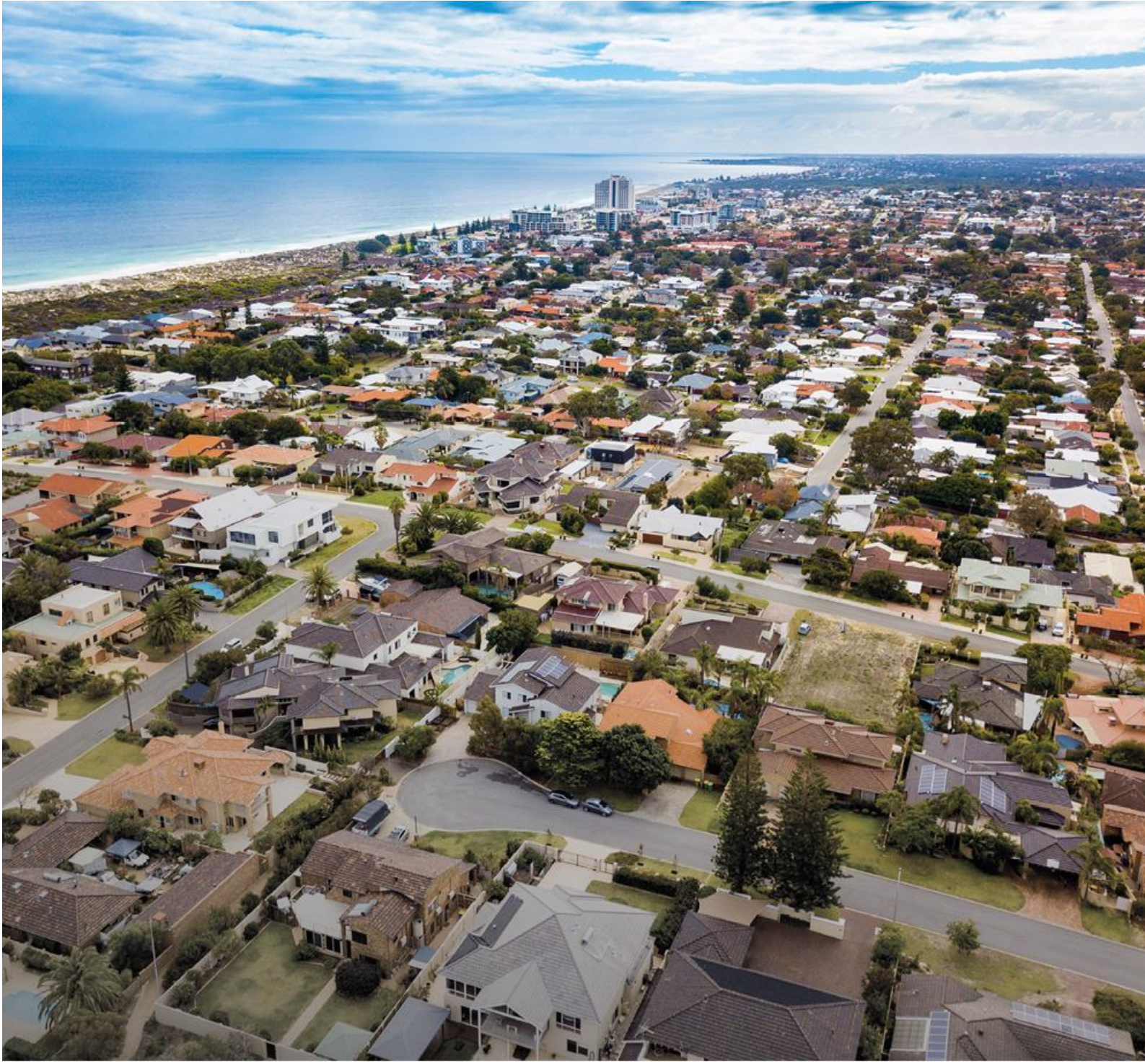

National Policy Competition analysis

HIA Submission

June 2025

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Simon Croft
Chief Executive, Industry & Policy
Housing Industry Association
79 Constitution Avenue
Campbell ACT 2012
02 0245 1300:
Email: s.croftx@hia.com.au

Executive Summary

Thank you for the opportunity for the Housing Industry Association (HIA) to provide a submission to the National Policy Competition analysis 2025, with a specific focus on:

- An occupational licensing scheme that provides labour mobility;
- Adopting international and overseas standards in regulatory frameworks and harmonising regulated standards across Australia; and
- Any other reform options identified as a priority during the study.

