MASTER BUILDERS
AUSTRALIA

Submission to the Independent Statutory Review of the *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022*

Introduction

1. On 2 October 2024, the Minister for Employment and Workplace Relations, Senator the Hon Murray Watt, announced the establishment of the *Secure Jobs, Better Pay Review* ('the Review').

2. The review is tasked with reviewing the terms of the *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* ('the SJBP Act') and also Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes Act) 2023* ('Part 16A').

3. The Amended Terms of Reference require that the review must:

    a. consider whether the operation of the amendments are appropriate and effective

    b. identify any unintended consequences of the amendments

    c. consider whether further amendments to the Fair Work Act 2009, or any other legislation, are necessary to improve the operation of the amendments or rectify any unintended consequences that are identified.

About Master Builders

4. This submission is made on behalf of Master Builders Australia Ltd. Master Builders Australia ('Master Builders') is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders' members are the Master Builder State and Territory Associations.

5. Over 130 years the movement has grown to over 32,000 businesses nationwide, 98 per cent of which are small in size and also includes the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.

6. The building and construction industry is an extremely important part of, and contributor to, the Australian economy and community. It is one of the largest industries in Australia, accounting for 10.4 per cent of gross domestic product, and around 9 per cent of employment in Australia.

7. The building and construction industry:

    a. consists of about 445,000 business entities, of which 98.6 per cent are considered small businesses (fewer than 20 employees);

    b. is home to over 260,000 independent contractors and self-employed tradies;

    c. employs almost 1.3 million people (around one in every 11 workers) and is the number two provider of full-time jobs in the Australian economy;

    d. represents about 10.4 per cent of GDP, the second largest sector within the economy;

    e. trains more than one third of the total number of trades-based apprentices every year, with over 121,000 construction trades apprentices and trainees; and

    f. performs building work each year to a value that exceeds $270 billion.

Summary of this submission

8. The focus of Master Builders in making this submission is on those amendments with particular relevance or application to participants and workplaces in the building and construction industry. These include the changes at Parts 3, 8, 12-23A and 25A of the SJBP Act and 16A of the Loopholes legislation.

9. As this submission outlines, the cumulative impact of the above changes has been to the overall detriment of workplaces in the building and construction and their participants. These impacts were

foreshadowed during various debates and inquiries preceding the passage of legislation and their subsequent emergence should be of no surprise to this Review.

10. The abolition of the Australian Building and Construction Commission (ABCC) and substantive repeal of effective provisions within the Building and Construction Industry (Improving Productivity) Act ('BCIIP Act') have caused particularly significant adverse outcomes for building and construction.

    a. The first 18 months following the amendments at Part 3 of Schedule 1 have seen a rapid re-emergence of a range of industry-specific practices, unlawful conduct and unproductive workplace restrictions which have been unfortunate but historically common in building and construction. Despite pleas and warnings from industry, regulatory agencies did not tackle these problems given the limitations in their remit and resources.

    b. It was only after the publication of the Nine news outlets' 'Building Bad' revelations about the CFMEU that Governments sought to act, including by placing the CFMEU into administration. Although these actions were welcomed by industry, they risk being an ineffective or 'band-aid' temporary measure unless backed by further law reform which is essential to achieving lasting, positive and tangible cultural change.

11. Changes at 16A of the Closing Loopholes legislation were moved on grounds that were unjustified and factually incorrect.

    a. They have been exploited for industrial purposes while undermining the importance of safety on worksites. Again, further industry-specific law reform is necessary to fix these adverse impacts and improve industry safety outcomes.

12. The changes made to bargaining provisions have failed to simplify bargaining processes and increase the level of enterprise level bargaining.

    a. To the contrary, these changes have made enterprise bargaining an even less attractive proposition for workplaces in building and construction and something that industry participants now actively avoid.

    b. The circumstances in which industry engages in bargaining only arise because they are already covered by an agreement or are forced to adopt one in order to tender for government funded work or work on particular projects.

    c. While industry welcomed the operation of Part 23A, this has been offset by the use of pattern union agreements with restrictive conditions and clauses that give unions unfettered control of operational matters. The extent to which pattern union agreements are used within industry has only increased and remains dominant.

    d. The ability for industry workplaces to implement a non-pattern, non-union agreement is, in practice, highly unrealistic and administratively prohibitive, contributing to an overall decline in their prevalence.

13. The establishment of the National Construction Industry Forum ('NCIF') under Part 25A has been welcomed by industry. Master Builders acknowledges its recent appointment to the NCIF and notes the recent announcement of the forum developing an industry blueprint. However, it remains to be seen if this body can achieve its stated aspirations, and will require stable and ongoing budgetary appropriations.

Background

14. In the lead up to debate on the SJBP Act, Master Builders was invited to provide a submission to the Senate Education and Employment Legislation Committee. This was duly filed and can be found here.

15. It will be of no surprise to the Review the main focus of Master Builders' submissions and advocacy at that time centred on Part 3 of Schedule 1 which, in summary, proposed to abolish the ABCC and repeal the substantive and effective elements of the BCIIP Act.

> *"The question I have for this committee is:* ***what do you think the CFMEU is going to do when there is no ABCC?*** *We have had building industry regulation on industrial relations in building and construction for 25 years now, and that's gone. The Rudd-Gillard government kept the fair work building commission, and we have had all sorts of regulation, but the important point to note is that we're going to lose that for the first time in 25 years.* ***I don't know what the CFMEU will do, but I can tell you that I don't think it's going to be good. I don't think they're going to become model industrial citizens****. So I simply say to the committee: it is not too late. It is not too late to not proceed with these elements of the bill, because it's bad for our industry, it's bad for our culture, it's bad for the industrial relations system and it's bad for unions."*
>
> **Master Builders verbal submission to Senate EEC Inquiry 11th November 2022**
>
> **Independent administrator to take control of CFMEU after 'abhorrent, intolerable' alleged behaviour**
>
>  By Daniel Jeffrey | 4:58pm Jul 17, 2024
>
> **9News.com.au, 17th July 2024**

16. Similarly, Master Builders was invited to provide a submission to the same Senate Committee in relation to the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* ('Loopholes Act'). This was likewise duly filed and can be found here.

17. Master Builders notes that the circumstances involving both the SJBP Act and the Loopholes Act left industry with very limited timeframes to understand the legislation and its ramifications.

    a. We note, for example, that significant amendments were made by the Government to its own SJBP legislation during debate that fundamentally altered features of the Bill and its effect, such as the application and scope of the multi-enterprise bargaining stream to participants in the building and construction industry.

    b. The inclusion of Part 16A was likewise a last-minute inclusion in the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* and had not been the subject of any meaningful analysis or scrutiny by the relevant legislation committee prior to this amendment being moved during debate in the Senate.

18. Master Builders was highly critical of the Government for adopting such a rushed and last-minute approach. It effectively forced the Senate to prematurely consider passage of complex changes to the Fair Work system of laws which have significant impacts on the community and economy,

without allowing the opportunity for these to first be appropriately scrutinised and objectively assessed.

19. Further, all of the evidence and data referenced within the two submissions referenced above was objectively proven and sourced from third-party sources, such as Federal Court judgements. This information directly contradicted, rebuffed or contested much of the assertions contained in the relevant Explanatory Memorandums and Regulatory Impact Analyses. Despite this, the final Committee Majority Report virtually ignored this evidence and did not even attempt to disprove or contest it. This was a disappointing outcome and severely undermined any notion of objective and evidence-based policy making.

RECOMMENDATIONS

20. That the Review find that:

    a. Any future changes to workplace laws only be considered by Parliament following extensive consultation with industry and only if justified by robust and objective analysis and assessment; and

    b. That there be sufficient time afforded to ensure that conventional parliamentary scrutiny processes have adequate time to properly inquire into, and report on, any proposed legislative change.

SCHEDULE 1 - PART 3 – ABOLITION OF THE ABCC AND BCIIP ACT AMENDMENTS

Summary of amendments made

21. The amendments in Part 3 made the following changes:

    a. Removed an effective and comprehensive set of industry specific workplace relations laws, the need for which has been justified and forensically documented over many decades;

    b. Abolished the Office of the Australian Building and Construction Commissioner which has been a highly effective regulator for the building and construction industry in ensuring compliance with the rule of law and driving improvements in overall industry culture;

    c. Removed the higher penalties applicable for breaches of workplace laws for building and construction industry participants;

    d. Removed particular parts of the Building and Construction Industry (Improving Productivity) Act 2016 ('BCIIP') Act that exist to tackle conduct and illegal behaviour that commonly occurs in building and construction, including unlawful picketing and specific types of coercive conduct;

    e. Removed additional safeguard obligations and sanctions for non-compliance with a range of other laws, including competition, security of payment, and safety laws; and

    f. Removed the additional obligation on industry participants to ensure compliance with workplace laws, report instances of actual or threatened non-compliance, and take steps to prevent non-compliance.

22. In response to these amendments, Master Builders made the following observations in our written submission filed with the Senate EEC (our emphasis):

    "Master Builders emphatically opposes any moves that abolish the ABCC. All available evidence shows that the ABCC has been an effective and efficient regulator. The ABCC has made a significant difference in ensuring building industry participants comply with the rule of law and

it has driven much needed positive industry cultural change. There are no sound grounds to abolish the ABCC or divert from the long-standing bipartisan approach of maintaining special industrial relations laws for the building and construction industry. The work of the ABCC is not yet done and its removal will undo the significant improvements it has delivered for our building and construction industry. Master Builders strongly opposes the abolition of the ABCC."

"The abolition of the ABCC and associated Code means that, for the first time since 2001, there will be no industry-specific body to regulate industrial relations and enforce compliance with workplace laws for building and construction workplaces. This will be a disaster for every single participant within the building and construction industry."

"Combined with the other measures in this Bill, the abolition of the ABCC represents one of most significant setbacks for building and construction workplaces and industrial relations in Australia that Master Builders has ever witnessed."

"The FWO is not an effective replacement for the ABCC – while Master Builders supports the work of the FWO, it will simply not be an effective replacement for the ABCC. This Bill does not give the FWO any new powers, allocate the necessary resources, or do anything to ensure it is appropriately equipped to tackle the unique sector specific problems that have been forensically documented over several decades and are widely known. Without these necessary elements, and despite their best intentions, we predict that the FWO will not be in any way as effective as the ABCC for the building and construction industry."

23. During evidence given when appearing before the Senate EEC, Master Builders said as follows (our emphasis):

"Instead, I just want to say this: everybody knows that the building and construction industry is home to a certain cohort of individuals and certain associations who, for whatever reason, think they're above the law. This is not a group of people who are operating in a normal way as a normal union might operate; this is a completely different kettle of fish we're talking about. They have a general attitude and approach which has, regrettably, been part of our sector for 50 years, as far as I can tell, or probably longer, and it's forensically documented."

"Over that period of time, and certainly since 1983, I'm aware that we've had the Gyles royal commission, the Winneke royal commission, the Cole royal commission, the Heydon royal commission, the Wilcox report and numerous other reports, reviews and inquiries into what happens in the building and construction industry. All of those reports note the same thing: we are home to a recidivist union. We have Federal Court judges who say that we have a union which brings the entire labour movement into disrepute. "

"The conduct of this union in our industry gives our industry a bad name, and it contributes to an extremely poor culture. It's a group of individuals who seem to be operating like it's 1960. It's not 1960, but, at the same time, these people are still operating. Honestly, they make a mockery of the entire industrial relations system."

The impacts of these amendments

24. The impacts of these amendments have been exactly as Master Builders predicted.

> *"The number one job of any union is to look after its members. That's a job of the union and it's a job of the officials.* ***The reported behaviour from the construction division of the CFMEU is the exact opposite of that obligation. It's abhorrent, it's intolerable****."*
>
> **Hon. Tony Burke MP, Minister for Employment and Workplace Relations, Press Conference 17th July 2024**

25. These predicted impacts have manifested in three main ways – bargaining; workplace conduct; and the placement of the CFMEU into administration – each of which is dealt with below.

Bargaining:

26. Many of the clause and agreement provisions that were not compliant with the Building Code 2016 have re-emerged and are becoming increasingly frequent in CFMEU pattern agreements.

27. Everybody is familiar with the unlawful and illegal conduct which underpins the extensive use of pattern agreements within the building and construction industry. These agreements have the common feature of containing clauses that are particularly egregious and rarely seen in other sectors of the economy. There are a range of such egregious clauses, but in general terms, they involve provisions that:

    a. Give Unions the right of veto of the selection and use of subcontractors, or mandate consultation about the use of such contractors;

    b. Require that all subcontractors are engaged on terms no less favourable than the terms of the Head Contractor (commonly known as 'jump-up' clauses);

    c. Provide unfettered rights for the union to attend all worker inductions, be given contact details of all new employees, and the standing right for any representative of the Union to enter any place of work;

    d. Specify or dictate the use of particular training and workplace support service providers; and/or

    e. Mandate that employers pay contributions into particular worker benefit funds and take out specific insurances, with revenue from such funds consequently flowing (directly or indirectly) to the union, and/or other third parties.

28. These clauses are a handbrake on the capacity of the industry to drive productivity, create jobs and deliver value for money building works. Worse, much of the lengthy history of the unlawful and inappropriate conduct deployed by the CFMEU arises from action designed to coerce or force employers to sign agreements containing the above clauses and such content has, in turn, perpetuated the ingrained industry specific toxic culture which as allowed criminal and corrupt activity to flourish unchecked.

29. Mechanisms in the Fair Work Act 2009 to address this conduct and encourage cooperative and productive enterprise agreement making have proven to be wholly inadequate in the context of this industry.

30. Several studies have identified the impact of these provisions on construction costs and highlight how these legislative changes are undermining the agenda of the Federal Government to address the national housing crisis One such study found that the cost to build a two-bedroom apartment

blows out by 33 per cent – from $870,000 to $1.16m, and that up to 96 days per year – equating to one week a month – were lost.[1]

31. Other analysis confirms that the impact of these provisions adds up to 10 per cent extra on the cost of apartment construction.[2]

32. A comparison of provisions in the proposed NSW CFMEU pattern EBA with its previous iterations is **attached**.

Workplace conduct:

33. A number of workplace practices that are unlawful and/or illegal started to remerge almost immediately following the amendments in Part 3.

34. Examples of these practices include:

    a. 'no ticket, no start',

    b. workplace picketing;

    c. action, threats or conduct designed to pressure participants to use, or not use, particular subcontractors;

    d. threats or taking illegal stoppages;

    e. making agreements, understandings or arrangements with unions that circumvent default workplace laws regarding dispute resolution, entry, work stoppages or election of worker representatives; and

    f. behaviour to pressure workplaces into accepting union pattern agreements.

35. Master Builders can report to the Review that these types of practices returned almost immediately and are due to the abolition of both the Building Code 2016 and a dedicated industry specific regulator with a proactive remit to enforce industry specific laws. Put simply, with the absence of special rules and regulators to enforce them, industry simply do no see any avenue to complain or take steps to arrest such conduct. In order to ensure industrial peace, workplaces frequently turn a blind eye to such practices and remain in fear of reprisal or repercussions if they speak up.[3]

36. This has been made worse because, as predicted, the FWO has not been an appropriate replacement for the ABCC. Master Builders notes that the FWO did not file a single new case against the CFMEU in the 18 months following the abolition of the ABCC and also dropped 30 per cent of the cases alleging construction union law-breaking it inherited, having discontinued or partially discontinued 12 of the 41 cases transferred from ABCC.[4]

37. As was confirmed at the last Senate Estimates hearings, the FWO has commenced only 2 new proceedings involving the CFMEU in the almost two years since it assumed responsibility for ensuring construction industry workplace compliance. Other reports arising from earlier Senate Estimates hearings have confirmed that the FWO would not automatically respond to complaints or requests for assistance about commercial construction matters by conducting site visits.[5]

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[1] *https://www.couriermail.com.au/news/queensland/qld-politics/bpic-deal-costing-a-weeks-productivity-every-month-master-builders-qld/news-story/33e7f92a29005d81edaf14603f604c99*

[2] *See: "CFMEU deal helps add 10pc to apartment costs" AFR 10 July 2024; "New union wage agreements to drive construction costs higher, RLB says" AFR 6 February 20224; "Secret union push for 26pc pay rise to spike building costs" AFR 8 March 2024*

[3] See, for example, "Fear of CFMEU reprisals keeps building bosses silent" AFR 23 July 2024

[4] "Watchdog drops 30pc of cases against CFMEU" AFR 28 April 2024

[5] "FWO less likely than ABCC to visit sites: Parker" Workplace Express, February 16, 2023.

38. The first 18 months following the amendments in Part 3 of Schedule 1 (up until June 2024) can be summarised as being one which witnessed the return of historical unlawful and anti-productive practices, leaving the industry without the necessary protections or an effective regulator to assist them enforce their rights.

Administration of the CFMEU

39. In late June 2024, a series of media reports were published that eventually became known as the 'Building Bad' revelations.[6] While these came as no surprise to Master Builders or construction industry participants, these reports brought the attention of both the broader community and government to the types of conduct had re-emerged following the amendments in Part 3 of Schedule 1.

40. In July 2024, in direct response to the Building Bad revelations, the Australian Government flagged its intention to explore options to appoint an administrator to the CFMEU on the basis that it had failed, as a registered organisation of employees, to operate effectively. Administrators were appointed on 23 August 2024 following the passage of the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024*.

41. Concurrently, the Government commissioned two investigations to be undertaken by the FWC registered organisations division and FWO. Those investigations continue but evidence given at the most recent Senate Estimates hearings revealed that:

    a. The FWC investigation has received 793 distinct reports since August 2024;

    b. Of these,

        i. 12 reports have been referred to AFP;

        ii. 3 have been referred to the ACCC; and

        iii. 205 have been referred to the FWO.

    c. The FWO investigation has resulted in over 400 distinct reports received since August 2024;

        i. This has generated 180 + active lines of current inquiry.

42. A Joint Agency Working Group involving (amongst other regulators) the FWC, FWO and the AFP has been formed, and the AFP has established a specific taskforce to inquire into the CFMEU called "Operation Rye" with three active prosecutions underway.

Master Builders position on administration

43. Master Builders submits that the fresh revelations involving allegations of criminal activity involving the CFMEU and links to organised crime have once again shone a light on the unlawful conduct and toxic culture that thrives amongst organisations and who operate in the building and construction industry.

44. While many parts of the community will be shocked and disappointed to learn of these allegations, it is nothing new to those who work in the construction sector. Sadly, the building and construction industry has a long history of being plagued by a range of illegal and unlawful behaviour by certain people and organisations which, as one Royal Commission found, has created a "culture of systematic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats and intimidation".

[6] https://www.smh.com.au/topic/building-bad-6gug

45. There have been several Royal Commissions of Inquiry, dozens of government reviews and reports, and hundreds of Federal Court judgements that forensically and methodically identify the people, organisations and conduct giving rise to this culture. All of these reports demonstrate that we know what the problems are, how they are caused, and why the culture still exists. What we need now is real and tangible action to fix these problems and tackle the culture once and for all.

46. The announcements of various levels of Government in response to allegations about criminal conduct and the CFMEU have been welcomed by industry and represent a good first step towards achieving improved outcomes for building and construction

47. Master Builders is particularly supportive of moves by the Federal Government regarding the appointment of an independent administrator for the CFMEU. Appointing independent administrators is a strong first step towards achieving positive change in the industry and tackling the poor culture promoted by some that allows corruption and criminality to flourish.

48. However, there is much more to be done to ensure actions taken to date are efficient, effective and deliver real outcomes. History shows that unless permanent and lasting changes are made, there is a very real risk that the sector will just return to the same old bad days sooner rather than later.

49. To achieve this, Master Builders has produced a document entitled Breaking 'Building Bad' which outlines a range of proposals for law reform to ensure positive industry cultural change is achieved and remains lasting.

50. Master Builders submits that the Federal Government should move to establish permanent special rules, laws and oversight for the building and construction industry in an effort to improve compliance, tackle poor culture, and stamp out criminality and corruption once and for all. This will require two core elements:

    a. Industry specific changes to the law: Government should move to permanently change a range of existing laws to create rules, regulations and obligations specific to the building and construction industry and its participants.

    b. Industry specific regulator dedicated to enforcing those laws: The Federal Government should move swiftly to establish a dedicated specific building and construction industry regulator with sole responsibility for enforcement of those industry specific laws, underpinned by strong investigation, compliance and enforcement powers.

51. The above two core elements would:

    a. Enable the parliament to take a 'whole of government' approach to tackle the causes and drivers of poor culture, corruption and unlawful behaviour;

    b. Allow for greater coordination and cooperation of regulator activity, ensuring a comprehensive approach is taken with outcomes that are effective and lasting;

    c. Ensure that changes to the law are applicable only to the building and construction industry and are specifically targeted towards fixing the problems known to exist; and

    d. Represent an effective and long-term solution to cleaning up construction once and for all.

52. The functions and operations of a dedicated regulator, and the laws it would enforce, are detailed in the full version of *Breaking Building Bad* which is also **attached.**

RECOMMENDATIONS

53. That the Review should find:

    a. That the amendments at Part 3 of Schedule 1 of the SJBP Act have:

i. failed to achieve their stated aim and resulted in the almost immediate re-emergence of unlawful practices and conduct which are industry specific and have been forensically documented over at least five decades;

ii. resulted in increased levels of pattern bargaining and the proliferation of EBA provisions which are anti-productive, inefficient and an artificial driver of higher construction costs during the middle of a housing crisis; and

iii. demonstrated the inadequacies of the FWO in discharging its role as an effective workplace relations regulator, especially given its reluctance to respond to industry requests for assistance and lack of proactive remit.

b. That the building and construction industry is unique and faces challenges that don't exist in other sectors of the economy;

c. That the current system of workplace laws and regulations are entirely inadequate in effectively dealing with these unique challenges and the culture of disregard for the rule of law which prevails amongst building industry unions;

d. That there is a need for an industry-specific regulator with a pro-active remit to investigate and enforce a range of industry-specific laws;

e. That the Government should urgently move to adopt and implement all the recommendations for law reform as outlined in *Breaking Building Bad,* to be overseen by an industry-specific regulator.

PART 16A – LOOPHOLES LEGISLATION

Summary of amendments

54. According to the relevant explanatory memorandum, the amendments made have sought to:

> *"Clarify the rules regarding entry to relevant workplaces in order to lawfully assist a health and safety representative on request under a provision of a State or Territory OHS law. These changes will implement Recommendation 8 of the Review of the Model Work Health and Safety Laws - Final Report (2018)."*

55. The EM goes on to say:

> *"For example, an HSR might ask for a health and safety manager, a hearing specialist or an occupational health nurse to be present to give advice on technical health or safety matters. However, in some cases, an HSR may ask for someone with appropriate experience and knowledge from their relevant union to assist them."*
>
> *"In Australian Building and Construction Commissioner v Powell (2017) 251 FCR 470; [2017] FCAFC 89 (Powell), the Federal Court of Australia held that officials who enter a relevant workplace to assist an HSR are exercising a 'State or Territory OHS right', so must hold a Fair Work entry permit and meet all applicable entry requirements under the Fair Work Act, Part 3-4. Until this decision, the prevailing view was that a Fair Work entry permit was not required to be used in these circumstances."*
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> *"In December 2018, the Boland Review considered the effect of Powell , among other things . Recommendation 8 of that review provided that consideration should be given to 'how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the [FW Act] or another industrial law'.*
>
> *The purpose of this item is to implement Recommendation 8 of the Boland Review (and reverse the effect of Powell), subject to appropriate safeguards imposed by the FW Act. Entry of officials*

to a relevant workplace to assist an HSR would continue to be regulated by the applicable 'State or Territory OHS law'.

56. Master Buidlers submits that the entire premise for making the changes at 16A, especially those underlined above, are completely incorrect and factually wrong.

57. Firstly, this particular recommendation was made on the basis that Safe Work Australia ('SWA') and other agencies should consider how to achieve a stated policy intention being "*a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law.."*

58. This policy intent is unfortunately misguided and incorrect. The correct policy intent is in fact entirely contrary to that stated. There is much evidence to support this. For example, the correct policy intent is clearly stated in various sections of the Fair Work Act 2009 prior to its amendment. For example, section 6 of the FW Act was entitled "*rights and responsibilities of employers, employees organisations etc."* Subsection (5) describes what Pt 3-4 "is about", as follows:

> *Part 3-4 is about the rights of officials of organisations who hold entry permits to enter premises for purposes related to their representative role under this Act and under State or Territory OHS laws. In exercising those rights, permit holders must comply with the requirements set out in the Part.*

59. Section 478 was also a guide to Pt 3-4 set out in the following (relevant) terms:

> *This Part is about the rights of officials of organisations who hold entry permits to enter premises for purposes related to their representative role under this Act and under State or Territory OHS laws.*
>
> *…*
>
> *Division 3 sets out requirements for exercising rights under State or Territory OHS laws.*
>
> *Division 4 prohibits certain action in relation to the operation of this Part.*
>
> *Division 5 sets out powers of the FWC in relation to the operation of this Part.*
>
> *Division 6 deals with entry permits, entry notices and certificates.*

60. Section 480 set out the statutory object of the Part, in the following terms:

> *The object of this Part is to establish a framework for officials of organisations to enter premises that balances:*
>
> *(a) the right of organisations to represent their members in the workplace, hold discussions with potential members and investigate suspected contraventions of:*
>
> *(i) this Act and fair work instruments; and*
>
> *(ii) State or Territory OHS laws; and*
>
> *(b) the right of employees and TCF award workers to receive, at work, information and representation from officials of organisations; and*
>
> *(c) the right of occupiers of premises and employers to go about their business without undue inconvenience.*

61. Section 494 is clear and states (our notations):

> *An official of an organisation [e.g. a union official] must not exercise a State or Territory OHS right unless the official is a permit holder [under the Fair Work Act].*

62. These provisions alone confirm the policy intent in the plainest terms. That is, a union official who assists a HSR with an WHS issue under or an Inspector under a State or Territory safety law, must hold a federal entry permit under the Fair Work Act 2009.

