CIVIL CONTRACTORS FEDERATION

POLICY DOCUMENT

Submission to the Senate Standing Committee on Education, Employment and Workplace Relations

Inquiry into the Fair Work Amendment Bill 2013

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Constructing Australia's Infrastructure

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1 Background and Introduction

Thank you for the opportunity to make a submission to the Committee's Inquiry into the Fair Work Amendment Bill 2013 ("the amending Bill").

The CCF is the member based representative body of civil engineering contractors in Australia providing assistance and expertise in contractor development and industry issues.

Through our Federation we represent over 2000 small, medium and large sized contractors who in turn work in an industry of more than 350,000 people. Importantly, we place particular emphasis on the experience of small to medium sized businesses (contractors) which was a specific object of the Fair Work Act 2009.[1]

Our members are involved in a variety of projects and activities including the development and maintenance of civil infrastructure such as roads, bridges, dams, wharves, commercial and housing land development. Members are also involved in the preparatory works for mining and other resource developments.

Employee Relations regulation and the Industrial Relations framework within which it takes place, plays a critical role in the productivity of the industry and is a primary concern of the CCF membership. Agreements in particular can have a very profound impact on productivity particularly in the building and construction industry.

CCF has made a number of submissions on employment issues including in relation to the Senate, Employment, Education and Workplace Relations Committee Inquiry into the Fair Work Bill 2008 (our 2009 submission"). In 2012 we lodged a substantive submission to the post implementation review of the Fair Work Act 2009 (FWA) ("the Review"). The position of the CCF on the critical and substantive issues raised in the Fair Work Amendment Bill 2013 (the "amending Bill") are unchanged from a number of our previous submissions. Indeed in many ways our concerns are even more pronounced and this is articulated in this submission.

We have also made a number of submissions in relation to the Australian Building and Construction Commission (ABCC) now Fair Work Building and Construction.

Employee and industrial relations support and advice are key component services that our Federation State Branches provide directly to members.

[1] Section 3 (g) of the FWA

In our view the government has missed an important opportunity to enable the Fair Work Act 2009 to operate more efficiently and productively particularly bearing in mind a number of the recommendations of the Review. This submission is organised in three parts.

Firstly, in Part A our Executive Summary in relation to the reforms proposed.

In Part B, our policy principles in relation to Employment Relations more generally, and thirdly, in Part C our specific consideration of the proposals in the amending legislation.

We have made extensive comments in relation to the proposed anti-bullying legislation given that the Federal Government is legislating for this for the first time in Workplace Relations legislation.

PART A - EXECUTIVE SUMMARY

Changes to the Right of Entry provisions

CCF does not believe the provisions as drafted will satisfactorily deal with issues experienced by the industry such as excessive visits and increased costs. More fundamental reforms are necessary.

Our policy position as expressed in our 2009 submission is that right of entry must be tied to employment of members. Right of Entry to workplaces for discussion purposes where no members are employed should not be permitted.

Changes to Conditions of Employment

Penalty rates

In our view the introduction of a new modern awards objective to require that the Fair Work Commission("FWC") take into account the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours, working on weekends or public holidays or working shifts is unnecessary over regulation and may fetter the discretion and independence of the FWC.

Flexibility provisions

In our view employers and employees should be free to bargain directly for the terms and conditions that suit that workplace. This is particularly the case in relation to rosters, hours and flexible working arrangements in general and we do not support the legislative imposition of flexibility provisions.

We also consider that the provisions in relation to provision of pay where Safe Work cannot be provided to pregnant employees without reference to a qualifying period will also be particularly onerous to small employers. These employers will be least able to accommodate such a request and will therefore have the additional burden of making these payments.

Arbitration

Whilst not part of this legislative package the Government has made announcements in this regard. We support the introduction of good faith bargaining when negotiating Greenfields agreements but oppose either Greenfields or broader arbitration.

Anti-bullying legislation.

We do not support the introduction of these provisions into the Fair Work Act 2009 and do not see federal workplace relations legislation as a starting point.

We see the merging of Workplace Relations and industrial matters with Work, Health and Safety which this legislation facilitates as highly undesirable and such a position is strongly opposed. Accordingly, our position is that where legislation is required this should remain a matter for the States and Territories through Work, Health and Safety and other relevant state based legislation.

The focus in this area must also be on working consistently and actively to change workplace culture including through guidance for employers and promotion of existing programmes.

