



Governments approach to re-establishing the Australian Building and Construction Commission

Submission of Unions NSW on Behalf of the Building Trades Group

31 January 2014

Submission by: Unions NSW
Trades Hall Building
Level 3, 4 Goulburn Street
Sydney NSW 2000
Contact: Shay Deguara
Phone: 02 9881 5999
Fax: 02 9261 3505
Email: whs@unionsnsw.org.au

Contents

Recommendations	1
Introduction.....	1
Term Of Reference A. The Potential Impact Of The Re-Establishment Of The Australian Building And Construction Commission On The Building And Construction Industry;	4
Term Of Reference B. The Need Or Otherwise For A Specialist Industrial Regulator In The Building And Construction Industry;	4
Term Of Reference C. The Potential Impact Of The Bills On Productivity In The Building And Construction Industry;.....	4
Project Agreements.....	4
History Of Project Awards/Agreements.....	5
Reduction Of Disputation	6
Benefits Of Project Awards / Agreements For Construction Companies	7
Term Of Reference D. Whether The Bills Are Consistent With Australia's Obligations Under International Law	10
C081 - Labour Inspection Convention, 1947 (No. 81)	10
C087 - Freedom Of Association And Protection Of The Right To Organise Convention, 1948 (No. 87)	11
C098 - Right To Organise And Collective Bargaining Convention, 1949 (No. 98)	12
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).....	13
C155 - Occupational Safety And Health Convention, 1981 (No. 155).....	13
☐ Articles 21 And 22 International Covenant On Civil And Political Rights- Freedom Of Assembly And Association	13
‘Freedom Of Association’	15
Site Induction/Union Indicia – Contrary To Ebas And/Or General Protections	15
National Code And Guidelines	16
Term Of Reference E. The Potential Impact Of The Bills On Employees, Employers, Employer Bodies, Trade And Labour Councils, Unions And Union Members;.....	17
Occupational Health And Safety	17
Table 1: Fatalities And Serious Incident Rate/1000 Employees Time Series Data	19
Graph 1: Table Indicating Trends In Fatalities And Serious Claims For Construction Industry.....	19
Term Of Reference J. Any Other Related Matter.	20
Review Of Code/Guidelines Decisions	23
Case Study 1: The Sydney Olympic & Paralympic Games 2000 (State) Award (1999)	25

Case Study 2: Northern Regional Office Of Unions Nsw (Unsw) And The Newcastle Trades Hall Council (Nthc)	28
Appendix 1: List Of Project Agreements Referred To In Case Study 2: Northern Regional Office Of Unions Nsw And The Newcastle Trades Hall Council	32
Request By Unions Nsw For The Assistance Of The Industrial Relations Commission Of New South Wales In Prevention Of Industrial Disputes - Mangoola Coal Project (Irc2010/493).....	33
Request By Unions NSW For The Assistance Of The Industrial Relations Commission Of New South Wales Re Ravensworth North Construction Project	33
Appendix 2: Recent Decisions By Industrial Relations Commission Of New South Wales In Support Of Case Study 2: Northern Regional Office Of Unions NSW And The Newcastle Trades Hall Council	34
☐ Matter No Irc 1466 Of 2010 Request By Unions Nsw And Newcastle Trades Hall Council For Assistance Of The Industrial Relations Commission Of New South Wales Re Newcastle Coal Infrastructure Group 2aa	34
2f Construction Site And Matter No Irc 572 Of 2010 Ncig Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd And Unions Nsw And Affiliates.....	34
Notification Under Section 130 By Bechtel Australia Pty Ltd Of A Dispute With Unions New South Wales And Others Re Clause 32 In Enterprise Agreement [2007] Nswircomm 1012.....	35
Newcastle Trades Hall Council V Westfield Design & Construction Pty Ltd Re Kotara Shopping Centre Expansion Project [2006] Nswircomm 259	46
Notification Under Section 130 By Unions Nsw Of A Dispute With Alstom Colongra Gas Turbine Project	49
Request By Unions NSW And Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Taggarts Wilpinjong Project [2011] Nswircomm 16453	
Request By Unions NSW And The Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Thiess Sedgman Joint Venture Bengalla Project	55
Request By Unions NSW And Newcastle Trades Hall Council For Assistance Of The Industrial Relations Commission Of New South Wales Re Newcastle Coal Infrastructure Group 2aa And 2f Construction Site	61
Ncig Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd And Unions Nsw And Affiliates.....	61
Mangoola Coal Project	63
Request By Unions NSW And Newcastle Trades Hall Council For Assistance Of The Industrial Relations Commission Of New South Wales Re Newcastle Coal Infrastructure Group 2aa And 2f Construction Project.....	67
Request By Unions NSW And The Newcastle Trades Hall Council On Behalf Of Port Waratah Coal Services Limited, Bechtel Australia Pty Ltd, Australian Industry Group And The Civil Construction Unions For The Assistance Of The Industrial Relations Commission Of Nsw	77

Request By Unions NSW For The Assistance Of The Industrial Relations Commission Of New South Wales Re Ravensworth North Construction Project89

Hunter Project Arrangement "An Exemplary Model": Tribunal100

RECOMMENDATIONS

- Unions NSW recommend that rather than removing enforceability of project agreements that the Federal Parliament should include enhanced provisions to the Fair Work Act to allow project agreements.
- NSW Industrial Relations Commission be allowed to evaluate project agreements. The evidence provided in support of applications for project agreements should be based on objective and detailed information which clearly demonstrate the benefit to the project. The Commission may provide its reasons for approving or disapproving a project award / agreement. These should be enforceable.
- Section 59 should be struck from the Bill if the Bill remains in the Senate to increase the efficiency of the construction industry.
- That the draft Bill allow for tripartite consultation on the inclusions in the Construction Industry Code of Practice and Guidelines.
- That an appeal mechanism be included for appealing what is included and the application of the instruments to the parties.

INTRODUCTION

1. On the 4th of December 2013 the Senate referred the Government's approach to re-establishing the Australian Building and Construction Commission for inquiry and report by the **last sitting day in March 2014 (27 March 2014)**. The committee agreed that submissions should be received by **10 February 2014**.
2. The following were the terms of reference:
 - a. the potential impact of the re-establishment of the Australian Building and Construction Commission on the building and construction industry;
 - b. the need or otherwise for a specialist industrial regulator in the building and construction industry;
 - c. the potential impact of the bills on productivity in the building and construction industry;
 - d. whether the bills are consistent with Australia's obligations under international law;

- e. the potential impact of the bills on employees, employers, employer bodies, trades and labour councils, unions and union members;
 - f. the extreme and heavy-handed proposed powers of the Australian Building and Construction Commission, including coercive powers, conduct of compulsory interviews, and imprisonment for those who do not co-operate;
 - g. the provisions of the bills relating to requirements to provide information to the Australian Building and Construction Commission during interviews including provisions that interviewees have no right to silence;
 - h. the provisions of the bills that introduce the law of conspiracy into the industrial regulation of the building and construction industry;
 - i. whether the provisions of the bills relating to occupational health and safety in the building and construction industry are adequate to protect the health and safety of employees and contractors in the industry; and
 - j. any other related matter.
3. Unions NSW and the Building Trades Group welcomes the opportunity to provide comments on the Building and Construction Industry (Improving Productivity) Bill 2013.
 4. Unions NSW submits that this is an unnecessary piece of legislation that is aimed at attacking construction workers through their union.
 5. This submission is made by Unions NSW on behalf of the Building Trades Group of Unions.

Unions NSW

6. Unions NSW is a State Peak Body as defined by section 215 of the *Industrial Relations Act 1996 (NSW)*. Unions NSW has over 60 affiliated unions representing members employed across a wide range of public and private sector industries. Collectively Unions NSW and its affiliates represent over 600,000 workers employed across NSW.

Building Trades Group

7. The following unions make up the Building Trades Group of Unions:
 - *Australian Manufacturing Workers' Union (AMWU)*;
 - *Australian Workers Union (AWU)*;

- *Communications Electrical Postal Plumbing and Allied Trades Union – Plumbers;*
 - *Construction Forestry Mining Energy Union (CFMEU);*
 - *Electrical Trades Union (ETU);*
 - *Transport Workers Union (TWU); and*
 - *Unions NSW*
8. We note that the scope of the Bill at Section 6 aims to extend the definition of building work to cover Railways, heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security, communications systems, and transporting or supplying goods to be used in work.
9. By including these broad group of function under the definition of “meaning of building work” this Bill is potentially acting as a Trojan horse to the industrial intervention into a range of other industries covered by a plethora of affiliated trade unions.
10. These include for Railways, the unions above and
- Australian Rail, Tram and Bus Industry Union;
 - Australian Municipal, Administrative, Clerical and Services Union
 - Association of Professional Engineers, Scientists and Managers Australia
11. As for the other functions noted potentially unions involved in the utilities or maritime industry and the security industry. The definition is quite broad and has the potential to allow interference with the human rights of workers incidentally related to construction industry.
12. There has been no justification provided for why these workers are also now being subjected to the same intrusive treatment as workers in the construction industry who were identified by the ILO as being treated in breach of the ILO Conventions.
13. We have addressed selected terms of reference of the Committee below.

