

MASTER BUILDERS AUSTRALIA - RESPONSES TO QUESTIONS ON NOTICE

DR TONER COMMENTS

In response to questions from Senators Lines, Sheldon and B Pocock regarding the EY report we have familiarised ourselves with media reports from Dr Toner and details therein. The following comments are made with respect to those reports:

Dr Toner: *The ABCC does not have a positive effect on productivity*

1. Dr Toner takes a macro-level approach in criticising the positive effect that the ABCC has on productivity, stating that the ABS's National Accounts show that productivity in the construction industry fell during the tenure of the ABCC (2015-2021).
2. This argument does not account for the myriad of factors that influence industry productivity
3. While industrial relations and the regulatory environment is part of this dynamic, other factors such as the investment cycle and government funding/policy also play a significant role in determining productivity, in conjunction with the ABCC's operation. Without controlling for these factors, it is difficult to draw any conclusion that the ABCC does not have a positive effect on productivity. It should also be noted that broader productivity performance across the economy has been weak over the last decade.
4. Additionally, the construction industry is large and diverse, ranging from sole traders to large construction companies with hundreds of subcontractors. Citing a high-level figure on productivity is not sufficient in disproving the ABCC's impact on supporting productivity across the industry.
5. The Report as referenced in our written submission takes an industry-informed approach to understand the impact of industrial action on the construction industry, and the role of the ABCC as a regulator, mediator, and mitigator of industrial action.
6. As the Report confirms through literature review, direct engagement with industry, and a survey of industry participants, industrial action has strong negative impacts on productivity due to work stoppages, knock-on delays to construction processes, increased stress, and diminishing staff morale.
7. Nearly 70% of survey respondents reported that the ABCC has reduced the amount of industrial action, and a similar proportion considered that the ABCC had made industrial action easier to manage.
8. The Report adds to a range of other existing evidence (including various Royal Commissions of Inquiry) that by assisting to reduce illegal industrial action, the ABCC supports industry productivity.

Dr Toner: *Survey respondents rarely experienced industrial action*

9. Dr Toner's approach misrepresents data in Table 3 of the Report, claiming that nearly two-thirds of respondents to the industry survey reported that they never or rarely experienced industrial action.
10. This is incorrect. The Report (p. 23) says that almost 70% of respondents to the industry survey faced industrial actions at their worksites.
11. Table 3 outlines which types of industrial action were most common and is not a reflection of the frequency of industrial action at worksites.

Dr Toner: *The survey methodology is unacceptable*

12. Dr Toner criticises the survey sample for being too small.
13. The report clearly acknowledges this issue (pp. 19-20), stating that the results do not necessarily represent the views and opinions of the entire industry, as only a certain parts of the industry are directly covered by the ABCC system and Code.
14. To sense-check the survey results, the Report compares findings with past surveys. For example, a survey of more than 1,000 construction workers undertaken in 2008 found that more than 40% of workers said the ABCC had improved productivity, and that 85% of workers believed the industry needed an industry regulator. This closely aligns to surveys undertaken to inform the Report which found that 89% of respondents believed that the industry benefited from an industry regulator.
15. While the survey sample size is limited due to the scope of the ABCC regime, the EY report acknowledges this and has incorporated a range of external information to ensure that the results are reliable. As the report outlines, measuring the impact of the ABCC is difficult due to statistical noise, the size of the industry, and the complex factors which make up productivity. A survey, backed up with on-the-ground research and industry engagement, is the best approach to understanding the impacts of the ABCC.
16. Master Builders rejects any suggestion that the views of industry are irrelevant in relation to the ABCC's role. The Reports findings are consistent with past surveys, the Royal Commission, and legal case studies.

