



**ECONOMIC REGULATION AUTHORITY  
INQUIRY INTO  
MICROECONOMIC REFORM  
IN  
WESTERN AUSTRALIA**

Master Builders Association of Western Australia Submission

**1. Introduction**

This submission is made by the Master Builders Association of Western Australia.

Master Builders is the pre-eminent building and construction industry employer representative group in Western Australia. Master Builders was formed in 1898 and registered in the Registry of the Western Australian Industrial Relations Commission (WAIRC) in 1904, and is one of the oldest employer associations with a continuous registration in Western Australia.

Our membership comprises over 1,800 national commercial builders, state-based commercial builders, specialist commercial sub-contractors, residential builders and sub-contractors, regional builders and sub-contractors, suppliers, kindred employer associations and government agencies.

Our membership operates throughout all of Western Australia and we have regional offices located in the major centres of Bunbury, Albany, Kalgoorlie and Geraldton.

Our members carry out work in the commercial, residential, resource, civil and infrastructure sectors throughout the state.

**2. Economic Contribution**

The building and construction industry is a major driver to Western Australia's economy.

The Construction Forecasting Council forecasts the following value in residential, non-residential, and engineering construction activity in Western Australia from 2012-13 to 2015-16.

2012-13	2015-16
<u>Residential</u>	
\$10.35 billion	\$13.78 billion
<u>Commercial</u>	
\$5.8 billion	\$6.0 billion

The economic value of the construction industry contributes 10% to the Western Australian Gross State Product.

The building and construction industry employs about 9% of the Western Australian workforce or 133,230 persons as at May 2013. Of this number the Master Builders approximates about 50% work on construction sites throughout the state.

### 3. Master Builders Response

#### 3.1 Licensing of Builders

Licensing in the building industry in Western Australia is limited compared to other states.

To carry out work as a builder in Western Australia a person must be approved by the Building Services Board to be either a building practitioner or building contractor where the work is more the \$20,000 in value and a building permit is required. This is a requirement under the Building Services (Registration) Act 2011.

Oddly, the Building Services (Registration) Act retained a limitation on the geographical application of its antecedent legislation, the Builders Registration Act 1939, which essentially was limited to the South West Division of Western Australia as prescribed by the Land Administration Act 1997, and certain prescribed town sites in Western Australia.

Master Builders see no merit in retaining this restricted geographical application of the legislation and has already approached the State Government to scrap this anachronistic provision. In doing so we are mindful of the "Compensation Principle" set out in the Inquiry's Issues Paper and say the extension of the licensing requirements for a building practitioner or building contractor will meet the Compensation Principle.

This will come about by builders in the remote regions of Western Australia not enjoying an unfair competitive advantage in not being required to be registered as a builder or contractor by the Building Services Board. It follows that this lack of licensing requirement as a builder will likely impact on an unregistered builder's understanding of various building code requirements as well as occupational safety and health obligations. On balance, removal of this throwback to early in the last century, which presumably was designed to provide remote regional

areas outside the South West Division access to building services, simply no longer applies in 2013. In Master Builders' submission, the benefits in scrapping this provision outweighs the cost of introducing it. The benefits are manifold and include but are not limited to better consumer protection, better public safety, improved safety standards in construction and compliance with building codes. Whilst unregistered builders in these remote areas will understandably argue they face additional commercial costs in seeking registration which will likely translate to higher construction costs for clients, Master Builders says the countervailing position of improved building and safety standards outweighs the initial cost and is in the public interest.

Whilst Master Builders calls for the extension of the Building Services (Registration) Act 2011 to all of Western Australia, it ought not be construed as Master Builders advocating for the imposition of more government red tape and regulation as we do not. This position is considered and in the context of this issue and is made having regard for the Compensation Principle.

Master Builders is also supportive of there being greater differentiation in the classifications of building practitioner to recognise the different types or categories of construction work undertaken by builders. This is an issue we are currently pursuing under the National Occupational licensing Initiative.

### **3.2 Trades Licensing**

The licensing of various trades and accredited occupations has been the subject of major federal review under National Occupational Licensing initiative since 2008, though its momentum in recent years has faltered as various state governments identify decreasing benefits from going down this path. It appears the Compensation Principle when applied to the National Occupational Licensing proposal has shown the cost benefit analysis to offer few benefits in comparison to the cost of introduction. As this major federal initiative was primarily based on the principle of mutual recognition of various licensed trades and occupations between states and territories, the costs associated with establishing a federal bureaucracy to administer the scheme and additional costs to state and territory governments as well as persons caught up by the scheme offered little meaningful benefit.