Term of Reference a) The potential impact of the re-establishment of the Australian Building and Construction Commission on the building and construction industry;

1. Workers lives will be put at risk;
2. Workers conditions and pay will be reduced;
3. Hardworking construction workers will be targeted from intrusive over regulation of their industrial conditions; and
4. Efficient project agreements will be lost to red-tape driven by ideology.

Term of Reference b) The need or otherwise for a specialist industrial regulator in the building and construction industry;

14. There is no need for a specialist industrial regulator in the construction industry.

Term of Reference c) The potential impact of the bills on productivity in the building and construction industry;

15. We argue that the impact will be a negative one for all industry on productivity and efficiency on the building industry.
16. The Bill aims at section 59 remove the enforceability of project agreements. These agreements have seen a number of safe, efficient and cost effective projects run in NSW. The Federal Agreements use the provisions of 146b of the New South Wales Industrial Relations Act 1996 to nominate the Industrial Relations Commission of New South Wales (IRC of NSW) as the alternate dispute resolution provider.

PROJECT AGREEMENTS

17. Major construction projects generally use a labour force comprising a combination of direct labour employees and subcontractors, the later accounting for the majority of building and construction workers on site. The majority of subcontractors are bound by various building and construction awards and enterprise agreement.¹
Project awards/agreements assist in streamlining the myriad of industrial arrangements in order they do not in themselves make the process of construction dysfunctional with

¹ *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003] NSW IR Comm 314 [11] 8. & 9.

varying standards and practices which affect the control that the principal contractor has in meeting clearly set out timeframes, milestones, budgets, contractual and legal obligations.

In *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003]² the NSW Industrial Relations Commission summarised the intention of Project Agreements/Awards in the NSW industrial system:

18. *The proposed awards are in a form now well familiar to the Commission in relation to major building and construction projects. The provisions of those awards are intended to produce an optimal climate for the undertaking of the project which involves the maximisation of efficiency and productivity combined with fair and safe workplace conditions. Such awards typically provide clauses concerning productivity initiatives, dispute resolution, occupational health and safety and basic workplace conditions and standards.*

History of Project Awards/Agreements

19. *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters, Re* [2005] NSWIRComm 58 provides a comprehensive summary of the history and effectiveness of Project Awards / Agreements in New South Wales.³

20. Project Awards or Agreements began to evolve in the lead up to the 2000 Sydney Olympic Games and specifically with regard to the construction of the infrastructure associated with the Games.⁴ The key aspect of the awards was the concept of setting minimum project conditions rewarding workers with a project productivity allowance⁵ attached to productivity measures as they were attained during the life of the projects.⁶

² Ibid. [5]

³ *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters, Re* [2005] NSWIRComm 58 [6.i.] – [6.ii.]

⁴ Ibid. [6.i.] – [6.ii.]

⁵ *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters, Re* [2005] NSWIRComm 58 [6.i.] – [6.ii.] and *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003] NSWIRComm 314

⁶ *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters, Re* [2005] NSWIRComm 58 [6.i.] – [6.ii.]

Additional key clauses include cover dispute resolution, occupational health and safety and basic workplace conditions and standards.⁷

21. After the Olympics numerous construction companies sought to use the project awards/agreements as a mechanism to achieve outcomes beneficial to both parties and there was a trebling of the use of Project Agreements by major construction companies between 2001-2004. While some of these agreements were unregistered, the vast majority were certified by the NSW Industrial Relations Commission for projects in excess of \$15 million dollars.⁸

22. Unions NSW believes project agreements should:

- be allowed to be evaluated by the NSW Industrial Relations Commission. The evidence provided in support of applications for project agreements should be based on objective and detailed information which clearly demonstrate the benefit to the project. The Commission may provide its reasons for approving or disapproving a project award / agreement.
- These should be enforceable.
- Section 59 should be struck from the Bill if the Bill remains in the Senate to increase the efficiency of the construction industry.

Reduction of Disputation

23. Where Project Awards/Agreements made by the NSW Industrial Relations Commission were in place there was a reduction in disputes and the number of days lost to industrial action and where significant dispute did arise few required the intervention of the Commission.⁹

24. Further, the vast majority of projects came in "*on time and on budget*" with *milestone incentive payments and/or other productivity incentives* credited as being a significant factor in reducing lost time and delays. Where productivity milestones were not reached it was as a result of factors beyond the control of the workforce which was the primary cause.¹⁰

⁷ *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003] NSWIRComm 314

⁸ *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters, Re* [2005] NSWIRComm 58 [6.i.] – [6.ii.]

⁹ *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters, Re* [2005] NSWIRComm 58 [6.i.] – [6.ii.]

¹⁰ *Ibid.* [6.i.] – [6.ii.]

Benefits of Project Awards / Agreements For Construction Companies

25. Many of the large construction companies used and supported the use of Project Awards / Agreements within the Industry. In *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003] NSWIR Comm 314 the Employee Relations Counsel of Bovis Lend Lease Pty Limited, Ms Alice Mary DeBoos, provided the following evidence regarding the effectiveness of project awards that:

- i. project awards provide some certainty as to project costs and delivery as the minimum entitlements are agreed between the parties at the outset;¹¹
- ii. projects are rarely disrupted by industrial action as a result of wages and conditions on the site;¹²
- iii. Bovis Lend Lease was able to use project awards as a marketing tool when tendering for construction work as it provided a benefit *“in terms of time and cost on comparison to other major builders who do not use the project award framework”*¹³.
- iv. the payment of a project productivity or milestone payment to the entire workforce on the site, rather than providing a site allowance as a matter of course, meant project awards allow Bovis Lend Lease *“to seek certain productivity milestones in return for increased remuneration...[which they believed increased]...the motivation of the workers on site and contributes to the completion of a successful project”*¹⁴.

Recommendation

- Unions NSW recommends that rather than removing enforceability of project agreements that the Federal Parliament should include enhanced provisions to the Fair Work Act to allow project agreements.

¹¹ *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003] NSWIRComm 314 [24]

¹² *Lend Lease Hotel Intercontinental (Stage 1) Project Award and Another* [2003] NSWIRComm 314 [24]

¹³ *Ibid.* [25]

¹⁴ *Ibid.* [26]

- NSW Industrial Relations Commission be allowed to evaluate project agreements. The evidence provided in support of applications for project agreements should be based on objective and detailed information which clearly demonstrate the benefit to the project. The Commission may provide its reasons for approving or disapproving a project award / agreement. These should be enforceable.
- Section 59 should be struck from the Bill if the Bill remains in the Senate to increase the efficiency of the construction industry.

26. An example of the productivity gains achieved by allowing workers, their representatives and the employer to talk more easily is contained in detail by the following completed projects in the last year in the Hunter Region alone. These examples put pay to the need for an extra layer of obstructionist intervention by the federal government. All these benefits would not exist. The relevant Industrial Relations Decisions are contained as an Attachment.

NCIG Coal Export Loader

- The construction of the NCIG Coal Export Loader, (\$2.5.billion) in the port of Newcastle has been completed **6 months ahead of schedule and \$200million under budget**. A number of milestones have occurred during this 6 year project:
 - 62 consecutive monthly communications meetings;
 - over 8 million hours worked;
 - no Lost Time (LT) due to industrial disputes;
 - 2 hours Lost Time due to injuries;
 - over 11,000 employees inducted on the project; and
 - 100 Agreements that covered the construction activities on site.

PWCS/Bechtel MPC Project

- The expansion at the PWCS/Bechtel MPC project has now been completed. This project contained some extraordinary outcomes given its size including:

- \$1.6 billion total project spend since 2005;
- over 5.4 million hours worked;
- project completed 6 months ahead of schedule;
- \$300 million under budget;
- no lost time due to OH&S or industrial disputes;
- 6000 inductions and 38 monthly communication meetings.

A final close out report was held on the 4 November 2013 before Deputy President Harrison of the Industrial Relations Commission of NSW with a decision issued on 28 November 2013.

Ravensworth North Project

The Ravensworth North project (\$600 million) is complete with:

- over 3.5 million hours worked;
- 21 consecutive monthly communication meetings;
- zero lost time due to industrial disputes;
- zero lost time due to injuries; and
- over 1,300 inductions.

A close out report before Deputy President Harrison held on 27 November 2013 with a decision pending.

