

## **CFMEU Response on Issues Raised During Productivity Commission Brisbane Hearing**

At the public hearing in Brisbane on 11<sup>th</sup> April the CFMEU appeared by way of a teleconference. During the hearing the CFMEU was asked to respond on a number of issues. Our short response (given the limited time available) is as follows:

### **1. Better Analysis of EBA's**

Unfortunately given the limited time available we are not in a position to give a detailed analysis of EBA's. What we can say is that:

- The level of living away from home allowances (which are paid in lieu of the employer providing meals and accommodation) in an EBA of \$500 per week is hardly over generous, especially if compared to the reasonable travel expenses schedule put out by the ATO which has a figure of \$213 per day for other country centres and up to \$349 per day for Perth (see <http://law.ato.gov.au/atolaw/view.htm?DocID=TXD/TD201217/NAT/ATO/00001&PiT=99991231235958> ).
- In regard to site allowances, it must be recognised that these are usually paid in lieu of a number of special rates (allowances paid for disabilities associated with certain work e.g. wet work, confined spaces, explosive power tools, toxic substances, etc.) which would otherwise be payable in accordance with the award. Payment of a flat rate per hour worked to all workers on the site is administratively easier for employers than having to identify which special rate is payable for each hour worked per day, for each individual worker (noting that some special rates may only be applicable to different groups of workers at varying times in a day). Site allowances have always been determined based on the total value of the project and the majority of non-project specific EBA's include a sliding scale of site allowances based on the value of the project (see for example the State appendices in the Lend Lease Project Management & Construction/CFMEU Joint Development Agreement Mark 8 2012-16 <https://www.fwc.gov.au/documents/documents/agreements/fwa/AE896830.pdf> ). Project specific EBA's on the other hand will only include one rate of site allowance (with an escalation clause which provides for increases during the life of the agreement) applicable to all workers covered by the agreement. This rate is normally set by the head contractor or project developer before the project commences and is then reflected in all project specific EBA's for contractors engaged on the project (see for example the Project Allowance on page 159 of the ASK Aluminium Fabrications Pty Ltd and CFMEU Victorian Desalination Project Agreement 2011 <https://www.fwc.gov.au/documents/documents/agreements/fwa/AE886944.pdf>).
- In regard to jump up clauses being included in EBA's, they are another way of ensuring that workers employed on the same site doing similar work are paid at the same rate (the other way is to treat the project as a greenfield agreement and requiring all employers engaged on the project to have greenfield EBA's). It is well recognised by industrial relations practitioners (of both employer and union persuasion) that having workers paid at different rates for performing the same work is a recipe for industrial disputation. If head contractors engaged companies with EBA's that paid different rates of pay and which expired at different times during the life of a project, then they would risk the possibility of facing

industrial action by the employees of those companies and potential delays to the project resulting in additional financial costs through completion penalties. Engaging companies with jump up clauses in their EBA's reduces this risk.

- Factors that influence the level of wage rates and other conditions in enterprise agreements are those set out in paragraph 3.11 of our written submission and, of course, the level of economic activity in the sector as stated by Mr Noonan during the public hearing.

## **2. The Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry**

During the public hearing the union was asked by Mr. Harris where the code was actually negative. It should be noted that the current Victorian Code of Practice for the Building and Construction Industry<sup>1</sup> was revised in 1999 and defers to the National Code on industrial relations. The Victorian Code of Practice has not changed since then. What has changed is that the Victorian Government introduced new Implementation Guidelines in 2012 (which were updated in June 2013) and it is these Implementation Guidelines that we understand Mr Harris was referring to.

