

**SUBMISSION TO THE SENATE INQUIRY
INTO THE *WORKPLACE RELATIONS*
*AMENDMENT (GENUINE BARGAINING) BILL 2002***

**Construction, Forestry, Mining and Energy Union
(Construction and General Division)**

22nd APRIL 2002

On 20th February 2002 the Minister for Employment and Workplace Relations tabled the *Workplace Relations Amendment (Genuine Bargaining) Bill 2002* (hereinafter referred to as "the Bill"). The contents of the Bill seek to resurrect a significant part of the "2nd Wave" Bill rejected by the Senate in 1999 and parts of the *Workplace Relations Amendment Bill 2000* also rejected by the Senate in 2000. Although the Bill could be portrayed as a watered down version of these previous attempts, it is still an attack on the ability of unions to collectively bargain. We submit that no matter how one attempts to dress up the Bill underneath you would still find that, "*The provisions are unbalanced in that they principally deal with the concerns that employers have with union performance on enterprise bargaining, and do not deal with the real concerns that unions have with employer abuses of the current law.*"¹

In regard to this Bill and the other bills under consideration by the Senate Committee, namely the *Workplace Relations Amendment (Fair Dismissal) Bill 2002*, *Workplace Relations Amendment (Fair Termination) Bill 2002*, *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002* and *Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002*, the CFMEU (Construction & General Division) opposes them outright.

¹ P.60, Consideration of the Provisions of the Workplace Relations Amendment Bill 2000, Senate Printing Unit, Parliament House, Canberra, 2000
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Introduction

In support of our opposition to the Bill the union had intended on providing a detailed submission, however we have had the opportunity to study the submission of the ACTU on this and the other bills, and believe that rather than repeating the arguments (contained within the ACTU submission) it would be more beneficial to the workings of the Senate Committee for the union to rely on the ACTU submission and only provide additional information in regard to the issues specifically related to our industry.

Special Features of the Construction Industry

The construction industry is comprised of 95,000 enterprises that are overwhelmingly small, under-capitalised businesses employing less than 10 employees². According to the 1996/97 Survey of Private Sector Construction Industry:

- 94% of businesses in the industry employ less than five people;
- 94% of businesses have an average turnover of less than \$154,000;
- less than 1% of enterprises employ more than 20 people; and
- only 6.3% of businesses have an average turnover of \$1m or more a year.³

Research (QMBA Training Blueprint, unpublished) has shown that 84% of small firms which commenced in the building and construction industry in Australia since 1973 failed because of poor financial management and liquidity, sales problems, poor records and incompetence.⁴

There have been significant changes in the structure of the industry in recent years due, in part, to outsourcing of labour by large and medium enterprises in both public and private sectors. This has resulted in:

² ABS Cat. 8772.0 'Private Sector Construction Industry' Jan 1999).

³ Construction Training Australia, "Building and Construction Industry Workforce - 2005", May 1999

⁴ *ibid*, p.40

- an increased reliance on contracting and sub-contracting;
- increased use of labour hire;
- the growth of 'fly in fly out' workforces.

ABS research indicates that the construction industry experiences a higher degree of contracting and subcontracting arrangements than most other industries.⁵ In the case of sub-contracting, the recent White Paper on the construction industry in NSW (July 1998) estimated that sub-contractors now delivered between 75% and 85% of the product of the industry. The White Paper suggested that:

- up to 20 specialist skilled sub-contractors are employed on a residential housing project; and
- up to 200 specialist sub-contractors may be involved on a major construction site.

This means that work is organised into small, often isolated packages. The growth of sub-contracting has been associated with shorter contract cycles and specialisation. It has also been noted that sub-contractors often lack the necessary business management skills.⁶

The industry is also characterised by a highly mobile or itinerant workforce. The latest ABS figures show that over 175,000 workers in the construction industry (24.88%) have held their current job for less than 1 year. Just over 45% of the industry's workforce have been in their current job for less than 3 years.⁷ It is not uncommon for individual workers to be employed by 2 or 3 different employers within any 12 month period.

