THE CHANGING FACE OF INDUSTRIAL RELATIONS IN THE BUILDING AND CONSTRUCTION INDUSTRY

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INTRODUCTION

Industrial relations in Australia is about to change dramatically, nowhere more so than in the building and construction industry.

This paper outlines some of the changes expected soon or already introduced. It starts by setting out the broad reforms promised and then discusses changes specific to the building and construction industry.

GENERAL REFORM

On 26 May 2005, the Prime Minister and Minister for Employment and Workplace Relations announced changes that will herald a new era for Australian workplace relations.[1] The face of workplace relations will change to incorporate:

• national system of workplace relations based upon the corporations power of the Constitution;

• the establishment of a new body, the Australian Fair Pay Commission, to set minimum wages;

• further streamlining of industrial awards;

• establishing legislated minimum conditions of employment to underpin bargaining which will form the new 'no disadvantage' test; and

• simplification of the bargaining process, including a system of lodgement of collective bargaining agreements with the Office of the Employment Advocate.[2]

These broad and far reaching reforms are still being fleshed out and how they will fit with the current workplace relations system is being assessed by the Government, particularly the arrangements that will be needed to move from a system based upon the conciliation and arbitration power of the Constitution to a unitary (single Federal) system based upon the use of the corporations power.[3] Essentially, it appears that so-called 'transitional' arrangements mean that unincorporated businesses will have five years in which to become incorporated,[4] in order to get the benefits of the new system.

The extent of the changes and their final form will, undoubtedly, be revolutionary. We believe that the legislation may be exposed to the community via a Senate inquiry, although that topic is, like all aspects of this subject, controversial.[5] The likelihood of a Senate inquiry was recently increased when the Family First Party made a statement that endorsed the process,[6] but the Coalition have the numbers so they could reject the need for an inquiry or, at least, make it very short.

Statements have been made during the current debate on the workplace relations reforms which are emotional rather than informative. I found former Justice Munro's comments[7] particularly inflaming. There is no evidence that 'social harmony and equilibrium and equity for individual workers across Mr Howard's projected 'enterprise culture' is being put at risk'.[8] At a time when skills shortages are at the top of every employer's list of concerns, particularly in the building and construction industry,[9] and unemployment is at circa 5% with long term unemployment at an historic low,[10] employees' ability to reach enterprise bargains that provide them with equitable outcomes is obvious. This predominance of the skilled will continue well into the 21st century with people such as plumbers and refrigeration mechanics forecast to be in short supply as a structural (permanent) rather than a cyclical matter.

The new laws will bring profound change but premature and inaccurate criticism seems the order of the day rather than rational analysis based upon the detail (and that place, of course, is where the devil resides). That task awaits further policy decisions by the government and, to be effective, the release of draft legislation, a process which Master Builders would support: i.e. a process of public scrutiny, especially for change of the magnitude indicated.

The extent of that change was made evident on Sunday 9 October when, having put a final draft of this paper to bed, I was confronted with 67 pages of policy detail about the new system and, on the Monday, a series of headlines that seemed contradictory. As the Prime Minister emphasised the additional worker protections announced by Government[11] and the Australian Chamber of Commerce and Industry were saying the system would remain over-regulated,[12] the Financial Review announced that the reform plans had been 'toughened'.[13]

The Government has placed a great deal of material on a dedicated web site https://www.workchoices.gov.au/.[14] No matter what ideological or other view that you possess, the overwhelming direction of the content of these reforms is to encourage enterprise and individual agreement making and to lessen the importance of external third parties, especially the traditional 'players' such as the Australian Industrial Relations Commission, employer associations and unions. I believe the ACCI has summed up the direction of the reforms:

An excessive level of regulation of employer and employee relationships will remain, as governments progressively replace a regulated arbitration system with a regulated bargaining system and a legislated safety net.

In this paper one of the issues I explore, is how this reform direction is only partly true in the context of building and construction industry reform. For in the building and construction industry, a central organisation, the Australian Building and Construction Commission, is a powerful new third party that will have a major influence on the industry.