HIA recently made a comprehensive submission to Housing Construction Productivity Inquiry (HIA Submission) and note that this submission featured prominently in the recommendations included in the *Housing construction productivity: Can we fix it?* Productivity Commission report published in February this year.

HIA welcomed the publication and recommendations of that report as providing a clear blue print for productivity reform. Furthermore, we are supportive of fast tracking the delivery of the reforms identified in that report to increase housing supply, reduce housing delivery costs and support builders to get on with building homes.

Our submission to the National Policy Competition analysis 2025, does not seek to replicate the *Can we fix it?* report nor our previous Productivity Commission submission, but instead to build off that with respect to the specific focus areas within the scope of this consultation.

The detailed comments on those matters are listed below and we would welcome the opportunity to discuss this matters further.

1. Occupational licensing

Although there are benefits in licensing, licensing also constrains the market's ability to provide services. By restricting entry, license holders maintain an entrenched market position thus reducing competition.

In this regard, the need for licensing of any particular trade or occupational activity should be assessed against the risk involved. If licensing is justified according to the risk, an important task is to identify those risks that require regulation.

HIA has a long held position in relation to business licensing for the residential building industry which includes those who hold an occupational license where required. Streamlining the administrative processes that currently exist to obtain licenses, and to then retain those licenses over time, should be a priority for all regulators.

There are numerous inconsistencies across state borders in relation to the licensing requirements for residential building work. These include:

- Variations in the types of individuals required to hold an occupational license.
- Variations in the type of businesses required to hold a business license.
- Variations in the training and experience required to hold equivalent licenses. Despite the existence of a national training framework, the number of years of experience required and the level of training qualifications required to be licensed varies from region to region. Hence there isn't uniformity in the levels and skills and knowledge provided by different courses, which range from diploma and degree courses to Certificate IV in Building. Likewise, there can be a significant variation in the experience levels of recently licensed builders in gaining a new license.
- Variations in the types of work or value thresholds that require a licensed builder, a building approval and/or home warranty insurance.

Although there is work underway in a number of jurisdictions to review their current licensing arrangements as a consequence of the Shergold Weir Building Confidence Report significant differences remains.

HIA's position on licensing for residential builders and trade contractors is set out in **Attachment A,** recognising that the policy relates to the existing hybrid arrangement referred to as business licensing, and not occupational licensing.

A national licensing scheme?

Much of the driving force behind nationally harmonised arrangements for occupational licenses through the establishment of a National Occupational Licensing Scheme (NOLS) was to reduce red tape associated with the various jurisdictional schemes.

Work towards this objective occurred through the Council of Australian Government's National Seamless Economy program. This approach was ultimately unsuccessful and at the December 2013 COAG meeting, it was decided not to pursue the reform.

National licensing was intended to harmonise licensing regulation between states and territories for a number occupations across a range of industry sectors, including the residential building industry.

In principle HIA supports the concept of alignment across complementary and competing licensing requirements, within state legislation and across state borders. Indeed increased

trade mobility and the reduction of economic barriers to interstate trade is an admirable and desirable goal.

However, the vast majority of residential building businesses – builders and tradespeople alike – are small businesses who do not work across state boarders and have little need to do so.

For those small businesses there was little to no tangible benefit in having national consistency unless it is accompanied with better quality administration of licencing regulation.

Although work was undertaken for several year on the NOLS project, HIA was concerned with the prospect of actually achieving better regulation through NOLS.

NOLS would have required the development of an entirely new licensing structure and the establishment of a new national licensing bureaucracy, the National Occupational Licensing Authority) (NOLA).