Totals of completed projects in last year.

These 3 projects above represent:

- a \$4.7 billion spend in the northern region;
- with 16.9 million hours worked;
- over 18,000 inductions completed; 2 lost time due to injuries and zero lost time due to industrial disputes, a remarkable achievement, given these projects have been running for 6, 8, and 3 years respectively.

An agreement has been reached with Downer for the Ulan West Stage 2 project (\$60m) in the Mudgee region. Construction continues at the AGL Tomago Gas Storage Tanks (\$300m) by CBI. An agreement has also been reached with Thiess/ Sedgman JV for construction work at the Boggabri Coal Mine in Northern NSW.

Other projects due to commence include Mauls Creek (\$700m), Orica Kooragang Island expansion project (\$800m) has been deferred indefinitely. Another project on the drawing board is Drayton South (500 million). All the construction projects in the region are covered by FWC agreements with the IRC of NSW nominated as the alternate dispute resolution provider.

Term of Reference d) Whether the bills are consistent with Australia's obligations under international law;

27. It is likely that the Bill will be inconsistent and breach Australia's obligations under international law. 1. The ILO condemned the laws on at least 8 occasions. The main conventions that may be in breach include the following:

C081 - Labour Inspection Convention, 1947 (No. 81)-

The Labour Inspectorate is meant to be tripartite and free from partisan operations. This is not the case for the ABCC as is demonstrated in the paragraphs below:

28. Most of the changes contained in the Bill are directed towards the industrial relations arrangements that apply on construction sites and other industries such as transport. Under the guise of so-called cost saving and productivity measures, these changes seek to alter the balance of power between industrial parties and reduce trade union influence/involvement on construction sites. What makes these laws more draconian and inhumane is that they unfairly target worker's rights by targeting predominately construction workers.

29. Examples to illustrate the point:

*"- in its most recent annual report, the ABCC disclosed that 63 per cent of all its investigations were directed at trade unions and a further 8.5 per cent concerned the conduct of workers in 2008–09. In 2006–07, the corresponding figures were 73 and 11 per cent respectively. **Unions or employees were the subject of on average 76.5 per cent or more than three-quarters of all ABCC investigations between 1 July 2006 and 30 June 2009;***

– the ABCC’s report on the exercise of compliance powers for the period 1 October 2005 to 31 March 2010, shows that out of 197 “examinations” conducted in the period, 135 were directed at employees and ten at union officials; only 50 examinees were management/employer representatives. One worker is presently on trial for allegedly refusing to attend a coercive interview facing a possible penalty of six months’ imprisonment. An earlier criminal prosecution against a union official had been withdrawn in November 2008;

– as of 8 July 2010 there had been **37 ABCC prosecutions before the courts. Of these, 36 identified a trade union, trade union official or employee as respondents to the proceedings. Only one of the 37 matters has been taken by the ABCC against an employer.** The number of ABCC prosecutions against unions and workers has dramatically increased in the last 18 months.”¹⁵

(Emphasis Added)

30. The last time the ABCC was in existence the ILO made the following statements.

“Noting with concern that the manner in which the ABCC carries out its activities seems to have led to the exclusion of workers in the building and construction industry from the protection that the labour inspection system ought to secure for these workers under the applicable laws, the Committee urges the Government to ensure that the priorities of the ABCC (or the Fair Work Building Industry Inspectorate) are effectively reoriented so that labour inspectors in the building and construction industry may focus on their main functions in full conformity with Article 3(1) and (2) of the Convention.”¹⁶

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

¹⁵ International Labour Conference, 100th Session, 2011, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) Third item on the agenda: Information and reports on the application of Conventions and Recommendations, p. 499

¹⁶ Observation (CEACR) - adopted 2010, published 100th ILC session (2011), Labour Inspection Convention, 1947 (No. 81) - Australia (Ratification: 1975)
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2333137

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

31. These conventions clearly have been breached before and as the Bill is targeted in the same manner toward workers these laws will again be in breach of Australia's international obligations.

The Committee considers that the prosecution of workers does not constitute part of the primary duties of inspectors and may not only seriously interfere with the effective discharge of their primary duties – which should be centred on the protection of workers under Article 3 of the Convention – but also prejudice the authority and impartiality necessary in the relations between inspectors and employers and workers. This is even more so when the laws on the basis of which the workers are prosecuted have been repeatedly found by this Committee to be contrary to other international labour standards, notably Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).¹⁷

32. In relation to the breach of Conventions under Freedom of Association, Collective Bargaining and Industrial Relations the ILO previously stated:

“that: (i) the BCII Act renders virtually all forms of industrial action in the building and industrial sector unlawful; (ii) introduces severe financial penalties, injunctions and actions for uncapped damages in case of “unlawful” industrial action; (iii) gives the enforcement agency known as the Australian Building and Construction Commission (ABCC) wide-ranging coercive powers akin to an agency charged with investigating criminal matters; (iv) grants the capacity to the Minister for Workplace Relations to regulate industrial affairs in the building and construction industry by Ministerial Decree through a device referred to as a building code which is inconsistent with the Convention on several points and is implicitly “enforced” through an “accreditation scheme” for contractors who wish to enter into contracts with the Commonwealth”¹⁸

¹⁷ Report of the Committee of Experts on the Application of Conventions and Recommendations, ILO, 2010, p. 490

¹⁸ International Labour Conference, 98th Session, 2009, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) Third item on the agenda: Information and reports on the application of Conventions and Recommendations. P.54

and

“The Committee wishes to emphasize once again that all workers without distinction whatsoever, including workers in the building and construction industry, have the right to organise, and that the exercise of the right to organize presupposes that trade unions have the right to freely organize their activities and formulate their programmes for furthering and defending the interests of workers, without interference from the authorities.”¹⁹

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

33. These conventions require tri partite consultation and administration of health and safety laws. The C155 requires administration of laws in an impartial manner and require exemptions to be notified when the State wishes to apply a different regime to that sector of the economy.

- **Articles 21 and 22 International Covenant on Civil and Political Rights- Freedom of Assembly and Association**

34. These articles of our human rights enable freedom of assembly and association. The right of freedom of assembly includes the “rights of individuals and groups to meet and to engage in peaceful protest.”²⁰

35. Section 47 of the Bill proposes to make picketing illegal and ban all “unlawful pickets”. However, it is unclear if any picket on a building site can be lawful. Despite the Section acknowledging that there are other reasons why a picket may be unlawful 47 (2) iii, or in fact legal as per the Convention. It appears to remove the Right of Assembly from building workers, people who support them or people who oppose building works.

¹⁹ Ibid p. 55

²⁰ Commonwealth of Australia, Attorney General’s Department, Right to Freedom of assembly and association, Website- Public Sector Guidance sheets.

According to Minister Abetz in submission #1 this is motivated by ensuring the rights of business. Business does not have human rights and these rights should be seen as sacrosanct when other rights are not infringed.

36. Many of the measures that are proposed to be introduced under the draft Bill are a repeat of old provisions that existed in earlier versions of the Act under the Howard Government. These clauses reflected the discredited 'WorkChoices' approach of the previous Federal Government which attempted to marginalise unions and impinge upon fundamental rights such as freedom of association and the right to collectively bargain.
37. A number of the offending parts of the old Act were contained in the Code and Guidelines which had force in law. Section 34 allows Minister alone to issue codes without any force of review of Parliament, or the courts.
38. These included a number of provisions that acted to disadvantage a balanced approach to industrial relations.
39. These former provisions were superseded by the introduction of the *Fair Work Act 2009* and their continuing operation was seen as inconsistent with the letter and intent of that Act. They were removed in August 2009 and replaced with new Guidelines.
40. Resurrecting these measures and attempting to lay the blame for so-called industry inefficiencies at the feet of unions ignores the broader forces which have an impact on the industry such as rising cost of construction materials, managerial competence and decision-making, the exodus of skilled workers to major resources projects in other states and global financial instability.
41. It also completely ignores the crisis in the construction industry in NSW that has seen several high profile companies collapse, leaving subcontractors and workers unpaid, none of which has been caused by construction Unions or their activities.

'Freedom of Association'

Site induction/Union Indicia – Contrary to EBAs and/or General Protections

42. In the name of 'freedom of association' the previous Code and guidelines prohibited union delegates/representatives from undertaking or administering site inductions. This was said to be the province of management. This clause existed in the National Guidelines under the Howard Government.
43. This part of the previous guidelines (2005-2009) raises the prospect of being resurrected under the guidelines to discriminate against the involvement of particular employees in a legitimate workplace role purely on the basis of their union membership. This may constitute a breach of the General Protections provisions of the Fair Work Act. However there is no redress as the Guidelines are issued by Ministerial decree without jurisdiction to any Court of appeal.
44. Likewise, the prohibition on union mottos, logos and other indicia unless it is contained in an existing enterprise agreement demonstrates not only the open hostility to unionism. This was introduced over and above the BCII Act last time around and was contained in the Guidelines that were unable to be appealed and issued by Ministerial decree.
45. Freedom of association is comprehensively regulated by the *Fair Work Act*. There were inclusions in the Guidelines that gave this right or freedom from 2005-2009 to companies. There is simply no need for these types of clauses and their inclusion amply demonstrates that the real purpose of guidelines is to undermine unionism and the result will be to cause unnecessary confusion in the industry. We have seen a number of State Government re issue the Howard Government Work Choices version of the Construction Code of Practice Code and Guidelines with the anti-union provisions.

