



## **Submission by the Civil Contractors Federation**

**to the**

**Senate Employment, Workplace Relations and Education Committee**

### **Inquiry into Workplace Agreements**

#### **1. The Civil Contractors Federation (CCF).**

- 1.1 The CCF on behalf of its eight State and Territory Branches and its members makes this submission. CCF is the peak industry body for all civil construction contractors, demolition contractors and industry related suppliers. These companies play a significant role in building construction projects and infrastructure development throughout Australia.
- 1.2 CCF is a national organization with an office in each state and territory of Australia and has a membership in excess of 1700 civil construction companies. CCF's membership includes civil construction companies ranging from small and medium to large civil construction, excavation and demolition companies, many of which are subcontractors. CCF on behalf of its membership makes this industry submission in response to the invitation of the Senate Employment, Workplace Relations and Education Committee in relation to the Committee's Inquiry into Workplace Agreements.
- 1.3 In preparing this submission CCF has sought information and feedback on the letter of invitation from its state and territory branches. As such, this submission represents a broad range of views from large contracting companies to small subcontracting organizations, owner operators and suppliers in the industry.
- 1.4 The Civil Construction sector is distinctly different from the commercial building sector and the residential sector of the building and construction industry.
- 1.5 Civil contractors employ staff with specific civil competencies and use sector specific (heavy) earth-moving equipment.

- 1.6 The civil construction sector primarily constructs roads, railways, tunnels, bridges, dams and other major infrastructure projects. The sector is also engaged in continuous maintenance and repair of these structures. The sector overlaps with the commercial building sector primarily on building sites where excavation is required prior to the construction of buildings or in the housing sector where preparation of subdivisions including roads, drainage and utilities are required.
- 1.7 The industry accounts for some \$9 billion of works annually, collectively employs some 50,000 people and owns around 40,000 items of heavy equipment.
- 1.8 Typically civil contractors are the first onto a building or infrastructure site, but tend also to be at the end of the supply chain of clients, principals and head contractors, specialist and subcontractors etc.

## **2. Terms of Reference.**

“**Act**” means the Workplace Relations Act 1996.

“**Workplace Agreement/s**” means an Australian Workplace Agreement or a Non Union Certified Agreement under the Act.

As a general proposition, the Federation supports the Federal Government’s IR reforms, including in regard to choice, enhanced flexibility and ease of agreement making.

### **2.1 Issue:**

*(a) The scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements;*

### **2.1 Submission:**

Parties to Workplace Agreements devote time and resources to making them. In some cases legal advice may be obtained, and legal costs incurred.

An important objective of the Workplace Agreements system is to encourage employees and their employers to focus on arrangements that are tapered to the business they work in. Both parties have an interest in its success. There has been a trend however,

particularly in Agreements made with unions, for Workplace Agreements to purport to cover non-parties who might be engaged by the employer, for example, subcontractors, or labour hire companies and regulate those non-parties relationship with their employees. The arrangements between say the subcontractor and its employees are therefore determined by others and they have no say in the negotiations. They will not even be aware they are taking place. The Act should be amended to make it clear that a Workplace Agreement or Union Agreement shall be invalid if it seeks to impose obligations on non-parties.

Some Workplace Agreements exclude the operation of otherwise relevant awards entirely. Others set out detailed conditions of employment but include a clause to the effect that if the Workplace Agreement is silent with respect to a matter a provision in the otherwise relevant (Parent) Award will apply.

One desire of the parties in negotiating a Workplace Agreement is to have a single, easily understood document that regulates the terms and conditions of employment in the workplace. The reason reference is made to the Parent Award is that Awards are lengthy and complex documents designed to cover a multitude of circumstance across an industry. If the Workplace Agreement were to cover every matter dealt with in the Award, it too would become a lengthy and complex document tapered to industry considerations rather than those of the workplace.