63. The provisions have been considered by both the Full Federal Court and the High Court of Australia who also affirmed the policy intent. In Australian Building and Construction Commissioner v Powell [2017] FCAFC 89 (the Powell decision) the Court had reference to the above provisions within the FW Act and noted [at para 56]:

> *The words of s 494(1) prohibit an official of an organisation (Mr Powell is such a person) from exercising a right to enter premises if the right is conferred by a State OHS law (the 2004 Victorian Act is such a law). Those plain words are apt and ample to cover the matters in para (a) of s 480, the objects clause; but they reach also to apply to the official of an organisation exercising his or her right to enter and have access to the premises or the HS representative's right to have him or her enter and have access to the premises, he or she having been the person asked by the HS representative for assistance.*

64. The Court went on to [at para 57] confirm the policy intent of these provisions in terms that could not be clearer:

> *"The plain purpose is to regulate by permit the lawful entry of officials of organisations on to workplace sites in respect of rights of entry given by Commonwealth, State or Territory legislation. There is no reason of policy or common-sense why one would distinguish between differently worded conditions that by their operation provided a right to enter premises for occupational health and safety reasons, to require a permit if the official has a reasonable suspicion of a contravention of a State or Territory or Commonwealth law about occupational health and safety, but not to require a permit if the official is asked to assist an HS representative deal with an issue about occupational health and safety, which may or may not have a connection with such a contravention."*

65. The court then observed [at para 58] that:

> "*To make such a distinction would lead to practical confusion at the workplace site in circumstances where such confusion may lead to allegations of trespass and the involvement of the police, as occurred here. Such practical confusion would tend to reduce the utility of Part 3-4."*

66. In Powell v Australian Building and Construction Commissioner & Anor; Victorian Workcover Authority v Australian Building and Construction Commissioner & Anor [2017] HCATrans 239 (17 November 2017) the High Court refused special leave to hear an appeal against the Full Court Powell Decision and concluded [at 740]:

> *In our opinion, there is not sufficient reason to doubt the correctness of the decision of the Full Court of the Federal Court of Australia to warrant the grant of special leave. Special leave is refused.*

67. The Australian Building and Construction Commission, in a subsequent public statement, advised BCI participants that the High Court decision:

> *…..means that under Australian law, union officials are required to hold a valid federal right of entry permit even when invited onto site to assist a health and safety representative (HSR) under a State or Territory OHS law.*[7]

[7] *https://www.abcc.gov.au/news-and-media/high-court-update-union-officials-must-hold-valid-federal-right-entry-permit-when-entering-under-state-or-territory-ohs-laws*

68. Further evidence can be found in SWA's own publication "*Summary of the Key Components of the Model WHS Bill"* which was produced prior to the model laws taking effect and well before the Powell decision. It contains the following section at page 14 which clearly outlines the correct policy intention of these provisions:

PART 7

WORKPLACE ENTRY BY ENTRY PERMIT HOLDERS

cll 116 – 151

The model WHS Bill allows unions to apply to the relevant authority for a Work Health and Safety entry permit to be issued to a person who is an official of that union. If an entry permit is issued, the entry permit holder may enter workplaces to:

- inquire into suspected contraventions of work health and safety laws affecting workers who are members, or eligible to be members of the permit holder's union, and whose interests the union is entitled to represent, and
- consult and advise such workers about work health and safety matters.

Permit holders are also entitled to exercise rights relating to inspection, consult with relevant workers and the person conducting the relevant business or undertaking, inspect and make copies of certain record or documents, and warn persons reasonably believed to be exposed to a serious risk emanating from an immediate or imminent exposure to a hazard.

When entering a workplace to inquire into a suspected contravention, an entry permit holder is not required to give prior notice. However, 24 hours notice is required to consult and advise and to request documents other than those related to the suspected contravention that are employee records.

The provisions in Part 7 have generally been drafted to be consistent with the right of entry provisions under the *Fair Work Act 2009*.

69. Another example of this evidence can be found in the 2008 publication *"National Review into Model Occupational Health and Safety Laws First Report to the Workplace Relations Ministers' Council October 2008"*. This report also contains the following extract which explains clearly the correct policy intent:

improper conduct.

Chapter 45: Authorised right of entry		Reference
204	The model Act should provide right of entry for OHS purposes to union officials and/or union employees formally authorised for that purpose under the model Act.	Page 388
205	Authorised persons for right of entry purposes are those persons who are elected officers and/or employees of unions registered under relevant state or federal labour law and: a) hold current authorisation under the OHS Act; and b) hold current authorisation required under any other relevant law. ***Note:*** *Union is defined in the chapter containing the definitions.*	Page 392

70. For the reasons above, Master Builders submits that the grounds and reasons for this change are misguided and factually incorrect.

71. Master Builders position is that there is absolutely no necessity or rational reason to amend the previous provisions which were both clear and widely understood amongst industry. The law in this area was settled and required that a union official who assists a HSR with an WHS issue under a State or Territory safety law, must hold a federal entry permit under the Fair Work Act 2009.

72. The existing framework clearly establishes this policy intent as did its legislative predecessors. This issue has been ventilated and settled by numerous court decisions, including from the High Court

of Australia and there is no evidence to demonstrate any circumstances where a HSR was unable to seek appropriate WHS assistance.

73. Master Builders' position is also supported by historical Federal Court cases involving building unions and the exploitation of workplace safety for unrelated purposes. There are countless judgments in which Courts have determined a willingness of building unions to use safety related matters to avoid other legislative obligations. Sadly, there are also many cases in which courts have found that building unions have in fact created workplace safety hazards and deliberately placed persons at risk in workplaces.[8]

The impacts of these amendments

74. The impacts of these amendments have been as follows:

    a. They have not improved safety outcomes for the BCI;

    b. They have required significant re-training and re-education for workplaces to explain the deviation from the previous arrangements that were clear and understood by workplaces;

    c. Given rise to higher levels of workplace disputation and confusion about entry;

    d. Contributed to construction costs and caused project delays; and

    e. Required all workplaces to completely revamp existing arrangements for HSRs, including training and system changes.

75. In addition, Master Builders can report an increased level of enquiry from members about the effect of Part 16A who frequently report that officials (with or without valid permits) use these amendments gain entry to worksites for purposes that are unrelated to safety.

> *"Why was a tattooed, muscle-bound bikie, who had done a historical stint in jail in Brisbane, now working as a union representative, let alone one responsible for health and safety of employees at companies delivering more than $4 billion worth of work on Labor's rail level-crossing removal program?"*
>
> ***"Bikies ran amok in the CFMEU, and they're not going to leave quietly"***
> **Nick McKenzie and Cara Waters, SMH, 28 November 2024**

76. Commonly, the reports cite that officials who seek entry do so with no regard to conventional right of entry processes and, when questioned by management, are told that they will say they've been invited by the HSR or site safety representative if their entry is resisted. In those circumstances, management do not have any option other than to allow (or not contest) entry.

77. This common practice, combined with the absence of a pro-active industry specific regulator, mean that building and construction employers rarely notify appropriate regulators or file complaints about this conduct. [9]

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[8] *See Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2018] FCA 42 (7 February 2018) at paras [226 – 227]*

[9] *See, for example, the article "Seeing and hearing is believing: How the CFMEU scandal finally landed with a thud" Nick McKenzie, SMH, November 22 2024, which noted: "Information coming to light also suggests that state government officials in charge of overseeing taxpayer-funded projects, especially in Victoria, knew the situation was getting out of hand but failed to act. Instead, to avoid industrial disruption and maintain the fiction that governments were delivering on their mega-projects with integrity and costs kept down, they tolerated rorting and improper practices."*

78. The net result of these changes is that safety is more frequently exploited as a means to achieve industrial purposes, which undermines the importance of safety in building and construction workplaces.

79. These impacts were again predicted by Master Builders and demonstrate the re-emergence of historical unlawful practices. There have been dozens of Federal Court cases and judgements that have found that the CFMEU and its officials have misused and exploited the issue of workplace safety to achieve other industrial objectives or for other reasons completely unrelated to safety.

80. In some of these cases, officials from the CFMEU have actually been found to be responsible for causing the alleged safety problem as a means to shut down a worksite as a way to force builders into signing a union-dictated pattern enterprise agreement. Other cases have shown that officials have disregarded site safety rules and placed themselves and others in unsafe situations.

81. See for example:

    a. *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2018] FCA 42 (7 February 2018);*

    b. *Australian Building and Construction Commissioner v Hanna & Anor (No.3) [2017] FCCA 2519 (19 October 2017)*

    c. *Australian Building and Construction Commissioner v Auimatagi & Ors [2017] FCCA 1772*

    d. *Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (The Footscray Station Case) [2016] FCA 872 (5 August 2016)*

    e. *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The Footscray Station Case) [2017] FCA 1555*

RECOMMENDATIONS

82. That the Review should find that:

    a. The amendments at 16A of the Loopholes legislation:

        i. Were advanced with reference to background that was factually incorrect and therefore were not justified;

        ii. Have resulted in a marked increase in the exploitation of safety grounds as a means to enter workplaces for unrelated industrial purposes; and

        iii. Have unfortunately undermined the importance of safety on building and construction worksites.

    b. To overcome the above findings, the Review should recommend that changes be to the Work Health and Safety Act 2011 and equivalent state laws to:

        i. make it an offence for officials or delegates to exploit or abuse workplace safety rights for non-safety purposes;

        ii. repeal and replace right of entry provisions in the Work Health and Safety Act 2011 and the equivalent provisions of the equivalent State Acts new provisions which provide that prior written notice of entry is to be provided except where the permit holder has a reasonable concern that (a) there has been or is contravention of the Act and (b) that contravention gives rise to a 'serious risk

to the health or safety of a person emanating from an immediate or imminent exposure to a hazard';

iii. make it clear that the burden of proving that a permit holder has a suspicion that is reasonable for the purposes of s 117(2) or a concern that is reasonable for the purposes of s 119A lies with the person asserting that fact; and

iv. require that right of entry to worksites on safety grounds can only be exercised by persons holding a valid ROE permit.

PARTS 12-23A – SCHEDULE 1 – SJBP ACT

83. Master Builders notes that the intention of these collective changes were stated as being to "*encourage and facilitate enterprise bargaining, and multi-business enterprise bargaining in particular*" and "*simplifying the bargaining and approval processes for enterprise agreements, including simplifying the better off overall test (BOOT)*".

84. In our submission to the relevant Senate Inquiry, Master Builders made a range of observations about the potential ramifications of these changes. While we welcomed the intention of some of the amendments, we warned that they would be unlikely to achieve their stated policy intent when considered overall.

85. Instead, Master Builders warned that these amendments would:

> *"Remove the 'enterprise' from 'enterprise bargaining' – Master Builders believes that workplace laws must encourage workplaces to drive productivity and foster innovation at the individual enterprise level. The Bill does the exact opposite and will significantly undermine the capacity for building and construction workplaces to negotiate, agree and implement workplace arrangements that suits their specific needs. If passed, the Bill will entrench and actively encourage a 'one size fits all' approach to the detriment of individual enterprises and workplaces."*
>
> *"Removes the 'agreement' from 'enterprise agreements' – Master Builders has long supported workplace laws that provide a comprehensive and strong safety net of minimum employment conditions, above which workplaces may negotiate and bargain for a collective set of workplace specific arrangements that are reached in good faith and genuinely agreed by all parties. This Bill gives the Fair Work Commission unprecedented power to reach into this process and make workplace determinations where the parties cannot agree. This will not only discourage meaningful and genuine discussions at the workplace, but will likely see workplaces being forced to adopt an 'agreement' that is not actually agreed by that workplace and has been determined by a third party who is not part of that workplace. Such changes effectively remove the 'agreement' aspect from 'enterprise agreements' and are opposed by Master Builders."*
>
> *"Gives unions more say than workers – the Bill contains several elements that will give unions a greater say over workers terms and conditions than are available to those actual workers to whom the conditions apply. Master Builders has long believed that workplace laws should recognise and respect that workers and employers are the primary and most important parts of any employment relationship, and we oppose changes that would give unions more rights than available to everyday workers. Master Builders supports the right for workers to be represented by a union if requested by members, however only 10 per cent of the building and construction workforce are union members. That leaves around 90 per cent of a 1.1+ million workforce who have chosen to not join a union. The rights of this overwhelming majority cannot be subservient to those of a small majority."*

"Leaves non-union and single enterprise agreements stuck in the slow-lane and mired in red tape – while the Bill proposes some changes said to reduce the complex and technical aspects currently faced by parties when seeking to have agreements approved, many of these only apply to agreements made under the proposed multi-enterprise bargaining streams or are not applicable to single enterprise agreements. This will mean those making single enterprise or non-union agreements will face many of the same complexities and barriers that feature in the current law and are universally agreed to be a significant disincentive to workplace bargaining. The message this sends to workplaces is that unless a union is involved, workers don't know what is good for themselves, nor can they be trusted to negotiate and implement workplace arrangements that suit their needs. This is the wrong message and is not supported by Master Builders."

"Arbitration ignores importance of encouraging workplaces to resolve their problems – the Bill significantly increases powers available to bodies and persons who are not direct parties to an employment relationship. There are, for example, numerous parts within the Bill that expand the arbitration powers of the Fair Work Commission. Master Builders, as a general principle, believes that Australian workplace laws should always focus on encouraging employers and employees to discuss concerns and resolve disputes at the workplace level. The amendments in this Bill are contrary to that approach."

Impact of these amendments

86. Master Builders can report to the Review that, collectively, the impact of these amendments has been to:

    a. deter workplaces from considering the use of an EBA where they do not have one;

    b. make it harder for workplaces with existing non-union agreements to renew or renegotiate a replacement;

    c. make it easier for unions to pursue the use of pattern agreements; and

    d. contributed to the loss of productivity within building and construction workplaces.

87. Master Builders can report that our members frequently raise the following concerns about the ramifications of these changes.

88. The significantly reduced ability to terminate an EBA where one exists is perhaps the most significant deterrent for business when considering the use of such an agreement. Members express concern about their ability to manage such an agreement in line with future or changed business needs, such as changes to workflow or the type of project or building works undertaken and are therefore more determined to stick with the Award and pay over-award conditions to employees were so negotiated.

89. Similarly, the significantly expanded potential for FWC to make binding determinations about terms of a proposed agreement that are in dispute is also a huge disincentive to consider bargaining. Members regularly report that these amendments, in a practical sense, remove the notion of 'agreement' from the concept of 'enterprise agreements' and fundamentally undermine the long-standing notion of a bargained outcome.

90. The approach deployed by the FWC under the 'Statement of Principles on Genuine Agreement' it developed to apply when considering approval of agreements is such that it means non-union agreements are automatically scrutinised far more stringently when compared to agreements to which unions are a party. This is because of the impact of part 19 of the Principles which notes that:

    a. *If one or more employee organisation(s) acting as bargaining representative(s) for a significant proportion of the employees covered by the enterprise agreement:*

i. supports the approval of the agreement, and

ii. does not have concerns that the agreement was not genuinely agreed to by the employees covered by the agreement,

b. then this should be given significant weight by the FWC in considering whether the agreement has been genuinely agreed.

91. The effect of Part 19 has been to make it easier for union agreements to be approved quickly and placed non-union agreements into a different and unfair process causing delay and far more administration in order to be approved successfully.

92. A further consequence of the above has been that the use of union pattern deals has become more common. Employers are told by unions that accepting the union pattern deal is the only way to guarantee that an agreement will be approved without delay, and that any non-union agreements lodged will be challenged or disrupted by unions until they relent and accept the union pattern deal.

93. Combined with the impacts arising from the loss of the Building Code 2016, the above issue has also facilitated the speedy return of clauses that were previously not acceptable in the industry. The use of provisions such as 'jump-up' clauses, union veto clauses and clauses that mandate payments into union-controlled funds and union-managed insurances are more widespread than ever.

94. These clauses are a handbrake on the capacity of the industry to drive productivity, create jobs and deliver value for money building works. Worse, much of the lengthy history of the unlawful and inappropriate conduct deployed by the CFMEU arises from action designed to coerce or force employers to sign agreements containing the above clauses and such content has, in turn, perpetuated the ingrained industry specific toxic culture which as allowed criminal and corrupt activity to flourish unchecked.

95. Further, the capacity for unions to unilaterally commence bargaining under Part 15 of Schedule 1 has been entirely counterproductive. While the relevant EM for this change stated that "*Where the qualifying conditions are met, the amendments would enable an employee, via a bargaining representative, to initiate bargaining for an agreement simply by making a written request to the employer*" the reality is very different.

96. Instead, the provisions in practice have simply handed unions powers to decide when bargaining commences irrespective of the views of workers. This has only undermined, or detracted from, the rights of employees to make their own decisions as to when, or if, to commence bargaining for a new agreement. The provisions in practice do not actually require involvement of an employee as a precondition for a union to initiate bargaining and in fact limits the rights for workers to initiate bargaining unless agreed by their union.

97. Evidence of the above concern has been frequently reported to Master Builders in the form of the CFMEU issuing 'form' or 'mail merge' letters to initiate bargaining that are sent to industry employers en masse. In some instances some 1500+ of these letters were sent at once and, given the level of union resourcing and personnel, could never have realistically resulted in the commencement of bargaining with any genuine intent. Worse, in most cases the workers in those workplaces receiving the letters had no idea they were coming nor were they asked about their views before they were sent.

RECOMMENDATIONS

98. That the Review find that the amendments at Parts 12-23A have:

a. Not achieved their stated policy intent;

b. Contributed to the increase use of pattern agreements and deterred workplaces from considering enterprise bargaining as a realistic or viable option;

c. Hurt productivity and eroded the rights of workers to make their own decisions about bargaining; and

d. Should be repealed in their entirety.

PART 25A – SCHEDULE 1

99. While not initially included, Master Builders was eventually appointed to the National Construction Industry Forum in September of 2024.

100. Master Builders notes that the Forum, arising from its last meeting, has agreed to commence work on a Construction Industry Blueprint.

101. Master Builders can report to the Review that this Forum is a worthy body and that its work should continue.

RECOMMENDATION

102. That the Review find that the:

a. National Construction Industry Forum should remain in operation; and

b. That Government ensure necessary and appropriate funding appropriations are given to the Forum, to enable and support its work and functions.

CONCLUSION

103. Master Builders is grateful for the opportunity to make this submission.

104. If any member of the Review panel has any questions, or requires any further information, please contact Deputy CEO Shaun Schmitke at shaun@masterbuilders.com.au or 0422 866 766.

MASTER BUILDERS
AUSTRALIA

BREAKING 'BUILDING BAD'

ESSENTIAL ACTION TO PERMANENTLY PREVENT CORRUPTION, CRIMINALITY AND IMPROVE CULTURE IN BUILDING AND CONSTRUCTION

INTRODUCTION

Fresh revelations involving allegations of criminal activity involving the CFMEU and links to organised crime have once again shone a light on the unlawful conduct and toxic culture that thrives amongst organisations and who operate in the building and construction industry.

While many parts of the community will be shocked and disappointed to learn of these allegations, it is nothing new to those who work in the construction sector.

Sadly, the building and construction industry has a long history of being plagued by a range of illegal and unlawful behaviour by certain people and organisations which, as one Royal Commission found, has created a "*culture of systematic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats and intimidation*".

There have been several Royal Commissions of Inquiry, dozens of government reviews and reports, and hundreds of Federal Court judgements that forensically and methodically identify the people, organisations and conduct giving rise to this culture. [1]

All of these reports demonstrate that we know what the problems are, how they are caused, and why the culture still exists. What we need now is real and tangible action to fix these problems and tackle the culture once and for all.

COMPREHENSIVE ACTION IS ESSENTIAL

The current circumstances and culture facing the industry show that comprehensive action is necessary and essential.

That the attempts of previous governments at all levels have tried and failed to drive cultural change demonstrate the need for a 'whole of government' approach which must be lasting and tangible.

Recent announcements from the Federal Government have been long-awaited and were strongly welcomed by industry. But a permanent solution is fundamental and necessary to avoid a repeat of history and drive lasting and tangible change.

The only way to tackle the problems is through a comprehensive and coordinated approach involving a range of immediate actions and future permanent law reform.

This document outlines a range of options for government action to adopt in order to:

- Ensure the organisations and individuals who thrive and promote the culture are identified and removed;
- Target the practices, opportunities and avenues that give rise to illegal activity, unlawful conduct and culture of disregard for the law;
- Monitor and quickly respond to any situation where illegality and unlawful conduct reoccurs;
- Recognise the important and lawful role of unions, and promote the responsible and productive exercise of their duties and purpose; and
- Put in place lasting and effective measures designed to ensure the criminality, corruption, and poor culture is stopped from ever happening again.

This is a unique opportunity for governments of all levels to ensure that the building and construction industry can be lawful, modern, safe and productive both now and for the future.

1 See Annexure A – Drivers of Poor Culture

THE BUILDING AND CONSTRUCTION INDUSTRY DESERVES BETTER

The entire building and construction industry deserves an environment which is safe, modern, productive and free from the poor culture and attitudes of those who think they are above the law.

- The approximately 1.3 million people (or around 1 in every 11 workers) directly employed by the industry deserve better;
- The over 120,000 apprentices and trainees trained by the industry every year (around one third of the total number of trades-based apprentices) deserve better;
- The over 445,00 business entities who operate in the industry (of which almost 99 per cent are small and family businesses) deserve better;
- The entire community, who benefit from the over $230 billion worth of work performed by the industry each year, deserve better; and
- The entire Australian economy, to which the industry contributes over 10.4 per cent of gross domestic product each year, deserve better.

Building and construction is essential to the economy, jobs and community. Everyone deserves a better industry that isn't held back by an ingrained culture of a few individuals and organisations.

UNIONS DESERVE BETTER

Everyone in building and construction recognises the important role that unions play in workplaces.

They are an integral part of the industrial relations system and workers deserve to be represented by organisations and individuals that focus on looking after their workplace needs and acting in their best interests.

While the vast majority of unions in Australia seem able to do this in compliance with the law, the experience in building and construction is different. Everybody knows the record, reputation and culture of the CFMEU in building and construction and how they operate.

One Federal Court Judge said this record was "*notorious*" and "*that record ought to be an embarrassment to the trade union movement.*"

Workers in building and construction deserve to have a union that operates like other unions. They deserve to be represented lawfully and honestly. And the entire trade union movement deserves a construction union that isn't "*an embarrassment*".

GOVERNMENT ACTIONS TO DATE: A GOOD FIRST STEP

The announcements of various levels of Government in response to allegations about criminal conduct and the CFMEU have been welcomed by industry and represent a good first step towards achieving improved outcomes for building and construction

Master Builders is particularly supportive of moves by the Federal Government regarding the appointment of an independent administrator for the CFMEU and its commitment to related legislative action if required.

Appointing independent administrators is a strong first step towards achieving positive change in the industry and tackling the poor culture promoted by some that allows corruption and criminality to flourish.

However, there is much more to be done to ensure actions taken to date are efficient, effective and deliver real outcomes.

History shows that unless permanent and lasting changes are made, there is a very real risk that the sector will just return to the same old bad days sooner rather than later.

Now is the time for governments of all levels to build upon the measures recently announced, avoid repeating the mistakes of the past, and take a comprehensive approach to make permanent change that delivers comprehensive solutions to solve the long-standing problems faced by the industry once and for all.

DELIVERING A COMPREHENSIVE APPROACH: ESSENTIAL ACTIONS FOR GOVERNMENTS

It is therefore absolutely essential that Governments of all levels should consider implementing a range of actions to improve industry culture and stamp out criminality or corruption.

This will require action both now and, in the future, and involve a mix of ongoing cooperation, coordination and permanent changes to the law.

The actions outlined in this document are divided into two categories: immediate actions for implementation now and future actions and permanent law reform to be pursued by governments as soon as is practicable.

There is widespread disrespect for, disregard of and breach of the law in the building and construction industry. ***The criminal, industrial and civil law is breached with impunity****. Agreements made are not honoured. The result is that industrial power, not right or entitlement, determines outcomes. Short term commercial expediency prevails.*

The culture in the industry is that the criminal law does not apply because industrial circumstances are involved. *The attitude is that the applicability of industrial law is optional because there is no body whose function it is to enforce it, or which has the will, capacity and resources to do so.* ***Orders of industrial tribunals, and even courts, are disregarded if such orders are contrary to the views or interests of a participant.*** *If unlawful action causes loss to others, that loss is not recovered. That is because of the difficulty, cost and time involved in bringing proceedings for recovery, the uncertainty of outcome, the view that continued relationships with unions are important, and the knowledge that if recovery action is taken the likelihood is that further industrial action will be taken causing yet further loss. Litigation for loss recovery is regarded as a bargaining chip to be used in future resolution of industrial disputes, rather than as a serious attempt to hold those causing loss responsible for it.*

Head contractors and subcontractors are subject to severe cost penalties for delayed completion. Industrial unrest and stoppages cause immediate loss from standing charges and overheads, and prospective loss from liquidated damages. ***These losses place intense pressure upon head contractors and subcontractors to accede to industrial demands****. If the short term cost of such demands is less than the actual and prospective loss on the specific project, the usual result is the demand is acceded to. That is because of the short term project profitability focus in the industry.*

In contrast, unions suffer no loss from unlawful industrial action. They know they will not be held accountable for unlawful industrial action by the criminal, industrial or civil law. *The result is inevitable. Concessions are made based on short term, pragmatic, project profitability considerations.*

The result is the rule of law is diminished. Productivity is diminished to the disadvantage of the Australian economy, contractors, subcontractors and employees. *Established freedoms protected by law, such as freedom of association, are ignored in favour of union power, and attempts to achieve industrial peace.*

Governments of both political persuasions, and at the Commonwealth and State level have been endeavouring to change the culture of the industry for at least 20 years*. The findings of this Commission make plain that* ***those attempts have failed****.*

To achieve cultural change, and re-establish the rule of law in the building and construction industry, a comprehensive package of reforms is necessary.

COLE ROYAL COMMISSION 2003 – Vol 11 p.10

PART 1 - IMMEDIATE ACTIONS

The following is a list of immediate actions that Governments at all levels should consider adopting or, where they are already underway, supporting.