National Code and Guidelines

46. The NSW Code of Practice for Procurement: Building and Construction, has for a number of years, operated alongside the National Code of Practice for the Construction Industry (National Code) and the Implementation Guidelines for the National Code of Practice for the Construction Industry (National Guidelines) on NSW construction sites. The National Code was issued by the Commonwealth with agreement of State and Territory Governments. Commencing in September 1997 it sets out the principles to apply to parties who wanted to tender for Commonwealth funded construction projects.
47. In February 1998 the Commonwealth issued the National Guidelines and as the name suggests, the Guidelines were intended to provide further detail on the principles established by the National Code and set out what would be required by the Commonwealth of parties engaged in work on Commonwealth construction projects. This included detailed requirements relating to the tendering process, contractual documentation and, crucially, industrial relations and occupational health and safety requirements on jobs within the scope of the National Guidelines.
48. Whilst the National Code has remained essentially unchanged since its introduction, the National Guidelines have passed through a number of iterations. The most recent version of the National Guidelines was issued by the Commonwealth in August 2009.
49. The reach of these Guidelines now also extends well beyond federally funded projects. They apply not only to work which is indirectly funded by the Commonwealth above certain specified amounts, but those tendering for Commonwealth work must also comply with the Guidelines on all of their privately funded Australian-based construction projects.²¹

²¹ See National Guidelines Clauses 3.2 to 3.4

Term of Reference e. the potential impact of the bills on employees, employers, employer bodies, trade and labour councils, unions and union members;

50. As demonstrated above by the project agreements the role of trade and labour councils to broker efficient, productive, and peaceful project agreements will be minimised.

51. The description of how this will harshly affect the rights unions and union members is described above. The key aspect of the above descriptions at the ILO is that these provisions will be affecting construction workers greater than union officials or employers.

52. Employers who engage in sham contracts, phoenixing or ripping off of workers and sub-contractors will be unaffected by these provisions.

- i. whether the provisions of the bills relating to occupational health and safety in the building and construction industry are adequate to protect the health and safety of employees and contractors in the industry;

Occupational Health and Safety

53. The construction industry remains one of the most dangerous industries to work in Australia. As far as serious injuries, occupational disease and fatalities, construction remains a dangerous industry. This industry is marked by short term thinking about how corners can be cut to make more profit. It is a constant struggle between contractual time pressures, which results in a conflict between the financier, owner, builder, the sub-contractors, and often the workers safety. A result of this is that quite often it is easier to cut safety corners. Construction sites change on a daily basis and whilst it just takes a moment for a lapse in safety to kill or maim a worker or bystander, these systems issues are often present well before the incident that causes the issue.

54. The National Code of Practice for the Construction Industry was formed by COAG after a similar process had occurred in different states . In the 1990s the unions got together with the NSW government and the major contractors for the NSW government public works and formed a code. The code was to ensure that the procurement of major works had established standards for Occupational Health and Safety, and industrial relations.

The industrial relations component was introduced to ensure sub-contractors and workers got paid. This was a large problem in the construction industry where sub-contractors would underpay or not pay their employees. As government was now contracting out most of its public works, it could not be responsible for hiring companies which breach industrial laws. This concept was followed in each state until COAG coordinated on a voluntary basis the Codes at a national level in the late 1990s. The Code became compulsory for all projects and tenders over a certain size. The Code and the Guidelines were non appealable and were not open for Parliamentary Review. This was a key driver of positive safety across the industry until 2005.

55. The National Code of Practice for the Construction Industry and NC Guidelines when implemented with the WorkChoices legislation became the catalyst for union busting and exclusion in the construction industry.²²

56. Whilst the proponents of the ABCC argue that the ABCC is there to manage more productive industrial relations by putting "a cop on the beat", what it really did when around previously was restrict the true effective "cop on the beat" to regulate safety in the industry. The National Code of Practice and Guidelines required restrictive union right of entry practices that inhibited proactive safety inspections on worksites across the industry.

57. Instead of having in NSW over 100 Organisers from various construction unions turn up to building sites observing safety systems in play, instead you had a requirement for them to provide notice under the code and guidelines. By requiring these officials to wait 24 hours before they enter a site and to specify the suspected breach would of course allow any employer to fix up an issue or simply move onto the next stage of the job before the official could enter.

58. Officials have the capacity to speak up against a large employer in an industry where a larger proportion than the rest of the workforce is in insecure contract work.²³

59. Whilst it could be argued that there is a WorkCover Authority of NSW inspectorate, they had a telegraphed compliance program, operated in a reactive manner to incidents, and were only a fraction of the number in size.

²² Australian Government, Implementation Guidelines for the National Code of Practice for the Construction Industry, Revised September 2005, Reissued June 2006, <http://www.fwbc.gov.au/sites/default/files/ImplementationGuidelinesNov06editFeb07.pdf>

²³ Safe Work Australia, Work-Related Injuries In Australia, 2005–06, Construction Industry, OCTOBER 2009

60. Additionally the Code and Guidelines attempted to muzzle the role of Shop stewards or delegates from undertaking the same role as officials, including removing the ability to undertake inductions or other proactive actions where safety could be encouraged.

61. Despite what Minister Abetz says in his submission # 1, during the operation of the ABCC with the restrictive codes there was a marked increase in fatalities in the construction Industry and a plateauing – rather than a decline – of Serious claims incident rates when the National Code and Guidelines were at their most anti worker stance.

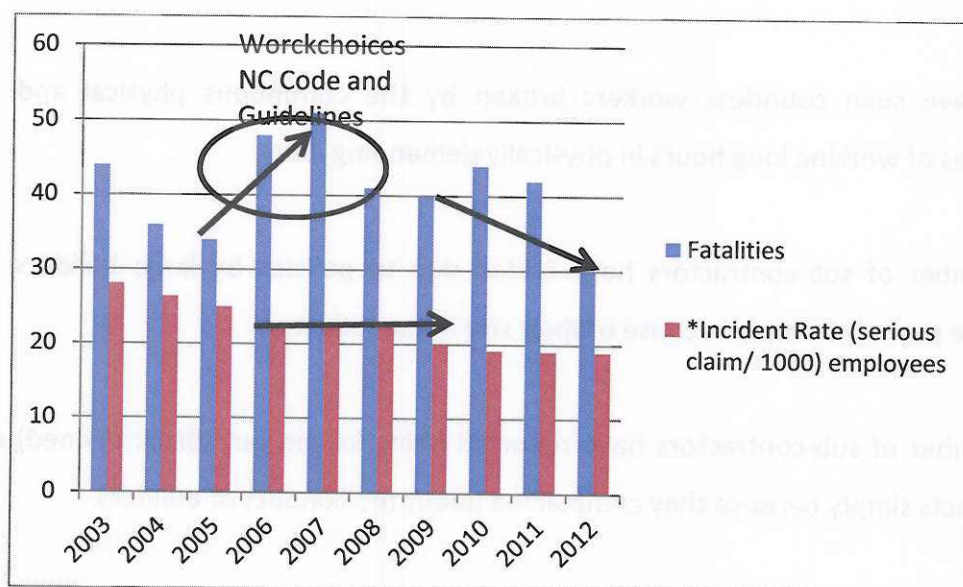
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Fatalities (a)	44	36	34	48	51	41	40	44	42	30
*Incident Rate (serious claim/ 1000) employees (b)	28.1	26.4	25	22.1	22.5	22.3	20.0	19.2	19.1	

Table 1: Fatalities and Serious Incident Rate/1000 Employees Time Series Data

Source:

(a) Safe Work Australia, Work Related Traumatic Injury Fatalities, Australia 2012, October 2013

(b) Safe Work Australia, Comparative Performance Monitoring Report, Comparison of work health and safety and workers compensation schemes in Australia and New Zealand., Fifteenth Edition, October 2013 and Comparative Performance Monitoring Report, Comparison of work health and safety and workers compensation schemes in Australia and New Zealand., Tenth Edition



Graph 1: Table indicating trends in fatalities and serious claims for construction industry

62. Unions NSW notes that Minister Abetz refers to the maintained role of State Safety Regulators under the National Safety Commissioner in Submission #1. Although he may state this at present there is a significant risk that this act may create an area of a legal regulatory void similar to the aviation industry when it comes to safety regulation. This is due to the predominance under the constitution for federal laws (even subordinate laws) to be deemed to cover the field²⁴.

