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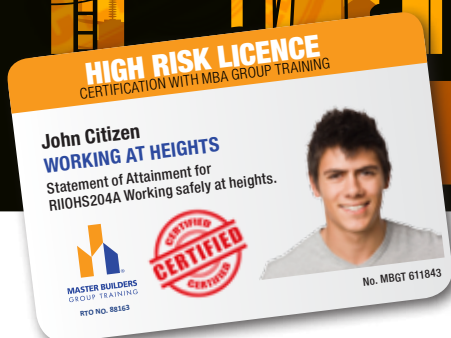
- Mon 21st - Tues 22nd March
- Mon 18th - Tues 19th April
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The *Monti* by MBS Housing at the newly opened Moncrieff Master Builders Display village.



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## editor's note

### Skills shortage

In 2015 the land release drought was hard for supplier manufacturers. Imagine the stress if you employed 60 staff and work dries up.

Now 2016 is looking much better and will most likely be a very busy year for residential builders. For supplier manufacturers keeping up is the trick, profits can be reduced paying overtime rates and if you can't meet the demand builders will look elsewhere. This is where a reliable supply of land would make forecasting and staff management much easier.

Another issue will be the battle for trades. Brickies are asking for more, rates of \$1,200 to \$1,400 a thousand bricks are being quoted. This will only worsen and quality face brickwork will become rare as there aren't many young people wanting to become bricklayers. For every ten carpentry apprentices there's only one bricklaying apprentice. Lots of future builders, not enough brickies to lay the bricks.



**PRESIDENT**  
VALDIS LUKS

## PENALISING INDUSTRY NOT THE ANSWER

Safety and Building Quality have been two very topical subjects in our region over the past number of years and they still will be going into the future. In fact the ACT isn't the only place in the country that has been dealing with these issues for quite some time and I'm sure the rest of the country will continue to have to deal with them also well into the future.

What I can't understand or come to grips with is why we continue to attempt to improve both our safety culture and building quality by regulation and the imposition of penalties and not address the issues up front with education.

In regard to safety, for some time we have thought that if we impose systems and regulate the industry based on these systems surely the culture of our industry will improve. The

addressed safety" when we haven't really addressed the cultural change we need to. This needs to be dealt with from an early stage in the training of our industry workers.

Building quality is another issue we seem to be addressing later rather than sooner. Again our focus seems to be concentrating on addressing the situation after the event rather than dealing with it before it becomes an issue. We continue to talk about harsher penalties for bad building practice and how we deal with "shonky" builders rather than make sure we produce quality engineers, architects and builders from the start.

The ACT building industry, together with the ACT Government and our teaching institutions, are in a unique position where we have the opportunity to work together to deal with these two issues on the front foot.

***"If our system is based around penalising workers for unsafe work practices rather than rewarding them for safe behaviour then we are approaching the issue from the wrong perspective."***

problem with this is that if the individual doesn't believe in the value of the system I'm not sure we're going to see the improvement we need to. If our system is based around penalising workers for unsafe work practices rather than rewarding them for safe behaviour then we are approaching the issue from the wrong perspective. We have a society that says it's wrong to smack our children and instead we should encourage them to behave in a positive manner, then why should it be any different when entering the working environment. If the principle of the carrot rather than the stick is supposed to work for our children then it should also be the same approach throughout the building industry in regard to safety. We need to have a culture where individual workers are keen to take ownership and responsibility for safety in their work environments, and not feel they have to or be punished. We continue to have an attitude of saying that "we've put the system in place so therefore we've

We are small enough geographically that we are able to communicate and deal with each other almost every day of the week. We have two educational institutions in the ACT, the Australian National University and the University of Canberra that teach a number of our engineers, architects and building and construction degree students, who then in turn work in our local industry. These institutions, together with our local Government and industry associations, have the opportunity to educate and mould these students toward best practice in how we deal with both safety and building quality. When you combine this with the training of our apprentices and other construction workers we have a great opportunity to influence the culture of safety and the quality of our product, not just for the here and now, but going into the future.

Now is the time where we have to put more focus on this upfront education and not continue to mostly deal with it after something has gone wrong.





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## LIGHT RAIL ROULETTE

While some people dread the extra day in 'alcohol free February', and others wait in gleeful anticipation for the global spectacle of another Olympic Games, we Canberran's face each leap year with the added responsibility of making an informed vote in our assembly elections.

The third Saturday in October every leap year sees us queuing in school halls, reminiscing with a touch of nostalgia about our own school days, while preparing for the ultimate adult political decision in casting our vote.

***"The opposition should not be rewarded for bad policy and government should not commit the people of Canberra to debt that could last generations based on an election time table."***

Even in our tight knit community elections are approached with a degree of justifiable cynicism. Not quite to the extent of Otto von Bismarck's oft quoted view that "people never lie so much as after a hunt, during a war or before an election" but close. Take the twisting politics around Canberra's largest ever infrastructure construction project in light rail.

On one side we have an opposition saying they will tear up contracts. Dreadful policy that hammers the confidence contractors must have in contracts and flies in the face of normal, let alone best, business practice.

On the other we have a government hell bent on starting the huge project in the face of an ambiguous mandate and fierce community opposition with construction anticipated to start mere weeks, perhaps even days, before the election.

To be clear, we support the project. Any major investment in infrastructure is to be commended. This is the A to B of a vision that could ultimately take us to an A to Z that delivers a world class transport network. The bones of a true global city state.

But this is far too important to be a play thing of politics. The opposition should not be rewarded for bad policy and

government should not commit the people of Canberra to debt that could last generations based on an election time table. Canberra can't afford this game of political Russian roulette.

Stripping the politics out, touching the break on the project would seem a sensible solution. A few weeks or even months will not make an appreciable difference in terms of the community benefits of this project. The haste is purely political.

The upside of a pause will be either an unambiguous mandate to proceed or a significant saving (according to Minister Corbel potentially hundreds of millions of dollars) in cancellation costs.

Put it to the people and let us decide.

The government can present their vision for a bold project that will shape the city for generations.

Today the heart of the opposition's policy is based on what they won't do. The notion of spending potentially hundreds of millions of our hard earned to *not* build something is plainly outrageous.

The construction industry in particular will be looking to the opposition to deliver an infrastructure plan that we can get behind as a city. We are well short of this today.

An ongoing challenge for both sides will be maintaining the focus on investing in our city. Governments must distinguish between good and bad debt; the difference between borrowing to pay operating costs and borrowing to invest.

One of the best investments any government can make is in boosting the productivity of its population. Transport infrastructure delivers huge dividends in productivity to a city, as does social infrastructure such as schools and hospitals.

If Canberra is to deliver on its enormous potential to become the globally recognised city state we all know it can be, we will need politicians from all sides to put aside political advantage and look to the fundamental interests of our community.

There is an old Irish leap year custom where the ladies can break from tradition and old-world custom to ask for their beau's hand in marriage.

It would be grand if our political masters could follow a similar leap year tradition and put the tradition of political rivalry and election point scoring aside to give real choice to our community. Today both sides have the revolver to our head.



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## CONSTRUCTION INDUSTRY REFORM IS LOW-HANGING FRUIT FOR ECONOMIC GROWTH

Reform of the construction industry – Australia's third largest industry – is low-hanging fruit for economic growth.

As Parliament considers whether to reintroduce a 'construction cop on the beat' – the Australian Building and Construction (ABCC) – it's worth remembering that economic growth is always constrained when normal rules don't apply.

There is no need to see confidential volumes of the Royal Commission's final report to make a case for the ABCC. The evidence is on-the-record.

'This isn't limited to a 'few rotten apples'. John Setka, Secretary of the Victorian CFMEU, made this threat to Boral: 'all wars end and ... we'll be at the table to divide up the spoils – we'll decide what market share Boral gets'. Or as ACT CFMEU Secretary, Dean Hall, put it to a builder: 'I know a lot of people in this town and you won't work here for long'.

The behaviour is widespread. In a survey of approximately 450 construction firms Australia-wide, 60 per cent reported threats to livelihoods if they didn't sign an EBA, while 50 per cent said they had been told they couldn't work unless their

***"A contractor informed a union official that a competitor (without a CFMEU EBA) had won a contract and that the official should "hammer him"."***

Ask the small business owner who testified before the Commission. A CFMEU union official told him to sign the union's pattern enterprise agreement (EBA) as "this is the way the industry is going... we will take control of the jobs. We will ... tell... you which ones you can and can't go on", before offering "other ways" to come to an "arrangement", including "donations" or payment for memberships. When he said he couldn't afford these demands, the official said he "didn't give a f\*%k about small businesses" and ordered a builder to black-ban the company and engage a union-endorsed rival.

Welcome to coercion, construction industry-style, where the CFMEU leverages demands by threatening contractors' ability to win work, usually through a mixture of site disruption (which stops builders engaging them) slander and intimidation.

Threats against livelihoods aren't limited to employers. Commission phone taps revealed a CFMEU official telling an employer to "move" an employee "off the job" because he didn't join the union. When the employer refused, the official suggested he "might make a little donation... or something" to the union charity to "smooth things over".

employees joined the union. Most disturbingly, 70 per cent said they had been verbally intimidated and 40 per cent said they had been physically intimidated.

No other industry endures this brutality. Nor should it.

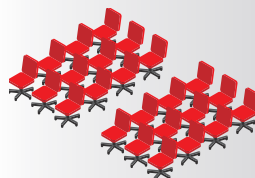
The consequences affect us all. Industrial coercion provides the context within which criminal and anti-competitive behaviours ripple throughout the industry. The ability for the CFMEU to threaten livelihoods, largely with impunity under existing laws, makes it a very small step for officials to make more explicit demands, including outright bribes. Should it be a surprise that one CFMEU official allegedly extorted more than \$200,000 from contractors?

The CFMEU's tactics are a ready-made vehicle for market manipulation, whereby contractors can cooperate with the union to suppress competition and even fix prices. In text messages aired before the Commission, a contractor informed a union official that a competitor (without a CFMEU EBA) had won a contract and that the official should "hammer him". A phone tap recorded the union official as



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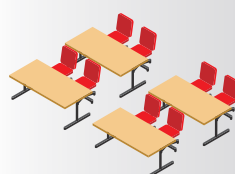
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having told the competitor that he “can’t be going around pricing”, saying: “I need to give you rates, I need to get you an EBA if you want to do commercial [work] ... we’ve ... got a system in place and can’t have you ... disrupting it.”

The ABCC is designed to suppress coercion in an industrial context, as a means to disrupting these broader criminal and anti-competitive patterns, which are thought to increase construction costs by as much as a third. It’s about freedom of association *and* freedom of competition.

The ABCC would not remove employees’ right to strike or collectively bargain, nor the CFMEU’s right to recruit and organise members. Instead, it would prosecute unlawful threats to livelihoods, restoring employers’ and employees’ right to work, without paying rents to the CFMEU. This would diminish the use of such threats in criminal and anti-competitive contexts, and assist in breaking the union-employer cartels now being investigated by the Australian Competition and Consumer Commission (ACCC).

The central objection to the ABCC is its compulsory evidence gathering powers. Yet similar powers are held by ACCC, the tax office and other agencies, breaking cultures of silence where witnesses fear reprisals.

What’s worse: routine unlawful threats against livelihoods or a requirement for witnesses to give evidence about those threats?

The ABCC would oversee a new procurement code, strengthening builders’ obligations to refuse to participate in black bans on contractors – or miss out on government work. Other reforms would make it easier to prosecute cartel behaviour.

In response to the findings of the Heydon Commission, Terence Cole, author of the original ABCC proposal, challenged opponents to explain the advantages of an “increased level of unlawfulness in the building and construction industry which the ABCC has demonstrated it can suppress, but which existing arrangements do not”. As Senator Nick Xenophon, who passed the ABCC bill in 2015, put it: “those who ignore the findings of the Royal Commission do so at their peril”.

» FULL ROYAL COMMISSION REPORT P30

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## BUT WHAT ABOUT SAFETY?

There has been a lot of comment around the final report from the Royal Commission into Trade Union Governance and Corruption (TURC) and the reintroduction of legislation to re-establish the Australian Building and Construction Commission (ABCC); but what about safety?

Statements in the TURC final report warrant further exploration. The first statement that came to my attention was following the evidence by Sam DeLorenzo. The report states ‘...work on a construction site is a dynamic process. *The effect of his evidence was that if one takes a snapshot of a site at a particular point in time, one is always going to be able to spot things that could be characterised as hazards. That is because in the ordinary course of managing risks some things will have emerged and just have not been fixed at that moment in time.*’<sup>1</sup>

Unlike many other workplaces, hazards and risks are forever changing on construction sites. Our role as an industry is to manage the hazards and risks ‘so far as is reasonably practicable’<sup>2</sup>. We need to do this by working cooperatively and consultatively with workers at the “leading front” in addressing the hazards and risks, by ensuring they have the necessary skills and resources, and are empowered to address the tasks. In addition, all workers on-site need to be made aware of the hazards and risks as (and even before) they arise and what is being done to mitigate them.

The second was following evidence cited where the final report states ‘*That regulation [Regulation 203, Work Health and Safety Regulations 2011 (ACT)] imposes on the PCBU or undertaking a duty to “manage risks to health and safety associated with plant, in accordance with part 3.1” of the Regulations does not impose any more specific obligation. It is not hard to see how reasonable minds may differ about the application of this standard...*’<sup>3</sup>

‘...not hard to see how reasonable minds may differ about the application of this...’<sup>4</sup> raises an important subject in safety. How safety is applied will vary, based on experience,

knowledge and “appetite for risk”. It will also vary on the resources available.

Where issues on the application of safety arise, those with differing views need to understand the above, and appreciate this; however, this appreciation does not achieve results. Through cooperation and consultation, agreed solutions are achieved.

A commentator on workplace safety and health made an interesting observation in an article on the political arguments around the reintroduction of legislation to re-establish the ABCC. The commentator observed ‘*Both positions ignore an important point of Australian OHS laws – that the major safety duty is on the employers to provide a safe and health workplace. Unions are not in control of safety on construction workplaces but they are active participants in OHS discussions on site. An unhealthy consultative relationship can create an unbalanced safety dialogue or a conversation where the purpose of the discussion – Safety – is lost among site and business distractions.*’<sup>5</sup>

Our industry must not abet or condone illegal, menacing and mischievous behaviour, and not accept safety being used as a disruptive industrial weapon. We must all work to continue improving safety. As observed above, our industry needs to ensure a healthy consultation creating balanced dialogue with all stakeholders on-site. This can be accomplished by ensuring all stakeholders, when discussing safety are “at the table” and all views treated with respect.

Cooperation and consultation must be supported and enhanced to build recognition of safety as an opportunity, as much as an obligation. Cooperation and consultation must be a foundation principle around which legislation, consultative committees and other related safety arrangements are built. Enhanced communication, where today’s near misses quickly become tomorrow’s smart safety initiatives must be embraced.

<sup>1</sup> Royal Commission into Trade Union Governance and Corruption, Volume 3, Chapter 6.3, Paragraph 41

<sup>2</sup> S17, Work Health and Safety ACT 2011 (ACT)

<sup>3</sup> Royal Commission into Trade Union Governance and Corruption, Volume 3, Chapter 6.3, Paragraph 53

# CONSTRUCTION TRAINING

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\$260 (rebate)\*  
Evolution Training. RTO: 31733**

### IMPLEMENT TRAFFIC CONTROL GUIDANCE PLANS RIICOM201D, RIIWHS201D, RIIWHS302D

This course is for personnel who are required to setup Traffic Guidance Schemes (TGSs) also known as Traffic Control Plans (TCPs) in accordance with approved Traffic Management Plans.