These immediate actions are necessary in order to:

- support the actions already announced and ensure they are effective; and
- compliment existing actions while underway to ensure that the problems they are designed to target aren't made worse or circumvented.

Appointment of Independent Administrators

- Governments at all levels should support any moves to appoint independent administrators to the CFMEU;
- Independent administrators should be appointed to all branches and levels of the CFMEU in Australia, not just in specified jurisdictions or branches. While recent reports have focussed on particular States and branches, a holistic and all-encompassing approach is necessary to ensure consistent outcomes and remove the ability to shift or transfer resources or personnel;
- To demonstrate faith and trust that Governments are serious about lasting change in the industry, any administrators appointed must be genuinely independent and able to operate without any interference; and
- In the event of any impediment or barrier to appointing independent administrators, Government should deliver on its promise to pass legislation to remove those impediments or barriers.

Rapid police response and clear authority to address disruption on worksites

- For the immediate future, additional resources should be given to police and law enforcement agencies to enable a rapid response to any disruption arising on building and construction sites; and
- Police must be given clear instructions that they hold overall authority to take actions as necessary to address any disruption on building sites, and not be held back or restrained by assertions that the disruption is a matter covered by workplace or other laws.

Encouraging industry confidence and cooperation by protecting witnesses and whistle-blowers

- There must be strong and comprehensive protections in place for people wishing to come forward with evidence, information or materials to support the various investigations and inquiries underway; and
- These protections must be complimented through stronger powers for regulators to receive information, obtain materials and conduct investigations in a manner that protects everyone from reprisals, payback or future adverse consequences. This should include enabling representatives of industry, including employer groups, to receive information from industry for referral to ongoing investigations in a manner that deidentifies individuals and businesses.

A central body to coordinate action and foster cooperation

- Governments should move to temporarily establish one central overarching committee or working group to coordinate, oversee and monitor the various processes, investigations, reviews and inquiries currently underway;
- This coordination committee should be underpinned by cross-jurisdictional police, law enforcement and regulatory agencies with appropriate powers to ensure information, evidence and materials can be shared ensuring all processes currently underway are thorough and effective;
- The existing FWO and FWC investigations should be coordinated by the committee; and
- ACCC, ASIC, ACNC, ASQA and Financial Service regulators should commence investigations into circumstances publicly revealed and be coordinated by the committee.

Temporary changes to workplace laws

- While various investigations announced to date are underway, Government should move to direct the Fair Work Commission to:
    - take a more comprehensive approach to ensure that enterprise agreements to which the CFMEU are a party are in fact genuinely agreed;
    - urgently review any current proceedings involving the CFMEU, and determine if those matters should continue or be temporarily paused;
    - not issue any right of entry permits involving the CFMEU;
    - take steps to ensure that any individual CFMEU personnel, officers, officials or agents are not recognised if nominated as bargaining agents in a personal capacity; and
    - prevent the CFMEU from intervening in any matters involving enterprise bargaining where they are not already parties.

Outcome of investigation into enterprise agreements

- Where it is determined that enterprise agreements have not been 'genuinely agreed,' Government should, while allowing those agreements to continue for their nominal life, move to excise those parts of these agreements that have the effect of:
    - Limiting the free and genuine choice of individual workers over payments or remuneration made on their behalf, such as choice their own redundancy fund, superannuation fund, or portable long service leave fund or sick leave fund;
    - Mandating that employers take out insurances with particular providers on behalf of all workers, regardless of whether the workers want or need the insurance;
    - Mandating or requiring union approval of a particular provider of workplace training, employee assistance or other support service;
    - Giving unions the right of veto over the selection and use of subcontractors, or restricts the deployment and use of particular types or classes of workers, or when work is performed; and
    - Imposing any arrangement, process or approach regarding the resolution of workplace disputes, right of entry or arrangement to stop work other than the default processes prescribed by workplace laws.
- Any agreement found to not have been 'genuinely agreed' in circumstances which also involve criminal conduct should be capable of being terminated.

Government entities with CFMEU involvement

- State and Territory governments should review all governmental advisory bodies, consultative groups, boards, reference groups or other like consultative bodies to identify if they contain any nominee or current or former official of the CFMEU and take steps to review their involvement until administrators have been appointed.

State and Federal government procurement

- State and Federal governments should take steps to ensure that any tenders awarded for building works are conditional upon the outcomes of reviews and investigations publicly announced dealing with the infrastructure projects and contracting; and
- All Governments should take additional steps to comprehensively ensure that any tenders so received involving contractors who have enterprise agreements with the CFMEU have been genuinely agreed, and are free form coercion and intimidation. The results of these actions should be reported to the overarching coordination committee.

Delegates rights provisions

- Government should move to temporarily suspend the operation of new 'delegates rights' provisions in both the Fair Work Act and modern awards as they relate to the CFMEU.

PART 2 - ONGOING ACTIONS AND RELATED LAW REFORM

Measures in this section outline actions necessary to ensure the existing actions and investigations announced by governments are worthwhile and generate ongoing, tangible permanent outcomes. They are designed to avoid a repeat of the past where actions taken have failed to generate lasting and meaningful cultural change.

The Federal Government should move to establish permanent special rules, laws and oversight for the building and construction industry in an effort to improve compliance, tackle poor culture, and stamp out criminality and corruption once and for all.

This will require two core elements:

A. Industry specific changes to the law

Government should move to permanently change a range of existing laws to create rules, regulations and obligations specific to the building and construction industry and its participants.

B. Industry specific regulator dedicated to enforcing those laws

The Federal Government should move swiftly to establish a dedicated specific building and construction industry regulator with sole responsibility for enforcement of those industry specific laws, underpinned by strong investigation, compliance and enforcement powers.

The above two core elements would:

- Enable the parliament to take a 'whole of government' approach to tackle the causes and drivers of poor culture, corruption and unlawful behaviour;
- Allow for greater coordination and cooperation of regulator activity, ensuring a comprehensive approach is taken with outcomes that are effective and lasting;
- Ensure that changes to the law are applicable only to the building and construction industry and are specifically targeted towards fixing the problems known to exist; and
- Represent an effective and long-term solution to cleaning up construction once and for all.

The functions and operations of a dedicated regulator, and the laws it would enforce, are detailed below.

A – INDEPENDENT REGULATOR DEDICATED TO THE BUILDING AND CONSTRUCTION INDUSTRY

Government should establish a Construction Industry Compliance & Corruption Agency (CICCA) as an independent statutory agency dedicated to the building and construction industry.

The purpose of the CICCA would be to oversee, investigate and enforce compliance with a range of special industry specific rules, laws and obligations that would be applicable only to the building and construction sector and participants therein.

CICCA would have dedicated units within its operation to enforce special construction specific laws covering a range of matters, including workplace, safety, competition, corporations, governance, training and other industry specific changes outlined later in this document.

In addition, CICCA would be home to a permanent cross-jurisdictional police unit dedicated to targeting criminal activity and organised crime linked to the building and construction industry. The police unit would also provide support for other units within the agency and support their investigations and enforcement processes.

CICCA is necessary as it would represent a coordinated and comprehensive 'whole of government' approach to enforcing building and construction industry compliance, underpinned by strong investigation and compliance powers with higher penalties available for non-compliance in order to prevent poor culture and practices from ever returning.

In short, CICCA would be a 'one stop shop' regulator for the building and construction industry to improve compliance, prevent corruption and criminality, and drive lasting improvements to industry culture ensuring that the problems of the past can never again return.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

B – INDUSTRY SPECIFIC LAW REFORM TO BE ENFORCED BY CICCA

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Coordinated and targeted police and law enforcement to stop corruption and criminality

CICCA would maintain dedicated cross-jurisdictional police unit to oversee and coordinate a strong law enforcement presence in the building and construction industry. It would be tasked with ensuring existing criminal laws can be more effectively used in a coordinated and comprehensive way to identify and prosecute any criminal or corrupt activity in the sector and prevent it from returning.

Importantly, this police unit would have the ability to ensure that there is a clear delineation between criminal and civil laws as they apply on building sites, to the overall benefit of both workers and employers in the sector.

The police unit would also be able to provide assistance for other units within CICCA to support their relevant compliance, investigation and enforcement work.

A strong, permanent and dedicated police unit is essential for cleaning up corruption and criminality in the industry once and for all.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Enforcing bans to rid criminals and serial lawbreakers from the industry

The Government should move to create laws that give CICCA the ability to obtain and enforce bans or other orders relating to persons found in breach of criminal laws in circumstances involving building and construction, or serial lawbreakers of industry specific laws.

Such bans and orders would be a 'last resort' option and available only in circumstances wherein other industry-specific laws contained in this document do not effectively remove criminals and those who display an ongoing disregard for the rule of law.

While there should be flexibility as to the types and length of bans and orders available, they should aim to ensure that criminals and serial lawbreakers are prevented from wielding ongoing influence or promoting poor industry culture.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Stronger protections for witnesses and whistleblowers

CICCA would maintain a dedicated unit focussed on gathering and receiving information about breaches of all industry specific laws within its remit.

This unit should be underpinned by a strong and solid system of legal protections to encourage whistleblowers and protect persons coming forward with information.

Existing laws and protections aren't sufficient to protect the industry and workers. As such, legislation to create CICCA should also create strong and clear protections for both companies and individuals, creating criminal penalties for any person or organisation engaging in conduct against another person or company as a form of recrimination, reprisal or other form of 'payback' for giving evidence or insisting on complying with industry specific laws.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Stronger competition law and better enforcement

CICCA would maintain a dedicated competition law unit with responsibility for enforcing stronger competition laws specific to the building and construction industry.

To support the work of a dedicated competition unit, a range of changes should be made to the *Competition and Consumer Act 2010* that would only apply to the building and construction industry, and participants therein.

These changes should include, as a minimum, that the *Competition and Consumer Act 2010* be amended to strengthen laws about cartel behaviour, better target secondary boycott behaviour, clarify that enterprise agreements under the Fair Work Act made in the building and construction industry are a contract, arrangement or understanding for the purposes of competition laws and give CICCA the powers necessary enforcement and investigation powers.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Strong enforcement of industry specific workplace laws

CICCA would establish a dedicated industry-specific workplace regulator with responsibility for ensuring compliance and enforcement of special additional rules specific only to building and construction workplaces.

A range of changes would be made to both the *Fair Work Act 2009* and *Fair Work (Registered Organisations Act) 2009* that would have specific application to building and construction workplaces, participants and organisations. These changes would create specific rules and additional obligations covering matters such as:

- Stronger duties for unions and their officials, such as:
  - A stronger fit and proper person test for officers, officials and employees of registered organisations of employees in the building and construction industry, including any workplace delegates;
  - Tighter disqualification of officials for breaching workplace or industry-specific laws;
  - The availability of bans on those disqualified from holding or standing for office in a union, or from holding a future right of entry permit;
  - Stronger laws to ensure right of entry powers are exercised in a proper and appropriate manner, and not exploited for non-industrial purposes, and to ensure right of entry permits are only available to those who satisfy the stronger 'fit and proper person' test.
- Better rules to support genuine and productive workplace bargaining for building and construction workplaces, including:
  - Requiring the Fair Work Commission to adopt a more comprehensive and inquisitorial approach to ensuring that enterprise agreements made in building and construction are in fact genuinely agreed. FWC should not be able to approve any building industry agreement unless it is comprehensively satisfied that this obligation has been met underpinned by rules including:
    - automatically application to 'pattern' based agreements where a union is a party;
    - powers to make sure negotiations have been free from coercion, misrepresentation, intimidation or any other similar conduct designed to undermine genuine and free workplace bargaining;
    - only recognising individuals appointed as bargaining agents if satisfied that they have not been previously found in breach of any workplace law, that their involvement is genuine and bona fide, and is not an attempt to circumvent other laws or stymie the negotiation process; and
    - more stringent rules for FWC to ensure that persons seeking to intervene in an EBA approval process or appeal the approval of an EBA are not current or former personnel, officers, officials or agents of the CFMEU and are genuinely representative of the majority of workers in the relevant workplace.
- Ensuring enterprise agreements in building and construction do not contain any provision that restricts the free choice of individual workers covered by the agreement, restrains or prevents the exercise or managerial discretion, or otherwise requires consent or agreement of a building industry organisation or official. This would require creating industry specific enterprise

bargaining laws prevent any enterprise agreement in building and construction containing any clause that has the effect of:

- Limiting the free and genuine choice of individual workers over payments or remuneration made on their behalf, such as choice their own redundancy fund, superannuation fund, or portable long service leave fund or sick leave fund;
- Mandating that employers take out insurances with particular providers on behalf of all workers, regardless of whether the workers want or need the insurance;
- Mandating or requiring union approval of a particular provider of workplace training, employee assistance or other support service;
- Giving unions the right of veto over the selection and use of subcontractors, or restricts the deployment and use of particular types or classes of workers, or when work is performed;
- Imposes any arrangement, process or approach regarding the resolution of workplace disputes, right of entry or arrangement to stop work other than the default processes prescribed by workplace laws.

- A range of new and clear offences be introduced in workplace laws to specifically target and eliminate industry specific workplace practices, including for example laws that ban:
  - 'no ticket, no start',
  - workplace picketing;
  - action, threats or conduct designed to pressure participants to use, or not use, particular subcontractors;
  - threats or taking illegal stoppages;
  - making agreements, understandings or arrangements with unions that circumvent default workplace laws regarding dispute resolution, entry, work stoppages or election of worker representatives;
  - engaging in any behaviour to pressure workplaces into accepting union pattern agreements; or
  - engaging in any behaviour, conduct, arrangement or tactic designed to circumvent or override the effect of industry specific laws preventing the inclusion of certain clauses in building and construction enterprise agreements.

To support the above laws, Government should move to establish specific building and construction industry division within the Fair Work Commission. This division should have dedicated members familiar with the industry and be responsible for all matters involving enterprise bargaining in building and construction and be tasked with swiftly hearing and determining disputes affecting or impacting the performance of work on building and construction sites.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Improved industry safety outcomes and preventing misuse of safety rules

CICCA would maintain a dedicated workplace safety unit to enforce industry specific safety laws that prevent the exploitation of safety for non-safety purposes and drive better safety outcomes.

This would require changes to the *Work Health and Safety Act 2011* and equivalent state laws including changes that:

This would require changes to the *Work Health and Safety Act 2011* and equivalent state laws to:

- make it an offence for officials or delegates to exploit or abuse workplace safety rights for non-safety purposes;
- repeal and replace right of entry provisions in the *Work Health and Safety Act 2011* and the equivalent provisions of the equivalent State Acts new provisions which provide that prior written notice of entry is to be provided except where the permit holder has a reasonable concern that (a) there has been or is contravention of the Act and (b) that contravention

gives rise to a 'serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard';

- make it clear that the burden of proving that a permit holder has a suspicion that is reasonable for the purposes of s 117(2) or a concern that is reasonable for the purposes of s 119A lies with the person asserting that fact;
- require that permit holders exercising rights under safety laws must leave a site within a reasonable time if requested to do so by a CICCA inspector who is on the site;
- require that right of entry to worksites on safety grounds can only be exercised by persons holding a valid ROE permit; and
- ensure persons seeking entry on safety grounds are also subject to the 'three strikes' rule.

In addition, the existing Australian Government Building and Construction Work Health and Safety Accreditation Scheme as administered by the Office of the Federal Safety Commissioner should be homed within CICCA.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Using government procurement to drive compliance and improve culture

CICCA would maintain a dedicated unit responsible for compliance with all Government procurement processes and rules involving building works, infrastructure and tenders involving participants in the building and construction industry.

Existing procurement rules should be modified to create industry specific changes requiring contractors tendering for federal government funded projects comply with additional rules and maintain workplace practices or face tough sanctions. Compliance with these rules would be overseen by CICCA and include obligations such as requiring contractors bidding to:

- ensure enterprise agreements have been genuinely agreed, made free from any coercion or intimidation, and meet the requirements of industry specific workplace laws;
- guarantee that they will report to the CICCA police unit any conduct, behaviour or information about any conduct, practices or information that may represent a breach of criminal laws or be conducive to criminal activity;
- adopt and maintain business, governance and workplace practices to meet and ensure ongoing compliance with all industry specific laws under the purview of CICCA;
- take steps to immediately report breaches or threatened breaches of industry specific laws to CICCA;
- cooperate and support any CICCA investigation relating to breaches of industry specific laws; and
- ensure all employees working on their sites have undergone thorough police checks, with a requirement that persons with a history of relevant convictions involving dishonest, violence or drugs being reported to CICCA.

In addition, Government must move to:

- clarify that Federal Government procurement rules apply on any project involving Federal Government funding to the complete exclusion of any and all state and territory procurement rules, including on projects that are jointly funded with states and territories; and
- make Federal Government funding to state or territory governments for projects involving building works conditional upon acceptance that Federal procurement rules will exclusively apply.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Stronger rules for providers of workplace training and other support services

CICCA would house a dedicated training and workplace services unit to ensure that providers of workplace training and any other workplace support services to the building and construction industry are dedicated to their core objectives, through additional rules that require higher levels of governance, transparency and financial accountability.

To achieve this, Government should amend a range of applicable laws creating rules specific to building and construction to implement changes to:

- increase financial transparency and reporting obligations;
- obliging the provider of any workplace training or support service to cooperate with any CICCA investigation; and
- improve governance arrangements where providers have directors nominated by building unions.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Preventing direct payments to building unions

CICCA would contain a dedicated financial compliance and governance unit tasked with identifying and enforcing industry specific laws designed to ensure that financial transactions made by building and construction companies to building unions are lawful and for legitimate purposes.

To achieve this, Government should move to create laws that:

- ban direct payments, donations or any other financial support to the CFMEU from any business, employer or entity in the building and construction industry unless such payments are permitted by law (such as payroll deductions for employee membership fees);
- require industry participants to record and account for any such payments and services as permitted by law;
- submit records of any financial transactions made by building and construction companies to building unions to CICCA;
- make it an offence for any person to solicit, compel, direct or otherwise influence a building and construction company to make a payment or provide financial support to a building union or any other organisation on or for their behalf, or at their direction; and
- require specific disclosure by building unions of the direct and indirect pecuniary benefits obtained by them in connection with worker entitlement funds, training or workplace support services, and employee insurance products.

See also: Why is this reform necessary? What it would mean? How it would improve industry culture?

Worker Entitlement Funds

A CICCA financial compliance and governance unit would also have responsibility for ensuring that worker entitlement funds operating in building and construction are more accountable and transparent to members and operate with higher standards of governance.

PART 3 – WHY REFORM IS NECESSARY | WHAT IT WOULD MEAN | HOW IT WOULD IMPROVE INDUSTRY CULTURE

This section expands on the measures outlined above and explains how these are necessary elements to drive lasting and tangible improvements for building and construction. It outlines how targeting the known causes and drivers of the conduct, giving rise to an attitude of disregard for the law, is key to eliminating the poor culture that allows corruption and criminality to flourish.

INDUSTRY SPECIFIC REGULATOR

Why this is necessary

Previous endeavours by various governments have established industry specific regulators but history shows these have not worked to achieve lasting change, were abolished far too soon, limited in remit or spread throughout various existing departments or agencies with ineffective coordination mechanisms.

The proposed CICCA would be a 'whole of government' and independent approach to ensure compliance with, and enforcement of, industry specific laws. It would allow maximum cooperation amongst various units proposed in this paper, allowing a coordinated and efficient approach to investigation and enforcement, involving greater sharing of information and better identification of practices and behaviours that drive poor culture and allow criminality and corruption to flourish.

What it would mean

The proposed CICCA would be widely known amongst industry participants, government agencies and regulators, and the broader community as 'the' dedicated agency responsible for ensuring the rule of law is observed in building and construction.

The proposed CICCA would be independent and should be established by specific legislation that gives it strong and consistent investigation, compliance and proactive enforcement powers. That same legislation should create a range of industry specific changes to the law (see below) and vest responsibility for enforcing those laws to CICCA.

There would be a range of dedicated units operating within CICCA with dedicated personnel who are familiar with the operation and practices within building and construction, and knowledge of how these can be exploited or abused for unlawful or illegal purposes.

How it would improve industry culture

The creation of CICCA would enable a new approach to enforcement of industry specific laws that are all designed to remove the previously identified causes and drivers of the ingrained culture that has existed in the sector for decades and which give rise to criminality and corruption.

It would take a proactive approach to investigation and enforcement and be able to commence proceedings and prosecutions for breaches of the law. This will mean that individual companies or persons don't have to risk reprisal, recrimination and 'payback' for initiating legal action and significantly removes a key driver for organisations and individuals to apply forms of commercial, industrial or other pressure designed to deter industry from speaking up, insisting on compliance with the law or enforcing their rights.

INDUSTRY SPECIFIC CHANGES TO THE LAW

Why this is necessary

A range of previous inquiries, Royal Commissions, and other various reports have all identified that the structure and operation of the building and construction industry is unique and contains a range of features and practices that make it highly susceptible to unlawful conduct and illegal practices.

Many of these earlier reports have recommended changes to a range of existing laws specifically designed to tackle these problems, however such changes often involve laws with broad application and may result in unintended consequences for other industries, organisations and entities. Similarly, changes to the law with broad application rely on existing regulators and agencies to enforce those laws, most of whom already have a very broad remit and stretched resources.

The amendment of existing laws to create industry specific rules and obligations for the building and construction industry would mean that the impact and effect of these changes are limited in their application and specifically targeted towards fixing problems that only exist in building and construction.

The proposed industry specific amendments to existing laws are all designed to remove the previously identified causes and drivers of the ingrained culture that has existed in the sector for decades and which give rise to criminality and corruption.

What it would mean

Government would amend a range of existing laws to create specific rules and obligations that only apply to the building and construction industry and the participants and organisations therein. The laws requiring industry specific amendments should, at a minimum, include:

- *Competition and Consumer Act 2011;*
- *Corporations Act 2010;*
- *Fair Work Act 2009;*
- *Fair Work (Registered Organisations) Act 2009;*
- State and Federal Government procurement rules applicable to government funded infrastructure and building works; and
- *Work Health and Safety Act 2011* (and associate State laws);

Industry specific changes to these laws would give CICCA the tools and powers it needs to ensure the broader aims of these laws are better achieved and that problems unique to building and construction can be targeted and fixed.

Vesting responsibility for enforcement of these laws with one central regulator would enable a more effective and coordinated approach, undertaken by dedicated personnel who are familiar with the operation and practices within building and construction, and knowledge of how these can be exploited or abused for unlawful or illegal purposes.

How it would improve industry culture

Industry specific changes to existing laws would have the effect of removing the incentives for any industry participant and organisation to engage in any unlawful or illegal conduct, and ensure the entire industry operates on a level playing field where there is no room for anyone to apply pressure or seek to gain advantage over another.

These changes would specifically target the practices and causes that have given rise to poor industry culture which has allowed criminality and corruption to flourish.

COORDINATED POLICE AND LAW ENFORCEMENT

Why this is necessary

While earlier endeavours to establish cross-jurisdictional police taskforces to investigate criminality and corruption have generated some positive results and outcomes, these have usually been temporary measures with a limited life.

What it would mean

CICCA would be home to a permanent and ongoing taskforce of national and state police and law enforcement agencies. The taskforce would support and facilitate a coordinated and national approach to enforcement of criminal laws would enable police activity and operations to be more comprehensive and effective. It would ensure greater sharing of information and more efficient use of law enforcement resources, enabling targeted and swift deployment of personnel as and where required to stop corruption and criminality wherever it occurs.

How it would improve industry culture

A permanent police taskforce would seek to identify, target and remove any elements of criminal activity and corruption that exist in building and construction, including persons or organisations linked to outlaw motorcycle gangs, organised crime and other criminal syndicates that prey on participants in the construction sector.

ENFORCING BANS TO RID CRIMINALS AND SERIAL LAWBREAKERS FROM THE INDUSTRY

Why this is necessary

History demonstrates that previous attempts to crack down on criminal elements and serial lawbreakers operating within building and construction have been mostly unsuccessful.

Attempts to ensure that the industry is free from persons known to thrive in, and promote, a culture of intimidation, thuggery and disregard for the law, have only resulted in their reappearance within the industry in a capacity that enables their poor culture and practices to get even worse and spread more broadly.

While other measures proposed in this document will go far in terms of driving permanent and positive change for the industry, there needs to be a 'last resort' option available if necessary.

What it would mean

CICCA would be able to seek bans of various lengths and order types to ensure that criminal elements and serial lawbreakers have no capacity to continue operating in, or having influence over, the building and construction industry and its worksites.

How it would improve industry culture

The only way to change culture is the change the people and organisations that thrive in, and promote, poor culture. Bans and orders would be a last resort option to ensure that CICCA has the power to not only remove those who cause the culture that allows criminal and corrupt activity to flourish, but also ensure that they can't return in some other capacity in the future.

STRONGER PROTECTIONS FOR WITNESSES AND WHISTLEBLOWERS

Why this is necessary

In short, there are a large number of companies and people in the building and construction industry that are that are too afraid to speak up, report wrongdoing or take steps to enforce their rights under existing laws.

Even recently, industry continues to report that in response to the recent Government measures announced, the CFMEU will only serve to 'unleash hell' on the industry and that anyone who assists the various inquiries 'will pay for it'. There are reports that persons are saying 'we've been through this before, we will survive it again, and will only make things worse for those who get involved'

Participants in the industry have long memories and they are cognisant that officials, officers and employees of some building unions have a track record of making public comments to the effect that they 'will never forget' and 'we know where you live and work, and where your kids go to school' and 'we will hunt you down' etc.

Existing laws simply aren't enough to protect the industry and workers – greater protections are needed to overcome the culture of silence and turning a blind eye to lawbreaking.

What it would mean

CICCA would be the one central agency to which anyone can report information, materials or concerns about organisations or individuals in the building and construction industry, or breaches of any laws that fall within its remit.

Legislation to create CICCA should also create strong and clear protections for both companies and individuals, creating penalties for any person or organisation engaging in conduct against another person or company as a form of recrimination, reprisal or other form of 'payback' for giving evidence or insisting on complying with industry specific laws.

