



Senate Select Committee on the Cost of Living

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Introduction

On 23 July 2024, the Housing Industry Association (HIA) received correspondence from the Senate Select Committee on the Cost of Living requesting our views on the impact of the activities of the Construction and General Division of the Construction Forestry Mining and Energy Union (CFMEU) on the cost of construction, particularly residential construction.

HIA provides these submissions in response to that request.

No one in the industry has been surprised by the reported conduct of the CFMEU. The allegations of intimidation, extortion and other illegal behaviour have been on record for decades.

It is a shame that despite multiple inquiries, royal commissions, the actions of an industry specific regulator (in various guises) and damning Federal Court decisions, it has taken an 'exposé' by several media outlets to draw attention to the behaviour industry has always known about.

The impacts of this behaviour are five-fold:

1. It undermines confidence in the sector, a sector already bearing the brunt of current monetary policy.
2. It acts as a strong disincentive to enter the industry, increasing the competition for workers, adding to labour costs.
3. It jeopardises taxpayer dollars through government and infrastructure projects that cannot prioritise value for money due to the project ties to union deals.
4. It jeopardises productivity simply increasing the 'cost of doing business' in the industry.
5. All of which simply exacerbates the current cost of living crisis.

The commitment to deliver 1.2 million homes over the next 5 years represents a pivotal milestone in government policy and direction. This announcement shows leadership to tackle Australia's housing supply and affordability challenges. However, this target cannot be achieved in a vacuum. HIA forecasts show that to reach this goal, housing supply cannot fall below 240,000 new homes each year, unfortunately HIA's forecasts predict that commencements will fall to around 176,000 in 2024-25. This is a slow start to achieving the Government's goal.

To arrest this slow down, policy settings must be directed at supporting the residential building industry to work in the most effective, efficient, and productive way that suits the operation of the industry.

Certainly, the recent media reports and allegations regarding the conduct of the CFMEU in no way supports this.

There is also concern that this behaviour may find its way onto building projects funded through the Housing Australia Future Fund, a fund set up to target the need for social and affordable housing. Such concerns are grounded in the revelations and allegations about the behaviour and conditions on the Victorian Big Build projects.

These reports simply confirm the industry knowledge that tendering for government funded work has always come with an obligation to enter the union Enterprise Bargaining Agreement (EBA); again, this is just the cost of doing business in the industry.



Australians should be disappointed that their taxpayer dollars are being used to support alleged illegal conduct.

These costs spill into the broader construction industry, including the residential building industry but the indirect effects are much more insidious and difficult to quantify, for example, the actions of the CFMEU impact the competition for skilled labour and materials and put pressure on businesses to engage in direct employment.

To have reached a point where the (known) actions of the CFMEU are putting pressure on housing affordability exacerbating the current cost of living crisis is unacceptable and must be responded to.

The current business environment under which the CFMEU can conduct its activities lacks the accountability and transparency required of the rest of Australian businesses. It should surprise no one that the clandestine business environment afforded to the CFMEU is an enabler to corruption and poor business practices. The current situation, while difficult, is an opportunity for widespread and meaningful reform, accountability and transparency.

To make the improvements to housing affordability that Australia desperately needs the costs imposed on the residential building industry must be reduced and governments at all levels have the power to help reduce these costs.

Systemic and comprehensive action must be taken to ensure a sustainable, productive, cost-effective building and construction industry and to improve housing affordability across the country.

The Residential Building Industry

Recognising the unproductive impact unions would have on the residential building industry, for years HIA has worked hard to ensure there is no direct union influence in the sector.

Historically, the low-rise detached/ cottage construction sector of the residential building industry has not been a source of illegal industrial disputation to the extent suffered by the civil and commercial construction sectors. This is in part due to the engagement of specialist contractors by builders rather than employees, the relatively small scale of construction for single, detached dwellings, the relatively short construction phase, and the low union membership across the industry.

However, HIA members seeking to undertake commercial, multiunit or government funded work have cited concerns over many years regarding intimidation by the CFMEU and the influence they have on building sites regarding workplace conditions and who can work on particular jobs. The influence exerted over training, redundancy schemes, labour-hire and superannuation through enterprise bargaining agreements also impacts cost, productivity and restricts healthy competition.