#### Upcoming course dates

- Tues, 19th April
- Tues, 7th June
- Tues, 12th July

**\$490 (Member), \$580 (Non member),  
\$130 (rebate)\*  
Evolution Training. RTO: 31733**

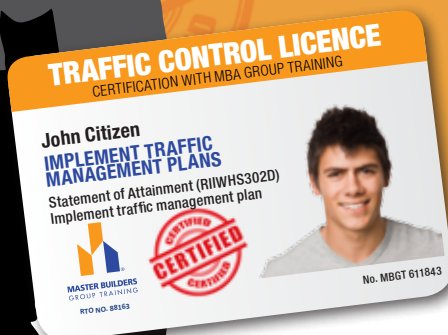
### TRAFFIC CONTROLLER - RIICOM201D, RIIWHS201D, RIIWHS205D

This course provides training for staff who are required to control traffic with stop-slow bat. This course aims to provide participants with the knowledge and skills to perform traffic control safety for their co-workers and the public.

#### Upcoming course dates

- Mon, 18th April
- Mon, 6th June
- Mon, 11th July

**\$450 (Member), \$540 (Non member),  
\$130 (rebate)\*  
Evolution Training. RTO: 31733**





# Changes to solar access rules announced

After more than 3 years of lobbying by the MBA, the ACT government announced changes to the solar access rules. The proposed changes (referred to as Draft Territory Plan Variation 346) are open for public comment until 7 April 2016.

In 2015 MBA ACT convinced government to re-engage with industry and community stakeholders to review the existing solar access rules. A review was formally announced by Minister Mick Gentleman at the launch of the Master Builders Moncrieff Display Village on 29 July 2015.

As part of the review, government, industry and community representatives all agreed that the principles of solar access design should be retained. However, as many MBA ACT members are aware, the current provisions have proved unworkable. In fact, in many cases the current rules lead to design outcomes which conflict with the principles of good solar access.

As well as simplifying the provisions and making them less prescriptive, the proposed changes provide a fair and balanced solution to both industry and community concerns.

The main changes to the solar access provisions are:

- Expanded building envelope that will allow for more effective positioning of the building and better design outcomes.
- New buildings will be required to have north-facing windows in a daytime living area that receive at least 4m<sup>2</sup> of sunlight at the winter solstice.

MBA welcomes this announcement and is supportive of the proposed changes. We are urging government to implement the proposed changes as a matter of priority.

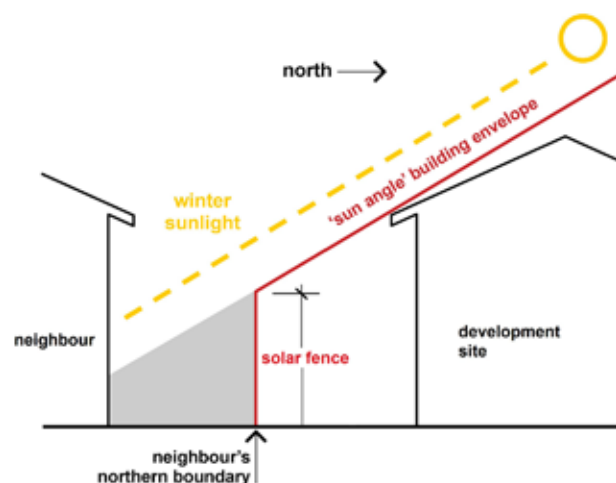
The draft Territory Plan amendments, an Explanatory Statement and Fact Sheet can be viewed at [www.planning.act.gov.au](http://www.planning.act.gov.au).

Please support this much needed revision by making a submission in support of the proposed changes before the April 7 deadline.

*"As well as simplifying the provisions and making them less prescriptive, the proposed changes provide a fair and balanced solution to both industry and community concerns."*

## Key terms

**Building envelope** – an imaginary ‘envelope’ that covers a block and controls the location, bulk and scale of a house on the block. The ‘solar access’ or ‘sun angle’ building envelope applies specifically to development near a neighbour’s northern boundary so that the development doesn’t unreasonably obstruct access to winter sunlight for that neighbour.



**Solar fence** – an imaginary ‘fence’ on a boundary that is used to determine the height of the building envelope and control how much shadow may be cast across a neighbour’s northern boundary.

**Winter solstice** – 21 June. The shortest day of the year when the sun is at its lowest point in the northern sky. This is the date commonly used to demonstrate the ‘worst case scenario’ for overshadowing.

**Primary building zone (PBZ)** – in general terms it is the area towards the front of a block where most of the house is built.

**Rear zone (RZ)** – the rear part of a block behind the PBZ. Part of the rear zone is often reserved for private open space

**Large block** – a block with an area greater than 500 m<sup>2</sup>

**Midsize block** – a block with an area of 500 m<sup>2</sup> to 250 m<sup>2</sup>

**Compact block** – a block with an area of 250 m<sup>2</sup> or less.

# Simplifying solar access - Territory Plan Draft Variation 346

## Draft Variation 346 proposed changes

In the primary building zone, the height of the solar fence along a neighbour's northern boundary (the southern boundary of the person who is building) will change from 2.4 metres to 3 metres (Figure 1).

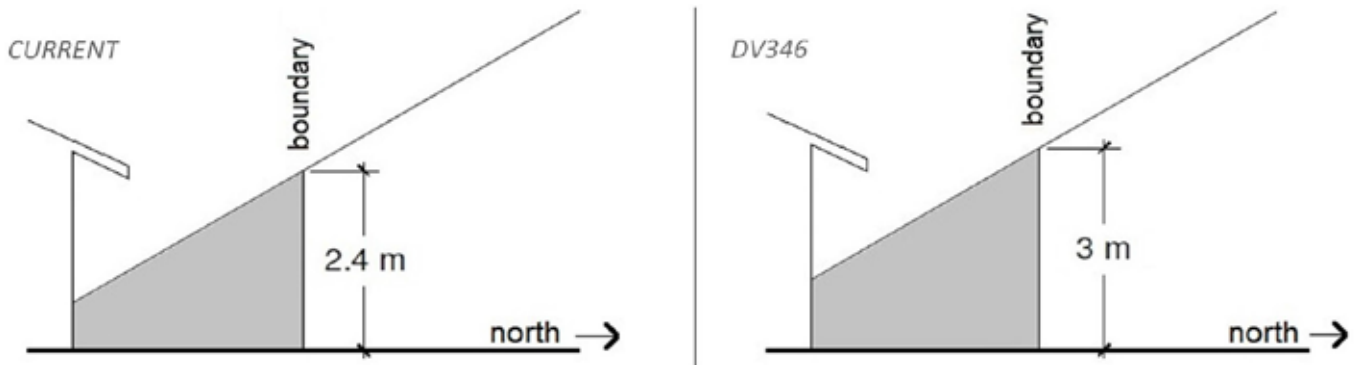


Figure 1 – Solar fence in the primary building zone

In the rear zone and for all other parts of the boundary, the height of the solar fence along a neighbour's northern boundary will change from 1.8 metres to 2.3 metres (Figure 2).

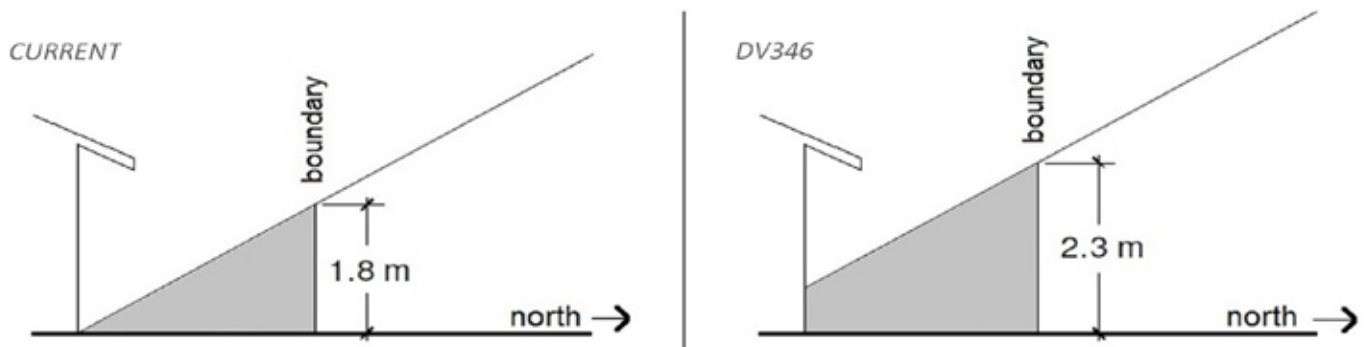


Figure 2 – Solar fence in rear zone

The larger building envelope will allow new dwellings to maximise the north-facing aspect of their block. Any new dwelling will be required to have north-facing window glazing in the daytime living area that receives at least 4 m<sup>2</sup> of sunlight on the winter solstice (Figure 3).

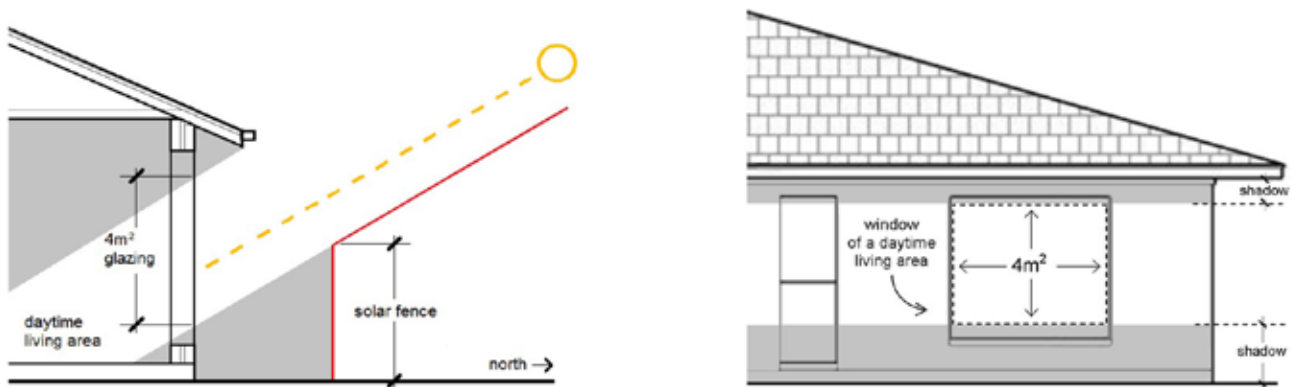


Figure 3- Glazing requirement

# Get a better deal

Enterprise Bargaining Agreements



**MASTER BUILDERS**  
AUSTRALIAN CAPITAL TERRITORY

## Five BIG reasons to avoid the

## CFMEU 2016 Pattern Enterprise Bargaining Agreement.

The CFMEU enterprise bargaining agreement is designed to increase union wealth and power at the cost of workers and industry. Master Builders ACT is working with industry to deliver real choice. We started by helping workers get a better deal. We're following this with advice to employers about the real costs of perpetuating union power by signing these commercially ludicrous agreements.

**#1. COURT** The pattern union EBA is either poorly drafted or deliberately vague and ambiguous. The net result of either means signing the EBA exposes your business to huge legal risk. The agreement is akin to setting a hand grenade into your business – with the CFMEU holding the pin. The moment you refuse a union demand (more memberships, donations, etc.) or upset them in other ways (give evidence against them, employ someone they don't like) the union can use the EBA as a weapon against you. They have vast wealth and power and few businesses have the financial and legal resources to survive a concerted union legal attack.

**#2. COSTS** The pattern union EBA embeds a range of compulsory commercial arrangements that add significant costs to your bottom line. These include inflated rates for income protection, training and compulsory donations to the union 'charity'. In 2013-14 these embedded commercial entities paid the union \$1.2 million in Canberra alone. That's cash that should be in the pocket of workers or reinvested in future jobs.

**#3. POWER** The 2016 pattern union EBA includes a clause which allows the union to hold a fully paid two hour stop-work meeting **every day**. In Queensland this has delivered rolling stop work meetings across trades, effectively shutting down sites for as long as is needed to extract demands. Once again the EBA also locks you into 'lock down' weekends stripping the team of the choice to take RDOs when they want. We know that workers want the flexibility to cash RDOs in, or take them when it suits their family – not when it suits the union.

**#4. TENDERS** Signing the pattern union EBA will exclude you from Commonwealth Government construction contracts. The proposed building services procurement code, which goes to parliament this month, specifically excludes the restrictive work practices embedded in this EBA (including restrictions on subcontractors, lock down weekends, stop work meetings, etc.). Commonwealth procurement specialists don't think the tax payer should pay for such restrictive work practices. We agree.

**#5. PROTECTION** In previous years businesses that signed EBAs could rely on the union to protect them from competition. Union bosses would 'sort out' contractors who dared to compete without a pattern union EBA. With the ACCC and the AFP now firmly on the case, the union will not be able to scare competitors off. If you sign the EBA you will most definitely be competing against teams that have not.

### The final reason is a moral one.

The final reason is a moral one. By bowing to the bullies you help perpetuate their power. We started 72 new apprentices this year. As industry leaders we have a duty to deliver them a better, safer, more inclusive industry than we have endured.

#### WANT TO KNOW MORE?

Contact the Master Builders ACT  
Industrial Relations team.

**P** 02 6280 9119

**F** 02 6280 9118

**E** canberra@mba.org.au

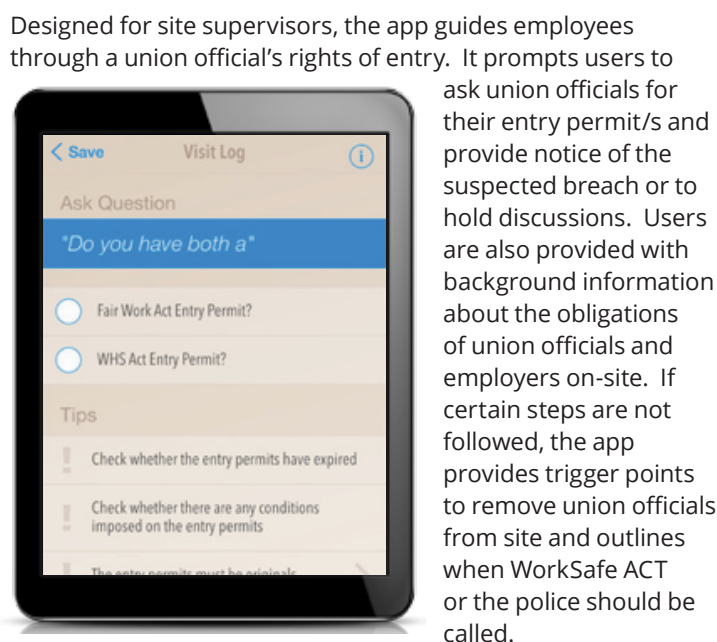
 [www.mba.org.au](http://www.mba.org.au)



# Right of Entry. New app for iPhone



Master Builders ACT has developed a right of entry app, in conjunction with Meyer Vandenberg, for use on iPhones. The right of entry app is the perfect tool for recording and managing union right of entry obligations on worksites in the ACT.



The app has the capacity to take photos, sound recordings, notes and provide a user's location via GPS. It also provides a PDF document which outlines the steps users took in either granting or refusing entry. This functionality is crucial in gathering evidence if a dispute were to arise.