Successive state regulator appeared to resist efforts to either alter the status quo , streamline their existing processes (there would be no consistent treatment of licence fees for instance) or rationalise often confusing and overlapping licensing classes.

As the Productivity Commission stated in its 2015 report:

> *"rather than adopt a simplified national system, the jurisdictions decided to keep their local regulators, record-keeping arrangements and unique registration fees. A complex system of national governance was to be grafted onto existing institutional arrangements… which created considerable confusion about stakeholder consultation and the roles of different parties in making policy decisions. Moreover, it would have increased the cost of administering occupational registration. Another fundamental issue was that jurisdictions were unable to agree on nationally uniform registration requirements for each occupation." (Productivity Commission 2015, Mutual Recognition Schemes, Research Report, Canberra at page 36.)*

In HIA's view the NOLS, if implemented, would have likely resulted in increased red tape and regulation for many small businesses in the industry.

Where national harmonisation is proposed, it should be established through an agreement of the Council of Australia Government's (COAG) and provide for all parties to make a contribution (financial or similar) to the delivery of the agreed outcome.

Any new proposals for harmonisation that effect residential building businesses by either State or the Commonwealth government (including through COAG) should not be agreed to without first conducting a cost benefit analysis that considers the impact of the reforms on housing affordability and the thousands of small businesses that do not operate outside of their state's jurisdiction.

HIA does not support harmonisation where it aims to achieve a nationally consistent outcome at the expense of genuine, positive regulatory reform for the residential building industry. States should continue to retain their right to determine what risk, both public and private, they seek to manage by the operation of licensing arrangements.

National harmonisation which simply seeks to mandate one or more states to unjustifiably increase their current regulation stringency for the sake of consistency alone is not a reduction in red tape and should not be put for as such.

In lieu of any formal harmonised approach to licensing requirements, HIA continues to support mutual recognition arrangements as a way to align similar license requirements and allow the movement of professionals across state borders.

Mutual license recognition

As outlined earlier, each state and territory has distinct occupational and business licensing arrangements in place for builders, trade contractors and workers in the residential building industry.

Mutual recognition arrangements have made it easier for licensed tradespeople, and authorities that issue licenses, to know what license a worker is entitled to when applying for a license in another jurisdiction.

Arguably, the full benefits of mutual recognition are yet to be attained noting that while the benefits that full labour mobility to the Australian economy are broadly recognised.

More effective automatic mutual recognition (of occupational licences in particular) would also help overcome some of the barriers state based licensing systems provide when interstate trades attempt to temporarily work in regions affected by natural disasters for example.

HIA supports a coordinated approach to regulatory reform that seeks to deliver improvements to the coordination of commonwealth, state and local government administrative requirements within a region and broadly supports the recently implemented AMR Scheme, particularly when it can:

- Help overcome some of the barrier's state based licensing systems put up when interstate trades attempt to temporarily work in regions affected by natural disasters.
- Reduce cost and red tape associated with working across borders.
- Assist to meet demand for skilled trades during periods of high building activity, meaning that such activity does not adversely impact housing affordability. Increased trade mobility and the reduction of economic barriers to interstate trade is an admirable and desirable goal.
- Improve and simplify conditions (not increase the stringency) for licensees. Streamlining the administrative processes that currently exist to obtain licenses, and to then reframe those licenses over time, should be a priority for all regulators.

Having said that, due to the distinct occupational and business licensing arrangements in place for builders, trade contractors and workers across the country, any benefits that may flow from the AMR Scheme are likely to be limited due to:

- As noted above, the reality that the majority of those in the residential building industry are first and foremost operating building or trade contracting businesses within their own distinct jurisdictional borders. The vast majority of residential construction businesses – builders and tradespeople alike – are small businesses who do not work across state boarders and have little need to do so.
- The marked disparity in the licensing of builders and trade contractors from state to state will mean that the positive benefits of an AMR Scheme may never be able to be fully realised.

Different eligibility requirements for licensing make the mutual recognition process inconsistent and again limits its benefits to the industry. For example, despite the fact that a

NSW builder may obtain a license to carry out certain building works in Queensland through mutual recognition, that builder must still obtain warranty insurance from the Queensland Building and Construction Commission (QBCC) in order to carry out building work in that jurisdiction.