How it would improve industry culture

A solid system of legal protections will encourage whistleblowers and protect persons coming forward with information. It will ensure that there is no longer a culture of fear and intimidation, and the culture of not speaking up lest there be payback will be eroded and eventually removed.

A strong system of penalties that is proactively enforced will send a message to industry that any person or organisation that engages in any type of coercion, intimidation, pressure or other conduct to unduly influence someone else, has no place in the building and construction industry and will feel the full force of the law.

Put simply, the culture of turning a blind eye to criminality, corruption and breaches of the law must end.

STRONGER COMPETITION LAW AND BETTER ENFORCEMENT

Why this is necessary

Every single one of the previous Royal Commissions of Inquiry into the building and construction industry have found examples where industry participants have engaged in conduct leading to contraventions of the boycott and cartel provisions of the Competition and Consumer law.

Industrial coercion creates an environment within which criminal and anti-competitive behaviours ripple throughout the industry. The result is that emerging small-to-medium sized competitors are excluded from the market when faced with union dictated pattern EBAs which are unaffordable at their economy of scale. For companies that meet union demands, the inflated costs of union pattern agreements make it impossible for them to compete, unless they are protected from competition by the union.

The CFMEU's tactics are a ready-made vehicle for market manipulation, whereby contractors can either acquiesce or cooperate with the union to suppress competition and even fix prices.

The effect of this 'system' is obviously severely restricted competition, which tends to entrench the market dominance of larger commercial subcontractors and impede the entry of emergent contractors into the commercial market.

What it would mean

Industry specific changes to the law would give the CICCA the tools it needs to effectively identify, target and eliminate anti-competitive behaviours which are known to exist in building and construction.

This would allow CICCA to drive increased levels of competition and innovation in building and construction, while ensuring that building and construction works are delivered in a way that ensures clients and taxpayers get value for money.

How it would improve industry culture

Stronger industry specific competition laws backed by better enforcement would remove a key driver of unlawful conduct and poor culture by creating a genuine level playing field for all industry participants.

It would remove the incentive for building unions and officials to engage in industrial coercion, and eliminate the commercial pressure felt by many industry participants to acquiesce to these and other illegal tactics in order to obtain or receive ongoing work.

Allowing industry participants to compete on merit would drive competition and support industry innovation, and remove a key driver of corrupt and criminal behaviour as identified by recent media reports.

STRONG ENFORCEMENT OF INDUSTRY SPECIFIC WORKPLACE LAWS

Why this is necessary

All previous Royal Commissions of Inquiry and a range of other reports have all reached the exact same conclusion - that there is a need for industry specific industrial relations laws that appropriately recognise and tackle the problems and conduct which are unique to the building and construction industry – enforced by a dedicated industry specific regulator.

The Heydon Royal Commission, for example, found that:

> *"One consideration which supports the need for an industry specific regulator is the high level of unlawful conduct in the industry. This is demonstrated by Appendix A to this Chapter. The sustained and entrenched disregard for both industrial and criminal laws shown by the country's largest construction union further supports the need.*
>
> ***Given the high level of unlawful activity within the building and construction sector, it is desirable to have a regulator tasked solely with enforcing the law within that sector**."*[2]
>
> *"**There should continue to be a building and construction industry regulator**, separate from the Office of the Fair Work Ombudsman, **with the role of investigating and enforcing the Fair Work Act 2009 (Cth) and other relevant industrial laws in connection with building industry participants."**[3]*

[2] *Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, para 83*

[3] *Ibid refer to recommendation 61*

What it would mean

A range of industry specific amendments would be made to the *Fair Work Act* and the *Fair Work Registered Organisations Act 2009* that are designed to:

- create stronger duties for registered organisations of employees and higher standards of governance;
- support genuine and productive workplace bargaining for building and construction workplaces;
- ensure enterprise agreements in building and construction do not contain any provision that restricts the free choice of individual workers covered by the agreement, restrains or prevents the exercise or managerial discretion, or otherwise requires consent or agreement of a building industry organisation or official;
- introduce a range of industry specific offences to target and eliminate commonly deployed unfair workplace practices and unlawful activity; and
- provide the FWC with a designated division to rapidly resolve workplace disruption and disputation.

Responsibility for ensuring compliance and enforcement with these laws would rest with CICCA.

How it would improve industry culture

Industry specific laws enforced by a dedicated industry workplace regulator would stamp out the ability for organisations and officials to exploit or manipulate workplace laws to apply unlawful or illegal industrial pressure to builders and workplaces.

This would remove a key driver of poor culture and leading cause of unlawful tactics, such as thuggery, intimidation and other forms of illegal workplace and commercial pressure and coercion.

This culture has been forensically examined, identified and known to exist within the industry for decades. Certain organisations and individuals thrive in, and promote the spread of, this poor culture and this creates the environment in which criminal and corrupt activity and grow and flourish.

Industry specific workplace laws are essential to ensuring that the causes of poor industry culture are not available to anyone in the sector, removing a key driver of unlawful conduct that gives rise to broader corruption and criminality, while also maintaining strong protections for workers, including their pay and conditions.

IMPROVED INDUSTRY SAFETY OUTCOMES AND PREVENTING MISUSE OF SAFETY RULES

Why this is necessary

Registered organisations and their officials have rights and privileges to enter workplaces and exercise certain powers under both state and federal work health and safety laws.

However, there have been dozens of Federal Court cases and judgements that have found that the CFMEU and its officials have misused and exploited the issue of workplace safety to achieve other industrial objectives or for other reasons completely unrelated to safety.

In some of these cases, officials from the CFMEU have actually been found to be responsible for causing the alleged safety problem as a means to shutting down a worksite as a way to force builders into signing a union dictated pattern enterprise agreement. Other cases have shown that officials have disregarded site safety rules and placed themselves and others in unsafe situations.

See for example:

- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2018] FCA 42 (7 February 2018);*
- *Australian Building and Construction Commissioner v Hanna & Anor (No.3) [2017] FCCA 2519 (19 October 2017)*

- *Australian Building and Construction Commissioner v Auimatagi & Ors [2017] FCCA 1772*
- *Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (The Footscray Station Case) [2016] FCA 872 (5 August 2016)*
- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The Footscray Station Case) [2017] FCA 1555*

What it would mean

Safety is crucial for everyone in construction workplaces and its importance should not be undermined through abuse and exploitation to achieve unrelated purposes.

Industry specific changes to work health and safety laws would tackle this practice in an effective and balanced way that ensures safety rights can only be used for genuine safety issues.

It would mean that only fit and proper people can have the right to enter a workplace under safety grounds, and that officials who exploit or misuse their rights under safety laws will be subject to effective penalties that deter future abuse.

How it would improve industry culture

These changes would remove a key lever by which safety rights can be used as another tool to apply unfair or illegal pressure to builders and through which unlawful stoppages to work can be threatened or actioned.

It would improve safety culture by ensuring rights under safety laws are used in a genuine way for their intended purpose and remove any concern or scepticism about the bona fides of officials when raising safety grounds.

USING GOVERNMENT PROCUREMENT TO DRIVE COMPLIANCE AND IMPROVE CULTURE

Why this is necessary

Governments have a longstanding practice of using government procurement rules to drive cultural change. This ensures that the use of taxpayer's money can be made conditional for companies that adopt practises which are consistent with the broader policy goals of the government of the jurisdiction in which the work takes place.

However, some state and territory governments have procurement practices that create special conditions and rights for the CFMEU, including oversight of processes that give approval to companies being eligible to tender for government funded building works and/or the requirement that companies adopt a pattern union enterprise agreement.

What it would mean

The Federal government should amend procurement rules to support its stated aim of stamping out criminality and corruption on building sites. This would mean contractors bidding for work must adopt specific rules and practices that avoid practices and proactively work to ensure they comply with the law. The Federal government should make it clear that where building works are funded jointly by them and another state or territory, the Federal procurement rules will override any maintained at the state or territory level.

How it would improve industry culture

By requiring contractors bidding for work to be compliant with these rules, Government can drive positive cultural change amongst some of the largest building contractors in Australia. Such practices will ensure all government funded building sites are free from corruption, criminality and meet high standards of compliance with the law.

It will also remove a key driver of corruption and criminality by removing the capacity for unions to influence which building companies are successful in bidding for government funded work, or forcing them to adopt union pattern enterprise agreements as a condition of tendering for work.

STRONGER RULES FOR PROVIDERS OF WORKPLACE TRAINING AND OTHER SUPPORT SERVICES

Why this is necessary

Various earlier Royal Commissions of Inquiry and other similar reports have identified how enterprise agreements can contain clauses that mandate the use of particular workplace training and workplace support services which are run by, or provide financial support, to the CFMEU.

The current pattern CFMEU agreement in NSW, for example, contains clauses that mandates that all employees must be given almost ten different types of training and workplace support services, all of which are either run by, provide financial support to, or have links with, the CFMEU.

What it would mean

Amending industry specific laws would prevent the naming of such funds being mandatory in enterprise agreements and oblige such funds to increase financial transparency and improve governance levels.

How it would improve industry culture

These changes would remove a key driver of poor culture and corrupt behaviour, by removing the ability for pressure and action to be taken that force employers into enterprise agreements that mandate the use of workplace training and support services that funnel money into the CFMEU.

This would remove a key driver of unlawful behaviour and give workers and employers the capacity to choose the best training provider for their needs.

PREVENTING DIRECT PAYMENTS TO BUILDING UNIONS

Why this is necessary

Various Royal Commission reports have found that the CFMEU has been involved in workplace practices that are designed for coerce employers into making payments to unions in a bid to maintain industrial peace. Such practices have included requiring employers to buy 'casual tickets' (union memberships) for workers without their consent or knowledge, fund union coordinated workplace events, and other similar actions designed to take advantage of unions capacity to disrupt work on building sites.

What it would mean

Industry specific laws should be created that make it illegal for contractors and employers to make payments to building unions, except where expressly permitted by law.

This would also make it illegal for building officials and organisations to solicit or take payments directly from contractors and employers, unless it is for specified and lawful purposes.

The obligation to report any payments made from contractors to building unions to CICCA, would enable the agency to monitor compliance with the law and ensure that money flows in the industry are for legal and proper purposes.

How it would improve industry culture

This change would improve industry culture by removing a common cause of unlawful pressure and coercion frequently experienced by contractors and employers on building sites. This change would be essential in stopping the unlawful flows of monies to building unions, remove a temptation giving rise to criminal and corrupt behaviour, and ensure greater financial transparency of all building industry participants.

ANNEXURE "A" - DRIVERS OF POOR CULTURE

The existence of a poor culture in some registered organisations and their officials that operate in building and construction has been examined many times over decades. This poor culture has become ingrained and is a key driver of corruption and criminality within the sector. Some examples of findings of earlier inquiries are below:

HEYDON ROYAL COMMISSION 2015

> *"The Commission's inquiries have revealed a worrying and recurring phenomenon, particularly within the CFMEU, of union officials deliberately disobeying court orders or causing the union to disobey court orders. Officials who deliberately flout the law should not be in charge of registered organisations".*[4]
>
> *"There is a longstanding malignancy or disease within the CFMEU. One symptom is regular disregard for industrial laws by CFMEU officials. Another symptom of the disease is that CFMEU officials habitually lie rather than 'betraying' the union. Another symptom of the disease is that CFMEU officials habitually show contempt for the rule of law. What can be done to cut out the malignancy and cure the disease?"*[5]
>
> *"Large national unions, such as the CFMEU….. have substantial assets. They have many thousands of members. They operate branches across different jurisdictions. They employ large numbers of employees. They generate tens of millions in membership dues annually. They generate millions in commercial enterprise and agreements with third parties. They are trading corporations in the constitutional sense. They are big businesses."*
>
> *"The conduct that has emerged discloses systemic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats, intimidation, abuse of right of entry permits, secondary boycotts, breaches of fiduciary duty and contempt of court."*[6]
>
> *"The issues identified are not new. The same issues have been identified in reports of three separate Royal Commissions conducted over the past 40 years: the Winneke Royal Commission in 1982, the Gyles Royal Commission in 1992 and the Cole Royal Commission in 2003."* [7]
>
> *"The continuing corruption and lawlessness that has been revealed during the Commission suggests a need to revisit, once again, the regulation of the building and construction industry."*[8]
>
> *"The evidence in relation to the CFMEU case studies indicates that a number of CFMEU officials seek to conduct their affairs with a deliberate disregard for the rule of law. That evidence is suggestive of the existence of a pervasive and unhealthy culture within the CFMEU, under which:*
>
> *(a) the law is to be deliberately evaded, or crashed through as an irrelevance, where it stands in the way of achieving the objectives of particular officials;*
>
> *(b) officials prefer to lie rather than reveal the truth and betray the union;*
>
> *(c) the reputations of those who speak out about union wrongdoing become the subjects of baseless slurs and vilification."*[9]

4 Heydon Vol 5 p226
5 Heydon Royal Commission, Volume 5, p401
6 Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, para 1
7 Ibid at para 2
8 Ibid at para 3
9 Royal Commission into Trade Union Governance and Corruption, Interim Report (2014), Vol 2, ch 8.1, p 1008.

'The case studies considered in this Report only reinforce those conclusions'[10]

'The evidence has revealed possible criminal offences by the CFMEU or its officers against numerous provisions of numerous statutes including the Criminal Code (Cth), the Crimes Act 1900 (NSW), the Crimes Act 1958 (Vic), the Criminal Code 1899 (Qld), the Criminal Law Consolidation Act 1935 (SA), the Corporations Act 2001 (Cth), the Charitable Fundraising Act 1991 (NSW) and the Competition Policy Reform (Victoria) Act 1995 (Vic)'[11]

'The conduct identified in the Commission is not an isolated occurrence. As the list in the previous paragraph reveals, it involves potential criminal offences against numerous laws. It involves senior officials of different branches across Australia.'[12]

Key conduct uncovered during the Heydon Royal Commission

The widespread misconduct described within the report traverses a range of behaviours that it suggested 'may' have occurred including but not limited to:

- actions favouring the interests of the union over the members;
- financial misconduct and the misappropriation and use of union funds for private purposes;
- arranging for right of entry tests to be sat by persons other than the candidate;
- abuses of rights of entry;
- use of blackmail and extortion for the purposes of achieving industrial ends;
- commission of criminal offences such as the making of death threats and conspiracy to defraud;
- procuring payments from employers for the purposes of 'industrial peace';
- false inflation of membership numbers and payment of bogus membership dues;
- creation of false records, insufficiency or absence of proper records and destruction of records;
- engaging in contraventions of the boycott and cartel provisions of the Competition and Consumer Act 2010 (Cth);
- misuse of private information of superannuation fund members for industrial purposes.

10 Heydon Report, Chapter 5, page 396
11 Ibid
12 Ibid

COLE ROYAL COMMISSION

> *"Underlying much of the conduct of unions, and in particular the CFMEU, is a disregard or contempt for the law and its institutions, particularly where the policy of the law is to foster individualism, freedom of choice or genuine enterprise bargaining. Overwhelmingly, industrial objectives are pursued through industrial conduct, rather than reliance on negotiation or the law and legal institutions."*[13]

Key conduct uncovered during the Cole Royal Commission:

Commissioner Cole found that, within building and construction, there was a range of unlawful conduct including:

- widespread disregard of, or breach of, the enterprise bargaining provisions of the workplace laws
- widespread disregard of, or breach of, the freedom of association provisions of workplace laws
- widespread departure from proper standards of occupational health and safety;
- widespread requirement by head contractors for subcontractors to have union-endorsed enterprise bargaining agreements (EBAs) before being permitted to commence work on major projects in State capital central business districts and major regional centres;
- widespread requirement for employees of subcontractors to become members of unions in association with their employer obtaining a union-endorsed enterprise bargaining agreement;
- widespread requirement to employ union-nominated persons in critical positions on building projects;
- widespread disregard of the terms of enterprise bargaining agreements once entered into;
- widespread application of, and surrender to, inappropriate industrial pressure;
- widespread use of occupational health and safety as an industrial tool;
- widespread making of, and receipt of, inappropriate payments;
- unlawful strikes and threats of unlawful strikes;
- threatening and intimidatory conduct;
- disregard of contractual obligations;
- disregard of National and State codes of practice in the building and construction industry;
- disregard of, or breach of, the strike pay provisions of workplace laws;
- disregard of, or breach of, the right of entry provisions in workplace laws'
- disregard of Industrial commission and court orders; and
- disregard by senior union officials of unlawful or inappropriate acts by inferior union officials; and
- disregard of the rule of law.

13 Royal Commission into the Building and Construction Industry, Final Report (2003), Vol 1, p 11, para 22.

SELECTION OF JUDICIAL COMMENTARY INVOLVING CFMEU

"The union has not displayed any contrition or remorse for its conduct. The contravention is serious… Substantial penalties for misconduct, prior to that presently under consideration, have not caused the CFMEU to desist from similar unlawful conduct."

(Tracey J, 21 November 2013, Cozadinos v Construction, Forestry, Mining and Energy Union [2013] FCA 1243)

"The circumstances of these cases … nonetheless, bespeak a deplorable attitude, on the part of the CFMEU, to its legal obligations and the statutory processes which govern relations between unions and employers in this country. This ongoing willingness to engage in contravening conduct must weigh heavily when the need for both specific and general deterrence is brought to account."

(Tracey J, 1 May 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 2) [2015] FCA 407)

"There is clearly, as other judges have recorded, a strong record of noncompliance on the part of the Union through its officers with provisions of industrial relations legislation, although that does not mean that a disproportionate penalty can or should be imposed. I note that significant past penalties have not caused the Union to alter its apparent attitude to compliance with the entry provisions and restrictions under the FW Act."

(Mansfield J, 14 August 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 3) [2015] FCA 845)

"The conduct has in common features of abuse of industrial power and the use of whatever means the individuals involved considered likely to achieve outcomes favourable to the interests of the CFMEU. The conduct occurs so regularly, in situations with the same kinds of features, that the only available inference is that there is a conscious and deliberate strategy employed by the CFMEU and its officers to engage in disruptive, threatening and abusive behaviour towards employers without regard to the lawfulness of that action, and impervious to the prospect of prosecution and penalties."

(Mortimer J, 13 May 2016, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 2) [2016] FCA 436)

"In the period between 1 January 1999 and 31 March 2014, the CFMEU itself or through it officials had been dealt with for 17 contraventions of s 500 or its counterparts in earlier legislation, and for 194 contraventions of s 348 of the FW Act or other provisions proscribing forms of coercive conduct."

(White J, 22 April 2016, Director of the Fair Work Building Industry Inspectorate v O'Connor [2016] FCA 415)

"The schedule paints, one would have to say, a depressing picture. But it is more than that. I am bound to say that the conduct referred to in the schedule bespeaks an organisational culture in which contraventions of the law have become normalised."

(Jessup J, 4 November 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (The Mitcham Rail Case) [2015] FCA 1173)

"…the litany of contraventions…[and] the many prior contraventions of relevant statutory proscriptions by the Union…indicating a propensity, on the part of the Union, to engage in proscribed conduct."

(Goldberg, Jacobson and Tracey JJ, 10 September 2009, Draffin v CFMEU & Ors [2009] FCAFC 120; (2009) 189 IR 145)

"...the history tends to suggest that the Union has, with respect to anti-coercion and similar provisions of industrial laws, what the High Court in Veen described as 'a continuing attitude of disobedience of the law'..."

(Jessup J, 29 May 2009, Williams v Construction, Forestry, Mining and Energy Union (No 2) [2009] FCA 548; (2009) 182 IR 327)

"There is ample evidence of significant contravention by the CFMEU and its ideological fellow travellers. The CFMEU, as a holistic organisation, has an extensive history of contraventions dating back to at least 1999. The only reasonable conclusion to be drawn is that the organisation either does not understand or does not care for the legal restrictions on industrial activity imposed by the legislature and the courts."

(Burnett J, 28 February 2014, Director, Fair Work Building Industry Inspectorate v Myles & Ors [2014] FCCA 1429)

"The union has not displayed any contrition or remorse for its conduct. The contravention is serious… Substantial penalties for misconduct, prior to that presently under consideration, have not caused the CFMEU to desist from similar unlawful conduct."

(Tracey J, 21 November 2013, Cozadinos v Construction, Forestry, Mining and Energy Union [2013] FCA 1243)

"The overwhelming inference is that the CFMEU, not for the first time, decided that its wishes should prevail over the interests of the companies and that this end justified the means."

(Tracey J, 17 March 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union [2015] FCA 226)

"The CFMEU is to be regarded as a recidivist rather than as a first offender."

(Tracey J, 17 March 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union [2015] FCA 226)

"The record indicates an attitude of indifference by the CFMEU to compliance with the requirements of the legislation regarding the exercise of rights of entry."

(White J, 23 December 2014, Director of the Fair Work Building Industry Inspectorate v Stephenson [2014] FCA 1432)

"…the pattern of repeated defiance of court orders by the CFMEU revealed by those four cases is very troubling."

(Cavanough J, 31 March 2014, Grocon & Ors v Construction, Forestry, Mining and Energy Union & Ors (No 2) [2014] VSC 134)

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
NES Precedence	*No equivalent*	*4(c)* *This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency*	An NES precedence clause has been inserted
Duration of the Agreement	*5(a)* *Except in relation to increases in wage rates, productivity allowance and superannuation, this Agreement shall apply from the date of lodgement and shall remain in force until 31 December 2023. The increases in wage rates, productivity allowance and superannuation are payable from 1 October 2019, and ACIRT contribution from 1 March 2020, all other increases are applicable from the date of lodgement*	*5(a)* *This Agreement shall apply from the date of lodgement and shall remain in force until 4 July 2027.*	Unlike the 2019 – 2013 Agreement, all conditions apply from the date of lodgement.
Duration of the Agreement	*5(c)* *At least three (3) months before the expiry of this Agreement, and ongoing as necessary, the parties may commence discussions concerning a future agreement. Employees will be eligible during this period to attend a maximum of three paid meetings (maximum duration four (4) hours) during ordinary hours of work convened to discuss their needs and expectations in respect of any future Agreement. The meeting will be convened at a date and time convenient to the Company and at a location where building work is not performed.*	*5(c)* *At least three (3) months before the expiry of this Agreement, and ongoing as necessary, the Parties may commence discussions concerning a future agreement. Employees, including casuals, will be eligible to attend a maximum of four (4) paid meetings (maximum duration four (4) hours) during ordinary hours of work convened to discuss their needs and expectations in respect of any future Agreement. The meetings will be convened at a date and time convenient to the Company and the Union*	The new pattern includes casuals in the group of employees that are provided with an entitlement to attend paid meetings with the Union. The pattern also removes the requirement that the mandated bargaining meetings occur at least 3 months prior to expiry of the Agreement and lifts the maximum number of paid meetings from 3 to 4. The new pattern requires the meetings to be at a time convenient to the Union as well as the Company and removes the requirement that the meeting not be held at a location where building work is performed

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
Duration of the Agreement	*5(d)* *Subject to the Fair Work Act 2009, for the purposes of acting as the Employees' Bargaining Representative, the Company shall facilitate, as is reasonable, access to Employees by the Bargaining Representative during the course of negotiations for a future agreement. Such access will be convened at a date, time and location mutually convenient to the Company an the Bargaining Representative.*	*No equivalent*	The new Agreement removes the requirement for the Company to provide access to bargaining representatives when negotiating the new Agreement.
Duration of the Agreement	*5(e)* *The parties must give not less than three (3) months notice in writing to the employees and the Union of any intention to terminate this Agreement.*	*No equivalent*	The Agreement removes the requirement for the parties to give 3 months' notice of an intention to terminate the Agreement. This is probably because the termination provisions in the FW Act have been made very restrictive.
Employee awareness	*6(c)* *To assist new employees in familiarising themselves with this Agreement, new Employees will be given the contact details of the Union Delegate/Employee representative upon engagement. The Union Delegate(s)/Employee Representative will be advised of the engagement of new employees where consented to by the new Employee.*	*6(c)* *To assist new employees in familiarising themselves with this Agreement, new Employees will be given the contact ·details of the Union Delegate upon engagement. The Union Delegate(s) will be advised of the engagement of new employees.*	The new Agreement removes the alternative of providing employees with the contact details of an Employee Representative rather than the Union on engagement. The new pattern Agreement also removes the requirement for Employee consent before their details are provided to the Union.
Procedure for resolving health and safety issues	*9.1(d)* *When a matter cannot be resolved in the first instance, the following procedure shall be adopted:* *(i) The health and safety issue will be raised with the Site Manager and Health and Safety Representative (HSR) and/or Workplace Health and Safety Committee (WHS*	*9.1(d)* *When a matter cannot be resolved in the first instance, the following procedure shall be adopted:* *(i) The health and safety issue will be raised with the Site Manager and Health and Safety Representative (HSR) for the Designated Work Group (DWG) and/or Workplace Health and Safety Committee (WHS Committee) member;*	The pattern Agreement includes references to a Designated Work Group in the provision dealing with resolving health and safety issues.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	Committee) member; *(ii) the HSR and/or WHS Committee member will consult with the supervisor and the Site Manager (or the Company's representative) to resolve the health and safety issue;* *(iii) where the health and safety issue is not resolved, the site WHS Committee will convene to resolve the issue in accordance with the WHS Act;* *(iv) where the steps in 9.1 d) (i) to 9.1 d) (iii) have been exhausted and the health and safety issue has not been resolved, the matter may be referred for advice from a specialist (such as a WHS inspector).*	*(ii} the DWG HSR and/or WHS Committee member will consult with the supervisor and the Site Manager (or the Company's representative) to resolve the health and safety issue;* *(iii) where the health and safety issue is not resolved, the site WHS Committee will convene to resolve the issue in accordance with the WHS Act;*	
Concrete pours	*No equivalent*	*9.5* *Concrete slab pours over 150m^3 in volume will not commence after 11:00am however, for concrete pours that do not involve slabs and are over 150m3, there may be consultation with the Parties as to the commencement of such pours after 11.00am*	The new pattern agreement restricts concrete slab pours occurring after 11:00am on sites over 150m^3. However, commencement of concrete pours that do not involve slabs and are over 150 m3 may occur subject to consultation.
Site safety inductions	*9.5* *In the interests of safety best practice site safety inductions will be conducted on site and communicated face to face in paid ordinary hours. The Company will not accept online site safety induction processes*	*9.6* *In the interests of safety best practice, the site safety induction will be conducted on site and communicated face to face in paid ordinary hours. This does not preclude online registration / general onboarding of workers prior to arriving to the site safety induction,· providing the time taken to undertake the onboarding is in paid time.*	The updated version confirms that the requirement for face to face site safety inductions does not preclude online registration / general onboarding of workers prior to arriving to the site safety induction,· providing the time taken to undertake the onboarding is in paid time.
Inclement weather	*9.7 (c)* *The Company must confer with Employee and/or the Union Delegate/Employee Representative/HSRs within a reasonable time (which does not exceed 30 minutes) for the purpose of determining whether or not the conditions referred to in this clause apply*	*9.8(c)* *The Company must confer with Employees and/or the Union/Union Delegate /HSRs within a reasonable time (which does not exceed 30 minutes} for the purpose of determining whether or not the conditions referred to in this clause apply. Further, prior to the commencement of normal*	The new Agreement removes the option of conferring with an Employee Representative as an alternative to dealing with the Union. It also introduces a requirement that prior to the commencement of normal