This is a major consideration to Western Australia as the premise of this former Federal Government initiative was to allow greater skills mobility between the eastern states. The perceived benefits to Western Australia were limited as there are only two licensed trades in the building and construction industry which are plumbing and electrical. Painters are required to be registered with the Building Services Board if they carry out work over \$1000, or are a nominated supervisor for a painting contractor with registration limited to the south west region of Western Australia. Registration is however, not a licence as per plumbing or electrical, as painters without registration can work as a painter for a registered painting contractor. Again, Master Builders sees no reason to limit the scope of application of painter registration to the south west region only.

The limited number of licensed trades in Western Australia does not act as a barrier to skilled workers coming to Western Australia and seeking/gaining employment in their trade. Arguably, it is a benefit so long as the workers are skilled in their trade. As a result, the main pier of support for National Occupational Licensing of skills transportability across state/territory borders has little impact in Western Australia as this state requires intrastate skills mobility to service resource projects/sites and limited trades licences presents few barriers to skilled trades coming west.

Master Builders does not advocate for the extension of licensing trades in the building industry at this time in Western Australia as consideration must first be given to how a trades licensing system would operate, an effective transition arrangement to prevent a loss of skilled but unlicensed workers from trades and the benefits to be derived of introducing licensed trades which is more than just consumer protection alone. For example, will licensing of trades result in greater apprenticeship completion rates and what is the experience in other states where trades are licensed? There has been no cost benefit analysis carried out on this matter, as we understand, as it affects Western Australia. The question is complex and Master Builders has an open mind on the subject but we recommend an in depth review be conducted by the State Government on the benefits of the pros and cons including conducting a Risk Impact Statement (RIS) of expanding trades licensing, and to what extent, before any decision is made to do so or not.

### **3.3 Occupational Safety and Health Harmonisation**

Master Builders is not an advocate of the harmonisation of occupational safety and health in Western Australia as part of the federal Occupational Health and Safety exercise and we have not been since 2008. Whilst this placed us at odds with many state based employer groups we now find we are no longer in the minority on this matter as many state based employer groups now share our position and common reasons in opposing the seriously flawed federal safety harmonisation exercise.

Whilst Master Builders does call for harmonisation between the federal model OSH legislation and the state Occupational safety and Health Act 1984, as far as possible, we do not call for a slavish approach, rather, harmonisation that benefits safety and stake holders in Western Australia, where appropriate. Our view is, much of the federal OSH harmonisation exercise fails that test.

Similar to National Occupational Licensing the driver behind a federal OSH harmonisation exercise was to have a one size fits all approach to safety across all state and territory borders. For national companies it makes eminent sense, but this premise falls down badly in Western Australia given few local state based businesses trade across state borders. This assertion was strengthened in April 2012 when the Victorian State Government issued a Risk Impact Statement (RIS) on introducing the federal OSH harmonisation in that state and at page 2 of the RIS found less than 1% of Victorian businesses operate in multiple jurisdictions. Master Builders argues there will be a similar outcome in Western Australia.

We say the so-called economic benefits put forward by the then Federal Government in 2008 as underpinning its OSH harmonisation initiative will not be realised in Western Australia. The Federal Government also issued a RIS in support of the federal OSH harmonisation exercise that foreshadowed national savings of between \$1.5billion - \$2billion per annum over the following decade ending in 2018 but no economic break down was provided for any state or territory making it impossible to assess any notional savings for Western Australia. Adding to Master Builders concerns on this point is the Victorian Government RIS of 2012 revealed major costs to that state's industry rather than any savings and a reduction on current state safety standards. Master Builders concludes there will be a similar outcome in Western Australia as foreshadowed by the Victorian RIS. Master Builders is also aware the State Government has undertaken a RIS on the impact of introducing the federal OSH harmonisation model in this state. That RIS has not been made public at this time but we speculate a similar outcome to Victoria.

In addition, a fundamental question arises in connection with the introduction of the federal OSH harmonisation exercise on Western Australia and that is what benefits arise to Western Australia, or put another way, how does the Compensation Principle apply? That has not been answered in this exercise but Master Builders points out that since the OSH Act 1984 was introduced in 1988 in Western Australia, injury frequency rates have dropped 73% in this state. There was no argument put forward by the former Federal Government about how the federal OSH harmonisation exercise will actually improve safety standards and KPIs in Western Australia over and above what the current state legislative model is delivering now and has delivered to date.

