

# SHOPFITTER INFORMATION KIT

## PRINCIPAL CONTRACTORS / SHOPFITTERS

### AFTER HOURS WORKS NOTIFICATION FORM

<b>Site:</b>			
<b>Site Times:</b> <b>Or as modified by consultation and agreement)</b>	Monday to Thursday	7.00am to 5.30pm	
	Friday	7.00am to 3.30pm	
	Saturday	7.00am to 3.30pm	
	Sunday	No Work	
	After Hours	72 hour notification required.	
	<b>Company:</b>		
<b>Contact Details:</b>	Name:		
	Phone:	Mobile:	
<b>Tenancy:</b>		Shop No:	
<b>Tenants Shopfitter:</b>			
<b>Contact Details:</b>	Name:		
	Phone:	Mobile:	
<b>Task Specific Safety Items:</b>	Activity/Task:		
	SWMS Developed:	YES   NO   N/A	SWMS Toolboxed: YES   NO   N/A
	Haz Subs:	YES   NO   N/A	Dangerous Goods: YES   NO   N/A
	MSDS/s Available:	YES   NO   N/A	PPE Required:
	First Aider Details:		
	First Aider Details:		
<b>Date/s of Works:</b>			
<b>Hours Of Work:</b>	AM / PM (please circle)		AM / PM (please circle)
<b>Number Of Persons:</b>			

# SHOPFITTER INFORMATION KIT

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Note: Please note that additional Probuild personnel may be required in attendance as a result of your after hours notification (e.g. foreperson, first aider, labourer, security) in which case costs may apply, however this will be assessed

# Appendix H

## Probuild's WRMP

# Workplace Relations Management Plan— IRD and Tower 4, Queen’s Wharf Brisbane

18 SEPTEMBER 2018



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# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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## OVERVIEW OF INDUSTRIAL RELATIONS MANAGEMENT SYSTEM AND THE WRMP

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This Workplace Relations Management Plan (**WRMP**) provides the framework to ensure that all Probuild (the **Company's**) stakeholders can work together in an environment that promotes:

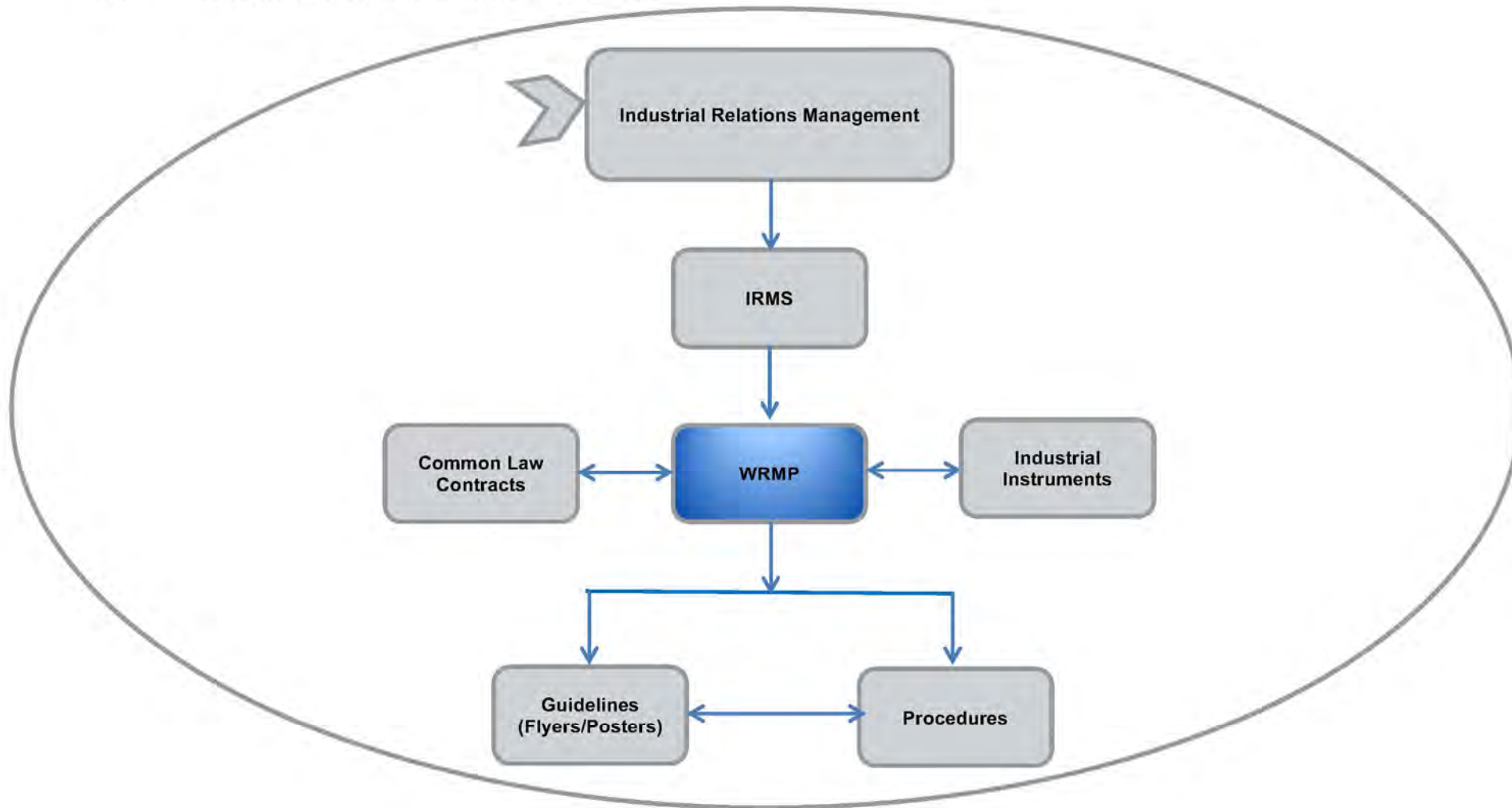
- Compliance with the building laws and encourages the development of safe, healthy, fair, lawful and productive building site practices for the benefit of all;
- Increased efficiency and cost savings and;
- Increased likelihood of timely and cost-efficient delivery.

Together this document, the Company's Policy, industrial instruments, procedures and guidelines, make up Company's Industrial Relations Management System.

The Industrial Relations Management System is subject to continual improvement practices and ongoing review. Outcomes of management reviews shall be reflected within the system where appropriate

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

## 1.0 INDUSTRIAL RELATIONS MANAGEMENT SYSTEM



# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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## **2.0 ADMINISTRATION**

### **2.1 Roles pursuant to the effective management of the Project's WRMP**

#### **2.1.1 State MD and Construction/Project Director**

The role of the State MD and Construction/Project Director will be to:

- Oversee the implementation of the IRMS, including WRMP;
- Collaborate with all parties on issues regarding to the WRMP;
- Make sufficient resources available for implementation of the IRMS, including WRMP;
- Collaborate with the HR/IR Manager to ensure that the WRMP is followed;
- Communicate with the workforce to ensure that they are aware of IR requirements and developments and progress on the Project
- Communicate any potential IR issue with the Client and relevant government body with the HR/IR Manager.

#### **2.1.2 HR/IR Manager**

The role of the HR/IR Manager is to:

- Provide advice on implementation of the WRMP;
- Advise the Construction Director and Project Director of any safety issue that may impact the Project.
- Develop strategies with the Construction Director and Project Director to maintain effective communication with the workforce;
- Advise updates to the WRMP to reflect any changes in circumstances on the Project;
- Responsible for monitoring and delivering labour productivity and compliance with the 2016 Code;
- Make the Construction Director and Project Director aware of any issues on the Project that may pose a threat to progress;
- Assist with the recruitment of workforce and staff;
- Provide advice with respect to implementation of any applicable awards and enterprise agreements/industrial instrument;
- Maintain all compliance records; and
- Assist in communicating any potential IR issue with the Client and relevant government body.

#### **2.1.3 Construction//Project Director**

The role of the Project Director is to:

- Be responsible for the project management and operations staff implementing the WRMP in their construction activity areas through Weekly Subcontractor Meetings, Tool Box Talks and Audits;
- Work with the HR/IR Manager develop ways to ensure the WRMP is followed;
- Work with the HR/IR Manager to manage and influence IR issues including grievance, that may affect the Project;
- Communicate any potential IR grievance to the Construction Director and HR/IR Manager; and
- Monitor Subcontractor compliance with the WRMP.

#### **2.1.4 Contracts Administrator/ Project Coordinator**

The role of the Contracts Administrator / Project Coordinator is to:

- Ensure that all subcontractor documentation reflects the requirements of the Company and the governments IR Guidelines;
- Maintain records of Subcontractor compliance; and
- Keep a register of Subcontractor Enterprise Agreement FWA Approval Certification, where applicable.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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## 2.1.5 Site Manager

It is the responsibility of the Site Manager to:

- Ensure that work is executed in accordance with the relevant contract agreement and the requirements of the enterprise agreement/industrial instrument;
- Communicate with the workforce on the project to ensure efficient and productive work practices are being utilised and maintained; and
- Advise the Construction Director and Project Director of any issue that can impede progress on the Project. .

## 2.1.6 HSE Manager

The role of the HSE Manager will be to:

- Monitor the project to ensure that there is conformance with the HSE Management Plan; and
- Work closely with the project team to assist with any HSE related matters.

Please refer to Appendix One for a current organisation chart for the Project.

## 2.2 Relationship Management and Communication Protocol

A clear and consistent communication protocol between all parties is essential on this Project to ensure relationship management with employees, subcontractors and officers, delegates and other representative.

Authorised users will have access to the Aconex web based communications and documentation database tool for use on the Project. In addition regular meeting will be undertaken with all key stakeholders, including the monthly project control group meeting with the client.

The Company uses Aconex for document management and communication on all projects for the entire Project Team. We will implement the Aconex Document Management System as the primary method of transferring and tracking all Design and Construction documents including correspondence and controlled documents such as the Project Brief, Design Drawings, Schedules and Specifications, Programs and Samples.

This web based project collaboration system is designed to enhance the communication platform across all disciplines involved in the successful delivery of our projects. Projects specific requirements will be established at the commencement of the Project to ensure the agreed communication protocols complement our client and contract obligations.

In using Aconex, standard forms will be provided, workflows will be established which pre-determine the distribution of documents for issue and review, including protocols for authorising outgoing communications.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

## 3.0 PROJECT RISK ASSESSMENT & PROJECT HISTORY

The below risk matrix identifies activities that may occur throughout the life of the project, identifies the potential risk of those activities and the control measure that will be put in place to manage risks accordingly.

The risk profiling below has been developed from experience of managing industrial relations on many projects and lessons which have been learnt.

Level	Severity		L <i>Likely</i>	M <i>Moderate</i>	U <i>Unlikely</i>
<b>H (H)</b> <i>(High level of harm)</i>	Potential Impact on site productivity considered high	<b>H (1)</b> <i>(High)</i>	1	1	2
<b>M (M)</b> <i>(Medium level of harm)</i>	Potential impact on site productivity considered minor	<b>M (2)</b> <i>(Medium)</i>	1	2	3
<b>L (L)</b> <i>(Low level of harm)</i>	Potential impact on site productivity considered relatively low	<b>L (3)</b> <i>(Low)</i>	2	3	3
Level	Likelihood / Probability				
Likely	It could be expected that the event would occur during the project.				
Moderate	It is not expected that the event would occur during the project.				
Unlikely	Conceivable but highly unlikely to occur during the project.				

Activity	Potential Risk	Level of Risk on Project L, M,H	Overarching Responsibility	Risk Management measures/actions
Asbestos	Asbestos-containing material is uncovered on the Project and has the potential to cause project disruption.	M	Construction Director	Asbestos issues will be handled in accordance with the Company's HSE System. All parties on the Project will observe those procedures and isolate effected areas and rectify matters as quickly as possible

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Activity	Potential Risk	Level of Risk on Project L, M,H	Overarching Responsibility	Risk Management measures/actions
Change in federal government	A change in government could precipitate a change in federal industrial legislation that could lead to change in employee conditions and the potential for disruption on the project.  This could lead to the unions targeting government funded projects		HR/IR Manager	If Union Right of Entry et al changes, the Company will comply as required under relevant legislation and provide information sessions and ongoing support to all affected staff.
Enterprise Agreements	There is a potential that subcontractors may engage in enterprise bargaining negotiations with unions on the project if their agreement term has ended. This may have the potential to cause industrial action between the parties.	M	HR/IR Manager	Where industrial issues or potential disputes arise between individual subcontractors and or unions regarding enterprise agreements, such matters will be resolved on a case-by-case basis.  The Company will assist to manage the process to ensure no disruption on the Project.
Inclement Weather	Processes dealing with Inclement weather conditions (as defined) not being followed correctly.		Construction Director/ HR/IR Manager	Working in accordance with the Inclement Weather conditions of the enterprise agreement/industrial instrument and its consultative requirements.
Industry issues	Union campaigns over particular issues can impact upon the project industrial relations' management and must be considered		Construction Director/ HR/IR Manager	The Company ensures regular attendance at the relevant State Alliance Safety Meetings.  The Company's in-house Consultative Committee meet regularly to discuss industry issues and contingency plans relevant, when necessary.
IR Compliance	Non-compliance of employers and employees with their industrial instruments resulting in potential disputation.	M	Construction Director/ HR/IR Manager	The Company requires IR compliance as a condition of contract for those it engages. Subcontractors

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Activity	Potential Risk	Level of Risk on Project L, M,H	Overarching Responsibility	Risk Management measures/actions
				<p>who are deemed non-complaint will be in breach of their contractual obligation.</p> <p>IR compliance is reviewed at weekly site meetings, where it appears as an ongoing agenda item, it is additionally reported on at all Project Control Group Meetings.</p>
Material Unloading	The location of the works and the movement of materials has the potential to cause traffic disruption.		Construction Director	<p>Material unloading areas have been allocated on the project, and the Project's Traffic Management Plan provides for the safe movement of vehicles associated with the project.</p> <p>All delivers are to be scheduled with the Company's Management providing a minimum of 24 hours' notice.</p>
RDO calendar	RDO calendar is not been followed.	L	HR/IR Manager	A common calendar will be provided on the Project in accordance with our contractual arrangement with those subcontractors engaged.
Redundancies	If any employer has to undertake redundancies this has the potential to lead to industrial unrest.	L	HR/IR Manager	Redundancies will be managed in accordance with industrial instrument and relevant legislation.
Safety	There is a high correlation between industrial relations and safety related issues.	L	Construction Director/ HR/IR Manager	<p>This will be managed in accordance with the relevant industrial agreement and appropriate legislation.</p> <p>All parties to the Project will be required to observe the relevant Procedures and isolate affected areas.</p>

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Activity	Potential Risk	Level of Risk on Project L, M,H	Overarching Responsibility	Risk Management measures/actions
				Where appropriate, where safety issues have arisen, and resolve the matters between the parties in a timely manner.
Wage disparity and alleged underpayment of wages	Workers on construction projects can be paid different rates, essentially when they are undertaking the similar roles. This could lead to wage claims.	M	HR/IR Manager /Commercial Manager	<p>The Company requests that all its tenderers complete a Tenderer Questionnaire to ensure that all those engaged on the Project are paid in accordance with their award/legislative requirements.</p> <p>The Company ensures that these requirements are met by requesting a Statutory Declaration each month from Subcontractors (and Secondary Subcontractors), providing this confirmation.</p>

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

## 4.0 INDUCTION

The Company's Site Safety Induction provides the requirements relating to these inductions including:

- – Construction Industry General OHS Induction
- – Site Safety Inductions
- – Visitor Inductions

It provides that the Site Safety Induction must be undertaken by a member of the Company's site management, who has completed the Company's Delivery of Induction Training (Inductor).

At the end of the induction the Inductor to provide the following spiel to Subcontractors:

The Site Safety Induction is now completed. If anyone wants to remain in the induction room to speak to their employee representative they are able to do so provided that it is in accordance with *Part 3-4 of the Fair Work Act 2009 (Cth)* or the *Work Health and Safety Act 2011 (Qld)*. We confirm that this site is a Building Code 2016 site and we protect Freedom of Association by ensuring that persons are:

- a. free to become, or not become, members of building associations; and
- b. free to be represented, or not represented, by building associations; and
- c. free to participate, or not participate, in lawful industrial activities; and
- d. not discriminated against in respect of benefits in the workplace because they are, or are not, members of a building association.

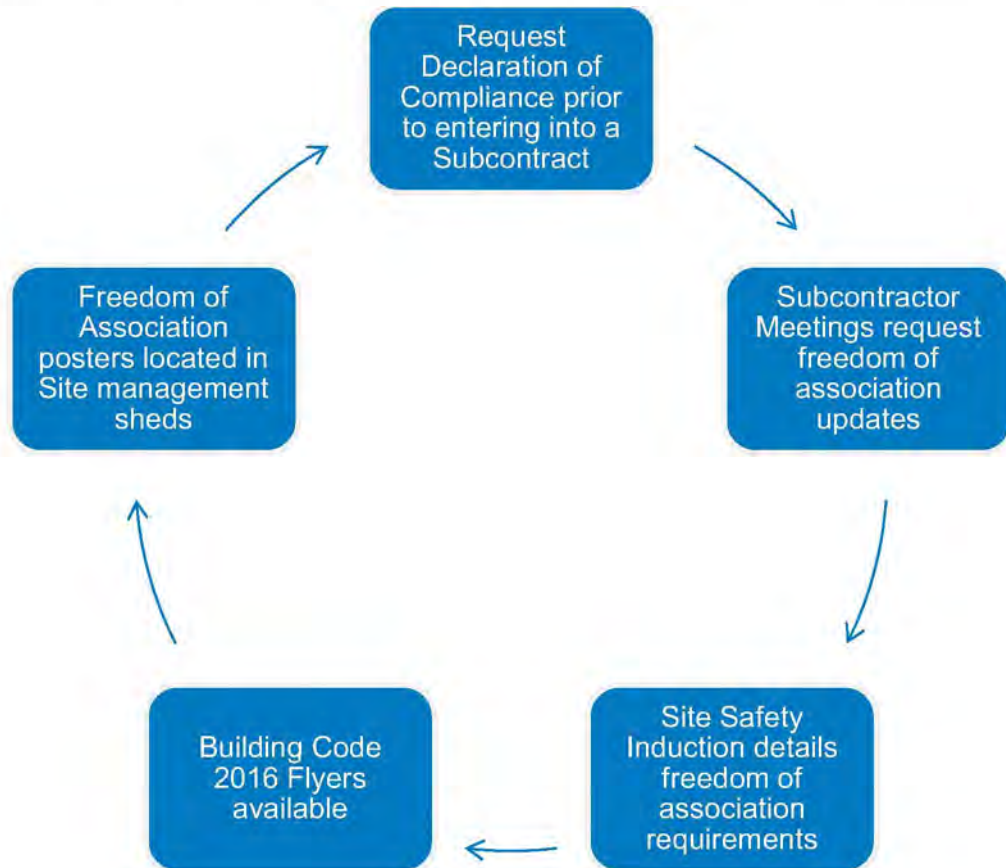
Site management are to remain in induction room until any subcontractor wishing to leave has left, to ensure that the Building Code 2016 principles are reinforced. Site management to provide availability to those who wish to speak to their employee representative.

The above process eliminates the occurrence of an official, delegate or other representative of a building association undertaking or administrating the induction process (unless there is a requirement in an existing enterprise agreement), and ensure that 'secondary' inductions conducted by representatives do not occur.

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## 5.0 COMMUNICATION

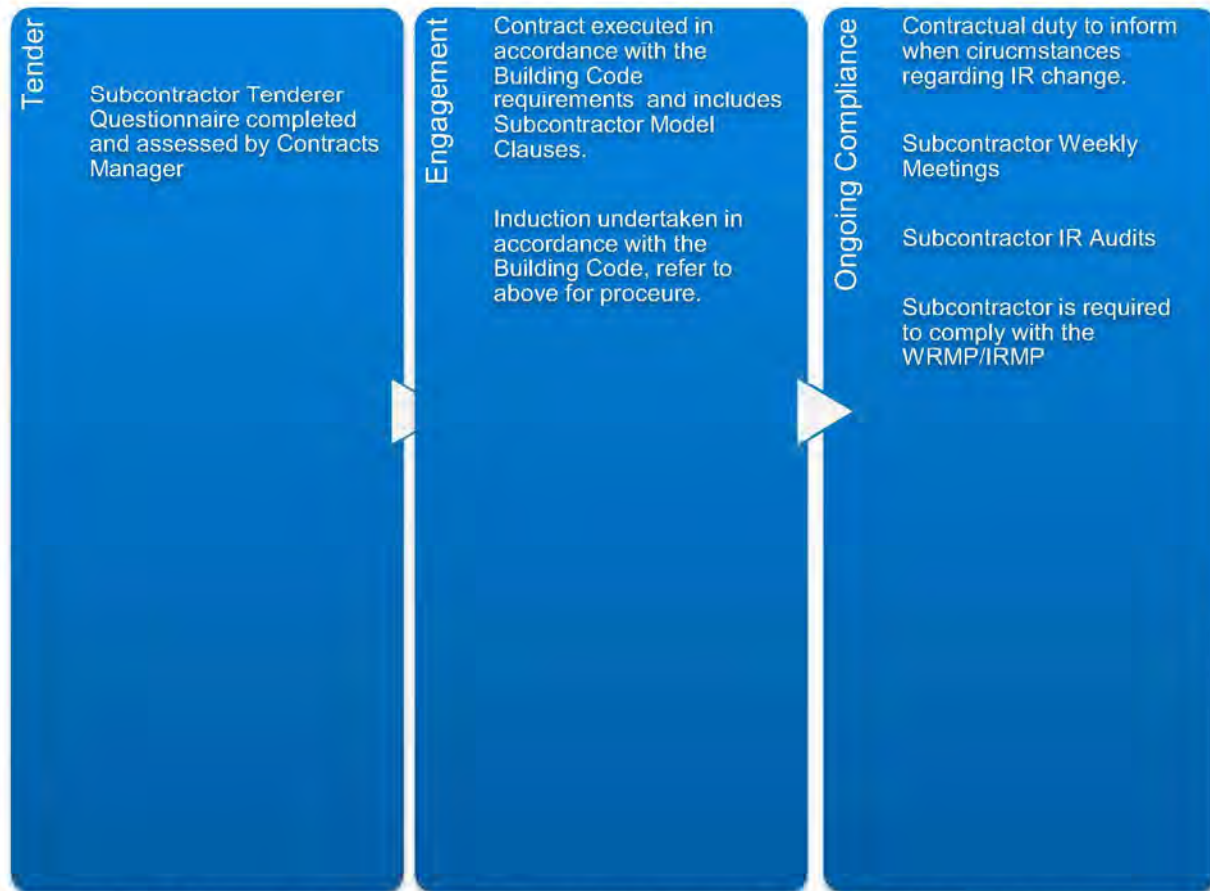
The following graph outlines how the Company will communicate the requirements of the Building Code to contractors and building industry participants. This is further detailed throughout this WRMP.



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## 6.0 SUBCONTRACTOR MANAGEMENT

Tenderers/Subcontractors are managed through its tendering and terms of engagement requirements, as displayed below.



At Tender Stage Tenderers are provided with key probity requirements and details its Industrial Relations' requirements specific to the job. A Tenderer's industrial relations' compliance is assessed using the Tenderer Questionnaire as a tool, which can be found in Appendix Two to this WRMP. This tool requires a subcontractor to demonstrate a sound industrial relations record, and ability to manage its own workforce. This ensures that subcontractors are not discriminated against during the engagement process, as wages rates and entitlements are not provided.

At engagement the Company's Subcontract is the tool which utilised to ensure effective IR management. Below is an example of some of the Company's contract conditions that exemplifies this requirement:

Requirement	Subcontractor Requirement
Dispute Resolution	<p>All subcontractors engaged under the Company's Subcontract Agreement must follow its disputes clause, which requires a senior manager of each party to meet to attempt to resolve any dispute within 5 days of the dispute occurring.</p> <p>If the issue is unable to resolved, the Executive Officers of the parties must attempt resolution within 20 days of the dispute, and only after this has occurred, is the dispute permitted to go to litigation.</p>
Consultation, Co-operation and Co-ordination	<p>Subcontractors are required to consult, co-operate and co-ordinate activities with the Contractor, any suppliers or contractors or other persons engaged in or associated with the Subcontract Works:</p> <ul style="list-style-type: none"> <li>(i) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and</li> </ul>

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

- (ii) to enable the Head Contractor and the subcontractor and other parties to comply with their respective obligations under the Legislative and Industrial Requirements.

Delays and Extension of Time	<p>If a subcontractor considers that there is a delay in the Subcontract Works it must immediately inform the Contractor to be eligibility for an EOT. This ensures that delays are notified to the Contractor as soon as possible to ensure rectification.</p> <p>Additionally, the Subcontract Agreement provides for subcontractors in these circumstances to provide additional resources, with no claim entitlement, if they have caused the delay, to accelerate the programme.</p>
Key Personnel	If subcontractor key personnel are not performing in accordance with the Subcontract, the Company has the contractual right to have key personnel replaced for those who meet the inherent requirements of the position.
Audit	Requirement that the subcontractor may be audited on the Building Code.

Breach of a requirement under Subcontract Agreement requires the subcontractor to show cause as to why the breach has occurred, and rectify the breach. If subcontractor personnel are not performing in accordance to the Subcontract, they are required through due process, to be replaced with person(s) holding the same skill as his/her counterpart.

## 7.0 LABOUR PRODUCTIVITY

The Company has a variety of mechanisms in place to ensure that the labour productivity's objectives.

The Company recognises productivity barriers and has required processes and systems in place to ensure the appropriate outcomes, some of which are detailed below:

Productivity Barrier	Measurement Tool	System in place to ensure Labour Productivity
Unsafe Work Practices	<ul style="list-style-type: none"> <li>– Work stoppages;</li> <li>– Safety incidents;</li> <li>– Lost Time Injuries;</li> <li>– Industrial unrest</li> </ul>	<p>All projects are required to have a dedicated Environmental Health &amp; Safety Management Plan before commencement on Site, and is monitored by weekly audits and toolbox talks. Proactive management of OHS is key to improving productivity.</p> <p>This requirement is extended to subcontractors and secondary subcontractors.</p>
Extended periods of Personal Leave	<ul style="list-style-type: none"> <li>– Lost Time Injuries</li> <li>– RTW and Worker's Compensation data</li> <li>– Absenteeism</li> </ul>	<p>It is a requirement for all subcontractors, that whenever a subcontractor is injured on site, their senior representative must accompany the individual to the required medical consultation. This ensures that the employer is involved from the very beginning, ensuring the best care and recovery for their employees.</p> <p>As a result of its effective management our Worker's Compensation rate is below the industry rate average.</p>
Coordination Issues	<ul style="list-style-type: none"> <li>– Weekly Programme Assessment by Programming Team</li> <li>– Monthly, Quarterly and PCG Reviews</li> </ul>	<p>Where necessary on a project, BIM Modelling will be implemented to ensure effective coordination.</p> <p>Our Subcontract requires subcontractors to coordinate their works with others on Site (as managed by the Company), and this is accounted for in their Contract Sum at Tender Stage.</p>
Delays	<ul style="list-style-type: none"> <li>– Weekly Programme Assessment by Programming Team</li> </ul>	Our Enterprise Agreement/industrial instrument provides for mechanisms where increased productivity is required, including the ability to undertake overtime and work on RDOs.

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	<ul style="list-style-type: none"> <li>– Monthly, Quarterly and PCG Reviews</li> </ul>	<p>Additionally, the Subcontract Agreement provides for subcontractors in these circumstances to provide additional resources, with no claim entitlement, if they have caused the delay.</p>
Potential Subcontractor Insolvencies	<ul style="list-style-type: none"> <li>– Monthly, Quarterly and PCG Reviews</li> </ul>	<p>Our Tenderer Questionnaire provides a due diligence assessment of its potential subcontractors.</p> <p>Once awarded subcontractors are required to statutory declare each month prior to progress payment that they have paid all employees and secondary subcontractors' wage rates in accordance with their nominated industrial instrument.</p>
Industrial Issues	<ul style="list-style-type: none"> <li>– In-house Industrial Action Site Reporting Requirements (this includes reporting for disputes, industrial action, complaints and is monitored by the HR/IR Manager)</li> </ul>	<p>Our Enterprise Agreement/industrial instrument ensures productivity in the workplace is achieved.</p> <p>Major issues such as Working Hours and Overtime, Inclement Weather and Dispute Resolution, are clearly defined and agreed by all parties, ensuring there is no unwanted industrial action pursuant to workplace conditions.</p>
Fatigue/Stress	<ul style="list-style-type: none"> <li>– In-house Work and Life Balance Reports</li> </ul>	<p>We are the only construction company to have won the Federal Government's National Work-Life and Balance Awards.</p> <p>Our commitment to Work-life-Balance ensures that we maintain our reputation as hard working, reliable, profitable and growing construction business, while we assist our people to achieve a satisfactory life balance through access to flexible work practices, well-being initiatives and workplace culture which is respectful and supportive of outside commitments.</p>
Skill Shortage	<ul style="list-style-type: none"> <li>– In-house Performance and Development Review Process</li> <li>– Project Training Management Plans</li> <li>– Induction details;</li> <li>– Safety Walks</li> </ul>	<p>We promote training and development through its biannual performance and development reviews, training and quarterly Information Day seminars.</p> <p>Our Subcontract Agreement requires all workers on site to have the adequate skill (including licensing and certification), to perform their task. This is monitored at induction, safety walks and audits. Additionally, if a subcontractor employee is considered not suitable to perform a task, we have the contractual right to request change in personnel, without effecting productivity.</p>

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## 8.0 MEASUREMENT OF PRODUCTIVITY

We use a variety of tools to measure labour productivity and performance. Details of each indicator are explained below:

Activity	Measurement Tool Description
Safety Reporting	<ul style="list-style-type: none"> <li>– Safety reporting is undertaken at Site level by the Site Manager to ensure that we have a true understanding of safety performance on its Project.</li> <li>– Safety data is collated at Head Office and analysed to identify incident trends and then implement appropriate action</li> </ul>
Programme	<ul style="list-style-type: none"> <li>– We will prepare a weekly review of all programme tasks planned against actual. This will clearly demonstrate to the Client actual performance against the baseline programme and physical work completed.</li> <li>– Monthly Programme Reviews: a Programmer attends site to ensure that all activities are meeting programme requirements.</li> <li>– ERP system reporting ensures that the amount of monies paid to the subcontractor is equivalent to the percentage of the programme achieved to date. This is assessed prior to every monthly subcontractor progress claim being paid.</li> </ul>
Performance and Development Review (PDR) and Training Management Plans	<ul style="list-style-type: none"> <li>– PDRs and Training Management Plans provide training gap analysis. This is where skill requirements/needs are identified and met, to increase individual performance.</li> </ul>
Industrial Reporting	<ul style="list-style-type: none"> <li>– The Industrial Relations Reporting Requirements Procedure requires all sites to report to the Group HR/IR Manager, on the same day of occurrence:               <ul style="list-style-type: none"> <li>– if they been affected or has the potential of being affect by Industrial Action (Protected or Unprotected);</li> <li>– incidents/complaints which constitute a breach or suspected breach of an individual's right to freedom of association, is coercive or discriminatory;</li> <li>– an alleged breach of right of entry;</li> <li>– been engaged in communication with the ABCC, CMG (or other relevant entity) either due to a site visit, telephone conversation or any other correspondence.</li> </ul> </li> </ul>

All the above indicators are reported to the Construction Executive Group monthly, at a minimum. Where measurements display a fall in productivity, the systems discussed in Section 11 are implemented/enhanced.

## 9.0 ENGAGEMENT OF DIRECT LABOUR

### 9.1 Recruitment of Direct Labour

The Company's direct labour is hired in accordance with its Enterprise Agreement, provided in Appendix Four. Management of unsatisfactory employee performance is undertaken pursuant to this agreement.

The Company's future direct labour is sourced from our previous employee database of known suitable employees that align with the Company's culture of teamwork, communication, integrity and excellence. A thorough interview process is undertaken and appropriate reference checks are made to ensure the prospective employee's suitability.

Once a short list has been determined, the Company's conducts a pre-employment medical to ensure their suitability for the position and their safety at work. To guarantee equal opportunity and anti-discrimination, pre-employment medicals are related specifically to the particular duties and responsibilities, of the role and identify attributes required for the job that are reasonable in all circumstances.

As a minimum the Company requires all its direct labour employees to have attained the following qualifications:

- Construction Induction Card;
- HSE Training;
- License to perform high risk work (where task required);

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

In situations where there may be a skill shortage for direct labour, our industrial agreement provides for options to engage supplementary labour where required.

It is intended that the Company will attempt to fill vacancies from construction workers who live in the region of the project. However at all times the primary consideration (subject to availability) will be skills, experience and compatibility with Company workplace requirements.

It is envisaged that some Company employees from existing projects will from time perform work on the Project. That will be determined by the Construction Director/Construction Director.

## 10.0 FREEDOM OF ASSOCIATION

Freedom of Association laws allow people to choose whether or not to join a union.

These laws provide protections from discrimination and victimisation due to membership or non-membership of a union.

Subcontractors working on Project site must also uphold laws relating to freedom of association.

The examples below are of conduct deemed to be inconsistent with freedom of association principles under the Building Code.

- ‘If you don’t participate in the stop work we will ban you from the site’
- ‘No ticket, no start’ signs, or other notices such as posters, helmets, stickers or union flags etc. implying that union membership is anything other than a matter for individual choice
- ‘Show card’ days
- Signs that seek to vilify or harass employees who participate, or do not participate, in industrial activities
- Employers unlawfully encouraging or discouraging employees to join a union
- Refusing to employ or terminating an employee’s employment because of their union status
- Induction forms requiring the employee to identify their union status
- Forms requiring employers and contractors to identify the union status of employees or subcontractors
- Any other practices that require either directly or indirectly a person to disclose whether or not they are a member of a union
- Requiring the employment of non-working union Shop Stewards
- Union logos, mottos or indicia on clothing, property or equipment supplied by, or which provision is made for by the employer or any other conduct which implies that union membership is anything other than an individual choice for each employee
- Officials, delegates, or other representatives of a union undertaking or administering site induction processes
- Dealing with ‘personal information’ in breach of the *Privacy Act 1988* or the FW Act

In some cases the above conduct may be expressly permitted, required or authorised by law or an industrial instrument registered or approved by the Fair Work Commission or one of its predecessors (or the conduct would necessarily be linked to a person’s compliance with an industrial instrument). In such cases, then compliance with the law of term of a registered industrial instrument will not render a person non-compliant with the Building Code.

We ensure we uphold Freedom of Association principles on the Project including by regularly reminding all on site of these principles at tool-box meetings.

## 10.1 Discrimination

It is unlawful to discriminate against an employee, a contractor or a person because, amongst other things, they:

- intend to become a union officer, member or delegate
- choose not to take out membership with a union or becomes a union member
- have refused to support, or do not participate in, industrial action
- are entitled to the benefit of an industrial award, registered agreement or order of an industrial tribunal governing their employment conditions

The FW Act and BCI Act also includes obligations not to take ‘adverse action’ against a person because they are entitled to the benefit of a workplace instrument, such as a modern award or industrial agreement.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

## 10.2 Anti-discrimination laws will be upheld on the Project.

Item	Prohibition/Requirement	Building Code 2016
<b>General prohibition</b>	A code covered entity must not engage in conduct, or implement a procedure or practice (howsoever described) in respect of building work which has, or is likely to have, any of the effects described in subsections 11(1) or (3) if the conduct, practice or procedure was contained in an enterprise agreement. This includes arrangements or practices that are inconsistent with freedom of association requirements set out in section 13.	<b>Section 11(4)</b>
	Note exception in section 11(5) which clarifies that this general prohibition does not apply if the conduct etc. is expressly permitted or required by a Commonwealth industrial instrument (enterprise agreement). See section 11 for prohibited content in enterprise agreements made on or after 2 December 2016.	<b>Section 11(5)</b>
<b>Policies</b>	Contractors must adopt and implement policies and practices that: ensure that persons are: (i) free to become, or not become, members of a building association; and (ii) free to be represented, or not represented, by building associations; and (iii) free to participate in, or not participate in, lawful industrial activities; and (iv) not discriminated against in respect of benefits in the workplace because they are, or are not, members of a building association.	<b>Section 13 (1)</b>
<b>Personal information</b>	Contractors must ensure that personal information is dealt with in accordance with the <i>Privacy Act 1988</i> and the <i>Fair Work Act 2009</i> . Contractors may not provide the names and details of those that they propose to engage or employ to third parties, other than in strict compliance with the law (or relevant enterprise agreement).	<b>Section 13 (2) (a)</b> <b>Paragraph 98 Explanatory Statement</b>
<b>Union membership</b>	Contractors must ensure that 'no ticket, no start' signage or similar, is not displayed, that 'show card' days do not occur, and that no other conduct occurs which implies that union membership is anything other than a matter for individual choice, including encouraging or discouraging a person from becoming, or remaining, a member of a building association. Contractors must ensure that practices that are not authorised by law which require, directly or indirectly, a person to disclose whether or not they are a member of a building association, are not engaged in.	<b>Section 13 (2) (b) (d) (g) (j)</b> <b>Section 11(3)(n)</b>
<b>Inductions</b>	Contractors must ensure that officials, delegates or other representatives of a building association do not undertake or administer induction processes.	<b>Section 13 (2) (p)</b> <b>Paragraph 98 Explanatory Statement</b>

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Item	Prohibition/Requirement	Building Code 2016
	Site management is responsible for undertaking inductions processes which are a non-delegable duty. Contractors must also ensure 'secondary' inductions are not conducted by representatives of building associations.	
<b>Discrimination</b>	Contractors must ensure persons are not discriminated against or disadvantaged in respect of benefits in the workplace because they are, or are not, members of a building association. Contractors must ensure that elected employee representatives are not discriminated against or disadvantaged.	<b>Section 13 (1) (a) (iv) (2) (e)</b>
<b>Signs</b>	Contractors must ensure that signs that seek to vilify or harass employees who participate, or do not participate, in industrial activities are not displayed.	<b>Section 13 (2) (c)</b>
<b>Freedom of choice</b>	Employees must be provided freedom of choice in deciding whether to be represented in grievance or dispute procedures (whether or not pursuant to an enterprise agreement), and, if so, by whom.	<b>Section 13 (2) (o)</b>
<b>Forms</b>	Contractors must not use any form which requires an employee to identify their union status, nor should they require that subcontractors identify the union status of their employees or subcontractors.	<b>Section 13 (2) (f)</b>
<b>Refusal to employ or terminate</b>	Contractors must not refuse to employ or engage an individual or terminate an employee or subcontractor because of their union status.	<b>Section 13 (2) (h) (i)</b>
<b>Reasonable request by delegate to represent</b>	Contractors must not refuse a reasonable request from a workplace delegate to represent employees in relation to grievances and disputes or discussions with a member of a building association.	<b>Section 13 (2) (k) (o)</b>
<b>Non-working shop steward</b>	Contractors must not employ a non-working shop steward or job delegate. Contractors must not permit the imposition, or attempted imposition, of a requirement for any employer on site to employ a non-working shop steward or delegate or to hire an individual nominated by a union.	<b>Section 13 (2) (l) (m)</b>
<b>Logos and indicia</b>	Contractors must ensure that building association logos, mottos or other indicia are not applied to the employer's property or equipment, or to clothing supplied or provided for by the employer.	<b>Section 13 (2) (j)</b>
<b>Bargaining Fee</b>	Contractors must ensure that individuals are not required to pay a 'bargaining fee' (howsoever described) to a building association of which the individual is not a member, in respect of services provided by the association.	<b>Section 13 (2) (n)</b>

Freedom of Association initiatives that will be implemented on the Project include:

- The requirement of Freedom of Association will be highlighted in the Project's Induction Procedure, including explanations of what does not constitute Freedom of Association;

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

- The Site Safety induction highlights the requirements of Freedom of Association;
- Audits undertaken for, Freedom of Association principles, ensuring that inductions are undertaken by site management and that there is no evidence of propaganda on the Project;
- Encouraging the reporting of Freedom of Association non-compliance at the Company’s weekly subcontractor meetings. Code Compliance will be a regular agenda item at the Project’s weekly subcontractor meetings and Freedom of Association requirements will be toolboxed accordingly;

Where audits reveal that Freedom of Association requirements are not being complied additional project specific training is undertaken on the relevant Site. Disciplinary action may also be undertaken.