⁵ *ibid*, p.40

⁶ *ibid*, p.40

⁷ ABS Catalogue 6209.0, Labour Mobility, October 2000

A further barrier to enterprise based negotiations is the poor literacy and numeracy skills of the workforce. A 1996 study found that the literacy skills of the construction workforce are considerably poorer than those of the Australian workforce in general. Nearly 55% of construction workers have poor literacy skills compared to 39% for all industries. In regard to numeracy over 43% of construction workers have poor numeracy skills compared to just over 36% for all industries. Of more concern is the fact that the numeracy skills of younger workers aged 15-34 years are considerably poorer than the numeracy skills of older construction workers (46% compared to 42%).⁸

Bargaining In the Construction Industry

The characteristics of the construction industry identified above make it quite clear that enterprise bargaining with a focus on each individual enterprise making its own tailored agreement is inappropriate. This fact has been quite clearly recognised by at least one major employer organisation, the Australian Industry Group (AiG). In their submission to the Royal Commission into the Building and Construction Industry the AiG note that:

“In Ai Group’s experience, differences in wages and conditions of employment are a source of significant disputation on major construction projects. Unless uniformity of wages and conditions can be established, disputes about inconsistent wages and conditions of employment become almost impossible to manage and create significant risk for stakeholders.

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In the experience of Ai Group, project managers perceive that differences in wage rates, conditions of employment and human resource management practices between employers on the same project, constitute the single largest industrial relations risk on major construction projects. Project agreements

⁸ ABS unpublished data from the Survey of aspects of Literacy, 1996
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provide a basis to ensure stability and consistency across the multiple employers who will work on a project.⁹

In their submission the AiG also notes the support of subcontractors for common wage rates and conditions on major projects:

“Subcontractors tendering for work on major projects want to be provided with information about the wage rates and conditions of employment upon which they should base their bid. Where project agreements are not in place to set wages and conditions of employment, subcontractors face substantial risks including:

- ◆ An inability to compete due to overestimating wages and conditions, in the absence of common guidelines provided by project agreements;*
- ◆ Underestimating the level of wages and conditions of employment necessary to attract and retain appropriately skilled labour and being unable to recover the necessary increases in those wages and conditions from project managers, when faced with claims part of the way through a project.*

These factors create great difficulty for the vast majority of small to medium sized businesses which lack the resources to manage their way through the myriad of contractual issues which would arise on a major construction project.

A further complication for many subcontractors arises because they need to employ personnel on a project by project basis and do not carry a large core workforce.

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⁹ AiG, Statement by the Australian Industry Group (to the Royal Commission into the Building and Construction Industry, November 2001, p.23
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Many subcontractors are ill equipped to handle employee relations risks arising from a major construction project and will have no desire to do so.”¹⁰

In the submission referred to, the AiG attempt to distinguish between major projects and lesser projects in arguing for the support of project agreements covering wages and conditions. The CFMEU would argue that the reasons proposed in support of project EBA’s are just as valid for having common wage rates and conditions (through pattern EBA’s) on smaller projects. Whether a construction site is a \$500 million major project or a \$2 million small project the characteristics of the way in which work is performed (i.e. subcontracting) and the workforce employed (highly mobile with poor literacy and numeracy skills) are the same.

One difference between project agreements and pattern agreements is that project agreements are often negotiated before the workforce is engaged, thereby requiring workers to rely on the negotiating skills of their representatives (i.e. the unions). With pattern agreements the workers have a direct say through the mass meetings and delegates meetings leading to the formulation of the template pattern EBA, and in the final voting for the approval of the EBA.

The Extent of Pattern Bargaining in the Construction Industry

A government report, *“Agreement making in Australia under the Workplace Relations Act – 1998 and 1999”* by the Department of Employment Workplace Relations and Small Business (DEWRSB) and the Office of Employment Advocate (OEA), identified 4,730 construction industry agreements for the period, covering 62,433 workers. This represented 4% of employees covered by federally registered enterprise agreements and 35.9% of the number of agreements registered.¹¹

¹⁰ *ibid.*, p.24-25

¹¹ DEWRSB and OEA, *“Agreement Making in Australia under the Workplace Relations Act – 1998 and 1999”*, June 2000,p.21

The report also identified 34 distinct pattern agreements in the Workplace Agreements Database (WAD). Pattern agreements accounted for 3,450 agreements covering an estimated 47,000 employees. Of these the CFMEU were party to 2,194 agreements which constituted 64% of all pattern agreements. This was 27% of all agreements on the database.¹²

A further report by the Department of Employment Workplace Relations and Small Business stated that between 1st October 1999 and 30th June 2000, 3,767 construction agreements covering 42,900 employees expired. This represented 73% of all construction agreements current at 30th September 1999.¹³ The number of pattern bargaining agreements in the construction industry is even greater than this as these figures only relate to federally registered EBA's. In a number of states (particularly QLD and NSW) substantial numbers of EBA's are registered by the State industrial commissions. There are also a number of EBA's that have not been registered.