In terms of the technical content of the legislation there should also be further consideration given to the breadth of these provisions particularly with reference to issues in relation to behaviours outside the workplace which emanate from workplace relationships.

PART B

2 General Statement of our Policy Principles

The Civil Contractors Federation (CCF) believes that the key features of a productive employment and workplace relations system should be based on the underlying principles as outline below.

These principles are the fundamental starting point for assessing the amending Bill.

2.1 Policy Principles 1 to 6

Key Principle 1

The right to bargain without the interposition of third parties to achieve the productivity outcomes necessary for a particular workplace

The relationship between an employer and an employee should be the fundamental starting point, with the parties free to bargain directly with each other as this supports:

- flexible and efficient outcomes for that workplace;
- the negotiation of agreements on an individual or non-collective basis free from the interference of third parties; and
- The negotiation of agreements which reflect and are tied to productivity in that workplace.

Key Principle 2

Genuine freedom of association

Genuine support for freedom of association that is the right to join or not join a union or an employer association. The CCF supports the rights of employees to be represented by a union however the choice must be a free one and we oppose legislation which mandates union representation.

Key Principle 3

A role for Independent contractors

A workplace relations system which recognises that there is a legitimate place for individual contractors and that such parties should be free to enter into contractual arrangements as appropriate for the task they are engaged for. CCF strongly opposes a workplace relations framework where agreements and provisions are designed to provide a disincentive to undertake joint contracts for construction and project work by or through the employment of

independent contractors or on- hire workers. We believe that such provisions should be specifically banned.

Key Principle 4

A clear separation between Employment and industrial relations and Work, Health and Safety

Work Health and Safety (WH&S) and industrial relations are covered by separate laws, and are served most efficiently when clear delineation of their application is ensured. Employers and employees must be free to use WHS consultation mechanisms to explore innovative ways to continuously improve their work places. The powers, activities and functions of WHS and those of industrial relations, such as right of entry, should be clearly separated and enforced. To this end, Work Health and Safety should be a prescribed matter and not able to be negotiated as part of an industrial instrument.

Key Principle 5

Dismissal laws which balance the responsibilities of employers with the rights of employees

When an employment relationship does break down unfair dismissal laws which appropriately balance the rights of employers and employees.

Key Principle 6

Respect by all parties for the rule of law

Respect for the rule of law by both employers and employees, facilitated by meaningful sanctions, speedy enforcement mechanisms and a strong regulator to enforce such sanctions for unlawful industrial action.

2.2 A strong and effective Building and Construction Regulator.

The CCF supports a strong and effective Regulator with rigorous enforcement powers based on tough sanctions.

It is therefore our policy to call for the reinstatement of the Australian Building and Construction Commission (ABCC) with the complete regulations and laws previously available to it prior to the passage of the Fair Work (Building Industry) Act 2012 which established the Office of Fair Work Building and Construction (FWBC).

In this regard we therefore support:

- the continuation of specific and targeted legislation dealing with the building and construction industry particularly:
    - in relation to an expanded definition of unlawful industrial action;
    - Right of Entry provisions appropriately targeted so as to minimise the possibility for inappropriate use as an industrial tactic or under the pretext of Work, Health and Safety.
    - A building code which underpins what is appropriate conduct for all parties to a construction project
- a separate regulatory body dealing with building and construction matters, properly resourced and truly independent;
- Strong and robust powers for such a Regulator such as the power to compel people to attend and give evidence on oath or affirmation subject to appropriate safeguards; and
- Strong enforcement sanctions and penalties especially for repeated contraventions.

The Building and Construction industry is vital for our prosperity as a nation. Our members work in an industry of some 350,000 where the industrial relations framework is critical for productivity and efficiency.

A strong effective regulator is part of ensuring that the industry continues to meet the challenges of constructing today's infrastructure for tomorrows Australia. It is a key plank of our Employment and Workplace Relations Policy

These key principles represent the CCF Employment Relations Framework

PART C

3 Proposed Government amendments and CCF response.

3.1 Scope of the Amending Bill

We note that the Bill proposes to introduce a large body of amendments. As outlined in the Committee reference the main amendments proposed include:

- Changes to Right of Entry provisions;
- Changes to conditions of Employment including provisions in relation to flexibility arrangements and provisions in relation to penalty rates in the modern award objectives.
- Implementation of the Government's response to the House of Representatives Standing Committee on Education and Employment's Report on Workplace Bullying[2].