As things stand the Workplace Agreement will deal with the matters that usually arise in the workplace. Due to the breadth of Awards however, regard may still need to be had to the relevant Award. The Workplace Agreement system has simplified industrial regulation in the workplace to a degree but the system still remains complex because there is continual reference back to the Parent Award which was not framed with any regard to the circumstances of the individual workplace. Further simplification is required. A narrowing of the matters considered in the no disadvantage test would assist as it may result in Agreement only having to deal with core matters under the relevant Award together with other conditions peculiar to the workplace in question.

## **2.2 Issue:**

*(b) The capacity for employers and employees to choose the form of agreement-making which best suits their needs;*

## **2.2 Submission:**

Members of CCF are impacted by the full range of systems available, that is, by:

Awards,  
Non Union Certified Agreements,  
Union Certified Agreements,  
Australian Workplace Agreements (AWAs),  
Project Agreements  
One or more of the Agreements above underpinned by the relevant Award, or  
A combination of the above.

In relation to Awards, members of CCF employing plant operators and labourers (virtually all of them do) will be normally covered by a Federal Award in relation to those employees. The truck drivers and clerical employees they engage will usually be employed under state awards. The establishment of a unitary system would eliminate the complexities that arise from this.

It is CCF's experience that both employers and employees have the capacity to determine if they want the workplace to be regulated by a Workplace Agreement which they have had a hand in negotiating, or by a Union Agreement or an Award instead where their involvement will have been nil or minimal.

Union Agreements in the civil construction sector are often pattern agreements. The employer and the employees in the workplace have no input into their contents. Union Agreements have been a failure in terms of promoting a workplace focus in industrial regulation. In the case of an industry award the position is the same in terms of employer and employee input at the workplace level. As a result employers and employees will often elect to have the workplace regulated by non union agreements or by AWAs which they will both be directly involved in.

Non union Agreements have a collective element. A valid majority of employees must vote in favour of the Agreement (Section 170LK). AWAs will also usually have a

collective element. Under section 170VPA(e) of the Act an employer must not unfairly or unreasonably fail to offer all comparable employees an AWA being offered to another employee or the AWA may not be approved. Many employers also prefer to operate a standard set of terms and conditions within each classification throughout the workplace.

Employers and employees have clearly demonstrated their capacity to enter into mutually beneficial Workplace Agreements that have the workplace as their principal focus.

### **2.3 Issue:**

*(c) The social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;*

### **2.3 Submission:**

In relation to balancing work and family responsibilities the flexibilities available to the parties in how hours of work and rostering may be applied have made a positive contribution in this area. Further flexibilities however are required.

It may suit some individuals to work a Saturday as part of their 5 day ordinary working week because of family commitments with Sunday and, for example, a Wednesday off. Under the current no disadvantage test the relevant Award sets the benchmark. It will usually provide that an employee must be paid 38 hours Monday to Friday whether or not they work each of those days and penalty rates for work on a Saturday. This is a disincentive to the employer to introduce flexibility in relation to the days on which ordinary hours are worked. A revision of the current no disadvantage test to provide for greater flexibility in how individuals organize their ordinary working week with their employer is appropriate to facilitate family friendly arrangements.

### **2.4 Issue:**

*(d) The capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards;*

## **2.4 Submission:**

It is not unusual for Agreements to provide for productivity/ bonuses. Often these are linked to lost time due to workplace injuries. Employees have a monetary incentive to have regard to their own safety and the safety of others. Employers benefit through workers compensation experience factors and higher productivity.

Efficiency and competitiveness are taken into account by employers and employees in negotiating Agreements. Both have a direct interest in the business being competitive. The recognition of this mutual interest is largely a result of the evolution of the Workplace Agreements system of industrial regulation which has given a greater degree of control of workplace regulation to the direct participants. This degree of control should be increased.

## **2.5 Issue:**

*(e) Australia's international obligations.*

## **2.5 Submission:**

CCF does not see any conflict between direct participants in a workplace determining the best form of industrial regulation for them, and negotiating the terms and conditions to apply and Australia's international obligations.

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## **Attachments:**

- CCF IR Reform Policy Position
- CCF Wages Policy