**Meyer Vandenberg** became involved in the development of the Right of Entry app because they saw a serious and urgent need for the industry to get immediate, real-time advice when site entry issues arose. MV is committed to advocating for fair play within the construction industry, and ensuring that the importance of site safety is not lost amongst industrial tactics.

The Right of Entry app is an extension of their strong industrial relations advice team and long-standing relationship with the Master Builders Association of the ACT. MV believe it is a tool that will assist with an issue their construction clients face daily.

The firm perceived that the construction industry in Australia had an incredibly complex task, not just in the ACT, to make sense of the legislation in a potentially volatile and time-critical environment. Construction worksite managers needed a quick navigation system to guide them on their rights when it came to granting site access as well as the grounds for health and safety breaches. Meyer Vandenberg's construction clients often told them that what they needed was clarity about their own legal rights, and proper procedures for recording what is happening when they provide union officials entry to their site. In particular, the app was designed to facilitate proper evidence gathering to ensure that construction companies are not at a disadvantage if an entry dispute ends up in court.

We hope that site managers find this tool practical and that ultimately the app becomes an integral part of the training regime for those learning construction site management.

With the 2016 enterprise bargaining round fast approaching, the right of entry app is a must to ensure sites run smoothly.

If any members have any questions about the app or would like a demonstration, please contact Master Builders' Industrial Relations Department on (02) 6247 2099.

**IVI**  
MEYER VANDENBERG  
LAWYERS



# Proposed regulatory changes will allow for the use of instantaneous electric water heaters in Class 1 buildings.

MBA ACT Member Nick Porreca (Benchmark Projects) recently wrote to Minister Mick Gentleman MLA informing him of an issue surrounding the use of 'current' gas instantaneous water heaters.



Mr Porreca was investigating the option of using an instantaneous *electric* water heater after continually experiencing issues with the current gas instantaneous water heaters.

During meetings with representatives from Electric Powered Instantaneous Water Heaters Mr Porreca was informed that

Class 1 Buildings containing 2 bedrooms or more were not allowed these electric instantaneous units. This prompted Nick to write to the Minister to try and encourage a re-think of this system as it consumes a renewable-energy source.

With the ACT set to achieve a 90% renewable energy target for electricity used by 2020 Nick strongly encouraged a rethink to allow all residential premises the option of electric or gas instantaneous water heaters.

Minister Gentleman MLA looked into the matter and responded in support of Nick's recommendations stating "As pointed out in your letter, the ACT's public electricity supply is well on target to notionally be responsible for comparatively low levels of greenhouse gas emissions within the next few years - potentially low enough to satisfy the mentioned requirement of the PCA".

"It is therefore sensible to review the prohibition; to help ensure that fossil fuel burning water heaters, such as gas-fired heaters, are not unduly encouraged over what seems set to soon become notionally less greenhouse-gas-intensive grid-electric instantaneous water heaters, such as the kind discussed in your letter."

The Minister confirmed the request had been made to the Environment and Planning Directorate to undertake the work required to amend the ACT appendix to the Building Code of Australia, to wind back the prohibition on some of the least greenhouse-gas-producing electric water heaters, such as instantaneous heaters, for the ACT.

This is great for the residential building industry as it provides builders with an alternative to using gas.

A big win for common sense and for the industry.



## RECEIVE INCENTIVES UP TO \$4,000



### Employ an Australian Apprentice in the following certificate III trades in 2016

- Solid Plastering
- Wall & Floor Tiling
- Roof Tiling
- Roof Plumbing
- Bricklaying / Blocklaying
- Civil Construction – Plant
- Concreting
- Engineering – Mechanical
- Stonemasonry
- Glass and Glazing
- Paint and Decorating

### Financial Benefits for Employers

The objective of providing incentives is to develop a more skilled workforce and to increase the employment and training opportunities for Australian Apprentices in the ACT.

The ACT Building and Construction Industry Training Fund Authority is providing the following funding for employers who employ a 1<sup>st</sup> year apprentice in the above trades in 2016.\*

- **\$2,000** three months after the commencement date of the apprenticeship\*
- **\$2,000** on completion of the first 12 months of the apprenticeship\*

\* Applicable to first year apprentices, commencing from 1<sup>st</sup> January – 31<sup>st</sup> December 2016 under an ACT Contract of Training.

Additional funding may also be available for Indigenous Australians, women in a non-traditional vocation and a person with a disability.

### Improve your skills and professional development with the following courses:

- Wet Area Waterproofing
- Confined Space Training
- Traffic Control Management
- ACT Construction Induction Card
- Senior First Aid (Level 2)
- Computer Software
- ACT Work Safety Representative
- Work Safely at Heights
- Cert IV Project Management
- Testing and Tagging of electrical equipment
- Open Cable Registration
- Optical Fibre Cabling
- Business Administration and Management
- Computerised Accounting

The above courses are examples of courses for which the Training Fund Authority may reimburse a percentage of the training cost (conditions apply).

For further information please call **Michael Doyle**—Industry Liaison Officer on 6262 5630 or email: [mdoyle@trainingfund.com.au](mailto:mdoyle@trainingfund.com.au)

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P 36.10 Merlo Telehandler



P 40.17 Merlo Telehandler



P 25.6 Merlo Tele Handler



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# New strategy set to transform the gateway to Canberra

**Will a new gateway to Canberra shift the perception of the national capital? The ACT Government thinks so.**

The landmark *City and Gateway Urban Renewal Strategy* discussion paper, launched in January, promises to create a new gateway to the national capital by improving the quality and design of the built form, creating greener, more “people friendly streets” and investing in diverse transport choices, such as light rail.

Executive Director of Master Builders ACT, Kirk Coningham, applauded the ACT Government’s acknowledgement that the Northbourne corridor is in urgent need of a unified strategy and long-term investment.

“One of the key actions outlined in the strategy is the introduction of new urban design guidelines to improve building design quality and public realm outcomes.

*“One of the key actions outlined in the strategy is the introduction of new urban design guidelines to improve building design quality and public realm outcomes.”*

In releasing the discussion paper, Chief Minister Andrew Barr acknowledged that all Canberrans “have a stake in creating a gateway to the national capital that is worthy of its status.” He agreed that the buildings along the Northbourne corridor “should be impressive and the landscaping should be beautiful” – and that the central spine should reflect Canberra’s “position as the world’s most liveable city and as the bush capital.”

The draft strategy outlines the planned transition from the bushland on the Territory’s fringe, along a vibrant corridor to a defined city centre.

Director-General of the Environment and Planning Directorate, Dorte Ekelund, says the strategy, previously dubbed the City and Northbourne Urban Design Framework, has been renamed “in recognition of the iconic role that the Northbourne corridor plays as the main gateway to the nation’s capital.”

“We are keen to see the Barr Government look at new planning laws that encourage innovation and excellence in building design, and that support the local industry to capitalise on the opportunities outlined in this strategy.

“Local builders and contractors are highly-skilled, experienced and have an enduring commitment to the national capital. It is vital that they are part of the engagement process,” Coningham says.

“We look forward to working with the ACT Government to create a gateway that inspires visitors and instils pride in locals.”

View the discussion paper online at [haveyoursay.planning.act.gov.au/city-and-gateway-urban-renewal-strategy](http://haveyoursay.planning.act.gov.au/city-and-gateway-urban-renewal-strategy)

**Feedback is open until 14 March.**



On-site: Apprentice Rowan Hennessy is trained by MBA Group Training and is undergoing an apprenticeship with Future Building.



## Host an apprentice the hassle-free way

When business is booming, most companies could do with the extra pair of hands – but they often don't want the administrative burden associated with taking on an apprentice.

That's where Master Builders ACT's Group Training program comes in.

As a registered group training organisation, MBA Group Training employs a number of apprentices who are hosted with employers to gain on-site work experience.

According to Master Builders ACT's Executive Director Kirk Coningham, the program is a "hassle-free" way for the industry to get the hands-on help needed while also investing in the next generation of tradies.

"We provide companies with an apprentice that suits the skill level required for your job – and we handle all the payroll, superannuation, workers' compensation and insurance. You determine the length of the hosting arrangement, and pay for only what you need."

"We rotate apprentices through various employers throughout their time with us, which gives up-and-coming tradies a well-rounded understanding of the industry and ensures they are highly sought-after employees when they finish their training," Coningham adds.

"Our program also helps employers with their own indentured apprentices to give them additional training grounded in real-world building experience."

Both employers and apprentices report their experiences have been overwhelmingly positive.

Host employer **Ben McGeechan from BAL Building** has been impressed with the quality of the apprentices, and the flexibility of the program.



MBA Group Training provides training to already employed apprentices. Trainer and Assessor Richard Flint goes over some finer points with apprentice Paul Bailey.

"It's very cost effective," he says.

*"The flexibility of working with MBA Group Training gives us the benefits we need, despite the ups and downs of the building industry" Ben adds.*

Reputation led apprentice carpenter Matthew Victory to choose MBA Group Training.

"MBA Group Training is well known as providing good training in the industry and puts you with good hosts. My father is a builder and he recommended MBA Group Training and that confirmed it for me," he explains.

Safe work practices within the industry are a priority for Master Builders, and training covers a range of areas from occupational health and safety requirements to industry codes of practice.



Find out more

visit: [www.mba.org.au/  
employment/employ-an-mba](http://www.mba.org.au/employment/employ-an-mba)

## New training and member centre works underway



Recent visitors to the Master Builders ACT office will have noticed refurbishment works are currently under construction on the ground floor of the office.

The new works will expand the size of MBA's training rooms and also offer more flexibility in the size of classrooms available.

MBA ACT's Deputy Executive Director Michael Hopkins said "the Master Builders is already a leader in construction training and the training of local apprentices. These new facilities will allow the MBA to respond to a growth in demand for construction training from our members and the local industry".

The new works will also create a new membership centre. MBA members are encouraged to visit the membership centre to access member services, discuss technical issues, purchase building contracts or apply for Master Builders Fidelity Fund cover. Office and meeting room facilities will also be available to members in the new centre as a benefit of membership.

The works are being completed by FM Projects and are scheduled to open in early March.

## Negative gearing is not the problem

The Labor Party has put forward a policy to limit negative gearing to new property only and for the capital gains discount to be reduced from the current 50 per cent to 25 per cent after 1 July 2017.

It is claimed that this will be a fix for improving home ownership for first home buyers and at the same time reduce the cost of housing.

Master Builders' concern is that the proposed changes are being taken in isolation and are not part of a holistic tax reform package nor about any serious reform to improve housing affordability.

It is about a tax grab to pay for a ballooning structural budget deficit. Yes the structural Budget deficit needs repair but to tax housing more is a poor policy response. A serious policy response must also include how government spends the tax it raises.

By impacting demand the proposed policy drives the price of green fields development while potentially significantly lowering the value of existing homes. Skewing the market does nothing to improve overall housing affordability. In the Territory and elsewhere land supply is the key to affordability. Stamp duty reform is also needed as this raises the deposit to enter home ownership.

Although it is argued that there will be a benefit to builders undertaking residential work if this policy is put in place should the ALP win this year's Federal Election, it ignores the substantial work done in repairing and upgrading established dwellings.

Master Builders in its comprehensive Pre Budget Submission has called for a holistic approach to tax reforms which generate economic growth and jobs. This is best done by reducing the company and personal income rates.

Master Builders will continue its strong advocacy to improving access to affordable housing for first home buyers but taxing investors, most of whom are Mums and Dads, by removing negative gearing is not the answer.



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Part of the team from Cockram Construction after the backyard blitz was completed.

# COCKRAM CONSTRUCTION'S VERY OWN BACKYARD BLITZ FOR A WORTHY CAUSE!

As local construction company Cockram Construction winds up completion of the AFP Forensics Facility, the project team with the assistance of DEBRA Australia, have dedicated their time to improving the quality of life for a courageous young man living with Epidermolysis Bullosa (EB).

Lewis Mataczyna is seven years old, like most 7 year olds he loves playing outside as much as he can. Unfortunately due to Lewis's condition and limited shade in his backyard, he is unable to spend much time outside with sun exposure causing his skin to painfully blister.

Touched by Lewis's story, Cockram Construction teamed up with Landform, Your Craftsmen Roofing, ACT Interiors, Papas, Anke Innovations, Kreadon Painting, Oz Metalwork, and Sheppard Electrical to design and construct a new backyard that caters to the family's needs.

The majority of the backyard makeover works were completed by Cockram Construction's employees, with trade contractors assisting with specialist works. All parties donated labour, materials and project management skills to create a backyard that better suits the needs of Lewis and his family.

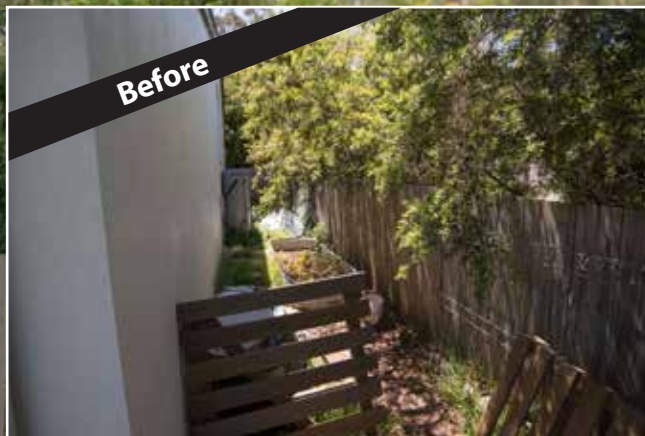
Epidermolysis Bullosa (EB) is a rare genetic skin disorder which is characterised by skin fragility with blister formation occurring spontaneously or following minor trauma.

EB ranges from mild to severe and can require major adjustments in the lifestyle of both the EB patient and their family. In severe EB cases, as is Lewis's case, blisters are not confined to the outer skin. They may develop on the soft tissues (mucous membranes) inside the body such as the linings of the mouth, oesophagus, stomach, intestines, lungs, airway, eyes and bladder. The extent of tissue involvement experienced by an individual is usually determined by the severity of the condition and the sub-type present.

Lewis's condition is severe, and often contributes to further complications such as a temporary blindness which lasts for days; or an inability to eat, which in-turn leads to malnutrition and other challenges to undertake normal everyday functions. Many of us can only imagine how this would affect the general wellbeing of our children and their ability to experience everyday pleasures many of us take for granted.

Lewis's family has confronted a lot of challenges over the years, yet they do not let the challenges define them, remaining determined, optimistic and genuinely welcoming a connection with the wider Canberra community. Cockram Construction's team and supporting trade contractors have all been touched by Lewis and the tenacity of his family. Cockram Construction feels privileged to use their specialist skills, resources, and networks to help out this well deserving family.





Before



After



Before



After

*"We can't thank Cockram Constuction's and their associates enough, for all the hard work they have put into improving our home and garden. It has immensely improved our family's quality of life, we now have a beautiful space for the children to play safely, and Lewis' has never been happier." Henry Mataczyna*

A big change - Before and after photos of the backyard, Laying the turf, and the Mataczyna family enjoying the new yard.

For more information on EB or to make a donation please visit: [www.debra.org.au](http://www.debra.org.au)

For further information on Cockram Construction please visit: [www.cockram.com](http://www.cockram.com)



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## Harvey Norman Commercial opens their new showroom at Mitchell

With a complete re-fit to their showroom, Harvey Norman Commercial have created a space that showcases the latest products from the most in-demand brands.