BUILDING INDUSTRY REFORM

A number of the elements of workplace reform that were contained in the 2003 industry specific package for building and construction that effected 120 of the Cole Royal Commission recommendations will not proceed.[15] Instead, they will be part of the broad reform agenda. These elements will be touched upon later. The point to make, however, is that the building and construction industry specific legislation recently passed is not as extensive as the 2003 reforms and that the 2005 legislation does not affect every detail of workplace relations in the industry. The specific building and construction industry package will be discussed next.

SPECIFIC BUILDING INDUSTRY REFORM

Despite elements of the 2003 package being taken up in the broader reforms, at the same time as making the general announcement, the Commonwealth Government reaffirmed its commitment to reforming industrial relations in the building and construction industry ahead of the broad reforms. These reforms were introduced because of the overwhelming evidence of unacceptable and unlawful behaviour exhibited by building unions. To reiterate the findings of both the Cole Royal Commission and the Building Industry Taskforce, just a few of these unacceptable practices include:

- industry lock down days;
- union permission required to substitute RDOs;
- no union enterprise bargain, no work;
- overtime bans that are non-negotiable;
- allocation of non–working union delegates particularly to large projects; and
- a host of restrictive work practices, such as the refusal to recognise part time work.

On 11 August 2005, the Building and Construction Industry Improvement Bill 2005 (BCII 2005) was passed by the House of Representatives. The Bill passed the Parliament on 7 September, with Royal assent on 12 September 2005. However the commencement of a number of provisions, including the start up of the Australian Building and Construction Commission (ABCC), occurred from 1 October 2005.

There is one very vital qualification to this start date. The BCII 2005 replicates, with some modifications, the industrial action provisions of the Building and Construction Industry Improvement Bill 2003 (BCII 2003) dealing with unlawful industrial action. Those provisions have retrospective effect from 9 March 2005 in order to dampen industrial demands for 'go early' pattern certified agreements that the CFMEU is pushing builders to sign in each State and Territory especially in Victoria as a way to beat the 'big bang' reforms. The BCII 2005, which was originally introduced on 9

March 2005, was not a complete Bill but contained fragments of the BCII 2003. The Government itself 'went early' on proposed changes that were explicitly designed to send a message to the industry not to sign CFMEU promoted pattern bargains. It remains our strong advice to you to await the new industrial relations changes in their entirety before re–negotiating a collective agreement and, at least, ensure that you possess a complete understanding of the revised Implementation Guidelines for the National Code of Practice,[16] before overhauling your industrial agreements.

The reasons were made plain by the Minister from early this year. In a March 2005 speech, Minister Andrews,[17] noted that the CFMEU was conducting national and State-based campaigns to force employers to renegotiate existing agreements well prior to their expiry dates. These campaigns aim to negate the effects of the reforms in general workplace relations law, but, specifically, in regard to the building and construction industry by 'locking in' conditions for the three year life of Federal certified agreements. As an example, it is common for the National Building and Construction Industry Award as it was at 31 December 1996 to be deemed to be the underpinning safety net Award where the certified agreement is silent on a matter.

The Minister reports on the Government's response to this union campaign:

The Government will not sit idly by and permit long overdue reform of this industry to be impeded by unlawful union demands.

To that end, I am announcing today that I will introduce into Parliament next week, legislation which mirrors the unlawful industrial actions of the BCIIB, including the substantially increased penalties contained in the BCIIB.

The legislation is a specifically targeted measure to address the unlawful conduct of unions. The legislation is being given retrospective effect, so that it will apply to any unlawful industrial action taken by building unions as part of the current bargaining campaign.[18]

TASKFORCE TO ABCC

From 1 October 2005, the ABCC took over the work of the current Building Industry Taskforce. The Taskforce did possess coercive powers but they were more constrained than the powers now provided to the ABCC. We didn't see the Taskforce exercise its powers in a manner that generated controversy. Frankly, one reason is because they were conferred close to the transfer date to the ABCC. Nearly twelve months after legislation giving the Taskforce increased powers passed (via the inaptly named Workplace Relations Amendment (Codifying Contempt Offences) Act 2004), those powers were formally put in place.

