in subcontractor selection, and prohibit agreement terms and side arrangements that impose union control over subcontracting or unnecessarily restrict productive work practices. These requirements should be a baseline for operating in the industry, with proportionate sanctions, including restrictions on tendering for serious or repeated breaches. Separate legislative amendments will be required to give effect to the other recommendations above. The BCA considers these changes are needed alongside any new Standards to address the settings in the industry.

A consolidated list of recommendations is set out in Attachment A.

Yours sincerely



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Attachment A

Consolidated Recommendations

To strengthen integrity, accountability and productivity in the construction industry, we recommend the following:

Recommendation 1

Establish a new, well-resourced, dedicated regulator for the building industry with strong investigative powers and the ability to refer suspected criminal conduct to police. The regulator should have statutory independence, powers to compel evidence and documents, financial investigation capabilities, and formal arrangements for information sharing, joint investigations and the clear allocation of responsibilities with other enforcement bodies.

Recommendation 2

Ensure whistleblower laws adequately protect workers and businesses reporting construction industry misconduct, particularly those without a qualifying relationship with the organisation concerned. Close any gaps with targeted reform, strengthen confidential reporting mechanisms and protect against intimidation, blacklisting and loss of future work, so that fear of commercial reprisals does not prevent evidence reaching regulators.

Recommendation 3

- Amend the Fair Work Act to prohibit enterprise agreement terms that require separate mandatory union consultation over individual provider-selection decisions, give unions approval or veto rights over subcontractor or labour hire engagement, or require the engagement of union-nominated providers. Such terms should be excluded from agreements approved by the Fair Work Commission and have no legal effect.
- Equivalent prohibitions should apply to requirements imposed through memoranda of understanding, side agreements, or other written or unwritten arrangements or practices. Sensible transitional arrangements should give businesses reasonable time and a lawful pathway to remove affected terms from existing agreements and arrangements.
- The construction Standards should also make compliance with the same restrictions a condition of eligibility to tender for or be awarded Commonwealth-funded construction work, including where the requirements are imposed through memoranda of understanding, side agreements, or other written or unwritten arrangements or practices. These procurement restrictions should not depend on prior enactment of the legislative reforms. Both regimes should provide sensible transitional arrangements.

Recommendation 4

Strengthen enforcement of existing prohibitions on coercion in bargaining, recruitment and subcontracting, and on conduct that makes union membership a condition of access to work, with penalties sufficient to deter repeat breaches.

Recommendation 5

Reinstate the requirement for union officials entering a workplace to assist a health and safety representative under state or territory work health and safety laws to hold a Fair Work Act entry permit.

Recommendation 6

Establish clear protocols between police and workplace regulators to resolve uncertainty promptly and ensure that officials without lawful authority to enter or remain on worksites can be removed. Stronger penalties and enforcement are also needed to deter unlawful entry onto worksites or remaining on site without lawful authority.

Recommendation 7

Extend the Federal Court's disqualification power under section 307A of the *Fair Work (Registered Organisations) Act 2009* (Cth) to cover contraventions of civil remedy provisions of the *Fair Work Act 2009* (Cth), including provisions governing right of entry and compliance with industrial action stop orders, where the Court considers disqualification justified in the circumstances.

Recommendation 8

Increase penalties to deter deliberate or repeated breaches of Fair Work Commission orders to stop or prevent unprotected industrial action.

Recommendation 9

Repeal section 270A of the Fair Work Act to ensure that the intractable bargaining determination framework operates effectively and appropriately, having regard to its stated objectives, and to mitigate unintended consequences.

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