Department of Transport and Main Roads
Noting Brief
MBN23385

To: Minister for Transport and Main Roads

SUBJECT: Minimum conditions on applicable TMR projects (over $100m)	**Non-Urgent**

Summary

- The Department of Housing and Public Works (HPW) is currently drafting a revised Cabinet Submission regarding the implementation of the minimum conditions for lodgement shortly (termed 'best practice industry conditions'). The Construction Forestry Maritime Mining Energy Union (CFMMEU) submitted a draft set of conditions for Department of Transport and Main Roads (TMR) projects.
- Crown Law advice indicates [redacted]
- There is a difference in wage rates between the conditions and the various enterprise agreements reviewed, showing an increase of up to 11 percent (for a construction worker), with a potential cost impact to projects of up to $192 million.
- This is a significant change from current practice, consultation will be required with the Australian Government as a significant funder of projects, subject to the conditions, the AWU, and industry representatives.
- The economic impacts of novel coronavirus (COVID-19) will be significant, and recovery will, in part, rely upon maintaining an active construction and maintenance program in Queensland. This is a key focus for TMR, and a firm commitment provided to the industry through recent Minister and Director-General meetings.
- Implementation of the proposed measures will create disruption for industry, and is likely to have more impact on medium-sized Queensland-based companies than major tier one contractors.
- As HPW has the lead for the development of the Cabinet Submission, TMR's early position on adopting the conditions into TMR projects will be to **not support**.
  A discussion with you would be welcomed on the challenges and preferred approach.

Action Officer:	**Endorsed by:**	**Endorsed by: DDG**	**Endorsed by: DDG**	**Endorsed by: DG**
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Date: 22 April 2020	Date: 20 April 2020	Date: 22 April 2020	Date: 22 April 2020	Date: 23 April 2020

Background

- The application of minimum conditions was approved on the Cairns Convention Centre project [redacted]
- Subsequent to that, HPW undertook further consultation within government and industry on applying these conditions more broadly on best practice principle (BPP) projects.
- In a draft Cabinet Budget Review Committee (CBRC) submission [redacted]
- TMR did not support the draft CBRC submission, and needed to assess the impacts and risks before supporting the proposal (**Attachment 1**).
- The draft CBRC submission (CLLO0818) indicated [redacted]
- TMR was presented with a draft set of minimum standards for infrastructure projects by the CFMMEU in late 2019 (**Attachment 3**). TMR has assumed these are the conditions to be applied as minimum conditions on TMR BPP projects [redacted]), although there has been no instruction from Government to this effect. On that assumption, legal and industrial relations advice was obtained to understand the impact (including financial), applicability, and future use of these minimum standards.
- TMR has requested a briefing from HPW on the industrial arrangements implemented on the Cairns Convention Centre project, including any feedback or input from the relevant regulatory authorities. This is yet to occur.

Issues and Suggested Approach

- TMR has sought both legal and industrial relations advice on the conditions, including a comparative analysis of the terms and wage rates with the Building and Construction On-site Award (the award), and other related enterprise agreements (**Attachment 4**). In summary, the advice shows:
    - [redacted]
    - [redacted]
    - [redacted]
    - [redacted]

- [redacted]

- [redacted]

- Additionally, the conditions are drafted as an enterprise agreement exclusively with the CFMMEU. The contents have not been negotiated. TMR is not aware whether the CFMMEU has consulted with other unions on the conditions, noting that the AWU has coverage of employees on civil construction works.
- A comparison review was undertaken of a number of enterprise agreements from tier one infrastructure contractors and other large construction projects, such as Queen's Wharf Brisbane, Cross River Rail, and Lendlease Engineering – Kingsford Smith Drive/M1/M3 projects.
- The findings showed that these organisations are currently paying well over the award wage, and are generally consistent with the proposed conditions. However, the scale of the variance differs, with Queen's Wharf and Cross River Rail the most generous. The conditions in the enterprise agreements are not identical to the proposed conditions.
- The wage rates of the conditions are 31–37 percent above the award. However, most civil construction companies currently pay above the award through their enterprise agreements.
- A comparison of the terms between the above agreements and the conditions identifies that they:
  - are consistent with union agreements for major metropolitan building and construction projects
  - are more complex than non-union agreements in the building and civil construction industry
  - present a lower commercial position for the department to use on transport projects, particularly regional projects
  - provide for allowance and penalty rates, which are generally higher
  - provide hot weather guidelines that will likely impact transport projects in South East Queensland, leading to project delays and additional costs. The guidelines state that work is to cease where the temperature reaches 35 degrees or 28 degrees and 75 percent humidity for more than 3 hours from the start of a shift. Existing industry agreements are not specific in its application of working conditions relating to temperature.
- The majority of TMR contractors have existing enterprise agreements to cover their employees' making it difficult to establish a Greenfield Agreement for specific TMR projects. This is particularly an issue for medium-sized Queensland-based companies. It may be more relevant and acceptable for contractors to demonstrate through their current agreements how they meet or exceed the conditions, employing a 'best endeavours' approach, [redacted]

- The infrastructure industry has shared with TMR they are not very supportive of introducing the conditions into TMR projects citing additional costs and the ability for smaller/local/regional businesses to meet the conditions.
- TMR would need to adapt the infrastructure tendering and contract management process to introduce the conditions, including instructions on how it could apply to subcontractors.

Financial Implications

- TMR has over $2 billion in road infrastructure contracts, currently in the market or in the process of being released in the next 12 months (**Attachment 2**).
- The Queensland Transport and Roads Investment Program (QTRIP) has over $5 billion in projects over the next four years that could be impacted by the introduction of the conditions.
- The wage rates provided for in the conditions are up to 11 percent above the tier one civil contractors enterprise agreements (for construction workers). It is uncertain and untested whether this would translate into higher project costs.
- Taking the approach that the full 11 percent increase in wage rates did flow directly through to project cost, this would potentially add up to $192 million in cost over the next four years (based on total aggregated project value of $5 billion, and labour representing 35 percent of project costs).
- The conditions also provide for:
  - more paid allowances at higher rates (with some exceptions)
  - leave entitlement in accordance with the National Employment Standards (NES) under the *Fair Work Act 2009*, with a few exceptions that are more generous than the NES
  - hot weather work conditions (as noted earlier), that may cause project delays and additional costs.
- As QTRIP is committed over the next four years, should costs increase significantly, reprioritisation options will need to be assessed.

Consideration of the *Human Rights Act 2019* (HR Act)

- The HR Act has not been considered at this stage, as the purpose of this brief is to inform you for further discussion and guidance on this matter.

Consultation with Stakeholders

- As the Australian Government is a significant funder of projects subject to the BPP, consultation will be required to be undertaken. There is a risk that the Australian Government may form the view that the process for implementing the conditions does not comply with the Queensland Government's obligations under the National Partnership Agreement, which could potentially impact funding arrangements. All of the projects over $100 million currently planned have an Australian Government funding component.
- Further consultation on the conditions will be required with the AWU, other relevant unions, and industry.

- Consultation on the minimum conditions for building construction projects was undertaken by HPW as part of the previous CBRC process. TMR is not aware of any further consultation.

Employment

- There are no known employment impacts associated with this matter.

Media

- There are no media impacts associated with this matter at this point.

Election Commitments

- This matter does not relate to an election commitment.

Government Priorities

- This matter relates to a government priority – quality local employment.

Minister's comments
Noted / Not Noted
Minister's signature……………………………………
Date ………/………../……….....