What is telling also against the federal OSH harmonisation exercise is a submission by WorkSafe WA in 2008 to the Federal Government on this exercise which at page 5 said:

*"We do not agree with the premise taken within the RIS that the significant upfront costs involved with the proposed model WHA Regulations will be outweighed by the resultant significant upfront implementation costs. It is our view that the identifiable potential benefits are not sufficient to out-weigh nor even off-set the costs associated with the introduction of the proposed WHS Regulations." .....*

*".....Our general observation is that the model WHS Regulations impose an increase in administrative activities which in themselves do not deliver safety benefits. ...."*

The Compensation Principle is clearly not met on the above extract from the WorkSafe WA submission and little has changed since the 2008 submission was made.

### **3.4 Priority Start Apprentice Policy**

The State Government has a Priority Start Apprentice Policy that seeks to reward commercial builders who employ local building industry apprentices. This Policy

and its previous iterations have been in place for at least three decades and is a Policy Master Builders supports.

The purpose of the Policy is to recognise those commercial builders that engage local building industry apprentices as a consideration in the tender process and in awarding a contract by Building and Management Works (BMW) as opposed to builders who do not engage building industry apprentices. Regrettably, the Policy does not extend to State Government trading corporations at this time as their respective governing legislation does not provide for this intervention by government Policy. Master Builders recommends the legislation for State Government corporations be amended to provide for this Policy to have State Government-wide application.

Master Builders says this Policy meets the Compensation Policy. The State Government has retreated from training trades apprentices since the early 1980s as various State Government departments and agencies have either been closed or privatised in some way. Examples are the closure of the State Government Heavy Engineering Works, closure of the Midland Yard Rail Sheds, closure of building construction and maintenance sections in HomesWest, Building Management Authority, Western Power, Main Roads and so on.

In effect, the State Government has withdrawn from directly training apprentices though in 2005 it sought to address that position by engaging a small number of building industry apprentices as an adjunct to the predecessor of the current Priority Start Policy.

Given the major infrastructure works built by State Government trading corporations such as Water Corporation, Ports and Energy corporations, Master Builders maintains the extension of the Policy to these entities will benefit skills training in Western Australia.

Master Builders concedes this Policy by itself will not, and never can, meet the skill training requirements of Western Australia. However, we have for many years said the State Government can do more in this area by rewarding builders who employ apprentices in that those builders will not be disadvantaged for doing so when bidding for State Government construction projects against builders who do not employ apprentices.

### **3.5 CEPU Licensed Inspectors**

Master Builders has raised a concern with the Director of Energy Safety, Ken Bowron, an anomaly under the Energy Co-ordination Act 1994 in which officials of the Communication, Electrical and Plumbing Union (CEPU) are able to enter building sites to inspect electrical licences. This power of entry is very limited and narrow under the ECAct 1994. Regrettably, it has been made known to Master Builders since mid 2012 that certain CEPU officials are abusing this entry and inspection power by allegedly portraying they have much wider authority including the inspection of electrical work performed and cutting power to site in one instance. Such conduct clearly breaches the narrow powers these union officials have under the ECAct.

Master Builders sees no real value in the existence of these powers which are anachronistic and add little to the intent of the ECAct. Master Builders says this provision ought be scrapped as it serves no meaningful purpose.

### **3.6 Industrial Relations Act**

Master Builders has previously identified and raised with the Minister for Commerce several issues of concern we have in connection with the Labour Relations Legislation Amendment and Repeal Bill 2012.

Master Builders is at odds with some WA employer groups in that, unlike those, we do not advocate the handing over by the State Government of its private sector industrial relations powers to the Federal Government. Our conviction is based on cogent reasons in that small employer members of Master Builders who are currently bound by the State Building Trades (Construction) Award 1987 will face increases in labour costs in redundancy pay, travel costs and higher wage costs under the federal Modern Building and Construction General On-site Award 2010. Master Builders identifies no good reason for this to happen and we have, as a matter of Policy, adopted a harmonisation, as far as possible, with the Fair Work Act 2009. This position also accords with Master Builders' position in connection with the Federal OSH harmonisation exercise.

A major weakness in the Labour Relations Amendment Bill is the lack of recognition of non-union enterprise agreement path ways and statutory individual agreement making instruments.

It is widely accepted that the private sector workforce in Western Australia is only about 10% unionised.