An AMR Scheme will not change this as compliance with public protection requirements (which includes insurance and other consumer protection requirements) must rightly be satisfied prior to commencing any work in the second state.

As such these other matters that affect the 'carrying on' of a business may ultimately impede the utility of mutual license recognition.

- AMR Schemes depend heavily on the cooperation and coordination of State and Territory regulators. This is in terms of information gathering and sharing, any proposed notification requirements and the adequate resourcing of relevant regulators to ensure that, notwithstanding an AMR Scheme, regulators are able to retain a 'line of sight' over those operating in their jurisdiction. Without these arrangements in place, it is unlikely the AMR Scheme will be able to operate successfully.

HIA would support a coordinated approach to regulatory reform that seeks to deliver improvements in the coordination of commonwealth, state and local government administrative requirements within a region.

Cultural Impediments?

In HIA's experience, one of the major issues with expanding mutual recognition (much as with attempts at national licensing) is that those jurisdictions with the higher entry standards and regulatory thresholds will seek to look for ways to maintain these higher standards.

For occupational licensing (as opposed to business to consumer licensing) there appears to be little reason why more effective automatic licensing arrangements are not already in place.

With relative simplicity, in 2014 New South Wales Parliament passed the *Mutual Recognition (Automatic Licensed Occupations Recognition) Act* to enable New South Wales, Queensland and Victorian electricians to work across state borders using the licence issued by their home state without having to apply for the issue of a New South Wales licence under mutual recognition.

This demonstrates the underlying capacity of state government to introduce more effective mutual recognition arrangements that drive down unnecessary red tape and regulation when accompanied by political willingness for reform.

2. International Standards Adoption

The notion of streamlined adoption of international standards in Australia is a matter that has been discussed multiple occasions over the past decade yet significant barriers continue to exist in having this become operationally effective in Australia.

HIA is supportive of the government seeking to align regulatory processes as much as possible to eliminate or minimise regulatory compliance burden.

The principle that if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements, unless there is a good and demonstrable reason to do so is sound policy settings and an overdue outcome that should be actively applied.

Accepting trusted international standards and risk assessments can reduce duplication of regulatory approvals, reduce delays, increase competition and improve business competitiveness in Australia.
In principle many Australian Government standards setting bodies apply as a guiding principle a commitment to reducing the burden of regulation on industry and the community.

For example, the Australian Building Codes Board who develops the National Construction Code (NCC) has a commitment under its Inter-governmental Agreement (IGA) to facilitate free trade and to avoid duplication, the ABCB has a policy of referencing international documents in preference to national documents, where they are available and suitable.

Similarly, the Commonwealth Governments memorandum of understanding (MOU) with Standards Australia says that Standards Australia will “utilise accepted international standards to the maximum extent possible and will only depart from this practice where there are compelling reasons to do so”.

These types of commitments are further reinforced on standards setting agencies in following the CoAG’s Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies (October 2007).

Equally, the Australian Government manages Australia’s responsibilities for the Technical Barriers to Trade Agreement under the World Trade Organisation and the Closer Economic Relations Agreement with New Zealand – which supports the policy of referencing international documents in preference to national documents.

This issue is not a new concept

The Australian Government published the ‘Industry Innovation and Competitiveness Agenda: An Action Plan for a Stronger Australia’ on 14 October 2014.

This included a number of proposals including the following:

- To reduce duplicative domestic regulation, the Government will adopt the principle that if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements, unless there is a good and demonstrable reason to do so.

This was based on the premise that it will reduce costs and delays for businesses, increase the supply of products into the Australian market and allow regulatory authorities to focus on higher priorities.

The proposal put forward in 2014 would've required a review of Commonwealth Government processes in each ministerial portfolio to objectively assess whether unique Australian standards or risk assessments are needed.

In doing so, agencies were going to be required to conduct stakeholder consultation to develop criteria for accepting or adopting trusted international standards and risk assessments.

The criteria was intended to be used when new regulation is being considered or when existing regulation is being reviewed.

