



11 May 2005

Mr Craig Symon
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Workplace Relations Implementation Group
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Dear Mr Symon

I write in response to the Department's letter of 28 April 2005 inviting the Australian Industry Group to comment on various proposals to amend the Australian Government Implementation Guidelines (the Guidelines) which underpin the National Code of Practice for the Construction Industry (the Code).

These latest proposals are in addition to those set out in a letter which we received from the Minister for Employment and Workplace Relations dated 18 March. On 2 May, we forwarded a submission to the Department setting out our views on the proposals referred to in the Minister's letter.

At the outset we would like to place on the record our concern about the extremely short timeframe which industry has been given to consider and make submissions on the Department's latest proposals for amending the Guidelines. The proposals are very significant and the timeframe allowed for submissions prevents us from carrying out the thorough analysis and consultation with our members that such proposals warrant.

Specifically, it is proposed that Government agencies be required to consider a contractor's workplace relations reform record as part of the tender process, including:

- The extent to which contractors offer employees genuine choice in terms of their preferred form of agreement, for example, does the contractor offer employees Australian Workplace Agreements?
- Whether their workplace agreements are tailored to the needs of the business and its employees;
- The extent to which their workplace arrangements emphasise productivity and flexible working arrangements;

- The contractor's past performance in terms of Code compliance;
- How the contractor has responded in instances where a Code audit has identified breaches of the Code and Guidelines, for example, has the contractor voluntarily and promptly moved to rectify these breaches?
- Whether the contractor is under investigation and/or the subject of legal action by the Building Industry Taskforce, particularly in respect of site/Code audits.

Our views on these issues are set out below.

The extent to which contractors offer employees genuine choice in terms of their preferred form of agreement, for example, does the contractor offer employees Australian Workplace Agreements?

The *Workplace Relations Act* enables an employer to determine what form of agreement is appropriate for its business and to seek to enter into that form of agreement with its employees. The Act provides the flexibility for employers to enter into an individual or collective agreement, an agreement with a union or directly with employees, a registered agreement or an unregistered agreement.

The preservation of choice regarding agreement-making is essential and it is highly inappropriate for the Guidelines to seek to limit an employer's choice and impose a particular form of agreement (eg. AWAs) on them. Requiring agencies to give preference to contractors who have offered AWAs, is no different in concept to requiring agencies to give preference to contractors who have entered into agreements with unions. Both approaches are unacceptable and inconsistent with the objects of the *Workplace Relations Act* which enables employers to choose the most appropriate form of agreement for their particular circumstances (s.3(c)).

In determining the form of agreement that it wishes to enter into, a contractor will have examined the options available and identified the form of agreement which is the most appropriate for its operations. Whether the contractor and its employees enter into a certified agreement or AWA should be extraneous to any consideration of its suitability to undertake work on behalf of the Commonwealth.

Whether a contractor's workplace agreements are tailored to the needs of the business and its employees and the extent to which its workplace arrangements emphasise productivity and flexible working arrangements

In determining the form of workplace agreement and the content of such agreement, a contractor, of course, will consider the needs of its business and of its employees. It is inappropriate for agencies to be required to make assessments about a particular contractor's business needs or those of its employees.

The contractor's past performance in terms of Code compliance and how the contractor has responded in instances where a Code audit has identified breaches of the Code and Guidelines, for example, has the contractor voluntarily and promptly moved to rectify these breaches?

We believe that it is reasonable that a contractor's performance in terms of Code compliance be examined, including the way that the contractor has responded in instances where breaches of the Code and Guidelines have been detected. However, the process of audit, review, rectification and sanctions needs to be carefully considered. The emphasis must be on influencing positive behaviour.

Whether the contractor is under investigation and/or the subject of legal action by the Building Industry Taskforce, particularly in respect of site/Code audits

Whether a contractor is under investigation and/or subject to legal action by the Building Industry Taskforce should not be a matter for consideration by an agency in the tender process. We live in a society where parties are innocent until proven guilty and this principle should guide the framing of the Guidelines.

Should you require any further clarification of Ai Group's position, please contact Jim Barrett, General Manager – Construction on telephone 02 9466 5522.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Heather Ridout', is written over a vertical line that extends from the top of the signature down to the printed name below.

Heather Ridout
CHIEF EXECUTIVE