Smeg, Milele, ZIP, Blanco, Siemens.....just some of the manufacturers you will find at the new showroom. With a wide range of products from all the leading manufacturers and suppliers Harvey Norman can cater for the exclusive penthouse to the budget minded first home buyer. Harvey Norman have all the products and the best service to meet your needs. So when you are next planning a specification for a new multi-unit development, need to put together an inclusion list for your new home, or have a refurbishment you need doing call Harvey Norman Commercial ACT.

Call (02) 62022000

The new showroom at Mitchell has some fantastic displays with the latest products from brands such as Smeg, Miele, Zip and Siemens. General Manager Gavin Pound with Rod Jenkins (Emmadale Group) and MBA ACT Executive Director Kirk Coningham.



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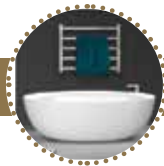
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# Is your two way radio an outlaw?



Two-way radios can be found on most construction sites around Australia. The vital communications they provide help keep you and your workers safe. As an employer, you should ensure that your radios are legally operated. By doing this you could stop a serious workplace accident or even save someone's life.

Under the Radiocommunications Act 1992 (the Act), every radiocommunications device must be authorised for operation by a spectrum licence, an apparatus licence, or a class licence.

A two-way radio must be authorised to be operated under:

- a class licence for the citizen band (more commonly known as CB radio)
- a land mobile licence belonging to your company
- someone's land mobile licence where that person has provided you with written authorisation.

So, no matter how you intend to buy your two-way radios, you must have the necessary licensing requirements sorted when you are purchasing or renting two-way radios. It's the law!

Communication companies who supply two-way radios for use on worksites will often have pre-programmed frequencies into these radios. These frequencies are generally licensed to that supplier and cannot be operated under any class licence issued by us. If you bought or rented a two-way radio with the frequencies pre-programmed and you intend to rely on the supplier's licence to operate that radio, then you must have the supplier's written authorisation. This can even be in the form of an invoice or rental agreement.

As part of your agreement, the supplier should disclose the following information (including but not limited to):

- the frequencies that you're allowed to use
- the duration of the authorisation
- the location that you're allowed to operate in
- any other licence conditions that must be met.

It's your responsibility to understand and meet the restrictions of the licence you're operating the two-way radio under. Otherwise you run the risk of operating a two-way radio in a manner that is not authorised by the licence.

The consequences of operating an unlicensed two-way radio can be serious. There's a risk that another radiocommunications service could interfere with that two-way radio, meaning your two-way radio might not always work the way you want. This can also affect safety on worksites.

You could also interfere with someone else's radio or another radiocommunications service. This could significantly impact their operations.

There are also serious legal consequences for operating an unlicensed two-way radio. This is because there is a range of civil and criminal penalties under the Act that could apply in relation to the operation of an unlicensed radiocommunications device, or possessing an unlicensed radiocommunications device. You may also be subject to civil liability or litigation from a third-party where your possession or operation of the unlicensed two-way radio causes loss or interferes with that party's radio or a radiocommunications service.

If you don't know the details, don't risk it. Check with the company or person who issued your two-way radio. If you're still unsure, contact ACMA on 1300 850 115 or [info@acma.gov.au](mailto:info@acma.gov.au).



# IS YOUR TWO-WAY RADIO AN OUTLAW?



Your use of the frequency (channel) on your two-way radio must be licensed ... it's the law!



If you've bought or rented a radio with the frequencies pre-programmed and intend to use the supplier's licence to operate the radio, you **MUST** have their written authorisation.

## You should know:



The frequencies  
you're allowed to use



The duration of the  
authorisation



The location you're  
allowed to operate in



Any other conditions  
that must be met

**IF YOU DON'T KNOW THE DETAILS, DON'T RISK IT,  
ASK YOUR SUPPLIER.**

As well as damaging your reputation, unlicensed operation means your company could be fined or taken to court. More importantly, using an unlicensed radio may be dangerous to you and those around you.

**IT'S YOUR RESPONSIBILITY TO KEEP YOU  
AND THE PEOPLE AROUND YOU SAFE.**



**Check with the radio supplier or contact the ACMA**

 **1300 850 115**  **info@acma.gov.au**

*This is not legal advice and should not be relied upon as such. Independent advice should be sought if required.*

Get the facts at **[www.acma.gov.au/twowayradiouser](http://www.acma.gov.au/twowayradiouser)**

# The trade union Royal Commission

## Why Canberra mattered & where to next?

**John Nikolic**, MBA ACT *Director Industrial Relations*, discusses the final report of the Royal Commission into Trade Union Governance and Corruption, including the report's findings, how Canberra stood out nationally, and where the industry goes from here.

The testimony of one small formwork company owner was typical. An ACT CFMEU organiser told him to sign the union's pattern enterprise agreement as 'this is the way the industry is going... [the CFMEU] will take control of the jobs. We will ... tell... you which ones you can and can't go on', before offering 'other ways' to come to an 'arrangement', including 'donations' or payment for union memberships.

When the employer said he couldn't afford these demands, the organiser said he 'didn't give a f\*\*k about small businesses' and ordered a builder to 'black-ban' the company and engage a union-endorsed rival (one which had a pattern ACT CFMEU enterprise agreement, had paid for union memberships and even made cash payments to the then lead ACT CFMEU organiser).

The [Final Report](#) of the Royal Commission into Trade Union Governance and Corruption was published in late December 2015. The bulk of the evidence concerned the building and construction industry, which the Commission found:

discloses systemic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats, intimidation, abuse of right of entry permits, secondary boycotts, breaches of fiduciary duty and contempt of court.

Most of that evidence came from the ACT. Unprecedented numbers of witnesses came forward to describe widespread coercion and corrupt market dynamics in the commercial construction industry, where the ACT CFMEU largely dictates who can and can't work.

The result is a union-coordinated cartel, in which union 'approved' contractors (usually larger companies that can bear the cost of the union's demands) tend to dominate the market. Those that can't afford them – the small businesses the ACT CFMEU official said he 'didn't give a f\*\*k about' – have to try and make a living somewhere else. As another ACT CFMEU official put it to a small non-'approved' contractor which won work:

we've ... got a system in place and can't have you f\*\*king disrupting it.

This 'system' was previously poorly understood by the Canberra community, even though it pays for it through inflated construction costs.

Here's how the system works.

### THREATS TO LIVELIHOODS

Most physical work in the commercial construction industry<sup>1</sup> is undertaken

by specialist contractors, with builders essentially acting as project management teams.

The CFMEU targets the way builders award jobs, ensuring most go to union 'approved' contractors, i.e. those that have met various CFMEU demands. Those demands differ, ranging from pattern enterprise agreements (which are identical for all employers and generate substantial profits for the union)<sup>2</sup> 'donations', engagement of union-nominated personnel and payments for union membership. However, the tactic used to leverage the demands is the same: threats to livelihoods.

Where builders give jobs to non-union approved or 'black-banned' contractors (i.e. those that fail to meet union demands) sites are disrupted, reputations slandered, client-relationships interfered with, undue influence placed on government officials to take adverse regulatory action, while contractors (and potentially builders) may face verbal and physical intimidation.

<sup>1</sup> Large-scale construction of retail, office and apartment space.

<sup>2</sup> Pattern CFMEU enterprise agreements require payments to union charities, training organisations and insurance schemes, which then give kickbacks to the union, earning the CFMEU earned \$1.2 million 2013/2014 in the ACT alone.



**Master Builders ACT Director Industrial Relations John Nikolic was instrumental in providing MBA members with advice and support during the Canberra hearings into the trade union Roayl Commission.**

Due to the intricately sequenced nature of modern construction work, coupled with large liquidated damages for even minor delays, the cost of any disruption is extremely high. The stress associated with standover tactics also takes its toll. That means builders tend to award jobs to union 'approved' contractors, even though such conduct is prohibited under discrimination and procurement laws.<sup>3</sup>

Employees are not involved in this process – strikes are extremely rare. These acts are carried out by ACT CFMEU officials, who consider themselves licensed to intimidate and black-ban contractors with or without instructions from employees.

The ACT CFMEU's grip on the tendering system grants union officials a dangerous amount of power. When you can credibly threaten a person's livelihood in an industrial context, largely with impunity under existing laws,<sup>4</sup> it is a very small step to make almost any demand, including bribes.

<sup>3</sup> Discrimination against contractors based on union-affiliation is prohibited under freedom of association laws in the Fair Work Act. It would also exclude builders from tendering for Commonwealth work under procurement codes.

<sup>4</sup> Fines of up to \$51,000 under the Fair Work Act are no disincentive, as the coercive act itself quickly pays for any occasional fines. Fines are simply seen as the 'price of doing business' by the union.

Four contractors told the Commission they made payments of more than \$200,000 to the lead ACT CFMEU organiser, Halafihi Kivalu, in order to obtain and retain work.<sup>5</sup> As one of the contractors explained, he paid Kivalu because '[in] every single job in Canberra ... especially in Canberra ... the builder will not let any trade contractor [work] without approval by Union ... that's the market, so we tried to get some work.' Another contractor said he paid the money because he 'didn't want to get on the wrong side of the Union' which could have 'stopped jobs ... stopped [concrete] pours' etc. Another contractor said Kivalu told him that, if he didn't pay the money, Kivalu would 'cause trouble' and that he could 'not stay in Canberra for work'. Yet another was told that, if he didn't pay the money, someone else would.

Every ACT CFMEU official (other than its Secretary) gave evidence that they were aware of the allegations of extortion, yet made no referrals to the police. In one phone tap, a contractor even expressed delight to ACT CFMEU organiser Johnny Lomax at being able to make a 'donation' to the union, saying that Kivalu would have 'hit him up' for \$5,000. In

<sup>5</sup> Kivalu has been charged with criminal blackmail (punishable by fines of up to \$210,000 and / or imprisonment for 14 years) and recently indicated he would plead guilty. An associate of Kivalu's has also been charged with perjury.

another phone tap, Lomax laughed when recounting how a contractor thought he needed to pay money to the union, joking that he must have previously been 'touched up ... by the big fella' (i.e. Kivalu).

The Commission found that the 'CFMEU's persistent line ... that any person who suspects corruption should report the matter to the police' was contradicted by the fact that the union 'had no system whatever to collect and record rumours and suspicions and then report them in an efficient manner to the police'. When the allegations were referred to police by the Commission they attempted to execute a search of the ACT CFMEU's premises, the police were accused of becoming 'politicised' and legal action was launched to prevent them from viewing the seized material,<sup>6</sup> prompting police to question why the CFMEU was attacking the police rather than assisting investigations relating to former officials accused of committing crimes.

It is unclear when union officials first became aware of the extortion allegations, but Kivalu (who left the union in November 2014) certainly wasn't terminated for misconduct,

<sup>6</sup> Similar legal action was launched following a police raid on the Queensland CFMEU, preventing police from inspecting potential information about alleged destruction of evidence by the union.



having received a termination package of more than \$73,000. It is also clear that Kivalu, who worked for the ACT CFMEU for eight years, was never performance-managed for making threats to livelihoods which then made it a small step to extort cash.

That's because threats to livelihoods were known if not endorsed by senior management within the ACT CFMEU. In evidence before the Commission, Assistant Secretary Jason O'Mara initially said it would be 'inappropriate' for organisers to threaten contractors with market exclusion. He was then played an Australian Federal Police phone tap in which ACT CFMEU organiser Johnny Lomax (in the presence of O'Mara) told an employer that, if he didn't pay for some more union memberships, the union would 'deliver... some action' to ensure he 'won't be doing any work on commercial sites'. O'Mara told the Commission that he didn't discipline Lomax for making the threat and didn't 'fall short' in his obligations as a senior official for failing to do so.

There is also the example set by ACT CFMEU Secretary Dean Hall, which the Commission found told a local builder 'you'll never be allowed to build without an [enterprise agreement] in place' and that:

there will be trades  
you can't access –  
you won't be able  
to build... there  
will be all sorts  
of authorities and  
officials visiting to  
check you over and  
close you down...  
[as well as] negative  
... publicity ... 'bad  
unsafe builder etc'  
... so looks like  
[your client will]  
have to get another  
builder.<sup>7</sup>

In a coercion case<sup>8</sup> currently before the courts, another builder claims Hall made the following threat, after police were called to open-up a blockade of the builder's site:

Did you call the police?  
Don't involve the  
f\*\*king police. Do you  
want a war? I will f\*\*k  
you over. I know a lot  
of people in this town  
and you won't work in  
this town for long.

Threats of market exclusion blur from the industrial to the criminal. 'Industrial' coercion, i.e. use of unlawful threats to force a demand like paying for union memberships, is prohibited under the Fair Work Act. However, where the coercive act is a threat against a person's ability to put bread on the table, it's arguably no different to criminal blackmail or extortion.

That's why criminal charges were brought against ACT CFMEU organiser Johnny Lomax for allegedly blackmailing a contractor into signing a pattern enterprise agreement. The brief of evidence was not disclosed, but is thought to have related to unlawful threats to livelihoods akin to those exposed by the Commission. While the charges against Lomax (the first of their kind) were dropped, criminal blackmail charges remain on foot against Victorian CFMEU Secretary John Setka and Assistant Secretary Shaun Riordan, for the following threat Setka made to Boral executives:

All wars end and once  
peace is established the  
CFMEU will be at the  
table to divide up the  
spoils. The CFMEU will  
decide who gets what  
and what market share  
Boral will get.<sup>9</sup>

<sup>8</sup> See: <https://www.fwbc.gov.au/fwbc-alleges-cfmeu-act-secretary-and-7-officials-broke-law-18-times-0>

<sup>9</sup> That threat was made because Boral refused to participate in a black-ban against builder Grocon, with which the union was 'at war' with after it refused to employ surplus CFMEU-nominated personnel. The Victorian CFMEU paid \$4 million to Boral to settle the matter, after being sued for intimidation. An Australian Consumer and Competition Commission prosecution against the union is also ongoing.

## WHO REPRESENTS THE UNREPRESENTED?

Threats to livelihoods are not limited to employers. The CFMEU are no Tolpuddle Martyrs. Unlike the heroic 19<sup>th</sup> Century farmhands transported to Australia for daring to organise a union, for the CFMEU it's the reverse: if you don't join the union you are more likely to lose your job.

In an Australian Federal Police phone tap played before the Commission, upon hearing that an employee didn't want to join the union, ACT CFMEU organiser Johnny Lomax told the employer to 'just make him a member, man. Just tell him to fuckin' sign up' because 'if he's going to be a c\*\*t then he'll get the c\*\*t treatment back'. Lomax then told the employer to 'move' the employee 'off the job' because he didn't want to join, even if the employer paid his dues.

Data from mid-2015 suggests that current membership levels of the ACT CFMEU are less than 10% (possibly around 7%) of the total workforce. However, even those figures are questionable. The Commission found that 'there can be no confidence that the CFMEU's membership register is a true reflection of the persons presently entitled to be members of the ACT Branch'.

The Commission heard of forced, free and even 'phantom' members, with one contractor being told by an ACT CFMEU official to simply 'make up' names and pay for 'ghost' employees if real ones didn't want to join. The Commission also found that the ACT CFMEU had 'waived' the dues of members who didn't want to renew their subscription, leading to 'illegitimate' inflation of membership numbers.

Which all begs the question, who represents the unrepresented? And who is really being represented here?