## 11.0 ENTRY TO PREMISES

All staff and subcontractors are provided with the Company’s Right of Entry Procedure displayed below:

### 11.1 Requirements

Reason a union official may enter	Purpose	Notice period required	Also...
Hold discussion with members or potential members  (s484 of Fair Work Act 2009)	Industrial	At least 24 hours but not more than 14 days.  (on request must also produce the notice on entry)	Must have Fair Work Entry Permit  Can only do this during meal times or other breaks  Permit holder must conduct interviews or hold discussions in the rooms or areas of the premises agreed with the occupier of the premises. If the permit holder and occupier cannot agree on the room or area to hold discussions or interviews, the permit holder may hold discussions or interviews in rooms where persons take meal or other breaks.
Investigate suspected breaches of:  FW Act, an industrial instrument  (s481 of Fair Work Act)	Industrial	At least 24 hours but not more than 14 days.  (on request must also produce the notice on entry)	Must have Fair Work Entry Permit  Notice must describe details of suspected breach  Site occupant may direct them to follow a specific route to do this.
Investigate suspected breaches of the OHS Act	OHS	No prior notice, but must give occupier notice as soon as practicable on entry.	Must have federal and state entry permits  Notice must describe suspected breach of OHS Act or regulations
Assist the OHS representative as requested under subsection 58(1)(f) of the OHS Act	OHS	None	A union official invited onto site under subsection 58(1)(f) of the OHS Act is regarded as exercising a right of entry for OHS purposes under the FW Act and therefore must have a federal entry permit. Refer also to section 70 of the OHS Act and guidance from the Site Manager. A union official who has sufficient knowledge of OHS may also have a right to access the workplace if they are

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Reason a union official may enter	Purpose	Notice period required	Also...
			assisting an OHS representative.

## 11.2 Checklist

- Advised Site Management on their arrival
- Signed the visitor's book
- Given the written period of notice (see above)
- Valid permit(s) –

At all times access to the site and conduct associated with access must be in accordance with the provisions of the FW Act and OHS Act.

## 11.3 Site Security for the purposes of Right of Entry Requirements

Site access is restricted to dedicated entry and exit points and will be actively managed within its Site Induction and right of entry protocols.

Where officials breach, are suspected to breach or otherwise misuse their right of entry, we will enforce its rights in accordance with the *Fair Work Act 2009 (Cth)*, Part 3-4.

## 12.0 GRIEVANCE MANAGEMENT

Specific grievance management processes are place to ensure successful dispute resolution, which provides graduated steps for discussion of grievances, this is provide in the Company's Enterprise Agreement, and is provided as follows:

- Matter to be submitted by an employee (or their representative) to their appropriate company representative and, if necessary, the Construction Director/Construction Director, the Site Manager or another appropriate representative of the Company.
- If the matter is unable to be resolved at site level, it should be referred to the Construction Director/Construction Director, and union officials may become involved (if not already).
- If any party remains dissatisfied, they may refer the matter in accordance with the dispute resolution procedure.

While a Dispute Resolution procedure is being followed, the pre-dispute status quo will normally prevail. Additionally, a Consultative Committee is put in place, which includes appropriate employee representation, where matters are proactively discussed and resolved;

Further mechanisms that we employ as grievance management tools include:

- An Industrial Relations Site Reporting Procedure and Form that requires all projects to monitor and report on potential Industrial Action amongst the direct workforce and the subcontract workforce. This enables management to manage potential grievances in accordance with the Company's Dispute Resolution requirements in its Enterprise Agreement/industrial instrument;
- a Whistleblowers Procedure is available to all its people, which allows anyone who believes that its procedures are not being adhered to, the option to anonymously report matters in accordance with the Procedure;
- a Health and Safety Resolution Procedure to ensure that any health and safety issue on Site is resolved efficiently.

## 13.0 MANAGEMENT OF INDUSTRIAL IMPACTS

Item	Requirement	Building Code	By Whom
<b>Reasonable Steps</b>	Contractors must, to the extent reasonably practicable, take steps to prevent or bring to an	<b>Section 16 (3)</b>	HR/IR Manager, State MD, and Construction Director will ensure that this is undertaken.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Item	Requirement	Building Code	By Whom
	<p>end industrial action that is not protected action taken by the employees of the Contractor.</p> <p>Note: reasonably practicable steps may include, depending on the circumstances, the taking of legal action in the Fair Work Commission or a court where remedies are available.</p> <p>This does not require the entity to accede to a demand, claim or threat that is being advanced by industrial action that is not protected.</p>		
<b>Reporting industrial action</b>	<p>Contractors must report actual or threatened industrial action (whether protected industrial action under Section 8 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> or industrial action that is not protected) by employees of the Contractor to the ABCC as soon as practicable, but no later than 24 hours after becoming aware of the threat or action.</p> <p>Contractors must, in relation to other building work, report actual or threatened industrial action that is not protected action by employees of the Contractor to the ABCC as soon as practicable, but no later than 24 hours, after becoming aware of the threat or action.</p>	<b>Section 16 (1) (2)</b>	HR/IR Manager, State MD, and Construction Director r will ensure that this is undertaken.
<b>Secondary Boycotts</b>	<p>Contractors must, in relation to all building work, report any request or demand by a building association, whether made directly or indirectly, that the contractor engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the <i>Competition and Consumer Act 2010</i> to the</p>	<p><b>Section 16 (4)</b></p> <p><b>Section 9(2)</b></p>	HR/IR Manager, State MD, and Construction Director will ensure that this is undertaken.

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Item	Requirement	Building Code	By Whom
	ABCC as soon as practicable, but no later than 24 hours, after the request or demand is made.		
	Contractors must comply with the <i>Competition and Consumer Act 2010</i> .		
<b>Reporting Secondary Boycotts</b>	Contractors must report any request or demand to engage in conduct that appears to be for the purposes of a secondary boycott to the ABCC as soon as practicable, but no later than 24 hours, after the relevant request or demand is made.	<b>Section 16 (4)</b>	HR/IR Manager, State MD, and Construction Director will ensure that this is undertaken.

## 14.0 COMPLIANCE WITH THE BUILDING CODE

Audits of this WRMP and compliance with the Building Code will be conducted at least on a frequency to be determined, as detailed in the Project Audit Schedule maintained by the Quality Manager.

Audits of the WRMP and compliance with the Building Code will be conducted by the Quality Manager or suitably trained delegate to confirm effective implementation is operational, effective and meets contract requirements.

An example audit checklist is provided below:

### SITE INTERNAL IR AUDIT

Item	Yes	No
Freedom of association is set as a regular agenda at subcontractors site weekly meetings and copies of Weekly Meetings kept on Site		
Copies of completed Tenderer Questionnaires stored with subcontractor information		
Copies of Project Industrial Action Reporting Forms kept on Site		
Copies of Right of Entry Report Including Entry Notices kept on Site		
Copy of Contractor's current Enterprise Agreement/industrial instrument and Award (including Code compliant letter and FWA letter) stored on Site		
Hard copy of IR Policy and Plan located on Site (i.e. IR Project Compliance Booklet and/ WRMP)		
Hard copy of OHS Policy and Plan located on Site		
Right of Entry Register Set-up and completed accordingly		
Site Diaries updated		
Site Induction Procedure Set-up appropriately		

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

Completed Site Induction forms kept secured and do not include any membership details

Site Visitor Register Set-up and updated accordingly

Site walk undertaken to ensure freedom of association requirements are being met, i.e. no propaganda

Subcontractor Contact List kept and updated

Subcontractor Statutory Declarations are submitted each month with

Subcontractor Payment Claim

Where an audit (internal or external) identifies non-compliance, this is rectified immediately, and where required additional training is undertaken by the IR Manager.

## 14.1 Breaches of the Building Code

A code covered entity must notify the ABCC of a breach, or a suspected breach, of the Building Code as soon as practicable, but no later than 2 working days after becoming aware of the breach or the suspected breach and advise the ABCC of the proposed steps to rectify the breach. A breach of this WRMP may be regarded as a breach of the Building Code.

Within 14 days of making such a notification, the entity must notify the ABCC of the steps taken to rectify the breach (section 17).

## 15.0 FITNESS FOR WORK POLICY

Please refer to Appendix Three.

## 16.0 SECURITY OF PAYMENT

We are committed to ensuring that payments which are due and payable to its subcontractors are made in a timely manner and are not unreasonably withheld. Our accounts payable division ensures that payments are made within the required timeframes.

The accounts payable team also provides general information to subcontractors in relation to payments for building work.

We are also committed to complying with all applicable security of payment legislation.

### 16.1 Resolution of disputed payments to subcontractors

We seek to resolve any disputes about payments to subcontractors (including those referred to an independent adjudicator) in a reasonable, timely and cooperative way. The dispute resolution process we follow to ensure that this occurs, is outlined below:

- The party who claims there is a dispute will send to the other party a notice setting out the nature of the dispute and the relevant details.
- The parties will attempt to resolve the dispute by direct negotiation. By agreement between the parties, the dispute may be referred to a mediator.
- If the dispute cannot be resolved in accordance with the Contract, the matter will be referred to an adjudicator within the meaning of the *Building Industry Fairness (Security of Payment) Act 2017 (the Act)*. The decision of the adjudicator will be binding on the parties and the parties will comply with the decision. Adjudication is a defined process under this legislation.

## 17.0 AUDIT AND REVIEW

The Company monitors the progress of the WRMP by undertaking regular audits on it and its subcontractors.

### 17.1 Management Review

The Project Team and the HR/IR Manager, will undertake reviews to check the continuing suitability and effectiveness of the WRMP, ensuring that it continues to meet contractual and legislative requirements.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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The Monthly Project Control Group Meetings and internal Monthly and Quarterly reviews are undertaken as an opportunity to ensure open communication between all parties and used as a means to improve IR management on the Project.

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## APPENDIX ONE

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### 1.0 PROJECT ORGANISATION CHART

Refer to section ■ of the submission. This section will be finalised upon tender award.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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## APPENDIX ONE

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- Tenderer Questionnaire

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

## Tenderer Questionnaire

[Click here to enter trade package.](#)

[Click here to enter project name.](#)

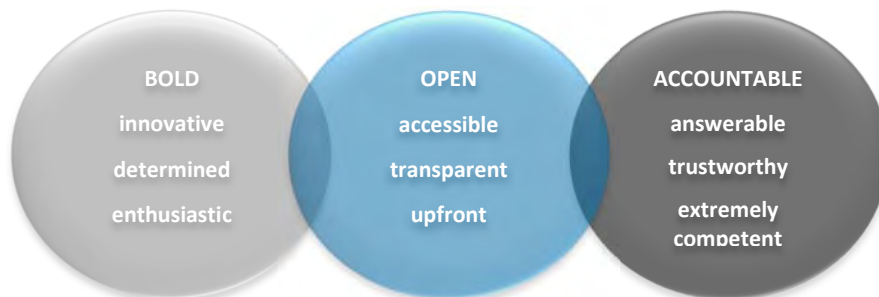
[Click here to enter project address.](#)

The Probuild Group is committed to providing an environment on our projects for all participants to be successful, whilst ensuring the highest quality, safety, industrial relations standards, and the effective and timely delivery of our works.

To achieve this we advocate a standard for behaviour on all our projects that includes open communication, mutual respect, a fair and commercially reasonable attitude towards the resolution of issues and the willingness to support those around us at all times.

To achieve this outcome, collaboration and support is required from those we work with; an attitude of partnering and teamwork. With this in mind, we ask you to participate in this endeavour to achieve the best possible outcomes for all concerned.

### OUR VALUES



### 1.0

#### TENDERER DETAILS

**Project:** \_\_\_\_\_ **Tenderer:** \_\_\_\_\_  
**ABN:** \_\_\_\_\_ **ACN:** \_\_\_\_\_

### 2.0

#### CONTRACTOR DETAILS

**Entity** \_\_\_\_\_ **ABN:** \_\_\_\_\_

### 3.0

#### CONTRACT ENGAGEMENT DOCUMENT TYPE

- Subcontract**
- Trade Contract**
- Minor Works**
- Supply Agreement**
- Purchase Order**
- Consultancy Agreement**

For the purpose of this Tenderer Questionnaire only, where *Subcontract* is referred to in this document, it means the engagement document type selected in this section 3.0.

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## MEETING DETAILS

Date:

Location:

Present:


## 4.0

### PREVIOUS EXPERIENCE

Provide a list of relevant projects completed recently and also those expected to be running in conjunction with this tendered package of Works.

Project and Year	Contract Sum	Contractor Name	Contact Name and No.

## 5.0

### PROPOSED KEY PERSONNEL FOR THE PROJECT

Position	Name	Phone No. (office)	Phone No. (mobile)
Director			
Subcontractor's Representative			
Foreman			
First Aid Representative			
Employee Representative			
Safety Committee Member			

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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## 6.0

Please carefully consider the following questions and state clearly your responses with a tick in the appropriate box. This is one of our most important working documents; it provides the backdrop for our work together going forward and the conversation we have now will provide the framework for our mutual success.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

6.1 GENERAL			
QUESTIONS	YES	NO	COMMENTS
1. The Subcontract documentation covers the scope of our work together and we assume that you will do everything necessary to meet that intent; do you agree to this?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Do you have any queries about the Subcontract or the tender documents?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Do you accept all the conditions of the Subcontract?  If 'yes' is selected, the conditions will not be able to be amended by the Tenderer at a later time, if the Tenderer is selected as preferred contractor for the project.  If you do not accept the Subcontract conditions please provide a schedule of clarifications.	<input type="checkbox"/>	<input type="checkbox"/>	
4. Have you inspected the site?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Do you confirm receipt of all the Subcontract, tender documents including trade specific items, drawings, general preliminaries, specifications, Bills of quantities (where applicable) and addenda?	<input type="checkbox"/>	<input type="checkbox"/>	
FINANCIAL			
QUESTIONS	YES	NO	COMMENTS
6. What is your tender sum, excluding GST?	\$.....		
7. Is the sum a fixed lump design and construct price for the Scope of Works?	<input type="checkbox"/>	<input type="checkbox"/>	
8. Which addenda are included in your current tender sum? Please list below:	<input type="checkbox"/>	<input type="checkbox"/>	
14. Are there any further suggestions you have on possible savings?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Do you accept that the Bill of Quantities, if applicable, is <u>not</u> part of your subcontract?	<input type="checkbox"/>	<input type="checkbox"/>	
10. Do you accept that any rates provided are for the purpose of valuation of progress payments and variations?	<input type="checkbox"/>	<input type="checkbox"/>	
11. What provisional sums, prime cost items and contingency sums in accordance with the specification and/or Bill of Quantities (where applicable) are included? Please list:	<input type="checkbox"/>	<input type="checkbox"/>	
12. These are the Insurances you are required to have; please indicate (Y/N) that you will have the required insurance in place and provide evidence of all policies and the inclusion of Probuild on these policies, within 10 working days.  <input type="checkbox"/> Public and Products Liability Insurance of at least \$20million.	<input type="checkbox"/>	<input type="checkbox"/>	

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<input type="checkbox"/> Workers Compensation Insurance in accordance with Statute and common law requirements. <input type="checkbox"/> Insurance for your plant and equipment entering Site (including motor vehicles). <input type="checkbox"/> Professional Indemnity Insurance of at least \$10 million, where applicable. <input type="checkbox"/> Motor Vehicle Insurance	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
<p>13. Please confirm agreement regarding the submission of your Progress Claims:</p> <p>Progress claims are to be submitted by the 25<sup>th</sup> day of the month and forecast to the end of the month.</p> <p>If a claim for off-site materials is allowed under the Subcontract, BGs, Insurance and Letter of Ownership is to be issued and all goods clearly marked “The Property of Probuild/Client” and placed in a designated storage area.</p> <p>The Probuild payment terms up to 35 days from the end of the month; <u>not</u> the date of the invoice.</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
<p>14. Retentions</p> <p>Have you allowed for retentions as required under the Subcontract?</p> <p>What retention value have you allowed?</p> <p>Will you provide:</p> <input type="checkbox"/> Cash retention <input type="checkbox"/> Bank Guarantees <p>To be released as follows:</p> <p>Release 1    50% of retention at Practical Completion</p> <p>Release 2    50% remaining on completion of Defect Liability Period.</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>\$ .....</p>
<b>PRELIMINARIES AND MATERIALS HANDLING</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
<p>15. Have you allowed for all your own materials handling horizontal and vertical to the workface in accordance with the Scope of Works?</p>	<input type="checkbox"/>	<input type="checkbox"/>	

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

16. Have you allowed for your own access requirements?  Have you made allowance for the regular servicing of plant and equipment in accordance with the manufacturers maintenance and service manuals?  If requested, are you able to provide records of compliance including your latest service records?	<input type="checkbox"/>	<input type="checkbox"/>	
17. Have you considered site access?  Do you understand that deliveries need to be arranged in advance with the Contractor's Representative?	<input type="checkbox"/>	<input type="checkbox"/>	
18. Have you made an allowance for the construction of your own office/on-site storage? How much and how many?  Containers/Compound  Phones  Security	<input type="checkbox"/>	<input type="checkbox"/>	
19. Have you allowed for a site measure, if required?	<input type="checkbox"/>	<input type="checkbox"/>	
20. Have you allowed for your own setting out from the grids and datum supplied by the Contractor?	<input type="checkbox"/>	<input type="checkbox"/>	
21. Do you understand that you need to supply all leads as required for your access to the power source?	<input type="checkbox"/>	<input type="checkbox"/>	
22. Have you allowed for generators, if required, in remote areas or where power is not initially available?	<input type="checkbox"/>	<input type="checkbox"/>	
23. Do you understand and accept that the specific task lighting to workforce is by the Subcontractor and the Contractor will supply safety and access lighting only?	<input type="checkbox"/>	<input type="checkbox"/>	
24. Have you allowed, where practical, for the protection of your works and all adjacent surfaces until Practical Completion is achieved?	<input type="checkbox"/>	<input type="checkbox"/>	
25. Do you understand that no advertising signage is allowed?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>PROGRAMMING</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
26. Do you understand that you are required to maintain your work programme and if you should fall behind it, you are required to work additional overtime, at your own expense and with shift work if required, to recover and maintain the programme?	<input type="checkbox"/>	<input type="checkbox"/>	

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

27. What are the lead times you require for the following: - Shop Drawings Materials Labour Other			
28. Do you accept that any costs incurred by you due to inclement weather or industrial disputes are your responsibility?	<input type="checkbox"/>	<input type="checkbox"/>	
29. What are the agreed liquidated damages?	\$..... / Day		
<b>SECTION 28 SECONDARY SUBCONTRACTING</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
30. Do you propose to engage Secondary Subcontractors during your works with us? If yes, please list:  If you answered 'yes', do the subcontractors engage employees or independent contractors? Please select most appropriate answer. <input type="checkbox"/> Subcontractors <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Both	<input type="checkbox"/>	<input type="checkbox"/>	
31. You confirm that you will ensure that any Secondary Subcontractor you engage is not subjected to sham contracting arrangements.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SECTION 29 OCCUPATIONAL HEALTH AND SAFETY "OHS", QUALITY AND ENVIRONMENTAL</b>			
<b>SECTION 29.1 OHS</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
32. Are you aware that this site prohibits the consumption of alcohol and the use of prohibited substances?	<input type="checkbox"/>	<input type="checkbox"/>	
33. There is no smoking in any of the site complexes or any enclosed spaces in the structure. Do you understand and accept this?	<input type="checkbox"/>	<input type="checkbox"/>	
34. Do you acknowledge your obligation to comply with all relevant OSH Acts, Regulations, Codes of Practice, Compliance Codes and established Reference Standards?	<input type="checkbox"/>	<input type="checkbox"/>	
35. Do you understand that you are required to have a project OHS Plan, issued in at least draft form and this must be provided to the Contractor prior to commencement on our site? The plan will be vetted and reviewed for compliance to both the Contractor and any legislative requirements. It must be project specific and generic documents will not be accepted. Do you understand and accept this?	<input type="checkbox"/>	<input type="checkbox"/>	

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

36. Do you accept your obligation to adhere to onsite safety rules, as determined by the Contractor and in conjunction with the project's OHS Committee?	<input type="checkbox"/>	<input type="checkbox"/>	
37. Do you have Safe Work Method Statements (SWMS's) and Risk Assessments specific for the work you are to carry out for the Contractor?	<input type="checkbox"/>	<input type="checkbox"/>	
38. Have you inducted your employees into their relevant, SWMS's and Risk Assessments?	<input type="checkbox"/>	<input type="checkbox"/>	
39. Do you have checklists that regularly check major safety controls involved in SWMS's?	<input type="checkbox"/>	<input type="checkbox"/>	
40. Are you able to verify that your employees hold all relevant licences, qualifications and competencies?	<input type="checkbox"/>	<input type="checkbox"/>	
41. Have you established plant/equipment inspection checklists?	<input type="checkbox"/>	<input type="checkbox"/>	
42. Do you have maintenance and any design alteration records and approvals for your plant and equipment? Do you have a major plant/equipment register?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	
43. Will you have a trained OHS Administrator/Representative?	<input type="checkbox"/>	<input type="checkbox"/>	
44. Are you aware that you will be required to provide proof/records of competency for this individual?	<input type="checkbox"/>	<input type="checkbox"/>	
45. Have you ensured that all your employees will be provided with all the compliant personal protective equipment?	<input type="checkbox"/>	<input type="checkbox"/>	
46. Do you organise health screening tests for employees engaged in work tasks with identified hazards to health?	<input type="checkbox"/>	<input type="checkbox"/>	
47. Do you understand and acknowledge that the Contractor will, from time to time, audit your performance and documentation?	<input type="checkbox"/>	<input type="checkbox"/>	
48. Are you aware of the requirement to work within project OHS consultative processes?	<input type="checkbox"/>	<input type="checkbox"/>	
49. Have you allowed for the submission of requested OHS Records at the completion of the Subcontract?	<input type="checkbox"/>	<input type="checkbox"/>	
50. Are you aware of the safety in design provisions and the requirement to consider and adhere to these, if applicable?	<input type="checkbox"/>	<input type="checkbox"/>	
51. Signage: Are you aware that any signage as required by OHS acts or regulations is your responsibility?	<input type="checkbox"/>	<input type="checkbox"/>	
52. Are you aware that all dewatering of your work area on the site, when necessary, is your responsibility?	<input type="checkbox"/>	<input type="checkbox"/>	
53. You accept that it is your obligation to ensure that your employees are properly trained and adequately instructed in relation to all Quality, OHS and Environmental practices associated with all aspects of the Scope of Works	<input type="checkbox"/>	<input type="checkbox"/>	
54. Please provide a Y/N for the following regarding your company for the last three years, if 'yes' please provide detail:			
• Fines / prosecutions for breaches in relevant OHS Legislation	<input type="checkbox"/>	<input type="checkbox"/>	
• Fines / prosecutions for breaches in relevant Environmental Legislation	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

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<ul style="list-style-type: none"> <li>• Prohibition Notices for breaches in relevant OHS Legislation</li> <li>• Abatement Notices for breaches in relevant Environmental Legislation</li> <li>• Fatalities (including Secondary Subcontractors to your Company)</li> <li>• Long term injuries (requiring more than six months to return to work)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
55. Do you acknowledge your obligation to comply with all relevant environmental Acts, Regulations, Codes, Guidelines and Standards?	<input type="checkbox"/>	<input type="checkbox"/>	
56. Do you acknowledge your responsibility to comply with project specific, environmental controls and waste minimization/ recycling requirements?	<input type="checkbox"/>	<input type="checkbox"/>	
57. Have you made provision for the recycling of any materials?	<input type="checkbox"/>	<input type="checkbox"/>	
58. Have the following items been considered, (where applicable) in the preparation and implementation of your Environmental/Waste Minimisation Plan:			
a) Reduction of waste at source	<input type="checkbox"/>	<input type="checkbox"/>	
b) Reuse of waste material	<input type="checkbox"/>	<input type="checkbox"/>	
c) Recycling of waste material	<input type="checkbox"/>	<input type="checkbox"/>	
d) Air and water quality	<input type="checkbox"/>	<input type="checkbox"/>	
e) Sediment and erosion control	<input type="checkbox"/>	<input type="checkbox"/>	
f) Site contamination	<input type="checkbox"/>	<input type="checkbox"/>	
g) Noise and vibration	<input type="checkbox"/>	<input type="checkbox"/>	
h) Hazardous substances and dangerous goods	<input type="checkbox"/>	<input type="checkbox"/>	
i) Cultural Heritage	<input type="checkbox"/>	<input type="checkbox"/>	
j) Flora and Fauna	<input type="checkbox"/>	<input type="checkbox"/>	
k) Office resources	<input type="checkbox"/>	<input type="checkbox"/>	
l) Reduction and control of litter.	<input type="checkbox"/>	<input type="checkbox"/>	
m) Adjoining owners	<input type="checkbox"/>	<input type="checkbox"/>	
59. What environmental initiatives can you implement on this project?			
60. Are you aware of any EPA certificates required to execute your works?	<input type="checkbox"/>	<input type="checkbox"/>	
61. Are you aware that you are responsible for the control and management of water over the site and the control of erosion, dust, noise and vibration?	<input type="checkbox"/>	<input type="checkbox"/>	
62. Are you aware that you are responsible to protect all adjoining waterways?	<input type="checkbox"/>	<input type="checkbox"/>	
63. If applicable to your trade; all streets are to be kept clean and free from dirt etc. Grillage should be supplied and a wash down carried out as required to satisfy authorities. Are you aware of and in agreement with this?	<input type="checkbox"/>	<input type="checkbox"/>	

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64. Clean Up: A consistent clean-up is required to maintain a safe working environment. If at any time you fail to maintain a clean working environment; costs for the clean-up will be charged to you. This will be discussed and agreed before any charges are applied. Do you understand and accept this?	<input type="checkbox"/>	<input type="checkbox"/>	
65. Rubbish Removal: It is your responsibility to take all rubbish generated as a result of your trade and dispose of it in the bins provided at street level; separation of recycled materials may also be required to different bins. Do you understand and accept this?	<input type="checkbox"/>	<input type="checkbox"/>	
66. Confirm that you have allowed for all litter control.	<input type="checkbox"/>	<input type="checkbox"/>	
67. Do you accept the Subcontract requirement for QA?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>6.2.3 QUALITY</b>			
68. Do you understand and accept the Subcontract requirement for QA?	<input type="checkbox"/>	<input type="checkbox"/>	
69. Do you have a QA System established?  If not, are you aware Probuild has a Subcontractor Quality Management Guide for your use?	<input type="checkbox"/>	<input type="checkbox"/>	
70. Please nominate your Quality Assurance Representative for the Project and submit their details and responsibilities.			
71. Do you acknowledge your obligation to comply with the project specification, contract documents and relevant Australian Standards?	<input type="checkbox"/>	<input type="checkbox"/>	
72. Do you acknowledge that the Contractor will periodically audit your QA Compliance?	<input type="checkbox"/>	<input type="checkbox"/>	
73. Are you aware that you, the Subcontractor must submit a project specific QA Plan (including ITP's and checklists) for the project prior to the commencement on site?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>6.2.4 DEFECT MANAGEMENT</b>			
74. Have you allowed adequate personnel/ resources to complete your works and attend to any defects progressively that may arise within your scope of works in accordance with the Subcontract?	<input type="checkbox"/>	<input type="checkbox"/>	
75. Are you aware that the Subcontract allows the Contractor to appoint other contractors to complete works that you have left outstanding with appropriate notice, and with additional costs borne to you?	<input type="checkbox"/>	<input type="checkbox"/>	
76. Do you agree to carry out defect rectification during the Defects Liability Period, outside normal hours, if required?	<input type="checkbox"/>	<input type="checkbox"/>	
77. Do you agree to allow for and work with the defect management system and DLP management system implemented on this project by the Contractor?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>6.2.5 INDUSTRIAL RELATIONS</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>

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78. What industrial agreement do you currently employ under? Provide details.			
79. If you employ under an Enterprise Agreement has that Agreement been registered?  If yes, please provide a copy of letter of registration from FWA (or similar)	<input type="checkbox"/>	<input type="checkbox"/>	
80. Will your employees and Secondary Subcontractors be Australian Citizens, Permanent/Temporary Residents or hold the required Visa to undertake work on the Project?	<input type="checkbox"/>	<input type="checkbox"/>	
81. What superannuation entitlements are paid on behalf of your employees? I.e. contributions to Cbus, Australian Super, AMP, 9.5% to another fund?			
82. What redundancy entitlements are paid or accrued on behalf of your employees? Provide details			
83. What long service leave entitlements are accrued on behalf of your employees? i.e. CoInvest, CILSLPB, LSPCNSW Provide details			
84. You confirm that you have read the tenderer's drug and alcohol policy and will comply with this policy for the Project.			
85. You confirm that you have complied with the Building Code 2013 and State Codes (where applicable) in submitting this tender, and that you will continue to do so throughout the project's life-cycle.	<input type="checkbox"/>	<input type="checkbox"/>	
86. You confirm that you will ensure that your Secondary Subcontractors comply to the Building Code 2013 and State Codes (where applicable).			
<b>6.2 VIPP PLAN – FOR PROJECTS SUBJECT TO THE VICTORIAN INDUSTRY PARTICIPATION POLICY</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
87. You confirm that have read and can comply to the Contractor's VIPP Plan (as amended), including Local Value-Added Activity specific for your trade?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>6.3 TRADE SPECIFIC ITEMS</b>			
<b>QUESTIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENT</b>
88. Latent Conditions: Do you accept that you are taking all risk on latent conditions? (If applicable).	<input type="checkbox"/>	<input type="checkbox"/>	
89. Equipment: Craneage will be provided by :  Scaffolding will be provided by:			

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Access equipment will be provided by:			
90. Theft: Do you accept that sole responsibility for theft is with you, and that no claim can be made against the Contractor?	<input type="checkbox"/>	<input type="checkbox"/>	
91. Damage: Do you accept and understand that unless those responsible for damage are identified, then no payment for damages incurred, will be made by the Contractor?	<input type="checkbox"/>	<input type="checkbox"/>	
92. Permits Have you allowed for all Permits - as required by local authorities/bodies and the Police etc., as required to complete your works?	<input type="checkbox"/>	<input type="checkbox"/>	
93. Parking: There is no parking on the Project site. A drop off and go policy will apply on site and therefore, no company vehicles or cars are to remain on the work site. Do you understand and accept this?	<input type="checkbox"/>	<input type="checkbox"/>	
94. Roof Access Roof access is normally the responsibility of the Contractor. Are you aware of this?	<input type="checkbox"/>	<input type="checkbox"/>	
95. Traffic Management: Do you understand and accept that all traffic management/traffic control specific to your Scope of Work, is your responsibility and this includes any barricading as required?	<input type="checkbox"/>	<input type="checkbox"/>	
96. Working Hours Do you agree working hours are to be adhered to as per any special Authority requirements?	<input type="checkbox"/>	<input type="checkbox"/>	
97. Materials Delivery The delivery of materials as required by the site schedule may be out of hours and may alter at short notice due to circumstances beyond our control; do you accept this?	<input type="checkbox"/>	<input type="checkbox"/>	
98. Warranties Do you agree all warranties will be provided as required by the contract and all specifications?	<input type="checkbox"/>	<input type="checkbox"/>	
99. Are you aware that it is your responsibility to communicate all agreements made here in this document with your company personnel?	<input type="checkbox"/>	<input type="checkbox"/>	

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E.30 Aboriginal Participation			
100. Does your company provide employment and education activities for indigenous and Torres strait islanders, procurement of goods and services from recognised Aboriginal services and other similar programmes  If so, please provide details			
101. You acknowledge, that if awarded the project, your contract sum provides for indigenous participation initiatives for the project.			

By signing the below you acknowledge that you are an authorised person acting on behalf of the Tenderer, and hereby confirm that all information noted in this document is accurate, true and current at the time of signing. Additionally, you will advise Probuild of any change in circumstances including but not limited to details that would preclude you from working on an Australian Government Funded Project (or State equivalent) as identified by the Code and relevant Guideline.

**Date:**

**Tenderer**

**Contractor**

Signature of tenderer representative

Signature of witness

Signature of contractor representative

Signature of witness

Name of tenderer representative **and** position

Name of witness

Name of contractor representative **and** position

Name of witness

## APPENDIX THREE

- Impairment Policy (Drug & Alcohol Management Programme)

### 2.0 PRINCIPLES

The health, wellbeing and safety of employees are of paramount importance to the employer, employees and their Unions. This policy is part of a broad work, health and safety (WHS) program to secure the highest level of health and safety in the workplace.

The policy adopts a WHS approach that involves identifying, assessing and controlling all workplace hazards, using the hierarchy of control, and then reviewing these controls to ensure ongoing improvements.

The focus of this policy is on the WHS risks associated with impairment and should be read in conjunction with other company policies concerning health and safety, particularly in relation to fatigue management, risk management and safe systems of work.

This policy has been compiled in a manner that is non-punitive and supportive of employees. This policy shall not be used in a discriminatory manner. Anti-Discrimination Law protects against discrimination on the basis of addiction and may also protect against discrimination on the basis of impairments caused by drug and alcohol addiction or use.

The policy and procedures adopt a peer based intervention approach based on fairness and equity for all employees.

### 3.0 SCOPE

This policy will apply to all employees (including managers and supervisors), contractors and labour hire staff. The policy applies to these groups at all times when they are engaged in company business, whether on or off site and when driving company vehicles.

### 4.0 STRUCTURE

The Impairment Policy is categorised in order with the intended implementation:

#### 4.1 Training & Awareness

Extensive research has shown training and awareness of impairment related issues provides the most effective means of behavioural change and encourages better decision making. The two types of training in accordance with this policy to do this are:

- Workplace Impairment Training (WIT) - all workers onsite will do this training.
- Preliminary Impairment Assessment (PIA) - HSR's, delegates and the PC's safety staff will undertake this training.

#### 4.2 Testing

Testing for drugs and alcohol is used to support and measure the results of the education and awareness program.

#### 3.3 Support Services

- rehabilitation, counselling and EAP's. Support is strictly non- punitive, and can be accessed at anytime (self-identification of the need for help is strongly encouraged).

### 5.0 OBJECTIVES

The objectives of this policy are as follows:

- To provide a safe and healthy working environment for all workers.
- To work collaboratively in the implementation and co-ordination of this policy with employees, employers and their elected representatives to achieve the objectives of this policy.
- To eliminate and control risks which may lead to impairment affecting health and safety in the workplace.

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- To ensure that there is a mechanism for managing impairment at work that is transparent, objective and in accordance with the purpose of this policy.
- To ensure that all persons are provided with adequate information and education on the health and safety issues surrounding impairment, and on the operation of this policy.
- To ensure that employees have access to rehabilitation, support and counselling of their choice on a voluntary basis that is independent, professional and confidential, without jeopardising their employment.
- To ensure confidentiality of information concerning the application of this policy to a worker is maintained.

## 6.0 RESPONSIBILITIES

The employer shall:

- Provide a work environment that is safe and without risks to health and safety.
- Provide information about the testing requirements to all existing employees, contractors and labour hire staff and to all new staff at the point of induction.
- Ensure that this policy is implemented fairly and equitably across all sections of the workforce.
- Comply with the four policy implementation steps outlined below.
- Have adequate resources (e.g., a room that allows for confidential impairment assessments to be discussed, if necessary, suitable transport to safely remove impaired employees from the workplace to be able to meet the objectives of this policy).

Employees shall:

- Co-operate reasonably with the employer in the implementation of this policy.
- If any employee reasonably believes that any person on the site may be a health and safety risk to themselves or others they should inform their employer and a Preliminary Impairment Assessor (PIA) of this belief.
- Not possess, consume, or be under the influence of, alcohol or other drugs while working.
- Ensure that they do not work, if they believe that they may be impaired.
- Consult their doctor or pharmacist about possible side effects of using prescribed or over-the-counter medication.
- Inform their employer a Preliminary Impairment Assessor (PIA); and if they have been made aware by their treating doctor or pharmacist of possible impairment as a side effect of medication, or if they feel impaired by medication.

## 7.0 POLICY IMPLEMENTATION WILL INVOLVE THE FOLLOWING STEPS.

1. PC/Employer and Union shall agree on a policy start date.
2. Engagement of an agreed training and rehabilitation/treatment service providers.
3. Provision of on-going Workplace Impairment Training (WIT) and Preliminary Impairment Assessors training (PIA).
4. Ongoing promotion of this policy.