Term of Reference j. any other related matter.

63. Unfortunately in NSW we have seen the history of the corruptive power of the construction industry with repeated governments including the influence of developers with planning laws.

64. We have seen significant companies in the industry go into administration due to phoenix companies who rise and fall and take the money with them before paying their workers and other sub-contractors.

65. We have seen our quality training framework and building licensing framework corrupted as builders bribe public officials.

66. We have seen countless workers maimed at work due to illegal and negligent safety practices.

67. We have seen countless workers broken by the continuous physical and financial stresses of working long hours in physically demanding jobs.

68. A number of sub-contractors have folded due to policies by large builders to delay invoice payment simply because of their size in the industry.

69. A number of sub-contractors have reported being locked out (Black banned) of future contracts simply because they complained about the conduct of builders.

²⁴ Helii-Aust v Cahill [2011] FCAFC 62

70. A number of workers have also been black banned for standing up for Work Health and Safety of themselves and others.

These laws will do nothing to address any of these provisions.

71. The Bill contains no serious attempt to deal with industrial matters of concern to unions. Issues such as training and apprenticeship numbers, job security and local content, phoenix operators, sham contracting, employer non-compliance are not given any serious recognition or treatment.

72. The Wilcox Inquiry which was set up by the Federal Government in 2008 to examine workplace relations issues in the building and construction industry dealt extensively with the operation of the National Code and Guidelines and made a number of recommendations in that area. Among its conclusions the Report noted:

a. *'Just as there is merit in the Government using its financial muscle to improve employment relationships in the industry, so there is merit in using that muscle to attain other goals; for example, employment of more apprentices, women and Indigenous people and achievement of environmental goals, such as energy and water efficiency, materials recycling and so on.'*²⁵

73. The Report recommended these changes be made after consultation with industry participants. The National Guidelines were amended in August 2009 and now make some reference to these issues.²⁶

74. The Final Report of the *'Building the Education Revolution Implementation Taskforce'*²⁷ which comprehensively analysed and reviewed one of the most significant government spending programmes in building construction in recent years, the multi-billion dollar

²⁵ 'Transition to Fair Work Australia for the Building and Construction Industry' Report March 2009 pg 88.

²⁶ For example. see 4.2.2 - 4.2.4 of the national Guidelines

²⁷ <http://www.bertaskforce.gov.au/pages/publications.aspx>

Building and Education Revolution (BER) programme, concluded that attention to environmental factors was inadequate and recommended:

75. *'future capital spending involving public monies should mandate specific measurable outcomes.'*²⁸

76. The report also specifically discounted industrial relations as a major productivity issue in the BER programme, *referring instead to declining public works capacity and apprenticeship completions and deficiencies in project management skills.*²⁹

77. The Bill shies away from these kinds of issues and predictably focus on a narrow and prejudiced view of industrial relations as a productivity panacea. This narrow view of productivity as a cost cutting exercise to be undertaken at the expense of employee conditions and union organisation distracts attention away from broader issues which have an impact on productive capacity.

78. The Bill does nothing to encourage or support the expansion and increase in enterprises that are innovative and conscious of the importance of the use of improved technology and production techniques, quality control, better capacity utilisation and use of economies of scale.

79. Further, whilst at face value the Bill seems to promote the objective of improved workplace health and safety, the Bill also attempts to reduce trade union involvement in health and safety issues for example, by introducing obstacles to union entry to the workplace.

80. Numerous academic studies have concluded that unionisation and union involvement in the workplace bears a direct correlation with better health and safety outcomes. Strong, independent trade unions have historically played an important role in the construction

²⁸ At pages 12 to 13.

²⁹ Ibid at pg 13.

industry in detecting hazardous situations in the workplace and influencing management to take remedial action before accidents occur.

81. As recently as September 2011 the Australian Industry Group (AiG) released *The Business Regulation Report*³⁰ which surveyed company chief executives from a range of industries including construction, which criticised excessive levels of government regulation and rising compliance costs. AiG specifically blamed excessive levels of government regulation for stifling productivity and employment growth as compared to industrial relations regulation which was identified simply as a particular problem.

82. According to the AiG survey, regulation constituted some 4% of business costs and the companies surveyed believed up to 20% of regulation was unnecessary.³¹

83. The AiG Chief Executive said '*What is painfully clear from this report is the enormous burden business regulation is having on Australia's already flagging productivity.*'³² The introduction of another layer of regulation for what is already regulated by the Fair Work provisions will add to the compliance burden in an area that is already comprehensively regulated.

Review of Code/Guidelines Decisions

84. One of the ongoing complaints about the operation of the Federal Code and Guidelines has been that decision-making about compliance has been arbitrary, unpredictable and beyond the reach of any reasonable process of review or appeal.

85. The same point was made by employers, unions and state governments during the course of the Wilcox Inquiry. The AiG stated:

³⁰ See http://www.businessspectator.com.au/bs.nsf/Article/Businesses-say-red-tape-holding-them-back-M44FM?opendocument&src=idp&emcontent_asx_financial-markets

³¹ See http://www.businessspectator.com.au/bs.nsf/Article/Businesses-say-red-tape-holding-them-back-M44FM?opendocument&src=idp&emcontent_asx_financial-markets

³² 'Businesses say red tape holding them back' The Age 27 September 2011 <http://www.theage.com.au/small-business/managing/businesses-say-red-tape-holding-them-back-20110927-1kuqk.html>

86. *'...there must be a proper process of appeal or review when administrative decisions made behind closed doors can have deleterious commercial consequences for companies.'*³³

87. The John Holland Group³⁴, the Electrical and Communications Association of Queensland³⁵ and the Combined Construction Unions³⁶ all made a similar point.

88. Ultimately Wilcox recommended that decisions taken under the national guidelines should be made judicially reviewable under the ADJR Act and administratively reviewable by the AAT.³⁷

89. Under the draft Bill there is no avenue for an independent external review or any suggested mechanism by which persons aggrieved can have their grievances independently considered.

Recommendation

- That the draft Bill allow for tripartite consultation on the inclusions in the Construction Industry Code of Practice and Guidelines.
- That an appeal mechanism be included for appealing what is included and the application of the instruments to the parties.

³³ Wilcox Final Report pg 81

³⁴ Ibid at pg 89.

³⁵ Ibid at pg 83

³⁶ Ibid at pg 87.

³⁷ Ibid at pg 89.

CASE STUDY 1: The Sydney Olympic & Paralympic Games 2000 (State) Award (1999)

In *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters*³⁸ the NSW Industrial Relations Commission provided the following summary of the considerable benefits of the *Sydney Olympic & Paralympic Games 2000 (State) Award (1999)*³⁹ for both employers, employees and ultimately the project itself as contained in the publication, *The Collaborative Games : The Story Behind The Spectacle*⁴⁰.

8. Mr Webb described the considerable benefits for both employers and employees (and ultimately the project itself) by those arrangements. They included provisions which are now familiar in modern project awards including a culture of collaboration (underpinned by the objectives to the awards), the provision of a productivity allowance, milestone incentive payments and dispute resolution procedures. The Olympic site awards and agreements also contained the now familiar feature of building and construction industry project awards of having common conditions of employment applying across the project including for the network of sub-contractors engaged on various aspects of the site (arrangements facilitated by the jurisdictional reach of this Commission under the *Industrial Relations Act 1996*). Mr Webb concluded as to the construction and building awards that:

Overall, the performance indicators of safety, skill formation, lack of disputation, mediation of disputes, on time and under budget delivery marked the construction phase as a huge success.

³⁸ *Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award and other matters*, Re [2005] NSWIRComm 58 [8] – [9]

³⁹ *Sydney Olympic & Paralympic Games 2000 (State) Award (1999)* 310 NSW IR 989

⁴⁰ Webb, T., *The Collaborative Games : The Story Behind The Spectacle* Annandale, N.S.W. : Pluto Press, 2001

9. Mr Webb also described the evolution of the building and construction awards for the Sydney Olympics into an award for the operation of the Games. The award was negotiated through proceedings before *Wright J*, President, and resulted in his Honour making the *Sydney Olympic & Paralympic Games 2000 (State) Award (1999)* 310 NSW IR 989. Mr Webb described the elements of that award as follows:

§ Defining an 'industry' for the Games that embraced all of the services to be provided to SOCOG by private industry contractors so that common conditions could be specified for workers across all these services - reducing the scope for resentments over differences and pressure for 'leapfrogging' claims later.