The Government also foreshadowed but did not introduce provisions dealing with compulsory arbitration in certain circumstances. Due to the importance of this issue we have provided our position on such potential reforms for the Committee's consideration as appropriate.

3.2 Broad policy position

In line with our policy principles articulated above, the CCF supports strongly the comments made by ACCI, AMMA, AIGroup and the BCA as reported that the changes proposed (but at that stage not introduced) should not proceed.

We fully support the comments in the joint media release by these groups that:

"The government's recently announced second tranche of amendments to the Fair Work Act 2009will put further stress on businesses struggling to adjust to competitive pressures and, as a result, risk jobs and job prospects in this country.

Like the review of the Fair Work Act 2009, the second tranche amendments fail to address

[2] *" Workp[ace Bullying – We just want it to stop" October 2012 accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ee/bullying/report.htm*

the changes required to workplace laws to support businesses to stay competitive in a changing economy, and to retain and employ more workers."[3]

And further:

"As the business groups said this week in our joint letter, the Bill should be rejected not just on detail, but because it fails to address day to day problems employers experience with the Fair Work IR system.

The Bill fails to address key problems, including the continued veto unions have over billion dollar Greenfields projects[4] and the ability for unions to take industrial action over matters outside of the employment relationship. The Bill does not deal with issues that the government's own panel acknowledged including limiting the capacity of unions to 'strike first and bargain later' and improving individual flexibility agreements to make them workable."[5]

CCF has also been most disappointed by the process by which these reforms have taken place.

The Government commissioned the Review of the Fair Work Act 2009 which resulted in the Report of the Independent Review which was publicly released in August 2012. And yet in a number of key areas the Government is in fact proposing to legislate either in opposition to the recommendations of the Review or on issues where there has been little if no public consultation. This is poor process and is resulting in extremely poor public policy.

In this regard we would like to commend the Committee for affording impacted stakeholders the ability to make informed commentary about the legislation and key issues with the proposals. This is greatly appreciated.

Whilst our concerns are broad in nature, importantly, specific reference is made to the fact that our members operate in the building and construction industry, an industry which has its own specific sets of issues and concerns. This is particularly the case in relation to changes to the Right of Entry provisions and Arbitration as outlined below.

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[3] See http://www.amma.org.au/newsroom/media-releases/2857-joint-media-release-ir-changes-damaging-to-jobs-and-the-national-interest

[4] Noting these provisions were not actually introduced

[5] http://www.acci.asn.au/Research-and-Publications/Media-Centre/Media-Releases-and-Transcripts/Workplace/Fair-Work-Amendments-----A-Leadership-Contest

3.3 Specific issues

3.3.1 Rights of Entry

Union rights of entry have been expanded substantially under the FWA. As we noted in our 2009 submission and indeed in a number of submissions supporting retention of the ABCC, Right of Entry is a particularly difficult and fraught issue in the building and construction industry and it is critical that this area is strongly policed.

The use of Right of Entry powers under the guise of WH&S has been a long standing and particular concern of the industry and was a key area of work for the former Australian Building and Construction Commission. Indeed it is worth recollecting that the Royal Commission into the Building and Construction Industry ("Cole Commission")[6] found "widespread use of occupational health and safety as an industrial tool"[7]

The powers, activities and functions of WH&S and those of industrial relations, such as Right of Entry, should be clearly separated and enforced. Moreover, the proposed bullying provision further adds confusion in an area which we say falls outside the scope of the Fair Work Act 2009.

These provisions in our view further unnecessarily enhance union powers in another area without a sound public policy reason for doing so. We do not believe the proposals deal with the very real problem of excessive visits to workplaces by union officials especially where they do not have members.

Other issues which members have raised with us previously in relation to Right of Entry include union officials entering premises without clear identification. Smaller employers are particularly vulnerable to intimidatory tactics as they are often not clear what their rights and responsibilities. Members often contact our industrial advisers seeking support in relation to these issues.

Our policy position as expressed in our 2009 submission was that right of entry must be tied to employment of members. Right of Entry to workplaces for discussion purposes where no members are employed should not be permitted. This continues to be our position.

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[6] Commonwealth of Australia *Final Report into the Building and Construction Industry* February 2003 available at www.royalcombi.gov.au

[7] Ibid p 5

3.3.2 Condition of Employment

It is not our intention to comment in detail on these matters save to say that in an overall sense the introduction into legislation of such provisions reduces flexibility for employers at a time when businesses are facing very tough trading conditions. A flexible labor market is a key to a productive Australia.

