



Submission by the  
**Housing Industry Association**

AC N 004 631 752

to

**the Senate**

re

**Workplace Relations Amendment  
(Work Choices) Bill 2005:**

11 November 2005

# 1 Executive Summary

The housing industry has for over 50 years been associated with self-employment, flexibility and choice in the labour market. Contracting is the lifeblood of the housing industry. An estimated 80 per cent of the industry's 394,000 workers are contractors, a far higher proportion of the workforce than in any other industry. More than any other sector of the economy, housing is an industry of independent family-operated small businesses.

The reforms set out in the Bill will encourage similar flexibilities in the economy as a whole. Employers and employees will be able to more freely and easily negotiate terms and conditions of employment which best suit the needs of the business and the employee.

HIA supports the Bill as the next evolutionary step forward for industrial relations in Australia. The legislation will create a simplified national system of workplace relations, encourage employers and employees to make agreements at the enterprise level, create key minimum standards that will protect the workplace interests of all parties, provide an improved labour market for young Australians and establish a framework that will ensure fair and equitable labour standards.

HIA supports the establishment of the Australian Fair Pay Commission (AFPC). As an independent expert body the Commission will conduct its wage-setting function in an objective, unbiased manner, without the time consuming, adversarial approach of previous wage determinations.

The legislation provides wage setting parameters that will overcome some of the complaints that have marred the wage setting system to date. The Commission has been charged with taking into account the needs of those who are low paid or unemployed, as well as the needs of young workers who should be given an opportunity to compete in the labour market.

The setting of wage rates for apprentices and trainees by an independent body will be a major step forward in providing the housing construction industry with more skilled contractors.

Efforts by industry to provide more relevant training and school based apprenticeships have been frustrated by the regulatory environment including the need for the setting of award conditions for such employment. This has required applications to be made to industrial relations commissions where proceedings are typically drawn out.

The ability of the Fair Pay Commission to establish such wages and the setting of school based apprentice wages under the legislation removes a barrier to making training and skill acquisition more attractive and accessible to young Australians.

HIA notes that the Inquiry will not consider matters that have been subject of separate recent reviews including pattern bargaining, union right of entry and award simplification. Our comments therefore are restricted mainly to agreement making and to trainees and apprentices.

## **2 Introduction.**

### **2.1 HIA**

The Housing Industry Association Limited (HIA) is an association of approximately 42,000 businesses. HIA is the peak industry association for businesses in the residential, building, renovation and development industry in Australia.

HIA members include builders and building contractors (residential and commercial), consultants, developers, manufacturers and suppliers.

HIA members cover the full range of trade and professional services in the industry, including carpenters and joiners; tilers, plasterers and bricklayers; painters and decorators; architects and draftspersons; quantity surveyors; arbitrators and mediators; maintenance and service tradespersons; and landscapers.

HIA has extensive experience in providing legal advice and support to contractor members. Consequently, HIA is familiar with the range of compliance and other business issues stemming from the treatment of contractors under Commonwealth and State legislation.

### **2.2 The Housing Industry**

The housing industry is a vital part of the Australian economy, generating 4.4 per cent of gross domestic product (\$32.5 billion in 2002-03) and providing work for 394,000 Australians. The overwhelming majority of people working in the industry are contractors (an estimated 315,000).

As these figures suggest, residential housing is an industry characterised by independent small businesses. In fact, there are more small firms in the building and construction sector than any other industry sector (19 per cent of all small businesses in Australia operate in building and construction). In residential construction, an average of 2.3 people are employed per firm.<sup>1</sup>

In 2001-02, more than 150,000 firms operated in building and construction. Nearly two-thirds of these businesses were suppliers of specialist trade services – plumbers, electricians, carpenters, bricklayers, concreters, tilers, and plasterers. Of the remaining firms, more than 40,000 were residential builders. Unlike commercial construction, smaller firms command most of the market. The largest 100 housing firms hold some 40 per cent of the market (the equivalent figure for commercial construction is more than 90 per cent).

### **2.3 Flexibility and agreement making in the housing industry**

The use of contractors in the housing industry is traditional and successful.

Contracting is preferred because of the freedom that the parties enjoy to make their own agreements about work arrangements. To substitute employees operating under the more rigid and inefficient practices of the award system, as applies in the commercial sector, would drive housing affordability down.

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<sup>1</sup> Productivity Commission. Reform of Building Regulation. Canberra, Productivity Commission, 2004, p.412.

Independent research has shown that the housing industry is significantly more efficient than commercial construction. The Productivity Commission first analysed the effects of restrictive work practices in the commercial sector in 1999.<sup>2</sup>

In 2003, Econtech conducted a thorough analysis of the different cost structures applying in the housing and commercial construction sectors.<sup>3</sup> Econtech found that the same tasks cost an average of 10 per cent more in the commercial sector than in the residential sector. Labour costs were on average 19 per cent higher in the commercial sector. This analysis understated the actual cost differential by excluding site allowances which are a considerable additional cost for commercial projects. Industry estimates suggest that the impact of site allowances for large projects in Victoria, for example, is an additional 3 to 4 per cent of total project costs.