A purpose of the policy and procedure is to provide protocols and procedures for workplace alcohol and other drug testing that are evidence-based, consistent with best practice, comply with relevant Australian Standards, and contribute to workplace safety and worker wellbeing.

The following drug and alcohol testing programs will be adopted:

- Self-testing
- Random Shift testing
- For-cause testing
- Post-incident testing
- Reasonable concern testing
- Testing of Minors

Any employee who is assessed as being impaired shall be advised to contact the rehabilitation/treatment provider.

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The employee will be permitted to access personal leave in the first instance and then take accrued personal leave entitlements for the period of time they are accessing the treatment provider.

With the endorsement/acceptance of the Impairment Policy the Principle Contractor (PC) will undertake to not pass the implementation and cost of drug and alcohol testing to its subcontractors.

It will also ensure compliance with this policy as follows:

- Subcontractors will be contractually required to comply with this procedure as a condition of subcontract..
- All direct employees of the PC as a condition of their employment must agree to adhere to the terms and conditions of the impairment policy.

Notwithstanding anything else contained in the policy, the costs of all testing contained within this policy shall be borne by the PC unless otherwise specified in this document.

## 8.0 DEFINITION OF A WORKER

Anyone who carries out work for a Person Conducting a Business or Undertaking, such as:

- an employee (either salaried or wages);
- a contractor or subcontractor;
- an employee of a contractor or subcontractor;
- an employee of a labour hire company;
- an apprentice or trainee;
- a student gaining work experience;
- an outworker;
- a volunteer;
- a visitor to a workplace (noting that for the purposes of section 12 of this policy, visitors are not to be included in the calculation for the number of random tests to be conducted)

## 9.0 TRAINING

The training provider shall be the Workplace Impairment Officer or other agreed provider between the Union and the PC/employer. Impairment awareness training sessions will be delivered to all workers (including principle contractor workers), sub-contractors and labour hire workers at least once every two years.

In addition to the below training course outlines, principal contractors will be required to develop a site specific information session to be delivered as part of the site induction outlining their Drug and Alcohol testing procedures for the site.

The below requirements will be audited on an annual basis. Requirements for an approved training provider:

- Must have previous experience delivering Workplace Impairment Training
- Must consult with professional organisations to develop all training courses
- Must be able to demonstrate a continuous improvement plan for each training course

Trainers must have the following qualifications:

- Cert IV in WHS
- Cert IV in Training and Assessing (TAE)
- Nationally Accredited Course in On-Site Drug and Alcohol Testing

**All training must be delivered Face to Face (F2F)**

### 9.1 Workplace Impairment Training (WIT)

WIT course must be a minimum of (2) hours in length and must cover the following topics:

- Australian Workplace Health and Safety construction statistics
- Overview of the Workplace Health and Safety Act, state specific
- Mental Health - discussing at length stress, anxiety and depression
- Fatigue - overview of causes and coping mechanisms

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- Illness and Injury - management of illness and injury, legal requirements and rehabilitation process
- Chemicals, Heat, Cold, and Noise and their abilities to cause impairment at work
- Legal/Illegal Drugs and Alcohol - statistics on current usage, potential negative consequences to the workplace, workplace deaths and accidents associated with drug and alcohol use
- Harm related to drug and alcohol use
- Understanding what is a standard drink and how long this will stay in your system
- Detection rates for illegal drugs
- Administering self-alcohol and drug tests
- Information about EAP and the services they offer
- Workers who are selected for drug and alcohol testing must also be trained in this policy

## 9.2 Preliminary Impairment Assessor (PIA)

PIA training must be a minimum of (4) hours in length and must cover the following topics:

- Understanding the signs of impairment
- Conflict resolution
- Skills to conduct an impairment Assessment
- Overview of what a PIA is
- What are possible impairment factors
- Causes and symptoms of impairment
- Investigative skills

Training is not to be conducted in a lunchroom, unless there are multiple lunchrooms on site and:

1. the training session will not interfere with workers wanting to use the room for smoko or lunch; or
2. the training session will not be interfered with by workers wanting to use the room in general

## 10.0 TESTING METHODS

### 10.1 Alcohol Testing Method-

- Alcohol testing must only be done by use of an Accredited Breath Test device. The device must be calibrated and meet the minimum requirements of AS3547.

### 10.2 Drug Testing Method-

- Drug testing may only be performed by oral fluid testing
- The equipment used to perform the test shall be used, tested and calibrated to the manufacturer's instructions and certified to AS 4760 (Process for specimen collection and the detection and quantitation of drug in oral fluid)
- The drug testing shall be conducted by an accredited person, following all of the chain of custody provisions.
- The test must be performed in accordance with AS 4760 (Procedures for specimen collection and the detection and quantitation of drugs in oral fluid).

### 10.3 Substances Tested

As part of this policy with regards to Drug and Alcohol testing the following substances must be tested for:

3. Alcohol;
4. Opiates;
5. THC;
6. Cocaine;
7. Benzodiazepines;
8. Amphetamine; and
9. Methamphetamine

Where applicable the above testing methods must be used for the purpose of section 12.1 of this policy.

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## 11.0 TESTING PROVIDER

- Must be NATA Accredited
- Must have accreditation AS4760:2006 Procedures for specimen collection and the detection and quantitation of drug abuse in oral fluid
- Must be agreed upon by the PC/Employer and the Union

Minimum standards that the testing company must meet are as follows:

- competent and trained staff
- appropriate equipment and instruments
- proper management and storage of test kits and reagents
- secure and controlled storage and management of samples
- comprehensive record keeping; and
- clear and precise reporting

Before the Authorised Testing Agent is engaged to be the sample collector for the principle contractor all relevant stakeholders must be engaged to make sure there is no conflict of interest and that they are totally independent. If a conflict of interest exists, or should arise, the Authorised Testing Agent must report it immediately.

## 12.0 ROOM REQUIREMENTS

Each workplace shall have a room nominated for use to undertake drug and alcohol testing consistent with this procedure. This room will not normally be the first aid room at a workplace unless a workplace has multiple first aid rooms and the use of a first aid room for the purpose of drug and alcohol testing will not affect the ability of the workplace to respond to a first aid incident.

The room selected for use must so far as reasonably practicable:

- Provide privacy for the Worker being tested including but not limited to:
  - Have a closing door
  - Not allow for casual visual observation of the testing process by other Workers external to the room e.g. through glass windows.
  - Not allow conversations to be casually overheard by other workers.
- Be clean and hygienic
- Be free from interruption whilst testing is being undertaken
- Include discrete entry and exit

## 13.0 TESTING REQUIREMENTS -

### 13.1 Code compliant workplaces -

On workplaces where the value of the Commonwealth's contribution to the project that includes the building work is at least \$5,000,000, and represents at least 50% of the total construction project value or the Commonwealth's contribution to the project that includes the building work is at least \$10,000,000 (irrespective of its proportion of the total construction project value) the following minimum testing requirements must be adhered to.

Frequent and periodic testing (at least once per month) of the workforce (both construction workers and site office workers) as follows:

1. where there are less than 30 Workers at a workplace – at least 10% of the workforce;
2. where there are 30 to 100 Workers at a workplace – a minimum of 5 Workers; and
3. where there are greater than 100 Workers at a workplace – a minimum of 10 Workers.

The number of workers selected shall be increased in line with the escalation below where test results meet the criteria indicated:

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Number of Workers	Criteria	Action
Less than 30 Workers at a workplace	Confirmed Positive results in 2 consecutive tests at the same workplace	Testing of 20% of workforce
30 to 100 Workers at a workplace	Confirmed Positive results for 3 or more workers in 2 consecutive testing rounds at the same	Testing of 10 workers
Greater than 100 Workers at a workplace	Confirmed Positive results for 6 or more workers in 2 consecutive testing rounds at the same workplace	Testing of 20 workers

The increased testing requirements shall continue until no Confirmed Positive test results are recorded for 2 consecutive testing periods.

## 13.2 Other jobs-

On jobsites/workplaces where there is no Commonwealth contribution testing frequency will be agreed upon by mutual consent by the PC/Employer and the Union. Testing requirements will remain the same for all jobsites i.e. blanket alcohol and code requirements for drug testing.

## 14.0 PRESCRIBED MEDICATIONS

Workers that are taking Prescribed Drugs or Pharmacy Only Drugs that they believe could register a positive test result should inform the Authorised Testing Agent prior to undergoing any requested test

If a Worker fails to declare that they are taking Prescribed Drugs or Pharmacy Only Drugs before being tested and they record a Non Negative Result Initial Test result, a post test declaration will not be considered relevant to the result and the Worker will be excluded from duty for the remainder of the shift, subject to a Confirmatory Test.

Workers who record a Non Negative Result Initial Test result will be excluded from their work duties and the workplace until a Confirmatory Test result has been received.

If that confirmatory result is a Positive Result Confirmatory Test, then:

The terms and conditions of the applicable industrial agreement shall be observed in relation to consultation and consequence management action.

When a confirmatory test result is negative or the result recorded is less than the target level or is consistent with a level expected from therapeutic use of a Prescribed Drug or Pharmacy Only Drug, which was advised by the Worker, then the test result shall be considered a Negative Result Initial Test for the purpose of any consequence management action

Where a Worker is excluded from the workplace as a result of a Non Negative Result Initial Test for Drugs and the confirmatory test is positive for a Pharmacy Only or Prescription Drug, the following factors would normally be considered in deciding when it is appropriate to allow a worker to return to the workplace and/or return to normal duties:

- Whether the worker declared the medication during the pre-test interview with the Designated Collector or Authorised Testing Agent;
- The level of the medication detected is consistent with therapeutic use;
- Written advice from the worker's doctor advising that the medication is required to treat a medical condition; and

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- The medication will not affect the worker's ability to perform the inherent requirements of their job - i.e. they are fit for work

## 15.0 SPECIAL CIRCUMSTANCES FOR PRESCRIPTION MEDICATION

A Worker participating in a treatment plan for a medical condition, managed by a Registered Medical Practitioner and involving a Prescribed Drug/Only Drug could result in a Non Negative Result Initial Test if they are selected for Drug and Alcohol testing.

If in the above circumstance a Non Negative Result Initial Test occurs, and provided that the Worker has:

- Declared their use of the Prescribed Drug/Pharmacy Only Drug in a letter less than 12 months old from a registered medical practitioner before the commencement of testing; and
- Declared their use of the Prescribed Drug/Pharmacy Only Drug to the Authorised Testing Agent or Designated Collector before the commencement of testing;
- Then the Non Negative Result Initial Test result shall be recorded at the workplace and a second sample of oral fluid shall be taken and sent for confirmatory testing. The worker will be prevented from performing work until they can provide they are fit to return to work

Where the results of the confirmatory test identify the Prescribed Drug/Pharmacy Only Drug declared and the levels are consistent with that prescribed by the prescribed medical practitioner, then a Negative Result shall be recorded and no results retained.

Where the results of the confirmatory test identify the Prescribed Drug/Pharmacy Only Drug declared and the levels are not consistent with that prescribed by the Registered Medical Practitioner or another drug(s) type is recorded then a positive result confirmatory test shall be recorded.

Where the Worker has not provided both declarations contained within this part then the Worker shall be excluded from the workplace until the results of the confirmatory test are known.

## 16.0 TESTING RESULTS

### 16.1 Alcohol -

A worker who returns a negative alcohol test will be allowed to return to work with no record of the test kept. A worker who returns a positive result for alcohol (above 0.00mg/ml) will be deemed not fit work and will not be permitted to return to work.

When a worker tests positive to alcohol in their system the workers blood alcohol concentration (BAC) may be decreasing or it may be increasing. In the interests of safety the Workers will be directed to remain within the testing vicinity and they will be re-tested no sooner than 60 minutes after the original test.

If the second test result is 0.000% the test will be regarded as negative and the Worker may return to normal duties. A Positive Result Confirmatory Test will not be recorded in these circumstances.

If the later confirmatory test indicates a BAC of greater than 0.000% a Positive Result Confirmatory Test will be recorded.

Alcohol testing shall be carried out by an Authorised Testing Agent agreed upon by the PC/Employer and the Union. The following steps shall be undertaken:

10. Details of the identity of the Worker to be tested shall be recorded including the workplace name, work area and their employer will be listed on a drug and alcohol testing record form by the independent Authorised Testing Agent.
11. Workers with a BAC of greater than zero (greater than 0.000%) shall discontinue any work activities and shall be directed to undertake a second test sixty (60) minutes after the first test and the results recorded on a Drug and Alcohol Testing record Form by the independent Authorised Testing Agent.
12. Where the second test indicates a level greater than 0.00% BAC the Worker will be further excluded from work duties for the remainder of the shift;

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13. Where a Worker is to be sent home using their own transport this shall only be permitted if the blood alcohol concentration test result is below that prescribed by applicable road transport legislation and has been determined as not rising for that Worker.

Note: If the Worker's blood alcohol concentration result is greater than or equal to 0.05% BAC, all reasonable assistance is to be afforded to ensure an affected Worker can make their way from the Workplace to a safe location without harm (e.g. taxi, lift from a friend or Supervisor).

Contractors will be responsible for the management/arrangements for their employees in accordance with their own employment arrangements.

14. Any Worker that is excluded from work duties for the remainder of a shift or sent home, must, before commencing work for their next shift undertake an alcohol breath test prior to commencing that shift. If the results are negative (0.00mg/ml) the Worker shall be allowed to commence work. If the Worker returns a positive test they will not be allowed to commence work, hence page 12 of this document, 15.1 Alcohol- d) will apply.

## 16.2 Drugs-

A worker who returns a negative test will be allowed to return to work. A worker who returns a non-negative test result from their initial test (equal to or above the relevant cut-off levels of the substances referred to in AS 4760) will be deemed not fit for work and will not be allowed to return to work. (Benzodiazepine level to be provided by the prescribed testing laboratory.)

Drug testing will be administered by the collection and analysis of an oral fluids specimen (saliva). Before conducting a drug test, the process used by the independent Authorised Testing Agent must be explained to the Worker providing the saliva sample.

Collecting and testing of saliva specimens shall be carried out by an Authorised Testing Agent, agreed upon by the PC/Employer and the Union, and confirmatory testing is to be carried out by a NATA accredited laboratory.

A Confirmatory Test will be required where a Non Negative Result Initial Test is recorded at the initial test. The handling of specimens taken for confirmatory testing is detailed in the process used by the Authorised Testing Agent and must be completed to Australian Standards.

Any worker attending the workplace under the influence of drugs or alcohol will be prohibited from entry. A worker returning to the workplace following their exclusion for a Positive Result Confirmatory test will be required to submit to a drug and alcohol test prior to commencing work and receive a Negative Result Initial Test for Drugs or Alcohol prior to commencing work.

## 17.0 FORMS OF TESTING

### 17.1 Self-Testing

The PC/Employer shall be required to provide sufficient self-testing facilities for alcohol and/or drugs for up to 10% of the workforce.

Where self-test facilities are made available voluntary or self-testing for alcohol will be available for Workers prior to presenting for work. A wall mounted breathalyser (optional) will be located in an area that provides for discrete privacy for the worker, whilst completing the test so the test results cannot be inadvertently observed and disclosed to other parties.

A Worker undertakes self-testing at his/her own accord; therefore, no test details are recorded. However, if the worker tests non-negative for any substance in section 9.3 of this policy they will be deemed not to be fit for work and will be prevented from performing work until they are fit for work. All Workers have obligations under the Work Health and Safety Act or equivalent occupational health and safety or occupational safety and health legislation in other States or Territories and must not wilfully place at risk their health and safety or the health and safety of other Workers or people at the workplace by commencing work if they believe they're impaired.

### 17.2 Random Shift Testing

In terms of Random Shift Testing it is imperative that the PC/Employer and the Union do not know on what day, or at what time the Authorised Testing Agent will conduct the tests.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

It is a condition of entry for all Workers at any workplace to comply with any request to participate in random Drug and Alcohol testing as a condition of employment or contract. This means that all Workers attending or seeking to attend a workplace will be eligible for testing.

Testing for Alcohol or other Drugs for Workers shall be mandatory and will be undertaken at any time throughout the Worker's hours of work (including overtime) or at any time whilst at the workplace.

Individual Workers will be selected for drug testing using a simple random selection process. A random draw will be conducted using an Authorised Testing Agent independent software to randomise the selection of Workers for testing.

The random selection process includes the selection of Workers from across the entire workplace subject to the testing.

A Worker selected for testing will be required to present themselves for testing within a reasonable time. Random shift testing shall be conducted in a room which provides for privacy for the selected worker during testing; the requirements for this room are outlined in the Room Requirements section of this policy.

## 17.3 For Cause Testing

An employer/supervisor may only request an employee to undertake for cause testing if:

15. The employee has been involved in an accident or incident, or had the potential to, cause:
  - i. serious and major damage to mobile plant or property; or
  - ii. an injury to themselves or other individual(s); or
  - iii. Participation in a relevant and specific industry focus area when the worker is undertaking High Risk Work as identified by the employer and consistent with OHS legislation. Workers will be selected for testing using a random selection process nominated by the employer following a consultation process in line with OHS legislation.

## 17.4 Post Incident Testing

After the occurrence of a significant incident/event at a workplace, all Workers involved in the incident may be required to undergo an initial Drug and Alcohol test.

Where a Worker(s) is to be tested following a significant incident/event they may request to be accompanied by their employee representative until they have completed all testing required.

Post Incident Testing will be conducted as soon as practical after the incident/event and when it is safe to do so.

An injured Worker who requires immediate medical attention may only be tested when it is appropriate and safe to do so. This will be determined by the Construction Director, the HSR, Delegate and the relevant PIA in consultation with the attending medical practitioner. In such cases, where testing can be conducted while under medical care, a saliva testing process will be used.

## 17.5 Reasonable Concern Testing

An employer may only request an employee to undertake reasonable concern testing if the following criteria are met:

16. An observable phenomena occurs, which is:
  - i. the direct observation of the employee of use of, and/or the physical behavioural symptoms of being impaired by, alcohol and/or
  - ii. Unusual and/or inexplicable actions by the employee
17. There is evidence that the employee is involved in the use or possession of alcohol and/or other drugs while working; or
18. The employee has breached safety precautions or procedures.

## 17.6 Testing of Minors

A letter of consent contained within the work experience and student placement procedure shall be signed by the parent or guardian of any worker who is a minor seeking to access a workplace where the Impairment Policy is in

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

place, as a condition of entry to that workplace. Alternatively, an equivalent letter signed by the parent or guardian can be provided through the minor's employer/host employer.

Where a minor is selected for testing and:

- A letter of consent is held, then the provisions of this procedure shall apply; or
- Where a letter of consent is not held, every effort will be made to contact the minor's parents/guardians to get verbal consent to participate in the testing procedure. If consent is given then the normal testing procedures will apply, if contact cannot be made and/or consent is not given then the minor will be unable to continue working until consent is given.

## 18.0 REFUSAL TO TEST

If a Worker refuses to participate in workplace Drug and Alcohol testing the following will apply;

19. The Employer, will inform the Worker and the workers chosen representative, that the refusal will have the same consequences as a non-negative result, i.e. that the employee will be deemed to be unfit for work due to the presence of alcohol or drugs.
20. If the worker still refuses, the Employer and the PIA, shall consult with the worker and the workers chosen representative, regarding the requirements, process and consequences of refusing to test and encourage them to partake in the test. This would be the second request to be tested.
21. If the worker still refuses, the refusal will be treated as a confirmed positive result, and will be subjected to the relevant consequences of such. All reasonable assistance is to be offered to ensure the employee can make their way from the workplace to a safe location without harm (i.e. taxi, lift from a friend or fellow worker). An agreed leave of absence arrangement is to apply for the duration of their absence.

## 19.0 DISCIPLINARY ACTION

The following sets out the action which may be taken when a worker returns a confirmed positive result to an alcohol or drug test.

22. First Occasion - A worker who has received a first confirmed positive test for alcohol or drugs (other than by self-testing) will be:
  - iii. Required to attend the Support as referred to in this Policy;
  - iv. Informed of the consequences of testing positive and their obligations to present, or remain in a fit state
  - v. ; Informed of further disciplinary action and testing requirements should they have a confirmed positive result (alcohol or drug) within the next 12 months.
23. Second occasion - A worker who has received a second confirmed positive test for alcohol or drugs (other than by self-testing) within any 12 month period will be:
  - i. Required to re-attend the Support as referred to in this Policy
  - ii. Required to participate in a rehabilitation program referred to in "Support" in this policy
  - iii. Informed of the consequences of testing positive and their obligations to present, or remain in a fit state;
  - iv. Given a verbal warning with a diary entry placed on file; and
  - v. Informed of further disciplinary action and testing requirements should they have a confirmed positive result (alcohol or drug) within the next 12 months.
24. A worker who has received three confirmed positive test results for alcohol or drugs which has been detected in a 12 month period may be disciplined under the Employer's disciplinary processes.
25. A worker who fails to attend EAP sessions may be disciplined under this policy in accordance with principles of natural justice.
26. No disciplinary action will be taken in respect of positive test results from a self-test.

## 20.0 SUPPORT

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The Principle Contractor (PC)/Employer will make available support to workers in respect of drug and alcohol issues. This will include:

27. allowing access to any Union support programs; and
28. provide an employer funded Employee Assistance Provider (EAP) to be available to workers.

The worker will be allowed to access a Union support program and/or EAP counselling during normal working hours and without loss of pay, or any form of employer retribution.

## 21.0 SELF- DECLARATION

29. Workers will not be disadvantaged for self-disclosure and therefore will be supported through counselling and rehabilitation processes and provided with the Support contained in this policy. In such cases the worker will be permitted to access personal leave in the first instance, then accrued leave, and may return to work when fit for duty.
30. The worker may be suspended from any work, with pay, with immediate effect in order for an assessment to be made of the duties they are able to perform safely and a drug and alcohol test is to be taken as soon as reasonably practicable.

## 22.0 PRIVACY

Drug and Alcohol testing results shall remain confidential and will only be used for the purpose of compliance with this Procedure in the manner required by the *Privacy Act 1988* (Cth). Any information provided or declared by a Worker regarding:

- Prescribed Drug and Pharmacy Only Drug consumed
- Medical conditions or the like
- Their proposed return to the workplace following exclusion by this procedure;

Will also remain confidential and managed in accordance with the *Privacy Act 1988* (Cth). Similarly, where a Worker supplies information regarding the use, sale or supply of Drugs or Alcohol at a workplace, unless the Worker otherwise agrees or as otherwise required by law, the Worker's identity will be kept confidential.

All Positive Results Confirmatory Test will be maintained on the relevant Worker's personnel records located at the workplace.

Protections from Worker Deoxyribonucleic Acid (DNA) misuse

Workers selected for testing shall have their personal DNA protected by:

- In the case of unintended collection of a Worker's DNA during the collection of an oral saliva sample for an initial test, by the worker being offered the used collection cartridge upon completion of the initial test.
- In the case of unintended collection of a Workers DNA during the collection of an oral saliva sample for testing at a NATA approved laboratory for an initial Non Negative Result Initial Test, by ensuring that the documentation that accompanies the collection cartridge to the NATA approved laboratory does not include the workers name or address but contains only that information sufficient to comply with AS4760 e.g. test report number and date of birth.

These protections will be notified to Workers during training.

## 23.0 CONSULTATION

If a party believes that an amendment to the impairment policy is required, they shall request and organise a consultation meeting involving the Employer, the Union and any other relevant stakeholders.

The attendees shall seek to reach agreement on any proposed amendments.

No amendments shall be implemented unless agreement is reached by the Employer, the Union and the relevant stakeholders.

Employment Assistance Program (EAP)

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

The Employment Assistance Program (EAP) is an agreed independent, professional and confidential service that aims to provide employees with assistance when affected by personal or job related problems.

To have a successful Impairment Policy at the workplace, the Policy must address how those at the workplace, including employees of the principal contractor, subcontractors and their employees and others, will be required to comply with the Impairment Policy.

The below requirements will be audited on an annual basis of the employer:

- Must be able to provide EAP support in all States, Territories and regional areas of Australia
- Must outline in their Impairment Policy how workers who attend for work affected by drugs or alcohol will be counselled and assisted, apart from any disciplinary process that might apply
- Must have a memorandum of understanding (MOU) with relevant stakeholders within treatment support areas
- Provide support for their workers and their immediate families
- Must be able to provide treatment services which must include the following:
  - General counselling
  - Drug and Alcohol counselling
  - Drug and Alcohol detoxification services
  - Drug and Alcohol rehabilitation services
  - Case Management services
  - Psychology services
- Must have a history of delivering support services to the Building and Construction Industry
- Must be able to develop and implement a plan to promote the impairment policy within the workplace

## 24.0 APPENDIX

Refer to the National CFMEU Impairment Policy for more information and detail about impairment in the construction industry. The policies and procedures in the national document look at the impairment issues of Mental Health, Injury and Illness, Fatigue, Chemicals, Heat, Cold and Noise, and Alcohol, Illegal Drugs and Legal Drugs and provide the research behind the implementation of this Impairment Policy.

# Workplace Relations Management Plan— IRD and Tower 4, Queens Wharf Brisbane

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## APPENDIX FOUR

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*Queen's Wharf Project Enterprise Agreement*

27 June 2019

Mr Graeme Newton  
Cross River Rail Delivery Authority  
Level 6, 123 Albert Street  
Brisbane Qld 4000

Dear Graeme

**Re: Pulse and Unity – Best Endeavours to Industrial Agreement**

Pulse and Unity have been progressing discussions with the relevant unions for TSD and RIS contracts since the announcement of Preferred Tenderer on 3 April 2019. Negotiations then stepped up with the issuing of formal bargaining notices for the two intended agreements:

- Tunnel and Shaft Greenfields Agreement on 31 May to the AWU;
- Civil, Mechanical and Electrical Greenfields Agreement (CME) on 13 June to the AMWU, AWU, CEPU, CFMMEU and ETU.

The focus of the discussions and bargaining has centered around the following key issues:

1. Scope and Application of the two Agreements;
2. Engagement of Subcontractors consistent with the Best Practice Principles;
3. Terms and Conditions.

Bargaining progress was initially slowed by the threshold issues relating to 1. and 2. above. With the facilitation of the Delivery Authority, we believe 2. has been able to progress in a positive manner by the parties agreeing in principle to the concept of a Cross River Rail Standing Consultative Committee. Whilst acknowledging the Terms of Reference are yet to be finalized, Pulse and Unity embrace the concept and the inherent consultation. In particular, any feedback on performance of subcontractors in the market relevant to their ability to meet the expectation of the Best Practice Principles will be fully considered by Pulse and Unity. We will also engage with the Committee to ensure the assessment criteria that Pulse and Unity utilise in the subcontractor selection will best meet the Best Practice Principles. This will include consideration of any code compliant practices currently in place on the Queens Wharf Project.

In relation to 1. being the scope and application of the Tunnel and Shaft Greenfields Agreement in particular, the issues of constitutional coverage and industry precedent combine to make this an extremely complex issue to resolve.

Given the positive progress on both these issues in more recent days, all parties have been able to focus on 3., ie terms and conditions. In the spirit of collaboration, Pulse and Unity have deliberately positioned their offer to the unions to remove the normal negotiating ambit and allow rapid closure of a deal. We have been encouraged by the progress where we have agreed rates of pay, ie Queens Wharf; and we are well

progressed on the important terms and conditions. We are aware of some tension points surrounding the differences between large infrastructure and building agreements, but believe these will be negotiated through. Acknowledging this, we will include in the drafting of the CME industrial agreement, clauses that are extracted from current Building Agreements in use in Queensland where such clauses are not in conflict with the particular requirements of this large infrastructure project.

Pulse and Unity are committed to continuing with regular bargaining meetings with diaries already booked with the unions on Friday 28 June, Tuesday 2 July and Friday 5 July. We are prepared to step this up to 4 to 5 meetings per week to ensure more rapid closure, subject of course to availability of all relevant unions. The recent pace of negotiations and progress has been very good, and compares very favorably with other major infrastructure projects.

Pulse and Unity provide our commitment that we will continue to apply maximum effort and pragmatic, commercially based decision making to progress an agreement in the shortest possible timeframe, which realistically will be in the order of 2 months best case.

In Exhibit 4, Clause 5.7.3 of the D&C Deed, Pulse committed to "Project Co. will continue negotiations with an aim to have agreed agreements in place for its employees prior to commencing major permanent works on site". Given recent progress, this is a realistic target and in fact Pulse and Unity are seeking to over achieve here and finalise agreements before works commence. This would also include the establishment of the Cross River Rail Standing Consultative Committee at this time.

Pulse was aware that material progress in respect of industrial agreements was established as a pre-requisite to financial close. Given the positive progress achieved to date, and the recent feedback to that effect from representatives of the Delivery Authority, Pulse has proceeded to mobilise the transaction for this week, including credit committee sign off by 11 international banks.

Failure to achieve financial close in the now expected timeframes may pose a significant risk to ongoing bank support, the reputation of all parties associated with this transaction including the Queensland Government, and at worse case could jeopardise ultimately achieving financial close. We also note that the apparent industrial relations issues that may currently be delaying the achievement of financial close may not be capable of being solved in the next few weeks ahead of the expiry of bank and equity commitments.

Pulse and Unity are committed to the delivery of this iconic project for the Queensland Government and the communities of South East Queensland and recognise the role that adherence to Best Practice Principles will play in the success of delivery.

We believe our behavior and intent has demonstrated the above commitment, and we undertake to continue to work closely with all relevant unions and the Delivery Authority to reach Industrial Agreements with all relevant unions in the shortest possible timeframe.

Yours faithfully



Don Johnson  
EGM – Qld / NSW / Tunnelling / Major Projects  
CPB Contractors Pty Ltd

## Sanfilippo, Vince

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**From:** Butler, Chris  
**Sent:** Tuesday, 2 July 2019 7:11 AM  
**To:** Matthew.Martyn-Jones [REDACTED]; peter@etu [REDACTED]; rohan.webb [REDACTED]; jingham [REDACTED]; gary@plumbers [REDACTED]; steve.baker [REDACTED]  
**Cc:** Johnson, Don; Sanfilippo, Vince; dgilbert [REDACTED]; darren.nelson [REDACTED]  
**Subject:** Douglas Mills  
**Attachments:** Draft Subcontractor Committee terms of reference  
CRR SCC v2 - 1-7-2019.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Matthew,

Please find attached a marked up version of the draft Subcontractor Committee terms of reference you provided to us on Friday 29 June. For your convenience, I have also provided an outline of the relevant Code considerations Pulse/Unity have taken into account in amending the document.

### Relevant section of the Code

1. Section 11(4) says that Pulse/Unity must not engage in conduct, or implement a procedure or practice which has, or is likely to have, any of the effects described in subsection 11(3) if the conduct, practice or procedure was contained in an enterprise agreement.
2. The relevant part of section 11(3) which would be breached by including those words as drafted is section 11(3)(e): requiring Pulse/Unity to consult with, or seek the approval of, a Union in relation to the engagement of subcontractors. The inclusion of 'consult with' as opposed from 'seek the approval of' means that, even just consulting with the Union/s about the list, without necessarily needing their approval of subcontractors, would breach that requirement.
3. Put simply, this means that sections 11(4) and 11(3)(e) of the Code say that Pulse/Unity must not implement a procedure or practice (such as conditions around how a Committee will operate) which requires Pulse/Unity to consult with, or seek the approval of, a Union in relation to the engagement of subcontractors.
4. To the extent that the terms of reference for the Standing Committee require consultation with a union/s about the engagement of subcontractors on the Project, it will breach this part of the Code. A requirement to consult with unions about subcontractors, whether as part of a Standing Committee or otherwise, should be limited to subcontractors who have already been appointed to perform works on the project, otherwise Pulse/Unity risks being in breach of this part of the Code.

Kind regards,

Chris

**Chris Butler**



A MEMBER OF THE CIMIC GROUP



## CROSS RIVER RAIL STANDING CONSULTATIVE COMMITTEE (SCC)

### Purpose

The purpose of the Cross River Rail Standing Consultative Committee (SCC) is to:

1. Facilitate the exchange of information between the Unions and Pulse/Unity consortia relating to the application of and compliance with the Queensland Procurement Policy 2018, incorporating the Best Practice Principles;
2. Provide a forum to exchange relevant information about sub-contractors ~~and compliance with the Best Practice Principles~~ ~~their ability to meet prequalification criteria~~; and
3. Improve the understanding between the parties about ~~BPP compliance~~ ~~suitability~~ of sub-contractors working on the CRR Project, ~~assessed against the framework established by the QPP 2018~~.
4. Enhance the engagement and consultation between the parties to encourage a better understanding of the project and a more cooperative relationship.
5. Measure performance of subcontractor engaged on the project against their Best Practice Principle commitments.

### Membership

Membership of the Cross River Rail SCC will consist of one (1) representative from the Delivery Authority, ~~who will act as the inaugural Chair~~, with equal representation drawn from the unions which are signatories to the Enterprise Agreements (relevant unions) covering employees working on the CRR Project ~~and five (5) representatives~~ ~~representation~~ nominated by Pulse/Unity consortia.

~~The role of Chair of the Cross River Rail SCC will be a nominee of Pulse/Unity rotate as follows:~~

Year	Chair
<del>1</del>	<del>Cross River Rail Delivery Authority representative</del>
<del>2</del>	<del>Nominee of relevant unions</del>
<del>3</del>	<del>Nominee of Pulse/Unity</del>
<del>4</del>	<del>Cross River Rail Delivery Authority representative</del>
<del>5</del>	<del>Nominee of relevant unions</del>

~~In the absence of the designated Chair, the CRRDA representative shall chair relevant meetings.~~

The membership of the Cross River Rail SCC shall not exceed 11 people.

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### Operation of the SCC

1. The membership of the Cross River Rail SCC (SCC) shall be as outlined above. The membership may be varied from time to time by a unanimous decision of the SCC.
2. The SCC will at all times act lawfully and in accordance with relevant applicable legislative requirements including the Code for the Tendering and Performance of Building Work 2016 (Code), both Commonwealth and the State of Queensland.
3. Pulse/Unity ~~The Delivery Authority~~ will provide the secretariat to the Chair and the SCC.
4. The Secretariat will circulate the agenda, supported by any relevant documents, to the SCC members prior to each meeting.
5. The Secretariat will record the minutes of meetings, including action items and circulate them to SCC members.
6. The SCC shall meet quarterly at a minimum, with more frequent meetings convened by agreement of the SCC to suit project ~~operational~~ ~~procurement~~ requirement.

- ~~7. Pulse/Unity will provide the SCC with a rolling procurement plan monthly to ensure SCC consideration of advice to potential subcontractors regarding Best Practice Principles obligations.~~
- ~~8. Escalation – in the event of material disagreement referral to the Project Director (Pulse/Unity consortia), relevant unions, Cross River Rail CEO for final advice to Pulse/Unity consortia.~~

**Terms of Reference**

The terms of reference for the SCC are as follows:

1. The SCC shall be a forum for Pulse/Unity to take soundings from project stakeholders regarding the compliance selection of subcontractors with to ensure implementation of the QLD Government’s Best Practice Principles.
2. The SCC shall from time to time assess relevant industry best practice and where appropriate bring forward for consideration examples that would assist in the overall objectives of the SCC.
3. The SCC will operate in an advisory capacity, providing operational on-the-ground advice to Pulse/Unity on matters covered by the BPP. As the SCC performs an advisory role only, it has no decision-making responsibilities.
- ~~3.4.~~ While the SCC will have no decision-making capacity in relation to appointment of subcontractors to carry out works on the CRR Project, it will provide advice and information to relevant decision makers as appropriate. Pulse/Unity will take this advice into account in making relevant decisions.
- ~~4.5.~~ The SCC will work with Pulse/Unity to provide guidance to potential subcontractors about how to meet and comply with the QLD Government’s Best Practice Principles.
- ~~5.6.~~ The SCC will have a role in ensuring the assessment criteria that Pulse/Unity utilise in subcontractor selection are consistent with the Best Practice Principles. Pulse/Unity will utilise best practice code compliant practices to inform its approach to the task of providing prospective subcontractors with relevant briefing material. This approach will be contingent upon the settlement of the Civil, Mechanical & Electrical Greenfields Agreement for the Cross River Rail Project. This will include consideration of any Code-compliant practices currently in place on e parties acknowledge the Queens Wharf project as a current exponent of best practice and will look to their practices as a guide for this project.
- ~~6.7.~~ The parties acknowledge that Pulse/Unity will decide how and when subcontracted work shall be allocated, in accordance with all relevant and applicable legislative requirements, both Commonwealth and the State of Queensland. In particular the relevant sections of the *Fair Work Act*, the *Building and Construction Industry (Improving Productivity) Act 2016*, and The Building Code.
8. The SCC will work with Pulse/Unity to monitor and measure subcontractor performance against the Best Practice Principles and report to Government on a quarterly basis.
9. If in the opinion of the Chair, a member of the Committee acts in a disrespectful manner, then the Chair can suspend that Committee member for a period of time, at the Chair’s discretion.
10. If unprotected industrial action occurs on the Project, the SCC will be suspended for the following quarter.

Conflict of interest

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1. Members must declare any conflicts of interest whether actual, potential, apparent, or appear likely to arise.

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#### Confidentiality

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1. Members of the Committee may from time to time be in receipt of information that is regarded as 'commercial in confidence' or have privacy implications. Members acknowledge their responsibility to maintain confidentiality of all information that is not in the public domain. Members will be required to sign a Confidentiality Deed, as provided by the Pulse/Unity consortium.

