



CB&I Constructors Pty Ltd

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Subject: **Productivity Commission Review - Improvement Opportunity**

Thank you for the opportunity to suggest opportunities for review that may improve workplace Productivity.

Listed below are matters that could be considered improvement targets. It is understood that in many of the suggestions below, improvement requires involvement and support not only from the Federal Government but also potentially State Governments, Employers and Employees:

- **The Fair Work Act.** Consideration should be given to amending the Fair Work Act (FWA) such that Industrial Agreements for Major Projects can be established with a term that is sufficient to cover the time taken to construct the Project. To be re-negotiating a new Industrial Agreement mid-way through a multi-billion \$ Project is an unnecessary significant disruption which can cause extra costs and uncertainty to a Project and potentially result in the deferral or cancellation of future Projects which will have an adverse impact on Australia's future tax income streams.

Examples of this exist with most of the major LNG Construction Projects around Australia with Industrial Agreement expiring mid-project. In these examples employees may legally take industrial action to further their claims. This is provided for by the Fair Work Act. In these scenarios there are likely to be thousands of employees (estimate >10,000 per project) working on the Project so any industrial action has at least two significant potential impacts:-

- Other Employers, working on the same Project may be stood down due to unavailable work fronts, and



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- The Client who has almost certainly expended many billion dollars on construction being delayed in Project completion.

Overall this will have an adverse impact on attracting further investors to possible future major Projects in Australia.

- **The Fair Work Commission.** A general perception is that the FWC is not an impartial referee – it depends on what Commissioner is appointed and their background i.e. Union or Employer. Improvement is required.

On the few occasions where recourse to the Fair Work Commission has been required different legal firms and practitioners have passed comment about the likelihood of success depending in some part on which Commissioner is listed to hear the matter. The practice of Commissioners being appointed on the basis of their Union or Business background or political affiliations needs to be brought to an end.

- **Employment Legislation.** Compliance with different aspects of employment legislation is onerous on employers and detracts from time that would be better spent identifying improvement opportunities. In terms of reducing this burden some improvement areas that warrant review include:-
  - Simplify the Fair Work Act. 1,000+ pages is excessive.
  - Remove State IR legislation and various Commissions. One set of rules on any one subject is sufficient.
  - Consolidate the various legislation around discrimination and make uniform and consistent across the breadth of Australia
  - The annual gender Equality Report. Compiling this report takes a considerable amount of time to produce results that are essentially already known and not helpful in establishing strategies to improve. The requirement should be simplified to an analysis of gender by applicants correlated with appointments by gender.

As a Company of approx. 4,500 employees (+ 800 sub-contract employees) dealing with the broad range of sometimes complex legislation requires frequent reference to subject matter experts. This is costly and time consuming and typically involves different business unit Managers. Clearly this represents additional costs to business and detracts from time that should be spent on productivity and improvement issues. One example of this is provided below under the heading Adverse Action



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- **Adverse Action.** In the event of an Adverse Action claim by an employee the employer has already lost even when no adverse action has occurred. For example, the cost of a court appearance to the employer is between \$25,000 and \$45,000 per day; by contrast the cost to the Claimant is virtually nil. Accordingly even in the event of a bogus claim it makes commercial sense for the Employer to settle outside of the Court room.

A recent example is an employee whose work performance was below expectations, alleged that he had been bullied. The matter was investigated and resolved with part of the solution being a discussion between the employee and his manager that clarified job requirements. Several months later the employee's performance had not improved to a satisfactory level and the person's employment was terminated. Subsequently the employee made a claim under the General Protections provisions of the Fair Work Act for compensation, claiming that the termination was a result of a claim of bullying being raised several months earlier.

The employer now has to prove that no wrong doing had occurred; that is, the employer is guilty unless it can prove that it is innocent of any wrong doing. Fortunately in this case the employer was able to prove it had acted appropriately. However, in the event that this matter had proceeded to Court then the employer would have faced significant legal costs regardless of the outcome. Knowing this the claimant does not need to outlay much effort or money to defend their position, rather the obvious approach is to wait until just prior to the Court hearing and settle for the best offer they can solicit.

- **Awards.** Professional, technical, management and administrative staff who have a common law contract of employment may have recourse to the Unfair Dismissal provisions of the FWA by virtue of being "covered" by an Award. This scenario is regardless of whether the employees terms and conditions of employment are overall more favorable, and regardless of whether their annual base salary greater than the Income Threshold (Ref. Fair Work Act). This loophole needs to be closed.
- **Long Service Leave Funds in the Construction Industry.** Remove the requirement to contribute to Long Service Leave Funds (Statutory Authorities) for construction workers. There is no rationale for this levy and many workers never get to make a claim. There is also currently limited visibility for stakeholders over how funds in this scheme are allocated and managed.

