

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Building and Construction Industry Inquiry

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COLE ROYAL COMMISSION RECOMMENDATIONS

CCF POSITION PAPER



(i) Civil Contracting Industry: Short Profile

- Civil contracting businesses range from very small to national and international firms:
 - predominantly businesses with \$5m - \$10m turnover
 - have high stability of ownership and work specialisation
 - typically directly employ some 55,000 (averaging 20-50 per firm)
 - are capital intensive with around 40,000 items of heavy plant (averaging 20-30 per firm)
 - have both public sector and private clients as key customers
- Civil contracting is predominantly different from other categories of construction (such as building)
 - typically capital intensive project-based business model
 - often initiate building and infrastructure site works
 - = major work categories are roads, pipelines, water & sewerage and sub-division
 - = operate as developers, head contractors, contractors and sub-contractors
- The Civil Contractors Federation is the registered employer body with around 2,000 members
 - represents a sector that undertakes some \$9 billion p.a. of works

(ii) Principal Measures Affecting Civil Contracting

Please note that as civil contracting activities and business practices are materially different to other building and construction activities, government responses to the Royal Commission recommendations will have quite different impacts on civil contractors, particularly in regard to managing both project and general commercial risks

- The key civil contractor interests are:
 - industry arrangements that recognise the nature of commercial and project risks faced by civil contracting firms (particularly the accumulated risks "passed on" by clients, head contractors etc)
 - substantive improvement in workplace and commercial practices in the construction sector
 - to be part of and contribute to all bodies established to implement government reforms arising from the Royal Commission (whether legislative, regulatory or administrative)

- The **National Code** is supported together with DEWR as lead agency, provided that:
 - the scope of direct and indirect federal funding is broadly defined so that there are sufficient complying projects to ensure wide and general application of the Code
 - the Code applies to all contractors
 - national pre-qualification is a priority, drawing on existing industry codes and establishing mutual recognition arrangements
 - there are nationally consistent and effective security of payment arrangements
- *Comment: the key objective is to avoid a multiplicity of administrative and commercial arrangements that create material additional tendering and construction costs*
- The **Building and Construction Commission** is supported, noting that:
 - the Safety Commissioner should fall within the Commission and OH&S matters should not be used for industrial leverage
 - the timeliness of decisions / responses of the Commission allow expeditious and effective remedies for non-compliance
 - there is a clear delineation of the roles of the Commission and the Australian Industrial Relations Commission
 - the Commission is adequately equipped to act as a “one-stop shop”
 - has a governing Board that fully reflects sectoral interests, especially the unique circumstances of civil contracting
 - a sunset (such as 5 years) is examined
 - has coercive powers to support effective proactivity
- *Comment: the overriding objective is to ensure that the Commission has a responsive, enduring, effective and expeditious effect without creating another layer of administrative and regulatory burden to business*
- An Act governing **workplace relations** in the building and construction sector is supported with accommodation of:
 - the specific nature of civil contracting site practices (for both building and infrastructure sites)
 - suitable transition arrangements for existing agreements
- *Comment: effective delineation between building and civil contracting awards is required, reflecting the fundamentally different work practices involved in building and civil contracting. Operationally, businesses should not be penalised for existing enterprise agreements agreed in good faith*

- Priority is given to documenting current and prospective skill gaps and **training needs** (especially vocational) over the next decade
 - *Comment: the average age of skilled plant operators is around 50 years creating the potential for abrupt and major skill gaps as operators retire over the next 5-7 years. Additionally, the sector performs poorly in attracting school leavers and women. Development of civil contracting plant operating and supervisory skills has considerable lead times.*

(iii) Interim Building Task Force

- Interim Building Task Force (IBTF) is an essential transitional measure until the ABCC is operational.

Comment: its advisory capabilities are particularly valuable, however its lack of "coercive" powers (to require access, documents, responses to inquiries, assess fitness etc) negate the IBTF's effectiveness and require remedy in the event of any significant delay in establishing the ABCC

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Attachment 1

Building and Construction Industry Improvement Bill 2003

Key Civil Contracting Objectives

- implementation of OH&S management system pre-qualification requirements should allow recognition of existing industry codes
 - consideration should be given to extending pre-qualification requirements to quality and environmental management
 - the Civil Contractors Federation has integrated management systems (IMS) covering quality, OH&S and environmental management that meet JASANZ industry code requirements: AS/NZ4801, ISO 14001 and ISO 9000-2000 standards for OH&S, environmental management and quality management (respectively). The systems provide for third party accreditation and are increasingly recognised by councils and key roads and water authorities

- government projects should provide “model client” best practice models, including for S46 and S51AC trade practices obligations on market power and unconscionable conduct
 - this goes hand-in-hand with nationally consistent security of payments legislation

- Federally-funded projects to which the National Code is applied should be widely-defined so that there is a sufficiently broad base of projects to ensure the relevance of the Code
 - at the same time small contractors should not become the “meat in the sandwich” between federal/state administrations by establishing a small project threshold for application of the code (say \$5 million)

- There should be clear provisions that override state laws with respect to:-
 - Bargaining
 - Industrial Action
 - OH&S disputes and investigation

Attachment 2

Building and Construction Industry Improvement Bill 2003

Core Elements for Effective Productivity in the Civil Construction Industry

A number of provisions of the (exposure) draft Bill are essential to the efficiency of the civil construction industry.

The failure to include these core elements in final legislation will undermine the “industrial balance” of the industry and effectively leave it with unacceptable levels of disputation and unacceptably low productivity.

In this regard, they should not be traded away in any compromise agreements intended to allow passage of the Bill, or failing passage within a reasonable period, should be brought into effect to the extent possible by regulatory or administrative means, or by incorporation in the WRA

Suggested Core Provisions

- prohibition of pattern bargaining
 - a key measure to balance negotiating positions of small contractors and unions
- tighter right of entry and “fit and proper person” provisions
 - limits on-site intimidatory practices or (eg) misuse of OH&S powers
- strong discovery powers for the ABCC
 - overcomes the limitations of the Interim Building Taskforce in assembling viable cases

Essential Elements

- Establishment of the Federal Safety Commissioner.
There needs to be thorough understanding of the scope of this position and its interaction with state authorities
- Limits on entitlements to be paid for periods of building OHS action
- Non certification of pattern bargaining agreements
- Indicators of genuinely trying to reach agreement
- Representation ballot for initiation of bargaining period
- Injunctions against pattern bargaining
- Project agreements not enforceable MORE REQUIRED on how mechanism will function
- Assessment of damage resulting from unlawful industrial action
- How is this going to work and how easy and timely will it be for small business to get an inspector?
- Applications for order for protected action ballot
- Secret ballot provisions for protected action
- Limits on length and regularity of protected action

Provisions that may be difficult for small businesses

- Obligation to notify cessation of unlawful industrial action

Additional elements required but not included

- Regulation that covers the field and eliminates jurisdiction shopping by industrial participants
- Mechanisms to police the subliminal pressure by principal contractors on sub-contractors to engage in pattern-bargaining, site agreements or “industrial employment standards” beyond those that are considered best practice