Dr Toner: *The estimated labour cost increase from abolishing the ABCC is a 'rounding error'*

17. Dr Toner's response utilises input-output modelling to measure the economic impact of the Report's estimate that labour costs in the construction sector could rise by 1.78%. Dr Toner says that total costs would increase by 0.287%, which is claimed to be insignificant as it falls under the definition of a 'rounding error' as defined by the ABS.
18. This input-output modelling does not factor in the economic dynamics which are examined through the computable general equilibrium (CGE) model which we understand was used to underpin the Report. We understand that CGE modelling is a common methodology used by governments to understand the economic impacts of a policy change; and that it is a comprehensive whole-of-economy model which accounts for a range of important factors that Dr Toner's did not consider. Some of these key drivers are:
 - a. Changes in investment decisions as capital is reallocated to industries with higher returns
 - b. Flow-on impacts to construction-adjacent industries, such as defence, professional services, and health
 - c. Impacts on government spending as publicly funded construction face cost increases

Dr Toner: *Investment impacts cannot exceed GDP impacts*

19. Dr Toner's concludes that investment impacts cannot exceed GDP impacts because investment makes up part of GDP in the formula.
20. Master Builders understands that, based on the national accounting framework, it is entirely possible for investment to decrease by more than GDP, due to the effect of other components of national income, namely consumption, government spending, or the difference between exports and imports.

OTHER INFORMATION TAKEN ON NOTICE QUOTES ABOUT ENTERPRISE BARGAINING

Throughout the hearing, Master Builders also made reference to various comments made publicly by former Government Ministers in relation to enterprise bargaining and workplace productivity. These are collated below for information:

“Friends, Forward with Fairness isn’t about trade union rights. Forward with Fairness is about the rights of working Australians. Labor will guarantee that if you choose to join a trade union then your union can represent you. Forward with Fairness will guarantee if a majority of employees in an workplace, as an enterprise, people who work all day every day as team, want to bargain for a collective agreement as a team then they will be able to do so.”

“Forward with Fairness will guarantee that any collective agreement must be supported by a majority of employees. Forward with Fairness is for working Australians today and for their children tomorrow. Fair and flexible. Balanced and simple.”

(Julia Gillard, Speech – Forward with Fairness, 28 / 04 / 2007)

“When you look at Labor’s policy, it’s a safety net, it’s decentralized enterprise bargaining – which is collective bargaining at the enterprise level and it’s an independent umpire to oversight the system.”

“They are the three pillars of it, and those three pillars were essential to the productivity growth, and boosting the productivity performance of lots of individual enterprises in this country from 1993 to 1994 onwards.”

“Those pillars will not be inflationary, and they will not harm the economy.”

(Greg Combet, The Australian – Combet places wages policy in Keating era, 20 / 08 / 2007)

GILLARD: If you like, Australia was moving in a reform direction away from centralised wage fixing towards enterprise bargaining, Labor did that, and if we'd seen a continuation of that reform direction we would have moved even further beyond the 1993 reforms.

(Julia Gillard, Channel Ten – Meet The Press, 26 / 08 / 2007)

As we’ve said in our policy, that there are a very limited number of circumstances where you “need the industrial umpire to step in and resolve a dispute. It’s the sort of safety valve that has always been in our industrial relations system. If you have got a dispute that is threatening safety or health or the national economy, an intractable dispute that is causing significant hard, they are they kind of circumstances in which the industrial umpire would be able to resolve the dispute. But in the ordinary course people who are collectively bargaining at their enterprise level, all of that bargaining will happen at the enterprise level, they will either strike an agreement or not strike an agreement.”

(Julia Gillard, Doorstop – Melbourne, 03 / 09 / 2007)

“...collective agreements encourage more harmonious workplaces while also enhancing greatly the industrial flexibility of individual firms. This approach to enterprise agreements was based on the reality that, beyond the base level protection provided by the relevant industry-wide awards, firms needed greater individual flexibility to operate in the global marketplace.”

(Kevin Rudd, Hansard, 09 / 11 / 2005)

“Enterprise collective bargaining is an important driver of productivity and a key feature of our policy. True non-union collective bargaining is a feature of Forward with Fairness. Under our system, a union does not have an automatic right to be involved in collective bargaining.”

"None of these requirements are in place under Forward with Fairness. A non-union agreement will be just that – a non-union agreement. Indeed, a union would not even know it was being made."

(Julia Gillard, Speech – Melbourne Press Club, 25 / 06 / 2007)

"Under Labor, it will be entirely possible for an employer which employees both union members and non-union members to make an enterprise agreement that the union plays no role in the making of and with which the union does not agree. Under Labor's system, unions have no automatic right to be involved in collective enterprise bargaining."