§ Defining clearly the Games period for which the award would apply. This avoided the creation of precedents based on the unique Games situation. Existing award conditions would apply up to the Games period and be reverted to after.

§ Defining wage rates to apply in each of the major service jobs that would represent a fair and appropriate rate at the time of the Games in September 2000 taking into account the unique nature of the event and the flexibility in working patterns required. This provided budget certainty for SOCOG, and for the contracting companies as the contract price would be based on these wage rates. This avoided two of the main problems of Atlanta - 'leapfrogging' of wage rates as contractors competed for scarce labour and the loss of recruited workers to other sectors as the wage rates for different jobs changed.

§ Defining an Olympic Bonus of \$1.50 per hour to be paid at the end of the Games to all workers who completed 95 per cent of the shifts they were rostered for. This overcame the problem of people dropping out of the workforce part way through the Games leaving significant gaps in the workforce.

§ Establishing dispute resolution mechanisms for dealing with problems as they arose - avoiding disruption in the lead-up to and during the Games.

§ Guaranteeing union rights of access to the workforce at each stage in the process, particularly during the recruitment, training and accreditation processes and during the Games itself. This ensured that the collaboration between SOCOG, contracting employers and the unions was a visible feature of the Games. It ensured unions would be proactive in identifying problems on site and it established effective communications for dealing with these when they arose.

§ Guaranteeing that the special conditions of the award would not set a precedent for future awards.

CASE STUDY 2: Northern Regional Office of Unions NSW (UNSWN) and the Newcastle Trades Hall Council (NTHC)

The Northern Regional Office of Unions NSW (UNSWN) and the Newcastle Trades Hall Council (NTHC) as peak bodies co-ordinate the construction unions on construction projects in Newcastle, Central Coast, Hunter, North and North West Regions of NSW.

The following Unions involved are:

- Australian Manufacturing Workers Union;
- Australian Workers Union;
- Construction, Forestry, Mining and Energy Union;
- Electrical Trades Union
- Plumbers Union; and
- Transport Workers Union.

For a number of years the peak bodies and unions along with peak employer organisations, developers, project managers and contractors have utilized what is called the *“Co-operative approach to safety and industrial relations”* on major construction projects.

This approach is underpinned by the 3C's concept:

- 1) Communication;
- 2) Consultation; and
- 3) Co-operation;

which then supports the relationship between the various parties involved.

Rates of pay and conditions of employment on these projects are regulated by Union Collective Greenfields Agreements which have been approved by the Fair Work Commission. In prior years such arrangements were regulated by State Awards and Federal and State Agreements.

The Federal Agreements use the provisions of 146b of the New South Wales Industrial Relations Act 1996 to nominate the Industrial Relations Commission of New South Wales (IRC of NSW) as the alternate dispute resolution provider.

This process is supported by the local members of the FWC and the IRC of NSW, Deputy President Harrison and Commission Stanton who are located in Newcastle but are able to travel to regions to assist on site if required.

The availability and access to the local members of FWC and IRC of NSW is critical to the parties and the projects that then allows for an efficient, effective and a speedy resolution to disputes. Commission members visit sites regularly and issues of potential industrial conflict are identified ahead of time and resolved. Thus, the disputes procedure is generally regarded as an early warning mechanism, not a tool of confrontation or disruption.

There has only been one instance in the previous ten years when the Commission was required to intervene in a volatile situation on short notice. However, using the resolution framework provided with the agreements, this issue was successfully resolved.

All projects have been:

- met or bettered budgetary expectations;
- met or bettered the schedule completion timeframes;
- had zero lost time due to industrial disputes ; and
- except for two (2) projects, zero lost time due to Lost Time Injuries (LTI).

Productivity is not compromised due to a lack of safety as this model ensures safety is a primary goal on each project and construction site. Fair and proper wages and conditions of

employment are established prior to the commencement of projects which allows for contractors and their employees to concentrate on productivity, quality and efficiency.

Another key component of the Agreements is the provision of regular communication and consultation on site. This Agreement allows for monthly communication meetings with employees and their representatives and for follow-up feedback meetings with the Project Manager and Contractors on site on any issue or problem which has been raised.

This process of structured communication and dispute resolution has been fundamental to ensuring these projects have not had any lost time due to industrial disputes over the last nine (9) years.

A list of projects [Appendix 1] and recent decisions [Appendix 2] by the Industrial Relations Commission of New South Wales in support of this Case Study have also been included.

In addition there are a number of examples of more recent projects including:

The NCIG Coal Loader Construction Project

- \$3.0 billion;
- 90 Agreements;
- over 7.4 million hours worked;
- 1 lost time injury;
- no Industrial disputes;
- 52 consecutive monthly communication meetings;
- project due for completion mid-2013.

PWCS/MPC Coal Loader Expansion Project

- Total spend since 2005 \$1.6 billion;
- 5.2 million hours worked;
- no lost time due to safety or industrial disputes.

This approach to industrial relations has been a success and is supported by all parties across these regions. The model has also been successfully applied in other parts of the State and the Sydney CBD including the Ski Tube, Sydney Harbour Tunnel and Airport Rail Link.

The Northern Regional Office of Unions NSW (UNSWN) and the Newcastle Trades Hall Council (NTHC) believe the imposition of a strict code is more likely to destabilise rather than facilitate improved industrial relations practices and outcomes or increased productivity.

Case Study	Value	Details
1	250 million	Longer term project - Airport Rail Link Extension Project (2015-2017)
2	130 million	Major infrastructure project - Sydney Harbour Tunnel (2000-2002)
3	100 million	Major infrastructure project - Airport Rail Link (2007-2009)
4	400 million	Major infrastructure project - Sydney Harbour Tunnel (2000-2002)
5	200 million	Major infrastructure project - Airport Rail Link (2007-2009)
6	400 million	Major infrastructure project - Sydney Harbour Tunnel (2000-2002)
7	300 million	Major infrastructure project - Airport Rail Link (2007-2009)
8	800 million	Major infrastructure project - Sydney Harbour Tunnel (2000-2002)
9	910 million	Major infrastructure project - Airport Rail Link (2007-2009)
10	15 million	Major infrastructure project - Sydney Harbour Tunnel (2000-2002)

APPENDIX 1: List of Project Agreements Referred to in Case Study 2: Northern Regional Office of Unions NSW and the Newcastle Trades Hall Council

	PROJECT	\$ VALUE
1	Tomago Aluminium Smelter AP22 Capacity Expansion Project Consent Award 2002 (IRC 2355 of 2002, 16/5/02)	220 million
2	Hydro Aluminium Kurri Kurri Smelter Upgrade and Retro-Fit Enterprise Agreement 2004 [2004] NSWIRComm 132	130 million
3	Bechtel Australia Pty Ltd Port Waratah Coal Services Project 3D Enterprise Agreement [2007] NSWIRComm1012 and 2010 NSWIRComm56	160 million
4	Newcastle Trades Hall Council v Westfield Design & Construction Pty Ltd re Kotara Shopping Centre Expansion Project [2006] NSWIRComm259	400 million
5	Request by Unions NSW for the assistance of the Industrial Relations Commission of NSW on the NCIG Coal Export Terminal Construction Project by Connell Hatch for NCIG for inspection and conference (IRC2008/1760, 31/10/08; 12/5/09)	900 million
6	Notification under section 130 by Unions NSW of a dispute with Alstom Colongra Gas Turbine Project NSWIRComm211	400 million
7	Request by Unions NSW and Newcastle Trades Hall Council, White Mining Limited and the Civil Construction Unions for assistance of the Industrial Relations Commission of New South Wales re agreement for construction work at Moolarben Mine Construction Site Mudgee (IRC2009/141, 19/02/09)	300 million
8	NCIG Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd and Unions NSW and affiliates (IRC2010/572)	800 million
	Joined With Request by Unions NSW and the Newcastle Trades Hall Council for the assistance of the Industrial Relations Commission of New South Wales re NCIG 2AA and 2F Construction Project (IRC2010/1466, 8/5/12 and 7/1/12)	800 million
9	Request by Unions NSW and the Newcastle Trades Hall Council on behalf of Port Waratah Coal Services Limited, Bechtel Australia Pty Ltd, Australian Industry Group and the Civil Construction Unions for the assistance of the Industrial Relations Commission of NSW (IRC10/946,	910 million
10	Request By Unions NSW And The Newcastle Trades Hall Council For The	75 million

	Assistance Of The Industrial Relations Commission Of New South Wales Re Taggart Wilpinjong Project 2011 NSWIRComm164	
11	Request By Unions NSW And The Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Thiess Sedgman Joint Venture Bengalla Project 2012 NSW IRComm32	90 million
12	Request by Unions NSW for the assistance of the Industrial Relations Commission of NSW in prevention of industrial disputes - Mangoola Coal Project (IRC2010/493	450 million
13	Request by Unions NSW for the assistance of the Industrial Relations Commission of New South Wales re Ravensworth North Construction Project	400 million

