

3.7 Workplace relations

Background

NECA believes a return to a workplace system that is fair to both the employee and employer is a critical step for the electrical contracting industry.

We support the introduction of a framework that seeks to:

- » Deliver greater flexibility and efficiency
- » Promote labour market reform
- » Provides freedom of choice for employers and employees
- » Preserve the rights and role of independent contractors.

Small business does not follow a one-size-fits-all approach, neither should a workplace relations model. Employers and employees should be free to enter into mutually beneficial and fair arrangements that fit the circumstances of the business and employees while maintaining the protection of a safety net.

Given NECA's strong commitment to the training and skilling of over 5,000 apprentices across the country, we strongly support changes to workplace relations legislation that deliver greater flexibility for businesses within our industry allowing them to hire, train, retain and dismiss staff as necessary.

NECA was a long-term advocate for the reinstatement of the Australian Building and Construction Commission (ABCC) and the Registered Organisations Act (ROC). Now the ABCC and ROC have commenced operations, we believe a more productive workplace, in conjunction with fewer lost working days, stronger compliance with legislation and a return to the rule of law will come into play across Australian construction sites.



Key issues and recommendations

Flexible workplace agreements

Mutually beneficial agreements should be reached between employers and employees to fit the particular circumstances of the workplace and the economic health of the sector. In many instances, collective arrangements have become too inflexible and have failed to meet the needs of businesses or individual employees.

These agreements would be conducted under the protection and benefit of a no-disadvantage safety net for the employee and allow for wage increases tied to productivity bargaining gains to be negotiated one-on-one, rather than through collective bargaining.

R32: NECA believes that mutually beneficial contract arrangements, with an in-built safety net, should be reached between employees and the employer.

Unfair contract terms

The extension of unfair contract protections for SMEs across Australia is an important step for the sector, given its SME profile. NECA is supportive of the commencement of the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill 2015*.

This Legislation extends unfair contract term protections for SMEs, currently available to consumers, and impacts the way in which businesses contract with each other when one or more contracting parties fits the definition of a small business.

The Bill defines a small business as one that employs less than 20 staff and covers contracts that have an upfront price payable of less than \$300,000 or more than \$1 million if the contract is valid for longer than 12 months.

NECA believes the scope of this legislation limits the level of protection for NECA members who constantly battle with unfair conditions from builders. We remain concerned that businesses within the electrical contracting industry have long suffered from having to accept standard form contracts on a take it or leave it basis from larger businesses.

These contract terms may unfairly disadvantage the smaller party over the larger as, compared with larger businesses, smaller organisations are often less well placed to manage the transfer of risks, lack the ability or technical expertise to properly analyse the details and don't have the necessary power to effectively negotiate a contract with a larger firm.

NECA recommends that the definition of business size within this Legislation be amended from 20 to 100 employees to reflect a more accurate picture of the size of businesses employed to work on larger construction projects across Australia.

We also recommend the threshold on the upfront price payable on the contract should be increased from \$300,000 to \$3 million for contracts of 12 months or less and from \$1 million to \$9 million for contracts greater than 12 months in scope. This reflects more realistically the price of contracts across the electrical contracting sector, particularly for medium size enterprises where larger numbers of staff are involved and project scales are more complex and time consuming.

R33: NECA advocates that Unfair Contracts Legislation is amended to better cater for SMEs with:

- a. The definition of business size increased from 20 to 100 persons employed.**
- b. The upfront, payable price threshold increased from \$300,000 to \$3 million for contracts under 12 months in scope and from \$1 million to \$9 million for contracts longer than 12 months in scope.**

Redundancy funds

NECA remains concerned about the operation of industry redundancy funds.

Whilst redundancy funds were set up to safeguard the redundancy benefits of workers across the industry as a form of income protection, board representation, some of these funds are dominated by the interests of trade unions.

NECA notes that the governance and transparency of some of these funds has been highlighted during the Cole Royal Commission, the Trade Union Royal Commission and the Senate Committee Inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017.

NECA has consistently argued that redundancy funds should be independently managed at arm's length from trade unions and employer groups to ensure beneficiaries are receiving the maximum benefit from the fund.

R34: NECA believes industry redundancy fund board memberships need to be reformed so that income protection for redundant workers remains the sole focus of the fund.

Building and construction industry

The Australian Building and Construction Commission (ABCC) was established in 2005 as one of the 212 recommendations to emerge from the Cole Royal Commission aimed at combatting lawlessness across the building and construction industry.

In 2012, legislation was passed to abolish the ABCC, despite the benefits it delivered to the national economy that flowed from enhanced workplace productivity and the significant reduction in lost work days due to industrial stoppages. Subsequently, industrial disputes across the sector rose by 40 per cent. Many businesses across the sector suffered financially as a result of the ABCC's abolition.

During 2016, NECA worked proactively with a range of industry bodies and made a number of submissions to Senate Inquiries to support the return of the ABCC.

On 2 December 2016, the *Building and Construction Industry (Improving Productivity) Act 2016* took effect which enabled the retention of the ABCC. NECA welcomed the ABCC's return as a victory for Australia's electrical contractors, leading to greater levels of safety and transparency across construction sites and making tougher penalties available to combat illegal activities.

We believe that its reinstatement will be a positive catalyst for change across the sector following the outcomes of the Royal Commission into Trade Union Governance and Corruption.

The Senate's passage of the *Fair Work (Registered Organisations) Amendment Bill 2014* in November 2016 was strongly supported by NECA as a measure to strengthen governance and legislative compliance arrangements bringing them into line with the wider business community.

The role of the Registered Organisations Commission (ROC) is to ensure that registered organisations comply with legislative requirements. We support the creation of the ROC as an independent regulator of unions and employer associations, such as NECA.

R35: NECA supports the retention of the ABCC and the ROC. Working in tandem, we believe both measures will lead to a more productive and safer workplace, enhanced legislative compliance, a reduction in lost work days resulting from industrial action and a return to the rule of law across Australian construction sites.