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
		work, and no less than 30 minutes after the cessation of a period of rain during the workday, the site safety committee will undertake a safety walk to enable areas to open progressively. *(d) The Parties agree that inclement weather does not automatically create unsafe working conditions. Employees will not be expected to work in unsafe or unreasonable conditions due to inclement weather. Employees shall not be required to commence a concrete pour in inclement weather. Refer to Heat Policy in Appendix G for concrete pours on days affected by heat. For concrete pours that do not involve slabs and are over 150m^3, there may be consultation with the Parties as to the commencement of such pours after 11.00am*	work and no less than 30 minutes after the cessation of a period of rain during the workday, the site safety committee will undertake a safety walk to enable areas to open progressively. The new Agreement enables concrete pours that do not involve slabs and that are over 150m^3 to potentially commence subject to consultation.
Drug and alcohol policy	*9.8(c)* *The Parties agree to apply the Drug & Alcohol Policy (as amended from time to time by agreement) in Appendix H*	*9.9(c)* *The Parties agree to apply the Drug & Alcohol Policy in Appendix H*	The amended version removes the indication that the Drug and Alcohol policy may be amended from time to time by agreement.
Mental Health and Wellbeing	*9.9(c)* *In order to improve mental health outcomes, the Company and the Employees agree to support the Foundo Blue program tailored to the building and construction and allied industries and to utilise the related services available In managing health and safety issues.*	*9.10(c)* *In order to improve mental health outcomes, the Company agrees to sponsor the best practice Foundo Blue program provided by the Construction Industry Drug and Alcohol Foundation tailored to the building and construction and allied industries and to utilise the related services available in managing health and safety issues.* *9.10(d)* *In addition, the Foundo Blue program will be addressed at inductions.*	The new pattern Agreement alters the wording of this clause so that the Company agrees to 'sponsor' the Foundo Blue Program. It also removes the similar obligation being placed upon the Employee. The new provision provides that the Foundo Blue Program is provided by CIDAF. New 9.10(d) provides that the Foundo Blue Program will be addressed at inductions.
Access to floors, tower cranes and jumpforms	*No equivalent*	*9.14(d)* *At least every 6 months after the erection of a tower crane on site a full safety check will be undertaken by an industry recognised independent crane assessor and agreed by the Union.*	The new version introduces a new requirement for a 6 monthly safety check for tower cranes.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
Wage rates and other employment benefits	*10.1(b)* *Apprentices will be paid in accordance with the wage rates in Appendix D of this Agreement. In addition, apprentices shall also receive applicable allowances in Appendix I and expense related and other BCGOA entitlements where applicable.*	*10.1(b)* *Apprentices will be pai in accordance with the wage rates in Appendix D of this Agreement. In addition, apprentices shall also receive applicable allowances in Appendix Cl and Appendix I and expense related and other BCGOA entitlements where applicable.*	The amended provision requires apprentices to receive the allowances in Appendix C1 as well as Appendix I.
Productivity allowance	*10.2(b)* *This allowance will be paid weekly for each hour worked attracting no premium or penalty and remain in force for the duration of the Agreement. This allowance is not paid to Employees when they leave site due to inclement weather.*	*10.2(b)* *This allowance will be paid weekly for each hour worked attracting no premium or penalty and remain in force for the duration of the Agreement. This allowance is not paid to Employees when they leave site and go home due to inclement weather.*	Under the amended version, the exclusion from paying the allowance when an employee leaves site only applies if they 'go home'.
Productivity allowance	*No equivalent*	*10.2(c)* *For the avoidance of doubt, productivity allowance is payable for all hours that Employees are working at the direction of the Company, including but not limited to, training and work in the yard*	Although it is arguable that this was the case under the existing pattern, the new pattern seeks to confirm that productivity allowance is payable where an employee is performing training or work in the yard.
Redundancy and Income Protection, Trauma and Journey Insurance	*10.4 Redundancy* *Redundancy or redundant means the termination or cessation of employment of an Employee for any reason.* *In respect of redundancy benefits:* a) *The Company agrees to make redundancy contributions in respect of Employees, including apprentices however engaged and casuals, covered by this Agreement to the Australian Construction Industry Redundancy Trust (ACIRT) in accordance with Appendix Cl or C2 whichever is applicable of this Agreement.* b) *The contributions shall be paid monthly into ACIRT in accordance with the requirements of the Trust.* c) *Once an Employee has accrued an amount equal to 8 weeks pay in their ACIRT account, they may elect to have their redundancy*	*10.4.1:* ***In respect of redundancy benefits*** a) *Redundancy or redundant means the termination or cessation of employment of an Employee for any reason.* b) *The Company will become and remain during the life of this Agreement, a member of the Redundancy Payment Approved Workers Entitlement Fund 2 ("Incolink Number 5 Fund") of which Redundancy Payment Central Fund Ltd (Incolink) is trustee (the "Nominated Redundancy Fund"), and Employees of the Company covered by this Agreement will be enrolled in the "Nominated Redundancy Fund" and be entitled to redundancy benefits in accordance with the terms of the relevant Trust Deed.* c) *The Company shall pay contributions to the*	Incolink is the nominated redundancy fund in the new version of the Agreement. Apprentices and casuals are also entitled to Incolink payments to be made on their behalf. IPT Agency Co Ltd is to be the nominated provider for Income Protection, Trauma and Journey Insurance. Weekly insurance premiums per employee will rise from $49 to $52 from 2026. A penalty of $2,000 net per week applies where an employer fails to pay these premiums. A $1 payment per employee per week is to be made to Construction and Building

<table>
<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
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contribution paid into Cbus as additional superannuation contributions.
d) Employees will be entitled to a redundancy benefit for each week of service with the Company being the greatest of the following amounts:

(i) the amount payable by the Company to ACIRT in accordance with this Agreement or
(ii) the amount prescribed by the BCGOA and or
(iii) any amount prescribed or awarded by a relevant industrial tribunal

Where there is a higher entitlement under d) (ii) and or (d)(iii) of this clause the Employee will be paid direct by the Company this entitlement on termination minus the balance that has already been paid into ACIRT by the Company for this period of employment
</td>
<td>
Nominated Redundancy Fund on behalf of each Employee, including apprentices and casuals covered by this Agreement, calculated on a weekly basis in accordance with Appendix C and paid in accordance with the Trust Deed.
d) The liability of the Company to pay redundancy benefits to an Employee under this Agreement will be met to the extent that contributions are made by the Company in respect of that Employee to the Nominated Redundancy Fund.
e) References in this clause to "Nominated Redundancy Fund" include a reference to another fund for comparable purposes for the purpose of this Agreement as a fund which supersedes the Incolink No 5 fund.

10.4.2:
In respect of Income Protection, Trauma and Journey Insurance and other Benefits
a) IPT Agency Co Ltd administers the insurance schemes covering income protection, trauma and journey accidents (Income Protection, Trauma and Journey Accidents Insurance Schemes).
b) The Company shall pay contributions to IPT Agency Co Ltd collected through Incolink, on behalf of each Employee, on a monthly basis, in the amount of:

<table>
<tr><th>Year</th><th>Maximum Sum Insured</th><th>Insurance Premium per week per Employee</th></tr>
<tr><td>Year1 2024/25</td><td>$2,200</td><td>$49.00</td></tr>
<tr><td>Year2 2025/26</td><td>$2,200</td><td>$49.00</td></tr>
</table>
</td>
<td>Industries Training. This will increase to $2 per employee per week.</td>
</tr>
</table>

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary

Year3 2026/27	*$2,300*	*$52.00*
Year4 2027/28	*$2,300*	*$52.00*

c) Pursuant to the Income Protection, Trauma and Journey Accidents Insurance Schemes, an Employee covered by this Agreement will be covered for Income Protection, Trauma and Journey Accidents insurance.

d) In addition, there may be additional benefits payable to Employees covered by this Agreement including Childcare Assistance Benefit payable in the event of a death of an Employee or their dependent spouse and Bill Payer Insurance to qualifying Incolink members.

e) In the event the Company has failed, including by way of omission or delay, to pay the premium to effect insurance coverage for any Employee covered by this Agreement, the Company must immediately make good any shortfall or arrears in premium/contribution to IPT Agency Co Ltd. The Company will pay to any affected Employee $2000 net per week and all the benefits that would have otherwise been payable to the Employees under the insurance policy.

10.4.3

In respect of the Industry Training Levy:

a) *As an initiative to enhance the employment and career opportunities of Employees, the Parties will continue to facilitate ongoing training to improve. occupational health and safety in the industry and to improve Employees' work skills so as to advance progression to*

<table>
<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
<tr><td></td><td></td><td>higher industry skill levels.
b) To support the cost of these training initiatives the Company will make a payment per Employee per week in accordance with the table below. Such monies to be paid to Construction and Building Industries Training (CABIT) Ltd and collected by Incolink to support that body's funding initiatives.<table><tr><td>Year commencing</td><td>Contribution per Employee per week</td></tr><tr><td>1 July 2024</td><td>$1.00</td></tr><tr><td>1 July 2026</td><td>$2.00</td></tr></table></td><td></td></tr>
<tr><td>Superannuation</td><td>10.5(b)
The Company shall make superannuation payments monthly into Cbus in accordance with the Superannuation Guarantee Levy (SGL) + 2.5% for all employees, including Apprentices however engaged, and in compliance with the Trust Deed and in accordance with Appendix Cl or C2 whichever is applicable under this Agreement</td><td>10.5(b)
The Company shall make superannuation payments monthly in accordance with the Superannuatio!1 Guarantee Levy (SGL) + 2.5% up to a maximum of 14.5%, for all employees, including Apprentices however engaged, and in compliance with the Trust Deed and in accordance with Appendix Cl or C2 whichever is applicable under this Agreement.</td><td>The amended provision removes the requirement to pay into Cbus. This has probably been done due to amendments to superannuation legislation regarding choice of super fund.

The amended version also caps the lift in the required superannuation contribution to 14.5%.</td></tr>
<tr><td>Superannuation</td><td>10.5(c)
"Ordinary Time Earnings" means the actual ordinary rate of pay the Employee receives for ordinary hours of work and paid leave and includes an Employees hourly rate, fares allowance, any applicable company productivity / site allowance and any other allowances or loadings prescribed by the BCGOA. In respect of any applicable company productivity / site allowance the SGL contribution rate plus 2.5% will apply for ordinary time pay. All other provisions of the BCGOA shall apply.</td><td>10.5(c)
"Ordinary Time Earnings" means the actual ordinary rate of pay the Employee receives for ordinary hours of work and paid leave and includes an Employees hourly rate, fares allowance, any applicable company productivity/ site allowance and any other allowances or loadings, including shift loading, prescribed by the BCGOA or this Agreement. In respect
of any applicable company productivity/ site allowance the SGL contribution rate plus +
2.5% up to a maximum of 14.5%, will apply for ordinary time pay including Designated Shutdown</td><td>The amended version of the provision confirms that OTE includes:
- shift penalties;
- loadings prescribed by the Agreement.

The amended provision also provides that OTE will include Designated Shutdown Long Weekend Saturday payments.</td></tr>
</table>

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		Long Weekend Saturday payments. All other provisions of the BCGOA shall apply.	
Superannuation	*No equivalent*	*10.5(f)* *Superannuation is payable on all leave entitlements paid on termination*	Superannuation payments are to be made on all leave entitlements paid on termination. This is not the case generally.
Meals	*10.6(a)* *A meal allowance provision for overtime shall be payable in accordance with Appendix Cl. This allowance will also be in lieu of the first 20 minutes crib payable for overtime Monday to Friday found in the B GOA.*	*10.6(a)* *A meal allowance provision for overtime shall be payable in accordance with Appendix Cl. This allowance will also be in lieu of the first 20 minutes crib payable for overtime Monday to Friday found in the BCGOA. The meal allowance is payable where an employee is required to work overtime for at least 1.5 hours after working ordinary hour inclusive of time worked for accrual purposes.*	The amended provision provides for the circumstances under which the meal allowance will be provided. This aligns with the Building Award.
Top up workers compensation insurance / income protection	*10.7* a) *The Company shall affect an agreed non-cancellable "Workcover Top-Up" and "Income Protection" insurance policy for Employees, including casuals, covered by this Agreement. The terms, conditions and benefits provided by the agreed insurance policy must be equal or better than that provided by "U-Plus Premium".* b) *The cost of this policy is $154.50 per Employee per month from 1 January 2021 and the cost will increase annually by no greater than the CPI (Sydney) during the life of the Agreement, if at all.* c) *For the purposes of this clause, "Workcover Top-Up Insurance" refers to additional lump sum payments for death and permanent injury as awarded under the NSW Workers Compensation Act.* d) *In the event the Employer has failed by way of omission or delay of premium payment to affect insurance coverage for any Employee covered by this Agreement, it is agreed that*	*No equivalent dedicated clause – see cl. 10.4.2 above.*	The dedicated provision dealing with top up workers compensation insurance and income protection insurance has been removed. These have been replaced by the payments provided for under 10.4.2 to IPT Agency Co Ltd.

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	such failure will constitute a contravention of this Agreement in accordance with s50 of the Fair Work Act 2009 (or any successor provisions), and the Employer will pay to any effected Employee $1500 per week and all the benefits that would have otherwise been payable to the Employees under the insurance policy. The employer will immediately make good any shortfall or arrears in premium and to avoid the serious consequences where cover is not in place, any Employee not covered by insurance, will not be required to work where insurance is not in place in accordance with this Clause		
Workers' compensation and rehabilitation of injured workers	*10.8(a)* *For the avoidance of doubt and for the purposes of s35 of the Workers Compensation Act 1987 the determination of pre-injury average weekly earnings shall include the company productivity allowance prescribed in Appendix Cl or C2 whichever is applicable of this Agreement.*	*10.8(a)* *In the event of a notifiable work-related injury, illness or disease the Company will ensure that a workers compensation claim is lodged in respect of the injured Employee in compliance with its obligations under relevant Workers Compensation legislation*	The amended provision removes the requirement to include the company productivity allowance in calculation of pre-injury average weekly earnings. The Agreement however requires that the Company lodge workers compensation claims in respect of notifiable work-related injuries, illnesses or diseases.
Security of entitlements under the agreement	*10.9(a)* *The parties recognise that due to the nature of the building and construction industry, the Company may from time to time face liquidity problems that may affect the Company's capacity to meet its obligations in terms of entitlements and remuneration due to Employees under this Agreement. In the event that this occurs, the Company shall notify the Employees.*	*10.9(a)* *The parties recognise that due to the nature of the building and construction industry, the Company may from time to time face liquidity problems that may affect the Company's capacity to meet its obligations in terms of entitlements and remuneration due to Employees under this Agreement. In the event that this occurs, the Company shall notify the Union and Employees.*	The amended document requires the Union to be notified where the Company faces liquidity problems
Security of entitlements under this Agreement	*10.9(b)* *The Company must immediately notify the Employees in the event that the Company is going Into, being placed or otherwise Intending to go into administration (voluntary or otherwise) or*	*10.9(b)* *The Company must immediately notify the Union and Employees in the event that the Company is going into, being placed or otherwise intending to go into administration (voluntary or otherwise) or*	Under the new Agreement, the Company is required to notify the Union if it is intending to go into administration.

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	liquidation or transferring Employees to a new entity	*liquidation or transferring Employees to a new entity.*	
Industry / workers welfare	*10.10* *a) The Company will contribute $3.00 per week for each Employee covered by this Agreement to the Construction Industry Drug and Alcohol Foundation (CIDAF), to assist with the provision of Employee drug and alcohol rehabilitation and treatment services.* *b) The weekly contributions are to be paid monthly and forwarded to CIDAF by the fourteenth (14) day of the following month. (i.e. January must be received by the 14 February).* *c) This will apply to all Employees of the Company (except apprentices and trainees).* *d) Upon lodgement of this Agreement the Company will contact CIDAF at info@foundationshouse.net.au to make the necessary arrangements and confirm that this has been done to the Union Delegate.*	*10.9* *Industry/ Workers Welfare* a) *The Company will contribute $4.00 per week for each Employee covered by this Agreement to the Construction Industry Drug and Alcohol Foundation (CIDAF), to assist with the provision of Employee drug and alcohol rehabilitation and treatment services.* b) *The weekly contributions are to be paid monthly to Incolink.* c) *This will apply to all Employees of the Company (except apprentices and trainees).*	Contribution to CIDAF is being lifted from $3.00 per week per Employee to $4.00 per week per employee. Under the Amended Agreement, contributions to CIDAF are to be made to Incolink. The requirement to contact CIDAF upon lodgement of the proposed Agreement has been removed.
Engagement	*11.1(a)* *An Employee can be employed full time (36 ordinary hours) or as a part-time employee, being an employee who works fewer than 36 ordinary hours but not less than 20 ordinary hours per week or a casual employee in accordance with Clause 22. Further on any day required to work a part-time Employee must be offered a minimum of four hours. For each ordinary hour worked, a part-time employee will be paid no less than the ordinary time hourly rate for the relevant classification and pro-rata entitlements for those hours. Where an employee is employed part-time the Company and the Employee will agree in writing:* (I) *that the employee may work part-time;* (ii) *upon the hours to be worked by the*	*11.1(a)* *An Employee can be employed full time (36 ordinary hours) or as a part-time Employee, being an Employee who works fewer than 36 ordinary hours but not less than twenty-four (24) ordinary hours per week, or a casual Employee in accordance with Clause 23. Further on any day required to work a part-time Employee must be offered a minimum of eight (8) ordinary hours per day (inclusive of the RDO ·accrual). For each ordinary hour worked, a part-time Employee will be paid no less than the ordinary time hourly rate for the relevant classification and pro-rata entitlements for those hours. Where an Employee is employed part-time the Company and the Employee will agree in writing. Where opportunities for full-time employment arises,*	The minimum number of weekly ordinary hours under the proposed Agreement has been increased from 20 to 24. The daily number of hours for a part-time employee has been increased from 4 to 8 (inclusive of the RDO accrual). The list of matters upon which agreement must be reached with part-time employees has been removed. The capacity for the terms of an agreement with a part-time employee

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	employee, the days upon which the hours will be worked and commencing times for the work; (iii) *upon the classification applying to the work to be performed; and* (iv) *upon the period of part-time employment.* *The terms of an agreement can be varied by consent, in writing, and copies of an agreement and variation provide to the employee. Where opportunities for full-time employment arises, the Company, unless impractical to do so, will offer part-time employees full-time employment.*	*the Company will offer part-time Employees full-time employment.*	to be varied by consent has been removed.
Redundancy	*11.2* a) *The parties agree that in the spirit of this Agreement, termination of employment will be consistent with the objectives and goals of the Company and the workforce. Termination of employment shall be decided on, but not limited to, issues such as skills and ability, diligence, experience, length of service with the Company and anticipated skills and future l<1bour requirements. Employees will be consulted and advised in respect of what criteria is used to determine redundancies prior to making Employees redundant.* b) *When redundancies are deemed necessary there will be appropriate consultation with the workforce and where relevant the Union delegate(s)/employee representative(s) prior to redundancies taking place. The Company should wherever possible seek voluntary redundancies.*	*11.2* *a) The parties agree that in the spirit of this Agreement, termination of employment will be consistent with the objectives and goals of the Company and the workforce. Termination of employment shall be decided on, but not limited to, issues such as skills and ability, diligence, experience, length of service with the Company and anticipated skills and future labour requirements. The Union and Employees will be consulted and advised in respect of what criteria is used to determine redundancies prior to making Employees redundant.* *b) When redundancies are deemed necessary there will be appropriate consultation with the workforce and the Union prior to redundancies taking place. The Company should wherever possible seek voluntary redundancies.*	The amended provision requires the Union to be consulted on criteria for redundancies. It also requires consultation with the Union prior to redundancies taking place.
Union Delegate/ Employee Representative / Health and Safety	*11.4(a)* *In cases where the Company is considering terminating (or transferring) the services of an elected Union Delegate/employee representative/Health and Safety Representative a*	*11.4* *In cases where the Company is considering terminating (or transferring) the services of an elected Union Delegate/ Health and Safety Representative a ten-day mandatory consultation*	This provision removes all reference to Employee Representatives and requires consultation to take place with the Union. This provision also requires the Union to be notified

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Representative Termination	*ten day mandatory consultation period shall be initiated by the Company with the affected Employee and his/her representative, which may be the Union, prior to any final decision on termination or transfer being made. The affected Employee will be immediately advised of the initiation of the consultation period and shall remain on the job during the consultation process (except in cases where Appendix F Clause 3 applies}, If the Company fails to comply with any of these requirements, the notice period that the Company must give to the affected Employee over above the notice otherwise due shall be Increased by 4 (four) weeks.*	*period shall be initiated by the Company with the affected Employee and the Union, prior to any final decision on termination or transfer being made. The affected Employee and the Union will be immediately advised of the initiation of the consultation period and shall remain on the job during the consultation process (except in cases where Appendix F Clause 3 applies). If the Company fails to comply with any of these requirements, the notice period that the Company must give to the affected Employee over above the notice otherwise due shall be increased by 4 (four} weeks*	where a consultation process is commenced under this provision.
Travel	*13* a) *Employees, including apprentices however engaged, are entitled to payment of the daily fares allowance of this Agreement in Appendix Cl or C2 whichever is applicable for travel to work each day. This allowance is payable for alt travel.* b) *The parties recognise that there is a Deed for more flexible travel provisions for projects located outside the counties of Cumberland, Northumberland, Camden and radial boundary areas (see County Boundary Map Appendix C). In an effort to acquire projects outside of these boundary areas and utilise the diverse living locations of Company Employees, who reside close to a county boundary, the parties agree that Employees, may be required to travel to projects located outside the boundaries {as stated above) up to 50 km by road from their place of residence without incurring the excess fares and travelling. If an Employee travels more than 50km by road from their residence to the project they will be entitled*	*13* a) *Employees, including apprentices however engaged, are entitled to payment of the daily fares allowance and related matters in accordance with this Clause 13 and Appendix C (including the County Maps) of this Agreement for travel to work each day. One daily fares allowance is payable for travel per day in accordance with this Clause 13. For-avoidance of doubt the distance travelled referred to below is measured as the actual distance travelled by road.* b) *Employees covered by this Agreement shall be paid the applicable fares and travel allowance amounts provided for in Appendix C of this Agreement in lieu of the fares and travelling allowance amount in Clause 26.l(a) of the BCGOA. This rate shall be paid for days the employee performs or reports for duty including Shiftwork; and paid on RDOs and will be taken into account when calculating annual leave loading and shall remain in force without variation for the duration of the Agreement.*	The 'travel' provision has been subjected to a substantial overhaul. Rather than a single daily fares allowance of $60 per day, the proposed Agreement provides for: A $65 allowance for: • Travel only within one of the three Counties. • Travel only in the Regional Area outside the three Counties but not more than 150km in either direction A $75 allowance for: • Travel from one County to an adjacent County • Travel from the Counties to the Regional Area but not more than 70km from the county boundary in either direction An $85 allowance for: • Travel from Northumberland County to Camden County or vice versa

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	to, in addition to the daily fares allowance, the following excess fares and travelling allowance: *(i) payment for the time outside ordinary working hours reasonably spent in travel, paid at the ordinary time hourly rate, calculated to the next quarter of an hour, and with a minimum payment of one half an hour per day for each return journey; and* *(ii) any expenses necessarily and reasonably incurred in such travel, which will be 0.80c {or higher in accordance with the relevant allowance in Appendix I) per kilometer where the employee uses their own vehicle.* c) *The excess fares and travel allowance will not apply to Employees who reside in the local region where the Employee is locally engaged on a Company project but maintains a separate place of residence from that recorded on the Employee job application form*	c) *The Fare allowance payable on an RDO will be the fares allowance that applies in accordance with Clause 13(e) below i.e., same as for travel only within one of the three counties.* d) *Apprentices shall be entitled to be paid daily fares and travel allowance in accordance with this Clause, including whilst attending training.*	Further, the proposed Agreement alters the threshold for eligibility for 'excess fares and travel' from 'over 50km' from place of residence to: - Travel from the Counties to the Regional areas and vice versa, more than 70km from the county boundary in either direction; - Travel only in the regional areas outside of the three Counties more than 150km in either direction. The quantum the per km allowance for excess travel has been increased from $0.80 to $0.93. This provision removes the reference to a need for flexible travel provisions for regional projects. It also removes the exemption from payment of the excess fares and travel allowance where an Employee resides in the local region where they are engaged but maintains a separate place of residence from that recorded on the job application form.
Training and related matters	*14(e)* *All training conducted outside of ordinary hours will be. paid for at overtime rates of pay*	*14(e)* *All training will be in paid time and any training conducted outside of ordinary hours will be paid for at overtime rates of pay.*	The amended provision indicates that all training will take place during paid time.
HSR Training	*14(f)* *Employees elected as health and safety representatives in accordance with applicable work health and safety legislation will undertake an agreed training course arranged by the Company*	*14(f)* *Employees elected as health and safety representatives in accordance with applicable work health and safety legislation will undertake an agreed training course arranged by the Company within six weeks of being elected, at no cost to the*	The amended version mandates that HSR training will be carried out by the Union or a provider nominated by the Union.

