



Workplace Relations Strategy

Policy Background

- Following the commencement of the Fair Work Act and the modern award system in 2010, workplace relation issues continue to have a large impact on HIA members.
- In the residential building industry as work is cyclical and project based and workers are often transient, the industry needs access to a flexible workforce.
- The consensus within HIA's membership is that the current workplace relation laws do not reflect these needs, are burdensome and go too far reversing many of the positive reforms from the 1980s and 1990s that were aimed at supporting productivity and competition.
- The current framework is also distorted and biased against independent contractors. The approval of union enterprise agreements that restrict the use and engagement of independent contractors have imposed considerable costs and uncertainties on the residential construction industry.
- Addressing the current efficiency constraints within the workplace relations system would improve the residential building sector's productivity, boost housing stock and contribute to greater housing affordability.

Policy Issues

- Issues impacting on the residential building industry include:
 - The extension of unfair dismissal laws to all employers, big and small, and its impact on small businesses' 'confidence to hire';
 - Restrictions on the capacity for employers and employees to bargain individually without union or regulatory interference;
 - The failure of 'award modernisation'. Many Modern Awards present a set of complicated and complex provisions that are not reflective of flexible and modern work practices;
 - The institutional biases against contractors, including the approval of union enterprise agreements that restrict the use and engagement of independent contractors;
 - The threat of industrial practices, in the commercial building sector, such as pattern bargaining, creeping into the residential sector; and
 - Barriers to employment and training of apprentices in the building industry, caused by cumbersome industrial relations arrangements and regulations.

HIA's Policy Position on Workplace Relations

HIA advocates the following workplace relations framework for the residential building industry:

1. *Simple flexible and fair minimum standards*

- Simplify minimum standards for small business employers to make them fairer;
- That employees be entitled to 'cash out' certain minimum entitlements;

- That employers be exempt from award coverage when they are paying an employee an amount that is significant above the minimum wage prescribed by the award. This might occur via the inclusion of an annualised salary provision within the current modern awards;
- That there be more certainty, simplification and streamlining in award conditions and pay rates for employers, in both the residential and commercial sectors;
- That industrial arrangements and pay rates for apprentices and trainees be considered and determined as a part of the regulatory framework for training and education of apprentices and trainees rather than in the industrial relations system; and
- The inclusion of junior aged based wages in awards.

2. Confidence to hire

- An exemption from unfair dismissal laws for 'small business employers';
- A simple, practical and easy to follow checklist and dismissal code should be made available to all employers. Employers should be protected from claims for unfair dismissal when there is evidence they have completed the checklist and followed the code;
- Adverse action provisions should not be broadly based or apply to contractors. The claimant not the respondent should bear the onus of proof in all proceedings; and
- That employers be entitled to terminate the employment of persons undertaking contracts of training, in line with the law as it applies to other employees.

3. Protection from unlawfulness

- The construction industry requires the Australian Building and Construction Commission (ABCC) enforce the rule of law in the sector and act as a strong and effective regulator to reduce the incidence of lawless behaviour, and to minimise the negative impact that industrial disruption has upon productivity;
- The powers of the ABCC should be extended to detached housing sites and the residential building sector.

4. Freedom from interferences

- The removal of the default bargaining position of the union or a requirement of the employees to elect one bargaining representative by way of majority vote.
- The enforcement of rules of entry for industrial officials.
- There should be no union right of entry for occupational/workplace health and safety purposes as this is the role of the relevant regulator.
- Employers should be given an express right to refuse entry in circumstances where a union does not seek or gain entry in way which accords with the relevant laws.
- Penalties against employers refusing rights of entry or unions breaching right of entry requirements should be the same for both parties but take into account any aggressive, offensive or unlawful conduct of the union.
- Union officials who persistently abuse right of entry laws should be permanently banned from the building industry.

5. Individual flexibility

- The re-introduction of individual bargaining (subject to a no-disadvantage test);
- The introduction of 'all in rates' in the award for those employers and employees who wish to avoid the calculations of allowances and other award based entitlements.