(Julia Gillard, Speech – Queensland Media Club, 30 / 08 / 2007)

O'BRIEN: Well, I'll come to the detail of its impact on the economy shortly, but if you could just quickly elaborate on how enterprise bargaining would work and what guarantees you can give that if the workforce in a particular enterprise did not want the union to represent them in the bargaining, then the union wouldn't get a look in.

GILLARD: I can give an absolute guarantee of that Kerry. If unions, if workers don't want unions involved, unions won't be involved. Indeed, if workers who are not members of a union are bargaining with their employer, the union wouldn't even know it's happening. It would be happening at an enterprise level, it would be about making the enterprise more productive, if you do that then there are gains to share. And in terms of the rest of the economy, productive enterprises mean workers will be better rewarded. There's no way a wage bargain in one workplace will flow through to other less productive workplaces, so you don't have an issue with wage inflation or upwards pressure on interest rates.

(Julia Gillard, Channel Two – 7.30 Report, 04 / 09 / 2007)

"Mr Howard claims that a union will be able to dictate the terms of an agreement in a workplace even if there is only one union member in the workplace. But of course this isn't true. Labor's policy provides that if employees want to make a collective enterprise agreement, they can bargain with their employer represented by whoever they want."

(Julia Gillard, Media Release – Federal Labor's industrial relations system for the future, 30 / 08 / 2007)

"What we would guarantee to fight inflation and to fight wage inflation is that our industrial relations system would be based on enterprise arrangements. So if you are in a productive enterprise, then you would expect to share the gains of that productivity with your employer. If you're in an enterprise that isn't going so well, then there wouldn't be gains to be shared. But what we would absolutely make sure of in our system is that there's no way in the world pay rises in a strong productive sector flow through to other sectors. That's what causes wage inflation, when you get a national wage movement because one sector of the economy is going strongly. Our system would not permit that. Our system would be based on enterprise bargaining. It would all be about how well your individual business is going."

(Julia Gillard, 612ABC – King, 29 / 10 / 2007)

Instead of investing in our stock of human capital, Australia has fallen behind in its education and training of all workers. Australia has also pursued an industrial relations agenda which encourages individual agreement over collective bargaining—despite the positive relationship between enterprise level agreements and long-term productivity growth.

(ALP National Platform 2007, Chapter 7.46)

"Well, the last government in this country that sat idly by and watched centralised wage fixing was in fact the Fraser/Howard Government. It was the Keating and Hawke Labor Governments that changed the system from a centralised system to an enterprise bargaining system and that will be the focus of our system because it's enterprise bargaining that drives productivity and we want productivity to be at the centre of the industrial relations system."

(Julia Gillard, Meet the Press, 25 / 02 / 2007)

REPORTER: How would a return to a pattern bargaining or in fact a lot more centralization of the Labor system, makes the economy more productive, how would it not impose costs on the economy which aren't there now?

RUDD: Well it's an economic argument on productivity which goes along these lines: how do you best pull productivity out of firms? Do you do it by a series of individuals arrangements which simply enable employers to cost gouge into wages conditions individually picking one worker off after the other or do you have a cultural enterprises which came out of our reforms of the '90's which said this: If employers and employees are working together as units of production, as firms, that's how in fact you best yield the best productive outcome.

(Kevin Rudd, ABC – Uhlmann, 28 / 03 / 2007)

O'BRIEN: Dean Mighell is a trade union official who calls a spade a spade. You've just seen what he had to say at the Labor conference in Michael Brissenden's story. There's no doubt what he's expecting from a Labor Government. The power to coerce his word coerce employers into agreements restoring lots of conditions, quote, "That's going to be fun," he said. And that was in the context of pattern bargaining. He expects a return to pattern bargaining. Do you endorse pattern bargaining, where whole industries are brought into line with an enterprise agreement model that's been imposed, coerced whatever word you want to use - negotiated, with a single company?

RUDD: That's not the approach that we support at all.

(Kevin Rudd, 7.30 Report, 30 / 04 / 2007)

"The Labor Party's policy Forward with Fairness, says you have to be bargaining at your enterprise level. Pattern bargaining is a term used to describe bargaining across the whole industry, that is not what Labor's policy is about."

