

**Address by Mike Kane, CEO & Managing Director, Boral Limited to
CMIC14 - the Cement Concrete Aggregate Australia (CCAA) Conference
4 September, 2014**

**'THE REAL THREAT TO AUSTRALIA'S ECONOMIC PRODUCTIVITY –
FACING UP TO REALITIES IN THE CONSTRUCTION SECTOR'**

Introduction

Thank you for your invitation to address the 2014 Construction Materials Industry Conference here in Brisbane.

This comes at a very interesting time in the history of Australia, Australian business and the construction industry.

But before I start, let me set the stage by giving you some background.

Over 110 years ago, my grandfather, Patrick Kane, an illiterate plasterer from Ireland boarded a ship and sailed for America to participate in one of the greatest commercial building booms in the history of the world, as sky scrapers rose from the ground in New York the skills of a plasterer were in great demand.

Over 70 years ago, John Kane, my father, flew with his crew on a Grumman Bomber plane from the factory in Long Island, New York. First of four stops en route was Long Beach, California, then to Honolulu, Hawaii then on to Auckland, before landing in Darwin to participate in the long arduous campaign to drive the Japanese back. His next stop was the Solomon Islands and the Japanese naval base at Rabaul but not before his plane was shot out from under him and he was left carrying traces of the steel shrapnel in his legs for the rest of his life.

Today the son and grandson of these global travellers stands before you having emigrated to Australia to take on the greatest challenge of his business career having been given the honour to lead an iconic Australian company – Boral.

It is a responsibility I don't take lightly and backed up by over 16,000 Australians, Asians and Americans – both employees and contractors – I intend to leave this company in better shape than I found it. That journey has been underway for two years now.

My background is over 40 years in construction materials and building products across a half a dozen global majors – USG, Pioneer, Hanson, Johns-Manville, Holcim and Boral – running businesses in the US, Asia, Europe and Australia.

Today I have been asked to provide my views on the productivity challenges faced by Australian industry and the construction industry in particular.

It is a big topic. It requires context to understand the trends, the dangers and the promise, if as an industry here in Australia, we can together face up to some difficult, and at times scary, but necessary, stances that as business leaders we must take. If we don't, we face a future of diminishing returns – in every sense of that phrase.

There is encouraging news, however. While as a nation Australia remains doggedly challenged by macro-economic headwinds in some markets including our challenged manufacturing sector – there is hope on the horizon that impediments to real productivity improvements are being recognised and dealt with – but more on that later.

AUSTRALIA'S GLOBAL COMPETITIVENESS

In May, the Boston Consulting Group published its global index of manufacturing cost competitiveness, which ranked Australia last among the world's top 25 industrial countries.

Hal Sirkin, the BCG author of this report, researched 90% of global manufacturers in the top 25 countries and found that Australia had slid from 19 to 25 in the last decade – driven by high wages, poor productivity and exchange rate gains.

Now before you write this all off to the Aussie dollar (which moved 21% in a decade) remember that countries with challenged currencies must adjust other features of their competitive offer – like input costs, regulation, tax schemes and productivity – to offset an unattractive currency.

So where do you think Australia sits in that regard?

To start, base wages in Australia were up 50% in a decade from AUD\$23.09 to AUD\$34.13 per hour. This compares to a 27% increase in the US sunbelt to US\$22.32, which is about equal to the average wage in Australia 10 years ago.

Annual wage growth in Australia has been double that of the US at a time where Australian productivity has been flat for a decade. And this is all at a time when the US has benefitted from the shale gas and oil revolution. US energy costs have plummeted while Australian energy costs have doubled over the past decade.

Put simply, Australia's manufacturing cost structure currently exceeds the US by 30% and that separation is accelerating.

That said, you are probably wondering what this implies for the domestic Australian construction industry.

You will have noticed that Australian steel, aluminium, cement and automobile manufacturing have been disappearing of late. And you may have noticed a variety of other manufacturing plant closures – like brick, timber, windows and roofing plants – just to point out some recent Boral examples. Unfortunately, the list is growing.

You may have read articles about global miners and contractors like BHP, Rio Tinto and Bechtel, to name a few, who have called out the high cost of project work in Australia versus alternative global options suggesting Australia may get less access to mining and energy projects in future due to an uncompetitive cost, regulatory and productivity environment.

Why would they look elsewhere?

Perhaps the flirtation with a mining tax, the misguided and failed carbon tax and other examples of anti-industry sentiment; unrestrained industrial disruptions and the absence of remedies for illegal job site conduct; unproductive labour entitlements and a work calendar distinctive for its focus on excessive days of tools down – not up, not to mention anti-competitive penalty rates.