The amending Act provided that the Taskforce's new powers could not be utilised until Guidelines concerning the exercise of the powers were tabled in Parliament and had passed the disallowance period. The Guidelines in relation to the exercise of Compliance Powers in the Building and Construction Industry (the Guidelines) were tabled in Parliament on 9 August 2004 but were not finally passed by the Senate until 22 June 2005. The Taskforce was then able to compel people to provide information, produce documents, and attend and answer questions in specified circumstances.

The Guidelines detail the manner and conditions under which the Taskforce could ask questions, down to the level of detail of prescribing that the Taskforce must serve refreshments![19] I mention them because, as discussed later, we want some elements of them resurrected.

The new ABCC has even greater powers than those finally brought into effect by the Guidelines. Persons who refuse to produce documents or information to the ABCC face a term of imprisonment of six months for a first time offence. This has a real practical application for builders. Builders could be required to provide such documents as subcontract conditions, including special conditions that deal with any aspect of industrial relations, or safety or wage records to determine whether strike pay was paid, or records of conversation with unions and others.

Subcontractors, such as your group, could also be required to provide similar documents, particularly wage and payment records or any 'side agreements' that the CFMEU is promoting in some States as a condition of putting a certified agreement in place.

Section 52 of the BCII 2005 says the ABC Commissioner may, by written notice, compel a person to produce information or documents or attend before the ABC Commissioner or an assistant and answer relevant questions if certain criteria are satisfied. The criteria are that the ABC Commissioner believes on reasonable grounds that the person:

• has information or documents relevant to an investigation into a contravention by a building industry participant of the BCII 2005, the Workplace Relations Act, 1996 (Cth), or a Commonwealth industrial instrument; or

• is capable of giving evidence relevant to such an investigation.

It is this provision that the CFMEU has seized upon to generate community debate that the ABCC will operate without due regard for civil liberties.[20] That criticism ignores the fact that the Australian Competition and Consumer Commission and other like organisations have had similar powers for a considerable period and have not been subjected to the allegation that they are fundamentally affecting the rights of citizens.[21] Instead, the perspective is that they are assisting to enforce the rights of the community against those who break the law even though the right to silence of the person required to give evidence has been eroded. That is the perspective that should be borne in mind in the current context.

In addition, given the extent of unlawful and inappropriate behaviour in the industry, the powers of the ABCC to compel a person to provide information appear to Master Builders appropriate and necessary. Master Builders wants builders and subbies to be protected from arbitrary action by any Government authority but we do not believe that any capricious or unjust behaviour will occur. There will be protection via legal representation, and the general law will see that the propriety of the actions of the ABCC are under scrutiny.

This propriety is reinforced by the provision of the Act preventing the information from being used in any other proceedings save for some limited exceptions such as where a person has provided false or misleading documents or where a Commonwealth official has been obstructed. Basically, unless you lie the information is not going to be used against you in separate proceedings.

In addition, section 54 of BCII 2005 must be taken into account. Persons who provide information to the ABC Commissioner will have legal immunity against any civil or criminal proceedings in relation to the provision of that information. So if a builder is required to provide information then the builder is, for example, protected against defamation.

As a further protection for builders, Master Builders will be lobbying to ensure that protocols or guidelines are established that set out the basic parameters around which the ABCC investigations will take place. This will ensure that the general legal constraints on the ABCC and the rights of participants in these investigations, such as the right to representation, are set out in an accessible and orderly manner and that there are plain English guides to what will occur during an investigation. We believe that there are some elements of the Taskforce's guidelines should be carried over into the new regime, particularly the requirement to give reasonable notice to parties who are required to give oral evidence to the ABCC. But we won't insist on tea and bickies being mandatory!

ABCC A 'ONE–STOP SHOP'?

Master Builders' conception of the ABCC has been as an agency that will assist smaller builders and subcontractors in particular to exercise their rights under the law. The BCII 2005 goes some way in that direction by, for example, giving the ABCC the right, under Section 39, to obtain an injunction where unlawful industrial action is occurring or threatened. Small business generally cannot afford the cost of going to the courts to obtain an injunction. The legal costs are generally prohibitive. It won't hurt to ask the ABCC to step in.