These core principles still ring true in 2025 and to HIA's knowledge there has been limited follow up work by respective Ministerial portfolio's to progress this work.

International comparisons

The issue of adoption of international standards is not unique to Australia and most comparable nations to Australia face similar challenges on this front.

Increasingly as we saw through COVID-19 is that we now operate in a global supply chain, and also international companies are investing in Australian businesses and looking at utilizing international products and systems into our market.

Many of those companies have expressed frustration in the lack of international standards adoption in Australia and the need to re-test, re-design and re-certify products prior to entering Australia market for no clear benefit other than our standards being different.

In 2025 and beyond as global supply chains shift and programs such as net zero transition ramp up and changing nature of how we build in Australia, will need to evolve and adapt. In doing so we need to ensure our standards and regulatory systems are fit for purpose in an evolving world.

The balance of maintaining safety, security, supporting local and sovereign manufacturing capabilities and ensuring Australia is open for business globally are critically important.

Australia should therefore look to how other countries are tackling this challenge and implement a model into Australia that sets us up for success now and into the future.

One such example includes the Singapore Product Listing Scheme.

Under that Scheme the regulator develops a list of regulated fire safety products used in buildings and sets out their level of certification required and accepted standards by which product must meet.

This way they are not picking a winner on a specific standard but rather providing a list of 'recognised standards,' which provides a streamlined pathway for product acceptance and facilitating international trade.

No.	Product Category	Product Category	Fire Test Standards	Scheme	Label / Marking	Surveillance Regime Testing	Surveillance Regime Factory/Site Inspection
1	Fire-rated Partition	Compartment Wall	BS 476 Pt 4/11 or EN 13501-1 BS 476 Pt 22, EN 1364-1 AS 1530 Pt 4 ASTM E119 ISO 834	Type 5	DoCs issued by CODIMI	Annual surveillance test shall only require material testing, and adopt the same test standards that were adopted for the material testing at the point of CoC listing	Factory inspection to be conducted at least once annually and Site inspection to be conducted for every 3500m2

Australian regulators could follow a similar model that can provide a clear pathway for compliance and provide regulator certainty. The challenge would be in empowering a regulatory body to develop the list of recognized standards.

This could be addressed by developing a set of criteria to which a recognized standard must satisfy and then it would be up to the proponent of that standard to put forward their application for acceptance against that criteria.

The ACCC recently published a similar set of criteria for acceptance of product safety standards, that could be adapted by the relevant ministerial portfolio areas as set out in the 'Industry Innovation and Competitiveness Agenda, from October 2014.

The ACCC's criteria for acceptance is as follows:

Criterion 1 - Addressing safety concerns

- Do any international standards or risk assessments adequately address the consumer product safety concerns?
- Are there appropriate international standards and risk assessments that provide adequate consumer safety?
- When considering an international standard does it achieves an acceptable level of safety for consumers.

Criterion 2 - Comparable jurisdiction to Australia

- Is the international standard or risk assessment published or developed by a legitimate standards body or government agency from an economy or nation with comparable economic and regulatory processes to Australia?

Criterion 3 - Applicability to the Australian context

- Is the international standard or risk assessment applicable to the Australian context?

Standards Australia adoption and consideration of International Standards

Standards Australia is the country's leading independent, non-governmental, not-for-profit standards organisation. Standards Australia represents Australia on many international standards committees and has a long history in publishing and adapting international standards in Australia.

Standards Australia also publishes SG 007: Adoption of International Standards. This Guide sets out the policy of Standards Australia on the adoption of International Standards as Australian Standards (including joint Australian/New Zealand Standards) and is intended to assist committees in their consideration of the international alignment of Standards under development.

Within this Guide it contains an appendix which provides a general outline of the process consideration of the adoption of an International Standard should be an integrated part of the Standards development process, along with the other considerations, such as costs and benefits.

Whilst Standards Australia plays a key role in adopting International Standards as part of their standards development process, this function effectively acts more so in adopting or adapting nationally rather than simply relying on the use of the International Standard being adopted directly into legislation.