Increased membership benefits the CFMEU in a number of ways. The commission heard that ACT CFMEU Secretary Dean Hall allegedly told a local builder that:

we want contractors who  
have their employees as  
union members because  
every four years we have a  
vote we need those votes

<sup>7</sup> The Commission found that ACT Secretary Dean Hall's denials of these threats was 'a piece of heroic testimonial audacity'.

to hold our positions, and that is more important than the construction price. If you engage contractors without [pattern union enterprise agreements] and union memberships that will upset our relationships and risk losing votes.

Apart from influencing internal union elections, increased membership also enhances the ACT CFMEU's voting power on key decisions within the Australian Labor Party, including pre-selection of politicians and policy.

## THE \$1.2 MILLION CONFLICT OF INTEREST

Union memberships are not the only demands placed on employees. The Commission heard from multiple contractors that pattern union enterprise agreements were never voted on by employees, despite being lodged by the ACT CFMEU on their behalf with the Fair Work Commission.

Where employees did vote, crucial information was withheld, like the substantial revenue streams that pattern enterprise agreements funnel to the ACT CFMEU.

Pattern ACT CFMEU enterprise direct payments to a range of union-affiliated entities, including a charity (Construction Charitable Works) an income protection insurance scheme (Built-Plus) and a training organisation (Creative Safety Initiatives) which in turn provide surplus funds back to the ACT CFMEU – to the tune of \$1.2 million in 2013-2014 alone.

The Commission found that these commercial interests 'created ... inherent conflicts of interest between union officials and the workers they represent', especially given that the union's commissions were not disclosed to employees. That \$1.2 million could have stayed in employees' pay packets instead of being paid to the CFMEU.

The nature of the benefits provided by the payments was also undisclosed, like the fact that the Built-Plus income protection insurance was only guaranteed for union members, even though premiums were paid for on behalf of all employees. Similarly,

most of the funds donated to Construction Charitable Works were apparently diverted for undisclosed purposes, being paid to the CFMEU via allegedly inflated 'service fees'.<sup>10</sup>

Pattern CFMEU enterprise agreements are on one level documents that set out wages and conditions of employment to employees. On another level, they are revenue streams for the union, effectively acting as business running sheets. On yet a further level, they are a 'ticket to tender' – a stamp of approval from the CFMEU that gives the green light to builders that they can engage a contractor, without fear of site disruption.

The latter aspect means the CFMEU can even withhold its consent to enter into a pattern enterprise agreement, as a way to exclude a contractor from the commercial market and extort demands. In one Australian Federal Police phone tap played before the Commission, an ACT CFMEU organiser threatened to 'rip... up' a contractor's pattern enterprise agreement to ensure 'you won't be doing any work on commercial sites', as a way to make him pay for union memberships. The pattern CFMEU enterprise agreement in this sense is a way to demarcate the market to those contractors that have met demands, rather than being a document guaranteeing employees' wages and conditions of employment.

In a recent case<sup>11</sup> brought by the building industry regulator, Fair Work Building and Construction, against the Victorian branch of the CFMEU, two construction workers were allegedly told by a union representative that 'you can't do work here. You need to have the [enterprise agreement] ... which we're not going to give you'. It's not clear why the union wouldn't 'give' the enterprise agreement to the employer in question, but it is clear that only a handful of competitors were granted the enterprise agreement – and accordingly the right to compete.

<sup>10</sup> The Commission referred Construction Charitable Works to the Australian Charities and Not-for-Profits Commission to consider whether it should be stripped of its charitable registration, for directing inflated service fees to the CFMEU.

The Commission also found that Construction Charitable Works had received donations from the Canberra Tradesmen's Union Club and the Woden Tradesmen's Union Club for training that was never, or only partially, delivered. Arguably, this was a device to meet the clubs' statutory requirements to make charitable donations (and maintain its tax-free status) while still keeping the funds within a corporate group controlled by the same group of CFMEU officials. The Commission found that 'there have been significant failures of governance by the directors of ... Construction Charitable Works, principally [by] Dean Hall', who was a director not only of the charity but also of the tradesmen's clubs.

<sup>11</sup> Director of Fair Work Building Inspectorate v Construction, Forestry, Mining and Energy Union & Anor; <https://www.fwbc.gov.au/cfmeu-safety-rep-refuses-site-access-company-without-right-union-agreement>

## SAFETY AS A 'WEAPON'

Because employees are largely alienated from this process, the CFMEU cannot rely on wildcat strikes to disrupt sites. Instead, they use safety rights of entry, which provide an open door onto construction sites, allowing access without notice, regardless of whether union members are present or the seriousness (or indeed reality) of an alleged breach. Once on-site, they are extremely effective in disrupting work.

The flagrant abuse of safety rights of entry to leverage commercial and industrial interests has led Master Builders ACT to call for a change in the legislation that will require 24 hour notice of any so called ACT CFMEU 'safety' inspection.

The Commission found that union 'safety' inspections were targeted at builders and contractors that didn't have pattern enterprise agreements, as a way to cause 'delay, disruption and the financial consequences that flow from it', until the demand is met. Once companies bow to the pressure, all of the previously pressing 'safety' issues disappear.

The fact that the CFMEU abuses its statutory rights to investigate suspected safety breaches, rights held on trust on behalf of workers, is appalling. It is failing workers and construction companies alike, as the resources of the regulator (which is often called to resolve disputes) employers and the union itself are diverted towards relatively trivial concerns, highlighted simply because they happen to occur on the sites of the union's chosen enemies. Meanwhile, genuine safety issues risk being neglected. The Commission provided an opportunity to confront this appalling trivialisation of safety – the most important issue affecting our industry.

Before the Commission, witnesses recounted how CFMEU officials blocked a concrete truck, claiming it was unsafe, despite WorkSafe ACT indicating that there were no safety issues associated with the pour. Witnesses gave evidence that, instead of inspecting work practices, ACT CFMEU lead organiser Halafihi Kivalu threatened management, attempting to incite violence with phrases like 'right here, right now'.

A week later, at a meeting between Kivalu and the builder, safety was not even discussed. Instead, the builder was told that 'if we had a better relationship [with the

union] these sorts of “incidents” wouldn’t occur’ before being given a pattern CFMEU enterprise agreement to sign and a list of ‘approved’ contractors to use.

Safety inspections are often timed with concrete pours, when maximum financial damage can be inflicted. The concrete is often wasted, or worse – a half poured job may have to be demolished, removed and re-poured. The above example cost the builder between \$10,000 to \$15,000. On larger jobs, the damage can quickly escalate to between \$50,000 to \$150,000. We all pay for that.

Another case study was particularly telling, due to the use of Australian Federal Police phone taps.

On the day scheduled for a concrete pour, a union official was recorded calling Assistant Secretary Jason O’Mara to tell him that the builder was ‘attempting to set up a pump, so we – we’re all down here – gonna to have a bit of a f\*\*kin’ crack’. Four union officials then entered the site and attempted to disrupt the pour.

Why did the ACT CFMEU try to disrupt the pour? In another phone tap, a union official was recorded saying that nobody had ‘rung with any problems’ and that ‘we were just waiting for [the builder] to start their pour so we could identify their problems.’ No records of any member complaints to the CFMEU about safety could be provided to the Commission whatsoever.

The real reason for the visit was laid bare in further intercepted calls, where union officials discussed how the ACT CFMEU Secretary Dean Hall was ‘f\*\*king dirty’ that the builder didn’t have a pattern enterprise agreement and that they were going to ‘sort out’ the builder. The builder had previously been warned by Hall that if he didn’t sign a pattern agreement he would ‘find you can’t get access to a cement pour’.

The Commission concluded that the ‘safety’ visit was in fact a ‘planned and co-ordinated’ attack ‘akin to a military-style raid’, aimed at ‘intimidating the builder and sending a message that the CFMEU would not tolerate a builder without a CFMEU [enterprise agreement] in... Canberra’. The Commission also observed that, ‘were it not for the fact that the Commission had access to intercepted telephone conversations, it would have been very difficult to challenge the claims of CFMEU officials that the visit

was just a routine safety visit’, especially given the ‘refusal of CFMEU officials to admit the truth even when it is revealed by tape recordings’.

Where WorkSafe ACT Inspectors don’t agree with CFMEU officials’ assessment of alleged safety concerns, they too can be the subject of intimidation. In yet another disrupted concrete pour considered by the Commission, multiple witnesses observed ACT CFMEU Secretary Dean Hall standing in close proximity to a WorkSafe ACT Inspector, pointing a finger at him at shouting: ‘if you don’t f\*\*king stop the pour and someone dies, you go to jail’. The Inspector gave evidence that he found the ‘situation intimidating’, not least because ‘there were four or five angry CFMEU officials standing around me, some of whom are very large men’. Although the Inspector did not consider that there was an imminent serious risk to safety, he issued a stop work notice after Hall’s intervention.<sup>12</sup>

The next day, the true purpose of the union’s visit was made clear. A union official informed the builder that they had to ‘get rid of’ a contractor that was not ‘approved’ by the union, or else the CFMEU would ‘make life hell’. The contractor in question had refused to sign a CFMEU enterprise agreement.

This is no way to improve safety.

## THE ‘SYSTEM’ THAT COSTS US ALL

Canberra can’t afford to be complacent about lawlessness in the construction industry.

The ACT CFMEU’s ‘system’ is in effect a cartel, in which union ‘approved’ contractors – those with artificially inflated costs – succeed. By dint of industrial muscle, emerging small-to-medium sized competitors are excluded from the market, unless they submit to union demands that are usually unaffordable at their economy of scale. For companies that meet union demands, they can’t afford to compete, unless they are protected from competition by the CFMEU.

<sup>12</sup>

Hall has now been referred for potential prosecution for allegedly intimidating a WorkSafe ACT inspector (punishable by fines of up to \$50,000 and / or imprisonment for 2 years).

The ACT CFMEU’s tactics are a ready-made vehicle for competitors to either acquiesce or actively cooperate with the union to suppress competition – and even fix prices. Multiple contractors from various trades testified to the Commission that, at group meetings of trade contractors, ACT CFMEU officials allegedly instructed them to fix charge-out rates to cover the cost of the union’s demands, which the CFMEU then offered to enforce.

In a series of text messages aired before the Commission, a contractor informed ACT CFMEU official Johnny Lomax that a competitor (one without a CFMEU enterprise agreement) had won a contract and that the union official should ‘hammer him’. A phone tap recorded Lomax as having told the competitor that he ‘can’t be going around pricing’, saying: ‘I need to give you rates, I need to get you an [enterprise agreement] if you want to do commercial [work] ... we’ve ... got a system in place and can’t have you f\*\*king disrupting it.’

One does not need to be an economist to work out the effect of this ‘system’. While hard to estimate, restricted competition in the commercial sector is thought to inflate construction costs by between 20 to 30 per cent – something all consumers of apartment, retail and office space have to pay for. They shouldn’t have to.

Cartel conduct deprives the industry not only of innovation but also its by-products, like efficiency, quality and safety.

Following the Canberra hearings of the Commission, the Australian Competition and Consumer Commission formed a taskforce to investigate market-sharing and price-fixing in Canberra’s commercial construction industry. The Commission noted that contractors should ‘understand the perils in terms of loss of property and loss of liberty which face them’:

**To assemble competitors in a room, to stimulate a discussion about prices and costs, and to engage in a process of advising the competitors to charge a particular price is a very hazardous activity. It is also very hazardous to advocate, encourage or insist that**



the competitors enter into identical agreements with a union. These are fundamentally anti-competitive practices... Even if the conduct itself is not unlawful, it is conduct which establishes a perfect background for unlawful conduct. Individual traders ought to be left to negotiate as they wish with unions. They should not reach agreements among themselves. At least, if they do, they should understand the perils in terms of loss of property and loss of liberty which face them.

## WHERE TO NEXT?

The first step in reclaiming basic economic and political freedoms is to speak about it. A little over a year ago, few employers had been willing to 'go public' about the daily abuses they endured – they would only respond to an anonymous online survey due to fears of reprisals.

The results of that survey, conducted by Master Builders ACT in late 2014, were shocking. Out of approximately 100 local construction firms, 60 per cent reported threats to livelihoods if they didn't sign a pattern CFMEU enterprise agreement, 50 per cent said they were told they couldn't operate unless their employees joined the union and 30 per cent said they had paid the CFMEU a 'donation' for industrial peace. Most disturbingly, 70 per cent said they had been verbally intimidated and 40 per cent said they had been physically intimidated by CFMEU officials.<sup>13</sup>

Master Builders ACT used that data as the basis of a submission to the Commission about what it viewed as a 'protection racket' being run by the CFMEU, where the union sold protection from threats to livelihoods, which the union itself was inflicting.

The submission was made on behalf of

Canberra's 'voiceless' construction industry, with a witness statement from its Director of Industrial Relations, to 'demonstrate that such statements can be made'.

Over the coming months, something unprecedented happened. The collective silence of Canberra's commercial construction industry was finally broken, as more than 50 witnesses came forward to tell their stories. Previously, the industry's silence meant that corruption could flourish – regulators couldn't prosecute, media couldn't report and politicians couldn't advocate.<sup>17</sup>

Those witnesses changed that. Regulators can now do their job. A range of prosecutions have been referred to Fair Work Building and Construction,<sup>14</sup> while the Australian Competition and Consumer Commission and Australian Federal Police taskforces continue their investigations.

The collective voice has also empowered the media to dig deeper.

The Australian Federal Police taskforce is now probing circumstances surrounding the leaking of confidential information to the ACT CFMEU from ex-Police Minister Joy Burch's office,<sup>15</sup> after the story was broken by Fairfax. While the Australian Federal Police investigation remains ongoing, Chief Minister Andrew Barr and Attorney-General Simon Corbell have indicated that her resignation 'relates to matters beyond' the leak, involving an 'unprecedented' and 'serious' matters yet to be disclosed.

Increasing scrutiny is now being placed on the CFMEU's influence over ACT government departments, including ACT Procurement and Capital Works. During the Commission hearings, several witnesses were named in evidence as targets of a union smear campaign. Following the hearings, union officials did in fact spread slander about a witness, which led to ACT Procurement officials asking the builder to 'part ways' with the contractor.<sup>16</sup> Such black-bans on government projects would have previously gone unnoticed.

14 Three ACT CFMEU officials (Anthony Vitler, Jonny Lomax and Jason O'Mara) have now been referred for prosecution by Fair Work Building and Construction for alleged coercion or inducement of employers to pay for union memberships, with Lomax also being referred for prosecution for allegedly discriminating / taking adverse action against an employee because they would not become a union member.

15 Which led to Ms Burch's resignation from all ministerial portfolios on 19 January 2016.

16 'CFMEU accused of calling in political favours to damage contractor', *Canberra Times*, David Ellery, 7 December 2015.

Some commentators have called for an independent commission against corruption in the ACT<sup>17</sup> on the basis that:

most of the problems ... exist only because of slack administration by an ACT government and legal system that is, in any event, far too close to some of the apparent malefactors ... not a single member of the ACT Government had an inkling or idea of the state of affairs in the ACT building industry ... revealed by the royal commission ... suggest[ing] a level of innocence, incompetence that by itself screams for inquiry.<sup>18</sup>

While an independent commission against corruption would not address industrial law-breaking, Master Builders would support moves to flush out persistent suggestions of undue influence over ACT government officials.<sup>19</sup>

Politicians are being empowered too. The Commission has made some 73 recommendations for law-reform, many of which have been endorsed by the Federal government.