The current state Industrial Relations Act 1979 and the Amendment and Repeal Bill only provide for 2 types of workplace agreement under the state industrial relations framework. These are either an employer entering into an enterprise agreement with a union under the state IRAct 1979 to be approved by the Western Australian Industrial Relations Commission (WAIRC) or highly restrictive Employer/Employee Agreement (EEA) that must closely follow the relevant state award. In reality, EEAs offer little meaningful incentive for employers remaining in the state industrial relations system to take these up. That is why only about 130 EEAs have been approved by the WAIRC since their inception in 2006. Clearly, EEAs have been an underwhelming success and that was the intention when these were introduced by the former State Labor Government in 2006 given they offer little flexibility outside a state award.

Only small private sector employers remain within the state industrial relations system who are structured as sole traders, partnerships and some family trusts which the WAIRC in its 2006 Annual Report suggested was about 30% of the Western Australian workforce.

On the assumption the 2006 WAIRC estimate is correct, that figure represents a sizeable portion of the state's workforce and when linked to the small union cohort of the private sector state workforce the need for greater flexible

workplace arrangements by small state based employers cry out. Master Builders understands the lack of needed flexible state workplace arrangements in the Amendment and Repeal Act 2012 is due to a lack of calls by small employers for this. Master Builders does not portray this as some acceptance of the current inflexible system, rather, a lack of understanding of the opportunity of what they could ask for.

The absence of access to genuine non-union enterprise agreements or some form of statutory individual employment contract of employment underpinned by an appropriate No Disadvantage Test within the state industrial relations framework condemns small state based employers to remain constrained by inflexible awards.

Master Builders says this is thinking more akin to the last century when work was performed on a regular Monday to Friday basis, retail shops closed at midday on Saturdays, no shops opened on Sundays, except the corner delicatessen and petrol stations had similar opening hours with roster stations open at night and on weekends.

Why the Amendment and Repeal Bill seeks to retain a 1950s approach to workplace arrangements is at odds with the State Government seeking to introduce microeconomic reform.

Master Builders says the State Government must seriously look at freeing up the current inflexible state industrial relations system for small businesses that remain with the state industrial relations framework.

### **3.7 Planning**

In our view the major area which needs review is the planning system in Western Australia. In making these comments a distinction needs to be made between the need for regulation on the one hand, and the efficiency with which the regulation is administered on the other. Many of the complaints of our members relate to the latter category – the need for the regulation is acknowledged, but the speed at which it is administered is the major area of dissatisfaction. However in the area of planning the issues of concern relate to both the need for certain regulation and the speed of implementation.

Master Builders is aware of research undertaken by the Institute of Public Affairs in which it stated excessive land regulation has resulted in an increase of over \$90k in land prices in recent years. Such consideration probably underpins the State Government's second stage of planning reforms currently being considered.

Our suggestions to improve the efficiency of the planning system are based on the principle of simplicity. Planning approval should not be needed for any single lot development. An "exempt" path should be available for new single lot developments which comply with the R Codes.

“Deemed approval” should be granted to proposals which are not responded to within statutory time periods by the Planning Commission. Alternatively there should be agreed time frames with the stakeholders for progress of a planning approval application. Private certification of planning approvals should be implemented to maximise efficiency gains.

Greater transparency and accountability should occur in the process. All agencies involved in the planning approval process should be subject to published key performance indicators (KPI). We endorse a “whole of government” approach to the planning approval reform process with all relevant agencies being subject to the agreed KPI’s.

Greater priority should be given to major development programmes and involve the empowerment of expert panels to deal with complex or non-conforming development approvals. This could also require additional resourcing of the planning agency and the appointment of an Independent Planning Ombudsman to reduce the need for mediation and appeals. There may also be a need for substantial cultural change within the Department of Planning and at a local government level. Many of the blockages and inefficiencies are endemic and will take significant effort to reform. One of the difficulties in reforming the planning regime, however, is the overlap it has with several government departments such as Environment, Local Government, Transport, Health, Housing and Infrastructure. This makes a holistic approach more difficult to achieve.

An effective State Infrastructure Plan or Strategy must be developed to better integrate land development and infrastructure provision. A useful starting point is to develop an accurate Urban and Rural Development program to gather comprehensive land use information. In addition there is a need for better planning of high growth regions.

There is a need for all government agencies involved in the planning process to have measureable time lines for the achievement of outcomes. Many government agencies which are consulted as part of the planning approval process do not have time lines imposed on them for consideration of the merits of the proposal.