Other types of industrial relations matters that typically drive up construction costs include:

- days lost because of industrial action, publicly reported actions of the CFMEU, particularly in Queensland have seen work stop about issues that would 'usually' be accommodated such as working around hot weather condition;
- abuse of WH&S issues for industrial purposes;
- inflexible inclement weather procedures;
- less working days per annum because of RDO provisions; and



- cost stemming from pattern bargaining (no ticket, no start).

The residential building industry has always been alive to the threat of industrial practices in the commercial building sector, such as pattern bargaining, creeping into the residential sector.

It is clear that the aggressive and unlawful industrial action set out in the findings and serious body of evidence presented before the 2015 Heydon Royal Commission, the 2002 Cole Royal Commission and the Federal Court has persisted.

As identified in the Heydon Royal Commissions final report, the ‘*systemic corruption and unlawful conduct*’¹ of the CFMEU is not new; over the last 40 years a number of Royal Commissions have reported the same.

There is, according to Commissioner Heydon:

*‘a long standing malignancy or disease within the CFMEU. One symptom is regular disregard for industrial laws by CFMEU officials. Another symptom of the disease is that CFMEU officials habitually lie rather than ‘betraying’ the union. Another symptom of the disease is that the CFMEU officials habitually show contempt for the rule of law.’*²

These observations remain apposite.

Independent Contracting arrangements

As noted above, the low rise/detached residential building industry has largely operated unaffected by the direct impact of the CFMEU.

This is largely due to the prevalence of independent contracting arrangements that underpin the industry.

HIA estimates that over 80 per cent of the work completed in the sector is performed by independent contractors. Independent contracting is a quintessential part of the residential building industry and is a legitimate business model that is extremely important for businesses – big and small, employers, employees and the national economy, which needs to be preserved.

For the residential building industry, independent contracting is the cornerstone of productivity and growth, not just because it is flexible and efficient, but also because the model provides the economy with small business entrepreneurial drive and creates much needed jobs for others. Many thousands of new contracting businesses start in domestic building each year; some prosper into growing enterprises and some fail.

Builders rely on access to good and reliable trade contractors to maintain competitiveness. For contractors it is a pathway to business ownership and career flexibility.

Genuine independent contractors in the residential building industry choose to work under these arrangements because they want to run their own businesses, make money and be rewarded for their productivity, efficiencies, and entrepreneurial efforts. Builders choose to engage them because of their superior construction and scheduling efficiency and the cost-effective benefits that flow on to the consumer. Contractors wish to pick and choose the work they do. They do not want to be treated as employees as it would effectively limit their income.

¹ Chapter 8 at paragraph 1
² Chapter 8 at paragraph 23



Independent contracting delivers productivity gains, freeing up resources that would otherwise need to be consumer in building homes.

As outlined below these savings total over \$3 billion just for detached homes.

These savings also translate into more affordable housing by around \$30,000 on the average detached home.

Engaging independent contractors to undertake building work has been shown to be the most productive way to deliver successful projects.

For example, according to the CSIRO, the level of unproductive time on housing sites is about 4 per cent; for the commercial building industry, the amount of unproductive time is 23 per cent. Anecdotal evidence from HIA members who operate across different segments of residential building report that the use of independent contractors saves of the order of 20-30 per cent on the labour component of their work. A 2013 report by Econtech put the cost differential between the independent contractor dominated residential building industry and commercial building at what they concluded was a conservative 11.8 per cent³.

The labour content of a new detached home averages 40-45 per cent. With an average new detached home price of \$305,000, the use of contractors saves \$30,000 per home. By way of example, based on a conservative number of 110,000 detached homes starts in a year, this would translate into productivity benefits to home buyers and the economy of \$3.3 billion. If these savings could be gained in higher density housing the savings would be of the order of \$6 billion across the whole of the residential building industry. In non-residential building the savings would be around \$4 billion.

The CSIRO has also confirmed that the independent contractor based building system in Australia has very high on-site efficiency compared with other countries' systems which have more employee-based approaches to delivery, possibly due to the dominance of a small number of large building businesses.

To measure levels of labour productivity in Australia's housing industry, the CSIRO's Division of Building Research carried out field studies of the actual construction using closed-circuit video.

The results of the research are summarised in Table 4.

