

POSITION PAPER

WORKPLACE RELATIONS FEDERAL ELECTION - 2016



**CIVIL CONTRACTORS
FEDERATION**

Constructing Australia's Infrastructure

INTRODUCTION:

The Civil Contractors Federation (CCF) is the peak industry body representing Australia's Civil Construction Industry. The CCF has branches in all states and territories representing more than 2,000 contractor and associate members nationally.

CCF members are responsible for the construction and maintenance of Australia's infrastructure, including roads, bridges, pipelines, drainage, ports and utilities. Our members also play a vital role in the residential and commercial building industry by providing earthmoving and land development services including the provision of power, water, communications and gas.

CCF is an organisation registered under the *Fair Work (Registered Organisations) Act 2009*. The organisation is governed by a National Board comprised of member-elected representatives from each State and Territory in the Commonwealth.

BACKGROUND:

Historically, the building and construction industry has been subjected to legal and illegal industrial activities beyond what is experienced in many other sectors. Members conducting businesses in the Civil Construction Industry are faced with a number of legislative employment issues that make it increasingly difficult and complex to operate businesses in an efficient, competitive and profitable manner.

In addition to the provisions of *Fair Work Act 2009* (the Fair Work Act), the industry is subjected to the most complex set of employment rules in any industry. It is extremely difficult to comply with all the provisions of the *Building and Construction General On-Site Award 2010* (the Award) without constant expert advice. This leaves employers (especially smaller employers without dedicated in-house industrial relations support) extremely vulnerable to prosecutions for award breaches, even if employees are paid well above the award entitlements.

To address these issues changes are required in the following distinct areas:

1. The provisions of the *Fair Work Act 2009 (Cth)*
2. The provisions of the *Building and Construction General On-Site Award 2010*
3. The operation of the Fair Work Building and Construction Commissioner.

The CCF has developed a comprehensive Workplace Relations Policy paper that details our concerns and issues in relation to current workplace and industrial matters impacting on the ability of members and the broader industry to conduct their businesses and respond to the needs of their clients both private and public. A copy of this full document is available at www.civilcontractors.com

CCF POSITION – WORKPLACE RELATIONS:

Productivity, efficiency and employment are cited as key measures and objectives in creating an Australian economy that is strong and capable of supporting the Nation and the aspirations of all communities.

The CCF would contend that the current Workplace Relations system and supporting laws and regulations conspire to achieve outcomes almost totally opposite to objectives aimed at delivering a better Australia, a stronger Australia and a fairer Australia.

The position of CCF is that major adjustment is needed to the Workplace Relations system and the laws and regulations that govern employment. The current and sheer complexity of the system, the unbalanced representation rights and the constant major shifts in Workplace Relations replace innovation and enthusiasm with indecision and uncertainty. This paper summarises the position of CCF against the three distinct areas of Workplace Relations outlined above to achieve reform that will better serve the overall interests of the Australian economy in terms of productivity, efficiency and employment.

CCF POSITION REGARDING THE FAIR WORK ACT 2009 AND REGULATIONS:

- Any present or future legislation or regulation facilitates for genuine freedom of association, and unions are not given automatic right of representation unless it is the express wish of the employees concerned.
- Parties are free to bargain directly with each other without interference to support flexible and efficient outcomes for the workplace that promote productivity.
- Technical amendments to the Fair Work Act occur to simplify the notification obligations relating to intention to commence negotiations for an enterprise agreement.
- The Fair Work Act is varied to simplify the process to register agreements. For example having to reissue an agreement for vote due to tight timelines though there is genuine agreement, and the agreement passes the Better-Off Overall Test (BOOT).
- The Fair Work Act mandate that individual flexibility terms are extended beyond the existing mandatory model flexibility term required in enterprise agreements, providing more flexibility for the employee and the employer without the current restraint.
- The better-off overall test (BOOT) be re-examined to clarify how better-off is measured in order to provide consistency, guidance, balance and ease of application.
- The minimum number of days an employer must wait before submitting an agreement to employees for approval be reduced from 21 days especially for small employers with few employees.
- Unions are not allowed to become bargaining agents by default if member fails to nominate a bargaining agent. The union must be specifically nominated by an employee to become a bargaining agent.
- A union should not be permitted to lodge an objection to the registration of an enterprise agreement by an employer where the union has no members, or was not specifically nominated as bargaining agent by a member. It is the responsibility of the Fair Work Commission to decide whether an agreement meets the BOOT test.
- The Fair Work Act is varied to allow individual employment agreements to cover all employment conditions by mutual agreement between the employer and the individual employee provided that the employee is not worse off than under the applicable instrument.
- That the Fair Work Act is varied to broaden the employment terms and conditions that can be negotiated by agreement between employees and their employers provided employee protections are preserved.
- The provisions that deal with cashing out of leave be simplified. Amendments should be made to the Fair Work Act to allow the cashing out of leave in circumstances of financial hardship where an employee has less than four weeks accrued annual leave.
- That provisions designed to provide a disincentive or penalty for the engagement of independent contractors, such as provisions dictating site wages for subcontractor employees be expressly outlawed under the Fair Work Act.
- The Fair Work Act, WHS (Cth) Act and Model WHS Act, and respective Regulations both provide for strong penalties and cancellation of Right of Entry permits when union officials gain entry to a site to pursue industrial issues by making bogus safety allegations.
- Union official exercising right of entry under the WH&S Acts must inform the employer of the alleged safety concern at the time of entry, as a condition of entry
- WH&S provisions should form part of company policies and procedures, and not be included in industrial instruments such as enterprise agreement or individual contracts.
- The Fair Work Act is varied to give more weight to the employee's misconduct rather than the employer's policies and procedures in relation to Unfair Dismissal and General Protections applications, particularly for small employers.
- All claims related to termination of employment for any reason should be dealt with under the Unfair Dismissal provisions where the reverse onus of proof to the employer does not apply. The person making the allegation should be required to prove their case.
- The definition of small business for the purpose of the unfair dismissal provisions should be a business with 20 employees or less.
- Employees or employee representatives should not be able to bring underpayment claims against employers based on technicalities in situations where overall, the employee was paid above the entitlements of the applicable industrial instrument.
- The Fair Work Regulations are varied so if there is a written agreement between the employer and the employee to a loaded rate of pay that covers applicable allowances, there is no requirement for the employer to show each allowance on each payslip.