The above figures demonstrate that pattern bargaining is predominately found in the construction industry. The clear intent of the Bill is therefore to attack the way in which enterprise bargaining is undertaken in the construction industry. This is despite the fact that pattern bargaining is clearly the most appropriate way of making enterprise agreements for the construction industry.

The Effect of Pattern Bargaining on Productivity in the Construction Industry

If pattern bargaining was the all consuming evil as portrayed by the Federal Coalition Government, then one would expect that it would have a negative

¹²ibid., p.65

¹³ DEWRBSB, "Trends in Enterprise Bargaining – June Quarter 2000 - Insert", p.6
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effect on productivity and investment in the industry. Recent studies however point to the opposite view. A recent report by Access Economics found that:

- Labour productivity in the Australian construction industry is high (second only to the UK in the countries subject to the comparison);
- Annual hours per construction employee are high (second only to the US);
- Australia has the lowest construction output prices of any country in the sample (in 1993);
- Construction prices were low relative to other prices in the economy.¹⁴

In a further report published by the Australian Petrochemical and Engineering Construction Industries in March 1995, entitled "*The Best Practice Guide to Petrochemical Plant Construction in Australia*", it was recommended to the Workplace Reform Group that:

"Best practice dictates that major projects are covered by a project specific EBA which binds all contractors working on the site. When working on these projects, it is recommended that the Project Agreement be the sole employment arrangement, overriding any other agreement in operation."

It is also worth noting that the AiG disagreed with the recent Productivity Commission report issued in August 1999¹⁵ which concluded that wage rates are best set at the enterprise level while other conditions of employment can be set by project agreements. According to the AiG:

"The Ai Group disagrees with this conclusion as there appears to be no evidence quoted in the report to support this view but rather, evidence to the

¹⁴ Access Economics and World Competitive Practices Pty Ltd, "Australian Construction Productivity: International Comparison", Canberra, August 1999, p.2

contrary as outlined in the following statement on behalf of Ralph M Lee Pty Ltd.

*“Pattern agreements ensure that employees working side by side on a job for different employers receive the same rates of pay. Employees on different rates of pay are never happy”.*¹⁶

Perhaps the final proof that pattern bargaining has not affected productivity and investment in the construction industry is that despite all the doom and gloom predictions (that were made when construction workers in Victoria achieved the 36 hour week through pattern bargaining in 2000), on 15th April 2002 the foundations were poured in Melbourne to start construction of the world's largest residential skyscraper. This \$500 million development, to be known as the Eureka Tower will be 88 storey's high (300 metres) and when it is completed in late 2004 it will be the same height as the Eiffel Tower. At the same time the Victorian Premier, Mr. Bracks, announced that \$1.1 billion worth of building work was approved in February this year, creating around 4000 jobs in the building sector.¹⁷

Conclusion

The intent of the *Workplace Relations Amendment (Genuine Bargaining) Bill 2002* is quite clearly aimed at hindering unions pursuing pattern bargaining, even when employers in an industry recognise that such an approach is appropriate. Contrary to the claims made by Minister Abbott in his second reading speech, pattern bargaining does not ignore the needs of employees and employers at the workplace level. Indeed pattern bargaining is a response to the special characteristics found in the construction industry, namely employers who are in the majority small businesses who lack sound financial and human resources skills, who due to the subcontracting nature of the

¹⁵ Productivity Commission, “Work Arrangements on Large Capital City Building Projects”, Labour Market Research, Commonwealth of Australia, August 1999

¹⁶ AiG, op cit., p.27

industry employ workers on a project by project basis with little if any continuity of employment; head contractors who employ very little direct labour relying on hundreds of different subcontractor firms to perform the work on a project; and the construction workers themselves who are highly mobile being employed in many cases by at least 3 different employers in any 12 month period and who unfortunately have low levels of numeracy and literacy skills.

Further, pattern bargaining is not an outdated or discredited approach. The facts speak for themselves and it is clear that pattern bargaining has increased the living standards of construction workers, increased productivity and investment in the industry and created more jobs.

¹⁷ Infolink Architecture & Building website (www.infolink.com.au), 16th April 2002
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