

Our Reference: Productivity
Commission QLD
Your Reference:



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Queensland Productivity Commission
Construction Productivity Inquiry

BY ONLINE SUBMISSION

SUBMISSION: INITIAL STAKEHOLDER INPUT: CONSTRUCTION PRODUCTIVITY

I provide initial submissions to the inquiry and I would welcome being consulted further by the Queensland Productivity Commission (QPC) in relation to this inquiry.

I hold a Bachelor of Economics (1996) (where I graduated at only 19 years of age) and Bachelor of Laws (2000) each from the University of Queensland. Since 2000 I have practiced primarily as a construction lawyer both in Queensland and overseas. While a construction lawyer I also have maintained a keen interest in economics even though I do not practice as an economist.

As part of my practice I have drafted construction contracts for multi-billion dollar projects and also provided legal advice for major projects from concept to completion. As such I have international experience in major projects, and I can compare that experience overseas to how such projects are delivered in Queensland.

In more recent years I have also frequently acted against the Queensland Building and Construction Commission (**QBCC**) and I have come to understand first hand its operations and in particular its gross failures in properly regulating the construction industry in Queensland.

My experience in the construction sector is therefore neither a theoretical interest nor a vested interest, I have actual first hand experience in major projects, and also in dealing with the QBCC.

The Terms of Reference for this inquiry is very broad and appears not be limited to construction productivity (i.e. the productivity of labour in the construction sector). Generally I believe a narrowing of the scope of the inquiry is advisable.

Response to Terms of Reference

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“Current conditions in the housing market, residential development sector, infrastructure delivery and construction sector in Queensland, including in both housing and non-residential construction as they relate to the delivery of additional housing supply and housing affordability.”

There is clearly an excess of demand (from both private and public sectors) over supply from the private sector of both construction services and construction labour in Queensland. Given Australia's high net migration, historic shifts of Australia's population towards Queensland and the 2032 Olympics that demand will not abate, and most likely will increase. Queensland must therefore prioritise policies to increase the supply of all services and inputs in the construction sector. Further, public demand for construction services for infrastructure (such as for the Olympics) is crowding out supply to the private sector.

Housing supply constraints can be directly linked to decreased affordability. Urban land in South East Queensland has become increasingly expensive, I would estimate any metre of developed land in South East Queensland is worth least \$1000 per square metre. However despite urban land being so expensive, the state and non-profit sit on vast quantities of urban land which is either not utilised, sparingly utilised or utilised for the wrong purpose. There is a desperate need for the State to increase the supply of land available for development to either develop itself or sell to the private sector to develop. A state agency tasked with identifying such land and bringing to market quickly would assist. Planning reform would assist too.

There should be no reason for the supply of land to be so constrained in a state which so much land available. This means policy settings which can be changed are a contributor to supply restriction.

Further, houses are built in Australia using primarily “stick” built methods where most material assembly occurs on site. The vast majority of the cost of housing is therefore labour. On site methods are inefficient, they primarily use moving material by hand, and labour often sits idle waiting for material to arrive. Further, as houses are built trade by trade, houses take longer to build because they are built in linear methods one trade at a time (meaning houses often sit idle waiting for the next trade to be available) rather than with concurrent work fronts. The cost of house construction will not fall unless there are radical changes to the way houses are built, either by full modularisation or moving work off-site by using say post and beam or portal frame construction methods. The state has a role by encouraging off site construction methods, particularly in its own procurement of public housing.

“Key trends in the sector including input costs, prices, competition, supply chain developments, productivity, and relevant comparisons with other jurisdictions and, where possible, across Queensland regions”

The recent CEDA construction productivity report highlighted that the residential construction sector is supplied by a large number of small operators. I believe there are few reasons for this. One major reason is state payroll taxes, small businesses stay small to stay under the threshold. Another reason is flexibility, many small operators trade as limited liability companies for tax benefits but also flexibility, because construction labour is otherwise highly regulated and union dominated. I would say the major project sector is the reverse, large scale building (say projects in excess of \$100 million) is dominated by a small number of players, and increasingly by overseas owned construction contractors, and therefore with limited competition.

The state needs to improve its forecasting and create a steady pipeline of work for major contractors to survive. Further, the state itself needs to become a better buyer by employing in the public service people capable of managing large contractors rather than contracting out such services to project managers. Generally there is too many white collar service providers in the construction industry who do not actually build anything. A key reason for decline in construction productivity on major projects is an increase the ratio of white collar workers to blue collar workers. Government has a role in reducing red tape so as to reduce the need for so many white collars workers to comply with the regulatory burden imposed by government.

“Productivity on residential, commercial and infrastructure construction sites, across a range of typologies and locations, relative to productivity performance in other States”

I am not able to comment on this.

“Factors shaping Queensland's productivity performance including commonwealth, state and local government legislation and regulation, industrial relations matters, procurement policies and labour force needs (individually, cumulatively or through duplication) and opportunities for improvement.”

Generally in Australia there has been a significant increase in migration without an equal increase in capital. This has resulted in a capital shallowing where more labour is being used relative to capital, resulting in a natural decrease in productivity per person. Construction trade labour and skills is not in any shortage worldwide, so it is policy issues that mean the state is not attracting a sufficient migration of construction workers. If policy issues are the cause, at least policy settings can be changed to fix it. Many major projects in Australia (for example the Snowy Mountains Scheme) were only able to be delivered by also utilising imported construction labour. The same issue will apply to projects in the future, such that it needs to be easier to import skilled trade labour for major projects.