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	within six weeks of being elected, at no cost to the Employee	*Employee. This training will be provided by the Union, or another provider nominated by the Union.*	
Asbestos and silica awareness training	*14(g)* *The Employer agrees to schedule an agreed asbestos/silica awareness training course*	*14(g)* *The Company agrees to schedule an agreed asbestos/silica awareness training course. It is agreed that this training will be provided by Creative Safety Initiatives (CSI), or another agreed provider nominated by the Union* *…* *Training will be re-done every three years*	Under the proposed Agreement, asbestos/silica awareness training must be carried out by CSI or another provider nominated by the Union. The amended Agreement confirms that an alternative provider must be agreed between the parties. The new provision also mandates that training will be re-done every three years.
Suicide prevention awareness	*14(h)* *The Parties recognise that suicide prevention of Employees in the construction industry is an important issue and the Company agrees to provide agreed awareness training to Employees, including apprentices, however engaged, through a provider nominated by the employees. Payment for the training will be paid in advance of the training being held*	*14(h)* *The Parties recognise that suicide prevention of Employees in the construction industry is an important issue, and the Company agrees to provide agreed awareness training to Employees, including apprentices, however engaged, as a component of their sponsorship for, and implementation of, the best practice Foundo Blue Program*	Rather than the employees having the capacity to nominate a provider of suicide prevention training, such training is to be provided as a component of the Company's sponsorship for, and implementation of, the best practice Foundo Blue Program.
Training and related matters	*14(i)(ii)* *Impairment awareness and policy information sessions will be delivered to all employees {including supervisors and managers), contractors and labour hire workers and renewed every 5 years.*	*14(i)(ii)* *Impairment awareness and policy information sessions will be delivered to all Employees and renewed every 5 years*	The amended Agreement removes the requirement to deliver impairment awareness and policy information sessions to contractors and labour hire. However, an impairment awareness and policy information session component must still be incorporated into contractor, labour hire and visitor induction.
Industry Training Levy	*No equivalent*	*10.4.3* ***In respect of the Industry Training Levy*** c) *As an initiative to enhance the employment and career opportunities of Employees, the Parties will continue to facilitate ongoing*	The new pattern Agreement includes a new industry training levy which starts at $1.00 per week.

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<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
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training to improve. occupational health and safety in the industry and to improve Employees' work skills so as to advance progression to higher industry skill levels.
d) To support the cost of these training initiatives the Company will make a payment per Employee per week in accordance with the table below. Such monies to be paid to Construction and Building Industries Training (CABIT) Ltd and collected by Incolink to support that body's funding initiatives.

<table>
<tr><td>Year commencing</td><td>Contribution per Employee per week</td></tr>
<tr><td>1 July 2024</td><td>$1.00</td></tr>
<tr><td>1 July 2026</td><td>$2.00</td></tr>
</table>

14(j)
Additional Training and Related Matters
(i} This clause covers training matters that are agreed between the Parties.
(ii} The Parties recognise that to increase the efficiency and productivity of the industry, a significant commitment to structured training and skills development is required. The Company recognises its obligation to contribute to the skills and knowledge base of the industry.
(iii} The Parties will consult on the development of training programs which are consistent with the following:
a. An Employee's skills will be assessed against those required in the nationally
</td><td>The amended version also mandates consultation on development of additional training programs</td></tr>
</table>

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		recognised formal training package relevant to their employment. Any necessary training will be provided to attain the relevant nationally recognised formal qualification. *Training provided will be consistent with the Company's business requirements, relevant to the work of the _Employees, consistent with the skills development of each Employee and with applicable national competency standards*	
Annual leave on termination	*16.3(a)* *On termination of employment, the value of any accrued but untaken annual leave shall be paid out to an Employee at the rate of 2.77 hours per week*	*16.3(a)* *On termination of employment, the value of any accrued but untaken annual leave shall be paid out to an Employee*	The rate at which annual leave is paid out on termination has been removed. This has perhaps been done as a result of the High Court's interpretation of the meaning of a 'day' for the purposes of 10 days of annual leave.
Additional purchased leave	*16.11 Additional Purchased Leave* a) *In addition to the annual leave entitlements in this clause employees may purchase additional leave at the rate of one hour per week worked. The purchase is made with the sacrifice of one hour of ordinary time pay.* b) *Unless otherwise agreed, all Purchased Leave must be taken in. the Purchasing Year to which it relates, Unused Purchased Leave at the end of the Purchasing Year will be paid back to the Employee, unless otherwise approved.* c) *Purchased Leave entitlements must be taken at a suitable time having regard to the operational requirements of the company and the personal needs of the Employee.* d) *Purchased Leave does not attract annual leave loading allowance.*	*No equivalent*	The capacity to purchase additional leave under the old pattern has been removed.
Parental leave	*7. PARENTAL LEAVE* *a) Parental Leave shall be in accordance with the NES including that after 12 months of*	*18 PARENTAL LEAVE* *a) An employee is entitled to the Parental Leave provisions contained within the NES.*	Rather than: - The entitlement being excluded from casuals;

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	continuous employment, an Employee (other than a casual) may take up to 52 weeks of unpaid leave for the purpose of being the primary carer of a newborn or newly adopted child. *b) In addition, if the Employee is entitled to paid parental leave under the Paid Parental Leave Act 2010 (Cth) (PPL Act) as the primary carer of the child:* (I) *The Company will provide 10 weeks' paid parental leave for part of the 52 weeks' of unpaid leave as outlined in clause 19(a) above; and* *(1i) The payment will be the equivalent to the difference between the Employee's entitlement to paid parental leave for a 10 week period under the PPL Act (based on the minimum wage) and the Employee's 36-hour wage rate prescribed in Appendix B applicable to their classification plus productivity allowance in Appendix C.* *c) In accordance with section 22 of the Fair Work Act, unpaid leave does not count as continuous service, however, it does not break service.* *d) Where an Employee is entitled to Dad and Partner Pay under the PPL Act, the Company will provide 2 weeks paid leave In accordance with this subclause. The payment will be equivalent to the difference between the Employee's*	*In summary an Employee who has, or will have, completed at least 12 months of continuous service may take up to 52 weeks of unpaid leave where the employee has or will have a responsibility for the care of the child.* *b) In addition to the entitlement under the NES the Employer will pay an additional amount as follows:* • *Where the employee is to be the primary care giver, the employer will pay for a period of ten (10) weeks the equivalent of the difference between the Government paid parental leave scheme and the employees 36-hour wage rate prescribed in Appendix B applicable to their classification plus productivity allowance in Appendix C.* • *Where the employee is not to be the primary care giver, the employer will pay for a period of two (2) weeks the equivalent of the difference between the government paid parental leave scheme and the employee's 36-hour wage rate prescribed in Appendix B applicable to their classification plus productivity allowance in Appendix C.* *c) To avoid doubt, if the Government paid parental leave scheme ceases to exist the Employer will pay to the employee the equivalent of the employees 36-hour wage rate prescribed in Appendix B applicable to their classification plus productivity allowance in Appendix C for the periods set out above.* *d) In the event that an employee does not qualify for the Government paid parental leave scheme the employee may elect to*	- The entitlement only being provided to the primary carer; and - The quantum being the difference between the amount received from the government for 10 weeks and the minimum rate for their classification. Under the proposed pattern: - Casuals also entitled - Employer to pay to primary care giver for 10 weeks the difference between the Government PPL scheme and the employee's 36 hour wage rate plus the productivity allowance. - Employer to pay to non-primary care giver for 2 weeks the difference between the Government PPL scheme and the employee's 36 hour wage rate plus the productivity allowance. - If the Government PPL scheme ceases to exist, the employer will pay to the employee their 36 hour wage rate (plus productivity allowance) for 10 weeks (primary care givers) or 2 weeks (non primary care givers). - Where an employee does not qualify for the Government funded PPL, the Company will pay for 2 weeks' leave.

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	entitlement to Dad and Partner Pay, for a 2 week period under the PPL Act (based on the minimum wage) and the Employee's 36-hour wage rate prescribed in Appendix 8 applicable to their classification plus productivity allowance in Appendix C.	*take up to two weeks paid leave and the Company will pay up to two weeks' pay to the employee being the equivalent of the employees 36-hour wage rate prescribed in Appendix B applicable to their classification plus productivity allowance in Appendix C. This is in addition to any accrued leave entitlements.*	
Family violence leave	***20.1Definition*** *a) For the purposes of this clause, family violence is behaviour by a person towards a family member of that person if that behaviour:* *(i) Is physically or sexually abusive;* *(ii) is emotionally or psychologically abusive;* *(iii) is economically abusive;* *(iv) is threatening;* *(v) is coercive;* *(vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person;* *(vii) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).* *b) For the purposes of this clause, a "family member", in relation to a person (a ''relevant person"), means-* *(i) a person who is, or has been, the relevant person's spouse or domestic partner; or*	***20.1 General Principles*** a) *The Company recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. The Company is committed to providing support to staff that are subjected to family and/or domestic violence.* b) *An Employee will not be discriminated against or have adverse action taken against them because of their disclosure of, experience of, or perceived experience of, family violence.* ***20.2 Definition of Family and/or Domestic Violence*** a) *For the purpose of this clause, family and/or domestic violence is defined as any violent, threatening or other abusive behaviour by a person against a member of the person's family or household (current or former).* b) *To avoid doubt, this definition includes behaviour that:* *(i) is physically or sexually abusive; or* *(ii) is emotionally or psychologically abusive; or* *(iii) is economically abusive; or* *(iv) is threatening; or* *(v) is coercive; or*	The 10 day entitlement to family violence leave is extended to casuals and to those providing support to a person who is subjected to family and/or domestic violence. The new provision also requires the Company to approve reasonable requests to changes to span of hours, job redesign and relocation. An inclusive list of matters that may be requested by an employee experiencing family and/or domestic violence is at cl. 20.5.

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	(ii) a person who has, or has had, an intimate personal relationship with the relevant person; or *(iii) a person who is, or has been, a relative of the relevant person; or* *(iv) a child who normally ot regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis;* *(v) or a child of a person who has, or has had, an intimate personal relationship with the relevant person.* *a) For the purposes of clauses 20(b)(ii) and 20(b)(v)), a relationship may be an intimate personal relationship whether or not it is sexual in nature.* ***20.2 Confidentiality*** *a) The Company must take all reasonable measures to ensure personal information concerning an Employee's experience of family violence is kept confidential.* ***20.3 Leave*** *a) An Employee (other than casual Employees) experiencing family violence will have access to 10 days per year of paid family violence leave paid at the Employee's minimum wage rate prescribed by clause 19.l(a) of the Award applicable to their classification to attend legal proceedings, counselling, and appointments with a medical or legal practitioner, relocation, the making of*	*(vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or* *(vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.* ***20.3 Family and/or Domestic Violence Leave*** *An Employee, including a casual Employee, who is subjected to family and/or domestic violence is entitled to 10 days per year of paid family and/or domestic violence leave for the purpose of:* a) *attending legal proceedings, counselling, appointments with a medical or legal practitioner* b) *relocation or making other safety arrangements; or* c) *other activities associated with the experience of family and/or domestic violence.* ***20.4 Notice and Evidentiary Requirements*** a) *The Employee will give his or her employer notice as soon as reasonably practicable of their request to take leave under this clause.* b) *If required by the Company, the Employee must provide evidence that would satisfy a reasonable person that the leave is for the purpose as set out in clause 20.4. Such evidence may include a document issued by the police service, a court, a health professional, a family violence support service, a lawyer, a financial institution, an accountant or a statutory declaration.*	

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	safety arrangements and other activities associated with the experience of family and domestic violence. *b) Family violence leave is in addition to any other existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day.* *c) The Employee shall give as much notice as reasonably possible prior to taking the leave under this clause,* *d) In addition, the Company may require the Employee to produce evidence to support the need for family violence leave such as a document issued by the police, a court, a doctor (including a medical certificate), a family violence support service, or a statutory declaration.* *e) For the avoidance of doubt, family violence leave does not accumulate from year to year and is not paid out on termination of employment.*	c) *The Company must ensure that any personal information provided by the Employee to the Company concerning an Employee's experience of family and/or domestic violence is kept confidential.* ***20.5 Individual Support*** *In order to provide support to an employee who is subjected to family and/or domestic violence and to provide a safe work environment to all Employees, the Company will approve any reasonable request from an Employee subjected to family and/or domestic violence including:* a) *changes to their span of hours or pattern or hours and/or shift patterns* b) *job redesign or changes to duties* c) *relocation to suitable employment within the Company* d) *a change to their telephone number or email address to avoid harassing contact; or* e) *any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.*	
Casual labour	*Clause 22(b)* *b) A casual Employee must be entitled to all the applicable rates and conditions of employment prescribed in this Agreement except annual leave, personal leave, parental leave, jury service, and public holidays*	*Clause 21(b)* *b) A casual Employee must be entitled to all the applicable rates and conditions of employment prescribed in this Agreement, including redundancy contributions except annual leave, personal leave, jury service, and public holidays on which no work is performed. A casual employee is entitled to unpaid bereavement leave, domestic violence leave and unpaid carer's leave*	The amended pattern provides that a casual employee will: - Receive redundancy payments; - Receive domestic violence leave;
Casual labour	*Clause 22(c)* *c) On each occasion a casual Employee is required*	*Clause 22(c)* *c) On each occasion a casual Employee is required*	The amended pattern provides that casuals will be offered a minimum of 8

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	to attend work, the Employee must be entitled to payment for a minimum of four hours work plus allowances, the relevant fares, and travel allowance and daily rate of ACIRT in this Agreement	*to attend work, the Employee must be offered a minimum of eight (8) hours work and be entitled to be paid for time worked plus· allowances, the relevant fares and travel allowance, and daily rate of redundancy contribution in this Agreement.*	hours per engagement (rather than paid a minimum of 4 under the previous pattern.
Casual labour	*No equivalent*	*Clauses 22(g) and (h)* *g) A casual Employee, who has been engaged by the Employer on a regular and systematic basis for a period in excess of six-weeks, thereafter, will have their contract of employment converted to permanent employment. Regular and systematic shall be defined as an average of 4 days or more, per week, over 6 weeks.* *h) Any Employee, who is entitled to be converted to permanent employment pursuant to this clause is entitled to be paid 180% of the hourly rate prescribed in this Agreement for the Employee's classification from the first day of the seventh week of their employment.*	A casual engaged on an average of 4 days or more per week over 6 weeks will automatically be converted to permanent employment. An employee who is entitled to be converted to permanent employment to be paid 180% of the ordinary hourly rate from the first day of the seventh week of their employment.
Effective work organisation	*23(b)* *Effective Work Organisation has several inter-related elements:* (i) *organisation of people to perform work* (ii) *skill development, including communication; and* (iii) *career planning or goal setting*	*23(b)* b) *Effective Work Organisation has several inter-related elements:* (i) *organisation of people to perform work;* (ii) *skill development, including communication;* (iii) *career planning or goal setting; and* (iv) *opportunities in the event of redundancies.*	The new version of the Agreement provides that 'opportunities in the event of redundancies' is an element of Effective Work Organisation
Effective work organisation	*23(f)* *The Parties to this Agreement acknowledge it may not be possible to directly engage Employees in the roles referred to in clauses (c) and (d) for example:* *(i) due to client tender/contract conditions (e.g. some Commonwealth Department of*	*23(f)* *The Parties to this Agreement acknowledge it may not be possible to directly engage Employees in the roles referred to in clauses (c) and (d) for example:* (i) *due to client tender/contract conditions (e.g. some Commonwealth Department*	The amended version alters the definition of a 'minor project' for the purposes of the exception to direct engagement up to a contract value of $20 million per site.

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	Defence projects, or existing projects where there are contractual requirements); or *(ii) on minor projects up to the Company's contract value of $10 million per site. For the purposes of this clause, the Company's contract value is calculated at the time of contract award to the Company,* *In such instances, the application of clauses (c) and (d) will be discussed and agreed with the Employees with at least 7 days' notice of the meeting or as soon as practicable.*	*of Defence projects, or existing projects where there are contractual requirements); or* (ii) *on minor projects up to the Company's contract value of $20 million per site. For the purposes of this clause, the Company's contract value is calculated at the time of contract award to the Company.* *In such instances, the application of clauses (c) and (d) will be discussed and agreed with the Union Delegate / Union with at least 7 days' notice of the meeting or as soon as practicable.*	It also mandates discussion/agreement with the Union Delegate/Union rather than the Employees.
Security of employment	*Clause 24.1* ***Use of Contractors*** *a) The Company is committed to maintaining a stable and skilled workforce, recognising its contribution to the operation of the Company. The Company will take measures to achieve employment security for its Employees. The Company recognises that in certain circumstances the use of contractors and labour hire could affect the job security of Employees covered by this Agreement.* *b) As soon as practicable prior to a contract being awarded, the Company shall inform the effected employees who the subcontractors are and provide documentation as to the subcontractor's compliance with its legal obligations and information about what work will be carried out prior to their arrival on the job.* *c} If after consultation, the Company engages subcontractors to perform work that may be performed by Employees covered by this Agreement, it will require that those subcontractors' employees are engaged on lawful terms and conditions of employment.*	*Clause 24* a) *The Parties agree to maximise the continuity of employment for permanent Employees and to ensure that permanent employment opportunities are not eliminated or eroded.* b) *The Company recognises that in certain circumstances the use of subcontractors and labour hire may affect the job security of Employees covered by this Agreement.* c) *As soon as practicable after being awarded a contract and prior to engaging a subcontractor to perform work performed by Employees covered by this Agreement, the Company shall inform the Union. Parties shall recognise both geographical and commercial circumstances and may agree to vary the operation of this clause.* d) *This clause does not apply in circumstances where existing subcontractors are engaged.* ***24.1 Use of subcontractors*** a) *If the Company wishes to engage subcontractors and their employees to perform work covered by this Agreement, the Company must consult in good faith with the Union.*	Rather than an aspirational clause referring to 'commitments' to a stable and skilled workforce, the amended pattern includes an agreement to maximise the continuity of employment for permanent employees and to ensure that permanent employment opportunities are not eliminated or eroded. The proposed pattern also requires the Company to consult with the Union after being awarded with a contract but prior to the engagement of contractors that are to perform work covered by the Agreement. The Agreement allows for agreement to be reached to vary the operation of this clause. An exception is applied in circumstances where existing subcontractors are engaged. However, the extent of this exception is unclear.

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	d) As soon as practicable after being awarded a contract, the Company shall inform the Union via its site delegates who the subcontractors are and what work will be carried out prior to their arrival on the job. The Company is not required to consult with or seek the approval of the Parties about the engagement of subcontractors	*Consultation will occur prior to the engagement of subcontractors for the construction works.* b) *If the Company decides to engage subcontractors, the Company shall ensure that the employees of the subcontractors are engaged on terms and conditions of employment which are no less favourable overall than Commercial Building Industry Rates. "Commercial Building Industry Rates" means the terms and conditions contained in the standard CFMEU enterprise agreements covering the type of work performed by the subcontractor and its employees.* c) *The use of sham subcontracting arrangements is a breach of this Agreement. The Company who engages subcontractors is responsible for ensuring the employees of subcontractors are entitled to wages, allowances and conditions equal to or better than Commercial Building Industry Rates covering the type of work performed by the subcontractor and its employees on the Company's projects.*	The new pattern also contains a 'jump up clause'. Subcontractors' employees to be paid at least at "Commercial building industry rates" (i.e. CFMMEU enterprise agreement rates). This is an open admission of pattern bargaining.
Security of employment	*24.2 Use of Supplementary Labour Hire* *a) Where there is a need for supplementary labour to meet temporary/peak work requirements, such labour may be accessed from bona fide businesses, including contractors and labour hire companies, following consultation with potentially affected Employees.* *b) The Company will require those businesses to ensure that any workers engaged by such businesses performing work that is currently being, or in the future being, carried out by Employees, are provided with all their lawful entitlements due in relation to their performance of work.* *c) Whilst the Company may engage labour hire*	*24.2 Use of Supplementary Labour Hire* *a) Supplementary labour hire is defined as temporary "top up" labour designed to meet short term situations such as absences d u e to personal/ carer's leave, annual leave and short- term work peaks.* *b) The Company shall ensure that any workers engaged by such businesses and performing work covered by this Agreement are entitled to wages, allowances and conditions equal to or better than those contained in this Agreement.* *c) The Company who engages labour hire workers is responsible for ensuring those workers are entitled to rates no less than those contained in this Agreement. This obligation*	Company to ensure that employees of labour hire companies providing 'supplementary labour hire' are to receive wages, allowances and conditions equal to or better than those contained in the agreement. Company liable for all outstanding entitlements of labour hire employees on the 'Company's projects' only. Under the proposed pattern, redundancies while labour hire is engaged in work performed by Employees requires the agreement of the Union.

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	for a variety of reasons, the Company acknowledges that it is not its intention to use supplementary labour to undermine the employment security and terms and conditions of Employees under this Agreement. *d) If the Company considers supplementary labour will be required for more than six weeks, consultation regarding the ongoing use of supplementary labour will occur with affected Employees.* *e) 'Supplementary labour' is temporary 'top up' labour designed to meet short term situations such as absences due to personal leave, annual leave, and short term work peaks.*	*extends to liability for all outstanding wages, conditions and entitlements under this Agreement on the Company's projects.* *d) The Company acknowledges that it is not the intention to undermine the employment security and terms and conditions of Employees under this Agreement. As such, there will be no redundancies made while the Company has engaged labour hire to undertake work that is performed by Employees. Any departure from this shall require agreement with the Union.*	
Temporary foreign labour	*24.3(a)* *The Company must ensure that no person that is not an Australian citizen or Australian permanent resident (within the meaning of the Migration Act 1958) is employed to undertake building work unless:*	*24.3(a)* *The Company must ensure that no person that is not an Australian citizen, or Australian permanent resident (within the meaning of the Migration Act 1958), or unrestricted work rights, is employed to undertake building work unless…*	The obligation of the Company has been varied so that the process in cl. 24.3(a) does not have to be followed to engage those with unrestricted work rights.
Sham contracting	*25.1(b)(iv)* *In this clause, "sham contracting" is where* *…* *Any use of sham contracting is a breach of this Agreement*	*25.1(b)(iv)* *In this clause, "sham contracting" is where:* *…* *Any use of sham contracting, including the use of individual workers paid on an ABN system doing work covered by this Agreement, is a breach of this Agreement*	The amended version of the pattern refers to usage of individual workers with an ABN doing work covered by the Agreement as 'sham contracting'.
Industry fund compliance	*25.2(a)* *a) The Company shall ensure that all its Employees covered by this Agreement are compliant with the industry schemes ACIRT, CBUS, Long Service Payments Corporation and Top-up Workers Compensation Insurance/ Income protection insurance.*	*25.2* *(a) The Company shall ensure that all its Employees covered by this Agreement are registered and receiving all benefits as applicable under any relevant industry schemes being Superannuation, Incolink, Long Service Payment Corporation,. Top-Up Workers Compensation/income protection and other related benefits. The Company will*	All references to ACIRT have been removed and replaced by Incolink. This provision has also been amended to refer to the requirement to be compliant in respect of the Company's obligations to CIDAF.

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		also be compliant in respect of its obligations to CIDAF.	Also, the obligation upon the Company with respect to industry fund compliance has been amended to refer broadly to superannuation (rather than Cbus specifically)
Industry fund compliance	*25.2(e) – (f)* *When an Employee or their representative raises a concern in respect of the Employee's entitlements and/or the Company's compliance with payments and/or registration with the abovementioned funds or schemes, the Company shall provide to the Employees and the Delegate/Employees representative if requested by an Employee, all relevant information to assist in resolving any concerns and an independent audit may be arranged. To assist the Company and the Employees in monitoring compliance with this Agreement, Company and the Employees nominate JMC Accounting Group as their preferred provider to conduct such audit(s) if an audit is required.* *a) If a person covered by this Agreement has a genuine and reasonable belief that the Company has failed to comply with its obligations the following process will apply:* *(i) the person or their representative must notify the Company in writing of the alleged non-compliance and what must be done to remedy it;* *(ii) the parties must consult In good faith in an effort to resolve the matter; and* *(iii) to assist in the monitoring of compliance by the Company and the employees and in resolving of a genuine and reasonable complaint a compliance audit may be arranged.*	*25.2(d)* *d) When the Union or an Employee raises a concern in respect of the Employee entitlements and/or the Company's compliance with payments and/or registration with the relevant funds or schemes, the Company shall provide to the Union, Employees and the Union Delegate, all relevant information to assist in resolving any concerns and an independent audit may be arranged. To assist the Company, the Union, and the Employees in monitoring compliance with this Agreement the Parties will utilise an agreed provider to conduct such audit(s) if an audit is required. A copy of any audit report will be given to the Union, Union delegates and employees.*	The amended pattern agreement provides the CFMMEU with the power to require production of information regarding industry fund compliance. The detailed procedure for resolving disputes prior to arranging an audit has been removed. The reference to JMC Accounting Group as the preferred auditor has been removed. The auditor must be agreed to with the Union.