### **3.8 Local Government**

Another area of extreme concern to Master Builders relates to the inefficiency and lack of consistency between, and even within, local government authorities (LGA’s), particularly in relation to the interpretation of the R Codes. We are also concerned about the poor turnaround times of a number of LGA’s in the processing of planning and building approval applications. This performance may be improved if all non-compliant applications were immediately returned to the applicant and priority given only to compliant applications. We believe that all LGA’s should be required to publicize relevant KPI’s in this area on a regular basis.

Master Builders is also concerned about inconsistency in the treatment of tenders by local authorities for new building work. The lowest priced tenderer is not

always assured of winning the tender and many LGA's engage in practices which are not consistent with the Tendering Code of Practice. Greater awareness by LGA Councillors and staff of these requirements is necessary.

Only a minority of Shires use an electronic system for the processing of applications for building licences. Most require hard copy. There are differing requirements even among electronic based authorities.

Master Builders believes that state and local government authorities should develop a more "risk based" approach with the level of regulatory requirement being aligned to the type of development being proposed.

The State Government's reform agenda in this area is welcomed. However it must be implemented to ensure consistency in town planning schemes as well to maximise efficiency gains.

### **3.9 Building Act & Private Certification of Building Applications**

The introduction of the Building Act in 2011, after a troubled implementation phase, has created greater efficiency in the building permit approvals process. There are other improvements that could be made, including rationalisation of the involvement of Emergency Services (previously FESA) in the commercial sector approvals process. Implementation of full private certification of building permit approvals without the involvement of local authorities would also be a further improvement.

### **3.10 Housing Indemnity Insurance**

Western Australia's current system of housing indemnity insurance needs wholesale "root and branch reform".

There is general dissatisfaction in the industry with the instability and uncertainty caused by fluctuation in the number of insurers who have offered HII in Western Australia. Over the last 17 years builders have on several occasions experienced "crisis" levels of interruption to their business activity and cash flow caused by the sudden exit of an insurer from the market resulting in an inability to obtain this mandatory insurance.

There is general resentment among builders over the ability of insurers to act as a "defacto" licensing body and determine the type and volume of work that a builder can take on. Building contractors licensed by the Building Commission are effectively regulated by another private sector agency which can dictate the volume, type, timing and amount of building a registered builder can undertake. This is made worse in the current insurance market where only two providers of HII are available. For builder turnovers over \$10m per annum, a QBE monopoly effectively exists. So, should QBE decide to withdraw from the market, the housing industry would be thrown into chaos. Recent across the board premium increases by QBE, with more to follow, should also be noted in the absence of a competitive market. This has an adverse impact on housing affordability.

Builders have little or no choice but to accept any restrictions imposed by insurers, including large increases in insurance premiums, bank guarantees or changing the structures of their businesses. In many cases, builders are effectively being asked to underwrite the risk of the insurer.

Thirdly, there is a general cynicism that insurers take no risk with this product which delivers little benefit to consumers. With a maximum last resort payout of only \$100k (regardless of contract value) insurers usually also have access to a director's deed of indemnity against personal assets. Builders argue that they will be personally liable anyway should a last resort claim be made and question whether the premium is pure profit to the insurance company. Given Western Australia's low claims experience it appears that Western Australian builders are subsidizing insurance losses in other states of Australia.

In addition, consumers are probably largely unaware that the maximum payout under a standard HII product is limited. In the event of a liquidation much of this could be used to cover liquidator or legal costs. Many consumers will be left largely out of pocket and will probably have to contribute additional funds to see their home completed by another builder.

With Master Builders WA having such a large membership it is not surprising that there are a range of views expressed as to what should be the future shape of HII arrangements in Western Australia. These options can be divided into several categories.

1. Move to a voluntary HII scheme as existed in Western Australia prior to 1996. This would require home buyers to do their homework on their builder's credentials and experience. We note that the Tasmanian government introduced this arrangement recently with no adverse effects to our knowledge.
2. Restrict coverage of HII to all residential contracts covered by the Home Building Contracts Act; that is, up to a maximum value of \$500k. Supporters of this proposal argue that this would provide some minimum level of protection or at least give some security to those homebuyers who are most vulnerable. There is some merit in postulating that clients who enter into housing contracts above \$500k are in a better position to either assess or ascertain the risk of their builder defaulting.
3. Introduce a government scheme similar to the Queensland model where registration and indemnity insurance are linked and provided by the State Government, unlike the hybrid arrangement that currently exists in Western Australia where mandatory insurance is provided by the private sector but is not linked to licensing arrangements. The State Government, however, still provides some underwriting of the risk of larger project builders defaulting.