APPENDIX 2: Recent decisions by Industrial Relations Commission of NSW in support of Case Study 2: Northern Regional Office of Unions NSW and the Newcastle Trades Hall Council

- *Notification under section 130 by Bechtel Australia Pty Ltd of a dispute with Unions New South Wales and others re clause 32 in Enterprise Agreement [2007] NSWIRComm 1012 Matter No IRC 394 of 2008*
- *Newcastle Trades Hall Council v Westfield Design & Construction Pty Ltd re Kotara Shopping Centre Expansion Project [2006] NSWIRComm 259*
- *Notification under section 130 by Unions NSW of a dispute with Alstom Colongra Gas Turbine Project STATEMENT [2009] NSWIRComm 211*
- *Request by Unions NSW and Newcastle Trades Hall Council for the assistance of the Industrial Relations Commission of New South Wales re Taggarts Wilpinjong Project [2011] NSWIRComm 164*
- *Request By Unions NSW And The Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Thiess Sedgman Joint Venture Bengalla Project [2012] NSWIRComm 32*
- *Matter No IRC 1466 Of 2010 Request By Unions NSW And Newcastle Trades Hall Council For Assistance Of The Industrial Relations Commission Of New South Wales Re Newcastle Coal Infrastructure Group 2AA*
And
2F Construction Site And Matter No IRC 572 Of 2010 NCIG Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd And Unions NSW And Affiliates
- *Request by Unions NSW for the assistance of the Industrial Relations Commission of NSW in prevention of industrial disputes – Mangoola Coal Project [2010] NSWIRComm 88*

Industrial Relations Commission of New South Wales

CITATION: Notification under section 130 by Bechtel Australia Pty Ltd of a dispute with Unions New South Wales and others re clause 32 in Enterprise Agreement [2007] NSWIRComm 1012

PARTIES: NOTIFIER
Bechtel Australia Pty Ltd
RESPONDENTS
Unions New South Wales
Newcastle Trades Hall Council
Australian Workers' Union, New South Wales
Australian Manufacturing Workers' Union
Construction, Forestry, Mining and Energy Union (New South Wales Branch)
Electrical Trades Union of Australia, New South Wales Branch
New South Wales Plumbers and Gasfitters Employees' Union
Transport Workers' Union of New South Wales

FILE NUMBER(S): 1094 of 2006

CORAM: Stanton C

CATCHWORDS: Coal loading facility - \$160 million infrastructure project - Port of Newcastle coal loading capacity increased by 13 million tonnes per annum - State project award - State enterprise agreement - site inspections - request to provide the Commission with a final report and review of project - communications, cooperation and consultation - 600,000 men hours worked - zero lost time injuries - zero lost time due to industrial disputation - project communications and safety awareness programs - mandatory personal safety plans - employee training - acceptance of "a fair go all round" - project completed eight months early - model for best practice - significant contribution to regional, state and national economic prosperity.

LEGISLATION CITED: Industrial Relations Act 1996

CASES CITED: Port Waratah Coal Services Project 3D Consent (State) Award [2005] NSWIRComm 420
Bechtel Australia Pty Ltd Port Waratah Coal Services Project 3D Enterprise Agreement [2005] NSWIRComm 434

HEARING DATES: 10/3/06, 2/5/06, 15/11/06, 13/2/07

DATE OF JUDGMENT: 23 February 2007

LEGAL REPRESENTATIVES: NOTIFIER

Ms E Morson, Australian Industry Group
Mr M Allen, Bechtel Australia Pty Ltd

RESPONDENT

Mr P McPherson, Unions New South Wales
also appearing for:
Newcastle Trades Hall Council
Australian Workers' Union, New South Wales
Australian Manufacturing Workers' Union
Electrical Trades Union of Australia, NSW Branch
Transport Workers' Union of New South Wales

DECISION:

- 1 -

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: STANTON C

Friday, 23 February 2007

Matter No. IRC 1094 of 2006

Notification under section 130 by Bechtel Australia Pty Ltd of a dispute with Unions New South Wales and others re clause 32 in Enterprise Agreement

STATEMENT

BACKGROUND

1 In April 2005, the Port Waratah Coal Services Limited Board (PWCS) approved the \$160 million 'Project 3D' Kooragang Coal Terminal expansion within the Port of Newcastle. At the time, the project was expected to complete in late 2007. The expansion comprised a fourth coal stockpile on Pad D with a capacity of over half a million tonnes, a fourth stacking stream consisting of two conveyors and an additional stacking machine, capacity improvement to the existing Pad C and upgraded water management and central control systems.

2 Upon completion, coal would be received from existing dump stations at a rate of 8,000 tonnes per hour with a consequent reduction in rail delays. PWCS operates two terminals; Carrington and Kooragang and receives, assembles and loads Hunter Valley coal for export to customers around the world. The expansion would boost the total ship loading capacity by 13 million tonnes per annum (mtpa) to 77 mtpa at Kooragang, increasing total capacity within the Port of Newcastle from 89 to 102 mtpa.

3 PWCS subsequently awarded an engineering, procurement, management and construction contract to Bechtel Australia Pty Ltd (Bechtel). Bechtel and its industrial relations advisor, the Australian Industry Group, convened a series of meetings with Unions New South Wales, Newcastle Trades Hall Council and affiliated construction unions to determine how best to approach industrial relations arrangements to govern construction work. Central to that consideration was the commitment of both PWCS and Bechtel to bring together their combined and substantial resources to deliver a project that would set a new

benchmark for construction in the Newcastle and Hunter region. The key components of that strategy were based upon the following principles:

Leadership

Committed and aligned teams and team members

Safe work environment, work methods and work practices

Commitment to shared, achievable project goals and objectives

Performance recognition

Excellent communications

Proven existing systems and processes across all aspects of the project

4 On 2 November 2005, his Honour, Deputy President Harrison made the *Port Waratah Coal Services Project 3D Consent (State) Award* [2005] NSWIRComm 420 with effect from 1 October 2005 to remain in force until 1 October 2008. The parties bound by that consent award were:

Australian Industry Group (on behalf of all contractors engaged on work that fell within the application and scope of the award)

Bechtel Australia Pty Ltd

All employees of contractors engaged on the Port Waratah Coal Services 3D Project, whether members of the organisations listed below or not:

Unions New South Wales

Newcastle Trades Hall Council

The Australian Workers' Union, New South Wales

The Australian Manufacturing Workers' Union, registered as the AFMEPKIU

The Construction, Forestry, Mining and Energy Union (NSW Branch)

The Electrical Trades Union of Australia, NSW Branch

The New South Wales Local Plumbers and Gasfitters Employees Union

The Transport Workers' Union of New South Wales

5 The award provided the certainty, structure and jurisdiction of the New South Wales *Industrial Relations Act* 1996 whilst the enterprise agreement gave legal empowerment and enforcement not otherwise available to the commitments and agreements of the parties.

6 The two industrial instruments made pursuant to the New South Wales *Industrial Relations Act* operate together to provide a single line of authority thus avoiding confusion, uncertainty and misunderstanding which arises from the application of a multiplicity of cross jurisdictional industrial instruments. Within that framework of industrial stability the parties were able to direct their attention and energies to the issues of safety and productivity.

7 On 18 November 2005, his Honour approved the *Bechtel Australia Pty Ltd Port Waratah Coal Services Project 3D Enterprise Agreement* [2005] NSWIRComm 434 pursuant to the New South Wales *Industrial Relations Act*, with effect from 1 October 2005 to remain in force until 1 October 2008. That agreement was made between Bechtel, Unions New South Wales, Newcastle Trades Hall Council and Unions party to the consent award.

8 The enterprise agreement provided for a monthly site communications meeting for union delegates and a monthly meeting of employees. I note that arrangements were put in place between the parties for the listing of dispute proceedings immediately after each monthly meeting, as required, in order that any issues could be dealt with expeditiously by Newcastle based members of the Commission.

9 On 10 March 2006, his Honour convened a compulsory conference following the notification of this industrial dispute which concerned the application of top-up workers' compensation insurance provisions under the enterprise agreement. Simply put, the parties sought the assistance of the Commission following advice that insurance underwriters were only able to offer limited top-up cover. That dispute was subsequently resolved and the matter was adjourned for further conference and site inspections.

10 His Honour and the Commission as presently constituted conducted site inspections on 2 May and 15 November 2006. Those inspections comprised presentations concerning construction progress, project safety and performance, contractor-employee issues, site communications, project leadership and employee training.