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## Toby Walthall

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**From:** Johnson, Don  
**Sent:** Tuesday, 2 July 2019 3:34 PM  
**To:** Michael Wright; Diego Zumaquero; Santamaria, Juan; Sanfilippo, Vince  
**Cc:** Butler, Chris; Johnson, Don  
**Subject:** RE: It starts - please give me a summary so I can call her this arvo

Michael

Some notes on today's meeting prepared by Chris Butler and myself

- The purpose of today's meeting was to progress the 'CRR Standing Consultative Committee' – draft Terms of reference and to progress bargaining for the 'Civil, Mechanical and Electrical Enterprise Agreement' with the 5 unions we have nominated as bargaining agents: AWU, CFMEU, AMWU, ETU and CEPU.
- At the outset of today's meeting, Matthew Martyn-Jones from the DA deferred the topic of the 'CRR Standing Consultative Committee', to the next meeting. We had no issues with this.
- With regards to bargaining, we provided an updated Term Sheet (as per the offer we outlined last week), which identified what we had 'agreed to in principle'. Within this meeting, we made some progress and moved a further 3 items (albeit, not major in nature) into this category: annual leave, employee reps receiving 5 days per calendar year of training leave and weekly payment of wages.
- The unions provided some feedback on our draft Enterprise Agreement (we handed out a revised copy), and we agreed to look at 2 Queen's Wharf clauses in particular for potential inclusion into the draft, and that we will revert with feedback next meeting.
- There was a discussion about utilising the Queens Wharf Enterprise Agreement as a base document (pushed by the DA and the CFMEU mainly), which we pushed back on (as we have done throughout the meetings) and stated that where the union/s identifies a clause from the QW Agreement for potential incorporation into the draft Agreement, we will consider it.
- 20 mins into the meeting, an RTBU official turned up to the meeting. The CFMEU and ETU pushed for the company to recognise the bargaining rights of the RTBU as a 'threshold issue' to them continuing the meeting and future negotiations. We had not initially provided the term sheet we were discussing to the RTBU rep as they are not part of the bargaining process, and this attracted the union's angst
- We restated our position that the RTBU were not part of the bargaining process as identified by the Fair Work Act. The unions restated that it was a 'threshold issue' for them. We provided no further reason than it was our choice as to who we issued a bargaining notice, and the other 5 unions had majority coverage
- The meeting was adjourned, and we considered our position. Including the risk of other unions (including the CFMEU) demanding a seat at the table for the 'Tunnelling Enterprise Agreement'. Also, we held the view that the integrity of the bargaining process would be comprised if we did not challenge the standing of the RTBU in the bargaining process.
- Don was called out of the meeting by Matthew Martyn-Jones, on his return, Don told us that Matthew agreed the RTBU should not be there and that a way for us to remove them was to offer more concessions to the other parties.
- The meeting reconvened, we restated our position regarding the RTBU, whereby we outlined that we do not wish to enter into an enterprise agreement with the RTBU and that the RTBU were not part of the bargaining process as per the bargaining notices we issued as identified by the Fair Work Act. Whilst we are fine to stay and continue bargaining with the other 5 unions (not including the RTBU), this is a 'threshold issue' for us.
- Before we could finish this statement, led by Jade Ingham (CFMEU) the unions walked out of the room.

The discussions I had outside the room and later on the phone with Scott Gartrell and Matthew Martyn Jones included:

- Matthew said he would push back at government level on RTBU involvement as it was an issue for the tunnel (ie let RTBU into rail was similar bad outcome to CFMEU in tunnel) and also for Qld Rail (QR) who would be exposed for massive pay increases if construction rates filtered into QR

- Matthew and Scott then tried to bounce me, saying that they would deal with RTBU issue with Government but we needed to step up and progress deal quicker and not be so negative  
- I pushed back noting their comments were not reflective of the meeting I'd just been in  
- I noted it was up to us how we conducted the negotiation and that we had chosen to deal with scope and application of agreements, subcontractors and then the agreement. Within the agreement, we were aiming to agree a term sheet of rates and conditions, after which we would get into the words. In the letter last week, I suggested it would take 2

months to get an EA, and I've no reason to think differently. It's difficult to control if unions continuously go back to scope and application and subbies

- They were trying to make a case that we were not progressing with the pace and positivity of last week, but there was no substance to their argument. It was almost that they just wanted to deliver this message
- Scott then spoke of our commitment to import clauses from Queens Wharf, and I didn't back away from this but said they need to be relevant to infrastructure ( not building) project. I quoted couple of examples being Jade's push for First Nations clause which gives us greater obligations than the Deed, and D&A where our 4 paragraph clause contrasts with the CFMEU's 43 pages, and we need to ensure compliance with Rail Safety requirements, and Hot weather noting we would not be importing Vic clauses into Qld - it's always hot here!
- the conversation ended ok and I'm surprised of the vigour in Scott's reporting up the line ( but it's not unexpected because their colours are becoming increasingly apparent)

Note that our team is arranging meetings with both RTBU and AWU to try to defuse the RTBU situation. We need to understand whether RTBU is pushing this as they are concerned that have coverage of particular groups of employees, or whether they are CFMEU stooges

-

Regards

Don Johnson  
EGM - NSW / QLD / Major Projects / Tunnelling

Level 18, 177 Pacific Highway, North Sydney, NSW 2060, T [REDACTED] M Mobile Number E  
[REDACTED]

-----Original Message-----

From: Michael Wright [REDACTED]  
Sent: Tuesday, 2 July 2019 11:51 AM  
To: Diego Zumaquero [REDACTED] Santamaria, Juan <[REDACTED]>;  
Johnson, Don <[REDACTED]>; Sanfilippo, Vince <[REDACTED]>  
Subject: It starts - please give me a summary so I can call her this arvo

Text below

Hi Michael, sorry to disturb your holidays. I'm also trying to get some down time.

The report out of this morning's meeting from Scott Gartrell is very concerning. I have been advised CBP have been hostile in their approach, comforted by the fact that the contract is finalised & financial close achieved.

Clearly, this is true but, it is also true that this is the start of a long relationship and consistency in approach and temperament would help to build on and strengthen this important relationship.

Additionally, commitments have been given, which I expect to be kept. Also, the government expects the good faith and momentum achieved on IR negotiations prior to contract close to continue now that the contract has been finalised.

Happy to discuss. Jackie

Michael Wright  
Chief Executive Officer  
CIMIC Group Ltd  
[REDACTED]

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## Sanfilippo, Vince

---

**From:** Michael Wright [REDACTED]  
**Sent:** Wednesday, 3 July 2019 9:51 AM  
**To:** Johnson, Don; Diego Zumaquero; Santamaria, Juan; Sanfilippo, Vince  
**Cc:** Butler, Chris; Nolan, Andrew; Craig Byrnes; Ignacio Segura  
**Subject:** CRR IR - Not for further distribution

Text sent to Jackie this morning 9:45am. Not for distribution.

Jackie

Following your call, I asked for some feedback from the meetings of yesterday, as below:

\*The purpose of the meeting was to progress the 'CRR Standing Consultative Committee' - draft Terms of reference and to progress bargaining for the 'Civil, Mechanical and Electrical Enterprise Agreement' with the 5 unions we have nominated as bargaining agents: AWU, CFMMEU, AMWU, ETU and CEPU.

\*At the outset, the DA deferred the topic of the 'CRR Standing Consultative Committee', to the next meeting.

\*With regards to bargaining, D&C provided an updated Term Sheet (as per the offer we outlined last week), which identified what we had 'agreed to in principle'. Within the meeting, some progress was made on a further 3 items.

\*Unions provided some feedback on draft Enterprise Agreement tabled, and agreed to look at other Queen's Wharf clauses for potential inclusion into the draft.

\*Some way into the meeting, an RTBU official turned up to the meeting despite them not being part of the bargaining process as identified by the Fair Work Act.

\*Following further discussions, with some unions wanting the RTBU involved, the meeting finished with the unions leaving the meeting.

\*Further discussions were had with Matthew Martyn Jones and Scott Gartrell re-progress, RTBU and Queens Wharf agreement, and need to reflect infrastructure needs/conditions.

\*Conversation ended well apparently.

\*Further meetings were arranged with AWU and RTBU yesterday afternoon.

Further meetings will continue to progress these matters. There is a commitment from D&C to progress these matters expeditiously, bargaining in good faith, however as required under requirements of the Code and Fair Work Act.

I will get an update later this week and see how things have progressed.

Regards, Michael

Michael Wright  
Chief Executive Officer

[REDACTED]  
Assistant

[REDACTED]  
www.cimic.com.au

-----Original Message-----

From: Johnson, Don <[REDACTED]>  
Sent: Tuesday, 2 July 2019 3:34 PM  
To: Michael Wright <[REDACTED]>; Diego Zumaquero <[REDACTED]>; Santamaria, Juan <[REDACTED]> Sanfilippo, Vince <[REDACTED]>  
Cc: Butler, Chris <[REDACTED]>; Johnson, Don <[REDACTED]>  
Subject: RE: It starts - please give me a summary so I can call her this arvo

Michael

Some notes on today's meeting prepared by Chris Butler and myself

\*The purpose of today's meeting was to progress the 'CRR Standing Consultative Committee' - draft Terms of reference and to progress bargaining for the 'Civil, Mechanical and Electrical Enterprise Agreement' with the 5 unions we have nominated as bargaining agents: AWU, CFMEU, AMWU, ETU and CEPU.

\*At the outset of today's meeting, Matthew Martyn-Jones from the DA deferred the topic of the 'CRR Standing Consultative Committee', to the next meeting. We had no issues with this.

\*With regards to bargaining, we provided an updated Term Sheet (as per the offer we outlined last week), which identified what we had 'agreed to in principle'. Within this meeting, we made some progress and moved a further 3 items (albeit, not major in nature) into this category: annual leave, employee reps receiving 5 days per calendar year of training leave and weekly payment of wages.

\*The unions provided some feedback on our draft Enterprise Agreement (we handed out a revised copy), and we agreed to look at 2 Queen's Wharf clauses in particular for potential inclusion into the draft, and that we will revert with feedback next meeting.

\*There was a discussion about utilising the Queens Wharf Enterprise Agreement as a base document (pushed by the DA and the CFMEU mainly), which we pushed back on (as we have done throughout the meetings) and stated that where the union/s identifies a clause from the QW Agreement for potential incorporation into the draft Agreement, we will consider it.

\*20 mins into the meeting, an RTBU official turned up to the meeting. The CFMEU and ETU pushed for the company to recognise the bargaining rights of the RTBU as a 'threshold issue' to them continuing the meeting and future negotiations. We had not initially provided the term sheet we were discussing to the RTBU rep as they are not part of the bargaining process, and this attracted the union's angst \*We restated our position that the RTBU were not part of the bargaining process as identified by the Fair Work Act. The unions restated that it was a 'threshold issue' for them. We provided no further reason than it was our choice as to who we issued a bargaining notice, and the other 5 unions had majority coverage \*The meeting was adjourned, and we considered our position. Including the risk of other unions (including the CFMEU) demanding a seat at the table for the 'Tunnelling Enterprise Agreement'. Also, we held the view that the integrity of the bargaining process would be comprised if we did not challenge the standing of the RTBU in the bargaining process.

\*Don was called out of the meeting by Matthew Martyn-Jones, on his return, Don told us that Matthew agreed the RTBU should not be there and that a way for us to remove them was to offer more concessions to the other parties.

\*The meeting reconvened, we restated our position regarding the RTBU, whereby we outlined that we do not wish to enter into an enterprise agreement with the RTBU and that the RTBU were not part of the bargaining process as per the bargaining notices we issued as identified by the Fair Work Act. Whilst we are fine to stay and continue bargaining with the other 5 unions (not including the RTBU), this is a 'threshold issue' for us.

\*Before we could finish this statement, led by Jade Ingham (CFMEU) the unions walked out of the room.

The discussions I had outside the room and later on the phone with Scott Gartrell and Matthew Martyn Jones included:

- Matthew said he would push back at government level on RTBU involvement as it was an issue for the tunnel (ie let RTBU into rail was similar bad outcome to CFMEU in tunnel) and also for Qld Rail (QR) who would be exposed for massive pay increases if construction rates filtered into QR

- Matthew and Scott then tried to bounce me, saying that they would deal with RTBU issue with Government but we needed to step up and progress deal quicker and not be so negative

- I pushed back noting their comments were not reflective of the meeting I'd just been in

- I noted it was up to us how we conducted the negotiation and that we had chosen to deal with scope and application of agreements, subcontractors and then the agreement. Within the agreement, we were aiming to agree a term sheet of rates and conditions, after which we would get into the words. In the letter last week, I suggested it would take 2 months to get an EA, and I've no reason to think differently. It's difficult to control if unions continuously go back to scope and application and subbies

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where our 4 paragraph clause contrasts with the CFMEU's 43 pages, and we need to ensure compliance with Rail Safety requirements, and Hot weather noting we would not be importing Vic clauses into Qld - it's always hot here!

- the conversation ended ok and I'm surprised of the vigour in Scott's reporting up the line ( but it's not unexpected because their colours are becoming increasingly apparent)

Note that our team is arranging meetings with both RTBU and AWU to try to defuse the RTBU situation. We need to understand whether RTBU is pushing this as they are concerned that have coverage of particular groups of employees, or whether they are CFMEU stooges

-

Regards

Don Johnson  
EGM - NSW / QLD / Major Projects / Tunnelling

Level 18, 177 Pacific Highway, North Sydney, NSW 2060, T [REDACTED] M Mobile Number E  
[REDACTED] cpbcon.com.au

-----Original Message-----

From: Michael Wright [REDACTED] >

Sent: Tuesday, 2 July 2019 11:51 AM

To: Diego Zumaquero [REDACTED] Santamaria, Juan

[REDACTED] Johnson, Don [REDACTED]; Sanfilippo, Vince

Subject: It starts - please give me a summary so I can call her this arvo

Text below

Hi Michael, sorry to disturb your holidays. I'm also trying to get some down time.

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Additionally, commitments have been given, which I expect to be kept. Also, the government expects the good faith and momentum achieved on IR negotiations prior to contract close to continue now that the contract has been finalised.

Happy to discuss. Jackie

Michael Wright  
Chief Executive Officer  
CIMIC Group Ltd  
[REDACTED]

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## Sanfilippo, Vince

---

**From:** Butler, Chris  
**Sent:** Thursday, 18 July 2019 4:25 PM  
**To:** Beau Malone (ETU); Peter Ong; gary@plumbers [REDACTED]; robbie@plumbers [REDACTED]; steve.baker [REDACTED]; marina.chambers [REDACTED]; Paul Cradden; rohan.webb [REDACTED]; joshua.thornton [REDACTED]; jingham [REDACTED]  
**Cc:** Sanfilippo, Vince; dgilbert [REDACTED]; Dean Langridge; darren.nelson [REDACTED]  
**Subject:** RE: Provision of term sheet (Civil, M&E) and bargaining representative responses  
**Attachments:** 20190705 v1 - Union Position - CME Term Sheet.docx

No problems, please see attached word version.

Thanks,

Chris

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**From:** Beau Malone (ETU) <[REDACTED]>  
**Sent:** Thursday, 18 July 2019 2:34 PM  
**To:** Butler, Chris <[REDACTED]>; Peter Ong [REDACTED]; gary@plumbers [REDACTED]; robbie@plumbers [REDACTED]; steve.baker [REDACTED]; marina.chambers [REDACTED]; Paul Cradden [REDACTED]; rohan.webb [REDACTED]; joshua.thornton [REDACTED]; jingham [REDACTED]  
**Cc:** Sanfilippo, Vince <Vince.Sanfilippo [REDACTED]>; dgilbert [REDACTED]; Dean Langridge [REDACTED]; darren.nelson [REDACTED]  
**Subject:** RE: Provision of term sheet (Civil, M&E) and bargaining representative responses

G'day Chris,

As agreed can you send through the word version

Cheers

**Beau Malone**  
Gold Coast Organiser  
Electrical Trades Union  
Queensland



[www.etu.org.au](http://www.etu.org.au)



Join Online

<https://etu.org.au/join-the-qld-nt-branch-now/>

Or call

1800ETUYES

“A worker in this country voting for the LNP is like a Turkey voting for Christmas”



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The Electrical Trades Union Queensland has virus scanning devices on our system but in no way do we represent that this communication (including any files attached) is free from computer viruses or other faults or defects. We will not be held liable to you or to any other person for loss and damage (including direct, consequential or economic loss or damage) however caused and whether by negligence or otherwise which may result directly or indirectly from the receipt or use of this communication or attached files.

**From:** Butler, Chris [redacted]  
**Sent:** Thursday, 18 July 2019 2:29 PM  
**To:** Peter Ong; Beau Malone (ETU); [gary@plumbers](mailto:gary@plumbers) [redacted] [robbie@plumbers](mailto:robbie@plumbers) [redacted]  
[steve.baker](mailto:steve.baker) [redacted]; [marina.chambers](mailto:marina.chambers) [redacted] Paul Cradden; [rohan.webb](mailto:rohan.webb) [redacted]  
[joshua.thornton](mailto:joshua.thornton) [redacted] [jingham](mailto:jingham) [redacted]  
**Cc:** Sanfilippo, Vince; [dgilbert](mailto:dgilbert) [redacted] Dean Langridge; [darren.nelson](mailto:darren.nelson) [redacted]  
**Subject:** Provision of term sheet (Civil, M&E) and bargaining representative responses

Dear all,

Following on from our bargaining meeting on Tuesday 16/07/19, I undertook to distribute a Civil, M&E Term Sheet to each of you so that you can respond to our offer and identify matters that you seek to be included in the agreement. You will also need to include the expected outcome or dollar amount, and respond with a unified position.

Please return the completed term sheet to me at your earliest convenience.

As we discussed, we will not meet next Tuesday (23 July 2019) to enable sufficient time for all parties to respond.

Thank you,

Chris Butler

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## 20190705 v1 – Union Position

Matter	CRR Civil, M&E Offer	Union Position
First aid	\$2.35-\$3.65 p/d (flat allowance)	
Leading Hand	\$35 - \$65 p/wk (flat allowance)	
Services Trades Queensland	\$30 per week for plumbers & sprinkler fitters fixed for life of agreement	
Certificate Allowance	\$0.99 p/hr fixed for life of agreement plumbers & sprinkler fitters	
OT meal	\$19.37 pm for OT more than 2 hrs	
Meal breaks	10 min + 30min shift 20 min + 30 min	
Notice of Term	empr 1-4 wks + 1 if >45 based on service	
TP incl Tool	\$1.5 p/hr (all purpose allowance)	
Elect Cont Lic	\$65 p/wk (flat allowance)	
RDO's	26 RDO's 6 fixed	
Overtime (in excess of 36 ord hrs for day & night workers)	mon - sat 1.5 1st 2, 2x thereafter sun 2 x	
Shift penalty rates	50% aft & night weekend shift 2x	
Public holidays	paid 250% if rostered to work paid ord time if rostered but no work	
Inclement weather	Flexibility to do other work not affected, training etc 32hr cap on lost time to inclement weather 2 x for work in rain	
Personal/Sick Leave	10 days pa paid out on redund and/or completion of project	
Compassionate Leave	2 days paid	
Jury Service	reimbursed diff bet jury & ord hrs for first 10 days	
Parental Leave	Minimum standard is 12 months unpaid for 12 mths cont serv	
DSP	model clause with 2 party consent to refer to FWC	
Consultation	consult on major change to production, program, org structure, technology in relation to enterprise consult on change to roster or ord hrs	
abandonment	absence for 3 days - employee right of reply in accord with recent FB decision	
counselling & discipline	in line with best practice, warnings for performance/behaviour that is not serious misconduct prior to term, empee opportunity to rectify and / or respond	
Relationship to award	stand alone overrides award	
Continous operations clause	flexibility for cont ops such as concrete pours etc	
individual flexibility	employees & employer can agree flexibility around when work is performed, parental leave ensuring empee is better off overall in the event no agt made.	
Travel	\$43 p/d - paid on days worked and RDO's increased as per wage escalation of 3.5%*	
IP Cost to Employer	\$156 p/p p/m increased as per wage escalation of 3.5%*	
Productivity/Site Allowance	\$8 p/hr worked increased as per wage escalation of 3.5%*	
Safety Disputes Procedure	Amended as per Union request	
HSR & HSR Meetings	Have incorporated significant aspects of QW agreement	
Employee Representative Facilities	QW with minor changes	
Compliance with Stat requirements	QW	
Severability	QW	
Tool box meetings	QW with minor changes	
Salary Sacrifice	As per QW, but only applies to Superannuation	
Wage escalations	3.5% pa	
Employee representatives	recognition of their role - access to computer, time etc <b>limit 5 days per cal yr training leave</b>	
Annual Leave	4 wks + 17.5% loading	
Payment of Wages	weekly	
Redundancy	\$150 p/wk worked, <b>pro rata for partial weeks works</b> increased as per wage escalation of 3.5%*	
Super	9.5% on ordinary hours (36 p/wk) or min \$245 p/wk	
Term	4 years - max term allowed	
Clothing Issue	SPF, hearing, eye incl prescription, helmet, gloves, boots, gumboots, dust masks, wet weather jkt, safety vest, 5 long pants, 5 long sleeve shirt AND Winter Jacket	

<b>Family Violence</b>	10 days paid per annum	
<b>Probation</b>	3 months	
<b>CW Rates</b>		
CW1	41.97	
CW2	43.60	
CW3	45.42	
CW4	47.69	
CW5	49.89	
CW6	52.15	
CW7	54.42	
CW8	56.70	
<b>EW Rates</b>		
EW1	40.24	
EW2	42.75	
EW3	45.27	
EW4	47.78	
EW5	51.61	
<b>MW Rates</b>		
MW1	37.33	
MW2	39.25	
MW3	41.83	
MW4	44.22	
MW5	47.86	
<b>Plumber Rates</b>		
PW1	38.78	
PW2	43.47	
PW3	43.63	
PW4	48.47	
PW5	50.96	

\* should wage escalations change, this item will be fixed for the life of the agreement

## Sanfilippo, Vince

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**From:** [REDACTED]  
**Sent:** Friday, 19 July 2019 2:22 PM  
**To:** Sanfilippo, Vince; Butler, Chris  
**Subject:** RE: Meeting summary - CRR Bargaining Meeting (C,M&E) - 19/7/2019 - 9am - 12pm

Vince and Chris,

I have highlighted my additions below.

Darren.

- The purpose of the meeting was to discuss the draft terms of reference for the Standing Consultative Committee.
- 2 key areas of disagreement were identified:
  - (1) the chair of the committee. Our view is that we will nominate the Chair (IR & BPP are our risks and opportunities to manage and our concerns re: the Code extend to the workings of the Committee, which is why we lead. Pushed primarily by Mathew Martyn-Jones (MMJ) and supported by the Unions, the opposing view was that an 'independent' Chair is implemented by the DA.
  - (2) the provision of a 'rolling procurement plan'. Our view is this would breach the Code (which we re-stated). In addition to, how the plan is being characterised, which is as a vehicle for delivering 100% parity and Union input into prequal and selection. The DA and Union's view is that this would not breach the Code.
  - SG stated that the SCC was not to be just another forum, but a channel for the implementation of BPP and discussion on 'a whole range of other matters including operational matters.
  - JI was insistent that SCC draft 'does not go far enough' nor does it do the work it needs to do.' He stated that it committee need to not only select the suitable subbie, 'it needed to determine what the subbies employees get paid and how they are treated.'
  - JI wanted all references to the Building Code 2016 removed.
  - JI stated that the 'ethical supply mandate' was to be incorporated. (This does NOT come into effect until 1 August 2019 and is not retrospective in its application.
  - JI stated that the SCC will also need to address employment security (labour hire and subcontracting) and that industry standard terms and conditions apply to employees of subbies (labour hire).
  - Beau Malone stated he wanted CPB to 'rebadge' the Probuild procedure word for word and submit to the ABCC for approval.
  - SG asked "What about a process that is ABCC approved?"
  - MMJ questioned, What does Probuild do re Code?
- Within the meeting the DA and Unions sought to expand the remit of the SCC to include matters including training, First Nation, etc. and how we could 'exceed/go far beyond the obligations within the contract'.
- The topic of 1 vs. 2 Agreements came up again. The AWU stood up and said they do not support 1 Agreement, despite the other 4 x Unions pushing this still. We made our position clear (again).

- From the separate (post meeting) discussion, Vince and Chris had with Scott Gartrell (SG) and Paul Inches (PI), it was clear that SG believes that the Code does not stop Pulse/Unity from having *the SCC*

---

**From:** Butler, Chris [REDACTED]  
**Sent:** Friday, 19 July 2019 1:51 PM  
**To:** darren.nelson [REDACTED]  
**Subject:** Meeting summary - CRR Bargaining Meeting (C,M&E) - 19/7/2019 - 9am - 12pm

Vince and Darren,

Please see below my summary of the meeting today, and the separate discussion we had with Scott Gartrell and Paul Inches.

I am on my way to the airport at 2pm, can I suggest Darren adds to the email, and re-circulates.

- The purpose of the meeting was to discuss the draft terms of reference for the Standing Consultative Committee.
- 2 key areas of disagreement were identified:
  - (1) the chair of the committee. Our view is that we will nominate the Chair (IR & BPP are our risks and opportunities to manage and our concerns re: the Code extend to the workings of the Committee, which is why we lead. Pushed primarily by Mathew Martyn-Jones (MMJ) and supported by the Unions, the opposing view was that an 'independent' Chair is implemented by the DA.
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- Within the meeting the DA and Unions sought to expand the remit of the SCC to include matters including training, First Nation, etc. and how we could 'exceed/go far beyond the obligations within the contract'.
- The topic of 1 vs. 2 Agreements came up again. The AWU stood up and said they do not support 1 Agreement, despite the other 4 x Unions pushing this still. We made our position clear (again).
- From the separate (post meeting) discussion, Vince and Chris had with Scott Gartrell (SG) and Paul Inches (PI), it was clear that SG believes that the Code does not stop Pulse/Unity from having

Regards,

Chris

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## Sanfilippo, Vince

---

**From:** Butler, Chris  
**Sent:** Friday, 2 August 2019 3:36 PM  
**To:** Large, Andrew  
**Cc:** Sanfilippo, Vince; darren.nelson [REDACTED] dgilbert [REDACTED]  
**Subject:** CME EA meeting 2/8/19

Andrew,

Please see below key points from today's meeting. Vince, Dale and Darren, let me know if I missed anything.

VS set the agenda for the bargaining meeting by stating the 4 threshold issues for the JV in relation to effectively progressing bargaining:

1. Overtime time would be in line with the Civil Industry- 1.5 for the first 2 hours and double time thereafter.
2. Shift allowance- JV position was 1.5x and a rejection of union claim for 2x.
3. Escalation would be 3.5% not the union claim of 5%.
4. RDO flexibility, 26 RDOs, 6 fixed and 20 flexible.

VS pressed that over the preceding 6-7 weeks the JV had considered claims from the unions and amended the term sheet and draft EAs to reflect our consideration. To date, the unions had not considered the position of the JV other than to refer to the QW EA. The unions became agitated and argumentative. It was obvious that the unions were unsettled by our approach (which had not occurred to this extent before). VS & CB pressed for the unions to respond and initiated a break for the parties to consider what had been discussed.

After the break the unions acknowledged that they would 'consider' the 4 threshold points and that there were other points they would raise. A discussion ensued and various points were discussed;

1. Jade Ingham referred to our previous offers as 'crumbs from the table.'
2. Jade Ingham stated that there were other (reference to our 4 points) key threshold clauses for the unions that are key to them.
3. There are a number of clauses in the CME EA that are abhorrent to the unions.
4. Beau Malone stated that we were in 'fairy land' if we thought that they were the only matters to be discussed today. He stated that the unions had raised matters at previous meetings that they wanted addressed prior to proceeding further.
5. CB put to the unions that we had provided 3 or 4 draft EAs and multiple term sheets and that the unions had not provided a written response or counter proposal at any time other than to refer to QW.
6. CB stated that the various draft EAs contained the provisions that the JV needed for the project and the unions had not considered them at any time they simply stated look at QW and 'tell us what you can't live with.'
7. The other unions referred to QW and other Industry agreements as the basis for their position.
8. In relation to escalation Beau Malone proposed front loading the hourly rates so that at the expiration of the EA the employees would receive the same level of pay as if they had an escalation of 5% on the current rates =QW rates.
9. Jade Ingham stated in relation to RDOs that his position was a calendar with 26 fixed RDOs, a process to seek agreement from employees to work and penalty rates to apply when they work. QW was the starting point.

It was obvious from Jade's comment that no consideration would be given to the key points unless the consideration (and penalties) aligned with QW.

The meeting concluded.

Regards,

Chris

----- Forwarded message -----

**From:** Jade Ingham [REDACTED]  
**Date:** 20 Aug 2019, 6:22 AM +1000  
**To:** Sanfilippo, Vince [REDACTED]  
**Cc:** Beau Malone (ETU) [REDACTED] dgilbert [REDACTED]  
scott.gartrell [REDACTED] Paul.Inches [REDACTED]  
[REDACTED], robbie@plumbers [REDACTED],  
gary@plumbers [REDACTED] marina.chambers [REDACTED]  
<marina.chambers [REDACTED] Jason Stein [REDACTED]  
**Subject:** Re: Tomorrows Meeting

Vince that's bullshit. Whichever bright spark IR consultant drafted your email cannot re-write history. Concessions have been made on both sides. If is agreed that bargaining has been slow going, but you cannot suggest that is the fault of Unions, or that Unions have not bargained in good faith. Just because you haven't gotten your own way that is no reason to throw your toys out of the cot and walk away. The JV has postponed and/or walked out of a number of meetings since bargaining commenced. Newsflash: bargaining is tough. Take a teaspoon of cement and get on with it.

Jade Ingham  
Assistant State Secretary  
CFMEU Q/NT  
Construction & General Division

On 19 Aug 2019, at 20:18, Sanfilippo, Vince [REDACTED] wrote:

Hi Beau

As you are aware bargaining for the Cross River Rail Civil, Mechanical and Electrical Agreement commenced early June 2019. Since the commencement there have been numerous bargaining

meetings. During that period, the Joint Venture team have made a significant number of concession in good faith during the bargaining process with the intent of achieving a fair and equitable outcome.

It is becoming increasingly apparent to the Joint Venture that the union bargaining representatives have placed little value on the significant movement that the Joint Venture has made in an effort to achieve an agreed form of Greenfields Agreement.

The Joint Venture is concerned that there may be no realistic prospect to a bargained outcome for a Greenfields agreement unless the union bargaining representatives acknowledge the movement from the Joint Venture and begin to commence bargaining in good faith.

Should the union bargaining representatives be unable or unwilling to provide the Joint Venture with evidence of good faith bargaining by acceptance of a number of key areas that are listed below and agreement that those matters will not be subject to further bargaining, then the prospect of an agreed position is unlikely.

The Joint Venture has bargained in good faith. However the Joint Venture's capacity to continue to bargain (in the absence of any compromise or movement from the union bargaining representatives) on matters such as; Escalation, Scope and Application, Non incorporation of any Award, Productivity and site allowances, Double time for shift work and Double time for all overtime, is now exhausted.

The Joint Venture also restates our earlier position in relation to the commitments made by the union bargaining representatives to;

- 1) Provide a detailed comparison document to our draft agreement (13th of August). The unions comparison document needs to contain the unions' consolidated position (wording and dollar values where relevant) against each clause in our draft agreement.
- 2) To allow for effective bargaining we need this document to be provided at least 24hrs prior to our next meeting.

Regrettably, if the unions bargaining representatives are unwilling to provide the required evidence of good faith bargaining (requested above) and to provide the comparison documentation that allows the Joint Venture to understand the Unions overall position, the Joint Venture sees little point in scheduling a further meeting.

Regards

**Vince Sanfilippo**

General Manager, QLD & PNG

M [REDACTED]

<image003.jpg>

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**From:** Beau Malone (ETU) [REDACTED]  
**Sent:** Monday, 19 August 2019 5:30 PM  
**To:** Sanfilippo, Vince [REDACTED]  
**Cc:** [dgilbert](#); Darren Nelson; [scott.gartrell](#); [Paul.Inches](#); Dean Langridge; [robbie@plumbers](#); [gary@plumbers](#); [jingham](#); [marina.chambers](#); Butler, Chris; Jason Stein [REDACTED] >  
**Subject:** Tomorrows Meeting

G'day Vince,

As discussed, it has been agreed by most Unions to postpone tomorrow's planned meeting in the aim to finalise the tracker, as agreed at last week's meeting. The aim is to have this through by close of business tomorrow.

**Cheers**

**Beau Malone**

**Gold Coast Organiser**

Electrical Trades Union

Queensland



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<image007.png> <image008.png>

<image009.jpg>

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*"The labor movement did not diminish the strength of the nation but enlarged it. By raising the living standards of millions, labor miraculously created a market for industry and lifted the whole nation to undreamed of levels of production. Those who attack labor forget these simple truths, but history remembers them."*

MARTIN LUTHER KING, JR., speech to AFL-CIO, Dec. 11, 1961

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**From:** Jason Stein [REDACTED]

**Sent:** Monday, 19 August 2019 1:55 PM

**To:** Beau Malone (ETU); Sanfilippo, Vince

**Cc:** [dgilbert@plumbers](mailto:dgilbert@plumbers.com.au); Darren Nelson; [scott.gartrell@plumbers](mailto:scott.gartrell@plumbers.com.au); [Paul.Inches@plumbers](mailto:Paul.Inches@plumbers.com.au); Dean Langridge;

[robbie@plumbers](mailto:robbie@plumbers.com.au); [gary@plumbers](mailto:gary@plumbers.com.au); [jingham@plumbers](mailto:jingham@plumbers.com.au);

[marina.chambers@plumbers](mailto:marina.chambers@plumbers.com.au); Butler, Chris

**Subject:** AMWU claim regarding MW classifications

Dear all,

At the meeting on Thursday, I committed to providing specific feedback regarding the MW classification structure.

That feedback is below.

**Trade level wage rates**

Wage levels must be equitable across the trade classifications.

The proposed agreement details the CW 5 (trade) level is \$49.89. The AMWU regards this as the minimum equitable level for all comparable trades.

The MW 5 level (\$47.97) contained in the current draft is not the equivalent rate. It is therefore rejected.

The AMWU claim is for the MW trade rate to be \$49.89.

It is noted that there have been some discussions regarding sheet metal workers being classified at a higher level than the base trade. If such an outcome is reached, the AMWU reserves the right to review and amend the above claim on the basis that trade rate equity must be maintained.

### Classification structure levels

Relevant contemporary classification structures contain levels above and below trade. The AMWU notes the CW structure contains several levels above trade and the PW structure also goes beyond the trade level. This is reasonable, given the scope of work of the project.

The AMWU requires the MW classification structure to contain no less than 3 levels above the trade level. Each level should represent a 5% increase which is consistent with industry standards and the relevant award.

It is noted that CPB have stated there is no intention to employ any workers that would fit into a post trade classification. This claim is not accepted.

The AMWU believes there is reasonable scope that persons will be engaged on the project in (MW stream) roles that will require them to exercise skills and experience that would otherwise be subject to a higher classification than the base trade level contained in the current MW structure.

It is unacceptable to establish a restricted level classification structure that limits the scope of workers to access higher classification levels on the basis that "CPB does not envision that people will be employed in such roles". The consortium's refusal to reference the relevant award means it is an absolute necessity to have post trade scope included in the document.

I am happy to discuss this further with a view to reaching an agreed position.

Regards

**Jason Stein**  
Industrial Advocate  
Australian Manufacturing Workers' Union



a: 366 Upper Roma Street Brisbane, QLD 4000

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<image020.png><image021.png> <image022.png>

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## Sanfilippo, Vince

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**From:** Sanfilippo, Vince  
**Sent:** Wednesday, 21 August 2019 3:50 PM  
**To:** Beau Malone (ETU); robbie@plumbers [REDACTED]; gary@plumbers [REDACTED]; jingham [REDACTED]; Jason Stein; marina.chambers [REDACTED]  
**Cc:** dgilbert [REDACTED]; Darren Nelson; scott.gartrell [REDACTED]; Paul.Inches [REDACTED]; Dean Langridge; Butler, Chris  
**Subject:** RE: Follow up from Bargaining Meeting 15/08/2019

Good Afternoon All;

On behalf of the Pulse and Unity Joint Ventures (JV) I refer my two earlier emails regarding this matter. I restate the JV's position in relation to the commitments made by the union bargaining representatives on Thursday 15 August 2019.

At that meeting the unions committed to providing a single, detailed and comprehensive response to the proposed Civil, Mechanical and Electrical (CME) Greenfields Agreement. In particular, that commitment was to;

- 1. Provide a detailed comparison document to the draft agreement (13th of August). The unions comparison document needs to contain the unions' consolidated position (draft wording and dollar values where relevant) against each clause in the draft agreement.*

It appears that the union's bargaining representatives are unwilling and/or unable to provide the comparison documentation that is necessary to clearly articulate the consolidated position of the union bargaining representatives and acknowledge that bargaining has been exhausted in relation to:

- Escalation;
- Scope and Application;
- Non incorporation of any Award;
- Productivity and site allowances;
- shift work allowances; and
- overtime penalties.

**For clarity, before a further meeting can be convened, we require the unions to fulfil their commitment and provide to us the single, consolidated and documented position from all unions.**

As we are all aware of the history and background as set out below:-

1. formal bargaining began on 13 June 2019;
2. there have been more than 20 formal and informal bargaining meetings;
3. During that time, the JV team provided:
  - terms sheets detailing offer line by line;
  - updated term sheets following bargaining concessions or compromise;
  - provided multiple (4) updated drafts of the proposed EA incorporating amendments and incorporation of bargained clauses, terms and conditions; and
  - made a significant number of concessions/compromises during the bargaining process with the intent of achieving a fair and equitable outcome.
4. Over the last 24 hours the JV has received correspondence from the CFMMEU, ETU and AMWU seeking to materially expand and/or escalate their respective claims in relation to:

- A single project wide agreement;
- Award incorporation;
- Increases to Productivity and Site Allowances;
- Increases to shift allowances;
- Increases to overtime penalties

Given all of the above, the JV therefore sees no point in scheduling a further meeting until the unions:-

1. clearly articulate their understanding that Escalation, Scope and Application, Non incorporation of any Award, Productivity and site allowances, shift work allowances and overtime penalties are not subject to further bargaining; and
2. provide a single, consolidated and documented bargaining position.

I look forward to your reply.

Regards

**Vince Sanfilippo**  
General Manager, QLD & PNG



**From:** Beau Malone (ETU) [REDACTED]  
**Sent:** Friday, 16 August 2019 9:51 AM  
**To:** Sanfilippo, Vince [REDACTED]  
**Cc:** [REDACTED]; Darren Nelson; Dean Langridge; [REDACTED]; Jason Stein; [REDACTED]; Butler, Chris [REDACTED]  
**Subject:** RE: Follow up from Bargaining Meeting 15/08/2019

G'day Vince,

Further to your below email, we will have plenty to talk about during next weeks planned meetings.

As I outlined yesterday, the Unions are looking to outline issues with each clause in the CPB proposed agreement so we can work through those points of difference. We will be in touch with those points of difference as soon as possible.