Under sections 71 and 72, the ABCC also has power to intervene respectively in court and Australian Industrial Relations Commission (AIRC) proceedings if a matter arises under the BCII 2005 or the Workplace Relations Act involving a building industry participant. Again, you should not hesitate to make the request for the ABCC's help.

In the BCII 2003, there were numerous requirements placed upon builders to make reports to the ABCC, for example, where industrial action occurred or where it concluded. Builders no longer have these obligations placed upon them by the BCII 2005.

However, under the Building and Construction Industry Improvement Regulations 2005 all court action taken under the Act or under the Workplace Relations Act must be reported to the ABCC by a building industry participant or a small civil penalty will be payable.[22]

There is also an obligation placed upon the Industrial Registrar, pursuant to section 74, to keep the ABCC informed of every application lodged with the AIRC under the Workplace Relations Act where it relates to a building industry participant and also to tell the ABCC of the outcome of the application.

In general, the ABCC must now obtain its intelligence in regard to other 'on ground' activities happening in the building and construction industry from its own resources. A very real practical effect of the BCII 2005 therefore comes from an omission: the dropping of the large number of reporting obligations previously thought to be a vital component of the reform package. But, again ironically, reporting requirements under the National Code and Guidelines, discussed later, have increased.

We do not believe that there will be an adequate information flow to fully inform the ABCC about

the extent of proscribed conduct that is occurring so don't hesitate to tell them about threats or unacceptable behaviour. We hold this view despite the fact that, in our understanding, the staff will be tripled from the current Taskforce's numbers to approximately 155.

UNLAWFUL INDUSTRIAL ACTION

Chapter 5 of the BCII 2005 deals with building industry industrial action. Essentially, Chapter 5 permits industrial action that is protected action for the purposes of the Workplace Relations Act (as modified by the BCII 2005 such as not being able to take protected action before the nominal expiry date of a certified agreement) to be lawfully taken. Strict adherence to the principles of the Act should be insisted upon and all notices legally scrutinised. Where a procedural requirement for protected action is necessary, the employer can challenge that it was lawfully taken and seek a remedy. So, the cost of engaging a lawyer to look at notices which say protected action is to be taken is a warranted expense.

One of the essential requirements for currently taking protected industrial action under the Workplace Relations Act is that, pursuant to section 170MO, notice of action must be given. In a recent submission to the Minister, Master Builders advocated that the BCII 2005 should provide a modification to section 170MO(2) in that the notice required to be served upon an employer/employee under that sub-section before protected action may be taken should also be served upon the ABCC, as a mandatory requirement. In our view, this will enable the ABCC to chart where and when allegedly lawful industrial action is taking place with a view to determining, in specific cases, whether that action was indeed lawful. Master Builders' suggestion is that failure to serve the notice on the ABCC would make the action unlawful. This suggestion hasn't been taken up but our lobbying continues.

One of the main concerns of Master Builders is that OH&S seems to be abused quite frequently for industrial aims. Hence, in the next section of this paper I deal with this issue.

UNLAWFUL INDUSTRIAL ACTION AND THE SANCTIONS

To be clear, action that is protected under the Workplace Relations Act as modified by BCII 2005 as well as industrial action taken on the basis of an imminent risk to health and safety is able to be taken lawfully. Unlawful industrial action is defined as all constitutionally connected, industrially motivated, building industrial action that is not excluded action. Each of these four phrases has a technical meaning that can be found in section 36 BCII 2005. Rather than take you through each of these technical definitions, I should note that building industrial action is defined broadly to cover conduct by employers and employees that adversely affects the performance of building work, which is defined widely.

Industrial action taken to get a State certified agreement and protected' under State law is unlawful under the BCII Act. Unless the action is for the OH&S reasons or is protected action under the Workplace Relations Act (excluded action), it is highly likely to be unlawful.

Focussing specifically on the OH&S exception, an employee will not be in breach where:

• the employee takes action based on a reasonable concern about an imminent risk to health or safety; and

• the employee does not unreasonably fail to comply with a direction of the employer to perform other available work, whether at the same or another workplace, that is safe for the employee to perform.

