

Potential Commonwealth standards for the construction industry

Chamber of Commerce and Industry of Western Australia
Submission

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Via: WR.Building@dewr.gov.au

Introduction

Thank you for the opportunity to provide a submission in relation to the Department of Employment and Workplace Relations' (DEWR) consultation on potential Commonwealth standards for the construction industry.

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia (WA). We are fundamentally committed to using our insights to develop and advocate for public policies that help realise our vision to make WA the best place to live and do business.

In what follows, CCIWA provides overarching comments regarding Australia's industrial relations environment, particularly in relation to the construction sector, before providing specific comments and recommendations in **Appendix 1**.

Overarching Comments

Over time, navigating the industrial relations framework has become one of the most complex areas of regulation employers face, regardless of business size. It is now a highly rigid and regulated system, where employee representatives hold substantial power to disrupt workplaces.

Ensuring the integrity fair and lawful conduct of all participants is essential to the integrity and effective functioning of the industrial relations system. Currently, unions hold a highly privileged position in the workplace, including through bargaining, utilising the right of entry, and legal access to investigate alleged breaches of industrial relations, work health and safety, and discrimination laws in the workplace.

It is critically important that there are appropriate safeguards in place to manage the use of these powers and to ensure the integrity of the workplace, including effective obligations for employee representatives. This is a particular concern in the construction industry as it is a sector that has experienced well documented governance issues.

Some of these issues were highlighted in the 2015 Royal Commission into Trade Union Corruption and Governance, wherein allegations of substantial and widespread misconduct and governance failures were presented.¹ Concerns with the regulation of this sector remain, illustrated by the Victorian Government's Royal Commission into the Integrity of Major Public and Civil Infrastructure Construction Projects in Victoria.²

While generally a lawful industry, the building and construction sector presents an example of persistent cultural problems being enabled by a lack of sector-specific regulation. This industry continues to present deep governance and culture problems that generalist enforcement agencies struggle to address.

A specialist regulator would have the ability to sustain targeted interventions to correct systemic cultural issues and the appropriate powers to address the critical issues, including those identified in the Discussion Paper. The regulator should be strong and empowered to perform its duties effectively, with powers to subpoena people and compel evidence.

A particular issue relates to the right of entry which is a special privilege that employee associations and unions hold, giving them substantial access to workplaces. In the Federal

¹ Royal Commission into Trade Union Governance and Corruption, Final Report, Volume 1-4. December 2015.

² Royal Commission into the Integrity of Major Public and Civil Infrastructure Construction Projects in Victoria. [About us | Royal Commission into the Integrity of Major Public and Civil Infrastructure Construction Projects in Victoria \(rcimcp.vic.gov.au\)](#). 23 September 2026.

system, more than 3,000 right of entry permits are currently provided across unions and employer associations.³

The problem is that permitting senior union officials to exercise broad entry and representational powers without enforceable behavioural standards or consistent and rigorous suitability checks can generate integrity risks. The absence of a clear, enforceable code of conduct and timely remedial powers can enable problematic behaviour, such as aggressive approaches to staff and repeated unproductive visits, including those that are inappropriate in a modern workplace.

To ensure ongoing confidence in the industrial relations system, the privilege bestowed on permit holders must come with responsibilities, checks and balances. This should be considered essential for a sector that is a pillar of the economy, especially in WA – representing the second largest contributor to the WA economy in terms of Gross Value Add and employing nearly 200,000 Western Australians.^{4,5}

Employers in this sector are already subject to strict regulatory obligations and standards. Placing additional undue burden on employers will not address the root causes of the issues that are known in the construction industry.

Instead, any potential construction industry standards should address the well evidenced integrity risks that have been exposed over time in relation to the powers of unions and employee representatives.

Should you wish to discuss the content of this submission further, please do not hesitate to contact Dr Daniel Kiely, CCIWA Chief Economist, via email at Policy@cciwa.com.

³ Fair Work Commission. [Find an entry permit](#). Accessed October 2026.

⁴ Australian Bureau of Statistics. [Australian National Accounts: State Accounts, 2024-25 financial year | Australian Bureau of Statistics](#). 20 November 2025.

⁵ Australian Bureau of Statistics. [Labour Force, Australia, September 2026 | Australian Bureau of Statistics](#). 15 October 2026.

