



HOUSING INDUSTRY ASSOCIATION



Housing Australians



Submission to the
Department of Mines, Industry Regulation and Safety

Ministerial Review of the State Industrial Relations System

8 December 2017

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new housing stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

“promote policies and provide services which enhance our members’ business practices, products and profitability, consistent with the highest standards of professional and commercial conduct.”

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new residential construction and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional member committees before progressing to the Association's National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The Association operates offices in 23 centres around the nation providing a wide range of advocacy and business support.



1. INTRODUCTION

HIA welcomes the opportunity to comment on the Ministerial Review of the State Industrial Relations System (the Review).

As a national association, HIA has members covered by a range of industrial relations laws and instruments both in Western Australia (WA) and in other states. Whilst many of HIA's WA members are covered by the Commonwealth Fair Work Act 2009 (FWA), some 30% of HIA's WA membership operates solely within the jurisdiction of the Industrial Relations Act 1979 (WA) (IR Act) and Minimum Conditions of Employment Act 1993 (WA) (MCE Act).

From the outset, the current state based system is confusing, for small business in particular.

In 2009, the Amendola review recommended combining the patchwork of different industrial relations laws and instruments including the IR Act, MCE Act, the Employment Dispute Resolution Act 2008 (WA) and associated Orders into one Act.¹ This Review is another opportunity to consider a recommendation that would make the system simpler and more efficient.

This Review is also an opportunity to identify a process to modernise, simplify and update the current model of state based industrial awards that cover small unincorporated businesses in Western Australia.

Otherwise, in response to the Review's broad terms of reference, HIA's submission will address:

- The structure of the Western Australian Industrial Relations Commission.
- A review of the definition of "employee" in the IR Act and the MCEA.
- A review of the minimum conditions of employment in the MCEA, the Long Service Leave Act 1958 and the Termination Change and Redundancy General Order.
- Devising a process for the updating of State awards for private sector employers and employees.
- The statutory compliance and enforcement mechanisms.

¹ Review of Western Australian Industrial Relations System Final Report Pg.23



2. TERMS OF REFERENCE

Review the structure of the Western Australian Industrial Relations Commission with the objective of achieving a more streamlined and efficient structure.

In HIA's experience, the current Western Australian Industrial Relations Commission (WAIRC) structure is working effectively.

Review the definition of "employee" in the Industrial Relations Act 1979 and the Minimum Conditions of Employment Act 1993 with the objective of ensuring comprehensive coverage for all employees.

In accordance with HIA's earlier comments, streamlining the legislative framework would resolve the need for duplication of this definition. Otherwise, HIA is unaware of any issues within the residential construction industry with the application or operation of the current definition and considers that the current definition is appropriate.

Review the minimum conditions of employment in the Minimum Conditions of Employment Act 1993, the Long Service Leave Act 1958 and the Termination Change and Redundancy General Order of the Western Australian Industrial Relations Commission to consider whether:

- (a) the minimum conditions should be updated, and***
- (b) there should be a process for statutory minimum conditions to be periodically updated by the Western Australian Industrial Relations Commission, without the need for legislative change.***

HIA supports the simplification and consolidation of the differing industrial relations law and instruments to ensure that the state system is easier to navigate and makes the following specific comments to the terms of reference in response:

Minimum Conditions of Employment

HIA supports the concept of a set of employment entitlements which exist as a minimum safety net for all employees and that are reflective of the current needs of workplaces in WA.

By and large, the minimum conditions of employment in the MCEA and the Termination Change and Redundancy General Order (Redundancy Order) are appropriate and are operating effectively. As such, any change to the current framework must prioritise the needs of small business and simplify the safety net to ensure it provides flexible and fair minimum entitlements.

In considering any changes to the current minimum conditions of employment, it is important that:

- The ability of individual employers and employees to negotiate terms and conditions of employment be retained.
- Management have reasonably managerial prerogative in relation to the determination of working hours.
- Employers and employees should be able to directly agree on the accrual, taking and payment of annual leave.



Long Service Leave

In its review of the *Long Service Leave Act 1958*, HIA considers that the merits and ongoing utility of long service leave (LSL) should be considered in its entirety.