Some crucial recommendations include

17 Evidence of lawlessness within the CFMEU was not limited to the ACT. It is not for no reason that the industry and its unions have been the subject of four Royal Commissions over the past 40 years, starting with the 1982 Winkeke Royal Commission into the Builders Liberation Federation which was deregistered by the Hawke Labor government but later merged with the CFMEU. The Heydon Commission found that there is a 'longstanding malignancy or disease' within the union and that senior officials in various states (including Victoria, Queensland and New South Wales) had engaged in offences against numerous laws, with over 100 adverse court finding against the union since 2000. The building industry regulator, Fair Work Building and Construction, currently has 72 CFMEU officials before the courts, with 67 continuing investigations

18 'Why the ACT can't afford to be without an ICAC', *The Canberra Times*, Jack Waterford, 31 July 2015.

19 In a poll conducted by radio station 2CC in late 2015, about 85% (of 130 respondents) stated that the CFMEU has too much power within ACT government departments. Similarly, in Master Builders' survey from late 2014, about 75% (of 100 respondents) said that the CFMEU has an inappropriate level of influence within local government agencies.

13 Those results were replicated in a broader survey of approximately 450 construction companies Australia-wide.

criminalising employer payments to union officials (except in certain legitimate circumstances) and the restoration of the Australian Building and Construction Commission. The Commission would increase penalties for industrial coercion, disrupting its use in the broader criminal and anti-competitive behaviors which ripple throughout the industry. It would also impose stricter obligations on builders not to participate in black-bans on contractors and make it easier to prosecute cartel behaviour. Essential reforms of safety right of entry laws have also been proposed, such as 24 hours' notice (to minimize abuse for disruptive ends) except in emergencies.

Labor politicians have denounced the CFMEU's actions, with some former Labor leaders such as Bob Hawke calling for the Labor Party (which receives substantial donations from the CFMEU) to cut ties with the union.<sup>20</sup> Cries about the Commission being a 'witch-hunt' are being replaced by more sober assessments, like that of former Labor politician Martin Ferguson, who said:

**I just don't see the royal commission as a political play thing ... I actually think it's potentially going to be very important in reforming the trade union movement ... and I will not damn it.**

However, perhaps the clearest change is in the behavior of construction industry employers. For the first time in years, contractors are saying 'no' to paying for union memberships, 'no' to payments to union entities, 'no' to donations and 'no' to black bans. Instead of buying union protection, they are asking their employees what they really want. They are negotiating enterprise agreements which actually suit their business and their teams, while finding they can tender in the commercial sector with less fear of reprisal.

Similarly, builders are starting to realize that they can offer more affordable and innovative construction if they openly tender to contractors based on safety, quality and price, rather than the say-so of the CFMEU.

They also understand that, if they take 'procurement advice' from the CFMEU, they are not only legally exposed,<sup>21</sup> but morally too – their acquiescence for the sake of uninterrupted work is what empowers the CFMEU to threaten livelihoods all the way down the contract chain.

However, all of us must stand-up – not just the construction industry. The construction sector is crucial: it is our second largest industry and houses us all. The lawlessness in the sector is like a hand around its throat – gradually pushing up costs and slowly strangling growth. We all have to take responsibility for how our apartment, retail and commercial spaces are built – and how the people building them are being treated. We should care about whether they can work freely and without fear. Otherwise, we are all hostage. After all, people need houses to live in and retail space to trade in, and will generally pay for it, regardless of the price. That's what makes reform of the construction industry an issue for everyone: otherwise we all pay.

## APPENDIX - POLICY RECOMMENDATIONS

### *Stricter governance, a specialist regulator*

In order to address widespread union governance issues revealed by the Commission, it recommended reforms that would bring union official's obligations closer to those imposed on company directors, with stricter duties of trust in relation to members and heavier penalties (including imprisonment for up to five years) for non-compliance. Other recommendations include greater financial disclosure and oversight, better record-keeping, protections for whistleblowers and the creation of a specialist union regulator, the Registered Organisations Commission. The federal Government has adopted these recommendations and introduced (yet to be passed) enabling legislation to the Parliament in February 2016.

Master Builders supports these reforms.

### *A corrupt 'system' – targeting employer payments*

<sup>21</sup> Discrimination against contractors based on union-affiliation is prohibited under freedom of association laws in the Fair Work Act. It would also exclusion builders from tendering for Commonwealth work under procurement codes.

Federal Employment Minister Michaelia Cash observed that 'Heydon has exposed corruption in the whole game, not just one player and that is what we have got to address':

**Tackling one side doesn't change the system. You have to target both sides ... corrupt receipt implies corrupt payment. Someone else must be involved, and we will be targeting the system. We will not be distinguishing between unions and businesses.**

To address the inherent conflicts of interest arising from employer payments to unions, the Commission recommended that *any* payment by an employer to a union should be criminalised, on pain of imprisonment of up to two years, or fines of up to \$90,000 (for individuals / officials) and \$450,000 (for companies / unions). However, certain payments to unions would be allowed, e.g. to genuine charities, for services at market rates (such as training) to honour successful wage claims or pay for union memberships (but only by way of wage deductions – which would require written employee consent).

Where payments could be seen to be in the nature of a bribe (i.e. would benefit the employer, or cause the union official to act other than in their members' best interests) payments would be punishable by imprisonment of up to 10 years, or fines of up to \$1.8 million (for individuals / officials) and up to \$18 million (for companies / unions). There would be no defence that an employer was blackmailed or extorted, the message simply being: 'don't pay protection money'.

The Federal government has endorsed these recommendations, with legislation expected to be introduced to the Parliament later this year.

Master Builders supports moves to penalise employer payments to unions.

### *Deregistration of the CFMEU, or certain officials?*

Rather than deregister the CFMEU, the Commission instead prioritised cultural

<sup>20</sup> Bob Hawke's Labor government deregistered the Builders Liberation Federation, which later merged with the CFMEU.

change, by focusing on the union's upper management. The Commission recommended that the federal Parliament be empowered to legislatively disqualify certain CFMEU officials from holding office, as a way to combat the organisation's cultural disregard for the rule of law. These reforms would sit alongside powers for the Registered Organisations Commission to apply to the Federal Court to disqualify union officials from holding office, where they breach industrial laws (akin to ASIC's power to disqualify company directors).

#### *Australian Building and Construction Commission*

The most important recommendation by the Commission is the reintroduction of the Australian Building and Construction Commission and the implementation of the new procurement code, the Building and Construction Industry (Fair and Lawful Building Sites) 2014 (Cth) – moves strongly supported by Master Builders.

The federal government has already introduced legislation to restore the Australian Building and Construction Commission to the Parliament, which is expected to be voted on by Mid-March 2016, following a (third) Senate inquiry. Identical legislation was previously defeated by the Senate in September 2015, by a single vote (Senator Lambie refused to pass the legislation unless the CFMEU was also deregistered).

Unlike the existing industry regulator, Fair Work Building and Construction (which replaced the former regulator in 2012 under the Rudd Labor government) the Australian Building and Construction Commission would:

- provide a greater disincentive for unlawful behaviour, with fines for industrial coercion increasing from \$54,000 to \$180,000 (for bodies corporate) and \$10,800 to \$36,000 (for individuals);
- grant the regulator access to coercive interrogation powers on the same basis used by other regulators, such as the Australian Competition and Consumer Commission. Compulsory evidence-gathering powers are designed to break cultures of silence by granting witnesses immunity from prosecution and an 'excuse' for giving evidence under threat of reprisal;

- be empowered to maintain prosecutions where a private settlement has been reached between the parties (currently Fair Work Building and Construction must withdraw from prosecutions where private settlements, leading to pressure on contractors to reach settlements).

The Australian Building and Construction Commission would not remove employees' right to strike or collectively bargain, nor the CFMEU's right to recruit and organise members. Instead, it would prosecute industrial coercion, i.e. where employers and employees' right to work is unlawfully threatened. By targeting threats against livelihoods in an industrial context, the Australian Building and Construction Commission would disrupt broader criminal and anti-competitive patterns, like the union-employer cartels now being investigated by the Australian Competition and Consumer Commission.

The Australian Building and Construction Commission would also oversee a new procurement code, strengthening builders' obligations to refuse to participate in black bans on contractors – or miss out on government work. Builders would need to pro-actively manage site disruption and coercion of contractors / employees, by implementing strict right of entry protocols. The Building Code would also enhance value-for-money on tax-payer funded projects, by ensuring that those employers that enter into union pattern agreements with restrictive work practices (such as lock-down weekends and restrictions on use of contractors) would be excluded from tendering for Commonwealth government work.

#### *Competition laws*

The Commission has also recommended that the Australian Building and Construction Commission be given joint jurisdiction with the Australian Competition and Consumer Commission to prosecute secondary boycott activity (i.e. black-bans on contractors) and that the penalties for such conduct be increased to those imposed for cartel behavior (\$10 million fines and / or 10 years in jail). Additional laws would impose an obligation on builders and contractors to report secondary boycotts to a regulator before accepting or providing services that they knew a contractor had been black-banned from.

Master Builders supports these measures.

#### *Safety rights of entry*

To address abuse of safety rights of entry, the Commission has recommended that union officials be required to provide 24 hours' written notice except where there is a serious and imminent risk to health and safety. Due to the sustained abuse of right of entry laws, Master Builders supports 24 hours' written notice in *all* circumstances, and an enhanced role for WorkSafe ACT to deal with immediate risk.

Master Builders has called for a 24 hour hotline to enable any person (including a union official) to refer safety emergencies to the regulator for rapid response, which has already been implemented by WorkSafe ACT. Master Builders has also called for increased training for union officials tasked with advising on suspected safety breaches, following revelations from the Commission that ACT CFMEU officials lacked both industry experience and safety qualifications.

#### *Commercial entities and enterprise agreements*

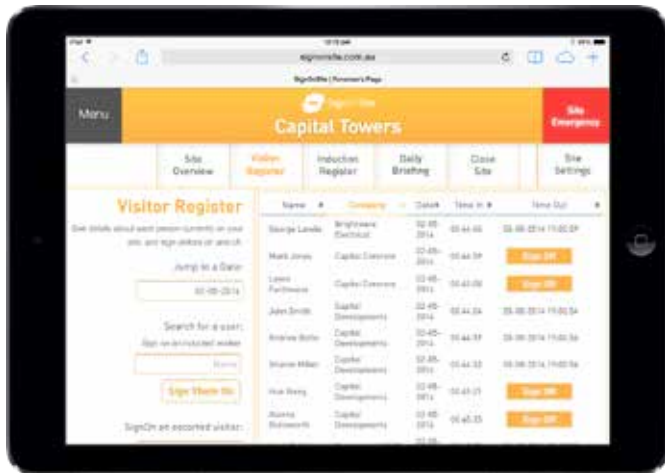
The Commission refrained from recommending that union-affiliated entities be removed from enterprise agreements, despite concerns that the financial gains they generated was a strong motivation for industrial coercion. However, the Commission has recommended various union entities be subject to much greater governance requirements and disclosure rules. New prohibitions on coercion of employers to make payments to union-affiliated entities in enterprise agreements would also be included into the Fair Work Act.

Master Builders also supports these recommendations.



# Local group SignOnSite creates application for construction sites

Running a construction project is more complex than just knowing if someone has shown up for work. A large portion of what happens on site revolves around knowing who is on site. Whether it's keeping the project on time or workers safe, with so many tasks day-to-day that require attention to detail and so many moving parts, it can become difficult to maintain.



After working with a number of companies about how they handle site attendance, SignOnSite co-founders, Mitchell Harmer and Alexandria Garlan, realised that while the importance of signing in was understood for many companies, there appeared to be no simpler way.

***"It's been a huge benefit to Huon. To know who's on site and when. And to know that information can be accessed within moments is priceless. It's about having a simple process, that works," said Percival.***

It's these conversations that sparked the SignOnSite team to build an app that not only made it easier for the workers, but also the management teams, while keeping it as simple as possible.

Within metres of a site, a worker will be signed on and off automatically, giving the site management team oversight whenever they need it.

Construction has always been a people-centric industry so by ensuring the app is easy to use, though powerful enough for scenario's like evacuations, SignOnSite demonstrates how technology can be used to help improve the industry.

SignOnSite began working with Huon Contractors in November 2013, with the goal of improving how workers sign onto their Googong Subdivision project. After months of design and development, they first rolled it out in August 2014. They have since worked together to develop and improve the app. With Huon and SignOnSite working hand-in-hand, SignOnSite has been crafted for the industry by those on the frontline.

Systems Manager, Keith Percival and the Systems team of Sebastian Holt and Rebekah Worrall, understand the need to

keep people safe on sites. Their involvement with SignOnSite's development has helped to tailor the app into one that helps him and his team to not only work for them, but make their jobs easier.

"The fact that the phone signs you on and off automatically makes it much easier for the guys. Having the little things automated, allows us to focus on other areas of our safety systems," Percival said.



Today the technology in the palm of our hands has the real potential to make every individual on site safer and SignOnSite has removed the barrier between safety and technology while providing an answer to an often overlooked challenge.

"Nobody has time to phone around to find someone. Being able to have oversight of how each site is going and which site the guys are on is priceless. Now all we have to do is log in and easily see where each job is up to.

"It's been a huge benefit to Huon and to know that information can be accessed within moments is priceless. It's about having a simple process, that works," said Percival.

SignOnSite understands what time means to the construction industry. And that's why it's a system made for efficiency. It's helping companies manage processes and puts the information at their fingertips when most critical.

"If a site's evacuated, the app notifies every phone on site immediately. The safety warden has an accurate list of who's on site, along with their contact details. This is all at the touch of a button. There's no more flicking through induction registers for phone numbers to make sure everyone's evacuated," said Mitchell Harmer.

The future of the industry is bright with the tools to do the job always evolving and changing. SignOnSite continues to look towards new and innovative ways of helping workers get the job done safely and efficiently.

Keep in touch through the Facebook, LinkedIn and Twitter pages or for more information contact [team@signonsite.com.au](mailto:team@signonsite.com.au) or visit [www.signonsite.com.au](http://www.signonsite.com.au).

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# Agreeing on a Project Delivery Method for a Construction Project

Rachelle Hare - Meyer Vandenberg Lawyers

19 February 2016

# 8 Key Issues

## How will the construction project be delivered?

It is critical when any construction, infrastructure, or other project is carried out to ensure that the principal uses the appropriate project delivery method that matches the required budget, timeframe, and project deliverables. Often the principal will ask the builder's advice or opinion prior to making this decision.

Deciding on which project delivery method to use at the start of the project will save time and costs as the project progresses and will lay a solid foundation for the project's ultimate success. Here are 8 key issues that you should take into account.

### 1. What is the dollar value of the project?

The budget for the project will have a significant impact on how that project will be delivered. It may not be appropriate, for example, to use a purchase order or a minor works contract for a larger value project, nor for a smaller project with a high degree of risk (such as one containing design obligations).

A tight project budget may lend itself to a construct only or design and construct contract, perhaps with a guaranteed maximum price to put a "cap" on costs. Alternatively, an early contractor involvement or managing contractor method of project delivery may help save costs as the parties work together to scope and price, and develop, the project.

### 2. Is the project's timing critical?

If timing is critical for the project, it may be preferable to use a more standard contract that the parties are familiar with, to reduce time spent in contract negotiations and revisions to the draft contract prior to execution. Construct only or design and construct contracts may be a better choice, potentially with revisions to place more emphasis on finishing on time by limiting the qualifying causes of delay and increasing the liquidated damages payable by the builder for late completion. A construction management model where the builder receives an incentive for early completion may also be an option.