Let me give you a few examples of what the unproductive labour entitlements in the construction industry costs Boral's concrete business, and would be costing other suppliers in the industry too.

In Melbourne, there are 26 rostered days off or RDOs per year – a relatively new term for me – where the CFMEU controlled sites shut down. Most other sites are operational because they have built-in flexibility with their RDOs – if they have them – to ensure the entire job doesn't shut down.

But because all work stops on the CFMEU controlled sites, demand from our affected metro concrete plants is approximately 50% less on RDOs than other Mondays (at least this impacts us when Boral is allowed onto these sites). This is the equivalent of an enforced inefficiency at affected operations of over 5% per annum compared to what is possible.

Weekend lock downs impact in a similar way. There are five lockdown weekends each year outside the Easter and Christmas breaks. Demand on the Friday before and Tuesday after the lock down is 50% less than normal Fridays and Tuesdays. This is the equivalent of an enforced inefficiency at Boral's affected operations of over 2% in any year compared to what is possible.

There are eight additional days taken after 4 January and between Easter and the following weekend in an average year. This results in an enforced inefficiency of a further 2% compared to what's possible.

All up, our concrete operations in metro Melbourne are almost 10% less efficient than they would otherwise be because of the extra days that the major construction industry doesn't work.

The embedded practices in Melbourne are worse than other cities but still in Sydney there are 14 RDOs per year where the CFMEU controlled sites shut down because everyone is taking a coordinated rostered day off. This is the equivalent of an enforced inefficiency at Boral's concrete operations of between 2 and 3% per annum compared to what's possible. And there are still the five lockdown weekends each year outside the Christmas and Easter shut downs in Sydney – so that brings it up to 5% per annum of lost productivity for affected operations in the Sydney metro market.

Remember these are all days off which everyone must take at the same – a system that takes no account of the individual personal or family circumstances of an employee and completely shuts down the construction site.

And these are practices that appear to exist nowhere else in Australian industry.

Some of these practices or 'entitlements' are embedded into enterprise bargaining agreements and awards. And let's not shy away from the fact that many of these 'entitlements' have been signed off and agreed to by employers and embedded into EBAs as a way of buying industrial peace.

These practices are impacting the productivity of construction materials suppliers, lorry owner-drivers and other building contractors. They are costing builders, driving developers offshore and they are costing Australian jobs.

REGULATORY FRAMEWORK AND INDUSTRIAL RELATIONS CLIMATE

So what characterises the regulatory and industrial relations framework in which investors, contractors and suppliers are able to efficiently execute their work bringing projects in safely, on time and on budget?

My experience across four continents running manufacturing plants, quarries and trucking fleets tells me that safe and productive outcomes require strong employee and management engagement at the 'coal face'.

Clear communications, disciplined execution, and a work environment where cooperation and enthusiasm are contagious – not fear and division. A work environment where the requirements of the customer are balanced with genuine requirements of site safety, environmental compliance, product and service quality – all coming together to deliver on our mutual commitments that assure our integrity as a business.

Most of my experience in Australia confirms that our workforce and operating teams get it – people want to work in this environment.

But, since February 2013 – for over 18 months – on high-rise projects in the Melbourne CBD, we have encountered something quite different – an orchestrated campaign of intimidation and interference by the Construction branch of the CFMEU, which does not represent our employees.

This group of rogue union officials has elected itself judge, jury and executioner of industrial justice. It has shown that it has every intention to ignore the law in its drive to first control the construction sites then all contractors and suppliers as a prelude to a much more sinister campaign to exact unlawful tribute from the business community.

You don't have to take my word for it. Just follow the media articles coming out of the Royal Commission into Union Corruption – the scams, extortion and thuggery detailed in the media should embarrass anyone associated with the construction industry.

Shame on us for allowing this to go on. Shame on us for not banding together to put an end to this sordid blot on an industry that stands for all that is good in Australia.

We build world-class buildings, homes, roads, dams, and the infrastructure this country needs to water its crops, ship its goods, transport its population and its global visitors.

We build, we don't tear down. We create a better future, we don't scare innocent people or associate with known criminals or threaten the livelihood of hard working citizens.

And in response to this illegal conduct, the situation on the ground has not been altered by the decisions of the Supreme Court of Victoria, the efforts of any regulatory agency, or by any State or Federal Government. We are hopeful this will change soon, but standing here today, nothing has proven effective in arresting the CFMEU's campaign.