LSL has its origins in the colonial public services of South Australia and Victoria. Historically, it was awarded to employees who had provided long service in the colonies to enable them sufficient time to visit the United Kingdom. As a consequence, Australia is the only country where there is a legislated right to LSL.

A number of rationales have developed over time to underpin the provision of LSL, these being:

- To provide employees with an extended leave of absence in order to renew their energies;
- To reward long and faithful service with an employer; and
- To reduce labour turnover.

Of interest are comments by Senior Deputy President Lacy who questioned the relevance of long service leave in today's environment. The following extract is relevant:

*'It seems that the rationale for a period of respite from a long period of service is no longer a valid assumption. The world today is a much smaller place than it was in colonial times. People are inclined to be far more mobile now than then. In addition to the fading of the tyranny of distance there has been significant change in the pattern of work that raises some questions about the relevance of long service leave as a benefit in employment.'*²

Participants in the residential construction industry must also adhere to a portable long service leave (PLSL) scheme.

PLSL Schemes were established to recognise the unique nature of employment in the construction industry, whereby employees are typically engaged on a project basis and move from employer to employer as one project is completed and another starts. The rationale for PLSL schemes does not exist in areas where traditional employment arrangements are the norm (e.g. where the employees are engaged on an ongoing basis with the one employer).

Key factors that led to the introduction of the relevant PLSL schemes have included:

- The strategic nature of the industry;
- High union density and industrial strength;
- A well-established industry focus; and
- Patterns of employment in the industry.³

² *Office of the Chief Electrical Inspector v the Association of Professional Engineers, Scientists and Managers, Australia and another re Office of the Chief Electrical Inspector Enterprise Agreement 2003-PR942414* [2004] AIRC 7 para 11

³ Discussion Paper 14 (2002) *Long Service Leave in the Building and Construction Industry*, Royal Commission into the Building and Construction Industry.



In respect of the residential construction industry, any review of the conditions set by the LSL Act must be considered within the context of the current portable arrangements.

Powers of the WAIRC

HIA would oppose empowering the WAIRC to periodically update the statutory minimum conditions. If any such review were to occur such a process should be a Parliamentary one with any changes effected through legislation.

Devise a process for the updating of State awards for private sector employers and employees, with the objectives of:

- (a) ensuring the scope of awards provide comprehensive coverage to employees;***
- (b) ensuring awards reflect contemporary workplaces and industry, without reducing existing employee entitlements;***
- (c) ensuring awards are written in plain English and are user friendly for both employers and employees; and***
- (d) ensuring that any award updating process is driven by the Western Australian Industrial Relations Commission, with appropriate input from the award parties and other relevant stakeholders.***

In principle, HIA supports the development of a process to review and update the State awards.

For instance, the State award relevant to the residential construction industry, the *Building Trades (Construction) Award 1987* (Building Award) has not been substantially reviewed in some time.

However, HIA strongly urges against modelling or basing any review or modernisation exercise on the 'modern award' process adopted federally.

The federal award modernisation and subsequent legislated reviews under the FWA, has resulted in little positive change to the substance of the awards. Modern Awards continue to include archaic terms and overly complex award conditions that are difficult for employees and employers to follow or understand.

Further, the current legislated ('4 year review') structure for reviewing Modern Awards under the FWA is time consuming and overly burdensome.

Any review should facilitate genuine 'modernisation', with the content of the awards simplified to form a basic set of industry specific minimum employment conditions.



Within that context and the desire to ensure awards ***reflect contemporary workplaces and industry*** and ***ensuring awards are written in plain English and are user friendly for both employers and employees*** HIA would highlight the following two areas of the Building Award in need of reconsideration:

- Provisions that place restrictions on casual employment.
- Provisions that place limitations on the engagement of apprentices.

Any state based award review must also prioritise the needs of small business and heavily involve stakeholders and award parties who are intimately familiar with the operation of their industry.

Review statutory compliance and enforcement mechanisms with the objectives of:

- ensuring that employees are paid their correct entitlements;***
- providing effective deterrents to non-compliance with all State industrial laws and instruments; and***
- updating industrial inspectors' powers and tools of enforcement to ensure they are able to effectively perform their statutory functions.***

HIA is unaware of any issues in the residential construction industry with the operation and application of the current compliance and enforcement mechanisms. As such, HIA would be opposed to any change to the current arrangements.