4. Introduce an industry funded “fidelity fund” arrangement which exists in the Australian Capital Territory, and is about to be adopted in the Northern Territory. Many builders who have in the past supported the establishment of a co-operative industry mutual fund see significant advantages of this type of arrangement; particularly that industry controls its own destiny and that any surplus funds can be directed towards the betterment of the industry through such initiatives as training or safety services.

Whichever model is proposed by the State Government it is clear that there are significant problems with the current system, not the least of which is the State Government liability should adversity occur. A system of insurance which relies on State Government support to attract and retain the presence of private insurers is an undesirable situation, and has led to considerable instability and inequity in the market. While the first and fourth options have significant appeal to this organisation, options 2 and 3 may be more palatable to the State Government.

There is also price discrimination in premiums charged by insurers and paid by large and small builders which may be based on financial capacity alone rather than other factors such as industry longevity, building quality etc. This adds a competitive disadvantage to pricing in the building industry for smaller builders whom, it could be argued, pose a lower risk to insurers than the collapse of a large corporate builder.

Builders also question the value of this insurance to consumers. Given Western Australia’s favourable claims record in relation to other states, local consumers appear to be receiving little value for this cost. Benefits are limited and have been diluted over time due to rising costs. Benefits are only accessible as “last resort insurance” (which could be eroded by liquidator and legal costs). Costs of this insurance to the consumer are not limited only to premiums paid. Builders are pricing in a margin for the considerable “red tape” that they have to endure in order to apply for insurance and to comply with regular reviews by insurers. To some extent consumers are under a misapprehension that they will be fully covered in the event of a builder’s collapse, disappearance or death. However this is clearly not the case.

There are a number of anomalies in the scheme. For example, while an owner builder is not required to obtain HII as a condition of the building permit a professional builder building his own home is required to take out insurance and effectively insure himself!! In the builder’s eyes he is paying money for nothing. Similarly there seems to be little or no reason for HII to be required for “off the plan” contracts where the construction risk is taken by the developer.

### **3.11 Department of Fire and Emergency Services**

Master Builders is concerned about the reliance on the Department of Fire and Emergency Services for the commissioning of buildings which can cause substantial delays and costs to builders and building owners. We highlight the additional construction costs which affect the competitiveness of the state as a destination for

investment, the effect on the State Government's capital works budget and, ultimately, the impact on employment levels.

Master Builders has received numerous complaints from members regarding the delays experienced in the approval of fire service installations on completion of buildings required to be tested by DFES to enable building occupancy. DFES has obliged by meeting Association and member representatives to explain its position, and has noted difficulties experienced in coordinating testing and the failure of contractors to test, prior to DFES inspections, installations which prove to be non-compliant. DFES has explained the management of testing installations and requirements for connection of Direct Brigade Alarms. Master Builders appreciates DFES's willingness to share these insights and that the authority's principal function is to protect the community. Nevertheless, the Association feels a lack of sufficient personnel or appliances for testing installations imposes significant costs on builders, the State Government and the community. Third party certification of installations by registered or appropriately qualified fire services consultants is a solution to relieve the burden experienced by DFES and would provide a user-pays alternative system for those on strict contractual deadlines.

The Association also considers there should be immediate additional resources for DFES to address delays in approvals for industry which are impeding the development approvals process; and consideration should be given to interim certificates of compliance for satisfactorily completed base building work, pending fitout work and final compliance certification.

### **3.12 Capital Works Procurement**

The State Government's capital works program, largely managed through the Building Management and Works division of the Department of Finance, remains vital to the state's commercial builders. Master Builders enjoys a good working relationship with BMW and meets regularly to exchange information and views. Though this is helpful, the Association believes there are reforms to the way in which much of the capital works program is delivered which would better serve contractors and also increase the number of builders pricing government projects, improving competitiveness as a result. Such reforms include:

1. The Association supports the continuing delivery of much of the capital works program by lump sum tendering by prequalified head contractors. The majority of such contractors favour public opening of tenders, something which, regrettably, has become increasingly unfashionable in both the government and private sectors. A compromise recently advanced by BMW, and accepted by Master Builders, is the publication, shortly after the close of tenders, of the list of tenderers for a project and a separate list of the tendered prices. This allows builders to review their competitiveness in the market and to plan resources and reduce further tendering if it is likely they will be awarded particular contracts. Master Builders recommends this release of tender information be more widely adopted by government authorities engaged in building procurement.