The earlier in the project that the builder is involved, the earlier the project design and planning can be completed. Delivering under an early contractor involvement and managing contractor method may allow the builder to commence ordering construction supplies or materials to make allowance for long lead times.

### 3. What is the principal's risk appetite?

Considerations about the principal's risk appetite, and how risk adverse the parties are, may impact on the choice of project delivery method.

If the parties are more comfortable with a traditional contractual structure, fixed risk allocation, and fixed time and costs, they may prefer a construct only or a design and construct contract in which the principal can shift the various risks of the project (including time, cost, and quality) more towards the builder. If the parties are risk



adverse, they should avoid entering into an alliance agreement or other “relationship contract”, since risks in those models are generally shared between the parties or transferred to the party best able to manage those risks.

#### **4. What is the long-term vision for the project?**

An important factor to consider is what is being constructed and how it will be used. Will there be significant public interest in the project? Are non-pecuniary goals, such as safety and environmental protection, important? Will the project require maintenance into the future, with such maintenance services to be carried out by the same builder? If so, an alliance agreement or a design, build, operate and maintain agreement may be more appropriate.

#### **5. Is the design fully worked out?**

Has the design of the project been prepared internally by the principal or does it require development through consultation with external parties? If the design of the project is likely to be varied during the term, flexibility in the project delivery method would be preferable to avoid repeat variations to the contract or the scope of the works. Delivery methods that enable such flexibility include managing contractor and early contractor involvement, where the builder can provide advice as to design and buildability aspects as well as assist the principal and its consultants to refine the design as the project progresses.

In circumstances where the project’s design can be finalised before the construction works are commenced, a construct only contract, where the builder constructs the works on the basis of the finalised design and does not bear any design risk, may be more appropriate. There is a potential “gap”, however, between design responsibility and construction responsibility, and principals may prefer single-line responsibility by novating the consultant’s contract to the builder under a design and construct arrangement.

#### **6. How much control does the principal want over the project?**

If the principal possesses the necessary internal resources to manage the project, the direct managed project delivery method (in which it engages and manages all the consultants and trade contractors and takes ultimate responsibility for the project’s delivery) will give the principal more control over the project. For higher risk projects, however, the principal is more likely to require a project delivery method where the builder takes single-line responsibility for all aspects of delivering that project.

#### **7. Does the principal wish to encourage innovation and cost savings?**

In circumstances where the principal would like to encourage innovation in a project or work with the builder to achieve cost savings (perhaps with an incentive structure built into the contract whereby savings are shared between the parties), the more relationship-focused project delivery methods may be more appropriate. Other methods such as construct only, design and construct, and design, build, operate and maintain operate within a more restricted structure due to the defined contractual obligations, risk shifting, and focus on fixed time and costs.

#### **8. What is the local industry familiar with?**

The builder should be familiar with the type of project delivery method that is chosen. Construct only and design and construct contracts are much more commonly used within the ACT. However, while alliance agreements are more common in NSW and Victoria, they are less commonly used in the ACT. Local builders may not be as experienced in delivering projects through those methods and may therefore need to build extra costs into their fee to protect themselves against unknown risks in a contract that they are not familiar or comfortable with.

#### **So what do we choose?**

After considering the above factors and any other factors that may be relevant to the parties, the project delivery method that best satisfies the needs of the parties and the project should be selected.

We would be happy to provide advice on the pros and cons of the relevant project delivery methods and which method best suits the needs of the particular project. We can also assist by drafting the necessary contracts or by making revisions to standard template contracts to suit the project and the preferred risk allocation of the parties.

**For more information contact the  
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# Deakin Charity House Project



## Charity begins at home with the Deakin Charity House Project

Bringing together a group of passionate local builders, Master Builders ACT is proud to be driving the Deakin Charity House project.

The Land Development Agency has contributed two adjoining separate title infill blocks in Deakin, and members of MBA ACT are donating or heavily discounting construction materials, professional services and labour to build two homes that will raise money for Canberra charities.

LDA CEO David Dawes said: "Following the tremendous success of the 2013 Franklin Charity House project, I am pleased that the Land Development Agency is again collaborating with the Master Builders ACT on the Deakin Charity House project."

The two homes, designed by AMC Architecture, will be auctioned later this year. Both homes will showcase smart, sustainable design including clever solar orientation, efficient use of space and light, and selection of materials that balance amenity with low lifetime cost. Inclusions will be chosen for their high energy and water efficiency.

"Our industry is made up of many long-time Canberra families with an enduring commitment to this city," explains MBA's Director of Commercial Operations, David Leitch.

"Our members value the opportunity to contribute to their community, and through this project will donate more than \$750,000 in time, hard work, expertise and materials to get this project off the ground."

Three charities will benefit from the funds raised. Boundless Canberra, an all-abilities playground on the shores of Lake Burley Griffin, will receive 70 per cent of the profits from the sale of the homes.

According to Boundless board member, Kristen Connell, the money will support the delivery of Stage Two of the park, which will mean "more fun, more accessibility and even more children able to enjoy the benefits of play."

Hands Across Canberra, which raises funds for more than 120 small charities across the Canberra region, will share its 20 per cent windfall with local groups providing important support services to people with disabilities.

Hartley Lifecare will use its share of the profits to rebuild and refurbish some of its properties that help people with complex disabilities.



The demolition of the existing home was undertaken by Irwin & Hartshorn.

"We've had success with two charity houses in the past – in 2006 with the Jenolan Charity House and in 2013 with the Franklin Charity House. Together, these projects raised just over \$850,000. With the knowledge gained and the increased size and scale of this new project, we're hoping to raise more than a million dollars," David said.

Renaissance Homes is the project's principal partner, and for director Andrew Kerec the project is deeply personal.

"Andrew is doing an amazing job of promoting the project to his network and getting subbies and suppliers on board. His energy and enthusiasm has saved us around \$350,000 in costs – and that's just a start," David said.

Andrew, a "born and bred Canberran", established Renaissance Homes with his father Lud in 1996. Six years ago, Lud was involved in a bicycle accident that left him with quadriplegia.

"Our family learnt first-hand the challenges and lack of support faced by people with high levels of disability," Andrew said.

Andrew and his team are now determined to help other families in Canberra through the rehabilitation process, and to "gain some life choices back".

"It hasn't been hard for us to get commitment from the industry," Andrew said. "All the subbies and MBA members have been unbelievably supportive. The experience has been quite humbling for Dad and me."



The house is expected to be complete and ready for the grand opening by July 2016, with the auction to take place in September 2016.

Peter Blackshaw RealEstate is providing pro bono services and advice. Agents Louise Harget and Dan McAlpine have been involved with the project since its inception, and will be marketing the properties.

"Projects like this only work when everyone collaborates – and this has certainly been the case with the Deakin Charity House," Louise said.

"We worked closely with the architect to provide initial advice on what would be most saleable in the area to ensure the project maximises its return.

"We're inspired to play a role in the project, and are impressed with the team's commitment to quality – there have been no corners cut. The end result will be a great house suited to the market."

Ern Smith Building Supplies is donating all the building materials as well as some labour. Atlas Windows has slashed the price of its products and so has Austral Bricks, while Irwin & Hartshorn undertook the demolition of the sites for a fraction of the usual cost.

CRT Building Products is manufacturing and delivering the homes' frames and trusses at no charge.

"We have a strong relationship with Renaissance Homes, having worked with Andrew and Lud for 20 years. As this project is close to Andrew's heart, it's close to ours too," said Tim Wilson, CRT's managing director.

"We're a locally owned business that's been around for 50 years, and we want to support the people who support us," Tim said.

And that's what it's all about – connecting across industry and community to build a better city for us all.

**Thank you** to the following for your generous contribution toward this important project.

AAC Environmental	Ground Control
AMC Architecture	Irwin & Hartshorn
ARC Reinforcements	JMC Masonry
Asset Construction Hire	Kitchen Link
Atlas Windows	Lupo Concrete pumping
Austral Bricks	MBA Fidelity Fund
BlueScope Lysaght	Moracshi Roofing
Canberra Crete	Meyer Vandenberg
Canberra Hire	Omni Interiors
Canberra Sand and Gravel	Paint Place
Certified Building Solutions	Peter Blackshaw Manuka
City Drainers	Professional Plaster Lining
CRE8IVE	Prestige Scaffolding Services
CRT Building Products	Selleck Consultants
Damian Dawes Carpentry	Southern Plumbing Plus
Elvin Group	Tony Quin Survey
Ern Smith Building Supplies	W R Moore Bobcat Hire
Flight Stairs	



For a good cause: Chief Minister Andrew Barr at the Deakin Charity House launch with representatives from Renaissance Homes and the charities Hartley Life Care, Boundless Playground and Hands Across Canberra.

### Project Partners



renaissancehomes  
www.renhomes.net.au

### Media Partners







Construction industry's biggest night: The 25th Excellence in Building Awards were held in 2015.

## 2016 Master Builders & Cbus Excellence in Building Awards

The Master Builders & Cbus Excellence in Building Awards will be held on Friday 24 June, 2016 at the Canberra Convention Centre. Recognised as the industry's most glamorous night of nights, the Awards highlight Canberra's best in building and construction from our regions residential builders, commercial builders, civil contractors, architects, designers, subcontractors, suppliers and associated professionals.

Tables of 10 are available with tickets \$235 per person. Get in quick to reserve your table as tickets are selling fast.

Judging for the awards will be between Monday 4 April and Friday 6 May. For those of you who have not been through the judging process before, we have provided some useful tips you should know to the right.

When you receive your judging time, be sure to let us know of any safety requirements or other permission needed by the judges. Jobs are scheduled by location and category. Therefore if you have several entries in different categories, they may not be judged on the same day.

To assist our judges with their tight schedules, it is recommend that you are at the inspection on time and ready to show the judges around. Please confirm the meeting place for where you would like the judges to meet you.

It is highly recommended that the person who is meeting the judges at the inspection knows the project well and is able to answer any questions the judges may have.

During the inspection take the time to point out aspects that the judges may not be able see. This could include any difficulties with the build, innovations or special features.

**Find out more**  
visit: [www.mba.org.au/events/2016-building-awards](http://www.mba.org.au/events/2016-building-awards)



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## Infinity cable recall update – ACCC issues new warning on obligations of builders

Master Builders recently attended the Infinity Cable Stakeholders teleconference convened by the ACCC. At the teleconference, the ACCC reported that the progress of the recall continued at a slow but steady pace with a total of 1537km of cable either remediated, scheduled to be remediated or recovered from stores. This figure constitutes 39% of properties identified as containing the cable. The ACCC has vowed to continue pursuit of the recall until the vast majority of the cable is either remediated or accounted for.

The ACCC is also of the view that builders or electricians who do not take appropriate steps to report to the supplier where the cables have been installed, or fail to contact home owners about the recall, can be issued with rectification orders, prosecuted or suffer other penalties if the cables left in situ cause property damage, personal injury or loss of life. The ACCC also stated that attempting to contact owners about the presence of the cabling may also not be enough and in the event of owners avoiding contact from contractors or remediation, builders and electricians have an obligation to alert the relevant State or Territory electrical regulator.

The bulletin that outlines the ACCC's position on the obligations of builders and electricians under the recall can be found via this link - [www.accc.gov.au/publications/have-you-installed-any-recalled-infinity-cables-in-the-last-six-years](http://www.accc.gov.au/publications/have-you-installed-any-recalled-infinity-cables-in-the-last-six-years)

## Proposal to Review AS4299 – Not supported by Industry



The proposal to review AS4299 - Adaptable Housing has not been supported by Standards Australia at present because of the lack of response by the housing industry.

Master Builders Australia responded to a request from the Australian

Network for Universal Housing Design (ANUHD) to support the review for this standard.

*Master Builder's response is that the industry, through Liveable Housing, is seeking a non-mandatory way for the voluntary adoption of design guidelines for making housing more accessible for people with a range of disabilities.*

Master Builders Australia has been very involved in promoting the adoption of the Livable Housing guidelines. Master Builders CEO is a director of Livable Housing and has been since its inception. This reflects the commitment of Master Builders to the greater adoption of the Livable Housing guidelines

Master Builders' position is to actively support Livable Housing and promotion of its guidelines on a voluntary basis.





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MBA Group Training recommends refresher training be undertaken every two years for those who regularly utilise these skills and knowledge.

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Gaining the skills and knowledge to be determined competent in Enter and Work in Confined Spaces RIIWHS202D, a nationally recognised unit of competency, enables participants to identify, assess and safely enter and work in a confined space.

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The frequency of refresher training for high risk activities will be determined by assessing the risk factors. The period between refresher training should be based on how often the skills and knowledge are used, increasing the frequency of training as participation in the activity decreases.

MBA Group Training recommends refresher training be undertaken every two years for those who regularly utilise these skills and knowledge.

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*\*Up to 70% of the course cost may be refundable to eligible applicants through the ACT Building and Construction Industry Training Fund. MBA Group Training will apply for this refund on your behalf on successful completion of the course.*

**For more information about training opportunities contact MBA Group Training:**

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**F** 02 6280 9118  
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M O N C R I E F F

# Discover your Great Australian Dream at Moncrieff

Visit the Moncrieff Display Village to discover the latest living ideas for sustainable, accessible and affordable homes.

A collaboration between Master Builders ACT and the Land Development Agency, the display village features 12 single and double storey homes packed with state-of-the-art design, smart technology and clever ideas to suit all budgets and tastes.

Moncrieff Display Village brings to life the best in contemporary Australian design – blending beauty with practicality, sustainability with livability.

Whether you're in the process of building your own home, contemplating your options or just keen to check out the best in modern design, you won't be disappointed by the imaginative and inspiring homes at Moncrieff.

Located on the corner of Crackajack Way and Bellhouse Crescent, the Moncrieff Display Village is open each Friday to Monday from 10.00am to 4.00pm.

The Moncrieff Display Village builders are:

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- APA Homes
- Elevated Living
- GJ Gardner Homes
- Gracious Living Constructions
- J & F Homes
- MBS Housing
- McDonald Jones Homes
- RAM Living
- Rawson Homes
- Renaissance Homes
- Sekisui House

## Let us help you discover your own Great Australian Dream

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Open Friday - Monday  
10.00am - 4.00pm

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Elevated Living



GJ Gardner



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# Woden Contractors appoint new Managing Director

Rory Goodsell graduated with a civil engineering degree from the University of New South Wales in 1990.



Moving to Canberra he joined John Haskins and the team at Haskins Contractors working on projects that centred around the area of Gungahlin including Gungahlin Pond and Yerrabi Pond, William Slim Drive as well as a number of subdivisions in Gungahlin, Tuggeranong and Camden.

In 1995 Rory moved up to the Mid North Coast after joining Thiess and worked as a Section Manager on the \$150M Bulahdelah

to Coolongolook Deviation project as part of the Pacific Highway upgrade. After completion Rory moved back to Canberra with his family and began working with Mark Haskins and his team. This included working on a range of projects for the Sydney Olympic Games.

In 2001, Rory joined Woden Contractors (Wodens) as a Construction Manager. Through his time at Wodens, Rory has worked on several interesting and challenging projects. One of his most memorable projects was the award winning Glenloch Interchange (below).

*“This job was so unique with four bridges being built in a 75m radius at different levels that I built a model of the project to help people understand what was going to happen” said Rory.*

Now as the newly appointed Managing Director of Woden Contractors, Rory feels privileged to be working with such a great team who have completed so many iconic projects around town. Rory plans to continue to produce quality work on a variety of different types of projects to give the team experience with a range of civil works.