In those jurisdictions most affected by restrictive work practices, namely Western Australia, the cost difference between the sectors is even greater. In Western Australia, standard tasks such as laying a concrete slab cost 14 per cent more in the commercial sector than in the residential sector.

Closing the productivity gap would deliver huge benefits to the economy. Econotech estimates that raising productivity in commercial construction to the level of the housing industry would generate an extra \$2.3 billion a year in economic benefits, permanently raise gross domestic product by 1.1 per cent and reduce the consumer price index by 1 per cent. Demand for construction, residential and commercial, would benefit from a permanent boost of 2.2 per cent. Consumers would benefit from a 2 per cent fall in the price of housing.

The Royal Commission into the Building and Construction Industry has confirmed that restrictive work practices imposed by unions have stunted productivity growth in the commercial sector.

The key to the greater productivity in the housing sector is, quite simply, the use of independent contractors and the flexibility that these arrangements provide for businesses to operate more efficiently and effectively. These benefits include:

- Higher levels of productivity;
- Guaranteed higher quality of work;
- Payment by results which leads to stable costs; and
- Capacity to organise work to suit themselves.

Although basic guarantees, such as those set out in the Bill, do not apply to contractors, the rates paid to contractors exceed those under awards. HIA has compiled data showing the reported incomes of its contractor members against the award rates for the same trades, set by the National Building and Construction Industry Award. The award figures below include all allowances other than the travel allowance of \$13.80 per day.

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<sup>2</sup> Productivity Commission. Work Arrangements on Large Capital City Building Projects. Canberra, AusInfo, 1999.

<sup>3</sup> Econtech. Economic Analysis of the Building and Construction Sector. Canberra, Econtech 2003.

**TABLE ONE: AWARD PAYMENTS AND CONTRACTOR PRICES DECEMBER 2004**

<b>Trade</b>	<b>Award rate (per hour)</b>	<b>Contractor's price (per hour)</b>
Bricklaying	\$16.45 - \$19.05	\$41.25
Carpentry	\$16.63	\$42.25
Ceramic tiling	\$16.63	\$44.96
Joinery	\$16.63	\$48.85
Painting	\$16.16	\$44.00
Plastering	\$16.52	\$44.19
Roofing	\$16.34	\$50.08

Some caveats should be stated with regard to this data. Many employees will be receiving wages in excess of the award rate. Employees will also have the benefit of certain entitlements (eg. leave) not available to contractors. Contractors will need to meet costs related to operating their business which do not apply to employees.

Nevertheless, even with these factors taken into account, a significant disparity between the award and contract rates would remain. There is no evidence that contractors are being underpaid.

Over the last ten years, employment in building and construction has risen by 41 per cent or 210,000 jobs. An estimated two-thirds of this growth (c.140,000) has been in the residential sector. It seems unlikely that this growth would have occurred if conditions in the sector were unattractive.

### **3 Agreement Making**

HIA and our members have been strong advocates for Australian Workplace Agreements (AWAs). HIA is a specified partner of the OEA and an Associate of the OEA's Small Business program.

AWAs can be beneficial for both a business and an employee as terms and conditions can be negotiated to accommodate both parties, for example the hours to be worked can be made flexible to accommodate the employee's family responsibilities.

There have been complications with some AWAs in passing the no disadvantage test when having to determine the appropriate award to apply. In such a case you apply for an award designation by the OEA. This designation would often be a State award.

A problem with the majority of State Awards is that they provide for entitlements and wage rates that extend beyond the 20 allowable matters as provided for in the *Workplace Relations Act 1996 (Cth)*.

The use of the Fair Pay Standard as the measure for the basic conditions for an agreement will significantly improve agreement making and aid in overcoming anomalies. This will reduce costs to both business and government in the creation and registration of agreements.

Under the current system employers have to proceed through a complex lodgement process of filling out forms and filing the AWA with the OEA with 21 days. Once the AWA has been received by the OEA a filing receipt is issued. The OEA then reviews the AWA and applies the no disadvantage test. If the AWA passes an approval notice is sent to the employer. If the AWA fails

the test the OEA consults with the employer and provides an undertaking in order for the AWA to pass and be approved.

The AWA is not effective until the approval notice has been received by the employer. Specified Partners, like the HIA, are able to work under the AWAs once the filing receipt has been received.

This process, although improved with the introduction of 'line-in' lodgements, creates uncertainty for employers and employees while awaiting approval.

The changes assist small business by reducing the number of administrative and technical issues that burden industry and can affect the approval of the agreement. These benefits include:

- AWAs commence from the date the agreement is signed. If the agreement does not pass the Fair Pay Standard, the OEA will require back payment of wages;
- The employer and employee have 30 days to lodge the AWA with the OEA (from the date of signing);
- An AWA will still remain valid even if an undertaking needs to be issued in circumstances where the OEA have the capacity, e.g. the OEA can place a condition that the issue be remedied within a certain time period.