CPB have tried to lead negotiations down a few different paths that have bared no fruit. The Unions are aiming to achieve an agreed outcome in a timely manner and the only way we are going to achieve this, is if we know what all the differences are and work through them.

Can I encourage CPB to come prepared to the next meeting.

**Cheers**  
**Beau Malone**  
 Gold Coast Organiser  
 Electrical Trades Union  
 Queensland



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MARTIN LUTHER KING, JR., speech to AFL-CIO, Dec. 11, 1961



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**From:** Sanfilippo, Vince [REDACTED]  
**Sent:** Thursday, 15 August 2019 2:21 PM  
**To:** Beau Malone (ETU)  
**Cc:** [dgilbert](#) [REDACTED]; Darren Nelson; [scott.gartrell](#) [REDACTED]; [Paul.Inches](#) [REDACTED]; Dean Langridge; [robbie](#) [REDACTED]; [gary](#) [REDACTED]; [jingham](#) [REDACTED]; Jason Stein; [marina.chambers](#) [REDACTED]; Butler, Chris  
**Subject:** Follow up from Bargaining Meeting 15/08/2019

Beau;

Further to the meeting today I confirm the following:

- 1) We accept your offer on behalf of the unions to provide a detailed comparison document to our draft agreement (13th of August). The comparison document needs to contain the union's consolidated position against each clause in our agreement.
- 2) To allow for effective bargaining we need this document provided 24hrs prior to our next meeting.
- 3) We confirm that we will meet next week after we receive this document. We appreciate that timing of the first meeting may need to be reschedule to accomodate this.

Regards

Vince Sanfilippo  
General Manager, QLD & PNG



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\*\*\*\*\*

**Large, Andrew**

---

**From:** Johnson, Don  
**Sent:** Wednesday, 28 August 2019 6:40 PM  
**To:** Sanfilippo, Vince; Large, Andrew  
**Subject:** FW: Bargaining - CME Greenfield Agreement

Gents

FYI

Regards

**Don Johnson**  
EGM - NSW / QLD / Major Projects / Tunnelling



Level 18, 177 Pacific Highway, North Sydney, NSW 2060, Australia

[cpbcon.com.au](http://cpbcon.com.au)



**From:** Johnson, Don  
**Sent:** Wednesday, 28 August 2019 6:40 PM  
**To:** Graeme Newton  
**Cc:** Johnson, Don  
**Subject:** FW: Bargaining - CME Greenfield Agreement

Graeme

As discussed, we have sent the following email to the intended participant unions in the CME Agreement tonight

I will be at your office circa 9am tomorrow for further discussions on the matter

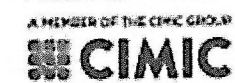
Regards

**Don Johnson**  
EGM - NSW / QLD / Major Projects / Tunnelling



Level 18, 177 Pacific Highway, North Sydney, NSW 2060, Australia

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**From:** Sanfilippo, Vince  
**Sent:** Wednesday, 28 August 2019 6:35 PM

To: Beau Malone (ETU) [redacted] jingham [redacted]; marina.chambers [redacted] Jason Stein [redacted] gary@plumbers [redacted] robbie@plumbers [redacted] dgilbert [redacted] Darren Nelson  
[redacted] Butler, Chris [redacted] Dean Langridge [redacted] Paul.Inches [redacted]

Subject: Bargaining - CME Greenfield Agreement

Good Evening All,

On the 12 June 2019 CPB and UGL issued bargaining notices to the ETU, CEPU, CFMMEU, AMWU and the AWU for a Greenfield agreement covering Civil, Mechanical and Electrical (CME) for the Project.

It has been 11 weeks since bargaining notices were issued and over 20 meetings have been held. Very little real progress has been achieved.

Our objective has always been to achieve agreement on terms and conditions that are reasonable and appropriate for the Project when compared to comparative projects and to deliver an outcome that is sensible and acceptable to the taxpayers of Queensland.

The need for substantive progress to be made to bring clarity to the parties' positions and to achieve an outcome in a reasonable timeframe has always been made clear.

We have made best endeavours and have at all times been clear in our desire to achieve an agreement with all of the Unions, if possible.

We met with you yesterday (27/8) to once again discuss, the 6 key fundamental items that are threshold items for bargaining. Regrettably, over the course of 11 weeks of bargaining, no agreement has been reached on these fundamental items:-

1. Scope and application of CME EA;
2. Escalation;
3. Incorporation of Awards;
4. Productivity/site allowance;
5. Penalty rates; and
6. Shift loadings.

Despite our repeated attempts to have the Unions acknowledge that bargaining had been exhausted in relation to these items, we were unable to move past the first item on the agenda. At the meeting on (27/8) none of Unions would agree or accept that the "scope and application" of the proposed agreement would be CME, even though the bargaining notice issued made our position on scope abundantly clear.

To ensure clarity we restate our objectives:

1. to achieve a Greenfield agreement covering CME for the Project;
2. the terms and conditions of the proposed agreement must be reasonable and appropriate for the Project when compared to comparative projects;
3. the agreement must deliver an outcome that is sensible and acceptable to the taxpayers of Queensland;
4. given the timetable for the project, an agreement must be reached in a timely fashion; and
5. if possible, the agreement is with all of the Unions, but failing that, with those Unions prepared to agree in a timely fashion.

The conduct to date in the bargaining process by the Unions has slowed down and frustrated an agreement being reached. The position as clearly maintained by the Unions on 27/08 means at this time it is not possible to reach an agreement.

The project's timelines and our need to deliver for the State's best outcomes requires outcomes to be delivered and the JV will therefore consider all available options.

Regards

**Vince Sanfilippo**  
General Manager, QLD & PNG



## Sanfilippo, Vince

---

**From:** Large, Andrew  
**Sent:** Friday, 30 August 2019 6:13 PM  
**To:** Johnson, Don; Sanfilippo, Vince  
**Subject:** FW: Summary of AWU Meeting

fyi

---

**From:** Butler, Chris  
**Sent:** Friday, 30 August 2019 6:00 PM  
**To:** Large, Andrew [REDACTED]; dgilbert [REDACTED]  
**Cc:** Darren Nelson [REDACTED]  
**Subject:** Summary of AWU Meeting

Andrew and Dale,

Quick summary below of today's meeting with the AWU. We got the agreements to a point (subject to the one item below) that the Agreements will be endorsed for approval by the AWU lead negotiator through to Steve Baker. It was a positive meeting, and we have meetings scheduled on Monday and Tuesday to conclude the deal. Steve Baker (who is the signatory for the AWU) is out of the State until Wednesday.

The AWU have sent the Agreements to their lawyer to fast track the process, which be concluded prior to our meeting on Monday.

For the TSE Agreement, a claim that came up in today's bargaining (that has been raised previously) is that pre-start and toolbox should form part of ordinary hours. Currently it does not (this clause was picked up within from the Sydney Metro template). This clause is within most Sydney civil infrastructure projects, but it is not found elsewhere within the country.

After confirming with Dale, from a budget position, we have allowed for pre-start and toolbox to form part of ordinary hours. So there is no additional cost from our budget position.

This is the last remaining claim to settle both Agreements.

Regards,

Chris



## REASONS FOR DECISION

*Fair Work Act 2009*

s.185—Enterprise agreement

**CPB Contractors Pty Ltd**

(AG2019/3422; AG2019/3447)

**CPB CONTRACTORS PTY LTD CROSS RIVER RAIL – CIVIL AND  
SURFACE WORKS GREENFIELDS AGREEMENT 2019-2023**

-and-

**CPB CONTRACTORS PTY LTD CROSS RIVER RAIL – TUNNEL AND  
SHAFT GREENFIELDS AGREEMENT 2019-2023**

Building, metal and civil construction industries

COMMISSIONER JOHNS

SYDNEY, 6 NOVEMBER 2019

*Application for approval of the CPB Contractors Pty Ltd Cross River Rail – Civil and Surface Works Greenfields Agreement 2019-2023 and the CPB Contractors Pty Ltd Cross River Rail – Tunnel and Shaft Greenfields Agreement 2019-2023.*

[1] On 16 October 2019 I issued two decisions approving two greenfields agreements relating to the Cross River Rail Project in South-East Queensland (**Project**), namely, the:

- *CPB Contractors Pty Ltd Cross River Rail – Civil and Surface Works Greenfields Agreement 2019-2023 (Civil and Surface Agreement),<sup>1</sup>*
- *CPB Contractors Pty Ltd Cross River Rail – Tunnel and Shaft Greenfields Agreement 2019-2023 (Tunnel and Shaft Agreement).<sup>2</sup>*

(collectively, the “**Agreements**”)

[2] The decision in relation to the Civil and Surface Agreement was as follows:

[1] On 12 September 2019, an application was made for approval of an enterprise agreement known as the *CPB Contractors Pty Ltd Cross River Rail – Civil and Surface Works Greenfields Agreement 2019-2023 (Civil and Surface Agreement)*. The application was made pursuant to s.185 of the *Fair Work Act 2009* (Cth) (**FW Act**). It has been made by CPB Contractors Pty Ltd (**CPB**). The Agreement is a greenfields agreement.

---

<sup>1</sup> [2019] FWCA 7152, PR713400.

<sup>2</sup> [2019] FWCA 7154, PR713402.

[2] The Civil and Surface Agreement relates to work to be performed by CPB in relation to the Cross River Rail Project in South-East Queensland (**Project**). The Project is “Queensland’s highest priority infrastructure project.”<sup>3</sup> The Project is estimated to cost around \$5.4 billion and generate 7,700 jobs during construction.

[3] Employment on the Project by CPB is awaiting approval of the Civil and Surface Agreement.

[4] Given the importance of the Project, the Commission, as presently constituted:

- a) expedited the approval process of the Civil and Surface Agreement, and
- b) issues this decision in advance of reasons for decision, which will follow in due course.

[5] Approval of the Civil and Surface Agreement is opposed by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, known as the Australian Manufacturing Workers’ Union (**AMWU**), the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**) and the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) (together the **Intervening Unions**).

[6] Having considered:

- a) the material contained in the application and accompanying statutory declarations filed by a representative of CPB and The Australian Workers’ Union (**AWU**),
- b) the material filed in the matter in compliance with the Directions I issued on 30 September 2019, including, without limitation, the materials filed by the Intervening Unions, and
- c) the evidence received today,

I am satisfied that each of the requirements of ss.186 and 187 of the FW Act, as are relevant to this application for approval have been met, including, without limitation, that it is in the public interest to approve the Civil and Surface Agreement.

[7] An undertaking has been given and this undertaking has become a term of the Civil and Surface Agreement in accordance with s.191(2) of the FW Act. It is appended at **Annexure A**.

[8] Based on the statutory declaration provided by AWU and the materials filed by it in these proceedings, I am satisfied that the AWU, the employee organisation to be covered by the Civil and Surface Agreement, is entitled to represent the industrial interests of a majority of employees who will be covered by the Civil and Surface Agreement in relation to work that is to be performed under it.

[9] The Civil and Surface Agreement is approved and, in accordance with s.54 of the FW Act, will operate from 23 October 2019. The nominal expiry date of the Civil and Surface Agreement is 15 October 2023.

---

<sup>3</sup> Queensland Government Media release, 20 February 2018.

[3] The decision in relation Tunnel and Shaft Agreement was in like terms.

[4] These are my reasons for those decisions as foreshadowed in paragraph [4](b) of the decisions.

### The Hearing

[5] At the hearing on 16 October 2019:

- a) The Applicant was represented by Mr G Hatcher SC, and Ms S Moody.
- b) The AWU was represented by Mr A Herbert.
- c) The Intervening Unions were represented by Mr C Dowling SC.
- d) Only Ronald Thomas, Senior Engineering Manager, CPB Contractors Pty Ltd, was required to give evidence.

[6] I gave the parties permission to be represented pursuant to s. 596 of the FW Act because I was satisfied that the matter was invested with sufficient complexity such that I would be assisted in the efficient conduct of the matter if I granted all parties permission to be represented.

[7] In coming to this decision, the Commission, as presently constituted, has had regard to the following:

<b>Exhibit No.</b>	<b>Description</b>
AG2019/3422 – Civil and Surface Agreement	
1.	CPB Contractors Pty Ltd Cross River Rail Civil and Surface Works Greenfields Agreement 2019-2023
2	Form F19
3	Form F20
4	Form F21 - AWU
5	Agreement checklist prepared 23 September 2019
6	Undertakings filed 24 September 2019
AG2019/3447 - Tunnel and Shafts Agreement	
7	CPB Contractors Pty Ltd Cross River Rail Tunnel and Shafts Greenfields Agreement 2019-2023
8	Form F19
9	Form F20
10	Form F21 - AWU
11	Agreement checklist prepared 23 September 2019
12	Undertakings filed 24 September 2019
Documents relevant to both Agreements	
13	Objections filed 27 September 2019 on behalf of the AMWU, CEPU and CFMMEU
14	Applicant's outline of submissions dated 4 October 2019
15	Applicant: Witness statement of Malcolm Davis dated 4 October 2019 as

Exhibit No.	Description
	amended following objections <sup>4</sup>
16	Applicant: Witness statement of Glenn Stockton dated 4 October 2019
17	Applicant: Witness statement of Ronald Thomas dated 4 October 2019
18	AWU’s outline of submissions filed 4 October 2019
19	Intervening Unions: outline of submissions dated 11 October 2019
20	Intervening Unions: Witness statement of Beau Malone dated 11 October 2019
21	Intervening Unions: Witness statement of Jade Ingham dated 11 October 2019
22	AWU’s outline of submissions in reply filed 14 October 2019
23	Intervening Unions’ Objections to the evidence of CPB
24	Photograph of Delta branded excavator
25	Photograph of Roma Street parkland
26	Photograph of Delta branded fence
27	Photograph of Delta branded barricade
28	Photograph of two unidentified workers at Albert Street

**Legislation**

[8] The approval of greenfields agreements is covered by ss.186 and 187 of the FW Act. Relevantly, for present purposes, those section provide as follows,

**“186 When the FWC must approve an enterprise agreement—general requirements**

*Basic rule*

(1) If an application for the approval of an enterprise agreement is made under section 185, the FWC must approve the agreement under this section if the requirements set out in this section and section 187 are met.

Note: The FWC may approve an enterprise agreement under this section with undertakings (see section 190).

*Requirements relating to the safety net etc.*

(2) The FWC must be satisfied that:

...

(c) the terms of the agreement do not contravene section 55 (which deals with the interaction between the National Employment Standards and enterprise agreements etc.); and

(d) the agreement passes the better off overall test.

...

---

<sup>4</sup> A number of objections (Exhibit 23) were made to Mr Davis’ witness statement by the Intervening Unions. Consequently, the following paragraphs were not read: 22, 25-27, 29, 30, 31(a), 33-35, 36, 38-40. In paragraph 21 the words “before negotiations fell apart” were deleted.

Note 2: The FWC may approve an enterprise agreement that does not pass the better off overall test if approval would not be contrary to the public interest (see section 189).

Note 3: The terms of an enterprise agreement may supplement the National Employment Standards (see paragraph 55(4)(b)).

*Requirement that the group of employees covered by the agreement is fairly chosen*

(3) The FWC must be satisfied that the group of employees covered by the agreement was fairly chosen.

(3A) If the agreement does not cover all of the employees of the employer or employers covered by the agreement, the FWC must, in deciding whether the group of employees covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

*Requirement that there be no unlawful terms*

(4) The FWC must be satisfied that the agreement does not include any unlawful terms (see Subdivision D of this Division).

Requirement that there be no designated outworker terms

...

*Requirement for a nominal expiry date etc.*

(5) The FWC must be satisfied that:

(a) the agreement specifies a date as its nominal expiry date; and

(b) the date will not be more than 4 years after the day on which the FWC approves the agreement.

*Requirement for a term about settling disputes*

(6) The FWC must be satisfied that the agreement includes a term:

(a) that provides a procedure that requires or allows the FWC, or another person who is independent of the employers, employees or employee organisations covered by the agreement, to settle disputes:

(i) about any matters arising under the agreement; and

(ii) in relation to the National Employment Standards; and

(b) that allows for the representation of employees covered by the agreement for the purposes of that procedure.

Note 1: The FWC or a person must not settle a dispute about whether an employer had reasonable business grounds under subsection 65(5) or 76(4) (see subsections 739(2) and 740(2)).

Note 2: However, this does not prevent the FWC from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4).”

**“187 When the FWC must approve an enterprise agreement—additional requirements**

*Additional requirements*

(1) This section sets out additional requirements that must be met before the FWC approves an enterprise agreement under section 186.

*Requirement that approval not be inconsistent with good faith bargaining etc.*

(2) The FWC must be satisfied that approving the agreement would not be inconsistent with or undermine good faith bargaining by one or more bargaining representatives for a proposed enterprise agreement, or an enterprise agreement, in relation to which a scope order is in operation.

...  
*Requirements relating to greenfields agreements*

(5) If the agreement is a greenfields agreement, the FWC must be satisfied that:

(a) the relevant employee organisations that will be covered by the agreement are (taken as a group) entitled to represent the industrial interests of a majority of the employees who will be covered by the agreement, in relation to work to be performed under the agreement; and

(b) it is in the public interest to approve the agreement.

(6) If an agreement is made under subsection 182(4) (which deals with a single-enterprise agreement that is a greenfields agreement), the FWC must be satisfied that the agreement, considered on an overall basis, provides for pay and conditions that are consistent with the prevailing pay and conditions within the relevant industry for equivalent work.

Note: In considering the prevailing pay and conditions within the relevant industry for equivalent work, the FWC may have regard to the prevailing pay and conditions in the relevant geographical area.”

[9] Section 172(2)(b) is also relevant. It provides that:

**“172 Making an enterprise agreement**

...  
*Single-enterprise agreements*

(2) An employer, or 2 or more employers that are single interest employers, may make an enterprise agreement (a *single-enterprise agreement*):

...  
(b) with one or more relevant employee organisations if:  
(i) the agreement relates to a genuine new enterprise that the

- employer or employers are establishing or propose to establish;  
and
- (ii) the employer or employers have not employed any of the persons who will be necessary for the normal conduct of that enterprise and will be covered by the agreement.

Note: The expression genuine new enterprise includes a genuine new business, activity, project or undertaking (see the definition of *enterprise* in section 12).

### **Matters contested and not contested**

**[10]** Starting with s.186, relevantly, in relation to each of the Agreements:

- a) s.186(1) – Applications for approval were validly made.
- b) s.186(2)(c) – No terms contravened s.55 in relation to the interactions between the NES and the Agreements.
- c) s.186(2)(d) – the Agreements passed the BOOT.<sup>5</sup> In relation to the:
  - i. Tunnel and Shaft Agreement the rates of pay were:
    - A. 72%-95% above Award rates for adults.
    - B. 91%-441% above Award rates for trainees.
    - C. 89%-112% above Award rates for apprentices.
  - ii. Civil and Surface Agreement the rates of pay were:
    - A. 79%-103% above Award rates.
    - B. 78%-112% above Award rates for apprentices.
    - C. 61%-125% above Award rates for trainees.
- d) s.186(3) – It was contended that there was an issue about whether the employees to be covered were fairly chosen (see below).
- e) s.186(4) – There were no unlawful terms.
- f) s.186(5) – The Nominal Expiry Date is contained in clause 2.4 and is four years after approval date.
- g) s.186(6) – A dispute settling procedure was contained in clause 3.10.

**[11]** Coming then to s.187, relevantly in relation to each of the Agreements the following matters were contested:

- a) s.187(2) – bargaining in good faith.
- b) s.187(5)(a) – whether the AWU was entitled to represent the industrial interests of a majority of employees who were to be covered by the Agreements.
- c) s.187(5)(b) – whether approval of the Agreements was in the public interest (incorporating notions of the behaviour of CPB and good faith bargaining obligations).

**[12]** I address each of these matters in turn below.

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<sup>5</sup> The Intervening Unions made submissions in relation to the same contending that the Agreements “may not pass the BOOT” because the Agreements “contain terms that are inferior to the award” (see paragraphs 34 – 40 of Exhibit 19). However, the matters raised by the Intervening Unions involved a line-by-line assessment of the Agreements as compared with the award. That is not the proper test. The BOOT should not be applied in such a pedantic way: *Rooty Hill RSL Club Ltd* [2014] FWCA 2191. The BOOT requires an assessment of the Agreements overall when compared to the award: *NTEU v University of New South Wales* [2011] FWAFB 5163. That assessment, properly done, established that the Agreements passed the BOOT. In any case, before me, Mr Dowling SC appropriately conceded that the Intervening Unions did not contend that the Agreements did not pass the BOOT (Transcript PN445).

## The evidence

[13] Malcolm Davis is CPB's solicitor from Mills Oakley. After ruling on objections made to his evidence (all of which were upheld) the remaining state of his evidence concerned:

- a) An overview of the Cross River Rail Project;
- b) media releases issued by the Queensland Government about the Project;
- c) the Cross River Rail website;
- d) the infrastructure packages that make up the Project;
- e) the Pulse Consortium;
- f) the tunnels, stations and development (TSD) works;
- g) the notice served by CPB on 6 June 2019 pursuant to s.178B of the FW Act on the AWU in relation to Tunnel and Shaft Agreement;
- h) the notice served by CPB and its joint venture partner UGL Engineering Pty Ltd (UGL) on 12 June 2019 pursuant to s.178B of the FW Act on the AWU, AMWU, CEPU and CFMMEU in relation to the civil, mechanical and electrical works;
- i) the fact that "between June and August 2019, negotiations took place between CPB and UGL on the one hand - acting as a "single interest employer" (SIE) - and the Unions on the other hand, the purpose of negotiating a Greenfields agreement for the civil works portions of the RIS Works and TSD Works (the SIE Negotiations)."
- j) the fact that "during the SIE Negotiations, the SIE provided to the Unions over 10 versions of drafts of the *CPB Contractors Pty Ltd Cross River Rail Civil and Service Works Greenfields Agreement 2019 – 2023...*";
- k) the fact that "the SIE Negotiations took the form of around 22 face-to-face bargaining meetings, as well as written communications."
- l) the fact that "on 5 September 2019 CPB (without UGL) entered into the Agreements with the AWU"; and
- m) the fact that "on 30 September 2019 the members of the Unity Alliance entered into a contract with the State of Queensland for the RIS Works."

[14] Glenn Stockton, Director and Chairman of Pulse Partnerships Pty Ltd. His evidence concerned:

- a) the Cross River Rail Project;
- b) the Cross River Rail Delivery Authority;
- c) Cross River Rail infrastructure packages, namely, the
  - i. Tunnel, Stations and Development (TSD) Public-Private Partnership;
  - ii. Rail, Integration and Systems (RIS) Alliance;
- d) a chronology of events from February 2018 when the Queensland Government announced the shortlisting of consortia;
- e) the public benefits of the Project.

[15] Ronald Thomas, Senior Engineering Manager employed by CPB. His witness statement evidence concerned:

- a) the Cross River Rail Project;
- b) the Tunnel, Stations and Development (TSD) Works;
- c) the joint venture that CPB is a part of;

- d) his role in the joint venture as the Design Director;
- e) early works in or around late September 2019;
- f) the fact that “site establishment and construction works...have not yet commenced” and the reasons for the same;
- g) the construction program;
- h) the RIS works;
- i) the Greenfields Agreements;<sup>6</sup>
- j) the fact that “as at [is 4 October 2019] CPB has not employed any person to perform work under either of the two proposed Agreements”;
- k) the IR Management Plan for the Project;
- l) the desirability of greenfields agreements.

**[16]** Before me Mr Thomas gave oral evidence:

- a) confirming that he was not involved in the enterprise bargaining negotiations;
- b) identifying who was involved in the enterprise bargaining negotiations on behalf CPB;
- c) indicating that he was not aware of any reason why those people involved in enterprise bargaining negotiations could not have given evidence to the Commission;
- d) about the history of CPB, formally Leighton Contractors;
- e) about other projects that CPB has been involved in;
- f) indicating that he was unaware of the existence of the *Leighton Contractors Pty Ltd Civil Construction Workplace Agreement 2006*;
- g) about the desirability of a Greenfields agreement in preference to a Brownfield agreement;
- h) about the predatory work being undertaken at the sites that CPB currently has access to in respect of the Cross River Rail Project;
- i) identifying a number of photographs put to him in cross examination evidencing predatory work at Roma Street and Albert Street;
- j) identifying equipment and machinery being used by the Delta Group at those sites; and
- k) confirming that work only commenced approximately two weeks ago.

**[17]** Jade Ingham, Assistant Secretary of the Queensland and Northern Territory Branch of the CFMMEU. His evidence concerned:

- a) background to the Project and the packages;
- b) the fact that “Pulse and Unity, specifically to of their member companies, [CPB and UGL], have been bargaining agreements to cover their respective packages of works”;
- c) the participants in bargaining on behalf of CPB/UGL and the Unions;
- d) the formal notification of bargaining by CPB/UGL for an agreement to cover the “civil, mechanical and electrical (CME) works”;
- e) the chronology of bargaining and correspondence between the parties between June 2019 – 30 August 2019;
- f) his understanding about the commencement of construction;
- g) the Agreement between CPB and the AWU;

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<sup>6</sup> Mr Thomas was not directly involved in the negotiations (see paragraphs 43 and 44 of his witness statement, Exhibit 17).

- h) the fact that CPB was pursuing separate agreements before the “tunnel and shaft on the one hand and the CME on the other”;
- i) the fact that “at all times Unions (except for the AWU) pursued 1 agreement”;
- j) the fact that “the Unions other than the AWU were always concerned that the AWU would run off and do an agreement with CPB to the exclusion of the other unions”;
- k) the conversation had with the representatives of the AWU about that concern;
- l) “similar conversations where Vince [the CPB representative] said that CPB did not want to run off and do an agreement with the AWU to the exclusion of the other unions”;
- m) other conversations he had with Vince [the CPB representative] about being “realistic that there could be two agreements...”;
- n) the fact that “the first time the CFMMEU heard about the fact that the post agreements had been made between CPB and the AWU was 17 September 2019 after they were published on the website of the Fair Work Commission”; and
- o) the eligibility rules of the CFMMEU.

[18] Beau Malone, Organiser for the ETU. His evidence was similar to that of Mr Ingham concerning the history of bargaining with CPB/UGL. His evidence further concerned:

- a) the fact that “throughout the negotiations [he] knew that CPB were wanting to pursue a separate agreement for the tunnel and shaft works which was to be an AWU-only agreement”;
- b) the fact that “separate to the AWU-only tunnel and shaft agreement, CPB was pursuing a civil, mechanical and electrical works agreement with all of the unions”;
- c) the fact that “the AWU never notified the ETU that it had signed off on the tunnel and shaft agreement (or the civil and surface works agreement for that matter)”;
- d) the first that the ETU heard about the proposed agreements was on 18 September 2019 after they were published on the website of the Fair Work Commission.”

**Consideration contested s. 186 issue – fairly chosen (s.186(3))**

[19] The Intervening Unions submitted that:

“...  
Ground 4: The group of employees was not fairly chosen: s.186(3), s.187(5)(b)

- 41. The applicant has excluded the “mechanical and electrical works” from the “civil and surface works” agreement. That is so despite previously bargaining for all 3 of those packages of work to be covered by one agreement. The decision to exclude those works appears to have been taken for commercial reasons, rather than because of any delineation between them and the civil and surface workers.
- 42. Despite being on notice of the above concern for some time, the evidence of the applicant contains no (or no adequate) answer to it. The applicant had every opportunity to tell the Commission why it thought those workers were not distinct between June and August 2019 only to change its mind in that regard in September 2019. It has not supplied that explanation because it cannot do so.
- 43. At [34] the Applicant’s Submissions make the position clear:

“As the single interest employer found it impossible to secure a single agreement to cover the work in question, CPB has attended to securing an agreement to ensure it can fulfil its obligations to the Joint Venture.”

44. The basis for the applicant’s decision to exclude the mechanical and electrical works (and the Intervening Unions) from what was to be the CME works agreement, which has now become the civil and surface works agreement, was the fact that it was having difficulty in its negotiations for the CME works agreement. That decision was taken despite progress being made in the negotiations<sup>7</sup> and positive assurances being given by the Intervening Unions about the progression of the bargaining.<sup>8</sup>
45. This was a decision which the applicant took to meet its own convenience, not one taken because the workforces are truly distinct.
46. Whilst the decision might be “readily explicable”<sup>9</sup> in a commercial sense, the explanation provided by the applicant does not evidence that these works are geographically, operationally or organisationally distinct from the mechanical and electrical workers (or each other) and were not, therefore, fairly chosen.
47. Finally, as mentioned above, the Intervening Unions did bargain for the tunnel and shaft works agreement, albeit without having received a bargaining notice. During those negotiations they repeatedly raised the issue of scope.<sup>10</sup> It is wrong to assert, as the applicant does, that there is some attempt to mislead the Commission.”

[20] The AWU submitted that:

“... ”

13. It is common in the construction industry for separate agreements to be negotiated for tunnelling and civil and surface works and numerous enterprise agreements have been approved by the Commission with this distinction. This separation recognises the obvious fact that there is a significant difference in the nature and skills of the relevant workforce and the nature and scale of the equipment to be utilised, as between the work of underground tunnelling and the work of constructing civil and surface works.

14. By way of brief example, we refer to the following agreements:

- WestConnex M4 East / AWU TunnellingWorks Greenfields Agreement 2016-2020;
- WestConnex M4 East / AWU Civil Works Greenfields Agreement 2016-2020;
- WestConnex New M5 / AWU TunnellingWorks Greenfields Agreement 2016-2020;
- WestConnex New M5 / AWU Civil Works Greenfields Agreement 2016-2020;
- CPB Contractors NSW Civil Works Enterprise Agreement 2017 – 2021;
- John Holland CPB Contractors Joint Venture - Rozelle Interchange and Western Harbour Tunnel Enabling Works, AWU Civil Works Greenfield

<sup>7</sup> Malone [55]-[59].

<sup>8</sup> Ingham [87], [100].

<sup>9</sup> Applicant’s Submissions [32].

<sup>10</sup> Ingham [15], [17], [33], [43]; Malone [9], [13], [40], [42].

- Agreement 2019 – 2023;
- John Holland CPB Contractors Joint Venture - Rozelle Interchange and Western Harbour Tunnel Enabling Works, AWU Tunneling Works Greenfield Agreement 2019 – 2023;
- NorthConnex / AWU Tunnelling Works Greenfields Agreement 2015-2019; and
- NorthConnex / AWU Civil Works Greenfields Agreement 2015-2019;

15. These agreements also demonstrate a range of listed exclusions from coverage, similar to those included in clause 2.3 of the Civil and Surface Works Agreement and the Tunnel and Shaft Agreement, which is also a standard practice for this industry and one that is regularly approved by the Commission.

16. The scope of both agreements has been fairly chosen to acknowledge the operational and organisational differences associated with the two aspects of the Cross River Rail Project which are to be covered by each agreement, and is an uncontroversial division of work activities and undertakings for the civil construction industry.”

[21] The AWU further submitted that:

“...  
...

Ground 4: The group of employees was not fairly chosen: s 186(3) and 187(5)(b)

24. The AWU’s submissions dated 4 October 2019 highlight that the scope of the agreements is standard for the civil construction industry and is in terms regularly approved by the Fair Work Commission.<sup>11</sup>

25. The material filed by CPB confirms the “mechanical and electrical works” identified by the Intervening Unions will be managed by UGL and not CPB. This is an obvious organisational distinction. In any event, the concept of “fairly chosen” does not require CPB to include within the scope of a Greenfields agreement workers who are not to be employees of CPB. If, as contended, the work in question is to be managed by UGL and not CPB, the issue of whether the workers undertaking that work have been excluded fairly or unfairly from a CPB agreement is entirely irrelevant to any matter to be decided by the Commission.”

[22] CPB submitted that:

“...  
...

Group of Employees fairly chosen

31. The Unions again apparently attempt to mislead the Commission in relation to the position of whether the group of employees were fairly chosen. There has been no complaint of the distinction between tunneling employees and civil and engineering employees.

32. The complaint appears to be limited to an assertion that electrical and mechanical trades are excluded from the Civil Works Agreement. Assuming this assertion to be correct, the omission is readily explicable.

33. Under the agreement whereby CPB is to perform work on the Cross River

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<sup>11</sup> Paragraphs [13] to [16].

Rail Project, the work of the skilled trades in electrical and mechanical is to be managed by UGL. It was the intention of the Joint Venture that UGL would employ these trades.<sup>12</sup>

34. As the single interest employer found it impossible to secure a single agreement to cover the work in question, CPB has attended to securing an agreement to ensure it can fulfil its obligations to the Joint Venture.
35. No Doubt, UGL will also be taking steps to ensure it can fulfil its obligations. To the extent that UGL provides the electrical and mechanical trades, they are organisationally distinct from CPB's employees.

**[23]** In *Cimeco Pty Ltd v CFMEU*<sup>13</sup> a Full Bench held that:

[11] At issue in these proceedings is the proper construction of the expression "fairly chosen" in s. 186(3). The starting point is to construe the words according to the ordinary meaning having regard to the context and purpose.

[12] The words "fairly" and "chosen" the right hip meetings, depending on the context. The Oxford Dictionary defines "chosen" to mean, among other things, "taken by preference, picked out". The word "chosen" in the context of s. 186(3) simply means selected to be covered by the relevant agreement.

[13] The word "fairly" is derived from the advert "fair" is a word of white port. What is fair in a particular context is largely a matter of impression of judgement. Of the various definitions of "fairly" in The Oxford Dictionary the most apt in this context are:

'by proper means, legitimately, partially, justly' and 'with due regard to equity, candidly, impartiality: without undue advantage site.'

**[24]** In the present matter CPB have excluded the "mechanical and electrical works" from the Civil and Surface Agreement. The evidence of the Intervening Unions confirms that when CPB was negotiating with its joint venture partner UGL it was contemplated that the Civil and Surface Agreement would also incorporate mechanical and electrical works. However, it is important to understand that the CPB/UGL negotiations with all the unions were different to (albeit, it would seem, running parallel with) the CPB negotiations exclusively with the AWU.

**[25]** The failure of the CPB/UGL negotiations with all the unions and the success of the CPB negotiations exclusively with the AWU explains the different scope/coverage of the agreements that were being negotiated and, in respect of the CPB/AWU negotiations, was successfully concluded.

**[26]** While it is arguable that the class of employees excluded from the Civil and Surface Agreement could have been included, the fact that ultimately they were not, does not mean that the class of people covered by the Civil and Surface Agreement were not fairly chosen. There is nothing illegitimate in the choice. The examples of other agreements referred to by the AWU underscores the lack of unfairness in putting in place different agreements having regard to the nature and skills of the relevant workforce and the nature and scale of the equipment to be utilised. Even the evidence of the Intervening Unions supports a finding that

<sup>12</sup> See paragraph 25 of the Statement of Malcolm Davis dated 04.10.19.

<sup>13</sup> [2012] FWA 5334.

the work of the skilled trades in electrical and mechanical was to be managed by UGL. It makes sense that that the agreement ultimately concluded by CPB did not include those employees.

[27] For these reasons I was satisfied that the group of employees covered by the Agreements was fairly chosen.

**Consideration contested s.187 issue – good faith bargaining (s.187(2))**

[28] This issue was raised in the context of public interest (see below).

**Consideration contested s.187 issue – AWU entitled to cover (s.187(5)(a))**

[29] The Intervening Unions submitted that:

“...  
Ground 2: The AWU is not entitled to represent the industrial interests of a majority of the employees who will be covered: s.187(5)(a)

41. In circumstances where the Proposed Agreements were purportedly made under s.182(3) of the Act, they can only be approved if the union signatory, the AWU, is eligible to represent a majority of the affected workers: s.187(5)(a).
42. Taking the CFMEU as an example, the evidence establishes that a majority of the roles listed within the classifications of the Proposed Agreements are clearly within the CFMEU’s eligibility: see Ingham [111] and Annexure 1.<sup>14</sup>
43. The CEPU and AMWU are similarly eligible to represent a number of roles: see Annexure 2.
44. Whilst coverage of the majority of the roles does not necessarily result in eligibility with respect to a majority of the employees, there remains a serious question as to whether the AWU is eligible to represent a majority of the employees as alleged.
45. At [18] the AWU Submissions rely on its civil and railway industry rules in order to assert majority coverage.<sup>15</sup> As to the civil industry rule, neither the evidence nor the Proposed Agreements currently establish that the civil industry rule is applicable. As to the railway industry rule, this would seem to have no or only limited application.
46. Similarly at [33] the AWU Submissions assert (admittedly in a different context) that “The AMWU, CEPU and CFMMEU are minority unions in the civil construction industry”. The Intervening Unions submit that the Commission’s focus for the purpose of this criteria is on the workforce to be covered by the Proposed Agreements (about which there is relevantly no evidence), not upon the industry or industries in which they will operate.
47. There is no evidence from the applicant as to the intended composition of the workforce under the Proposed Agreements.<sup>16</sup> The absence of such evidence, in circumstances where it is squarely raised, means the Commission cannot be satisfied of this criteria.

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<sup>14</sup> Particularly under the FEDFA rule.

<sup>15</sup> Likewise [27] the Applicant’s Submissions.

<sup>16</sup> Compare Thomas at [48] (“CPB has also not made any decision at this time about the likely future mix of directly employed workers versus subcontractors”) with the prior advice from the applicant to the Intervening Unions: Malone at [24] and BM1; Ingham at [27], [28].

48. Given the evidence with respect to Annexures 1 (and 2) it is open that the CFMEU, in respect of the civil and surface works agreement, is the majority union, rather than the AWU. In the absence of any proper attempt by the applicant and the AWU to provide evidence of majority coverage, the Commission cannot be satisfied that this criteria is satisfied.”