Where an employee takes industrial action on the basis of a concern about their health and safety, the employer can direct the employee to perform other work that is at the same or at another workplace. So, if workers are sitting in the shed because of safety, an employer should provide them with a direction to work on a part of the site that is safe or on another site. The workers have the onus of proving that they took the action based on OH&S grounds. If they can't prove this as fact or if they fail to meet the employer's direction, they should not be paid for the down time, as an employer will be exposing the business to a potential fine of up to $110,000 for making a payment of 'strike pay'.

Section 38 of BCII 2005 prohibits a person from engaging in unlawful industrial action. Unlawful industrial action attracts a Grade A civil penalty provision.

Section 49 sets the maximum penalty for Grade A civil penalty provision as $110,000 for a body corporate or $22,000 in any other case. Section 49 in chapter 7 of the Act also says that an eligible person may apply to an appropriate court concerning a contravention of a civil penalty provision. The ABCC is an eligible person. Builders and subbies are also able to take action if affected by the contravention. In that regard, section 49 brings in to effect the Minister's promise to introduce retrospective provisions whereby damages are payable for unlawful industrial action. Those damages are not, however, to be assessed by external assessors as was proposed in the BCII 2003.

The damages will be assessed in accordance with the normal provisions relating to the law of torts i.e. the law of civil wrongs.

OTHER PROVISIONS OF THE ACT

Obviously from the previous discussion, the central platforms of BCII 2005 are the establishment of the ABCC and the making of certain forms of industrial action unlawful, with improved access to sanctions in the form of injunctions, pecuniary (monetary) penalties and compensation for loss when that unlawful industrial action occurs.

BCII 2005 also:

• sets out the powers and functions of the newly established Federal Safety Commissioner, including setting a requirement for the Commissioner to apply an OH&S pre-qualification scheme as a condition of being granted Commonwealth work: section 35;

• prohibits coercion and discriminatory conduct: Chapter 6;

• as mentioned earlier, makes payment of strike pay unlawful with heavy fines for employers: section 42;[23] and

• commits the Minister to issue a Building Code, that may be more than one document: section 27.

The Government has taken up the recommendation of the Royal Commission that the forms of project agreement which should have force and effect in the building and construction industry are those made under section 170LC or section 170LL of the Workplace Relations Act. It should be noted that the application of these sections has major difficulties in the building and construction industry. Section 170LC agreements, for example, are almost non–existent—a situation likely to continue—because all of the subcontractors who might be bound by the project agreement are not known at the time the agreement is certified. The extent to which the notion of a project agreement will in future be permitted at all is in doubt, although one of the six new forms of agreement announced by the Government on 9 October will be a multiple business agreement. It seems from the skimpy detail released so far,[24] that the idea that these agreements will apply in respect of construction projects hasn't been thought out.

The National Code and Guidelines also place additional constraints on project agreements which limit their application to projects greater than $25 million. Under the Implementation guidelines, project agreements must also contain a productivity measure suitable to the client agency of the Commonwealth which lets the tender. Project agreements must be reviewable against performance benchmarks over the construction period and be able to be terminated or varied if these benchmarks are not met.[25]

DISCRIMINATION AND COERCION

As stated earlier, Chapter 6 of the BCII 2005 deals with coercion and discrimination. Section 45 is particularly relevant regarding the management of sites. Breach of the provision is a Grade A civil penalty as described earlier. Essentially, section 45 is designed to stop principal contractors requiring subcontractors to enter into particular types of industrial instrument, such as a CFMEU pattern agreement, in order for the subcontractor to get work on a site.

On the basis of this law, the old days are gone: builders must forget about telling subcontractors what they can and cannot do in terms of their industrial instruments. That is the case except where the Code and Guidelines apply—discussed below. This does not mean that they cannot require certain specific provisions in a particular industrial agreement that will help to manage a site—for example 'eligible conditions' may be 'encouraged' to be inserted in an industrial instrument that is conditions dealing with the time or days when work is to be performed or provisions relating to inclement weather procedures.

NATIONAL CODE AND GUIDELINES

The Government has made it plain that it has used and will continue to use its purchasing power to effect reform in the industry. This philosophy has meant that, in order to qualify for Commonwealth work, builders have had to meet a range of requirements that are in addition to the general workplace law. They also have to require their subbies to comply—so they are still needing to tell subbies what should be in their workplace agreements and other workplace documents.