HIA supports the new amendments as they provide a simpler and faster lodgement process.

The amendments to collective agreements will enhance the ability of businesses to enter these agreements. HIA supports these changes.

## **4 Apprentices and Trainees**

The building and construction industry will contribute significantly to employment growth over the next five years. The Department of Employment and Workplace Relations forecasts employment in construction will increase by 13,000 jobs a year to 2010-11. Construction is expected to be one of the top five industries which will generate more than 80 per cent of new jobs to 2010-11. HIA forecasts a cyclical upswing after 2005-2006. HIA expects employment in the sector to rise by 6 % over the next three years to meet demand in 2009.

However, at this time of demand, the industry is facing an acute shortage of skilled labour. The building and construction industry is the sector most severely affected by skills shortages. Nationally the industry has the highest level of trade vacancies of any sector: 23% of all trade vacancies and 14% of all skilled vacancies. The building and construction workforce is predominantly composed of tradespeople – 60% of workers are tradespeople while the all-industry average is 13%. Without an adequate supply of skilled tradespeople, the sector will struggle to meet demand.

The acute skills shortages affects home-buyers in terms of higher trade contractor prices and delays in the completion of work. The increase in trade contractor prices has inevitably lead to increases in home prices. Skill shortages will also have a major impact on economic growth because, as noted above, the building and construction industry will play a major part in employment growth over the next five years.

To overcome these pressures, vocational education and training must be flexible and respond to the needs of the market. For its part, HIA believes reform must be based on sound principles, in particular:

- Training must be relevant to the needs of the industry;
- Training should not be constrained by industrial relations agendas;
- Employers and apprentices must have a real choice of training options;
- Training must be flexible and genuinely competency-based; and
- Financial support for trainees and apprentices must be available on an equal basis to all registered trainers delivering accredited courses.

The training and industrial relations systems are closely linked such that training options in the industry are distorted by the industrial relations system.

The 19<sup>th</sup> century model has been upheld by unions to serve their traditional industrial agendas of a workforce rigidly divided into tradesmen and labourers, with tradesmen being in short supply and thereby assured of high wages. Many employers work within this industrial constraint by paying trades wages to unqualified but sufficiently skilled workers (many of them ex-apprentices) who can do 'tradesmen's work', at least in a particular area. Until recently, building unions had an effective veto over the development of Training Packages, and ensured that only AQF3 Training Packages were developed in building and construction.

Furthermore, new training options cannot be developed unless an industrial instrument (eg. award) creating a corresponding job classification already exists. In some States this also required the Declaration of a Vocation by a State Training Board. Union resistance to such changes, through the arbitral industrial relations system, has ensured that training in our industry is confined to 13 traditional apprenticeships. The requirement under State training legislation that all new training courses have demonstrated union support further compounds this problem.

HIA supports the change in the Bill which will see the Fair Pay Commission set minimum wages for all apprenticeships and traineeships, regardless of whether a current award classification exists. This, along with the removal of award provisions regulating the duration of apprenticeships and traineeships, will allow the development of the new training packages needed by industry.

The Bill will establish school based apprenticeship and trainee rates. Changes to this type of training have been strongly resisted by unions and has prevented the implementation of this training in nearly all States.

Over 94 per cent of Australia's secondary schools now offer vocational education and training (VET) to their senior students. Students can now gain practical work skills and nationally recognised VET qualifications as part of their secondary education. This growth of VET in schools programs has seen pre-apprenticeship training overshadowed. While VET in schools has exposed far more students to the possibility of a career in trades, it does not provide skills training tailored to specific industries.

Apprentices need to have the opportunity to undertake pre-apprenticeship training or some type of bridging training between their VET training and their commencement of an apprenticeship. This would improve the skills of first year apprentices, making these apprentices more employable to potential employers. There is a pressing need to improve the skills of school leavers commencing apprenticeships. The most common reason given by members, in a HIA survey carried out in

August this year, for not employing an apprentice was the inability to find a person that is suitable for the job. There is the need to improve the suitability and quality of apprentices so that host trainers are more prepared to take on an apprentice. Pre-apprenticeship and practical vocational training in secondary schools is one of the most effective approach to improving the quality of apprentices.

School Based New Apprenticeships provide a proper transition into work through an apprenticeship. Students who participate in a School Based New Apprenticeship will be gaining industry skills and will be more attractive to employers. Exposing more people to the industry at an early age is a positive step towards making host employers more willing to take on an apprentice.

Until now the need to set apprenticeship conditions through awards has frustrated the roll out of School Based New Apprenticeships. The move to set rates and conditions as proposed by Work Choices will overcome this barrier.

The effect of these reforms will be to assist in the separation of training from the industrial relations system. This will allow for more flexible industry training and greater competition in the delivery of training. HIA has for many years been lobbying for the separation of training and industrial relations, and the current reforms are strongly supported by HIA.