As we stated in our written submission the Implementation Guidelines are not an economic blueprint for improved productivity but a transparent political policy designed to simply reduce trade union influence. The intent of the Implementation guidelines is clearly stated in the introduction,

*“These implementation Guidelines (Guidelines) have been developed to further assist in the achievement of the objectives of the Victorian Code and in particular, the industrial relations, OHS&R and workforce reform elements as adopted from the National Code.”*

(<http://www.dtf.vic.gov.au/files/33b4eecf-6bf8-4fc1-b4a0-a1d400edafac/Implementation-Guidelines-VicCodePractice-Building-Construction-Industry-May13.pdf> p.2)

The focus on industrial relations is demonstrated by the emphasis on tenderers being required to provide a Workplace Relations Management Plan (s.5.1), restricting what tenderers can include in their enterprise agreements including banning provisions that require an employer to consult or seek the approval of a union over the number, source, type or payment of labour required by the employer (s.5.5), micromanaging what must be included in a Workplace Relations Management Plan (s.6.1), proscribing what must be included in a dispute settlement procedure in an agreement (s.8), and requiring contractors to not use employee representatives, site delegates or other union representatives to undertake or administer site induction processes, and requiring employers not to allow admission to a site by a union official other than in strict compliance with the right of entry provisions of the Fair Work Act 2009 and any relevant and applicable OHS or Victorian legislation (s. 10.2).

In comparison the existing (Federal) Building Code 2013 is not so restrictive and gives greater flexibility to the industrial parties to work out and agree on their own industrial arrangements as

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<sup>1</sup>(see [http://www.dtf.vic.gov.au/files/441\\_e3184-d98f-47d1-8e72-a1d400edcce9/VictorianCodePractice-March1999.pdf](http://www.dtf.vic.gov.au/files/441_e3184-d98f-47d1-8e72-a1d400edcce9/VictorianCodePractice-March1999.pdf) )

long as they are in accordance with the requirements of the Fair Work Act 2009.

(See <http://www.comlaw.gov.au/Details/F2013L00130>)

(NB Guidelines that apply to the procurement of building work, including guidelines of a State or Territory, cannot include additional requirements about matters that the contractor or participant is, or is not, required to include in an enterprise agreement or workplace practices that the contractor or participant is required to carry out, or not carry out, in relation to building work.)

There is no evidence that the Victorian Implementation Guidelines will reduce costs or improve productivity. Indeed we submit that they will have the opposite effect as they will diminish the co-operation between workers and management. Management working with unions and improving labour relations have been identified as one way of improving productivity not reducing it (see paragraph 3.3 of our written submission).

We would suggest that rather than focusing on industrial relations in their implementation guidelines the Federal and State governments should take heed of international research and address the following areas for improving construction productivity:

- Labour management, conditions and relations (including incentive programs, working with unions, work schedules, training and certification of the workforce).
- Project front-end planning (loading) and work face planning.
- Management of construction and support (including management of change and rework minimisation, material management and supply chain management, quality, contract administration).
- Engineering management.
- Effective Supervision and leadership.
- Communication.
- Contractual strategy and contractor selection.
- Constructability in engineering design.
- Government influence (including having a role in the pace of the start-up of new projects, withholding regulatory approval until a target of front end loading is reached, ensuring sustainable development).
- Modularisation, Prefabrication and pre-build in shops (including the use of standardisation where possible in design and construction so that people are not seeking to re-invent the wheel on each new project).

(source: [http://www.albertacanada.com/files/albertacanada/improving\\_construction\\_productivity.pdf](http://www.albertacanada.com/files/albertacanada/improving_construction_productivity.pdf) )

### **3. National Apprenticeships Program**

During the public consultation Mr. Harris asked a question about our position on the National Apprenticeships Program (NAP) and referred to paragraph 4.12 of our written submission. The union gave a response but the transcript does not adequately reflect what we intended to say.

The issue we have with the NAP is that it should not be used as a substitute for taking on younger workers into a full apprenticeship. The target audience for the NAP is mature workers who already have substantial skills (at least 40% of the skills requirements of a particular trade). The anecdotal

evidence that we have is that on a lot of the major infrastructure and resource projects the employers have shown that they will only take on either adult apprentices who have industry experience or apprentices starting their third or 4<sup>th</sup> year. Our fear is that if the NAP is the preferred model for the infrastructure construction sector then it will diminish the job opportunities for young people who wish to take up an apprenticeship in the industry. Our position is that the NAP should be in addition to and not a substitute for the employment of people, especially young people, in full apprenticeships.

#### **4. Sources of Information on innovation**

During the public consultation Mr Noonan referred to NATSPEC as a source of information on innovation. The person he was referring to was a Mr. Richard Choy whose contact details can be found at <http://www.natspec.com.au/page.asp?wptitle=Contact%20Us>.

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