To truly drive this program forward a process akin to the Singapore Product Listing Scheme, whereby government policy or ministerial portfolio agencies apply a more direct approach to adoption alongside national standards adoption is needed.

3. Other competition policy reform

Competition law and workplace relations

Workplace relations have been largely excluded from the reach of competition and trade practices laws. This broad exclusion is found at section 51(2)(a) of the Competition and Consumer Act (CCA) and has historically been based on the notion that labour is a different market to other goods and services and should be regulated discretely.

At the same time, free enterprise and improved productivity essentially depends on effective competition in all markets, including the employment market. However, the prevalence of pattern bargaining and the inclusion of terms in enterprise bargaining agreements that restrict or prevent the engagement of different forms of labour are fundamentally at odds with principles of competition. They drive up costs and reduce productivity.

While a line remains between these complex areas ignoring their interplay continues to have consequences.

For example, on the issue of secondary boycotts, section 45DD of the CCA states that if conduct relates to employment matters, a person's activity is not deemed to fall under the illegal secondary boycotting provisions.

In HIA's view whilst this might exempt legitimate strike activity, it should not cover or enable aggressive picketing that prevents material suppliers entering or leaving premises or subcontractors entering site.

In the Interim Report of the Royal Commission into Union Corruption and Governance, Commissioner Heydon observed that:

> *'The current secondary boycott provisions in the CC Act were ineffective to deter illegal secondary boycotts by trade unions.'*

Commissioner Heydon was specifically referring to allegations surrounding alleged 'black banning" of building products manufacturer Boral by the CFMEU. Whilst the ACCC issued, ultimately successful Federal Court proceedings, their intervention was belated and well after the conduct had occurred impacting the supply of product to the market.

Adding to these concerns is the recent High Court decision to dismiss the ACCC's appeal against a ruling of the Full Federal Court in proceedings involving the Construction, Forestry and Maritime Employees Union (CFMEU) and construction company J Hutchinson Pty Ltd (Hutchinson)[1].

As has been widely reported, Hutchinson was the head contractor on a construction project. It had an enterprise bargaining agreement with the CFMEU, which obliged it to consult with the union when appointing subcontractors in certain circumstances. Hutchinson brought Waterproofing Industries Qld Pty Ltd (**WPI**) on to do waterproofing; the CFMEU objected and said it would "sit the job down" if WPI were allowed back onto the site. Hutchinson reacted by excluding the subcontractor from the site and then terminating the subcontract.

The High Court's decision to take a narrow interpretation of the meaning of an 'understanding' under the CCA has dealt a serious blow to the ACCC's ability to police union action. The failure to demonstrate that Hutchinson and the CFMEU had reached the "meeting of minds" required to establish that they had made an agreement or arrived at an

[1] Australian Competition and Consumer Commission v J Hutchinson Pty Ltd; Australian Competition and Consumer Commission v Construction, Forestry and Maritime Employees Union [2025] HCA 10.

understanding to boycott a subcontractor places yet another hurdle in front of a regulators ability to take steps in response to this type of behaviour.

Add to this that the current enterprise bargaining framework under the Fair Work Act fails to support productivity, flexibility and efficiency gains. Given the experience of the maritime industry this framework should be a starting point when responding to the current circumstances.

Historically productivity improvements or considerations of productivity were always an expected feature of enterprise bargaining, as highlighted by the AIRC:

> *'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.'[2]

HIA recommends that the PC endorse the recommendations of the Harper Competition Review including:

- Amending sections 45E and 45EA of the CCA so that they apply to awards and industrial agreements, except to the extent they relate to the remuneration, conditions of employment, hours of work or working conditions of employees.
- Removing the present limitation in sections 45E and 45EA, such that the prohibitions only apply to restrictions affecting persons with whom an employer 'has been accustomed, or is under an obligation,' to deal.
- Applying the maximum penalty for breaches of sections 45E and 45EA should be the same as that applying to other breaches of the competition law.

The Harper Competition Review also recommended that the ACCC be given the right to intervene in proceedings before the Fair Work Commission and make submissions concerning compliance with sections 45E and 45EA. HIA would support this recommendation.