(Julia Gillard, ABC – AM Program, 30 / 05 / 2007)

"Labor's policy is perfectly clear on this question. Labor will not enable industry wide strikes to be taken, that will be unlawful under Labor's policy. We have always been crystal clear about that. You will have to, in Labor's system, if you are collectively bargaining, be bargaining at an enterprise level."

"Our policy is perfectly clear on this. A Rudd Labor Government will enact legislation which means, you must be bargaining at an enterprise level."

(Julia Gillard, Doorstop – Sydney, 01 / 06 / 2007)

KELLY: Will it deliver employees higher wages in some cases?

GILLARD: It's a system that will guard against wage inflation. What is the sort of wage inflation that the Reserve Bank worries about? It worries about wage rises in strong sectors of the economy, sectors like mining during the resources boom, it worries about those wage rises flowing through to the rest of the economy. That will be impossible under Labor's system. Our system is about the productivity of individual enterprises, it will be impossible for wage rises in strong economy sectors to flow through to unproductive sectors.

(Julia Gillard, ABC Radio National – Fran Kelly, 16 / 08 / 2007)

GILLARD: We have launched our policy, it is clear. We have launched it of course, knowing that the economic evidence about enterprise based bargaining and working on productivity at the enterprise level shows that it is good for productivity. That has been the experience in this country in the past, that looking at your enterprise, where you work and working with your employer to try and get it to work more productively is a good way forward. So we have been informed by that economic research, those economic findings in putting the policy together. And I would note that with all the

resources of government, all of the thousands of bureaucrats at his disposal, all of the resources of the Federal Budget, Mr Howard has never released a piece of economic modelling about Work Choices.

"Obviously I saw what Paul had to say and I'm still a little bit puzzled by what he actually meant in that interview but let me be very clear about this. The system we are proposing is an enterprise bargaining system, it has plenty of flexibility for individual deals at workplaces and a deal in one workplace cannot flow through to a deal in another workplace."

(Julia Gillard, Insiders, 17 / 06 / 2007)

"I am not in the business of stopping workers and employers doing what they genuinely agree to."

(Julia Gillard, ABC News radio, 04 / 01 / 2007)

"Can I make it clear that Federal Labor does not agree with Dean's views about workplace confrontation in our workplaces, and the desire for industry wide industrial action."

(Julia Gillard, Speech – ETU, 01 / 05 / 2007)

"...collective agreements encourage more harmonious workplaces while also enhancing greatly the industrial flexibility of individual firms. This approach to enterprise agreements was based on the reality that, beyond the base level protection provided by the relevant industry-wide awards, firms needed greater individual flexibility to operate in the global marketplace."

(Kevin Rudd, Hansard, 09 / 11 / 2005)

REPORTER: Would a Labor Government seek to relax those provisions that allow industry wide strikes or as you say the days of big unions dead?

GILLARD: Look I think the days of that kind of wide scale industrial action, unions and our workforce, have largely moved on. When we had a more protected economy it was possible for there to be routine industry wide strikes but the whole economy has changes and what explains the low level of industrial disputation now is that whole economic change. Of course there is, even under the governments system, they say there are times when you can take industrial action and then they tie that up in all sorts of legal red tape. Under our system ultimately in limited circumstances when all else is failed people might choose to take strike action and that's a democratic right too to withdraw your labor. But I would certainly not see the level of disputation rising under a Labor system.

(Julia Gillard, Adelaide Advertiser, 17 / 02 / 2007)

"Even the WorkChoices legislation doesn't legislate, doesn't make pattern bargaining unlawful. I think we've got to just note that but my view is the future is not in industry-wide action. The future is in enterprise bargaining and driving productivity at workplaces. When we look at workplaces in this country, which are similar, you will always see some commonality to conditions."

"So there are industries in which there will be some commonality of conditions, but my view is the great productivity gains for this country are in enterprise bargaining."

(Julia Gillard, Meet the Press, 25 / 02 / 2007)

"...if you get the structure right tariffs, competition policy which we are doing with Hilmer, a completely open financial market, a much more flexible labour market all of these things produce a natural contestability which gives you natural increments to productivity and low inflation."

(Paul Keating, 12/05/1995)

"Labor will not shift the essential balance in the relationship between employers and employees: we will make the relationship more flexible, we will make it more productive, we will offer more choice."

(Paul Keating, ALP campaign launch, 14/02/1996)