Indeed a key opportunity to improve the operation of Individual Flexibility Agreements (IFA) has been missed. In our view parties to an IFA should be able to agree on any contents, the period of operation, notice of termination by either party and any period of review whilst, still maintaining the current provisions to enable mutual termination of the IFA at any time.

CCF has supported the National Employment Standards in substance as is evidenced in our 2009 submission; however the current proposals will be particularly difficult for small business and adds further complexity, cost and red-tape.

It is the CCF's primary position that employers and employees should be free to bargain directly for the terms and conditions that suit that workplace. This is particularly the case in relation to rosters, hours and flexible working arrangements in general. In some cases the new requirements will simply not be practical for small employers and may well lead to a reduction in employment opportunities.

(a) Penalty Rates

In our view the introduction of a new modern awards objective to require that the Fair Work Commission ("FWC") take into account the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours, working on weekends or public holidays or working shifts is unnecessary and has the potential to fetter the discretion and independence of the FWC.

Indeed it may well distort particular arrangements already in Awards.

(b) Flexibility Provisions

As noted previously it is the CCF's primary position that employers and employees should be free to bargain directly for the terms and conditions that suit that workplace. This is particularly the case in relation to rosters, hours and flexible working arrangements in general.

In particular we note the changes to workplace flexibility extend the scope and rights of employees in relation to hours of work, changing rosters and certain casuals to persons with

responsibility for elderly relatives, persons with disabilities, victims of domestic violence as well as to the domestic violence victims themselves and workers over 55 years of age.

In some cases the new requirements will simply not be practical for small employers and may well lead to a reduction in employment opportunities. We are also concerned about the increase in complexity that such provisions introduce so that businesses will be focused on regulatory compliance rather than on growing and expanding.

Moreover, these kinds of provisions will create a disparity between persons who have such responsibilities and others who do not. These are matters that are best dealt with at the workplace where an employer can balance the needs of the business and the particular circumstances of employees.

The safe job provisions also in our view warrant further examination.

Currently, under the Fair Work Act 2009, and subject to the employee qualifying, where an employer provides safe work to an employee the employer is required to continue to pay the employee at their “same wage” even if the employee is not able to undertake their usual work. If however, the employer is unable to provide safe work the employee is able to take paid no safe job leave.

It is of considerable concern that this benefit is available regardless of length of service. At the minimum there should be a 12 month qualifying period. We consider this provision will provide particular hardship for small employers who are the least likely to be able to place an employee in a “safe job”.

3.3.3 Arbitration

Whilst these provisions have not been introduced in this amending bill they have been foreshadowed by the Government and accordingly we ask the committee to note our concerns in relation to the policy direction in this regard.

(a) Greenfields Agreements

The FWA provisions on Greenfield agreements have been particularly troublesome for employers particularly because of demarcation disputes between unions or unions holding out for even higher wages and other benefits. We believe there is strong merit in the introduction of “good faith bargaining” in relation to the negotiation of a Greenfields agreement and support such an amendment as foreshadowed.

Indeed more broadly it is our position that on application by the employer, FWC should have the power to make a Greenfield agreement within a reasonable timeframe, where agreement cannot be reached with the union. The agreement should be measured in the usual way that is against a modern award, NES, the better off overall test (BOOT).

This is a much more preferable position in our view than introducing compulsory arbitration which interposes a third party in the bargaining process which has the potential to move the goal posts away from the underpinning award and NES to other areas which in our view do not directly deal with the employer and employee relationship.

Accordingly, we do not support amendments to introduce arbitration for Greenfields bargaining when there is an impasse.

(b) Arbitration of Bargaining disputes

Whilst not contained in this Bill the Minister has foreshadowed that he would introduce provisions to allow for workplace determinations to be made in limited circumstances where bargaining has become intractable.

We strongly oppose the introduction of arbitration powers for circumstances where bargaining is said to be intractable. This power was not endorsed by the Fair Work Act 2009 Review after very detailed analysis and consideration. We note that the Review members stated:

"Accordingly, we are not inclined to recommend providing any additional avenues for arbitration, with the exception of Greenfields agreements which we deal with separately in 6.5"[8]

Compulsory arbitration is in our view out of step with a modern, flexible and productive economy, and will do little to limit excess demands, "jump up" clauses and inappropriate union intervention which is a major concern of employers in the bargaining process.