2. Master Builders has urged BMW (and encourages other agencies) to address pre-tender processes which the Association believes currently can have an adverse economic effect on projects. Fees for lead design consultants (architects) are too low, resulting in:

- Reduced ability to assess alternatives, research cost effective building solutions and ensure buildability.
- Limited resources for actual design (and thus poor quality tender documents).
- Minimal time spent on and off site once construction gets under way.

Poor quality documentation leads to disputes and delays on site and the costs associated with such circumstances. To largely abate these problems, Master Builders recommends selection of consultants on merit, rather than on price.

3. Another aspect, often lying beyond BMW's control, is the setting of unrealistic construction periods and handover dates for projects. Client agencies need to recognise that adequate time must be given to preparing the project brief, appointing the consultants, design and documentation and tendering. Merely compressing the construction period when these other processes have dragged on is a false economy.

4. Master Builders also is concerned at a trend towards more principal-head contractor disputes on government projects. One view is that much of this is attributable to poor administration of the head contract by the principal's superintendent. In most cases of BMW work, the superintendent also will be an employee of the lead consultant architect. As already mentioned, fees for architects have been squeezed and the allowance for superintendence might well be underdone resulting in not enough time being devoted to the project, or the assigning of the task to relatively inexperienced personnel. In addition, where the superintendent is an employee of the design consultant, there is a conflict of interest when it comes to claims arising from deficient documentation. The Association considers the current state of affairs leads to more, and more protracted, disputes. A regime of independent and impartial superintendents is recommended as a means of more speedily resolving disputes and doing so fairly, with the likely additional benefit that designers will have to take greater responsibility for producing adequate documentation.

5. A great deal has occurred in the wake of the failure of seven head contractors engaged on BMW projects during the period of the Federal Government's Building the Education Revolution economic stimulus package. While not underestimating the impact of the failure of these builders on other businesses and individuals, Master Builders is concerned that an overreaction could result in measures which ultimately prove to be counter-productive to the cost of building. The Small Business Commissioner's Construction Subcontractor Investigation report, covering non-payment of subcontractors on BMW-administered projects between October 2008 and 2012, reported 110 subcontractors claiming total losses of \$8.1 million in respect of the review period. Those losses should be seen in the context of the 2100 BMW-managed projects during that same period,

worth \$3.6 billion. The Commissioner made a series of recommendations in his report whereby BMW might improve its processes to reduce the risk of head contractor insolvencies on its projects and the consequent losses to subcontractors and others. Master Builders is generally supportive of a number of the Commissioner's recommendations though more stringent financial reporting by builders and the auditing of their accounts will add to overheads. BMW has embarked on a program to implement the recommendations but more significantly, the authority also has been directed to trial the use of project bank accounts, something not proposed by the Commissioner (though his report did refer to the Inquiry into Construction Industry Insolvency in NSW which contemplated the setting up of construction trusts). Master Builders remains to be convinced that the cost of establishing and operating PBAs will be offset by the perceived benefit of reducing the consequences of insolvencies.

### **3.13 Construction Training Fund**

The Construction Training Fund (CTF) has provided an extremely valuable role and service to the state's building and construction industry since it commenced in 1990.

The scheme operates under a legislative statute and imposes a 0.2% levy on the contractual value of all construction projects in WA valued at \$20,000 and over except one category. That category is civil engineering construction projects being carried out in the mining/resource sector.

Residential and commercial/ industrial construction projects are contributed for but civil engineering construction projects for the same mining/resource sector are not. In South Australia and Queensland, where a similar training levy exists, no such exemption applies. In fact, all mining/resource companies pay the training levy in those two states whereas in WA they don't. This is a most inequitable scenario which cannot be justified on any grounds.

The impact of such a large sector of the construction industry not contributing the 0.2% CTF levy is that the CTF is not able to fund additional, worthwhile training projects or increase the training subsidies of building apprentices. The problem is exacerbated by the high number of electrical apprentices that are being subsidized by the CTF, many of whom are or become engaged in the mining/resource sector. The number of electrical apprentices now exceeds the number of all other building apprentices combined.

As the CTF Board has responsibility for ensuring the WA building and construction industry has sufficient skills to meet its future needs, it is imperative that the scheme is properly and adequately funded. With one major sector excluded this is not possible to achieve in a fair and equitable manner.