The specifics of these requirements have been incorporated into conditions of tender where:

• the value of the Australian Government contribution is at least $5 million and represents at least 50 percent of the total project value; or

• the value of the Australian Government contribution for the project is $10 million or more, irrespective of the proportion of Australian Government funding.

The Government has recently announced changes to the Implementation Guidelines. From 1 November 2005 major changes will be applied to the Implementation Guidelines.[26] In addition if a builder does not apply the conditions in the

Code and Guidelines to all of their new building work, not just in relation to work of the kind where the Commonwealth provides funding, then the builder will not be eligible to tender for Commonwealth building work from 1 November 2005.

The Minister has also said that, when the general workplace reforms are legislated, the Implementation Guidelines will no longer be required. In other words, the new Guidelines that are being applied from 1 November 2005 reflect the general law that will be put in place in the 'big bang' reforms. In the meantime, many builders will have a tough job getting their industrial instruments to comply, remembering that it will be about all new work including private sector work that will be covered.

I mentioned earlier that the new Guidelines require extensive reporting systems to be put into place. Clause 8.8 of the Guidelines deals with this issue and requires, amongst other things, an effective and clear reporting structure for construction projects to be put in place.

CONCLUSION

I said at the beginning of this paper that the general workplace reforms had been foreshadowed as embracing a large element of the original 2003 building and construction industry reform package. These areas include the regulation of registered organisations (thrown into doubt in any event by the use of the corporations power for their regulation), right of entry and the intricacies of making and registering collective agreements and the details of procedures that will prevent pattern bargaining and that will govern how collective bargains are to be reached. But even with the deletion of these elements from the 2005 package, BCII 2005 is a powerful instrument to prevent building unions illegitimately exercising collective industrial power to 'roll-out' agreements that constrain the management of building sites.

An industry watchdog, the new ABCC, oversights this new regime of adherence to the rule of law. These laws are differently based from the philosophy underlying the general workplace reforms, which will emphasise less reliance on third party agencies and institutions. That is, in fact, the irony of building and construction industry workplace reform: that at a time when the rest of industry is to have less third party control imposed, the need to require adherence to the rule of law in the building and construction industry has meant that a well empowered third party is to play a vital role in the future of this sector's workplace reform. Welcome to the brave new world.

REFERENCES

1. The Hon Kevin Andrews, Minister for Employment and Workplace Relations, Media Release dated 26 May 2005 'Building Better Workplace Relations'.

2. See P McIlwain 'Agreement Making—What the Future Holds' presentation to the 2005 Workforce Conference, 22 September 2005.

3. See M Davis 'Business Seeks Tax Break to Fund IR Shift' Australian Financial Review 22 August 2005, p1 for an example of Master Builders lobbying on behalf of its unincorporated members.

4. M Skulley 'Reprieve for Small Business on IR Reforms' Australian Financial Review 7 October 2005 p1.

5. See Hansard 17 August 2005 p51 for the Minster for Employment and Workplace Relation's answer to a question on this subject asked by the Hon Stephen Smith which asked: 'Minister, will there or won't there be a Senate inquiry?' The Minister in part replied—'far be it from me to tell the Senate what to do.'

6. See Dennis Peters 'Value of minimum wages won't fall under Industrial Relations changes—Howard' AAPNet 26 September 2005.

7. P Munro 'Radical Change: Is it Needed or Loading the Dice' paper for Industrial Relations Society of the ACT Conference, 10 June 2005'

8. Id

9. See for example the Master Builders' media release dated 4 May 2005 'Builders Urged to Hire More Apprentices' which predicts that there will be a loss of 44,000 skilled workers from all trades due to retirement in the next five years as well as an annual shortfall of between 20,000 and 25,000 apprentices a year.

10. See The Hon Kevin Andrews media release dated 18 August 2005 'Long Term Unemployment Remains Near Historic Lows'.

11. See Workplace Express 'Howard announces changes to agreement–making, awards, as more second-wave detail revealed' 9 October 2005.

12. ACCI media release dated 9 October 2005 'Employers Welcome 'Workchoices' As Real Workplace Reform—But Overregulation Remains a Concern'.