Personnel working in the Construction Industry know that their employment is on a Project by Project basis. While working on a Project, pay rates are very attractive; typically the standard work week is more than 50 hours so penalty rates make the overall pay even more attractive. Additionally, during the period of employment employees accrue annual leave. Time between Projects varies depending on activity in the Construction Industry and the



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willingness of employees to work away from home. This all adds up to a scenario where employees are looking for some period of time at home and each individual can determine what length of break suits them best. Further, typically employees do not work 10 or 15 years without a lengthy break from work.

An employee, for example a Welder, who worked on any of the major LNG Construction Projects in Western Australia would earn approximately \$160,000 p.a. and the duration of employment could be up to 3 years. Many employees chose to accrue some portion of their annual leave and enjoy a good break at the end of the Project.

If the concept of Long Service Leave is to provide employees with a paid long break after 10 years of continuous employment then this situation does not exist in the Construction Industry as employment is never continuous for 10 years (seldom more than 2 years) and the earnings of these employees provides the opportunity for employees to save money for a voluntary break in work.

Consequently the imposition of a further levy on Employers to contribute to Construction Industry Long Service Leave Funds represents a further cost burden to employers and with very little merit

- **FBT on LAHA.** Effective 1 October 2012 a change in legislation came into effect which severely reduced previous Fringe Benefit Tax (FBT) concessions on Living Away From Home Allowances (LAFHA). This has caused businesses operating in the Construction Industry to incur a great deal of additional costs. Firstly, it has significantly added to the cost of employing Australian labour on construction sites which are not classified as remote areas, adding significant amounts to the cost of construction projects being executed by the business in Australia in the Oil and Gas Sector. In addition it has rendered the cost of employing specialist staff working in professional fields, staff that are not commonly available in the local market, exorbitant and uncompetitive. This has thus reduced workforce mobility and added additional compliance and administrative burdens on the Company.

These additional burdens render the cost of projects that the Company supports less economic and could lead to less opportunities for the Australian economy and in particular the construction industry to grow. It also renders the Company less agile and less able to respond to changes in market dynamics, which is of particular concern given the outlook for the sector of the Australian economy in which the Company operates.



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- **Penalty rates.** Payment of penalty rates provides an unintended incentive to work longer hours. A reduction in penalty rates may reduce the incentive for work to take longer than necessary, and may provide for more jobs by virtue of being more competitive.

A further impact of penalty rates particularly in the Construction Industry is the flow on effect to staff and Supervision. Understandably, if a crew member e.g. a welder, is earning \$180,000 per annum, then the Supervisor would expect to be earning overall more, commensurate with the position's significant additional responsibilities. In turn the Construction Manager is responsible for co-ordination of the Supervisors and accordingly there is an expectation that appropriate salary relativities would be maintained. The need to maintain relativities is a logical argument but does lead to a demand for very high salaries from bottom to top.

The suggestion is not to revert to one flat rate but to wind back the penalty rates, for example, reduce double time to time and a half.

- **Pay for performance.** Current practice is to pay employees for skills that they have and may be required to use on the job. Paying on this basis was part of the introduction of Enterprise Bargaining and in its day was a very positive step forward. The next step should be to structure Industrial Agreements that provide for remuneration to be calculated having regard to performance.

- **Child care.** The cost of child care makes return to work not financially practical for many parents and continues to be a barrier to female participation in the workforce.

Child care costs have risen by 8% per annum since 2008, well above CPI. It is suggested that concrete measures are put in place to reduce child care costs at source such as payment of a means tested subsidy paid direct to the child care provider rather than the current system of child care rebates which adds to inflationary pressures in this sector.

- **Superannuation.** It would be helpful to both employers and employees to have a moratorium on any further changes to Superannuation arrangements.

From an employer's viewpoint administration of Superannuation has become complex and time consuming. Interpretation of Superannuation Legislation can require expert advice.

From an employee's viewpoint regular changes in the legislation particularly around tax on contributions creates uncertainty and anxiety.



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Media reports of the Government looking to salvage the budget deficit by finding a way to draw into individuals Superannuation funds and suggestions around raising the retirement age to 70 years should be squashed.