3.3.4 Implementing the Government response in relation to Workplace Bullying

(a) General position on bullying in the workplace

Like our position on Anti-discrimination CCF and its members support merit based employment. In doing so we do not condone conduct which seeks to deny employment opportunities to someone on the basis of their sex, race, disability or age (the current

[8] See Towards More Productive and Equitable Workplaces - An Evaluation of the Fair Work Legislation at Page 148 available at http://foi.deewr.gov.au/node/29150

legislation). CCF members have no tolerance for serious misconduct in the workplace. This includes threats of, or actual violence, intimidation, harassment or bullying.

Our policy statement on Workplace Relations includes the following key objective:

"Respect for the rule of law by both employers and employees -facilitated by meaningful sanctions, speedy enforcement mechanisms and a strong regulator to enforce such sanctions for unlawful industrial action"

This statement also encapsulates and supports our views that all people should have the ability to participate in meaningful employment free from discrimination including assumptions about their capacity to perform job tasks and free from threats of, or actual violence, intimidation, harassment or bullying.

CCF and its members work in an industry which has traditionally had a low participation rate for women particularly in plant operation. This arises for a range of reasons including workplace culture, hours of work and the previous physical nature of the job. We are working hard with our members to attract women to civil construction.

Initiatives include supporting "Women in Civil" through networking opportunities, mentoring and targeted training initiatives. Ensuring women and other minority groups can properly participate in our workplaces is a key strategy in meeting skills shortages.

CCF also advocates for strategies to prevent and manage bullying that encourage and promote dignity, respect and appropriate behaviours in the workplace. CCF also supports provision of guidance to help workplaces recognise mutual responsibilities in promoting such a workplace culture.

(b) The merging of the clear separation between employment and Industrial relations and Work, Health and Safety through this legislation.

One of our fundamental and primary concern with this legislation is that it inappropriately treats what we regard as a work, health and safety issue as an industrial matter.

As we note in our key principles outlined above Work Health Safety and industrial relations are covered by separate laws, and are served most efficiently when clear delineation of their application is ensured.

It is our position that we do not believe that this is an area that should be legislated through the Fair Work Act 2009. This is a matter which is best dealt with as a state or territory local issue through Work, Health and Safety legislation. This is where there is both the ability and

resources to take strong and appropriate enforcement activity and to support employers through education and training.

There are also some important examples of States taking leadership in this area for example Victoria's passage of Brodie's law which will be well known to the Committee[9].

By introducing such issues into the Federal Workplace Relations space there is also real potential to cause confusion for employers. We note for example that not all employers will be caught by the new laws as they will need to be incorporated.

This creates a multiple jurisdictional issue so that some employers have to comply with both state WHS laws and Federal Workplace relations laws which may well be different in relation to the same issue.

Such complexity through a national overlay will also expose employers to multiple actions, possible forum shopping and may involve a number of authorities including state and territory work cover agencies. It should also be noted that there is also likely to be different standards of proof, different timing provisions on claims and complex jurisdictional questions. For example, if a State Work, Health and Safety agency exercises compulsory powers to obtain evidence through a search warrant how would such evidence as obtained be treated by the Fair Work Commission?

(c) Specific comments on the legislative approach taken by government

However, this is a complex and difficult area. Bullying is not limited to the workplaces and is a community issue generally.

Much of the work that needs to be done in this space relies on working to cultural change in society which is often a difficult and long process and involves education and leadership.

(i) What constitutes bullying?

There are difficult definitional issues about what constitutes bullying and the legislation seeks to set out a definition for the purposes of the Fair Work Act 2009.

This definition is based on the Committee Report which looked at various definitions in the different jurisdictions and settled on behaviour which is "repeated, unreasonable and cause(s) a risk to health and safety."

[9] Further information on Brodie's law at http://www.justice.vic.gov.au/home/crime/brodies+law/

We do not put a position as to whether this is a satisfactory definition but rather make the point that Work, Health and Safety is not harmonised and even in states where they have moved to harmonisation there remain a number of differences particularly in state discrimination legislation.

Whilst there is much merit in working towards a harmonised definition, in the short term any new definition in a Federal Act, in addition to state and territory legislation has the potential to lead to confusion, complexity and possible forum shopping by complainants.

We also note that the provisions are very broad in nature as to who can bring an action as it includes "an employee, a contractor, a sub-contractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer"[10].

From an employer perspective bullying is also not akin to or like dealing with a physical safety hazard where an employer can identify the hazard, measure it and put in place hazard minimisation. This very wide definition will raise very serious issues for employers.