[30] The AWU submitted that:

“... ”

18. The AWU has coverage under its registered rules of:
- every bona fide worker employed in or in connection with the construction, repair, maintenance or demolition of civil and/or mechanical engineering projects;<sup>17</sup> and
  - every bona fide worker male or female, engaged in manual or mental labour in or in connection with Railway construction and/or Maintenance and/or repairs and/or works in or in connection with or incidental thereto<sup>18</sup>.
19. Each of these items are properly characterised as “industry” coverage which is determined by the industry of the employer and the substantial character of its business.<sup>19</sup>
20. It cannot seriously be suggested that CPB is not engaged in or in connection with the industry of constructing civil and/or mechanical engineering projects, nor that their engagement in the work of tunnelling and the construction of civil and surface works for the sole purpose of the construction of the Cross River railway lines is not works in or in connection with, or incidental to, railway construction.
21. As a result, the AWU is entitled to cover all of CPB’s employees covered by each of the agreements.<sup>20</sup> The majority coverage requirement on the part of the AWU in s 187(5)(a) of the FW Act is self-evidently satisfied in these circumstances.
22. The letter from Hall Payne Lawyers dated 27 September 2019 refers at paragraphs [8] to [11] to the coverage of the AMWU, CEPU and CFMMEU.
23. In *AWU v Leighton Contractors Pty Limited*,<sup>21</sup> Katzman J (with whom McKerracher J agreed) said at [50] in relation to the organisations concerned with the making of Greenfields agreements:
- There is no dispute that the CFMEU was a relevant employee organisation. It appears that the AWU was, too. But it is plain from the terms of s 182(3) that the employer may choose the relevant employee organisations with which to negotiate and may strike an agreement with some or all of them. (Emphasis added)
24. The information provided by Hall Payne Lawyers as to the coverage of these unions appears to be relevant only to the question as to whether any or all of those unions were relevant employee organisations for the purposes of negotiations. As agreements have now been struck between CPB and the AWU, as permitted by the FW Act, that information has no relevance whatsoever to any matter to be determined by the Commission in these proceedings. The only relevant issue is whether the AWU, as a party who is expressed by the agreements to be covered thereby is entitled to represent a majority of the workers, which does not appear to

<sup>17</sup> AWU Rule 5, Section 1, Part A(4) and Rule 6, Part A(4).

<sup>18</sup> AWU Rule 6A, paragraph 4 (14)

<sup>19</sup> *Harnischfeger of Australia Pty Ltd* AIRCFB (2005) PR963826 at [85] and [86].

<sup>20</sup> *Ibid* at [97].

<sup>21</sup> [2013] FCAFC 4

be a matter seriously in contention.”

[31] The AWU further submitted that:

“...  
Ground 2: The AWU is not entitled to represent the industrial interests of a majority of a majority of the employees who will be covered: s 187(5)(a)

11. The Intervening Unions continue to raise irrelevant arguments about the coverage, for example, of the CFMMEU, which is not a party to any agreement that is before the Commission.
12. The only issue to be determined is whether the AWU can represent the industrial interests of a majority of the employees who will be covered by the agreements.
13. The critical issue for the Commission to determine is whether CPB is, in respect of the Cross River Rail Project, engaged in or in connection with the civil construction industry. If it is, the AWU can cover all of its employees.
14. The submissions from the Intervening Unions do not address the industry of CPB, perhaps because it is obvious that a substantial character of its business is in, or in connection with, the civil construction industry. Those submissions also tellingly fail to outline how or why it could be that the Cross River Rail Project as described in the evidence is not a civil construction project.
15. The Intervening Unions’ submissions concerning an absence of evidence about the intended composition of the workforce may conceivably be relevant if union parties such as the intervening Unions were required to demonstrate the extent to which their largely vocational eligibility rules might be stretched to cover a numerical majority of the employees. That analysis is irrelevant in a case such as the present, in which the entitlement of the AWU to represent employees is derived from the characterisation of the industry in which the employer is engaged. The assessment required by s 187(5)(a) is entirely answered by the unarguable conclusion that the Cross River Rail Project is a civil construction project.
16. In *R v Moore; ex parte Federated Miscellaneous Workers Union of Australia*<sup>22</sup> the High Court explained the manner in which the AWU rules apply in such circumstances, by reference in that case to the rule relating to metalliferous mining, which industry is included in the group of industries which now includes civil construction projects. Project engineering companies were found in that case to be engaged in the employer industry of metalliferous mining, the consequences of which were said by Aicken J. at [17] to be:

“17. If it is right to say that the project engineers are engaged in the metalliferous industry, so far as their performance of their contracts to act for the mining companies are concerned, then it must follow that the A.W.U.'s demand was made upon employers engaged in an industry in respect of which its members were eligible under its rules to work.”
17. Contrary to the submissions of the Intervening Unions, there is no serious question about whether the AWU is entitled to represent a majority of the relevant employees. The Commission approves a large number of greenfields agreements in the civil construction industry each year that cover only the AWU.
18. By reason of the very close similarity between the definition of civil construction in the Building and Construction General On-site Award 2010 (“On-site Award”),

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<sup>22</sup>(1978) 140 CLR 470.

and the terms of the civil construction industry portion of the rules of the AWU, the Commission can be comfortably satisfied that by deduction, apart from the general knowledge of the Commission, the Cross City Rail Project can be taken to be within the definition of civil construction within the meaning of the AWU rules, and that CPB is engaging in that industry by undertaking that project or part thereof.”

[32] CPB submitted that:

“...  
The AWU covers the majority of workers

25. Under a heading asserting the contrary of the above proposition, the Unions contend that the CFMMEU has coverage of a majority of the roles dealt with in the classifications under the Civil Works Agreement and Tunnel & Shaft Agreement, and that the other unions have some coverage.
26. Even if these assertions be accepted, it does not establish that the AWU does not have coverage of the majority of the workers to be employed. It does not create a “serious question” because there is no serious evidence about the AWU’s coverage.
27. Given that the eligibility rule of the AWU extends to “... every bona fide worker employed in or in connection with the industries or callings of: The construction, repair maintenance or demolition of ... (i) Civil and/or mechanical engineering projects” it is perhaps unsurprising that the Unions leave the question of coverage by the AWU unaddressed.
28. Even if one has regard to the scant materials provided by the Unions as to the Tunnel & Shaft Agreement, it is clear the proposition gets no higher than that the CFMMEU may have some coverage of some positions in tunneling work. If it be so, it does not appear to be coverage that they have been successful in exploiting.”

[33] In the present matter it is contested that the AWU is eligible to represent a majority of the affected workers. In contesting the same the Intervening Unions contended that they too were eligible to represent a number (if not all) of the roles covered by the Agreements. However, that is not the statutory test. The fact that other unions also have eligibility is unremarkable. The test to be applied was whether the AWU is entitled to represent the industrial interests of a majority of the employees who will be covered by the Agreements.

[34] I reject the contention made by the Intervening Unions that the AWU failed to properly establish that it had majority coverage. I carefully considered the nature of the work to be undertaken in the course of the Project and the coverage of the AWU under its registered rules. The work of the Project is clearly in connection with the construction, repair, maintenance or demolition of civil and/or mechanical engineering projects. Further I was satisfied that the Cross River Rail Project is work in or in connection with, or incidental to railway construction.

[35] For these reasons I was satisfied that the AWU was entitled to represent the industrial interests of a majority of the employees who will be covered by the Agreements. To suggest otherwise, as the Intervening Unions did, was to be mischievous.

**Consideration contested s. 187 issue – public interest (s. 187(5)(b))**

[36] The Intervening Unions submitted that:

“...  
”

Ground 1: CPB did not bargain in good faith: ss.187(2), 5(b)

15. The evidence of the Intervening Unions demonstrates that:
  - (a) on or about 12 June 2019 the applicant issued bargaining notices to our clients, under s.178B of the Act, initiating bargaining for a “civil, mechanical and electrical works” greenfields enterprise agreement;<sup>23</sup>
  - (b) between June and August 2019, the applicant bargained with our clients, including for a “civil, mechanical and electrical works” greenfields enterprise agreement;<sup>24</sup>
  - (c) between June and August 2019, the applicant tabled various logs of claims entitled “CRR Civil, M&E Offer”;<sup>25</sup>
  - (d) between June and August 2019, the applicant tabled various drafts of a “civil, mechanical and electrical works” greenfields enterprise agreement;<sup>26</sup>
  - (e) between June and August 2019, the applicant advised our clients that it did *not* intend to make an AWU-only and civil-only greenfields enterprise agreement (of the type now before the Commission);<sup>27</sup>
  - (f) despite the above advice, and without any notice to our clients, in September 2019 the applicant made an AWU-only and civil-only greenfields enterprise agreement (now before the Commission as the “civil and surface works” agreement);<sup>28</sup>
  - (g) in acting as set out above the applicant misled the Intervening Unions as to its intention;
  - (h) the Intervening Unions give evidence about likely action to be taken by them had the applicant advised of its intentions to make an AWU-only and civil-only greenfields enterprise agreement.<sup>29</sup>
16. The above conduct on the part of the applicant failed to comply with, and undermined, the good faith bargaining requirements (particularly those at ss.228(1)(b), (e) and (f)).
17. The conduct described above was inconsistent with the good faith bargaining requirements in at least the following ways:
  - (a) the AWU and the applicant failed to disclose their intentions/actions with respect to the Proposed Agreements, contrary to prior verbal undertakings (which in turn deprived the Intervening Unions of the opportunity to seek redress): s.228(1)(b).
  - (b) the steps taken by the Applicant and the AWU undermined collective bargaining because they prematurely ended the bargaining process with

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<sup>23</sup> Ingham [12].

<sup>24</sup> Ingham [12] – [100].

<sup>25</sup> Ingham [18], [19], [37].

<sup>26</sup> Ingham [20], [38], [42](e), [50], [51], [77], [79].

<sup>27</sup> Ingham [106].

<sup>28</sup> Ingham [109], [110].

<sup>29</sup> Ingham [108]; Malone [96].

- the Intervening Unions which was by then well advanced: s.228(1)(e); and
- (c) the AWU and the applicant failed to meet with the Intervening Unions regarding the civil and surface works agreement for which they were, at least informally, a bargaining representative, having regard to the notices of 12 June 2019 and the conduct of the CME negotiations: s.228(1)(f).
18. We submit that the broad “in the public interest to approve the agreement” criteria in s.187(5)(b) permits, and indeed requires, the Commission to consider whether approving the Proposed Agreements would be inconsistent with or undermine good faith bargaining, in circumstances where that issue is squarely raised by our clients. The obligation to consider the good faith bargaining requirements in s187(5)(b) is to be distinguished from the requirement in s187(2) which emphasises their application in particular circumstances.<sup>30</sup>
  19. As mentioned above the Intervening Unions did bargain for the tunnel and shaft works agreement. It is wrong to submit, as the applicant does, that there is some attempt to mislead the Commission.
  20. At [2] and [3] the Applicant’s Submissions seek to distance the prior negotiations which it had with the Intervening Unions from the Proposed Agreements that it has now made.<sup>31</sup> That submission fails because, in truth, they are one and the same. Save for the change in scope from “civil, mechanical and electrical” to “civil and surface” (and the consequent omission of UGL as an employer under that agreement), the agreement which was negotiated for and the agreements which have been made are one and the same. The similarities include that they each concerned the Project, CPB, the tunnel and shaft works package and the civil and surface works package. The applicant seems to have picked up where the negotiations with the Intervening Unions left off (or, in some cases, taken them backwards)<sup>32</sup> and then made the Proposed Agreements with the AWU in those terms.
  21. The Applicant has not put on any first hand evidence of what was said and done during the negotiations and it has not said whether (and if so when) a further bargaining notice was provided to the AWU with respect to what has now become the civil and surface works agreement. The applicant is in the position to fully explain how it acted inconsistent with its representation to the Intervening Unions and it has failed to do so.
  22. At [24] the Applicant’s Submissions refer to *Philmac* and misunderstand the position of the Intervening Unions. They have at all times given, and adhere to, the concession in footnote 10 above. However, it is submitted that the Commission can (and should) consider compliance with the good faith bargaining requirements as relevant to s.187(5) as contended for by the Intervening Unions.
  23. The Intervening Unions also note it may be relevant to “genuinely agreed”, as alluded to by the applicant.<sup>33</sup> The Proposed Agreements cannot have been

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<sup>30</sup> The Commission is not required by s.187(2) to consider whether approving the Proposed Agreements would be inconsistent with or undermine good faith bargaining, because that provision only applies where a scope order is in operation: *Re Philmac Pty Ltd* (2011) 210 IR 3 at [4].

<sup>31</sup> The Intervening Unions did bargain for the tunnel and shaft works agreement: Malone [38].

<sup>32</sup> Malone [55], second sentence.

<sup>33</sup> Applicant’s Submissions [24].

genuinely agreed between CPB and the AWU if the agreement of those parties was secured through them deliberately misleading other union bargaining representatives, in breach of good faith bargaining requirements.

24. Whether compliance with the good faith bargaining requirements will ultimately weigh against approval of the Proposed Agreements will depend upon what findings of fact are made in that regard.
25. The only evidence currently before the Commission establishes that the applicant failed to comply with the good faith bargaining requirements.”

[37] And further, on behalf of the Intervening Unions, that:

“...  
Ground 6: Approval is otherwise not in the public interest: s.187(5)(b)

52. In *Re Abigroup Contractors Pty Ltd* [2012] FWA 3745 Commissioner Booth described the test as follows (footnotes omitted):

[51] What was in dispute before me was whether the additional requirement in s.187(5)(b) was satisfied: that it is in the public interest to approve the agreement.

[52] In *GlaxoSmithKline Australia Pty Ltd v Colin Makin* the Full Bench noted that in considering the public interest FWA is required to take into account the following:

The expression ‘in the public interest’, when used in a statute, classically imports a discretionary value judgment to be made to be made by reference to undefined factual matters, confined only by the objects of the legislation in question. [citing *Comalco v O’Connor* (1995) 131 AR 657 at p.681 per Wilcox CJ & Keely J, citing *O’Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210]

[53] The Supplementary Explanatory Notes to the Bill reinforce this:

In assessing the public interest, it would be expected that FWA would take into account the objects of the Act, and the need to ensure that the interests of employees who are to be employed under the Agreement are appropriately represented.

53. In that matter Commissioner Booth ultimately weighed the public interest by listing the public interest considerations as follows (emphasis added):

[64] Whether approval of the Agreement is in the public interest is a discretionary decision, and my judgement of it is informed by consideration of the following matters.

- (a) Approval of the Agreement is consistent with the object of the Act set out in section 3, especially section 3(f) and the objects of Part 2-4 about enterprise agreements set out in s.171.
- (b) The Agreement is consistent with the Greenfields agreement made for the other part of the construction with another corporation, minimising the potential for industrial disputation.
- (c) The Agreement provides equal or better terms and conditions that the relevant modern award and wages are significantly higher than the award.
- (d) It is positively in the public interest for the parties to the Agreement to eliminate lost time or productivity arising out of disputes or grievances during the construction under the agreement.

- (e) It is positively in the public interest for the Agreement to be approved to assist completion of the project within its time and financial targets.
  - (f) No substantive arguments were raised in opposition to the approval of the Agreement being in the public interest even though the CFMEU asserts such.
54. In *John Holland Pty Ltd re John Holland Pty Ltd Wheatstone Project Agreement 2012* [2012] FWAA 7307 and *Thiess Pty Ltd re Thiess Pty Ltd Wheatstone Project Agreement 2012* [2012] FWAA 7466 Commissioner Williams took a similar approach, in weighing the public interest by listing the public interest considerations, including that approval would “assist the parties [to] eliminate lost time and/or lost productivity arising out of disputes or grievances during the construction of the project”.
55. At [26]-[28] the AWU Submissions identify some positive public interest considerations. However, the AWU Submissions do not rebut the Intervening Unions’ submission as to the public interest. To the extent that the AWU is suggesting a balancing exercise, the public interest considerations that it has identified do not outweigh those identified by the Intervening Unions.
56. To approve the Proposed Agreements may not be in the public interest because it would increase the potential for industrial disputation, where four relevant unions, the Intervening Unions, have been excluded from coverage without notice and contrary to advice given to them by the applicant. The Applicant’s Submissions endeavor to address the issue at [41] to [43]. In reply the Intervening Unions submit, firstly, that their position is supported by prior decisions of the Commission. Secondly, given the public interest in the prompt completion of the project, as previously conceded, the Commission should endeavour to avoid industrial disputation and should weigh that in the balance.
57. The Applicant wrongly assumes such action to be unlawful industrial action. Examples of the sort of lawful industrial disputation that approval of the Proposed Agreements may create include:
- (a) demarcation disputes between the AWU and the Intervening Unions in circumstances where the latter assert coverage but the AWU has the benefit of being the only union covered;
  - (b) right of entry disputes where the applicant or its sub-contractors believe that the Intervening Unions do not have rights under Part 3.4 of the Act because they are not covered;
  - (c) collective disputes affecting multiple members of the Intervening Unions being unable to be effectively resolved through a dispute resolution procedure because they are not covered; and
  - (d) individual disputes affecting members of the Intervening Unions not being able to be effectively resolved through a dispute resolution procedure because of an issue as to representation, arising from the fact their union is not covered.”

[38] The AWU submitted that:

“... ”

25. “The public interest it is not a term which is defined, and has been held to refer in the present context to matters that might affect the public as a whole and is distinct in nature from the interests of the parties.<sup>34</sup>
26. The Cross River Rail Project is a very large and important Australian infrastructure project.
27. There is a positive public interest in favour of such a project being undertaken expeditiously and without costly and unnecessary delays. Approval of the agreements will provide certainty to CPB and the Queensland and Commonwealth Governments ahead of work commencing and will permit the work to commence expeditiously without any further delays.
28. There is a positive public interest associated with the approval of the agreements, as they will ensure CPB employees working on the Cross River Rail Project will have the immediate certainty of receiving appropriate conditions for a project of this nature, being conditions that far exceed those in the On-site Award and conditions that have been recognised as commercially viable for CPB. This will also ensure immediate, significant and ongoing employment security for a large number of workers in the civil construction industry.
29. The letter from Hall Payne Lawyers appears to assert some ground based in the public interest concerning the striking of the two agreements with the AWU by CBP, in circumstances where antecedent negotiations had occurred between different parties and had failed to produce any real progress or an effective outcome. These issues cannot be other than a ventilation of the personal disappointment of the unions represented by Hall Payne Lawyers and have no public interest aspect of any kind.
30. As pointed out by Katzman J in *Leighton* (supra) the FW Act clearly provides for an employer to choose the relevant organisations with which it might wish to negotiate, and may elect to strike an agreement with some or all of them. The outcome of an employer making such an election, which is clearly its right under the FW Act, cannot be relied upon in these proceedings as being a matter which is adverse to the public interest nor as a ground upon which approval might be refused.
31. To do so would be to effectively deny the employer the choice conferred upon the employer by section 182(3) of the Act. The core of the apparent objection in the Hall Payne letter is that, once having apparently chosen to commence negotiations with some or all relevant unions, an employer loses its right of election and is bound to only strike an agreement with the number of unions with which it may have commenced negotiations. If this is in fact the objection, it has no substance and should be dismissed.
32. Approval of the agreements is consistent with the objects of the FW Act and all the relevant statutory requirements have been satisfied.
33. The AMWU, CEPU and CFMMEU are minority unions in the civil construction industry and their complaints about the agreements present as an expression of disappointed personal aspirations and an attempt to compel CPB to strike an agreement with those unions, which is not permissible under the Act. Nor is it a matter that pertains in any way to the public interest.
34. It is clearly in the public interest for the Civil and Surface Works Agreement and the Tunnel and Shaft Agreement to be approved by the Commission.”

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<sup>34</sup> *Kellogg Brown and Root, Bass Strait (Esso) Onshore/Offshore Facilities Certified Agreement 2000* (2005) 139 IR 34 at 40.

[39] The AWU further submitted that:

“...  
 ...

8. The evidence filed in these proceedings establishes:

- (i) CPB agreed to bargain with the AWU (and only the AWU) in relation to the Tunnel and Shaft Agreement<sup>35</sup> on 6 June 2019 and ultimately *made* an agreement with the AWU on 5 September 2019;
  - (ii) On 12 June 2019, CPB and UGL Engineering Pty Ltd (“UGL”) agreed to bargain with the AWU and the Intervening Unions for a proposed greenfields agreement to cover civil, mechanical and electrical works on the Cross River Rail Project as a single interest employer<sup>36</sup> (“CPB/UGL Agreement);
  - (iii) The Intervening Unions admit “little progress had been made” with bargaining for the CPB/UGL Agreement by 30 August 2019<sup>37</sup> and the proposed CPB/UGL Agreement was never *made*; and
  - (iv) CPB agreed to bargain with the AWU (and only the AWU) for the Civil and Surface Works Agreements and it was *made* on 5 September 2019.
9. The only bargaining representatives for the Tunnel and Shaft Agreement and Civil and Surface Works Agreement were CPB and the AWU. Neither of these parties suggest any good faith bargaining issues arise as between those parties.
10. It follows that the applications could not be dismissed on the basis that the good faith bargaining requirements in relation to the agreements that were actually made, and which are before the Commission, have not been satisfied.”

[40] And further on behalf of the AWU:

“...  
 ...

Ground 6: Public interest: s 187(5)(b)

- 27. The submissions of the Intervening Unions are primarily directed at the private interests and the disappointed expectations of the three unions concerned, as opposed to the broader interests of the public which are positively served by the expeditious, fair and orderly settlement of the industrial arrangements to operate in respect of this very substantial Project.
- 28. Both agreements meet the relevant statutory requirements and it is in the public interest for the Commission to approve the agreements so work on this important project can commence with certainty as to the industrial conditions to be applied.
- 29. It appears that the submissions of the intervening Unions as to likely disputation on the Project if they are not parties to the prevailing agreements, amounts to little more than a threat to the parties and inferentially to the Commission, that the intervening Unions may become involved in disrupting the legal arrangements which are sought to be put in place in these proceedings.

<sup>35</sup> Statement of Malcom Davis at paragraph [18].

<sup>36</sup> Statement of Malcom Davis at paragraph [19].

<sup>37</sup> Statement of Jade Ingham at [100].

30. As registered organisations under the FW act, the Intervening Unions have a responsibility to support the integrity of the system of industrial relations created under that Act. It is respectfully submitted that the intervening Unions cannot legitimately invoke public interest considerations which, at their core, consist largely of predictions as to a possible illegitimate response by them or on their behalf if the Commission exercises its discretion in this matter in accordance with the FW Act.”

[41] CPB submitted that:

“...  
Good Faith Bargaining

20. The primary point to make in relation to the Unions’ contentions under this rubric are that they are based upon a premise, known by the Unions to be false and apparently intended to mislead the Commission.
21. The Applicant provided a bargaining notice to the AWU in relation to the Tunnel & Shaft Agreement on 6 June 2019.<sup>38</sup> The Applicant did not provide a bargaining Notice to the other unions.
22. On or about 12 June 2019, UGL Engineering Pty Ltd and the Applicant, as a “single interest entity”, jointly served a bargaining notice on the Unions, together with the AWU, seeking to enter an agreement to cover civil and engineering work, including electrical, plumbing and metal trades work.<sup>39</sup>
23. For reasons known only to the Unions, they refused to reach any sensible agreement.<sup>40</sup> They were informed that it was the view of the employer parties that no agreement was possible and negotiations ceased. They were clearly entitled not to reach an agreement, but they cannot then complain if another party chooses to make an agreement to cover the work in question.
24. Whilst the Unions properly acknowledge that *Philmac* makes plain, were it not otherwise so, that it is an error of law for a member of the Commission to refuse approval of an agreement on the basis of a failure to comply with the Good Faith Bargaining Requirements where no scope order is in place, the Unions in a manner not immediately apparent, seem to seek to draw support from the decision. There is certainly dicta of the Full Bench noting a submission by the ACTU that a failure to comply with the good faith bargaining requirements may raise an issue as to whether a party to the agreement “genuinely agreed”. Quite how this may assist the Unions when they are not parties to the agreement and there seems little doubt that the parties to the agreement in question do genuinely agree, is left somewhat unclear.”

[42] CPB further submitted that:

“...  
Approval is in the public interest

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<sup>38</sup> See paragraph 18 of the Statement of Malcolm Davis dated 04.10.19.

<sup>39</sup> See paragraph 19 of the Statement of Malcolm Davis dated 04.10.19.

<sup>40</sup> See paragraphs 20 to 29 of the Statement of Malcolm Davis dated 04.10.19.

39. There ought be no doubt that the Cross River Rail Project is a major project constructing Brisbane's necessary infrastructure for the next century. The unions do not appear to put this in issue.
40. There can similarly be no doubt that it is in the public interest to secure the industrial relations on site for the duration of the project as has been regularly recognised as the role of relevant Greenfields Agreements.
41. Somewhat menacingly, the Unions assert that approval of the Agreements would be contrary to the public interest in that "*it would increase the potential for industrial dispute*".
42. Quite how the approval of Greenfields Agreements, settling employment conditions on the project for the duration of the project, could increase the potential for lawful industrial dispute quite eludes the Applicant.
43. The Applicant does not, given the history of one of the Unions involved, discount the possibility that approval of the Agreements may lead to unlawful industrial dispute, however contends that it would be contrary to the public interest for the Commission to consider the potential for unlawful conduct in determining where the public interest may lie in the approval of the Agreements."

[43] In the present matter I was satisfied that having regard to the scope and scale of the Project and its importance to the State of Queensland it was in the public interest to approve the Agreements. It is clearly preferable to have a greenfields agreement in place prior to the commencement of substantive works so that there is a protection from industrial action during the performance of substantive works. The advantage of having a greenfields agreement as opposed to a brownfield agreement is well understood in the building construction industry.

[44] However, the issue of public interest was also contested on the basis that it was contended on behalf of the Intervening Unions that CPB did not bargain in good faith.

[45] The first observation to make is that in respect of the Agreements CPB was negotiating with the AWU. It was to the AWU that CPB owed a duty of good faith to in its bargaining. The AWU made no allegation that CPB did not bargain in good faith with it.

[46] The allegation that CPB did not bargain in good faith arises out of the fact that, at one point in time, for many months, acting in concert with its joint venture partner UGL it attempted to reach an agreement with all of the relevant unions, but it did not do so.

[47] The evidence of Mr Ingham is instructive in this regard. It evidences an extensive period of negotiation without a successful agreement being concluded. At all times the Intervening Unions wanted a single agreement as opposed to the, at least two, agreements that CPB wanted to conclude. It was a substantial "sticking point" in the negotiation about which, even on the evidence of Mr Ingham, there was an impasse. It may well be, as Mr Ingham said, that the Intervening Unions would be realistic about two agreements, but that certainly had not transpired by August 2019; by which time negotiations had been ongoing for many, many weeks.

[48] Further, at all times the Intervening Unions were fearful that CPB would conclude a deal exclusively with the AWU. They cannot claim to be surprised that that is what ultimately occurred. When negotiations were proceeding slowly, in August 2019 CPB/UGL wrote to the Intervening Unions indicating that "the JV will therefore consider all available

options.” The Intervening Unions were on notice about the same.

[49] Clearly CPB was running a parallel process with the AWU at the same time that it (with UGL) was running a process with the all union group. That does not demonstrate bad faith. Sensibly, CPB was hedging its bets. It, with its joint venture partner, UGL, desired to have at least one agreement with all the Unions, but was, at the same time, laying the ground work to have two agreements exclusively with the AWU. That parallel process does not undermine enterprise bargaining.

[50] The evidence of the Intervening Unions does not demonstrate that CPB was being duplicitous. Its representatives gave no undertaking that they would not pursue a separate agreement with the AWU. The same might not be said for the representatives of the AWU. They appear to have attempted to give the other unions a greater measure of comfort that they would not do a separate deal with the CPB. However, the fact that the AWU was less than forthcoming with its comrades does not mean that CPB did not bargain in good faith.

### **Consideration contested s. 172(2)(b) – new enterprise**

[51] The Intervening Unions submitted that:

“...  
...

Ground 5: They do not concern a genuine new enterprise: s.172(2)(b)

48. The Intervening Unions submit that work on the project has already commenced through, at least, sub-contractors. That submission appears to be consistent with the statement of Ronald Thomas (of the applicant) at [19] and [40]. The work described by Mr. Thomas is more than preparatory in the establishment of the enterprise. That raises a serious question as to whether this is a genuine new enterprise as required by s.172(2)(b).

49. At [8] the AWU submissions state that the AWU is not aware of any employees being engaged before the Proposed Agreements were made. Firstly, that submission is not supported by any evidence. Secondly, and in any event, such a fact would not be determinative of the issue.

50. In *Construction, Forestry, Maritime, Mining and Energy Union v CPB Contractors Pty Ltd and The Australian Workers' Union* [2018] FWCFB 3702 the Full Bench held:

[68]

...

The distinction sought to be made by CPB that the inherent characteristic of the enterprise was the engagement of a full-time permanent workforce, is, respectfully, not a distinction which we think, in the circumstances of this case, should be accepted as setting the seven employees apart from the fundamental character of the enterprise as described by the Commissioner.

...

Moreover, such a characterisation, confined as it is to a permanent workforce without more appears to us in the present case to be an insufficient basis on which to conclude that the enterprise is genuinely new. It is difficult to distinguish the engagement by CPB in the enterprise described as award-covered civil construction and water industry works in Victoria, from its “other enterprise” covering the same work but being performed by, for example, labour hire employees engaged by it.

51. The above suggests that the Commission should take a holistic approach to the matter. As the later case of Applications by CPB Contractors Pty Limited & John Holland Pty Ltd [2019] FWC 1122 demonstrates, in circumstances such as these, the Commission should carefully examine the activities that have been and are being undertaken by the applicant in order to determine whether s.172(2)(b) is met.”

[52] CPB submitted that:

“Cross River Rail Project is a genuine new enterprise

36. CPB does not employ anyone on the Cross River Rail Project;<sup>41</sup> it has not directly performed any work in relation to the Cross River Rail Project;<sup>42</sup> and it has not, as yet, met the conditions precedent for it to participate in relation to the Joint Venture intended to execute the project.<sup>43</sup>
37. Accordingly it is unclear how the solicitors for the Unions could have been instructed that *“the Applicant’s work on the project has already commenced through, at least, sub-contractors.”*
38. The Commission may wish to be informed of where these instructions came from in order to be assured that it wasn’t being deliberately misled.”

[53] In the present matter the only person who gave evidence about the genuineness of new enterprise being undertaken by CPB and whether it had employed any persons who were necessary for the normal conduct of that enterprise was Mr Thomas. The uncontroverted evidence, which I accept, is that the Project was a new enterprise of CPB and that it had not engaged any employees in respect of the same. Under cross examination Mr Thomas was shown a number of photographs of relevant sites. His evidence was that preparatory work was being undertaken by subcontractor, the Delta Group. The photographs in evidence support the same.

[54] For these reasons I had no hesitation in concluding that the Project was a new enterprise pursuant to s.172(2)(b).

### Other matters

[55] The Intervening Unions also submitted that:

“...  
Ground 7: Other matters

58. The Proposed Agreements refer to something called “the Project Work Rules” at clause 3.13(b). However, the Project Work Rules are not included, or otherwise defined. The Intervening Unions submit that is a matter which weighs against the approval of the Proposed Agreements.

---

<sup>41</sup> See paragraph 47 of the Statement of Ronald Thomas dated 04.10.19.

<sup>42</sup> But see paragraph 40 of the Statement of Ronald Thomas dated 04.10.19 in relation to certain preliminary works performed by a contractor of CPB in relation to the RIS Works.

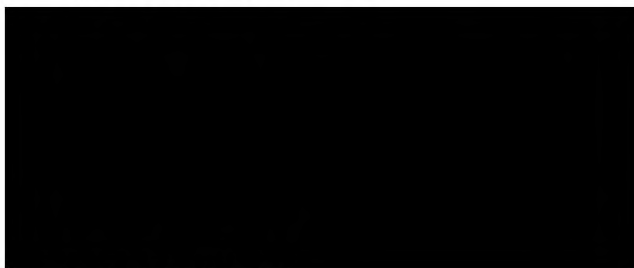
<sup>43</sup> See paragraphs 22 to 36 of the Statement of Ronald Thomas dated 04.10.19.

59. Whilst public documents need not be included in an enterprise agreement,<sup>44</sup> it is submitted that non-public documents ought to be included, failing which an enterprise agreement will lack the requisite certainty. Such a lack of certainty is exacerbated where, as here, the document in question appears to be amenable to amendment at the discretion of the applicant.
60. The lack of certainty about the operation of the Proposed Agreements, by operation of the Project Work Rules, also makes the BOOT difficult or impossible to assess.
61. Similarly, the fact that future terms and conditions of employment were able to be altered lead to a finding that the impugned enterprise agreement did not pass the BOOT in *Construction, Forestry, Mining and Energy Union v CSR Limited (t/as Viridian New World Glass) (2015) 250 IR 16*.
62. The Intervening Unions do not understand [46] of the Applicant's Submissions which seems to misunderstand this ground of opposition. So that there can be no doubt, the Intervening Unions' contention is that, in circumstances where the Project Work Rules do not form a part of the Proposed Agreements, and appear to be amenable to amendment at the discretion of the applicant, problems arise as to certainty and for the assessment of the BOOT.
63. In any event, at [45] of the Applicant's Submissions it accepts that the relevant sentence<sup>45</sup> "imposes no obligation and confers no entitlement". By that submission the applicant seems to have effectively abandoned the Project Work Rules, so far as the Proposed Agreements are concerned. The applicant has not offered any undertaking to that effect. Absent an appropriate undertaking, it remains an issue and may preclude approval."

[56] For the reasons advanced by the Applicant and the AWU the other matters were not a barrier to approval of the Agreements.

### Conclusion

[57] It was for these reasons that, in relation to the Agreements, I was satisfied that each of the requirements of ss.186 and 187 of the FW Act, as were relevant to the applications for approval had been met, including, without limitation, that it was in the public interest to approve the Agreements.



COMMISSIONER

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<sup>44</sup> *McDonald's Australia Pty Ltd v Shop, Distributive and Allied Employees' Association* (2010) 196 IR 155.

<sup>45</sup> "The Employer expects all Employees to comply with its policies and procedures including those dealing with harassment and discrimination in the workplace and the Project Work Rules".



hire, slowing the execution of the project works, vastly increasing costs and depriving the ability of contractors to reach genuine agreements with its workforce.

- (6) The introduction of BPICs has also enabled and encouraged a significant escalation in the frequency and disruptiveness of CFMEU activities on the site, which are also discussed in this report. For example, the D&C Subcontractor has had to contend with an increasingly adverse industrial relations environment on the project — characterised, in particular, by an ongoing campaign of interference, harassment and disruption by the CFMEU. In the interests of ensuring the efficient delivery of the project, the D&C Subcontractor has refused to acquiesce to certain CFMEU demands which, in its view, would make impossible any reasonable adherence to existing budgets and programs. In retaliation, and in an apparent attempt to strengthen its bargaining position, the CFMEU has undertaken or encouraged a variety of unlawful actions — ultimately bringing about a drastic reduction in productivity on the project, and driving increased costs and delays.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (12) The D&C Subcontractor has modelled the increased costs that it has and will face on the CRR-TSD Project [REDACTED]

This figure consists of:

[REDACTED]

- (c) a specific impact of \$580 million to date for impacts of the CFMEU campaign, buoyed by BPIC
- (d) an allowance of \$250 million for future impacts of the CFMEU campaign, being the mid-point of an estimated range (\$100 million – \$400 million)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (16) The specific elements for BPIC and the CFMEU noted in 12 c) and d) above have also modelled by the D&C Subcontractor in an additional, separate exercise. The analysis calculated the extra-over productivity impacts of CFMEU activity on the site, who have been emboldened by the introduction and spread of BPICs. In this exercise, the D&C Subcontractor has sought to quantify the separate productivity cost impacts on the project of these events. To do so, it has:
- (a) divided the timeline of the project to date into a pre-July 2023 period and a post-July 2023 period, based on the escalation of the CFMEU campaign at that time;
  - (b) used detailed, site-specific data to calculate that productivity across the project fell by 55% in the twelve months after July 2023; and
  - (c) estimated that the CFMEU campaign was having a 10% impact on productivity prior to July 2023.
- (17) Using these figures, along with data as to costs incurred to date and forecast cost to complete, the D&C Subcontractor has determined that the CFMEU campaign has increased costs on the CRR-TSD Project as a whole by approximately **\$580 million**. Importantly, industrial relations issues continue to affect the project. Their final impact remains uncertain, but the D&C Subcontractor estimates it to be between \$100 million and \$400 million . BPIC has provided an environment for CFMEU related issues to flourish beyond control.
- [REDACTED]



[REDACTED]

[REDACTED]

(24) Against this background, this report seeks:

[REDACTED]

(b) in section 7, to identify and estimate the separate impact that the introduction of BPICs (and associated industrial relations activities and impacts, including CFMEU activity on site) has had on the CRR-TSD Project;

[REDACTED]

[REDACTED]

[REDACTED]

## 7. BPICS AND THE STATE PROCUREMENT FRAMEWORK FOR GOVERNMENT PROJECTS

- (1) There have been significant shifts in the underlying industrial relations landscape at both the State and Federal levels — including the introduction of BPICs, the impact of which has been heightened by the abolition of the Australian Building and Construction Commission (“ABCC”), and the repeal of the *Code for the Tendering and Performance of Building Work 2016* (“**Building Code**”).

### 7.2 The introduction of BPICs

- (1) As the delivery of the CRR-TSD Project commenced, the D&C Subcontractor faced mounting industrial relations pressure as a result of the introduction of BPICs. The “Best Practice Industry Conditions” were introduced in the second half of 2019 as part of the tendering process for a number of building projects, where tenderers were asked to comply with “minimum conditions” as part of their compliance with Best Practice Principles. These projects included
- (a) the New Performing Arts Venue project, awarded in September 2019;
  - (b) the Cairns Convention Centre Expansion project, awarded in December 2019; and
  - (c) the Gatton Prison project, awarded in August 2020.
- (2) The introduction of these “minimum conditions” into a tender process was inconsistent and in fact at direct odds with the Government’s approach to Best Practice Principles at the time, which was to allow tenderers to put forward their own strategies for ensuring the spirit of the Best Practice Principles would be implemented on the relevant project. This approach was consistent with the orthodox approach to contracting in Queensland (and Australia) of allowing contractors to ultimately manage industrial relations as they see fit. The introduction of the “Minimum Standards” was unprecedented, and has had a significant effect on the industrial relations environment in Queensland which has been accretive and compounding ever since (aided by the formalisation of “Minimum Standards” as a formal procurement policy approach of the Government, through the introduction of “BPICs”, which is merely alternate terminology for “minimum conditions”).
- (3) When it tendered for the CRR-TSD Project in October 2018, and when it entered into the D&C Subcontract in June 2019, the D&C Subcontractor could not conceivably have foreseen — let alone priced for — the effect that BPICs would ultimately have on its ability to deliver the works.
- (4) The risk embedded in BPICs was, from the D&C Subcontractor’s perspective, impossible to avoid or to control effectively. Further, the D&C Subcontract provides no allocation of risk for the macroeconomic impacts of BPICs. At the time of tendering for the CRR-TSD Project, none of the entities making up the D&C Subcontractor had been requested in any other project to tender on the basis of “minimum conditions” in order to comply with the Best Practice Principles.
- (5) Ultimately, the impacts of BPICs are difficult to identify comprehensively. For present purposes, they can loosely be divided into general impacts and specific impacts.
- (6) The D&C Subcontractor has worked consistently to limit, and to mitigate against, the general impacts — which have included:
- (a) substantial increases in labour costs across the construction industry in South-East Queensland;
  - (b) reductions in productivity;
  - (c) increases in subcontractor costs as a result of:
    - (i) a depleted pool of subcontractors willing to tender for work on any project associated with BPICs; and
    - (ii) a consequential reduction in competition across the subcontracting market; and
  - (d) those subcontractors that remain willing to work on projects associated with BPICs (invariably with close union affiliation) tendering with elevated margins.