It is pleasing that the National Party adopted this policy prior to the 2013 State Election. The challenge is now for Training and Workforce Development Minister, Terry Redman, to navigate appropriate amendments to the CTF legislation through state parliament.

The WA economy would clearly operate more efficiently without recourse to overseas labour if the CTF levy applied to all construction projects equitably.

### **3.14 Deregulated Trading Hours**

The Master Builders Association is concerned that WA's restrictive trading hours are having an adverse impact on the building and construction industry and should be reviewed as a matter of urgency.

A good example of where WA's trading hours are inconveniencing builders, contractors, home-buyers and other consumers is the regulation of hardware stores. Take Master Home Improvement stores as a case study.

Masters Home Improvement stores are the new entrant in the marketplace. Masters is a joint venture between Australia's Woolworths and the US home improvement chain Lowes. To date, it has opened four stores in WA and plans to open another three over the next 12 months.

The arrival of Masters provides more choice, convenience and stronger competition in the retailing of hardware materials for home owners and the building trades.

In WA, retail trading hours are regulated by the Retail Trading Hours Act 1987. To be able to open early, when the building trade wants to pick-up their supplies and get to work, Masters must get a certificate from the head of the WA Department of Commerce confirming that it is a "domestic development shop" and it must only sell those goods that are listed in the Retail Trading Hours Regulations.

The regulated list of what a "domestic development shop" can sell gives rise to all sorts of inconsistencies and anomalies. The regulations:

- Allow the sale of light bulbs but prohibit the sale of light fittings
- Allow the sale of outdoor lighting but prohibit the sale of indoor lighting
- Allow the sale of kitchen sinks but prohibit the sale of dishwashers
- Allow the sale of wood-fire heaters but prohibits the sale of gas heaters
- Allow the sale of indoor television antennae but prohibit the sale of outdoor televisions aerials.

The practical effect of WA's regulations is that Masters Stores cannot open early because they sell both light bulbs and light fittings.

This is a crazy situation that does nobody any good. Builders and tradesman are inconvenienced because Masters is not open early enough. Masters itself says it can have more than 50 vehicles waiting in the car parks for the store to open. All of which reduces the productivity and efficiency of the economy. It is red tape gone mad.

Master Builders believe fixing this problem should be made a priority. Getting rid of this sort of red tape should be easy and uncontroversial. It is a commonsense action that would be supported right across the community. If we can get rid of this sort of red tape then we can all get back to work – faster and smarter.

### **3.15 Traffic Congestion**

If this Inquiry is seriously looking at improving efficiency in the workplace and economy, it should definitely be addressing ways to improve traffic congestion.

Builders' productivity is greatly affected by the time it takes to move from one project to another. Traffic congestion exacerbated by accidents and breakdowns can cause major delays and inefficiencies.

During peak hour periods, traffic accidents and breakdowns can add one hour or more to the time that thousands of workers take to get to or from their workplace. This can have a serious impact on workplace productivity, arriving in time for appointments and child care costs. Although it is impossible to calculate the actual costs, they would be enormous.

The state government via their relevant departments (e.g. Main Roads and the Department of Transport) should develop traffic management plans and strategies to deal with these scenarios, especially on major arterial routes to and from Perth and major urban centres.

Experience from other jurisdictions, including overseas, should be a good starting point to explore options to keep traffic moving smoothly.

As the population in Perth continues to grow, this issue will become even more critical to achieving a productive economy.

### **3.16 Government Reviews and Inquiries**

It is very frustrating from an industry perspective when a government decides to have a Review or Inquiry and then not publicize the findings and recommendations. Master Builders is often invited to contribute to these Reviews and Inquiries and, in the process, consults broadly with our members and relevant stakeholders. This can be a time consuming and resource intensive process. When the outcome of the exercise is not publicized by the Reviewer or Inquirer, for whatever reason (generally political), it is very frustrating and not a good use of resources from the various organisations that contributed. Governments should have an obligation to report the outcome of all of these Reviews and Inquiries.

### **3.17 Regulatory Impact Statements**

Proposed new or amended legislation should always be accompanied by a Regulatory Impact Statement (RIS). This will serve to discipline governments to assess the cost impacts of their proposed legislation on the economy, stakeholders and the community/taxpayers. It is in the public interest for this process to be mandatory. The effects could well be less onerous new legislation and red tape!

Master Builders appreciates the efforts of the State Government to develop a more efficient economy and is happy to expand upon this submission if required. We look forward to the outcome of this Review.

Yours sincerely,  
Master Builders Association of WA

Michael McLean  
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