Appendix 1: CCIWA comments

<i>CCIWA position</i>	<i>Recommendation</i>
Theme 1 – Integrity and lawful conduct <i>Improving integrity through employee representative duties and qualifications</i> Improving the governance framework for greater accountability of unions will ensure their senior representatives respect the privileged position they hold in the workplace relations system. One way to improve accountability is by applying directors’ duties to union officials. At the current size, funding and development of professional unions, it is important for members to have enforceable oversight, which can be achieved by establishing their accountabilities, as well as a penalty regime for contraventions. Requiring right of entry permits for all union officials would ensure representatives meet minimum suitability and accountability tests before exercising workplace powers. Consequences for non-compliance for union officials should be immediate revocation of their permits. <i>Strengthening integrity of the right of entry</i> The right of entry regime gives extraordinary powers to those who hold a permit. They give holders the right to enter a workplace with short or, in certain circumstances, no notice. Without appropriate safeguards, permits can be used to significantly disrupt workplaces or exert tactical pressure during negotiation. For example, alleging safety risk to gain access and force work to stop. Limiting entry to those involved with industrial instruments or those expressly invited by employers or employees focuses entry rights on legitimate, workplace related purposes and reduces opportunistic or disruptive visits. The absence of a clear, enforceable code of conduct and timely remedial powers means problematic behaviour, such as aggressive approaches to staff, can occur with limited recourse. Furthermore, strengthening the test to grant a right of entry permit, including prior conduct and criminal record, ensures permit holders meet community expectations. The Fair Work Commission (FWC) should be granted discretionary powers to suspend or modify permits when officials are committed to stand trial for serious offences.	The Federal Government should legislate duties for union officials, similar to directors’ duties. This should include a regime for the Federal Court to disqualify union officials from holding such offices when they are in breach of their duties. The Federal Government should legislate qualification requirements for union officials to hold right of entry permits. The Federal Government should amend the criteria for right of entry permit holders to access worksites to only if: • they are party to an industrial instrument; • invited by the employer to site; or • invited by an employee to site. The Federal Government should introduce an enforceable code of conduct for permit holders. The FWC should have jurisdiction to deal with alleged breaches. The Federal Government should introduce changes to the right of entry application test to ban applicants from holding a right of entry permit after conviction under State and Territory criminal laws. The Federal Government should amend the powers of the FWC to allow for modification and temporary suspension of permits when the permit holder has been charged with serious violence / dishonesty offences.
Theme 2 – Productivity, fairness and industrial practices There are gaps in the industrial relations system that have been exploited by certain groups to force specific outcomes. This can occur through enterprise bargaining. For example, there have been reports of contractors being locked out of commercial projects because they do not have an industrial agreement with a specific union. Changes would strengthen bargaining, to ensure it occurs genuinely, in good faith, and free from unlawful coercion, intimidation and threat to coerce or intimidate every time. Unions have used protected action ballot orders (PABOs) as part of the agreement-making process, rather than using them when	Commonwealth standards for the construction industry should contain provisions to facilitate industrial relationships to be free from coercion or intimidation. This should include clear enforcement mechanisms for breach of the standards through an industry-specific regulator.

good faith bargaining has been exhausted and negotiations come to an end. When unions make an early PABO application, they can extend the 30-day period in which the action must commence, hampering productivity. The Government should introduce further parameters to ensure PABOs are granted only after good faith bargaining has been exhausted. Unproductive behaviours can also impact subcontractor engagement. For example, one union has provided head contractors with a list of subcontractors that have union agreements. If they select a company not on that list, the union will often use safety entries to slow down or stop the work until that contractor is removed. Safeguards should ensure decisions about subcontractors are transparent, merit-based, commercially appropriate and free from coercion or inappropriate influence.	
Theme 3 – Workforce development and job quality The Commonwealth standards for the construction industry should not unduly restrict the flexibility of workplace practices, including limitations on labour hire, subcontracting and business choice of industrial model. Employers in the sector are already subject to strict regulatory obligations and standards. Placing additional burden on employers will not address the root causes of the issues that are known in the construction industry. The standards should recognise the legitimate operational needs for the use of labour hire and subcontracting. They should also not be prescriptive in terms of apprentice and trainee engagement or work health and safety matters as they are covered by their own comprehensive policy frameworks.	Any Commonwealth standards for the construction industry should not hinder businesses from operating productively, efficiently and flexibly.
Theme 4 - Scope and Application Definitions across the industrial relations system and enabling frameworks should be consistent to provide clarity for all participants.	The standards should be aligned with the Code for the Tendering and Performance of Building Work 2016, which was taken from the <i>Building and Construction Industry (Improving Productivity) Act 2016</i>.
Theme 5 – Governance and compliance The building and construction sector has demonstrated systemic governance and culture issues that generalist enforcement agencies struggle to address. A specialist regulator would be able to sustain targeted interventions to correct cultural issues. This would assist productivity and make the workplace safer and more appealing for a more diverse and inclusive workforce. Appropriate enforcement and dispute mechanisms must also be implemented to facilitate compliance with standards. If a specialised regulator is not introduced, more funding and responsibility for the Fair Work Ombudsman would assist with this. Powers to subpoena witnesses to attend to give evidence and produce documents should be strengthened.	The Federal Government should re-introduce an industrial regulator that is specialised in the building and construction industry, with an initial focus on addressing cultural issues. If a specialised regulator is not introduced, the Government should, at least, ensure that the Fair Work Ombudsman has the funding and powers to maintain integrity across the industrial relations system.