Rory is also passionate about continuing to train young apprentices to become plant operators and field supervisors. “There is a shortage in the industry with people not doing the training. We have worked closely with the MBA for a long time training young apprentices and I look forward to continuing this relationship.”



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# NATIONAL UPDATE

A SNAPSHOT OF INDUSTRY NEWS  
FROM AROUND THE COUNTRY

## SENATE INVESTIGATES FEASIBILITY OF OPTIONS FOR PORTABLE LONG SERVICE LEAVE

Master Builders lodged a submission in response to a Senate inquiry on the feasibility of, and options for, creating a national long service standard (LSL), and the portability of long service and other entitlements. This issue has previously been addressed by Master Builders as part of our submission to the Productivity Commission (PC) in relation to its report into the Workplace Relations Framework. In our submissions to both the PC and the more recent Senate inquiry, we argued that in the event that a uniform model for LSL is drafted or an amendment to the National Employment Standards is proposed to include LSL benefits, the building and construction industry should be carved out of these amendments given its unique characteristics.

The building and construction industry's complex and distinctive contracting arrangements has led to the establishment of our own State Territory based portable LSL scheme that has already been in place for decades. In our submission to the Senate inquiry, we reiterated that any proposal to transition to a single uniform model would require extensive due diligence with and across the existing State and Territory schemes and should include the grandfathering of existing entitlements under a cost-effective, accountable and transparent model of administration.

The Senate Education and Employment is due to release its report on the matter by 25 February 2016.

## MASTER BUILDERS SUBMISSION ON VITAL AMENDMENTS TO IR LEGISLATION

Master Builders lodged a submission with the Senate Education and Employment Legislation Committee (the Senate Committee), following an inquiry referred to it by the Senate into provisions of the Fair Work Amendment (Remaining 2014 Measures) Bill 2015 (Remaining Measures Bill).

The Remaining Measures Bill contains the following:

- Clarification on the payment of untaken leave on termination which under the new provisions would only be payable on termination if provided for under an enterprise agreement
- An amendment that provides that, subject to some exceptions, an employee who is absent from work

and in receipt of worker's compensation (WC) payments, will not be able to accrue annual leave while receiving WC.

- A range of measures providing for increased flexibility arrangements (IFAs) such as clarification that non-monetary benefits may be taken into account when determining whether an employee is better off overall under an IFA
- Provisions that require an employee who seeks to transfer to an associated entity of their current employer are subject to the terms and conditions of employment of the new employer
- Amendments that restore some balance to the Right of Entry provisions, for example, providing new eligibility criteria to determine when a permit holder may enter premises for the purposes of holding discussions with workers
- New processes in how the Fair Work Commission deals with unfair dismissal claims

Although largely supporting the changes outlined in the Remaining Measures Bill, in our submission to the Senate Committee Master Builders stated that more industrial relations reform is needed to bring balance to the industrial relations system. We also submitted that specific reforms for the building and construction industry were vital to restore the rule of law in our industry.

The Senate Committee is due to hand down its report, following the inquiry into the Remaining Measures Bill, in February 2016.

## PROPOSED AMENDMENTS TO MODEL WHS LEGISLATION AND MSD RESEARCH

Safe Work Australia (SWA) is continuing to consult with Master Builders on proposed changes to the model Work Health and Safety (WHS) Regulations. A summary of the amendments are as follows:

- Reviewing the definition of 'construction work' to clarify its application to fixed plant
- Revision of the monetary threshold which is to be applied to a 'construction project'
- Reviewing the effectiveness and form of Safe Work Method Statements (SWMS) that are currently required for high risk construction work
- Reviewing the requirements for general construction induction training

SWA has advised that it will continue to consult with Master Builders during the Regulatory reform process. In addition, Master Builders was also recently consulted and provided comment on a research scoping document that SWA has commissioned on Musculoskeletal disorders (MSDs). Although acknowledging the importance of the research, in our feedback to SWA we emphasised that it is crucial that any research undertaken or commissioned by SWA is subject to systematic review and is treated with academic rigour.

The finding of SWA's MSD report will be circulated once it has been released.

## HOUSEHOLD MOBILITY

More than 40 per cent of Australian households moved home in the last five years, according to new figures from the Australian Bureau of Statistics (ABS). And, much as would have been expected, the likelihood of moving home is linked to a person's age. At the younger end of the age spectrum, 82 per cent of people aged between 25 and 34 years moved home at least once in the last five years, while for those in the 35 to 44 years age cohort the figure was 56 per cent. By contrast, for people aged 65 years or more the home relocation rate was just 14 per cent. South Australians appear to be least likely to relocate home (68 per cent staying in the same home), while Queenslanders appear the most likely to move (just 53 per cent staying put).

## FOREIGN INVESTMENT

Foreign investment in Australian residential property is expected to weaken in early 2016. A new survey by the ANZ Bank predicts foreign investors will account for 21.9 per cent of housing demand in the March Quarter this year, down from 22.4 per cent a year ago. By contrast, foreign investors are expected to account for 19.7 per cent of office sales, up 11 per cent on a year earlier, and a similar proportion of retail space sales, up more than 56 per cent. Foreign investors are also expected to expand their footprint in the industrial and the tourism construction area.

## PUBLIC HOUSING

Australia's public housing stock has contracted substantially over the past decade. In 2004, there were some 345,335 dwellings in the public housing stock; a decade later the figure was 323,803 dwellings, a fall of more than 6 per cent. The largest falls in the public housing stock were experienced in Tasmania (down 28 per cent), South Australia (down 15.6 per cent), and the Northern Territory and New South Wales (both down around 11 per cent). By contrast, Western Australia and Queensland increased their stocks of public housing, by 6 and 5 per cent respectively, over the same period.

## ABCB NON-CONFORMING PRODUCTS CONSULTATIVE COMMITTEE

Master Builders has continued its advocacy to ensure that members concerns about Non-Conforming Products and a potential mandatory regulatory response are being heard.

In July 2015 the Building Minister's Forum asked the Australian Building Codes Board (ABCB) to report in February 2016 on the potential need for a mandatory reporting scheme for high risk building products.

To inform its response to Building Ministers, the ABCB established a Non-Conforming Products (NCP) Consultative Committee comprised of key industry stakeholders with Master Builders prominent among them.

Master Builders ensured that the concerns of builders have been heard among other stakeholders such as engineers, building surveyors and building products suppliers.

The Consultative Committee principally considered and provided feedback to the ABCB on:

- Potential options for a mandatory building product certification scheme.
- Assumptions for regulation impact assessment.
- Proposals to address issues associated with products being used in circumstances for which they are not intended.

The ABCB will provide its formal response to the Building Ministers Forum in mid-February and Master Builders will inform members of its recommendations immediately afterwards.



# The Master Builders Fidelity Fund was established in 2002 to **protect the interests of both consumers and builders in the ACT.**

For Builders, the Master Builders Fidelity Fund provides financial certainty as money held by the Fund remains in the ACT. It is securely invested and used for the betterment of the ACT builders and consumers and is therefore not subjected to the vagaries of international markets and events.

The Fidelity Fund issues Fidelity Certificates which provide consumer protection for owners of new homes and those making significant changes to homes. The Certificates protect the owner during construction and for up to six years from the date of practical completion.

Master Builders members receive reduced premium rates and we also offer special discounts for volume users of the Fidelity Fund. For more information contact the Master Builders Fidelity Fund.

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## FIFTH EDITION HUMAN RESOURCES MANUAL **UPDATED**

The building and construction industry is extremely complex. Not only do employers need to contend with the complicated process of building and its numerous laws and regulations, but they are responsible for the day to day management of their employees.

People management is a job in itself, and no employer can be fully prepared for every workplace relations issue that may arise. That's why the Master Builders Association of the ACT has created this Human Resources Manual.

The Human Resources Manual provides employers in the building and construction industry with practical guidance about employment laws. The Manual includes information on:

- **recruitment;**
- **induction;**
- **record keeping;**
- **discrimination and bullying in the workplace;**
- **dealing with unions;**
- **performance management and redundancy; and**
- **termination of employment.**

The Manual is regularly updated, with recent changes to the template contracts and visa options.

#### Further information

If members require further information about the Manual or would like to purchase a copy, please contact the Industrial Relations Department on (02) 6247 2099.



# CONSTRUCTION TRAINING

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MBA Group Training provides learning opportunities through industry training and education services. Safe work practices within the industry are a priority for Master Builders and expert advice is available in a range of areas including occupational health and safety requirements, industry codes of practice, education and training.

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### LICENCE TO OPERATE A FORKLIFT TRUCK TLILIC2001A

The Forklift Training Course is designed to provide participants with the ability to operate a forklift safely and equip them with the knowledge and confidence to apply for a High Risk Work Licence (HRWL).

#### Upcoming course dates

- Wed 16th – Fri 18th March
- Wed 27th – Fri 29th April
- Wed 18th – Fri 20th May
- Mon 20th – Wed 22nd June

**\$625, \$430 (rebate)**

**Southern Training Organisation**

**RTO: 91378**

### LICENCE TO OPERATE A MATERIALS HOIST CPCCLHS3002A

This course is specifically designed for Materials Hoist operators. The category HM course does not allow operating personnel hoists.

#### Upcoming course dates

- Thurs 21st - Fri 22nd April
- Mon 27th - Tues 28th June

**\$650, \$455 (rebate)**

**Southern Training Organisation**

**RTO: 91378**

### INTRODUCTION TO MANUAL HANDLING

The aim of this training course is to provide participants with the knowledge and skills necessary to identify potential hazards, understand the associated risks and implement control measures to minimise their risks.

#### Upcoming course dates

- Fri, 29th April
- Tues, 21st June
- Thurs, 25th August

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Australian Building Codes Board  
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# Breathe a little easier knowing you have completed the best Asbestos training.

## ASBESTOS AWARENESS

The aim of this one day course is to provide participants with an awareness of the hazards and health effects of asbestos and its possible location in ACT homes and the community. Under the current Work Health and Safety ACT an employer must provide information and training to protect all persons from risks to their health and safety arising from their work.

This course provides participants with an ability to identify and understand the dangers of asbestos, an awareness of its possible locations and the procedures followed if presence is detected.

**For more information contact MBA Group Training on:**

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# Updated forecasts ... out now!

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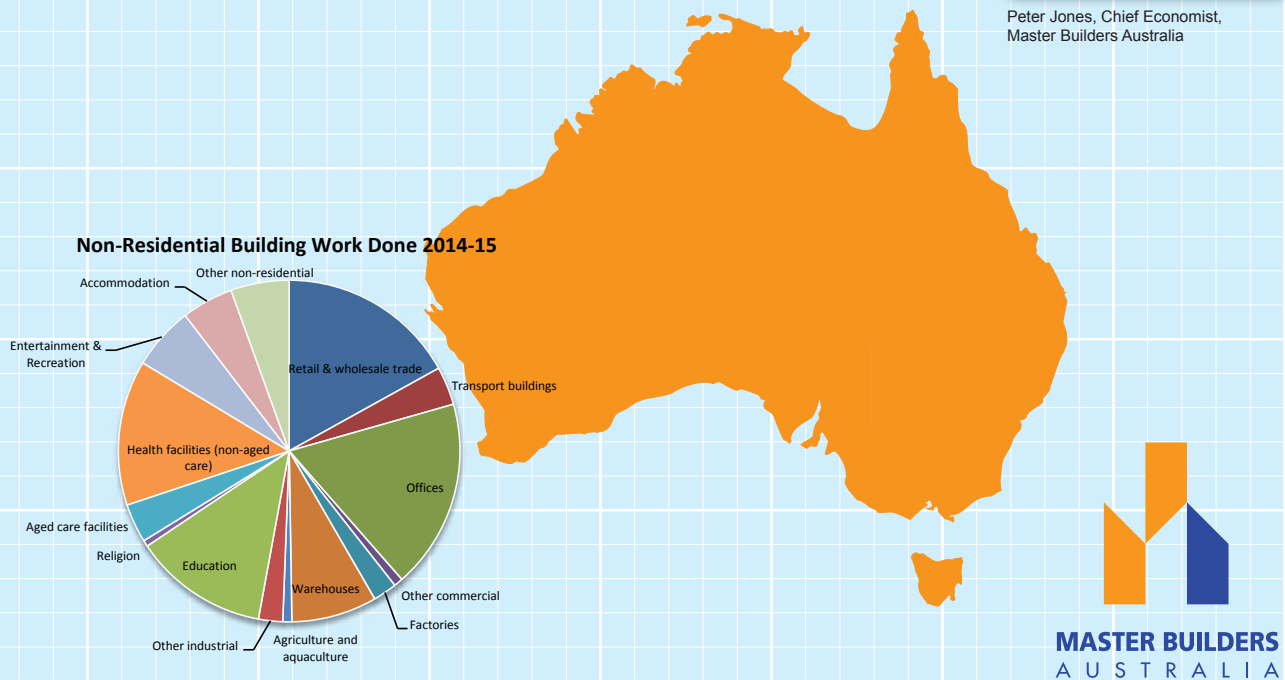
Collaboration with Macromonitor has enabled Master Builders Australia to develop a sophisticated building and construction industry economic forecasting capability. The forecasts are downloadable from our website [www.masterbuilders.com.au](http://www.masterbuilders.com.au).

The complete set of forecasts provides a comprehensive insight nationally into Australia's building and construction industry out to 2018-19.

Individual modules will suit businesses interested in specific state residential, non-residential or commercial sectors. Modules are available for \$50 each (including GST). The complete set is made up of all 41 modules and is substantially discounted at \$1300 (including GST).



Peter Jones, Chief Economist,  
Master Builders Australia

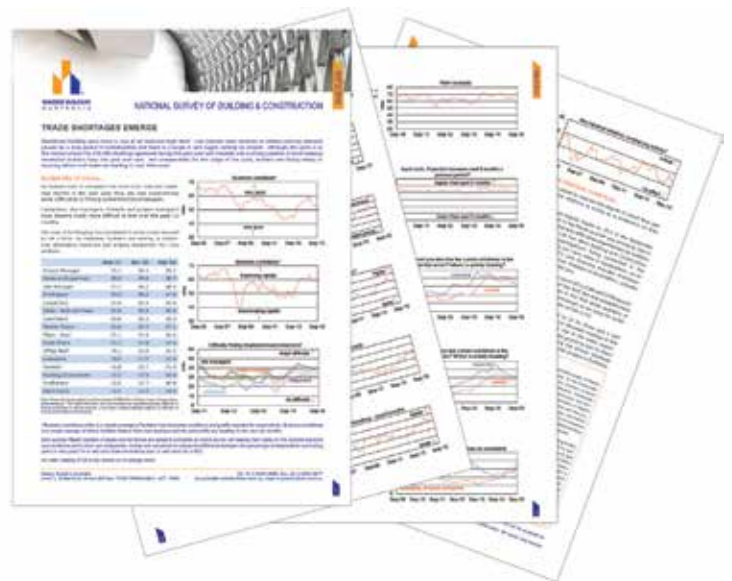


## Help us help you ... be part of our national survey...

Each quarter your Master Builders Association will email you a link to an online survey canvassing your views. The information gathered from the survey provides a valuable tool to members for business planning as well as raising the profile of our industry with important decision makers.

Next time you receive an email about the survey, please take a few minutes to complete it. Your contribution is valuable and would be appreciated.

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