In our immediate region there is an opportunity for Queensland to attract construction labour from other states and New Zealand. While there is already mutual recognition, policy settings to encourage this migration of construction skills is a good idea. For example, mutual recognition should be considered for extension beyond other Australian states and New Zealand.

In major projects in Queensland the supply of construction labour is union dominated. This has resulted in “rent seeking” behaviour where wages have increased without productivity increases and hours worked have decreased. Given construction projects have high overheads, this impacts project durations and overall cost. This rent seeking behaviour has resulted in a transfer of wealth from the taxpayer to such rent seekers (and also a reduction in the amount of new infrastructure which can be delivered to benefit all citizens for the same amount of money i.e. poor value for money).

Union domination of construction labour is not new, craft guilds for example go way back to the 12th century. Adam Smith identifies the issue in *The Wealth of Nations*¹ and also identifies the only solution are those imposed by the customer:² *“[t]he real and effectual discipline which is exercised over a workman, is not that of his corporation, but that of his customers. It is fear of losing their employment which restrains his frauds and corrects his negligence”*. As a result the state has a role as a customer in regulating unproductive rent seeking in the construction industry.

“The opportunities for improvements in productivity in Queensland including regulatory and non-regulatory mechanisms”

Regulatory Mechanisms

A state based Building and Construction Commission including a State Code for the Tendering and Performance of Building Work in Queensland, covering both public and private sectors.

As apprenticeships are supposed to be competency based, consideration being given to reducing usual construction trade apprenticeship durations from 4 years to a shorter period, say 3 years. This may have the benefit of increasing supply of apprentices by reducing the cost to employers, and also permitting apprentices to move to higher wages a year earlier (again Adam Smith identified apprenticeship durations as an issue in 1776³).

Do away with project trust accounts and have more management contracting where sub-contractors, sub-trades are paid directly by the customer, with the head contractor being paid a management fee with bonuses for meeting key performance indicators.

Non Regulatory Mechanisms

Advertising in other states and New Zealand of construction and lifestyle opportunities in Queensland to encourage migration of construction skills to Queensland.

¹ Adam Smith *The Nature and Causes of the Wealth of Nations* (Liberty Fund Edition, Indianapolis, 1981) 142-146 (Smith)

² Smith at 146

³ Smith at 136

Further steps in secondary education to reduce inherent bias towards tertiary as opposed to technical education, in particular in South East Queensland.

“Priority areas for reform for the Queensland Government to efficiently address identified challenges in the short, medium and long term (including but not limited to labour availability, skills availability and market competition, the availability of suitably qualified head contractors and sub contractors etc) key recommendations and themes from other relevant productivity reviews, including those undertaken by the Australian Government Productivity Commission”

The QBCC needs reform. In the short term the 2022 Varghese Review into the QBCC should be revisited and either implemented (or supplemented) rather than a new QBCC review.

The QBCC is currently a tight – loose regulator, it imposes very significant regulatory burdens to obtain and maintain licences and requires significant reporting (minimum financial requirements for example) but does little by way of enforcement. This increases the cost to everyone and may discourage new trade entrants, yet does not discourage bad behaviour and remove bad actors from the industry (who can phoenix into a new business merely by nominating a new nominee). The cost of bad behaviour is carried by consumers through unrectified defects and the increased cost of paying Home Warranty Insurance.

The QBCC needs to change to a loose – tight regulator, reducing licencing requirements and costs but increasing enforcement. I would separate the QBCC’s functions into two separate entities, one for licencing and one for enforcement and managing home warranty insurance premiums and claims. Varghese recommended this (recommendation 1.1).

“Impact on small and medium scale subcontractors in regional areas to compete for government tenders due to regulatory requirements”

What is needed is steady regular workflow with simplified contracts, regulations and reporting requirements. Queensland Government building contracts now seem to require onerous reporting requirements to meet state government policy objectives (e.g. training policies) which small contractors do not have the resources to meet. Government construction and procurement contracts need to be standardised (at both state and local government level) and simplified for small value work.

“Flow on effect across the industry of government regulations to compete for labour and resources on both wages and work conditions”

I have no comment.

“Factors that limit the availability of suitable labour for building and civil construction, skills development of the labour force, and matching of labour supply with sector demand, and how policy settings can be improved”

See comments above.

“How government procurement and contracting arrangements, including Best Practice Industry Conditions, affect productivity in the construction sector, and how practices and policy settings can be improved”

As commented above, the State Government can take the lead by imposing from a customer level a requirement for improved construction industry behaviours. Major contractors will not do it because they are beholden to union interests and may in fact profit from project cost overruns. The State Government needs to be a more principled, better buyer.

“Barriers to entry, investment and innovation in the sector, and potential options to address those impediments”

The construction industry is highly regulated, which therefore creates barriers to new entrants. As I stated, the QBCC needs to change to a loose-tight model. If more houses are to be built the primary method of how houses are built needs to change (more standardised designs with less on site labour and more mechanisation (craneage for example in residential construction)). The State Government could seek some open source fast build architectural designs and build public housing using faster construction methods with more modularisation and standardisation.

“Key issues to be considered in implementing reform options identified and views on how recommendations could be prioritised.”

This is a matter for the inquiry.

Yours Sincerely

(sent electronically, therefore unsigned)

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