The Federal Government has proposed the return of the Australian Building and Construction Commission to bring law back to the construction sites. To date, government has been ineffective in the face of this monopolist union's establishment of a cartel market in Melbourne. Clearly, a combination of effective enforcement of secondary boycott prohibitions and application of anti-cartel provisions of the competition law is required.

What is even more insulting is that this group cynically uses the guise of safety as the pretext for disrupting our work.

Their unqualified inspectors look at each truck, find nothing and delay, delay, delay.

Boral takes safety seriously. We take pride in the fact that our safety performance is better – in most cases an order of magnitude better – than materials manufacturing and mining, road freight transport, forestry and general construction industry statistics.

With up to 3,000 company-owned and contracted heavy vehicles delivering our products and materials around the nation, Boral runs one of the largest truck fleets in Australia. And we genuinely focus our efforts on managing safety for our employees, contractors, their families and the public. We continue to develop and install state of the art safety features on our trucks, train our drivers, refresh that training and constantly revisit safe work practices and equipment inspections.

Like many global industrialised economies, highway safety is a challenge, and sadly, about 1,300 people lose their lives on Australian roads and highways every year. Regrettably we have lost drivers over the years when trucks have collided with other vehicles or ran off the road. But we, like you, accept our responsibility and we are sickened by this union's use of safety as a pretext to manipulate the media, general public and our workplaces.

Let me give you another example. Does anyone in this room really believe that the CFMEU campaign to insist that its officials be appointed as site safety officers rather than qualified business officers – believe that their motivation is truly to improve safety?

This union's cynical use of safety as a control mechanism with which they can then disrupt a construction site to pressure contractors should be called out for what it is. The consequence of this manipulation – which is less certainty of safe site practices and conditions – should be presented to the membership they claim to represent for what it is – a betrayal.

Go back and look at the facts around the Myer Emporium dispute with Grocon and at its core you will find this same battle for control of the job site. Boral believes that using safety as a Trojan horse for an industrial campaign for control denigrates the safety agenda and ultimately creates risk.

When will the self-respecting unions in this country who do a fair job for their members and don't engage in this perverse distortion of the principles of unionism – speak out and disassociate themselves from this unlawful mob?

In the case of Boral, this illegal campaign of intimidation and coercion was launched because we refused to collude with the CFMEU in its long campaign to gain control of Grocon construction sites.

We estimate that we continue to be denied access to over 20 large construction projects in Melbourne on an on-going basis, and it has cost us around \$10m in lost EBIT and legal fees so far.

Our customers, employees and contractors have been threatened, builders have been told to stop doing business with our concrete division and where we have work we have been subject to continuing safety inspections of our trucks in a thinly veiled effort to delay our deliveries and disrupt our work as a continuing reminder that these hooligans are in charge and the law be damned.

OUR ROLE

So, given we know what's happening in our industry, what are we doing about it?

After all, we are the ones who supply the materials that builders such as Grocon and Lend Lease and Leighton Construction and our other customers use to turn architectural plans into a reality.

As I have said many times, we generally have good relations with the unions that represent our employees.

We don't necessarily deal with the CFMEU on a daily basis because, in general, they do not represent our employees. They represent the employees of our customers and in some cases they quite clearly and openly control our customers' building sites.

As the effective monopoly supplier of labour to major construction sites, the CFMEU has been allowed to wield extraordinary power. To the CFMEU, the control of the construction site is central to their power, their ability to drive membership fees, and their ability to influence the award of jobs and therefore, money flows in the industry.

Boral is at the front end of the CFMEU's efforts to use the "intravenous drug" of concrete as a choke point to punish disobedient general contractors and reward friends in the construction industry who fall in line.

This much was made clear to us by a senior CFMEU leader in Melbourne.

As I detailed in my evidence before the Royal Commission, the union made clear to us that they see it as the union's right to determine the allocation of work among industry participants, and that such allocation would reflect whether or not we play by the union's rules, rather than normal market dynamics. If any company said that it would rightly be accused of criminal cartel conduct.

While Boral may have the resources to assert its legal rights and the commitment to pursue its enforcement options, the same is not true for many participants in the construction industry.

For many of our customers, positive cash flow is a project-to-project proposition, making them vulnerable to illegal tactics of the union that threaten to cut them off from workflow. Small operators don't feel they have the ability to stand up to the CFMEU, and often capitulate without realising that in doing so they may be violating the law themselves.

When all is said and done, the fact is that for the union's unlawful bans to work, they require the acquiescence of a customer. Others in the industry have to be willing to benefit from the illegal ban, sometimes even assisting the CFMEU's illegal ban in order to obtain that benefit.