The data reveals that it is only the mass produced "system built" housing in the United States and the Netherlands that compare at all favourably with the productivity of Australian home building. Labour productivity on Australian home building sites was nearly four times as productive as sites in the United Kingdom. If UK productivity applied in Australian volume-built housing, the cost of a home in Australia would double (with 40 per cent of the Australian home's value being labour).⁴

³ Independent Economics (2013) [Economic Analysis of Building and Construction Industry Productivity: 2013 Update](#)

⁴ Dalton, T., Hurley, J., Gharai, E., Wakefield, R., and Home, R., (2013) [Australian suburban house building: industry organisation, practices and constraints](#), Australian Housing and Urban Research Institute RMIT Research Centre pgs. 68-69



Table 4: Productivity in Dwelling Construction - (work hours per square metre)

	Volume Built Housing	System Built
Australia	5.5-6.0	9.5*
United Kingdom	20.2	13.8
United States	23.7	6.5
Netherlands	23.7	5.9
Sweden	11.3-12.7	
<i>Source: CSIRO</i>		<i>* custom built</i>

Extrapolating from these findings the adverse impact union activity can have on productivity should not be underestimated, pressure to directly employ under EBA’s undermines the efficiencies associated with the contracting model simply adding to the cost of construction.

Competition for skilled trades

An important part of the residential building industry’s capacity is to deliver not only 1.2 million homes over the next five years but the ability to future proof our industry for future growth. Demand for housing will remain high and as such, not only does the industry need to be expanded in size, but it also needs to be efficient and productive.

However, there is a persistent and underlying shortage of skilled labour within the industry that is exacerbated by the competition for skilled workers who are attracted to the terms and conditions prevalent on EBA sites and a number of significant infrastructure and big build projects in the pipeline.

The pool of workers to be drawn from for this work is in high demand and will likely be from the same cohort of potential workers that the residential building industry would be seeking to draw from.

This competition is only going to drive up the price for skilled labour across the entire construction industry, including the residential building industry. Capacity constraints, particularly for skilled labour, have seen construction times increase by more than a third, increasing costs.

Enterprise Bargaining

The current enterprise bargaining framework has been the source of much debate and discussion. It should be clear now that it is not only not fit for purpose for the residential building industry, but questions should be raised about the bargaining process more broadly.

Of note, the Productivity Commission foreshadowed concerns in respect of the Secure Jobs, Better Pay reforms that made changes to multi-employer enterprise bargaining stating that:

‘...any changes to the FW Act to increase the use of multi-employer and industry/sector wide bargaining are likely to have uncertain implications for productivity (depending largely on the approach taken) and should be undertaken with caution and be subjected to detailed, rigorous and transparent analysis’

In the extreme, multi-employer agreements could morph into industry-wide agreements, undermining competition across industries, weakening the growth prospects of the most productive enterprises in any industry, and creating wage pressures that cascade into other industries.



Given that industrial action is the most important source of leverage for employee bargaining, the overall level of industrial disruption could also be expected to increase.⁵

A matter left unaddressed for years is the need to require that productivity improvements be a consideration when bargaining. A failure to account for this is exactly what we are seeing play out across the industry. An increase in the 'breadth and width' of EBAs with no commensurate obligation regarding productivity gains.

'Productivity' is simply not a factor.

Historically productivity improvements or considerations of productivity were always an expected feature of enterprise bargaining, as highlighted by the Australian Industrial Relations Commission:

'In our view the essence of enterprise bargaining designed to achieve increased efficiency and productivity also requires the parties to demonstrate that they have considered a broad agenda in their enterprise negotiations. We do not intend that that agenda be limited only to matters directly related to normal award prescriptions. It should cover the whole range of matters that ultimately determine an enterprise's efficiency, productivity and continuing competitiveness.

These could involve such things as:

- *short and long term plans for the enterprise including plans for future investment, product or service development, restructuring and greater emphasis on the needs requirements of suppliers and needs of customers;*
- *the current and future operational needs of the enterprise including requirements for improved performance in relation to quality, cost, delivery reliability and cycle time; and*
- *the needs of employees including skills development, job satisfaction and improved employment opportunities.'*

Over time the prominence of such considerations in the bargaining framework has all but evaporated.

⁵ 5-year Productivity Inquiry: A more productive labour market, Interim Report No. 6, PC, October 2022, pages 62-63