13. Mark Davis and Mark Skulley 'PM Toughens Workplace Reform Plan' Australian Financial Review 10 October 2005 p1.

14. The Government has also released a booklet 'WorkChoices: A New Workplace Relations System' 9 October 2005.

15. Building and Construction Industry Improvement Bill

2003 (Cth) and the Building and Construction Industry Improvement (Consequential and Transitional) Bill 2003 (Cth) see also the parliamentary Bills Digest Nos. 129–130 2003–04 at http://www.aph.gov.au/library/pubs/bd/2003-04/04bd129.htm

16. See Master Builders media release dated 30 August 2005 'Commonwealth Purchasing Power to hit Construction Industry' for details of changes to the Code and Guidelines expected 1 October 2005, but postponed to 1 November 2005, some of which are discussed infra.

17. Speech to Master Builders Association, Queensland, 2 March 2005 http://www.dewrsb.gov.au/ministersAndMediaCentre/mediacentre/detail.asp?keywords=&title=&creator=&type=&month=&year=&index=&show=3244

18. Id at p4

19. See paragraph 54 of the guidelines to be found at http://www.buildingtaskforce.gov.au/Downloads/Documents/Guidelines%20for%20Compliance%20Powers.pdf

20. See for example CFMEU media release 'Building Workers Back Journalists on Free Speech' 25 August 2005 http://www.cfmeu.asn.au/construction/press/nat/20050825_civilliberties.html

21. Section 155 Trade Practices Act, 1974 (Cth)—in my understanding this provision has existed since at least 1977.

22. See 'Reporting to Construction Cop Now Mandatory' Workplace Express 5 October 2005.

23. The Australian Industrial Relations Commission has backed an employer docking pay and refusing flexitime entitlements when a 'report back' meeting was held outside normal breaks and without the company's agreement: see PR960784 a decision of Commission Hingley dated 28 July 2005. This case has implications for the building industry, especially where, for example, unauthorised stop work meetings are held within working time for which workers are paid. Under the Building and Construction Industry Improvement Act 2005, payment of strike pay from 9 March 2005 can attract large fines. The Act proposes increased penalties for contravention of the 'strike-pay' provisions in the Workplace Relations Act. It prohibits employers from making payments and employees from accepting payments in relation to any periods of building industrial action that are industrially–motivated and constitutionally–connected. There is a maximum penalty of $110,000 (for a body corporate) compared to the current maximum penalty under the Workplace Relations Act of $33,000. The maximum penalty for an individual will be $33,000 (compared with $22,000 in the 2003 Bill).

24. See footnote 14 above page 22 for the details on this type of agreement.

25. Clause 8.4 Australian Government Implementation Guidelines, September 2005.

26. See Workplace Express 'New Construction Guidelines Allow Cashing Out of Annual Leave' 30 August 2005 which contains a summary of most of the changes made as at 1 November 2005 as follows:

The revised guidelines:

1. Bars any restrictions in registered or unregistered agreements on offering AWAs;

2. Prohibits provisions allowing access to sites that go beyond entry provisions in the Workplace Relations Act or state legislation;

3. Outlaws restrictions on the type of agreement employers or employees are able to sign, or the parties with whom an agreement can be made;

4. Bans provisions requiring, or effectively coercing, group apprenticeship schemes to make over-award payments;

5. Requires any site allowances to be prescribed in an agreement or AWA registered under the Workplace Relations Act;

6. Allows project agreements, but only for 'major contracts';

7. Forbids provisions in agreements that provide for third parties, except for government regulatory agencies, to 'monitor' the operation of agreements;

8. Precludes provisions requiring union–nominated non–working delegates to be employed on a site;

9. Rules out provisions in agreements and awards requiring employers to put union logos on employer–supplied equipment, including clothing;

10. Outlaws redundancy selection criteria in industrial instruments such as 'last–on, first–off' arrangements that 'ignore' employers' operational requirements;

11. Bars sections restricting employers' 'short– or long–term labour requirements', provisions stipulating terms and conditions for third parties and requirements to consult unions about engagement of on-hire or contract labour; and

12. Excludes any restrictions on making all-in payments in lieu of annual leave, overtime or other entitlements.

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