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Industry fund compliance	*25.2(g)* *If the Company does not contribute the amounts in accordance with this Agreement, the relevant Trust Deed and the Fund or scheme, the Company will be liable to make the appropriate contributions immediately upon notification of the non-compliance. Further, the Company must pay the earnings on the relevant Trust Deed and the Fund or scheme that accrued during the period of non-payment. The requirement for the Company to make retrospective payments will not limit any common law action which may be available in relation to death, disablement or any other cover existing within the terms of a relevant fund*	*25.2(e)* *If the Company does not contribute the amounts in accordance with this Agreement, the relevant Trust Deed and the Fund or scheme, the Company will be liable to make the appropriate contributions immediately upon notification of the non-compliance. Further, the Company mu J pay the earnings on the relevant Trust Deed and the Fund or scheme that accrued during the period of non-payment. The requirement for the Company to make retrospective payments ill not limit any common law action which may be available in relation to death, disablement or any other cover existing within the terms of a relevant fund. Employees will not be required to work until such time as the non-compliance is -rectified.*	The amended version of this clause provides that Employees will not be required to work until industry fund non-compliance is rectified.
Dispute resolution procedure	*26(i)* *Any resolution of a dispute under this clause by FWC will not be inconsistent with legislative obligations or any other applicable Codes or Regulation, Including the Code for the Tendering and Performance of Building Work 2016*	*No equivalent*	References to the 2016 Building Code have been removed from the dispute resolution procedure.
Method of accrual of RDOs	*27.3(a)* *The ordinary working hours shall be worked in a 10 day/ 2 week cycle, Monday to Friday inclusive with eight hours worked for each nine [9] days, and with 0.8 of an hour on each of those days accruing toward the tenth day and can be taken as a paid day off. The tenth day shall be known as the Rostered Day Off or 'RDO',*	*27.3(a)* *The ordinary working hours shall be worked in a 10 day/ 2 week cycle, Monday to Friday. inclusive with eight hours worked for each nine [9] days, and with 0.8 of an hour on each of those days accruing toward the tenth day and can be taken as a paid day off. The tenth day shall be known as the Rostered Day Off or 'RDO'*	The 2024 pattern is just the same as the 2019 pattern in terms of the method of accrual. The ordinary working week is still structured around a 10 day/2 week cycle, Monday to Friday, inclusive with 8 hours worked for each 9 days, and with 0.8 of an hour on each of those das accruing toward the tenth day which can be taken as a paid day off.
Number of RDOs	*27.3(e)* *For clarity, 26 RDOs shall be accrued by an Employee in each twelve months continuous service*	*27.3(e)* *For clarity, up to 26 RDOs shall be accrued by an Employee in each twelve months continuous service*	The quantum of RDOs in a 12 month period is the same under the 2024 pattern as it was under the 2019 pattern. It provides for 26 RDOs per year.

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Terminology	*Designated Long Weekends,* *Scheduled RDOs* *Flexible RDOs*	*Designated Shutdown Long Weekends* *Fixed RDOs* *Other RDOs*	The terminology has shifted. Designated Long Weekends are now referred to as Designated Shutdown Long Weekends. Scheduled RDOs are now referred to as Fixed RDOs Flexible RDOs are now referred to as Other RDOs.
Flexible / Other RDOs	*27.3(b)* *RDO's shown as flexible RDO's in the RDO Calendar (Appendix E) can be worked and banked*	*27.3(b)* *RDO's shown as Other RDO's in the RDO Calendars (Appendix E) can be worked or banked*	The RDOs that were formerly known as 'flexible RDOs' are now referred to as 'Other RDOs'. These can be worked or banked. Generally, there would be 9 of these per year in the 2019 pattern. However, the number appears to be reducing under the 2024 pattern. They start off at 9 in 2024 and reduce to 8 in each subsequent year.
Scheduled RDOs/Fixed RDOs **Designated Long Weekends/Designated Shutdown Long Weekends (Projects Other than identified projects)**	*27.5(a)* *The Company and its Employees may agree, where there Is a need for genuine operational reasons, work may be carried out on Scheduled RDO/Designated Long Weekends if the Company first consults with and agrees about the need to carry out work with the majority of the Employees. As far as practical given operational requirements, the Company will give employees at least 7 days' written notice of any such need for work to occur so as to ensure 13ppropriate consultation. Such requirements must be based on genuine circumstances. If 7 days notice is not provided by the Employer then the affected Employees, in addition to accrued entitlements, shall be paid double time and a half and shall bank an additional RDO over and above the time accrued* *…* *c) Except on Designated Long Weekends,*	*27.5(a)* *Work is prohibited on public holidays, fixed RDOs, and Designated Shutdown Long Weekends and RDOs attached to a Designated Shutdown Long Weekend. Where there is an agreed emergency or a special client need and subject to the agreement of all Parties to this Agreement and the Union, limited work may be undertaken on public holidays, fixed RDOs, and Designated Shutdown Long weekends and RDOs attached to a Designated Shutdown Long Weekend. The Company will give the other Parties and the Union 7 days notice of any such need for work so as to ensure appropriate consultation.* *Where it is agreed that work can be performed on a Fixed RDO, or on a Designated Shutdown Long Weekend, public holiday and/or the attached RDO(s) to a Designated Shutdown Long Weekend, the affected Employees, in addition to accrued*	Under the 2019 Pattern, work could be performed on a Scheduled RDO / Designated Long Weekend if: - There was a need for genuine operational reasons; - The Company gave 7 days' notice; - The Company first consulted with employees; - The majority of employees agreed If 7 days' notice was not provided, employees were to be paid double time and a half and would bank an additional RDO over and above the time accrued. If 7 days' notice were provided: - For scheduled RDOs, you paid ordinary rates but provided an

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	in addition to accrued entitlements, such work on any scheduled RDO that is not attached to a Designated Long weekend and where notice is given in accordance with clause 27.5 a) shall be paid for at ordinary time rates of pay, including the daily 'Fares & Travelling Allowance' and any applicable allowances as prescribed by this Agreement. *d) On Designated Long Weekends, in addition to accrued entitlements such work shall be paid for at double time and a half, including the dally 'Fares & Travelling Allowance' and any applicable allowances as prescribed by this Agreement and the Employee shall bank an additional RDO over and above the time accrued.* *All Employees who work on the Scheduled RDO will be granted an alternative RDO to another day falling within six weeks of the originally scheduled day provided that the re- scheduled RDO is to be taken on a day or days adjacent to a 'weekend or in co junction with annual leave, or as otherwise agreed by the Employee and the Company, such agreement not to be unreasonably withheld*	*entitlements, shall be paid double time and a half, the daily 'Fares & Travelling Allowance' and any applicable allowances as prescribed by this Agreement, and shall bank an additional RDO over and above the time accrued irrespective of the length of notice time provided* *…* *All Employees who work on the Fixed RDO, or an RDO attached to a Designated Shutdown Long Weekend will be granted an alternative RDO to be taken on a day or days adjacent to a weekend or in conjunction with annual leave, or as otherwise agreed by the Employee and the Company, such agreement not to be unreasonably withheld*	alternative RDO within 6 weeks; - For Designated Long Weekends, you paid double time and a half anyway and employees would be entitled to bank an additional RDO. Under the 2024 agreement, the default position is that work on fixed RDOs and Designated Shutdown Long Weekends is prohibited. The following changes are notable: - The circumstances under which employees may be requested to work these RDOs has been raised to an 'agreed emergency' or a special client need; - Arguably all the employees and the Union must agree; - 7 days' notice is still required - Employees who work one of these RDOs will be entitled to be paid at double time and a half and bank an additional RDO regardless of whether or not the 7 days' notice was provided.
Refusal to work on RDOs (Projects Other than Identified Projects)	*27.5(b)* *e) An Employee may refuse to work on a scheduled RDO (or any substituted day) if the requirement to do so is plainly unreasonable having regard to:* (i) *the hours of work that will be worked by that Employee in the week of the scheduled RDO;* (ii) *the number of scheduled RDOs*	*27.5(c)* a) *An Employee may refuse to work on any RDO (or any substituted day) if the requirement to do so is plainly unreasonable having regard to:* (i) *the hours of work that will be worked by that Employee in the week of the RDO;* (ii) *the number of RDOs worked by*	Whereas under the 2019 Agreement the Employee had a right of reasonable refusal to work a Scheduled RDO. Under the 2024 Pattern, this has arguably been expanded to a reasonable right to refuse to work any RDO at all, including Flexible or Other RDOs.

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	worked by the Employee within the previous six weeks; (iii) *the Employee's family responsibilities; and* (iv) *any other special circumstances peculiar to the Employee.*	*the Employee within the previous six weeks;* (iii) *the Employee's family responsibilities; and* *any other special circumstances peculiar to the Employee*	
Identified Projects	*Appendix K* ***1. Work on Designated Long Weekends on Identified Projects*** *a) The Company and its Employees may agree, where there is a need for genuine operational reasons, work may be carried out on Designated Long Weekends if the Company first consults with and agrees about the need to carry out work with the majority of the Employees. As far as practical given operational requirements, the Company will give employees at least 7 days' written notice of any such need for work to occur so as to ensure appropriate consultation, Such requirements must be based on genuine circumstances.* *b) In relation to Scheduled RDOs not attached to a Designated Long Weekend, these may be worked with the Agreement of an employee.* *c) An Employee may refuse to work on a scheduled RDO (or any substituted day) if the requirement to do so is plainly unreasonable having regard to:* *(i) the hours of work that will be worked by that Employee in the week of the scheduled RDO;* *(ii) the number of scheduled RDOs worked by the Employee within the previous six weeks;*	*Appendix K* **3.** *Work on Fixed RDOs and Designated Long Weekends* a) *Work is prohibited on public holidays and Designated Shutdown Long Weekends and RDOs attached to a Designated Shutdown Long Weekend. Where there is an agreed emergency or a special client need and subject to the agreement of all Parties to this Agreement and the Union, limited work may be undertaken on public holidays and Designated Shutdown Long weekends and RDOs attached to a Designated Shutdown Long Weekend. The Company will give the other Parties and the Union 7 days notice of any such need for work so as to ensure appropriate consultation.* b) *In relation to Fixed RDOs not attached to a Designated Long Weekend, these may be worked with the agreement of an Employee.* c) *An Employee may refuse to work on a Fixed RDO (or any substituted day) if the requirement to do so is plainly unreasonable having regard to:* *(i) the hours of work that will be worked by that Employee in the week of the Fixed RDO;* *(ii) the number of Fixed RDOs worked by the Employee within the previous six weeks;* *(iii) the Employee's family responsibilities;*	As under the 2019 Pattern Agreement, the 2024 Pattern Agreement enables work to be performed on Scheduled or Fixed RDOs not attached to a Designated Long Weekend by agreement with an individual employee without providing the 7 days' notice. For identified projects, a Company would still need, under the 2024 Agreement, to provide 7 days' notice for work performed on Designated Shutdown Long Weekends and fixed RDOs which abut a Designated Shutdown Long Weekend but arguably, the Company would need to reach agreement with the Union and all employees in order to do so. However, even with agreement, work performed on Designated Shutdown Long Weekends would need to be remunerated at double time and a half and attract a substitute RDO.

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	(iii) the Employee's family responsibilities; and *(iv) any other special circumstances peculiar to the Employee.* *d) In addition to accrued entitlements, such work that is on any scheduled RDO that is not attached to a Designated Long weekend shall be paid for at ordinary time rates of pay including the dally 'Fares & Travelling Allowance' and any applicable allowances as prescribed by this Agreement.* *e) On Designated Long Weekends, In addition to accrued entitlements, such work shall be paid for at double time and a half, including the daily 'Fares & Travelling Allowance' and any applicable allowances as prescribed by this Agreement and the Employee shall bank an additional RDO over and above the time accrued.* *f) Where the Employer and Employee agree up to six days RDOs in a twelve month period may be accrued for the purpose of creating a bank to be drawn upon by the Employee at times mutually agreed. Details of such banked RDOs shall be entered on to each Employee's employment records. These RDOs may be taken as a group of consecutive days or any other combination subject to reasonably notice by an Employee.*	*(iv} any other special circumstances peculiar to the Employee.* d) *In addition to accrued entitlements, such work that is on any Fixed RDO that is not attached to a Designated Long Weekend, shall be paid for at ordinary time rates of pay including the daily 'Fares and Travelling Allowance' and any applicable allowances prescribed by this Agreement.* e) *On Designated Long Weekends, in addition to accrued entitlements, such work shall be paid for· at double time and a half, including the daily 'Fares and Travelling Allowance' and any applicable allowances as prescribed by this Agreement and the Employee shall bank an additional RDO over and above the time accrued.* *Where the Company and the Employee agree, up to six days of RDOs in a twelve-month period may be accrued for the purpose of creating a bank to be drawn upon by the Employee at times mutually agreed. Details of such banked RDOs shall be entered on to each Employee's employment records. These RDOs may be taken as a group of consecutive days or any other combination subject to reasonable notice by an Employee*	
5 day working week	*Appendix J* *(a) Projects will be fully operational on all scheduled RDOs days not attached to a Designated Long Weekend (which include the Easter and Christmas shutdown periods* *(b) If an Employee works on a scheduled RDO, they will take the accrued RDO as a substitute day within 7 days (i.e. on any day over the 7 day period) from the Scheduled RDO falling in the RDO calendar (Refer Appendix E).*	*Appendix J* *(a) Projects will be fully operational on all Fixed RDOs days not attached to a Designated Shutdown Long Weekend (which include the Easter and Christmas shutdown periods).* *If an Employee works on a Fixed RDO, they will take the accrued RDO as a substitute day, at a later date, at the Employee[1]s choosing for each RDO that they are required to work. Employees will be required to*	As per the 2019 Agreement, where the 5 day working week is implemented, projects will be fully operational on all Scheduled or Fixed RDOs not attached to a Designated Long Weekend. Whereas under the 2019 Agreement, working on a Scheduled RDO would enliven an entitlement to take a

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		take up to thirteen 13 RDOs in a calendar year. In addition to the Designated RDOs, with these RDOs able to be utilised in accordance with .clause 27.3 c) of this Agreement, or any other Saturday of the Employees choosing	substitute day as an RDO within 7 days, the 2024 Agreement lets the employee choose a substitute day on any later date. Further, the 2024 Agreement requires employees to take up to 13 RDOs in a calendar year.
Overtime	*27.6(d)* *Employees required to work on a Saturday or Sunday must be afforded a minimum 4 hours work, or be paid as if worked for 4 hours at the aforementioned overtime rates*	*27.6(d)* *Employees required to work and attend work on a Saturday or Sunday must be afforded a minimum six (6) hours work, or those hours permitted by the relevant DA Conditions for the project. Employees will be paid as if worked for six (6) hours, or those hours permitted by the relevant DA Conditions at the applicable overtime rates*	Minimum payment on a Saturday or Sunday has been increased from 4 hours to 6 (or those hours permitted by the relevant DA Conditions for the project).
Public holidays	*No equivalent*	*27.8.1(c)* *For the avoidance of doubt, an employee who is a permanent part-time employee, is entitled to receive 8 hours payment for the public holiday(s) irrespective of the days worked.*	The amended pattern Agreement provides that part-time employees receive the benefit of public holidays (quantified as 8 hours) regardless of whether their ordinary hours would have fallen on the relevant day.
Public holidays	*27.8.3* *An Employee required to work on a public holiday or the day after Good Friday will be paid for a minimum of four (4) hours work at the rate of double time and a half ordinary time rates and shall bank an additional day in lieu*	*27.7.3* *An Employee required to work on a public holiday or the day after Good Friday will be paid for a minimum of eight (8) hours work at the rate of double time and a half ordinary time rates and shall bank an additional day in lieu*	The minimum payment for work performed on a public holiday has been extended to 8 hours rather than 4.
Picnic day	*28* *It is agreed by the parties that the first Monday of December shall be observed as the building industry picnic day. All employees as far as practicable will be given and will take this day as picnic day, without loss of pay to Employees*	*28* *It is agreed by the parties that the first Monday of December shall be observed as the building industry picnic day. All employees as far as practicable will be given and will take this day as picnic day, without loss of pay to Employees on production of an OK Card by the Employee*	The eligibility to be paid for the picnic day under the new pattern is contingent upon the employee presenting an OK Card.
Trade Union Rights and Representation	***Clause 29.1*** *29.1 Union Delegate/Employee Representative Rights*	***29.1 Union Delegate*** a) *This clause outlines the rights for Union Delegates when assisting Employees. For clarity, each Employee has the right to*	All references in this provision to 'employee representative' have been removed. The Agreement now

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	a) *This clause outlines the rights for Employee representatives and Union Delegates when assisting Employees. For clarity, each Employee has the right to determine whether they wish to be represented or not.* b) *Such representatives (or individual Employees) are entitled to the protections of Division 4 of Part 3-1 of the Fair Work Act in relation to their involvement in lawful industrial activities.* c) *The Company shall not initiate, be involved in, or interfere with the election of a Union Delegate(s).* d) *Where an Employee has been elected as a Union Delegate/Employee Representative, the Company will recognise the following rights:* *(i) the right to be treated fairly and to perform their role without any discrimination in their employment;* *(ii) the right to represent an Employee where requested in relation to a grievance, dispute or a discussion with a member of the Union* *(iii) the right to place information related to permitted matters on a notice board In a prominent location in the workplace except that the material must not breach freedom of association, privacy and other applicable laws;* *(iv) the right to paid time to attend industrial tribunals and/or courts where they have been requested to do so by an Employee (which may include themselves) whom they represent in a particular dispute in their workplace;* *(v) the right to paid time to assist and*	*determine whether they wish to be represented or not.* b) *Such representatives (or individual Employees) are entitled to the protections of Division 4 of Part 3-1 of the Fair Work Act in relation to their involvement in lawful industrial activities.* c) *The Company shall not initiate, be involved in, or interfere with the election of a Union Delegate(s).* d) *Where an Employee has been elected as a Union Delegate the company will recognise the following rights:* *(i) the right to be treated fairly and to perform their role without any discrimination in their employment;* *(ii) the right to represent an Employee where requested in relation to a grievance, dispute or a discussion with a member of the Union;* *(iii) the right to place information related to permitted matters on a notice board in a prominent location in the workplace except that the material must not breach freedom of association, privacy and other applicable laws;* *(iv) the right to paid time to attend industrial tribunals and/or courts where they have been requested to do so by an Employee (which may include themselves) whom they represent in a particular dispute in their workplace;* *(v) the right to paid time to assist and represent Employees who have requested them to represent them in respect of a dispute arising in their workplace;*	assumes that the Union Delegate will represent employees. This provision also includes a right to 'paid' time off to participate in the operation of the union. The new pattern provides a right to the Union Delegate to address new employees about the benefits of union membership at the time they enter employment or on site. The right of a union delegate to paid time off has been limited to time during usual working hours.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	represent Employees who have requested them to represent them in respect of a dispute arising in their workplace; *(vi) the right to represent the interests of members in their work place to the Union, the Company and industrial tribunals/courts;* *(vii) the right to formal recognition that the endorsed Union delegates will speak on behalf of the Union members in the workplace;* *(viii) the right to paid time (including wages, productivity allowance and fares) to attend Union endorsed training/forums which are directed to improving the skills and knowledge of the participant in the system of workplace relations;* *(ix) prior to the Company making a decision to terminate or transfer a Union Delegate/Employee Representative, the Company shall notify the Union Delegate 10 days in advance of such termination or transfer. Payment In lieu of notice may be made by agreement;* *(x) Union members employed by the Company have the right to be represented by their Union in the consultation, disciplinary and dispute resolution arrangements in this Agreement, where they so choose;* *(xi) the right to reasonable time during working hours to consult and confer with Employees, Union members and officials;* *(xii) the right to reasonable time to participate in the operation of the Union*	*(vi) the right to represent the interests of members in their workplace to the Union, the Company and industrial tribunals/courts;* *(vii) the right to formal recognition that the endorsed Union delegates will speak on behalf of the Union members in the workplace;* *(viii) the right to paid time (including wages, productivity allowance and fares) to attend Union endorsed training/forums which are directed to improving the skills and knowledge of the participant in the system of workplace relations;* *(ix) prior to the Company making a decision to terminate or transfer a Union Delegate the Company shall notify the Union Delegate 10 days in advance of such termination or transfer. Payment in lieu of notice may be made by agreement;* *(x) (x) Union members employed by the Company have the right to be represented by their Union in the consultation, disciplinary and dispute resolution arrangements in this Agreement, where they so choose;* *(xi) the right to reasonable time during working hours to consult and confer with Employees, Union members and officials;* *(xii) be present at site induction meetings for the purpose of being introduced as the Delegate;* *(xiii) the right to have reasonable paid time off during usual working hours to participate in the operation of the*	

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	during normal working hours; and *(xiii) be present at site induction meetings for the purpose of being introduced as the Employee Representative.*	*Union; and* *(xiv) the right to address new Employees about the benefits of union membership at the time they enter employment or on site.*	
Trade Union Rights and Representation	*29.2 – Facilities* a) *The Company shall provide an agreed facility for the use of the Union Delegate/Employee Representative to perform their duties and functions as the on-site representative of the employees. The provision of the following facilities is to ensure that the Union Delegate/Employee is able to effectively perform his/her functions in a professional and timely manner* b) *The facilities shall include:* *(i) a telephone;* *(ii) a table and chairs* *(iii) a filing cabinet;* *(iv) air-conditioning/heating;* *(v) access to stationery and other administrative fadlities, including use of facsimile, use of e-mail, (if available on site), following consultation between the Union Delegate/Employee Representative and Site Management* *(vi) a private lockable area* *(vii) A suitable workplace location to conduct confidential discussions with those Employees who choose to be represented by the Employee Representative. The Company will respect the privacy of the nominated Employee Representative's use of these facilities and will not monitor*	***29.3 – Facilities*** a) *The Company shall provide an agreed facility for the use of the Union Delegate to perform their duties and functions as the on-site representative of the employees. The provision of the following facilities is to ensure that the Union Delegate is able to effectively perform his/her functions in a professional and timely manner.* b) *The facilities shall include:* *(i) a telephone;* *(ii) a table and chairs* *(iii) a filing cabinet;* *(iv) air-conditioning/heating;* *(v) access to stationery and other administrative facilities, use of e-mail, (if available on site), following consultation between the Union Delegate and Site Management.* *(vi) a private lockable area.* *(vii) A suitable workplace location to conduct confidential discussions with those Employees who choose to be represented by the Union Delegate. The Company will respect the privacy of the Union Delegate's use of these facilities a d will not monitor communications using that location.*	The reference to facsimile has been removed.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	communications using those facilities		
Trade Union Rights and Representation	*No equivalent*	**24.1** ***Trade Union Rights Promoting Representation of Members*** a) *Any Company representative who discourages an Employee from becoming a financial member of the Union breaches the intent of this Agreement.* b) *The Company must invite the Union delegate to attend every Company induction for new Employees and to address Employees.* c) *A standing invitation exists for any representative of the Union covered by this agreement to enter any place where Company Employees or representatives are for purposes including, but not limited to, dispute resolution or consultation meetings but not for purposes for which a Right of Entry exists under Part 3-4 of the Fair Work Act.* d) *The Company will allow the Union to promote membership of the Union.* e) *The Company will provide a Union noticeboard at every workplace. The display of material upon the Union noticeboard will be under the control of the Union.* f) *The Company will provide any information to the Union about Employees that the Union requires, to ensure compliance with this Agreement, ·subject to relevant legislation.* g) *The Company will provide information about the Union to an Employee that the Union requires.*	The new pattern requires: - Any Company representative to refrain from discouraging an Employee from becoming a financial member of the Union; - Company to invite union delegate to attend every company induction for new employees and to address employees for at least half an hour per attendance. - Standing invitation for any representative of the Union to enter any place where company employees or representatives are. - Company to allow the Union to promote membership of the Union. - Union noticeboard to be provided at every workplace. - Company to provide any information to the Union about employees that the Union requires, to ensure compliance with the agreement (subject to relevant legislation).
Consultation	*31.1* a) *Effective consultation is essential for continuous workplace reform and as such consultation can take place at any time during the life of a Project.* b) *Consultative Committees may be set up for*	*No equivalent*	The amended pattern contains no reference to a Consultative Committee for the purposes of implementing the consultation provision in the Agreement.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	this purpose		
Consultation	*31.4(b)* *The Company must recognise the representative appointed by an Employee (if any), and consult in good faith in relation to such proposed changes, including by representing Employees during consultation regarding the proposed changes. For the purpose of this consultation, the Company will invite any nominated representative/s (e.g. Union or other representative) to attend the consultations under this clause. Such consultation will occur off site (also noting that this does not confer a general right to enter site to hold discussions with Employees*	*31.3(b)* *The Company must recognise the representative appointed by an Employee (if any), and consult in good faith in relation to such proposed changes, including by representing Employees during consultation regarding the proposed changes. For the purpose of this consultation, the Company will invite any nominated representative/s (e.g. Union or other representative) to attend the consultations under this clause*	This provision in the new pattern has been amended to remove the requirement that consultation with the Union be off site.
Discrimination & Sexual Harassment	*Appendix A* *Ultimately, the responsibility for discrimination and sexual harassment matters lies with senior management of the Company.*	*Appendix A* *[No equivalent]*	Appendix A is identical between the two versions except the statement that responsibility for discrimination and sexual harassment matters lying with senior management of the Company has been removed.
Agreement classifications	*Appendix B (contains no reference to telehandlers)*	*Appendix B* *CW 4* *…Telehandler with fork attachments regardless of lifting capacity {Gold Card).* *…* *Cw5* *…Telehandler over 3 tonnes SWL/WLL capacity and a crane jib attached requiring HRW Crane Licence (CN or C2), Telehandler over 3 tonnes SWL/WLL and has a work platform with an over 11metre boom length attached requiring WP HRW licence.* *…*	Telehandlers to be classified at CW4 or CW5. Sub Forepersons (bridge and wharf carpenter) and Forepersons (bridge and wharf carpenter) have been added to CW 7 and CW 8 respectively.

<table>
<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
<tr><td></td><td></td><td>CW 7
…Sub Foreperson (bridge and wharf carpenter);

CW 8
…Foreperson (bridge and wharf carpenter)</td><td></td></tr>
<tr><td>Rates of Pay</td><td>Appendix B
Further, should this agreement remain in operation past its nominal expiry date a 1.5% increase will be applied to the ordinary rates of pay In Appendix B applicable from 1 October 2024 and six monthly thereafter from 1 March and 1 October each year</td><td>Appendix B
e.g. hourly rates

From 1 March 2024 – CW3(trade) - 50.04
From 1 July 2024 – CW3 (trade) - 53.54
From 1 July 2025 – CW3(trade) - 56.22
From 1 July 2026 – CW3(trade) - 59.03
From 1 July 2027 – CW3(trade) - 61.98

Further, should this agreement remain in operation past its nominal expiry date a 3% increase will be applied to the ordinary rates of pay in Appendix B applicable from 1 July 2028 and annually thereafter from 1 July each year.</td><td>Opening rates applicable 1 March 2024 equal the highest rates under the previous pattern Agreement.