- (7) At the specific level, the D&C Subcontractor has faced a number of unique challenges related to the introduction of BPICs during the course of the CRR-TSD Project, which have arisen out of the following series of events:
- (a) In late 2020, a subset of BPICs specifically applicable to transport were introduced — known, aptly, as the Transport BPICs. At the time of their introduction, several major projects to which BPICs might be applied were already in the post-tender, pre-award phase. The State’s apparent expectation was that parties involved in these projects would use “best endeavours” to align themselves with the policy objectives and requirements contained within BPICs, and to drive the intended outcomes of those policy objectives. Accordingly, three projects received “best endeavours” requests:
    - (i) Bruce Highway Upgrade — Cooroy to Curra Section D, Contract 2 (the contractor for which was CPB);
    - (ii) Bruce Highway Upgrade — Caboolture-Bribie Island Road to Steve Irwin Way (the contractor for which was Fulton Hogan); and
    - (iii) Gold Coast Light Rail Stage 3 (the contractor for which was John Holland).
  - (b) Fulton Hogan remained relatively neutral in its commitment to BPICs. By contrast, both CPB and John Holland took up the policy underlying BPICs and negotiated with unions to conclude project agreements that aligned, to a substantial extent, with the Transport BPICs.
  - (c) On Cooroy to Curra, CPB adhered to a principled approach by seeking to maintain terms and conditions within the project agreement that would ensure productivity, along with its continued control of the site (similar to CRR-TSD). Ultimately, this led to the conclusion of one of the first BPICs-aligned agreements in the market — negotiated with and executed by the AWU.
  - (d) On the Gold Coast Light Rail Stage 3 project, the CFMEU reached agreement with John Holland and ultimately ratified a Civil Agreement which contained the restrictive terms and conditions contained within the Building BPIC Agreement. This was a landmark outcome for the CFMEU and one which the CFMEU further leveraged into the market via similar Civil Agreements with Watpac.
  - (e) Buoyed by this success and the introduction of BPICs, the CFMEU began to assert a number of entitlements that departed markedly from, or actively conflicted with, prior industry practice. To compel agreement to those entitlements (similar to those adopted on Gold Coast Light Rail Stage 3), it deployed a range of disruptive tactics — as evidenced by its conduct on other Queensland projects, such as:
    - (i) Centenary Bridge Upgrade;
    - (ii) Coomera Connector; and
    - (iii) Rockhampton Ring Road.
  - (f) The ultimate outcome has been a radically different labour market characterised by widespread inflation in labour costs, and significant damage to competition in the subcontracting market — where the decision of an individual subcontractor to adopt or to refuse BPICs-aligned terms and conditions can have serious implications for its ability to work on major projects with a CFMEU presence.

### 7.3 Impacts of BPICs and industrial relations

- (1) As the CRR-TSD Project has progressed, the impact of BPICs, together with other union (CFMEU) activity, have increasingly caused substantial reductions in productivity, as well as increased costs and delays.
- (2) As explained above, the accretive impacts of BPICs in the market has been taking place from at least as early as just after the time of execution of the D&C Subcontract. The introduction of “minimum conditions” for Government infrastructure in the State has provided the CFMEU with an unprecedented platform from which to increase its activity on projects, including the CRR-TSD Project. The purpose of this activity appears to be to influence the market to adopt CFMEU-style agreements and/or BPICs (which are one and the same) and result in entire projects being operated according to their desired conditions.

- (3) One way in which the CFMEU has sought to implement this agenda is by triggering purported safety concerns on the CRR-TSD Project through its engagement of, and perceived influence over, individuals within WHSQ. Its apparent objective has been to manufacture an adverse safety record for the project, which has then been used to discredit both the D&C Subcontractor and CPB. At the same time, the repeated issuing of infringements has had a severe impact on progress, as works across the site have had to be shut down in response to each infringement until the underlying issue (no matter how minor) has been rectified.
- (4) The impacts of this aspect of the CFMEU's agenda, in particular, can be demonstrated by comparing in Figures 21, 22 and 23 below the dates of right of entry events ("ROEs") involving CFMEU (or BTG) representatives and the dates of WHSQ notices being issued against the D&C Subcontractor.

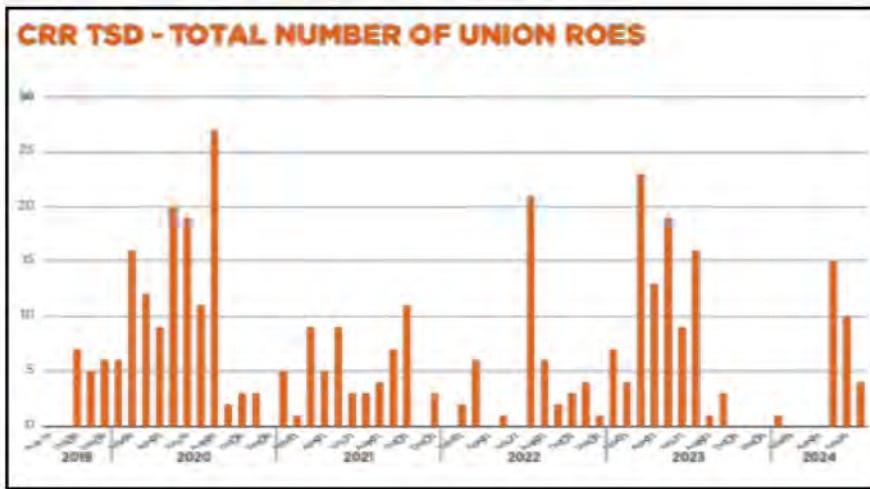


Figure 21: Total number of union ROEs on the CRR-TSD Project from commencement to date

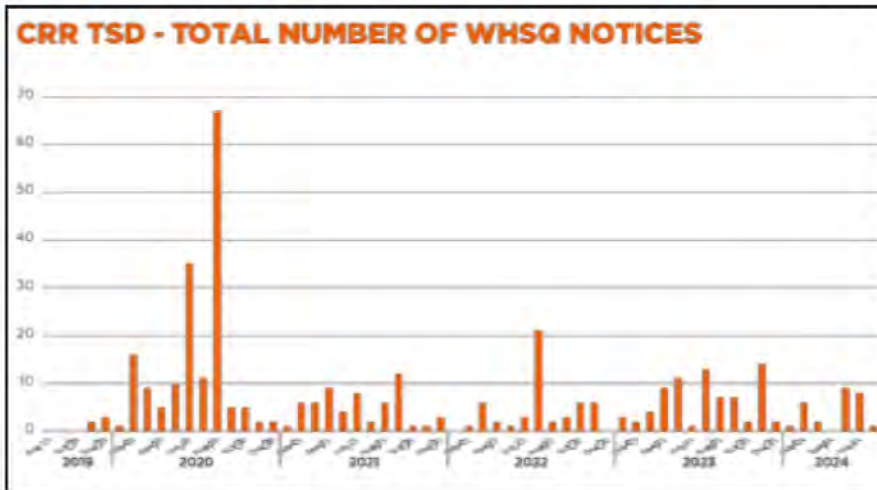


Figure 22: Total number of WHSQ notices on the CRR-TSD Project from commencement to date

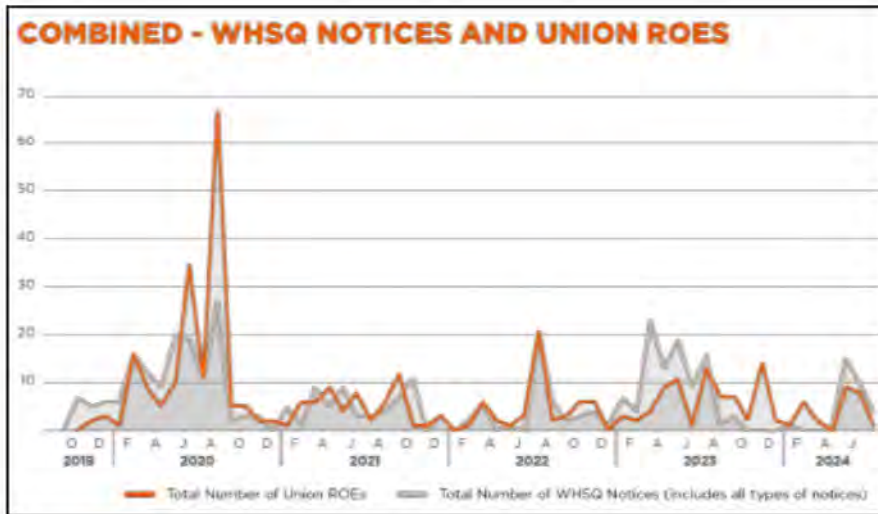


Figure 23: WHSQ notices compared to union ROEs on the CRR -TSD Project from commencement to date

- (5) The correlation between the ROEs and WHSQ notices is striking. It reflects the D&C Subcontractor’s experience on the project, whereby CFMEU representatives have entered site, called WHSQ inspectors to site, and, often, a notice ended up being issued against the D&C Subcontractor.
- (6) Of course, the D&C Subcontractor acknowledges that the data depicted above might be interpreted differently: that is, the correlation between ROEs and WHSQ notices might instead be taken to suggest that CFMEU representatives attending on site are detecting legitimate safety issues that are otherwise going unmentioned. However, this is demonstrably not the case. As shown in Figure 24 below, project safety records demonstrate that CRR-TSD has consistently maintained a strong safety record — markedly better than the industry average.

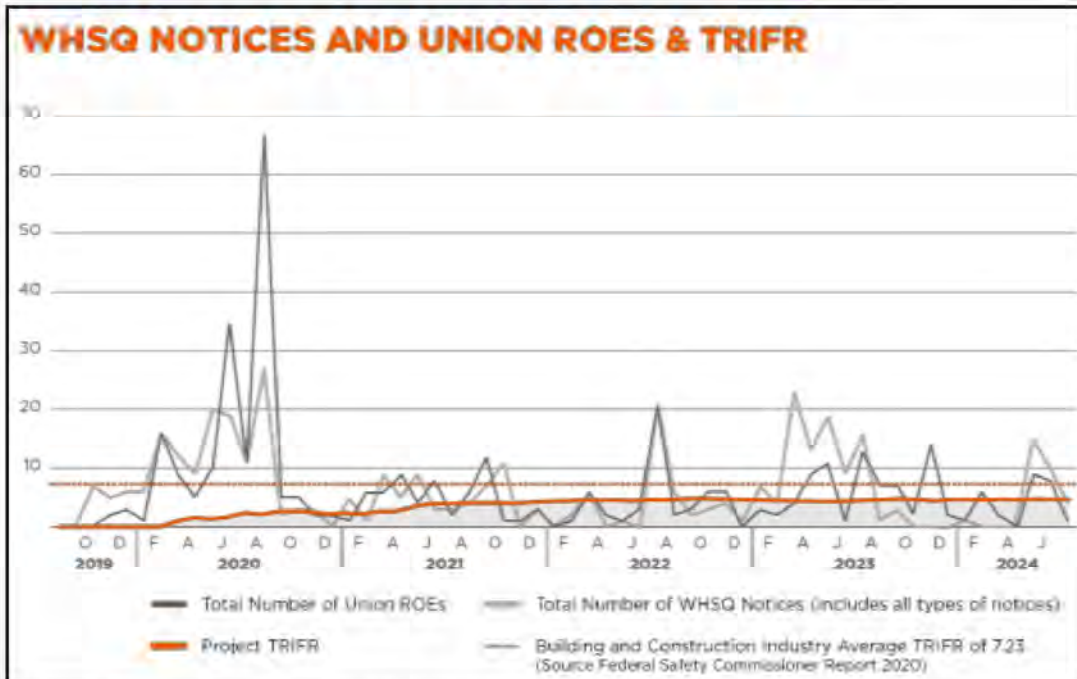


Figure 24: WHSQ notices, union ROEs and the total recordable injury frequency rate (“TRIFR”) on the CRR-TSD Project, as compared to the industry average TRIFR, from commencement to date

- (7) The graph above demonstrates that the TRIFR for this project is well below the nationwide industry average. In fact, during the peak period of CFMEU ROEs and WHSQ notices, the TRIFR was exceptionally low.
- (8) If there was any doubt as to the D&C Subcontractor’s true safety record on the CRR-TSD Project, that doubt ought to have been dispelled by the findings made by the Office of the Federal Safety Commissioner (i.e. an independent safety regulator from the federal government). In early September 2020, the Federal Safety Commissioner commenced a two-day intensive audit of safety on the project in response to the publicity surrounding the growing number of WHSQ notices that had been issued against the D&C Subcontractor. However, at the conclusion of the audit, the Federal Safety Commissioner found decisively that there were **zero** non-conformances to be recorded.

**7.4 Escalation of the impacts of BPICs and other union activity**

- (1) As the true impact of BPICs continued to materialise on the project (and throughout Queensland), the D&C Subcontractor experienced increasingly severe consequences on the CRR-TSD Project, both as a direct result of BPICs and as a result of increased and emboldened CFMEU activity.
- (2) So much is demonstrated by Figure 10 below, which identifies a 26% impact on available productive time on the project since July 2023. This escalation occurred after the CFMEU illegally locked the project gates across all precincts. The D&C Subcontractor, after failed attempts to obtain support from the Queensland Police Services and the Department of Workplace Health and Safety, agreed to employ a number of CFMEU Health and Safety Representatives in an attempt to allow the gates to be unlocked and works recommence for the sake of the project. From this point onwards, the CFMEU, buoyed by their success used this platform to escalate their campaign on the project and across the industry. This analysis of impact involves a review of three different metrics:
  - (a) first, the “Available Work Days” — being all days available for the workforce to work (excluding public holidays, etc);
  - (b) secondly, the “Planned Productive Days” — being the Available Work Days minus all calendar days on which the workforce is planned not to work, including shutdowns over Christmas, RDOs and anticipated periods of wet weather; and
  - (c) thirdly, the “Actual Productive Days” — being, as the name implies, the available productive work days in reality, taking into account the impact of phenomena such as the exercise of rights afforded to workers and/or the CFMEU by the BPICs.

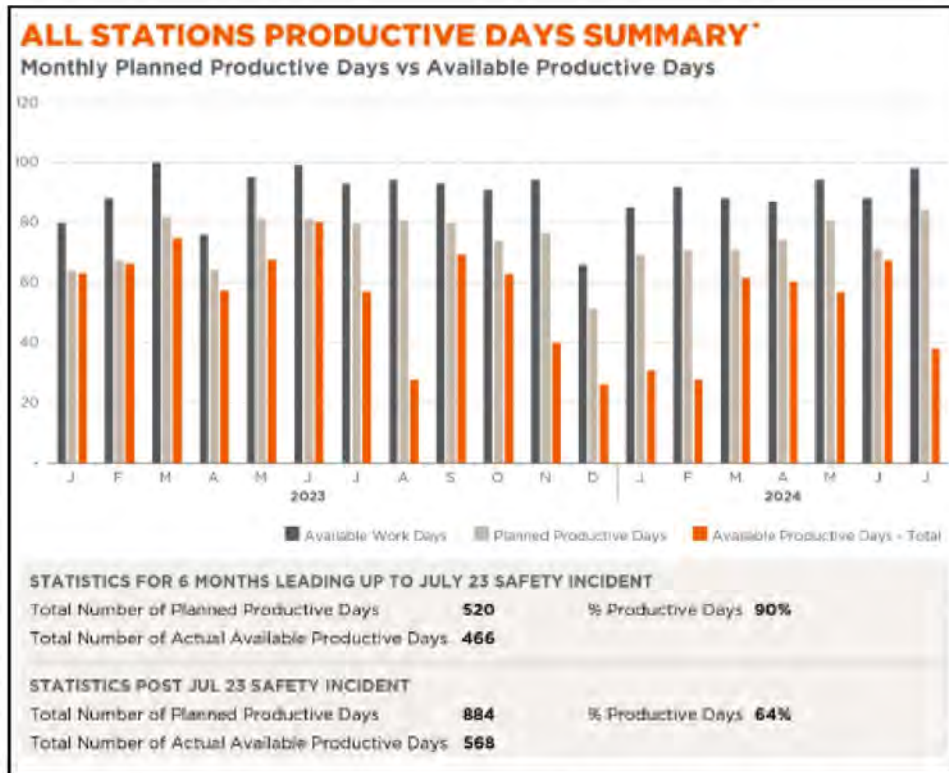
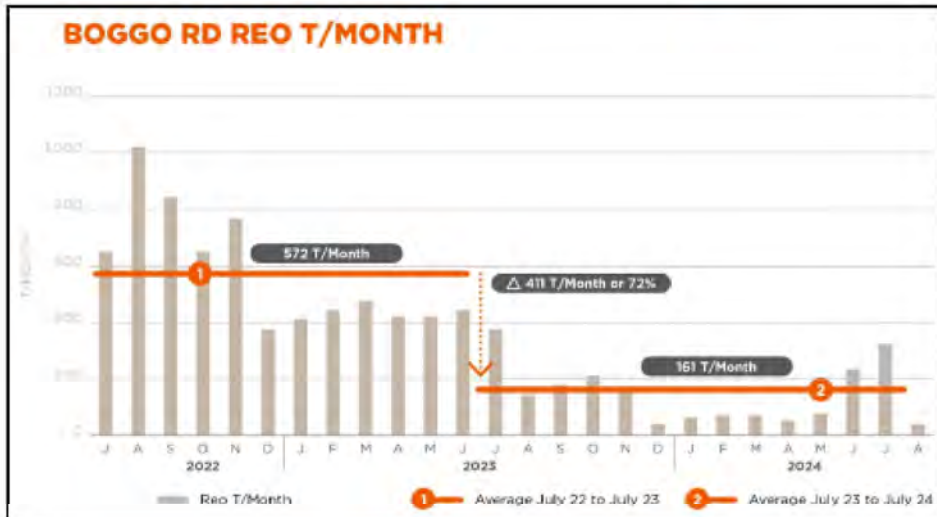
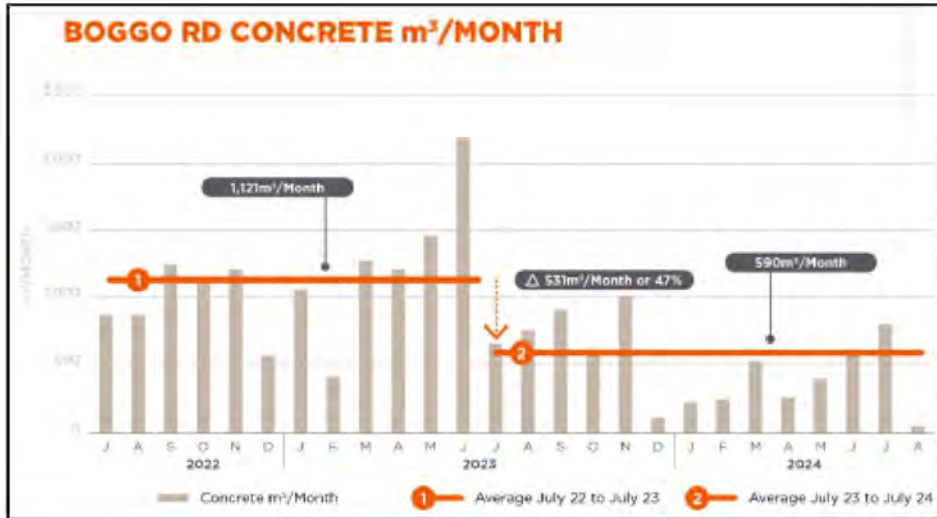
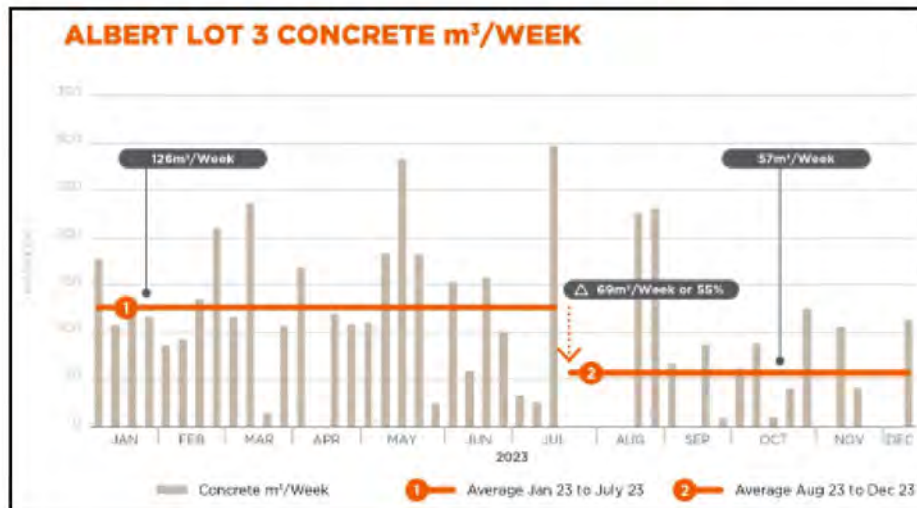
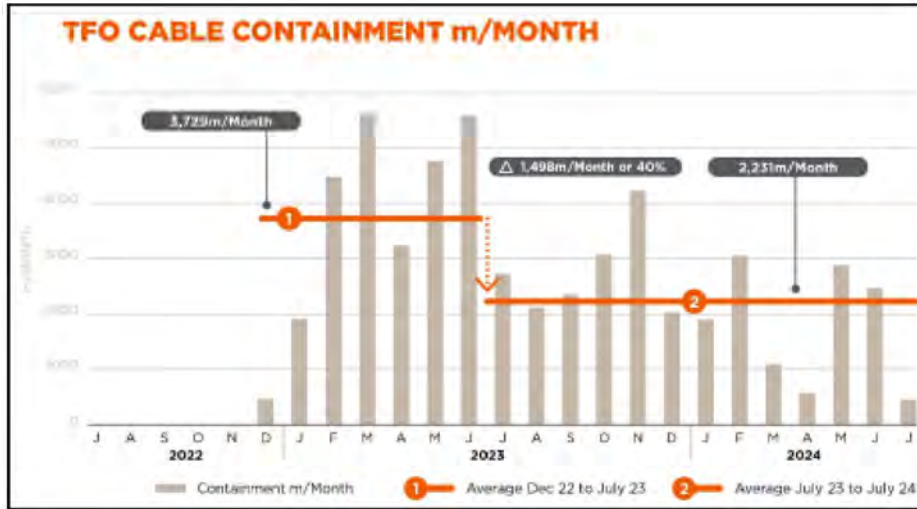


Figure 25: All stations productive days summary from January 2023 to July 2024

- (3) As this figure shows, prior to July 2023, the CRR-TSD Project was averaging an actual productive time of 90%. In the twelve months after July 2023, productive time fell by 26%.
- (4) The data underlying this analysis is contained in:
  - (a) Appendix 6H, where it is set out by precinct; and
  - (b) Appendix 6I, where it is set out in its full detail — using the Boggo Road precinct as an example.
- (5) The foregoing analysis of the effect on productive time since July 2023 assesses the number of days on which productive work could not take place on site as a result of the escalating impacts of BPIC and associated CFMEU activity. This is not a measure of true productivity impact, as it does not account for the day-to-day impact of CFMEU activity when sites are working.
- (6) The series of graphs set out below show the true productivity impact on certain works, as discerned from performance metrics across the project. These metrics have been measured across a 24-month period to allow a ready comparison between the twelve months before and twelve months after July 2023. Importantly, the graphs give snapshots of productivity on packages of work that have been *in progress* throughout the relevant 24-month period — avoiding packages that were nearing completion during that period, on which productivity might naturally be winding down (for instance, Roma Street concrete).





(7) The graphs all depict the same phenomenon, which has been perceptible across multiple sites and packages of work. As the graphs show, the impact to productivity from the escalation in the impact of BPICs and associated CFMEU activity in July 2023 (as measured by time available and direct impacts) is in the order of **55%**.

**7.5 Quantification**

(1) Due to the scale of the CRR-TSD Project and the nature of the disruption caused by the CFMEU campaign — it being both direct and indirect, varying in its extent, and spread across multiple sites over several years — it is difficult to quantify definitively the ultimate impact of these issues on the cost of delivering the project. This difficulty is exacerbated by the fact that the effect on productivity may in some instances be especially subtle: for instance, whilst it might appear outwardly that work is progressing over particular periods, the rate at which it is progressing is actually suboptimal and is throttling momentum on the project. The graphs set out above in section 7.4 suggest a phenomenon of that kind to be occurring; however, even with the benefit of hindsight, it is only possible to approximate the impact that this might have on productivity.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

Total

- (15) Combining the impacts of BPICs and associated union activity, the total impact can be quantified as approximately **\$580 million**. This is not to say that the impact of BPICs and associated union activity is limited to this amount – as discussed above, these phenomena have also contributed to the escalation and hyper-escalation being experienced by the D&C Subcontractor on the CRR-TSD Project, and by contractors across Queensland generally.

**8.2 Cost of knock on consequences of BPICs and associated CFMEU activity**

the second quantification exercise indicates the total extra-over productivity cost of BPICs and associated union activity to date to be **\$580 million**.

- (2) This second quantification exercise is calculated directly and across two time periods: pre-July 2023 and post-July 2023 — capturing the pre-July 2023 “normalised” and “post-July 2023 “escalated” impacts of BPICs and associated CFMEU activity (as emboldened by BPICs, respectively.
- (3) In addition, the D&C Subcontractor considers it reasonable to estimate future and ongoing project specific BPIC cost consequences, which stands to be incurred throughout the remainder of the CRR-TSD Project. Given the significant degree of uncertainty in a forecasting exercise of this nature, the D&C Subcontractor cannot commit to stating anything more than a broad range of potential costs. The uncertainty arises from factors including:
  - (a) the protected action currently occurring on the CRR-TSD Project (as at the time of writing);
  - (b) the difficulty that the D&C Subcontractor continues to have in concluding an agreement with the CFMEU that provides sufficient value and an ability for the D&C Subcontractor to maintain productive control;
  - (c) the ongoing issues involving the CFMEU around Australia — which might well lead to reform within the union, but cannot at this stage be treated as if they are destined to produce any particular outcome;
  - (d) the fact that any agreement concluded with the workforce on the project is unlikely to bring CFMEU interference and disruption to an end, but may instead motivate more intense retaliatory action;
  - (e) the broader federal and State macroeconomic policies that will influence major infrastructure projects (existing and future) in coming years.
- (4) Including an estimate of the range of future impacts, the overall cost of the knock on consequences of BPICs and the associated CFMEU activity can be depicted graphically as follows:



## APPENDIX 6 — INDUSTRIAL RELATIONS CASE STUDIES

As discussed in section 7, As the true impact of BPICs continued to materialise on the project (and throughout Queensland), accelerated by the formal introduction of the updated Civil BPIC in March 2023 and the development of what would become the Building Construction and Maintenance BPIC, the D&C Subcontractor experienced increasingly severe consequences on the CRR-TSD Project, both as a direct result of BPICs and as a result of increased and emboldened CFMEU activity.

This appendix details some of the activities engaged in by the CFMEU as a consequence of being emboldened and enabled by BPICs, and in order to further drive their agenda of influencing the market to adopt CFMEU-style agreements and/or BPICs (which are one and the same) and result in entire projects being operated according to their desired conditions.

### A. Albert Street Station slipform

- (1) Albert Street Station is on the overall critical path for the CRR-TSD Project. Within that component part of the project, the critical path runs through the usual concreting stages of “form”, “reo” and “pour” — as part of which there is both “slipform” concreting work and “jump form” concreting work. The works are being performed by Rocktown, a specialist reinforced concrete structure subcontractor. Rocktown is not aligned with the CFMEU.
- (2) As explained below, the CFMEU has focused particular attention on disrupting the Albert Street Station slipform work. The D&C Subcontractor suspects that its objectives are twofold:
  - (a) first, to inflict the maximum damage to the D&C Subcontractor’s program, given that it is well known that Albert Street Station is on the critical path; and
  - (b) secondly, to impact the work of Rocktown specifically, given that it is not aligned with the union.
- (3) The approximate timeline of events is as follows:
  - (a) On 21 April 2023, a large crowd of people in plain clothes, wearing glasses, hats and masks, were stationed outside Lot 1 — blocking the access of concrete trucks to the site. The concrete pour had commenced prior to the crowd arriving. The crowd was asked to move several times, as it was obstructing entry to the site. The crowd refused, and instead attempted to open the site gates with a set of keys that certain people within the crowd had found (or that had been provided to them), ultimately to no avail. The police were in attendance but did not intervene because, as they explained, they “had to meet the crowd halfway”. The concrete pour was cancelled mid pour on account of the interference with site access, resulting in the slipform work having to stop. This caused a cold joint issue, which necessitated significant rework — including lowering the slipform, to scabble and reinstate the pour. The ultimate consequence was a significant delay of 12 days to the critical path.
  - (b) On 24 May 2023, six CFMEU officials climbed over the Albert Street turnstiles to enter the site. A crowd of CFMEU delegates simultaneously gathered outside the site. The CFMEU officials stood in the way of workers trying to get to the workface, preventing another concrete pour from taking place. The officials also led a protest nearby on Mary Street, lasting for approximately an hour and a half, which focused attention on the Site Manager (James Maher), the industrial relations team, and the subcontractor workers previously at Albert Street. The concrete pour was cancelled, resulting in the loss of the shift (and, ultimately, much longer delays to the overall schedule).
  - (c) On 14 July 2023, three CFMEU officials stood behind a concrete truck, preventing the truck from entering site to undertake another concrete pour. The officials were requested to move several times, but refused. Several CFMEU delegates from the nearby Queen’s Wharf Project arrived and stood outside the site gates, helping to prevent the concrete truck from entering the site. Eventually, after approximately 30 minutes, the officials moved away with police intervention, and the pour was allowed to continue.
- (4) As evidence of the events summarised above, the D&C Subcontractor can provide the following photographs — showing:

(a) the crowd impacting the concrete pour on 21 April 2023:



(b) the impacts of the CFMEU's interruption to the pour:



(c) CFMEU delegates preventing the concrete pour on 24 May 2023:



**B. Campaign against Multhana Property Services**

- (1) Multhana is an indigenous-owned company that has been engaged on the CRR-TSD Project for the cleaning of sites — including amenities, crib rooms and offices. Its work on CRR-TSD generates approximately 60% of its overall revenue. Many of its employees are First Nations people, or are from difficult or low socio-economic backgrounds.
- (2) Multhana does not have an Enterprise Agreement in place. Instead, it pays its employees in accordance with the *Cleaning Services Award 2020* — which is the typical approach taken in the cleaning industry. The correctness of Multhana’s payment practices has been confirmed through:
  - (a) several independent payroll audits throughout the CRR-TSD Project; and
  - (b) legal advice obtained by Multhana, which concluded that the *Cleaning Services Award 2020* was properly to be applied — as set out below:

From: Mark Diamond [REDACTED]  
Sent: Wednesday, January 17, 2024 4:38 PM  
To: Sandra Gauder [REDACTED]

Cc: [REDACTED]; Joe Wallace [REDACTED]

Subject: Award coverage

Dear Sandra,

As you are aware I have been advising employers in various industries for 42 years (I opened my business in January 1982). In particular I have been advising employers in the cleaning industry for 40 of those 42 years. I mention these facts as an indicator of my familiarity with the issues at hand. The issues upon which you have sought my advice are:

1. Is cleaning a task that is broadly covered by the Building and Construction General On-Site Award 2020?
2. Is there any area of the contract between Multhana Property Services Pty Ltd and CPB where the cleaning activities might be covered by the Building and Construction General On-Site Award 2020?

This issue is by no means uncommon. The building industry unions (CFMEU etc.) always make aggressive claims to the effect that any worker who even walks near a construction site should be covered by the Building and Construction General On-Site Award 2020. However even though the unions make those sorts of aggressive claims they enjoy little success where cleaners are concerned. If you check the list of tasks that are found in the Classification Definitions at the back of the Building and Construction General On-Site Award in Schedule A you will look in vain for cleaning as a standalone task. It simply is not in there. The building unions assert that the task is covered by "general labourer" but that argument has never succeeded in any tribunal decision of which I am aware.

The plain and simple fact is that the cleaning being performed by Multhana employees at the sites listed in the contract (whether they are construction zones or not) is a task covered by the Cleaning Services Award 2020. The building unions will never contest that point in the Fair Work Commission or the Federal Court because they know the argument will not succeed. The unions might well fall back on industrial muscle (bans, mystery "safety" disputes etc.) but that takes you into the realm of a negotiated resolution. The strict legal outcome is very clear: the Multhana employees are covered by the Cleaning Services Award 2020.

If your client needs more from me on this matter then I am happy to provide it.

Regards

Mark Diamond

Principal

WORKPLACE ADVISORY GROUP

- [REDACTED]
- [REDACTED]
- (3) This confirmation has been provided, in turn, to the D&C Subcontractor.
  - (4) Nevertheless, the CFMEU maintained throughout 2023 and much of 2024 that Multhana was paying its employees incorrectly. In the D&C Subcontractor's view, the CFMEU's stance was motivated by its desire either:
    - (a) to compel Multhana to pay its employees in accordance with a union-sanctioned Enterprise Agreement; or
    - (b) to cause Multhana to be removed from the project.
  - (5) To exert pressure on Multhana, CFMEU representatives prevented Multhana cleaners from entering the site. Several Multhana cleaners also reported being intimidated. The approximate timeline of events is as follows:
    - (a) On 10 and 11 January 2024, the Multhana cleaners at Boggo Road Station were directed to stop work by CFMEU officials and delegates. The cleaners left site for the day, as they were unable to complete any duties — resulting in two lost shifts.
    - (b) On 19 January 2024, Multhana cleaners were unable to clean the toilets at the Albert Street site due to CFMEU interference, including the barricading of toilets and direct measures to prevent the cleaners from entering the site. As a result, a separate company (AllAces Cleaning & Restoration) was engaged to clean the toilets on Lots 1, 2 and 3.
    - (c) On 5 February 2024, the toilets on Lots 1, 2 and 3 were again barricaded so that workers could not use them, and so that they could not be cleaned. This caused the subcontractor

workforce to leave site, disrupting works for the day and resulting in the loss of an additional shift.

- (d) Over a longer period of time, Multhana cleaners were repeatedly told by CFMEU representatives at all sites not to undertake any cleaning duties on site, and to remain in office areas only. In an effort to ensure that construction works could continue:
  - (i) arrangements were made at the Boggo Road Site for portaloos to be lifted to the surface by tower cranes; and
  - (ii) arrangements were made within the Tunnel Fit Out scope for toilets to be transported out of the tunnels to the surface.

Both of these solutions impacted the productivity of the affected sites.

- (6) The D&C Subcontractor has resolutely stood by Multhana in the face of this pressure from the CFMEU. Eventually, the CFMEU was encouraged through political avenues to cease its campaign against Multhana, having regard to its special status as an indigenous company. Prior to this point, however, the human cost of the campaign was significant: Multhana's employees, many of whom are already disadvantaged, lost earnings due to their inability to work on the CRR-TSD Project in the face of obstructive measures taken by the CFMEU.

### **C. Campaign against Altus Traffic**

- (1) Altus has been engaged on the CRR-TSD Project since its commencement. It is one of the largest traffic management companies in Queensland, with over 450 employees. The Altus Enterprise Agreement expired in 2021, and was non-union. Since 2022, the CFMEU has actively been pressuring Altus to sign up to a union-approved Enterprise Agreement throughout Queensland.
- (2) In early 2023, Altus commenced a bargaining process that involved AWU and CFMEU representatives. However, by mid-2023, two attempts to conclude a new Enterprise Agreement had proved unsuccessful. The D&C Subcontractor is aware from publicly available information, and from anecdotal information received on the project, that:
  - (a) CFMEU representatives texted Altus employees to vote against the proposed Enterprise Agreements on both occasions;
  - (b) after the second vote, the CFMEU threatened protected action — however, the geographical spread of Altus employees apparently made it too difficult for the CFMEU to coordinate this protected action; and
  - (c) at the same time, on 20 June 2023, the CFMEU made a post on its Facebook page, setting out a number of claims for Altus employees.
- (3) The CFMEU's campaign against Altus appears to be one element of its broader strategy to have CPB include traffic controllers in a replacement Cross River Rail Enterprise Agreement. In the context of CRR-TSD and RIS negotiations, the CFMEU has been advocating for traffic controllers to have their weekly earnings increased from \$2,200 (already a competitive rate for traffic controllers in Queensland, equating to approximately \$100,000 per year) to \$5,500.
- (4) The campaign against Altus has involved repeated disruptions to the project. The approximate timeline of events is as follows:
  - (a) On 23 May 2023, all Altus traffic controllers left site and participated in a CFMEU-led rally, attempting to pressure CPB to include traffic controllers in a replacement Cross River Rail Enterprise Agreement. The rally resulted in one lost shift across all project sites.
  - (b) On 12 July 2023, CFMEU organiser Dean Rielly sent an email to a large group of people, asserting that Altus traffic controller Andrea Hildreth was now a delegate for the CFMEU with Altus. The email was not accompanied by any evidence that a vote had taken place.
  - (c) On 14 July 2023, Ms Hildreth entered the Albert Street Station site with a CFMEU official (unescorted) to speak to site management about the reasons for her relocation from Lot 1 to Lot 2. The CFMEU then issued to the D&C Subcontractor an ultimatum, requiring it to reinstate Ms Hildreth in her usual position on Lot 1. This request was initially denied, but subsequent CFMEU activity impacted a concrete pour at the site. In the face of this pressure, the request was agreed. The effect of this incident was the loss of one shift at Albert Street.