Reforms are required to both the FW Act and the CCA to establish a workable bargaining framework and to better address the use of anti-competitive conduct in an industrial relations context.

[2] *Review of Wage Fixing Principles,* 25 October 1993 (Print K9700).

Attachment A

HIA Policy

Builders Licensing

HIA's Position Statement

1. HIA supports business licensing for Builders undertaking:
   a. Domestic building work.
   b. Multi-residential building work, and that domestic, multi-residential and high rise licenses be separate categories.
   c. Commercial and other building work – and that non-residential licenses be a separate category from a residential builders' license.
2. HIA supports business licensing for trade contractors:
   a. Engaged (contracting) directly with consumers (subject to a monetary threshold).
   b. Engaged (contracting) directly with 'commercial' consumers.
3. HIA supports business licensing for project managers who undertake building work.
4. HIA does not support licensing of trade (sub)contractors who work exclusively for builder/principal contractors but (sub)contractors should be accountable for the quality and compliance of their work.
5. HIA supports occupational licensing of trade (sub) contractors who undertake high risk work.

Monetary Threshold

6. HIA supports a monetary threshold for building work, above which a license is required.
7. The monetary threshold should align with the warranty threshold, if there is one, for residential building work.

License Eligibility

8. HIA supports license eligibility for the requirement for builders and subcontractors being based on, but not solely subject to each of the following:
   a. Technical competency.
   b. Industry experience.
   c. Business skills.
   d. Financial viability – for example, insolvency should trigger an automatic suspension of license.
   e. Business financial checks to be undertaken annually by warranty insurance providers, not consumer/licensing agencies.
   f. Personal probity.
   g. Warranty insurance eligibility.
   h. Other insurance requirements.
   i. CPD not being required for renewal purposes.

Background

- Regulation of the building industry is constantly scrutinised and often under review.
- Residential builders in all states need to be licensed or registered. However, licensing requirements across Australia are not consistent. Licensing is a state and territory function with each respective government having its own regulators and own rules, criteria and categories.
- Licensing can: restrict entry into a profession by imposing skill, education or probity requirements on practitioners; contribute to a consumer protection regime; provide indications as to the quality of the licensed person's skills; be used as a means to enforce rules of industry behaviour; and, be a source of revenue for governments.
- Licensing can be divided into two categories: Business and Occupational.
- Business Licensing is generally associated with the practice of contracting to do work (with a consumer or another business). Business licensing therefore contemplates the business (financial) capacity, probity, conduct and being a 'fit and proper person'.
- Occupational (skills) Licensing reflects the nature and related risks of the actual work being performed, and therefore contemplates skills, competency, knowledge and experience.
- A license will affect the type of residential building work a practitioner can carry out, potential minimum financial requirements and potential disciplinary actions.
- Although there are benefits in licensing, licensing also constrains the market's ability to provide services. By restricting entry, license holders maintain an entrenched market position thus reducing competition.
- In this regard, the need for licensing of any particular trade activity should be assessed against the risk involved. If licensing is justified according to risk, an important task is to identify those risks that require regulation.
- Where there is a high monetary threshold for licensing, a greater range of building work will not require a license practitioner. This might have the consequence of increasing competition amongst non-licensed practitioners at the lower-end of the market, but in turn could have potential to expose consumers to increased risk from non-licensed practitioners.
- However, removing compliance costs for the lower end of the market will result in lower costs, for the business and the consumer, providing greater choice for consumers and more targeted regulation where it matters the most.
- An added complexity is that other regulatory frameworks overlay state and territory based licensing requirements, for example, differences between the contract value threshold for when a license is required and the requirements to obtain Home Owners Warranty Insurance in conjunction with training and experience requirements.
- Despite the existence of a national training framework, the number of years of experience required and the level of training qualifications required to be licensed also varies across jurisdictions.
- Not all jurisdictions license both commercial and residential builders and amongst those that do, there is a wide variation in the way licenses are graded or classified. From a consumer protection point of view, the grading of licenses assists market choice by indicating the most appropriately qualified builders for their needs