On 1 July 2024, minimum rates increase by 7%

On 1 July 2025, minimum rates increase by 5%

On 1 July 2026, minimum rates increase by 5%

On 1 July 2027, minimum rates increase by 5%.

Beyond the nominal expiry date of the Agreement, a 3% increase will apply annually on 1 July (rather than 1.5% in March and October).</td></tr>
<tr><td>Extra Benefits and Provisions

Productivity Allowance</td><td>Appendix C1
Productivity Allowance
The Company will pay a company productivity allowance of $4.50 per hour for each hour worked. This allowance shall be paid in accordance with clause 10.2 of this Agreement.

Further, 10c/hour of the Company Productivity allowance is paid in lieu of the Jumpform, Hazardous Material and Underground</td><td>The Company will pay the following company productivity allowance per hour for each hour worked. This allowance shall be paid in accordance with clause 10.2 of this Agreement.

<table><tr><th></th><th>Productivity Allowance</th></tr><tr><td>On lodgment</td><td>$4.00</td></tr><tr><td>From 1 July 2025</td><td>$4.25</td></tr></table></td><td>The productivity allowance has been reduced from $4.50 per hour to $4.00 per hour. It increases to $4.25 per hour from 1 July 2025.

However, there is no capacity to absorb the Jumpform, Hazardous material and Underground allowance into the productivity allowance under the new pattern.</td></tr>
</table>

<table>
<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
<tr><td></td><td>Allowances below.</td><td></td><td></td></tr>
<tr><td>Extra benefits and provisions – Site Allowance</td><td>Appendix C1
Site Allowance
<table><tr><th>Project Value – $million</th><th>Site Allowance As at 1.10.2020</th></tr><tr><td>0 – 2.6m</td><td>$2.05</td></tr><tr><td>2.6m - 6.8m</td><td>$2.30</td></tr><tr><td>6.8m - 16.8m</td><td>$2.50</td></tr><tr><td>16.8m - 33.7m</td><td>$2.75</td></tr><tr><td>33.7m - 67.3m</td><td>$3.20</td></tr><tr><td>67.3m - 134.8m</td><td>$3.95</td></tr><tr><td>134.8m - 202m</td><td>$4.05</td></tr><tr><td>202m - 269.4m</td><td>$4.15</td></tr><tr><td>269.4m - 404.2m</td><td>$4.25</td></tr></table></td><td>Appendix C1
Site Allowance
<table><tr><th>¶
Project Value – $million</th><th>Site Allowance¶
As at 1.10.2023</th></tr><tr><td>0-2.6m</td><td>$2.40</td></tr><tr><td>2.6m - 6.8m</td><td>$2.70</td></tr><tr><td>6.8m - 16.8m</td><td>$2.95</td></tr><tr><td>16.8m - 33.7m</td><td>$3.20</td></tr><tr><td>33.7m - 67.3m</td><td>$3.80</td></tr><tr><td>67.3m - 134.8m</td><td>$4.60</td></tr><tr><td>134.8m - 202m</td><td>$4.70</td></tr><tr><td>202m - 269.4m</td><td>$4.85</td></tr><tr><td>269.4m - 404.2m</td><td>$4.95</td></tr></table></td><td>Site Allowance has increased by between $0.35 and $0.70 depending on project size.

However, each agreement provides for increases to the site allowance with CPI.</td></tr>
<tr><td>Extra benefits and provisions – redundancy entitlement</td><td>Appendix C1
Redundancy Entitlement
1 March 2023 - $193.90 per week (permanent)
$38.80 per day (casual)</td><td>Appendix C1
Redundancy Entitlement
From 1 March 2023
- $150 per week (permanent)
- $30 per day (casual)
From 1 July 2024
- $160 per week (permanent)
- $32 per day (casual)
From 1 July 2025
- $170 per week (permanent)
- $34 per day (casual)
From 1 July 2026
- $180 per week (permanent)
- $36 per day (casual)
From 1 July 2027
- $190 per week (permanent)</i>
- <i>$$38 per day (casual)</td><td>The weekly/daily redundancy payment is lower that under the previous pattern.

However, all references to ACIRT have been removed.</td></tr>
<tr><td>Extra benefits and provisions – superannuation</td><td>Appendix C1 – Superannuation
The Company will contribute the SGL+2.5% into Cbus and in accordance with clause 10.5 of this Agreement</td><td>Appendix C1 – Superannuation
The Company will contribute the SGL + 2.5% up to a maximum of 14.5% into Cbus and in accordance with clause 10.5 of this Agreement</td><td>Superannuation entitlements are capped at 14.5% of OTE.</td></tr>
<tr><td>Extra benefits and provisions- Additional meal</td><td>Additional meal allowance provision
In lieu of the BCGOA meal allowance provision for overtime $30.60 shall be payable in accordance With clause 10.6 of this Agreement.</td><td>Additional meal allowance provision
In lieu of the BCGOA meal allowance provision for overtime $35.65 shall be payable in accordance with clause 10.6 of this Agreement.</td><td>Meal allowance has been increased from $30.60 to $35.65</td></tr>
</table>

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
allowance provision			
Daily fares and travel allowance	*Appendix C* *$60 per day for each day worked (including RDO's)*	*Appendix C* *For:* - *Travel only within one of the three Counties.* - *Travel only in the Regional Area outside the three Counties but not more than 150km in either direction.* *$65.00 per day, increasing yearly up to $70.00 per day from 1 July 2026.* *For* - *Travel from one County to an adjacent County* - *Travel from the Counties to the ·Regional Area but not more than 70km from the county boundary in either direction* *$70.00 per day, increasing yearly up to $80.00 per day from 1 July 2026* *For travel from Northumberland County to Camden County or vice versa:* *$85.00 per day increasing yearly up to $90.00 per day from 1 July 2027.*	The travel allowance under the new version has been substantially altered. Rather than a single daily fares allowance of $60 per day, the proposed Agreement provides for: A $65 allowance for: - Travel only within one of the three Counties. - Travel only in the Regional Area outside the three Counties but not more than 150km in either direction A $75 allowance for: - Travel from one County to an adjacent County - Travel from the Counties to the Regional Area but not more than 70km from the county boundary in either direction An $85 allowance for: - Travel from Northumberland County to Camden County or vice versa.
Extra benefits and provisions – Jumpform allowance	*Jumpform Allowance* *An Allowance of $1.50 per hour shall be payable where work performed on a jumpform*	*Jumpform Allowance* *An Allowance of $1.50 per hour shall be payable where work performed on a jumpform, including the assembly of jumpform*	The amended pattern provides that the jumpform allowance is to be payable for the assembly of jumpform
Extra benefits and provisions – Underground allowance	*Underground allowance* *For all work performed underground an allowance of $2.50/hour is payable*	*Underground allowance* *For all work performed underground in a Tunnel an allowance of $2.50/hour is payable*	The circumstances under which this allowance is payable have been narrowed to where work is performed in a tunnel
Extra benefits and provisions –	*Protective clothing* *Employees each year will be re-issued with the following:*	*Protective clothing* *Employees each year will be re-issued with the following:*	The number of shirts and pants/shorts to be provided twice a year has been

<table>
<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
<tr><td>Protective clothing</td><td>- In April three (3) shirts, 2 sloppy joes and 1 jacket and three (3) pairs of pants/¾ length shorts
- In October three (3) shirts and three (3) pairs of pants/¾ length shorts</td><td>- In April five (5) shirts, 2 sloppy joes and 1 jacket and five (5) pairs of pants/ shorts
- In October five (5) shirts and five (5) pairs of pants/ shorts</td><td>increased under the new pattern from 3 to 5.</td></tr>
<tr><td>Crane Crew – Extra Benefits and Provisions</td><td>Appendix C2
Company productivity allowance - $4.50 per hour

Redundancy entitlement
From 1 March 2023:
- $193.90 per week (permanent)
- $38.80 per day (casual)</td><td>Appendix C2
In lieu of the Productivity Allowance in Appendix C1, for Crane Crew the Company will pay the following productivity allowance in accordance with Clause 10.2 of this Agreement:

<table><tr><td></td><td>Productivity Allowance</td></tr><tr><td>On lodgment</td><td>$4.50</td></tr><tr><td>From 1 July 2025</td><td>$4.75</td></tr></table>
In lieu of the Redundancy contributions in Appendix Cl, for Crane Crew, the Company will pay the following redundancy contributions in accordance with clause 10.4 of this Agreement:

<table><tr><td></td><td>For permanent full-time and part-time Employees weekly amount</td><td>Casual daily rate to a maximum of 5 days in a given week Monday to Sunday</td></tr><tr><td>1 Mar 23</td><td>$193.90</td><td>$38.80</td></tr><tr><td>1 July 24</td><td>$207.47</td><td>$41.49</td></tr><tr><td>1 July 25</td><td>$217.85</td><td>$43.57</td></tr><tr><td>1 July 26</td><td>$228.74</td><td>$45.75</td></tr><tr><td>1July 27</td><td>$240.18</td><td>$48.04</td></tr></table>
Once an Employee has accrued 8 weeks pay in their account, they may elect to have their redundancy contribution paid into Cbus.

The rate of pay for crane crew/s temporarily</td><td>All references to ACIRT have been removed.

The productivity allowance for crane crew under the new version of the Agreement is $4.50. This increases to $4.75 from 1 July 2025.

The new version of the Agreement mandates weekly redundancy contributions for crane crew of $207.47 per week for full and part-time employees from 1 July

The new pattern requires maintenance crew in the yard to be paid as a CW3 (NT). It also requires employees performing the duties of a Tower Crane Crew in the yard to be paid as a CW7.

Yard employees are provided a $55.00 daily dares allowance under the new version of the Agreement, increasing to $60.00 per day on 1 July 2026.</td></tr>
</table>

<table>
<tr><th>Topic</th><th>2019 – 2023 Agreement</th><th>2024-2027 Agreement</th><th>Commentary</th></tr>
<tr><td></td><td></td><td>performing general maintenance work in the yard shall be the CW3 NT classification rate of pay in Appendix B of this Agreement.

Where Employee/s perform the duties of a Tower Crane Crew in the yard they shall be paid the rates of pay and conditions of the CW7 classification in this Agreement.

In lieu of the Travel Allowance in C1, for crane crew/s temporarily performing general maintenance work in the yard, the following is payable per day in accordance with Clause 14 of this Agreement:

<table><tr><td></td><td>ALLOWANCE</td></tr><tr><td>On Lodgment</td><td>$55.00</td></tr><tr><td>On 1 July 2026</td><td>$60.00</td></tr></table></td><td></td></tr>
<tr><td>Apprentice rates of pay</td><td>Appendix D</td><td>Appendix D</td><td>The rates of pay for junior apprentices align with the Building Award</td></tr>
<tr><td>Additional apprentice provisions</td><td>Appendix D
Ratios
The Company agrees to maintain, an appropriate ratio of apprentices to tradespeople. This ratio will not be less than 1 apprentice for each 5 tradespersons where practicable</td><td>Appendix D
Ratios
The Company agrees to maintain, an appropriate ratio of apprentices to tradespeople. This ratio will not be less than 1 apprentice for each 5 tradespersons</td><td>The new pattern locks in the ratio of 1 apprentice for each 5 tradespersons. This is in contrast to the existing pattern which only required that ratio ‘where practicable’.</td></tr>
<tr><td>Additional apprentice provisions</td><td>No equivalent</td><td>Appendix D
Fares and Travel
Apprentices shall be entitled to be paid daily fares and travel allowance in accordance with this Agreement including whilst attending training.</td><td>The new pattern explicitly provides that apprentices receive the fares and travel patterns allowance when attending training.</td></tr>
<tr><td>Additional apprentice provisions</td><td>Appendix D
Public holidays and Holiday Work
In addition to clause 29 of the BCGOA, where an Apprentice is required to attend a technical college,</td><td>Appendix D
Public Holidays and Holiday Work
In addition to clause 29 of the BCGOA, where an Apprentice is required to attend a technical</td><td>The new pattern does not provide any option to pay an apprentice overtime where granting an alternative paid day off is not practicable.</td></tr>
</table>

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	or other institution, on a public holiday including, picnic day, or an RDO for the purpose of receiving instruction and / or for any examination, the Company and the Apprentice shall mutually agree that the Apprentice shall be allowed another working day off with pay in lieu of the day of instruction / examination. Where this is not practicable the Apprentice shall be paid at the overtime rates prescribed in the BCGOA	*college, or other institution, on a public holiday including, picnic day, or an RDO for the purpose of receiving instruction and/ or for any examination, the Company and the Apprentice shall mutually agree that the Apprentice shall be allowed another working day off with pay in lieu of the day of instruction/ examination.*	
Additional Apprenticeship Provisions	*No equivalent*	*Appendix D* *Pre-apprenticeship credits* ***Painting, Decorating and Signwriting*** *a) Any person under the age of 21 years entering the trade of Painting and Decorating, Painting, Decorating and Signwriting or Signwriting, who has successfully completed the pre-employment course Stage 1 conducted by the Department of Technical and Further Education, shall serve a three year apprenticeship and the wage shall commence at the second year rate.* *b} Any person under 21 years of age entering the trade of Painting and Decorating, Painting, Decorating and Signwriters or Signwriting, who has completed the pre-apprenticeship course Stages I and II conducted by the Department of Technical and Further Education shall serve a two and one-half year period of apprenticeship and the wage shall commence at the second year rate for a period of six months, at which time the apprentice shall be progressed to the third year rate.* ***Tile laying*** *a) Any person under 21 years of age entering the trade of tile laying who has successfully completed the pre-apprenticeship course of 18 weeks' duration conducted by the Department of*	The amended pattern has included provisions dealing with pre-apprenticeship credits for painting, decorating and signwriting and tile laying. These are absent from the existing pattern.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
		Technical and Further Education shall serve a 3 year period of apprenticeship and the wage shall commence at the second year rate. *b) Any person under 21 years of age entering the trade of tile laying who has successfully completed the pre-apprenticeship course of 36 weeks' duration conducted by the Department of Technical and Further Education shall serve a two and a half year period of apprenticeship commencing at the 2nd year rate and continuing for a period of six months, at which time the apprentice shall be progressed to the 3rd year rate.* *c) A person who is regarded by the Department of Technical and Further Education as not having completed all of the requirements of a pre-apprenticeship course but as having successfully completed the equivalent of at least one stage of the trade course shall be entitled to have his/her period of apprenticeship shortened by six months, provided that the application is supported by a statement from the Department of Technical and Further Education that the student is regarded as having successfully completed that stage and as a consequence is entitled to proceed to stage two of the trade course*	
Counselling and Disciplinary Procedures / Termination of Employment	*Appendix F*	*Appendix F*	References to an Employee Representative as an alternative to dealing with the Union Delegate in the disciplinary/termination procedures have been removed.
Heat Policy	*Appendix G* ***Monitoring of Temperature*** *- Temperatures shall be measured on site by a temperature gauge compliant to Australian Standards, and located as agreed by the WHS Committee.*	*Appendix G* ***Monitoring of Temperature*** *- Temperatures shall be monitored as follows:* a) *Temperatures shall be monitored during the course of the day by the PCBU's, Site*	Under the new pattern, the method of monitoring temperature is to be utilising the nearest BOM weather station rather than taking measurements on site.

Topic	2019 – 2023 Agreement	2024-2027 Agreement	Commentary
	a) *Temperatures shall be monitored during the course of the day by the PCBU's, Site Manager, WHS Committee Chairperson and/or the Deputy Chairperson.* b) *If gauges are not available - or malfunction, readings shall be taken from the nearest Bureau of Meteorology (BOM) weather station.*	*Manager, WHS Committee Chairperson and/or the Deputy Chairperson.* b) *Readings shall be take from the nearest Bureau of Meteorology (BOM) weather station.*	
Heat Policy	*Appendix G* *Concrete pours and emergency work - Employees shall not be required to start a concrete pour in inclement weather. Areas to be concreted on hot weather days must not commence without full consultation and agreement between the Company, Employees and the Site Safety Committee. Concrete pours over 150m^3 that are delayed will not commence after 11:00am without full consultation and agreement between the Company, Employees and the Site Safety Committee.*	*Appendix G* *In circumstances where it is predicted that the temperature will be 35°C, concrete pours shall not be scheduled, and Employees shall not be required to start a concrete pour. However, after prior consultation and agreement between the Company and the Union, agreed concrete pours may commence no later than 7.00am*	Appendix G of the new pattern introduces a prohibition on concrete pours - limited to circumstances where it is predicted that the temperature will be 35°C. Agreement with the Union is enough to commence a concrete pour but such pours may commence no later than 7am.
Heat Policy	*Appendix G* ***Training** - All PCBUs and workers on site will be trained in mitigating and recognising heat stress illness symptoms, in themselves and others. With refresher training to take place annually.*	*Appendix G* ***Training** - All PCBUs and workers on site will be trained in mitigating and recognising heat stress illness symptoms, in themselves and others. With refresher training to take place annually. This training will be provided by Creative Safety Initiatives (CSI) or another provider nominated by the Union.*	The new pattern agreement specifies that training will be provided by CSI or another provider nominated by the CFMEU
Drug and alcohol policy	*Appendix H* *The procedure applies to all employees, staff, workers, permanent and casual subcontractors on projects and workplaces during work hours. This procedure also applies to any visitors to the project or workplace, whereby the visitor/s may be requested to undertake impairment testing and/or to leave the site should they present behavioural signs of possible impairment*	*Appendix H* *The procedure applies to all Employees on projects and workplaces during work hours. This procedure also applies to any visitors to the project or workplace, whereby the visitor/s may be requested to undertake impairment testing and/or to leave the site should they present behavioural signs of possible impairment*	The Drug and Alcohol Policy is amended in the new version of the Agreement to only apply to employees.

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Drug and alcohol policy	*Appendix H* *Cl. 6:* ***1. Alcohol at approved company functions or occasions*** *a) Consumption of alcohol may be permitted at some company sponsored events such as team dinners, functions, celebrations or annual parties. In these instances, socially-responsible behaviour is expected, and responsible service of alcohol applies. Personnel who consume alcohol at company sponsored events must ensure that they do not perform work if their BAC exceeds the acceptable limit for their project or workplace.*	*Appendix H* *Cl. 6* *Consumption of alcohol may be permitted at some Company sponsored off-site events such as team dinners, functions, celebrations or annual parties. In these instances, socially-responsible behaviour is expected, and responsible service of alcohol applies.*	In the new version of the Agreement the requirement upon personnel who consume alcohol at company sponsored events to ensure they do not perform work if their BAC exceeds acceptable levels has been removed.
Drug and Alcohol Policy	*Appendix H* *a) Requirements for an approved training provider:* *(i) Must have previous experience delivering workplace impairment training,* *(ii) Must consult with professional organisations to develop all training courses.* *(iii) Must be able to demonstrate a continuous improvement plan for each training course,* *b) Trainers must have the following qualifications:* *(i) Certificate IV In training and assessment.* *(ii) Certificate IV In drug and alcohol or community services.* *(iii) Certificate IV in work health and safety.*	*Appendix H* *No equivalent requirements*	The experience, skill and education requirements for approved training providers have been removed
Drug and Alcohol Policy	*Appendix H* ***9.1.2 Random Testing*** *a) Workers are required to comply with a request to participate in random drug and alcohol testing.*	*Appendix H* ***9.1.2 Random Testing*** *a) Workers are required to comply with a request to participate in random drug and alcohol testing.*	The amended pattern provides that random participants in drug testing will be chosen from workers on and off the tools on site on each occasion.

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	*b) Workers chosen to participate may be random individuals and/or random workgroups. The method adopted for choosing random p.1rticipants will be fc1ir, transparent and equitable through a designated collector or authorised organisation independent software (exclusive of **gate** entry software),* *c) As a minimum monthly expectation for the following ratio of testing for both Alcohol and other drugs:* *(i) Where there are less than 30 workers on site- at least10% of the workforce* *(ii) Where there are 30 to 100 workers on site - a minimum of 5 workers per month* *(iii) Where there are greater than 100 workers on site-a minimum of 10 workers per month*	*b) Workers chosen to participate may be random individuals and/ or random workgroups. The method adopted for choosing random participants, to be chosen from both workers on and off the tools on site on each occasion, will be fair, transparent and equitable through a designated collector or authorised organisation independent software (exclusive of gate entry software).* *c) The following ratio of testing for both Alcohol and other drugs:* *(i) Where there are less than 30 workers on site - no more than 10% of the workforce* *(ii) Where there are 30 to 100 workers on site - no more than 5 workers* *(iii) Where there are greater than 100 workers on site - no more than 10 workers*	The amended pattern also makes the following changes regarding ratio of testing: - Where there are less than 30 workers on site, testing will be no more than 10% of the workforce. Under the existing pattern, at least 10% of the workforce had to be tested; - Between 30 and 100 workers, the new pattern stipulates no more than 5 workers being tested. The existing pattern required a minimum of 5 workers per month. - Greater than 100 workers, the new pattern requires no more than 10 workers being tested, whereas the existing pattern required a minimum of 10 workers per month.
Allowances	*Appendix I* *First-aid attendant (minimum qualification) per day - $4.80* *Higher first aid cert (per day) - $7.58* *Leading hand not more than 1 (per hour) - **$0.88*** *Leading hand 2 and not more than 5 (per hour) - **$1.91*** *Leading hand 6 and not more than 10 (per hour) - **$2.43*** *Leading hand more than 10 (per hour) - **$3.23*** *Travelling outside radial areas (per Km) - $0.93* *Transfers during working hours (per Km) - $1.67* *Compensation for tools - $3,030.74*	*Appendix I* *First-aid attendant (minimum qualification) per day* - *Current $4.80* - *From 1 July 2026- $5.00* *Higher first aid cert. per day* - *Current $7.58* - *From 1 July 2026- $7.80* *Leading hand not more than 1 per hour:* - *Current $0.88* - *From 1 July 2026 - $0.90* *Leading hand 2 and not more than 5 per hour* - *Current $1.91* - *From 1 July 2026 - $2.00* *Leading hand 6 and not more than 10 per hour:* - *Current $2.43* - *From 1 July 2026 - $2.50*	Increases applied to each allowance from 1 July 2026.

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		Leading hand more than 10 per hour: - *Current $3.23* - *From 1 July 2026 - $3.30* *Transfers during working hours (per Km)* - *Current $1.67* - *From 1 July 2026 - $1.75*	
Five-day week Monday to Friday projects	*Appendix J* *This Appendix applies to Employees working on projects that are structured over a 5-day, Monday to Friday working week. If the project is varied to a standard working week (Monday to Sunday}, Appendix J does not apply.* *…* *Projects will be fully operational on all scheduled RDOs days not attached to a Designated Long Weekend (which include the Easter and Christmas shutdown periods* *If an Employee works on a scheduled RDO, they will take the accrued RDO as a substitute day within 7 days (i.e. on any day over the 7 day period) from the Scheduled RDO falling in the RDO calendar (Refer Appendix E).* *…* *a) Work may be carried out on a weekend if the Company consults and agrees with the majority of the affected Employees (and if nominated, their representative) about the need to carry out work. As far as practical; given operational requirements, the Company will give affected Employees at least 7 days' written notice of any such need for work to occur, so as to ensure appropriate consultation. Such work shall be paid at the rate of double the ordinary rate of pay for all hours worked.*	*Appendix J* *This Appendix applies to Employees working on projects that are structured over a 5-day, Monday to Friday working week. Once a project has commenced as a 5-day work week (Monday to Friday) arrangement, the Company can revert to a standard working week (Monday to Sunday) one time only and once it does so will then remain so.* *…* *Projects will be fully operational on all Fixed RDOs days not attached to a Designated Shutdown Long Weekend (which include the Easter and Christmas shutdown periods* *b) If an Employee works on a Fixed RDO, they will take the accrued RDO as a substitute day, at a later date, at the Employee1s choosing for each RDO that they are required to work. Employees will be required to take up to thirteen 13 RDOs in a calendar year. In addition to the Designated RDOs, with these RDOs able to be utilised in accordance with clause 27.3 c) of this Agreement, or any other Saturday of the Employees choosing…* *Work may be carried out on a weekend if the Company consults and agrees with the Union about the need to carry out work. As far as practical, given operational requirements, the Company will give affected Employees at least 7 days' written notice of any such need for work to occur, so as to ensure appropriate consultation. Such work shall be paid at the rate of double time and a half of the ordinary rate of pay for all hours worked and a minimum of eight (8) hours*	The amended pattern provides that once a project has commenced as a 5-day week project, it is provided with one opportunity to revert from a 5-day working week arrangement on a project to a standard working week. Under the amended pattern, where Appendix J applies, a project will be fully operational on all fixed RDOs not attached to a Designated Shutdown Long Weekend. Rather than a substitute RDO being provided within 7 days, it will be provided on a later date at the employee's choosing. The amended version of the Agreement provides that Employees will be required to take up to 13 RDOs in a calendar year. Under the new pattern, work may only take place on a weekend with the agreement of the Union rather than the agreement of the majority of employees. Weekend work to be paid at double time and a half rather than double time and, in contrast to the existing pattern, weekend work will attract a minimum payment of 8 hours per day.

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		per day. *If 7 days written notice is not provided by the Company, then the affected Employees, shall be paid double time and a half of the ordinary rate of pay. This will not apply for events outside the control of the Company, where emergency work is required to be undertaken.*	The amended version of the Agreement provides that time worked on weekends (where there is a 5 day working week) is to be remunerated at 250% where 7 days' written notice is not provide by the Company. However, this is indicated not to apply for events outside the control of the Company where emergency work is required to be undertaken.