These cultural hurdles to productivity we find in our industry may be the work of the CFMEU but let's be clear about this – they are in place because we, as an industry, have for far too long gone along with the union's demands.

In my view, no participant in the industry should be able to reach an agreement or understanding with the union to give effect to an illegal ban or assist the CFMEU to affect an illegal ban, without legal consequences.

The CFMEU's illegal tactics only work if our direct customers and competitors comply with the union's illegal inducements or turn a blind eye to their complicity by taking work that is effectively controlled by the CFMEU.

As I made it clear in my evidence to the Royal Commission, regulators have to tackle these other participants, too, if they ever hope to stop these tactics.

I believe we need to stand up for our rights – and that is what I am doing.

OPPORTUNITY FOR CHANGE

Now, I said at the beginning that while there are plenty of challenges ahead, there is hope on the horizon that impediments to real productivity improvements are showing promise of being addressed.

These issues are now out into the open. And like it or not, change is coming in the form of a more aggressive enforcement of existing regulations and court orders and, while pushed back some because of the logjam in the Senate, we see it as inevitable that the ABCC will be returned to bring law and order to the construction sites.

There is a national conversation taking place about our industry, partly through the media interest in what has been happening on Melbourne sites, and partly because the Royal Commission has been turning a very public spotlight on practices and behaviours in our industry that for far too long, have been allowed to fester and grow.

Just to give you an idea of how progress is being made: over the past 18 months, we have approached the ACCC for help ... and Fair Work Australia. We have taken the union to court – and won several court injunctions, which were ignored. We've contacted the Federal and Victorian State governments, asking for help.

At first, the response was slow. The ACCC had difficulty progressing an investigation into the illegal secondary boycotts against Boral. But today they have a dedicated team undertaking a deep investigation into the matter.

In July, we presented our case to the Royal Commission into Trade Union Governance and Corruption, detailing the campaign against Boral. This commission is taking a detailed look at the failure of the courts and regulatory agencies to manage the misconduct it learns about weekly in its hearings throughout Australia. We believe there is a consensus building across Australia to rein in the illegality, the stand over tactics, the manipulation and anti-competitive conduct that has been exposed in great detail – and I suspect there is more to come.

Closing

People ask me why I have taken the stand against the rorts and unlawful activities of a union as powerful and occasionally vindictive as the CFMEU.

The simple answer is – what choice did I have? The alternative would have swept Boral up in a conspiracy to damage our customer, sully our reputation and jeopardise our integrity and values as a company.

Participating in CFMEU controlled activities could mean we are participating in illegal conduct. It never crossed my mind to agree to the demands of the CFMEU.

But this is much more important than my personal beliefs or the long-term survival of our business, important as that is.

This matters to the Australian economy, to the future of what is left of Australian manufacturing; and it matters to the thousands and thousands of workers and their families, who rely on a sustainable construction industry for their livelihoods.

So, as CCAA members, what can we do to help accelerate change?

You might be thinking this doesn't affect you. You may not see it every day – you may not notice it at the sites you deliver to or the market segments you work in – or, like many, you may have become immune to this behaviour and these practices.

But I am telling you that this unlawful control – these impediments to productivity – it's happening across major construction projects, such as high rise commercial and residential construction projects – particularly in our larger capital cities. The big projects where you see the CFMEU flag flying are the obvious sites.

It's not just in Melbourne – it's here in Brisbane too. As you've seen through the Royal Commission hearings, the CFMEU's Queensland branch allegedly put pressure on companies to ban subcontractors from Brisbane work sites if they refused to sign a workplace agreement with the union. Crane companies effectively banned from building sites over an enterprise bargaining agreement.

We can all start to accelerate change by recognising what has been happening in our industry for decades – a situation where rogue elements of a powerful union have used their industrial muscle, intimidation and threats to exercise absolute control over entire projects.

We can also recognise that as an industry, we have not only acquiesced to these activities but on many occasions, we have ignored the problems and in fact encouraged these practices to become part of our industrial culture.

And we can use our public voice to support and assist the ACCC investigation – and support moves by the Federal Government to make legislative changes in this area.

As an industry, we have a responsibility to speak up.

We have a responsibility to act within the law – and behave lawfully.

We have the right to operate our business freely and transparently, within the boundaries of the law, on behalf of our shareholders.

We have a legislative requirement – and a moral requirement – to protect our employees from intimidation and harassment, and to provide a safe working environment.

And we have a duty to ensure our industry is productive, so it survives and prospers – for the benefit of all Australians.

A fully productive construction industry is necessary to the overall health of the Australian economy and to rising standards of living. Without ongoing reform, Australians will always be worse off compared to what is possible.

Thank you.