- (d) On 19 July 2023, all Altus workers attended a meeting organised by the CFMEU to commence bargaining for a replacement Enterprise Agreement.
- (e) On 21 November 2023, CFMEU delegates purported to audit the Project Traffic Management Plans and procedures. While the audit was being undertaken, site access gates were shut, preventing all in and out traffic movements. This, again, resulted in one lost shift across all project sites.
- (f) On 12 December 2023, there was a disagreement between two Altus workers on nightshift. The next day, both workers were called to the Altus office. CFMEU organiser Dean Rielly attended the meeting, without having been invited. Once at the meeting, he proved so disruptive that Altus had to call the police to remove him from their office.
- (g) On 14 December 2023, CFMEU delegates on all project sites requested that all Altus traffic controllers be re-inducted onto their Safe Work Method Statements (“SWMSs”). This process proved especially disruptive, and partial shifts were lost on all sites.
- (h) On the same day, CFMEU representatives pressured the traffic controllers at the Boggo Road site not to open the gates at that site or to accept deliveries until CFMEU delegates allowed it. This resulted in the loss of an additional partial shift at Boggo Road.

**D. Tower crane companies**

- (1) The tower crane companies engaged on the CRR-TSD Project are CFMEU-aligned. The CFMEU has repeatedly used its connection with these companies to disrupt the project schedule by controlling the use of cranes on various sites. The companies have also agreed to impose conditions whereby:
  - (a) their employees must obtain CFMEU approval to work RDOs, Saturdays prior to RDOs, and weekends; and
  - (b) their employees must leave site for all CFMEU marches and events.
- (2) The CFMEU’s insistence on employees limiting or ceasing weekend work, overtime and night shifts has had a significant impact on the project. The approximate timeline of events is as follows:
  - (a) On 16 December 2023, the CFMEU withdrew the permission for the tower crane companies to work the pre-Christmas bank of RDOs. This decision caused the loss of six shifts.
  - (b) On 25 November 2023, the Freo Group crane crew at Albert Street Station did not turn up for work, following a direction from the CFMEU. It is understood that the CFMEU’s direction related to the fact that a replacement Freo Enterprise Agreement had not yet been concluded. The direction caused the loss of three shifts. Ultimately, Freo elected not to work any longer in Queensland due to the pressured exerted upon it by the CFMEU, and the D&C Subcontractor had to change out the crane at the Albert Street site.
  - (c) On 19 January 2024, the Marr Contracting crane crew did not turn up for work, again under pressure from the CFMEU. The D&C Subcontractor understands that this pressure was tied to Marr’s negotiation of an Enterprise Agreement.
  - (d) On 6 February 2024, all crane crews on the project turned up for work in shorts and short-sleeved shirts, contrary to the site PPE requirements, to support the CFMEU’s attempts to have its “heat policy” implemented on the project (as addressed in more detail in the next case study). The resulting disruption caused the loss of two shifts.
  - (e) On 23 February 2024, the Lindores crane crew at Roma Street Station refused to undertake any planned lifts, citing their support for the CFMEU’s attempts to have its heat policy implemented on the project. This caused the loss of one shift.

**E. CFMEU heat policy campaign**

- (1) Prior to commencing work on the CRR-TSD Project, all employees attend a project and site induction at which they are advised of, amongst other things, the site PPE requirements. The PPE requirements entail the wearing of long pants and long-sleeved shirts on site. The CFMEU has contested this rule by advocating for workers on site to wear shorts and short-sleeved shirts in support of its heat policy. The CFMEU heat policy essentially introduces a “one out, all out”

approach to the management of heat and other forms of inclement weather on the project. In the D&C Subcontractor's view, the policy threatens to prolong the project drastically by broadening the range of circumstances within which work can be halted.

- (2) Relevantly, the CPB Enterprise Agreement does not contain any blanket rule pursuant to which work might cease once the temperature on site reaches a certain level. Instead, CPB takes a more active approach to the management of work during periods of heat and other forms of inclement weather.
- (3) By contrast, the CFMEU heat policy *does* impose blanket rules of this kind, and the CFMEU has promoted a similar approach to rainfall on site. These policies would have treated 84% of the days in the summer of 2023–24 as affected by heat or rain — leaving only 14 days out of three months.
- (4) Given the considerable impact that the CFMEU heat policy would have on productivity, the D&C Subcontractor has not agreed to implement it on the CRR-TSD Project. In response to this stance, the CFMEU has encouraged disruption to the works — seeking either:
  - (a) to compel the D&C Subcontractor to adopt the heat policy in a replacement Cross River Rail Enterprise Agreement; or
  - (b) instead, to prolong the project through unnecessary stoppages.
- (5) The approximate timeline of events is as follows:
  - (a) On 5 February 2024, some members of the CPB workforce and certain subcontractors refused to work, as the D&C Subcontractor's heat policy did not align with the requirements of the CFMEU heat policy. Under the direction of the CFMEU, elements of the workforce requested that their SWMSs be updated to permit the wearing of shorts in lieu of long pants. Those personnel refused to work until the changes were implemented, and left site after their requests were denied.
  - (b) On 6 February 2024, some members of the CPB workforce and certain subcontractors attended work in shorts and short-sleeved shirts. Those personnel again refused to work, and remained in crib rooms until the cessation of ordinary work hours. Each site was instructed not to pay employees for non-compliance with the D&C Subcontractor's PPE requirements.
  - (c) On 15 February 2024, the CFMEU organised and led a rally protesting the heat policies in place on the project, which it asserted were unsafe.
  - (d) On 22 and 23 February 2024, the CPB workforce and subcontractors were again advised at prestart that all workers onsite were required to wear compliant PPE and that, if they did not, they could not undertake any work and would not be paid.
  - (e) On 23 February 2024, CFMEU delegates led the workforce out of the crib rooms and onto site to commence work at Boggo Road Station. The delegates ignored supervisors' instructions to stop work on account of their non-compliance with PPE requirements. Other sites faced similar instances of defiant behaviour.
  - (f) On 25 February 2024, a supervisor employed by the D&C Subcontractor at Roma Street advised a CPB worker that he was required to wear correct PPE when working on site — including safety glasses. The worker refused to put on safety glasses, and the supervisor became a target for bullying by CFMEU delegates.
  - (g) On 27 February 2024, a small number of CPB HSRs and CFMEU-aligned subcontractors continued to defy the site PPE requirements. However, the CFMEU ultimately announced that the campaign for the implementation of its heat policy on the project was over.
- (6) Accordingly, the CFMEU heat policy campaign commenced on 5 February 2024 and significantly impacted a number of shifts on all sites until 15 February 2024. From that point, workforce involvement in the campaign reduced significantly until the campaign was brought to an end on 27 February 2024.
- (7) As evidence of the events summarised above, the D&C Subcontractor can provide the following photographs — showing attendees at the rally organised by the CFMEU on 15 February 2024, wearing outfits that did not comply with PPE requirements:



#### F. Targeted sabotage and vandalism

- (1) During 2024, in particular, there has been a noticeable increase in the number of targeted acts of sabotage and vandalism by CFMEU representatives across the CRR-TSD Project. These acts have mainly been focused on:
  - (a) toilets — exposing the D&C Subcontractor to claims that work should cease because of inadequate facilities;
  - (b) concrete pumps; and
  - (c) Damstra access points.
- (2) The ultimate effect of these acts has been to disrupt, and in some cases to stop, work on site. The approximate timeline of events is as follows:
  - (a) On 14 February 2024, distribution boards on Lots 1 and 3 at the Albert Street site were found to have their residual current device (RCD) test stickers removed. The stickers show that the testing of those devices is “in date”.
  - (b) On 5 May 2024, the Damstra keypad at the Boggo Road site was damaged by CFMEU representatives after a protest outside the site.
  - (c) On 30 April 2024, the Damstra keypads at the Roma Street site were glued and smashed by CFMEU representatives during protected industrial action, making further use of the keypads impossible.
  - (d) On 30 April 2024, during the same protected industrial action, the CCTV cameras at Roma Street were sprayed by men wearing masks and hooded jumpers.
  - (e) On 24 May 2024, subcontractors (from KME Steelworks) working at the Albert Street site had the keys to their elevating work platforms stolen while they were at smoko.
  - (f) During June 2024, there was a marked increase in instances of vandalism, graffiti and inappropriate stickers on lockers, amenities, hard hats, and surfaces around sites — particularly at Albert Street and Woolloongabba. There was also an increase in the number of issues with toilets at Albert Street in particular, with toilets being intentionally clogged, locks being removed off female toilets, and concrete slurry being poured into toilets.
  - (g) On 28 June 2024, several subcontractor workers refused to work until all stickers and graffiti had been removed from lockers, hard hats, amenities and surrounding areas. The subcontractor workforce ultimately left the site in protest, resulting in one shift being lost by all trade subcontractors at Albert Street.
  - (h) On 25 July 2024, a concrete pour at Woolloongabba was interrupted after workers noticed that there was an issue with the pump. An investigation by a fitter found evidence of wire that was fouling the push and pull motion of rams. The fitter deemed this to be an instance of intentional sabotage or vandalism, and one shift was lost by the pour crew at Woolloongabba.

(3) As evidence of the events summarised above, the D&C Subcontractor can provide the following photographs — showing:

(a) the damaged Damstra keypad at the Boggo Road site:



(b) CCTV cameras being sprayed by men in masks and hooded jumpers, around the same time that the CFMEU was engaged in unlawful picketing and chaining of the gates:



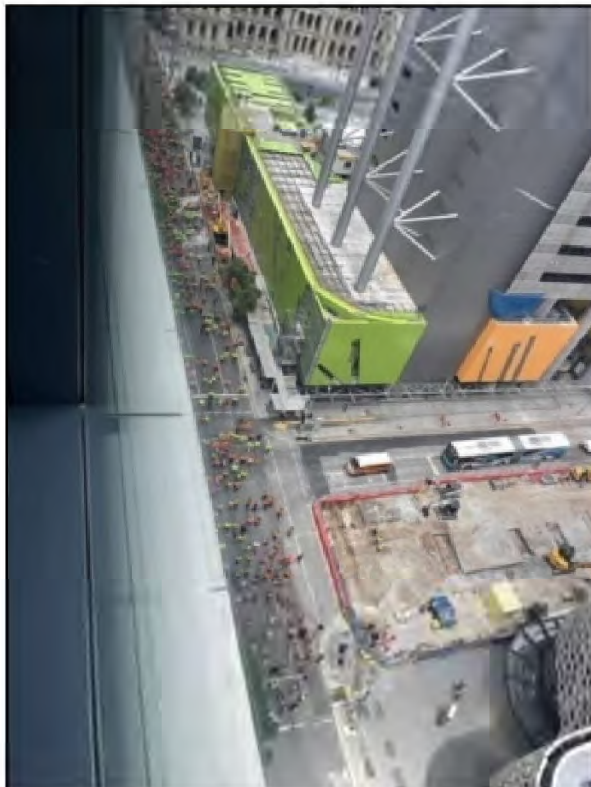
#### **G. Stoppages, rallies and labour withdrawal**

- (1) CFMEU-led stoppages and rallies have resulted in mass withdrawals of labour, impacting all CFMEU-aligned subcontractors as well as multiple other BTG-aligned subcontractors. The purpose of these rallies is generally to muster support for the CFMEU, to demonstrate the union's power to those that it is trying to influence (more often than not, the State), and to demonstrate to subcontractors the union's ability to "switch on" and "switch off" the workforce.
- (2) Although the D&C Subcontractor has sometimes received several days' notice of upcoming rallies via police contacts, there has almost invariably been nothing that it can do to prevent substantial declines in productivity on the days of those rallies. In particular:
  - (a) it is common to see CFMEU organisers visiting all sites in the days leading up to a rally to garner the greatest possible attendance at the event;
  - (b) on the day of a rally, CFMEU delegates actively encourage the workforce to attend;
  - (c) rallies ordinarily commence at 10:00 am, with workers beginning to depart at 9:30 am — causing them to be unproductive for large portions of the work day;

- (d) whilst those workers are on site for about three hours in the morning prior to their departure, they usually achieve little in real terms during this time; and
  - (e) depending on the rally, it is common for only about 10% of direct hire workers (trades and non-trades) to return to site afterwards — and, in the case of subcontractors, that number is significantly lower.
- (3) Ultimately, while project sites may continue to run during these rallies, overall progress suffers considerably — particularly with the almost inevitable withdrawal of craneage.
- (4) Outlined below are some typical examples of the industry stoppages experienced:
- (a) 21 August 2019 — industry rally — the CFMEU marches on Parliament and calls for Jackie Trad to resign:



- (b) 27 November 2019 — CFMEU-led rally — the CFMEU marched to the CRRDA’s office and then to Parliament;
- (c) 8 February 2022 — CFMEU-led rally — the CFMEU marched against Master Builders (claiming that Master Builders were “trying to sabotage the \$6 Billion BUSSQ Fund”):



- (d) 28 April 2022 — rally for Workers’ Memorial Day;

- (e) 4 August 2022 — CFMEU-led rally regarding BPICs;
- (f) 9 November 2022 — CFMEU-led rally — the CFMEU claimed that the Queensland Labor Government had turned its back on blue-collar workers, with particular focus on Neil Scales and Mark Bailley;

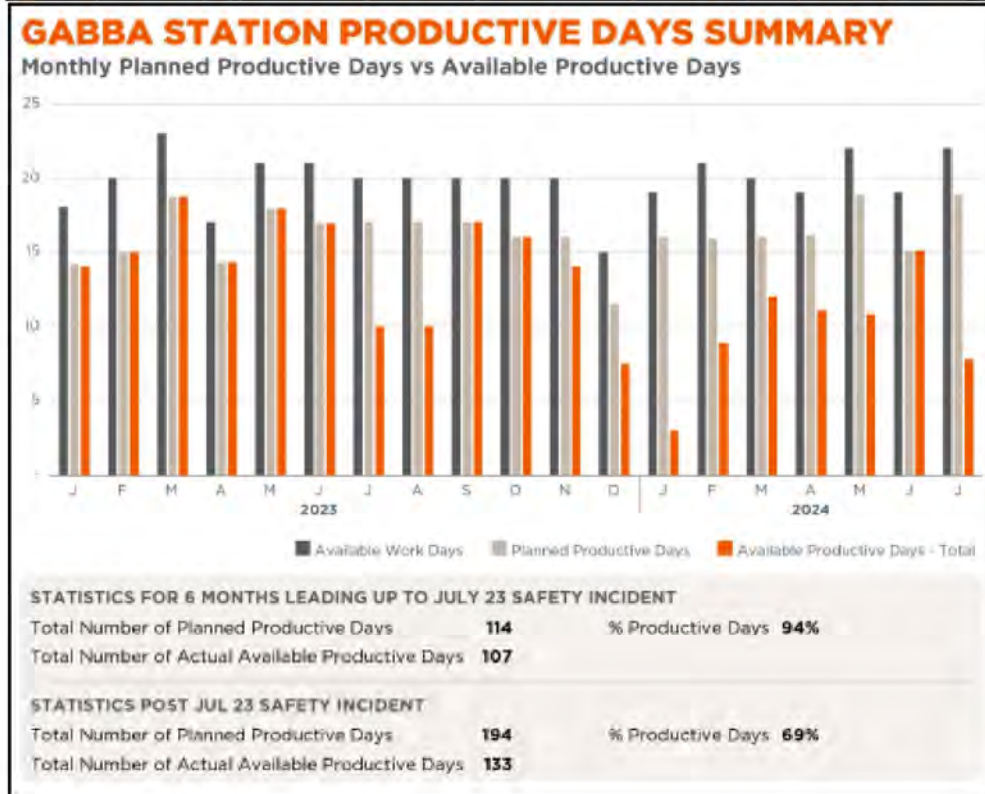
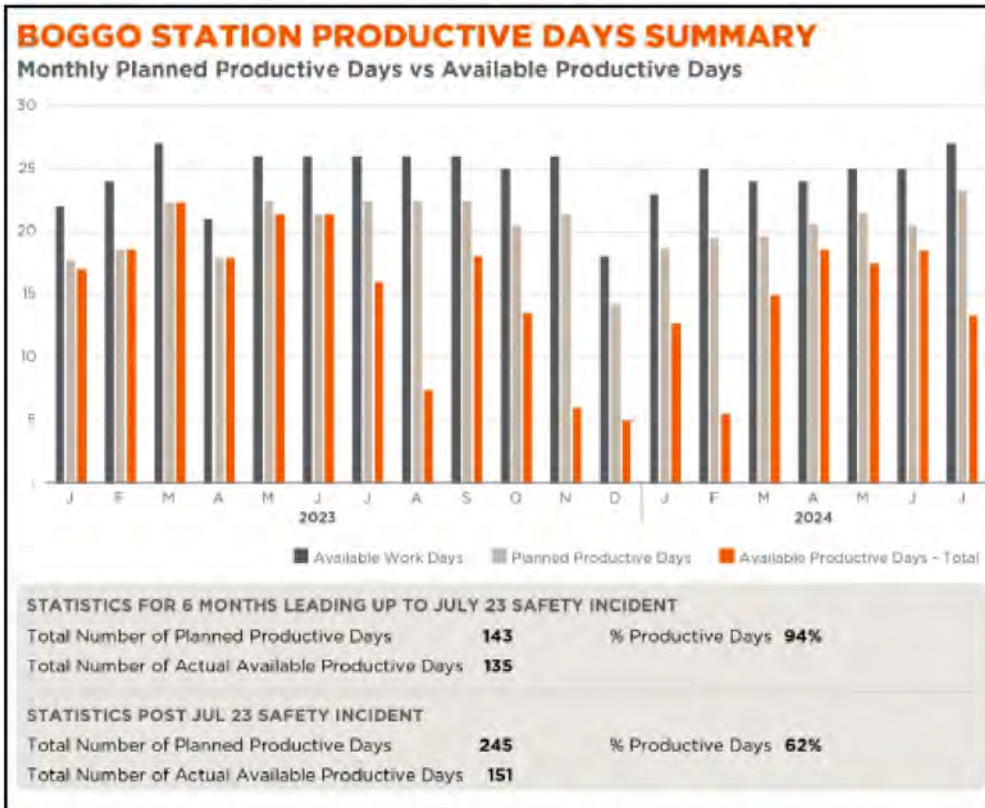


- (g) 5 April 2023 — industry rally — protest against the Fair Work Ombudsman;
- (h) 24 April 2023 — all sites lose trades and the CFMEU workforce to a rally for Remembrance Day;
- (i) 23 May 2023 — CFMEU-led rally regarding traffic controllers:



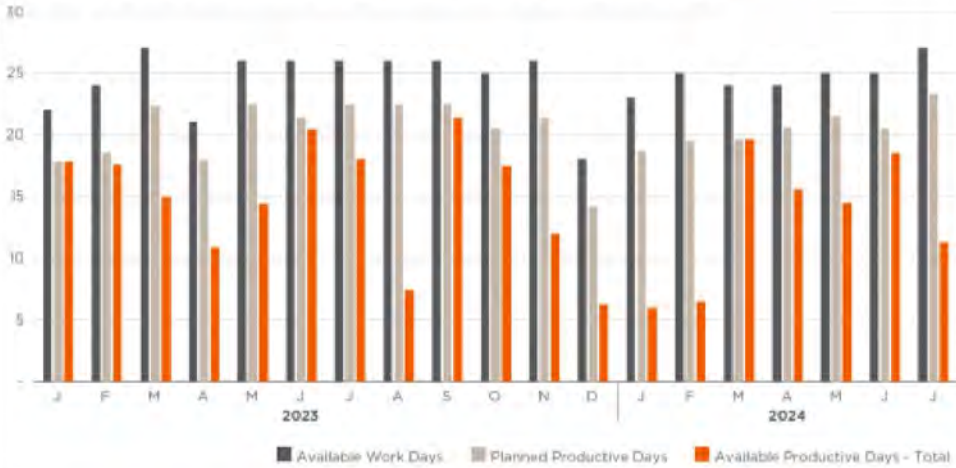
- (j) 14 September 2023 — CFMEU-led rally — the CFMEU marched to Parliament House, protesting in respect of a number of government-related issues, such as TMR and the activities of WHSQ; and
- (k) 15 November 2023 — industry rally in relation to Workplace Safety Systems.

H. Productive time after July 2023 — precinct analysis



## ALBERT STATION PRODUCTIVE DAYS SUMMARY

### Monthly Planned Productive Days vs Available Productive Days



#### STATISTICS FOR 6 MONTHS LEADING UP TO JULY 23 SAFETY INCIDENT

Total Number of Planned Productive Days **143**      % Productive Days **80%**  
 Total Number of Actual Available Productive Days **114**

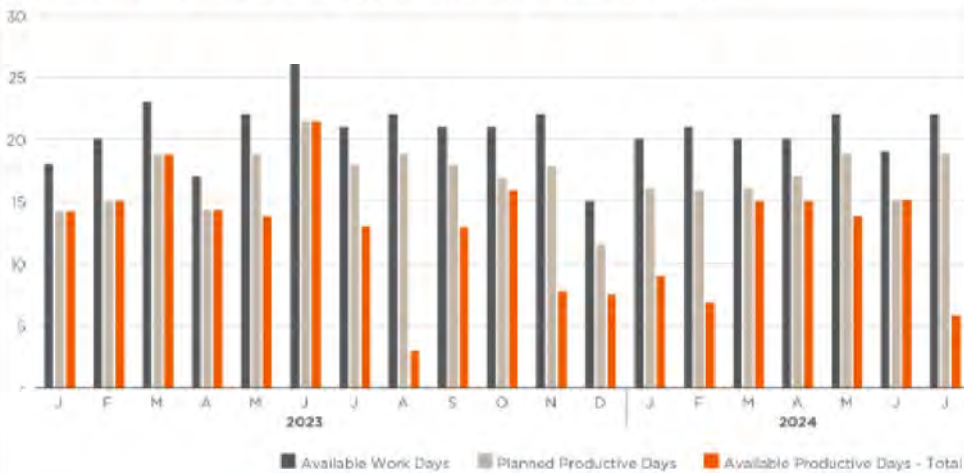
#### STATISTICS POST JUL 23 SAFETY INCIDENT

Total Number of Planned Productive Days **245**      % Productive Days **64%**  
 Total Number of Actual Available Productive Days **157**

Note, that the impact of the escalated campaign at Albert St is lower. This is due to the fact that prior to the escalation, Albert St was already getting heavily impacted being the "ground zero" of the CFMEU campaign prior. The pre-July 2023 productive days was measured at 80% which is notably lower than the other precincts which were all over 90%.

## ROMA STATION PRODUCTIVE DAYS SUMMARY

### Monthly Planned Productive Days vs Available Productive Days




#### STATISTICS FOR 6 MONTHS LEADING UP TO JULY 23 SAFETY INCIDENT

Total Number of Planned Productive Days **120**      % Productive Days **92%**  
 Total Number of Actual Available Productive Days **110**

#### STATISTICS POST JUL 23 SAFETY INCIDENT

Total Number of Planned Productive Days **201**      % Productive Days **64%**  
 Total Number of Actual Available Productive Days **128**

I. Productive time after July 2023 - Detailed Analysis Boggo (excerpt)

CRR TSD - IR Impacts					
					
Boggo					
Location	Description of Issue	Delay Commencement Date	Delay Ceased Date	Delay Duration (d)	Comment
TC2	Mam's Tower Crane	Wednesday 1st November 2023	Wednesday 1st November 2023	Last afternoon and night shift	Lightning strikes starting at 3pm, with last strike at 4.54pm. Wind until 8.30pm preventing lifts or night shift.
AI	Site access until HSR Committee confirmed dewatering	Thursday 2nd November 2023	Thursday 2nd November 2023	Part Day And Part Night Shift	Workforce kept in sheds by CPMEU HSR, until HSR committee satisfied that dewatering of site from rain event on the previous night was completed to their satisfaction. All areas needed to be inspected before work could commence. Rain commenced at 1pm ending daylight. Night shift kept in sheds by CPMEU HSR until HSR committee satisfied that dewatering of site from rain event on the previous night was completed to their satisfaction.
AI	Emergency Lighting	Friday 3rd November 2023	Friday 3rd November 2023	Entire Day/Shift	Industrially motivated actions, whereby the workforce were kept in sheds by the CPMEU HSR due to power disruption over night and a claim that the emergency lights were non-operational.
AI	Site access until HSR Committee confirmed dewatering	Saturday 4th November 2023	Saturday 4th November 2023	Part Day shift	Workforce kept in sheds by CPMEU HSR, until HSR committee satisfied that dewatering of site from rain event on the previous night was completed to their satisfaction. All areas needed to be inspected before work could commence.
AI	Site access until HSR Committee confirmed dewatering	Monday 6th November 2023	Monday 6th November 2023	Part Day shift	Workforce kept in sheds by CPMEU HSR, until HSR committee satisfied that dewatering of site from rain event on the previous night was completed to their satisfaction. All areas needed to be inspected before work could commence.
AI	Site access until HSR Committee confirmed dewatering	Tuesday 7th November 2023	Tuesday 7th November 2023	Part Day And Part Night Shift	Rain mid morning - HSR committee (led by CPMEU HSR) not accepting access back to site. Half shift lost. Rain mid night shift - HSR committee (led by the CPMEU HSR) not accepting access back to site. Half shift lost.
AI	Site access until HSR Committee confirmed dewatering	Wednesday 8th November 2023	Wednesday 8th November 2023	Part Day shift	Workforce kept in sheds until HSR committee satisfied that dewatering of site from rain event on the previous night was completed to their satisfaction. All areas needed to be inspected before work could commence.
AI	Rain event	Friday 10th November 2023	Friday 10th November 2023	Night Shift	Rain at commencement of night shift. Preventing any works being performed.
TC2	Mam's Tower Crane	Saturday 11th November 2023	Saturday 11th November 2023	Part delay due to mobile cranes not capable of serving site to the same extent of Tower Crane.	Mam's crane crew not allowed by the CPMEU to work a Saturday shift (which was industrially motivated). Site team continued with production on this day by using a 200t mobile crane. However, this mobile crane does not have the full capacity of the TC, so lifts were reduced.
AI	Industry Rally - ALL TRADES - Workplace Safety Systems	Wednesday 15th November 2023	Wednesday 15th November 2023	1 Shift	The workforce departed site at approx. 9.30am to attend the Industry Rally, very little productive works prior to the workforce departing site.
AI	Heat	Thursday 16th November 2023	Thursday 16th November 2023	1 Shift	Despite even the CPMEU Heat threshold not being breached (and many of the contractors not operating under the CPMEU Heat Policy), under pressure from the CPMEU the workforce left site at 11.30am due to heat. The union delegate also spoke to Kenny after protest and they didn't go back to work until 6.30pm. Lightning at 6.00pm
TC2	Wind	Friday 17th November 2023	Friday 17th November 2023	Night Shift	Wind prevented tower crane being operated during night shift.
AI	Wet Weather	Monday 20th November 2023	Monday 20th November 2023	Entire Day	Rain. Enough to stop pours commencing. Crews walked after 4 hours as per ESA. Day & Night shifts lost.
AI	ALTUS Traffic Controllers	Tuesday 21st November	Tuesday 21st November	Night Shift	CPMEU delegates conducted audits on the Transport Management Plan and procedures. During the audit, site access gates were shut by the CPMEU which stopped all inbound traffic movements. Production was impacted given concrete pours and all other deliveries inbound could not take place, however limited productive works were undertaken.
AI	Traffic Control prevented operating	Wednesday 22nd November 2023	Wednesday 22nd November 2023	Entire Day	Site access gates remained shut by the CPMEU which stopped all inbound traffic movements. Production was impacted given concrete pours and all other deliveries inbound could not take place, however limited productive works were undertaken.
AI	Site access until HSR Committee confirmed dewatering	Thursday 23rd November 2023	Thursday 23rd November 2023	Part Day shift	Workforce kept in sheds by CPMEU HSR, until HSR committee satisfied that dewatering of site from rain event on the previous night was completed to their satisfaction. All areas needed to be inspected before work could commence.
AI	Rain event	Friday 24th November 2023	Friday 24th November 2023	Night Shift	Rain caused 2nd half of shift to be lost.
TC2	Mam's Tower Crane	Saturday 25th November 2023	Saturday 25th November 2023	Part delay due to mobile cranes not capable of serving site to the same extent of Tower Crane.	Mam's crane crew not allowed by the CPMEU to work a Saturday shift (which was industrially motivated). Site team continued with production on this day by using a 200t mobile crane. However, this mobile crane does not have the full capacity of the TC, so lifts were reduced.
AI	PN issued by CBGU HSR/Delegate to Kenny Construction	Tuesday 28th November 2023	compliance by 7/12/23		28(a) failure to comply with code of practice - scaffold minimal handrail height 600mm-1100mm
AI	PN issued by CBGU HSR/Delegate to Kenny Construction	Tuesday 28th November 2023	compliance by 7/12/23		299(1) safe work method statement to be prepared prior to high risk work
AI	PN issued by CBGU HSR/Delegate to Kenny Construction	Tuesday 28th November 2023	compliance by 7/12/23		PCBU must reasonably practicable provide a work environment with out risks to health and safety 19(3)(g) ensure SWMS is developed and work group instructed

AI	PN issued by CRGU HSR Delegate to Kerry Construction	Tuesday 26th November 2023	compliance by 7/12/23		PCBU Must provide safe entry and exit to areas mentioned in subsection 2
AI	PN issued by CRGU HSR Delegate to Kerry Construction	Tuesday 26th November 2023	compliance by 7/12/23		PCBU to manage risk of falls in the vicinity on which a person could fall
AI	Rain event	Tuesday 26th November 2023	Tuesday 26th November 2023	Half Day and All Night Shift	Half day shift off (night shift wet weather). Delegates event not other workers to return to a lot of areas. Concrete pour did not proceed.
AI	Rain event	Wednesday 29th November 2023	Wednesday 29th November 2023	Night Shift	Rain caused night shift to be lost.
AI	Heat	Friday 1st December 2023	Friday 1st December 2023	Day Shift	Cranes and traffic control stopped work at 10.30am due to CPMEU Heat Policy, which impacted other works. Despite many of the contractors not operating under the CPMEU Heat Policy, under pressure from the CPMEU the workforce ceased work.
TC2	Mars Tower Crane	Saturday 2nd December 2023	Saturday 2nd December 2023	Part delay due to mobile cranes not capable of serving site to the same extent of Tower Crane.	Mars crane crew not allowed by the CPMEU to work a Saturday shift (which was industrially motivated). Site team continued with production on this day by using a 200t mobile crane. However, this mobile crane does not have the full capacity of the TC, so lifts were reduced
TC2	Mars Tower Crane	Saturday 9th December 2023	Saturday 9th December 2023	Part delay due to mobile cranes not capable of serving site to the same extent of Tower Crane.	Mars crane crew not allowed by the CPMEU to work a Saturday shift (which was industrially motivated). Site team continued with production on this day by using a 200t mobile crane. However, this mobile crane does not have the full capacity of the TC, so lifts were reduced
ALL	GM Strongforce scaffolds	Monday 11th December 2023	Monday 11th December 2023	Full Day	CPMEU delegates and organiser demanded that GM Strongforce scaffolds needed to be engaged by a designated scaffold company. Scaffolds were kept in the sheds by the CPMEU.
ALL	GM Strongforce scaffolds	Tuesday 12th December 2023	Tuesday 12th December 2023	Full Day	CPMEU delegates and organiser demanded that GM Strongforce scaffolds needed to be engaged by a designated scaffold company. Scaffolds were kept in the sheds by the CPMEU.
AI	Complaint from CPMEU HSR that workers access paths had unacceptable level of silica dust.	Tuesday 12th December 2023	Tuesday 12th December 2023	1 Shift	Entire shift consumed by cleaning and wash down activities. No production undertaken.
ALL	GM Strongforce scaffolds transferred to Kennys employment since 12th.	Wednesday 13th December 2023	Wednesday 13th December 2023	Full Day	CPMEU delegates and organiser demanded that GM Strongforce scaffolds needed to be engaged by a designated scaffold company. Scaffolds were kept in the sheds by the CPMEU.
ALL	GM Strongforce scaffolds transferred to Kennys employment since 12th.	Thursday 14th December 2023	Thursday 14th December 2023	Full Day	CPMEU delegates and organiser demanded that GM Strongforce scaffolds needed to be engaged by a designated scaffold company. Scaffolds were kept in the sheds by the CPMEU.
AI	CPMEU HSR requesting that all Atlas traffic controllers are re-inducted into their SWMS.	Thursday 14th December 2023	Thursday 14th December 2023	Concrete pour and deliveries to site cancelled. **Access gates remain closed.	Industrially motivated - the CPMEU attempted again to pressure Atlas to sign up to the CPMEU Pattern EA. CPMEU closed all access gates.  This stems from a traffic controller allegedly being on their phone while conducting live traffic control duties. The traffic controller who breached the rules (mobile phone usage) was confronted by another traffic controller. Subsequently a strong verbal disagreement took place between the two traffic controllers which led to one of the traffic controllers making a formal complaint against the other. Atlas management called a meeting with the traffic controller the complaint was made against. A CPMEU Organiser attended Atlas Brisbane office to provide worker representation for this traffic controller. Atlas management denied CPMEU organiser access to the meeting room. CPMEU organiser refused to leave the Atlas office so the police were called and CPMEU organiser was escorted off the Atlas property. CPMEU are demanding that Atlas immediately commence paying the pattern rates to all Atlas traffic controllers.
ALL	GM Strongforce scaffolds transferred to Kennys employment since 12th.	Friday 15th December 2023	Friday 15th December 2023	Full Day	CPMEU stated scaffolds for Kennys need to be engaged by a designated scaffold company. Issue now resolved, agreement reached with CPMEU for Kennys to directly engage all of their workforce (and not subcontractor any works (excluding concrete piling workers).
AI	CPMEU HSR requesting that all Atlas traffic controllers are re-inducted into their SWMS.	Friday 15th December 2023	Friday 15th December 2023	Concrete pour and deliveries to site cancelled. **Access gates remain closed.	Industrially motivated - the CPMEU attempted again to pressure Atlas to sign up to the CPMEU Pattern EA. CPMEU closed all access gates.
TC2	Mars Tower Crane	Saturday 16th December 2023	Saturday 16th December 2023	Part delay due to mobile cranes not capable of serving site to the same extent of Tower Crane.	Mars crane crew not allowed by the CPMEU to work a Saturday shift (which was industrially motivated). Site team continued with production on this day by using a 200t mobile crane. However, this mobile crane does not have the full capacity of the TC, so lifts were reduced
AI	CPMEU HSR requesting that all Atlas traffic controllers are re-inducted into their SWMS.	Monday 18th December 2023	Monday 18th December 2023	5 HRS Crews manned again @ 1100am on-site works continued, no deliveries in or out - plus missed a crane window with 200t return	Industrially motivated - the CPMEU attempted again to pressure Atlas to sign up to the CPMEU Pattern EA. CPMEU closed all access gates.
AI	RDO Reduced Workforce	Tuesday 19th December 2023	Tuesday 19th December 2023	Part Day	Due to Tower Crane being unavailable on RDO, FRP contractor only provided reduced workforce, impacting planned productivity.
AI	RDO Reduced Workforce	Wednesday 20th December 2023	Wednesday 20th December 2023	Part Day	Due to Tower Crane being unavailable on RDO, FRP contractor only provided reduced workforce, impacting planned productivity.
AI	Site Shutdown works	Thursday 21st December 2023	Thursday 21st December 2023	Full Shift	Non-productivity due to RDO and site shutdown process for Christmas

BOGO STATION PRODUCTIVE DAYS SUMMARY

Week	Work Days	Planned Productive Days	Actual Productive Days	Planned Productive Days	Actual Productive Days	Planned Productive Days	Actual Productive Days
Week 1	1	1	1	1	1	1	1
Week 2	2	2	2	2	2	2	2
Week 3	3	3	3	3	3	3	3
Week 4	4	4	4	4	4	4	4
Week 5	5	5	5	5	5	5	5
Week 6	6	6	6	6	6	6	6
Week 7	7	7	7	7	7	7	7
Week 8	8	8	8	8	8	8	8
Week 9	9	9	9	9	9	9	9
Week 10	10	10	10	10	10	10	10
Week 11	11	11	11	11	11	11	11
Week 12	12	12	12	12	12	12	12
Week 13	13	13	13	13	13	13	13
Week 14	14	14	14	14	14	14	14
Week 15	15	15	15	15	15	15	15
Week 16	16	16	16	16	16	16	16
Week 17	17	17	17	17	17	17	17
Week 18	18	18	18	18	18	18	18
Week 19	19	19	19	19	19	19	19
Week 20	20	20	20	20	20	20	20
Week 21	21	21	21	21	21	21	21
Week 22	22	22	22	22	22	22	22
Week 23	23	23	23	23	23	23	23
Week 24	24	24	24	24	24	24	24
Week 25	25	25	25	25	25	25	25
Week 26	26	26	26	26	26	26	26
Week 27	27	27	27	27	27	27	27
Week 28	28	28	28	28	28	28	28
Week 29	29	29	29	29	29	29	29
Week 30	30	30	30	30	30	30	30
Week 31	31	31	31	31	31	31	31
Week 32	32	32	32	32	32	32	32
Week 33	33	33	33	33	33	33	33
Week 34	34	34	34	34	34	34	34
Week 35	35	35	35	35	35	35	35
Week 36	36	36	36	36	36	36	36
Week 37	37	37	37	37	37	37	37
Week 38	38	38	38	38	38	38	38
Week 39	39	39	39	39	39	39	39
Week 40	40	40	40	40	40	40	40
Week 41	41	41	41	41	41	41	41
Week 42	42	42	42	42	42	42	42
Week 43	43	43	43	43	43	43	43
Week 44	44	44	44	44	44	44	44
Week 45	45	45	45	45	45	45	45
Week 46	46	46	46	46	46	46	46
Week 47	47	47	47	47	47	47	47
Week 48	48	48	48	48	48	48	48
Week 49	49	49	49	49	49	49	49
Week 50	50	50	50	50	50	50	50
Week 51	51	51	51	51	51	51	51
Week 52	52	52	52	52	52	52	52

[Redacted content]

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