(ii) The employer's right to direct how work is done

Additionally, employers have a legal right to direct and control how work is done, and managers have a responsibility to monitor workflow, give feedback and manage performance. Because bullying has a subjective element it is most important that a differentiation is made between the legitimate exercise of workplace authority and bullying.

We note that the Bill attempts to deal with this by introducing a concept of "reasonableness" in Section 789 FD (2) that is reasonable management action carried out in a reasonable manner would not constitute bullying behaviour.

However, once again we are concerned that there is the potential to expose employers to frivolous and vexatious claims especially if the employer is in the process of performance management of staff.

(iii) The need for certainty and the issue of cyber-bullying

From an employer perspective bullying as noted previously, is also not akin to or like dealing with a physical safety hazard where an employer can identify the hazard, measure it and put in place hazard minimisation. Bullying has a clear psychological component and the rise in cyber-bullying is almost entirely focused on this aspect.

[10] Section 789 FC (2) but noting that Volunteer organisations are excluded through FWA Section 5 (7)

Recently in commenting on the Federal Government move to harmonise Anti-Discrimination laws we raised a strong concern about the use of social media by employees outside of the employers control.[11]

It is entirely foreseeable that an employer will be made party to an action for a bullying claim by one employee against another employee on Facebook or through twitter.

There is now at least one court case where an employer has dismissed an employee over comments made about the workplace on social media only to be taken to Fair Work Australia and for the employee to be re-instated.

In Glen Stusel v Linfox[12] Mr Stusel brought proceedings pursuant to s.394 of the *Fair Work Act 2009* (the Act) in relation to the alleged unfair termination of his employment by Linfox Australia Pty Ltd. Particularly it was alleged by the company that:

" "1. on your Facebook profile page, which was open to the public, you made a number of statements about one of your managers, Mr X[13], that amounted to racially derogatory remarks;

2. on your Facebook profile page, which was open to the public, you made a statement about one of your managers, Ms Y, which amounted to sexual discrimination and harassment; and

3. you made extremely derogatory comments about your managers, Mr X and Ms Y[14]."

In these circumstances the company terminated his employment stating that:

"the above conduct is extremely serious, and Linfox cannot in any way condone or fail to deal with these matters appropriately."

Ultimately Commissioner Roberts found in favour of Mr Stusel noting amongst other matters that the company did not have a social media policy.

"At the time of Mr Stusel's dismissal, Linfox did not have any policy relating to the use of social media by its employees. Indeed, even by the time of the hearing, it still did not have

[11] See our Submission No 307 at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/anti_discrimination_2012/submissions.htm
[12] Glen Stusel v Linfox [2011] FWA 8444
[13] The names of the co-workers appear in the judgement
[14] The names of the co-workers appear in the judgment

such a policy. The Company relies on its induction training and relevant handbook (see paragraphs 28 and 29 above) to ground its action against Mr Stusel. In the current electronic age, this is not sufficient and many large companies have published detailed social media policies and taken pains to acquaint their employees with those policies. Linfox did not."[15]

Notwithstanding the specific facts of this case the fraught position of employers generally is highlighted in this decision.

(d) Preferred approach and conclusion on Anti-bullying measures

As noted in our discussion in this section:

- We do not support the introduction of these provisions into the Fair Work Act 2009 and do not see federal legislation as a starting point in relation to this difficult issue.
- We see the merging of Workplace Relations and industrial matters with Work, Health and Safety which this legislation facilitates as highly undesirable and such a position is strongly opposed.
- In our view where legislation is required this should remain a matter for the States and Territories through Work, Health and Safety and other relevant state based legislation.
- The focus in this area must also be on working consistently and actively to change workplace culture including through guidance for employers and promotion of existing programmes.
- In terms of the technical content of the legislation there should also be further consideration given to the breadth of these provisions particularly with reference to issues in relation to behaviours outside the workplace.

4 Conclusion

CCF does not support these amendments as proposed. We believe that a substantial and important opportunity has been missed to make the Act work more efficiently and productively particularly bearing in mind a number of the recommendations of the recent review. These amendments will add to the complexity of current legislation and impose further unnecessary and counterproductive red-tape especially for small to medium businesses.

As always we would be pleased to provide and further clarification as required.

[15] Confirmed on Appeal to the Full Bench of in FWA Linfox Australia Pty ltd v Glen Stusel [2012] FWAFB 7097 now on Appeal to the Federal Court.