- The provisions of the Fair Work Act and the Award in relation to Transmission of Business are reconciled and simplified.
- Employees from the old employer are able to transfer immediately to the industrial instrument of the new employer, provided there are no worseoff.

CCF POSITION REGARDING THE BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010:

- That the definition of “redundant” in this Award is varied to be in accordance with s.141 (3) of the Fair Work Act.
- In the alternative, we propose that the specific redundancy provisions in this Award are omitted in accordance with clause 141 (5) of the Fair Work Act, and replaced with the accepted definition of “redundant” found in clause 119 of the Fair Work Act.
- The Award is varied to introduce junior rates of pay similar to those found in other awards.
- The Award is varied to allow the payment of wages as agreed.
- A clear definition of “unusually dirty work” be inserted in the Award to identify situations where this allowance becomes payable to employees.
- A sub-Clause is inserted in the Award with the separate monetary values for the accommodation and each meal of the Living Away from Home Allowance.
- The Award be varied to exclude employees not working on building sites receiving the travel allowance in Clause 25.2 when not working on a building site as part of their normal duties.
- Employees who are issued with a company vehicle free of charge by the employer do not receive the Travel Allowance prescribed in 25.2 Metropolitan Radial Areas.
- The Award be varied to so that employers and employees can agree for annual leave to be paid with the normal payroll cycle.
- That employees are not required to accrue and keep a minimum of 4 weeks annual leave before Annual Leave can be cashed is dealt with earlier under the “RECOMMENDATIONS REGARDING THE AUSTRALIAN FAIR WORK ACT 2009”.
- Clause 4.10 (b) (ii) be removed from the Building and Construction General On –Site Award 2010, in accordance with s. 160 and s,163 (1) of the Fair Work Act.
- Disability allowances in the Award are heavily rationalised.
- That the clause 34.2 (a) definition of shift work be repealed for the civil sector in the award be the same as it is in the other sectors.
- The Travel Allowances in the Award are simplified and rationalised to allow easy compliance.

CCF POSITION REGARDING OPERATION OF THE BUILDING AND CONSTRUCTION COMMISSIONER, THE BUILDING CODE 2013 AND STATE GOVERNMENT INDUSTRY CODES OF PRACTICE:

- All industry participants including employers, employees, unions and employer associations obey and respect the rule of law without exception to protect our Members from illegal industrial action, intimidation and coercion.
- The Australian Building and Construction Commission is restored fully and permanently, with its powers to compel a person who had evidence relating to an investigation to answer questions, provide information and/or produce documents.
- The deployment of State Construction Codes in support of the National Building Code are supported by CCF, and their continuation should be assured.



Media Release

For immediate release: Monday 27th June 2016

Don't forget workplace reform

The peak industry body representing the Civil Construction industry says that workplace reform is vital to the Nation's economic future and that it should not be forgotten as the 2016 Federal Election campaign reaches its zenith.

The Civil Contractors Federation (CCF) in releasing its Workplace Relations Position Paper* said that the current Workplace Relations system and supporting laws and regulations need significant overhaul so as not to conspire to achieve outcomes almost totally opposite to objectives aimed at delivering a better Australia, a stronger Australia and a fairer Australia.

"There is so much complexity in the current system with award interpretation extremely difficult to navigate for business, especially for small business operators, many vulnerable to prosecution even when paying above award to their employees," said CCF National Chief Executive Officer, John Miller.

"Workplace reform and particularly industrial relations was in many ways the genesis of the July 2 election and irrespective of the outcome of the election, workplace reform that leads to a much simpler and balanced system must be a priority for the incoming government. The reality is that many businesses are totally confused by current arrangements.

"The current and sheer complexity of the system, the unbalanced representation rights and the constant major shifts in Workplace Relations replace innovation and enthusiasm with indecision and uncertainty and without these issues being addressed sooner rather than later the positive impacts on the economy will be delayed.

"We remain committed in support of policy that ensures that a strong and independent regulator such as the Australian Building and Construction Commission is in place to oversight the industry and can deal with the type of unlawful conduct long recognized as massive burden on the country economically and socially and which simply is not part of the industrial landscape elsewhere.

"Members of the CCF are urging workplace reform to ensure as an industry we can contribute strongly to the Australian economy as well as achieve a much greater level of certainty and security for our businesses and the people we employ and their families," concluded Mr. Miller.

*A copy of the CCF Workplace Relations Position Paper is attached.

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