11 The inspections provided the Commission with a first-hand opportunity to view construction progress and canvass project related issues with representatives of Bechtel, contractors, union officials, delegates and employees together with representatives of the Peak Councils, Unions New South Wales, Newcastle Trades Hall Council and the Australian Industry Group.

12 The matter was allocated to the Commission as presently constituted on 12 December 2006.

13 On 31 January 2007, the Australian Industry Group, on behalf of the parties to the project consent award and enterprise agreement filed the following notification with the Industrial Registrar:

The Port Waratah Coal Services Project 3D formally concludes today, 31 January 2007. Given the close involvement, assistance and interest of the Industrial Relations Commission of New South Wales throughout all phases of this project, the parties wish to provide the Commission with a final report and review of the project and the operation of the *Bechtel Australia Pty Ltd Port Waratah Coal Services Project 3D Enterprise Agreement 2005* and also, the *Port Waratah Coal Services Project 3D Consent Award 2005*.

14 In accordance with the request of the parties, the matter was subsequently listed for report back on Tuesday, 13 February 2007.

Appearances

15 Mrs E Morson appeared on behalf of the Australian Industry Group. Mr M Allen appeared on behalf of Bechtel Australia Pty Ltd. Mr P McPherson appeared on behalf of Unions New South Wales, Newcastle Trades Hall Council, the Australian Workers' Union, New South Wales, the Australian Manufacturing Workers' Union, registered as the AFMEPKIU, the Electrical Trades Union of Australia, NSW Branch and the Transport Workers' Union of New South Wales.

SUBMISSIONS

Australian Industry Group

16 Mrs *Morson* confirmed that the Port Waratah Coal Services Project 3D formally concluded on 31 January 2007 and submitted the parties were eager to provide the Commission with a final report and review of the Project, given the close involvement, assistance and interest of the Commission.

17 Mrs *Morson* stated that construction work under the \$160 million project began in October 2005, concluded eight months ahead of schedule and significantly under budget. The project had been afforded success on many fronts with good industrial relations and safety playing a key role in that success.

18 Mrs *Morson* submitted that the very strong commitment of PWCS, Bechtel, contractors, unions and employees to safety that resulted in zero lost time injuries over more than 600,000 man hours and no lost time due to industrial disputes *"was a fantastic result and almost unheard of on a construction project of this size and achieved through the commitment of all the parties to the approach that 'if it's not safe don't do it that way'."*

19 Mrs *Morson* identified some of the key achievements of the project beyond the significant achievement in terms of safety and industrial harmony:

Achievement of 99 per cent local labour and a peak workforce of 300 employees in October 2006;

470 employees and 21 local contractors engaged over the life of the project;

implementation of a recognition and rewards system to encourage input and ideas from employees. This system focused on reinforcing positive relationships and recognition of employee effort in the success of the project. Employee recognition took the form of project-themed caps, restaurant dinners or a work group BBQ;

employee training and skill improvement projects where 22 employees successfully attained WorkCover accreditation and ticketing. Five electricians attained instrumentation certificates and all electrical personnel participated in electrical awareness training.

20 Mrs *Morson* asserted that the Stage 3D Project had built upon the success of a number of recent construction projects in the region including the Tomago AP22 and Hydro Aluminium Smelter Upgrade and Retro-fit Projects and she submitted the existing cooperative relationships between the parties had strengthened:

There exists within the region excellent working relationships between Unions New South Wales, Newcastle Trades Hall Council, affiliate unions, employers and the employer groups - relationships built on the basic tenets of communication and cooperation facilitated by the making of the project award and enterprise agreement and ready access to the Commission for conciliation, mediation and dispute resolution.

21 On behalf of the Australian Industry Group and the Bechtel PWCS Project 3D team, Mrs *Morson* took the opportunity to thank Unions New South Wales, Newcastle Trades Hall Council and affiliate Unions for their leadership and cooperation on the project, from the initial stages of discussion and negotiation through to the monthly meetings and site inspections. In that regard, she stated the following:

The success of the Stage 3D Project and other recent projects demonstrates the industrial harmony and stability that exists in this region. This is something that everyone involved in the project can be proud of and something that cannot be overstated. This harmony and stability is a competitive advantage to the region providing future investors with confidence and acts as a conduit to further investment and regional prosperity. We would like to thank

the Commission for its involvement and interest in this project. While there has been zero lost time as a result of industrial disputation, the Commission has still had a role to play and its assistance has been invaluable. The physical proximity of the Commission, its regional knowledge and ability to list matters quickly and engage (the parties) has been of particular assistance to the project.

22 Finally, Mrs *Morson* submitted she was pleased to be in a position to report and formally advise the Commission that the Port Waratah Coal Services Project 3D had concluded. She said "*the parties had achieved much and learnt a lot from the project's construction philosophy as well*". From the Australian Industry Group's perspective, it was her hope that the success of this project would result in additional infrastructure investment in the region. The relationships of communication, cooperation and consultation had certainly created a firm base to underpin safety and employee relations on the project.

Bechtel Australia Pty Ltd

23 Mr M *Allen* was the Bechtel Employee Relations and Industrial Relations Manager for Project 3D. He endorsed the submissions of Mrs *Morson* and articulated what he believed were the significant factors central to the project's success:

The skills, competencies and commitment of the team put together to execute the project.

The process systems and methodologies used including a favourable construction schedule, excellent planning, project controls and attention to detail.

The commitment to the achievement and demonstration of the leadership philosophy and model used to establish the project's culture and work environment through the engagement and inclusion of everyone involved together with the training given to all employees involved so as to ensure they understood this culture and could measure its execution.

The commitment to and achievement of a safe work environment through the use of a wide range of safety tools, systems and processes.

The implementation of a people-based safety program, the unequivocal pursuit of zero incidents and the use of personal safety plans. Arguably, the most important of all was the engagement and participation of every person on the project in the safety program.

The establishment of a 360 degree open, simple, timely, effective and informative communication program.

The willingness of the project leadership team to encourage, recognise and reward individual team and work group suggestions. Contribution, performance and achievement through the project's performance excellence program.

The use of local contractors on the project.

The adoption of process assistance methodologies and programs and their capacity to contribute innovative and creative ideas for consideration and adoption across the project.

The relationships established with local external providers in kindred organisations that led us to achieve the excellent results of zero industrial disputation and zero time lost to any industrial disputes.

24 Mr *Allen* stated that after a decade of Australian and international experience working with Bechtel, Project 3D was the first where both zero lost time injuries and zero industrial

disputation have been achieved.

25 Mr *Allen* acknowledged the value of the underpinning award and enterprise agreement. He submitted the resultant cooperative and consultative framework provided a work environment where all parties could participate in a contributory manner to the safety, productivity and work environment:

The most important facet of any project or any activity we get involved with in our organisation is to ensure that we all come to work eager to work in a good work environment. One that's safe and that we can expect to go home as safe as when we came to work but having learnt a bit more about ourselves and our capacity to do things. It's extremely satisfying that nobody was hurt on this project to the extent that required recordable injury or lost time injury, an incredible effort and exciting actually, because hopefully that has demonstrated to people in this part of the world that these things are possible. They're not pie in the sky, they're not management gimmicks for want of a better expression or platitudes trotted out for everybody to gain some kudos. But we're talking about more tangible things, people not being hurt, being able to work in a cooperative framework that allows people to have their point of view, be different, be acknowledged for being different, yet be heard and have those issues dealt with and dealt with expeditiously and without rancour, so it has been a very impressive project.

26 Mr *Allen* explained the significance of the communications strategy towards the project's success in the following terms:

... one of the keys to that was that communications program I talked about. We got together every month and there was never an opportunity for anything to get out of hand. The monthly review activities that we had were very beneficial and dealt with any issues ... The people-based safety program and all those things ... the employees themselves never once said why should we not get involved, they'd just say, "Yeah, we'd be happy to get involved". The one-on-one observation program, the planned job observation program where individuals observed one another in doing their work and executing that work was an invaluable tool. In a lot of other projects there has been quite a deal of resistance from a number of quarters in wanting to adopt this approach because of the "old thought process of dopping in your mate". However, this is a no blame process and clearly achieved the goal we set which was a safe work environment and zero incidents. We've proved that can be done. It takes cooperation, it takes commitment. The client has got to take a reasonable pat on the back for that as well because they created the environment for us, the managing contractor, to then share with the rest of the contracting workforce, the Unions, the Commission and everybody else.

Unions New South Wales and Newcastle Trades Hall Council

27 Mr *McPherson* supported the submissions of Mrs *Morson* and Mr *Allen*. He submitted the project was the product of the relationships that existed between the parties, including Port Waratah Coal Services, Bechtel, the Australian Industry Group and the Unions represented by Unions New South Wales and Newcastle Trades Hall Council. In addition, he submitted that the affiliated unions on the project, the Australian Workers' Union, Australian Manufacturing Workers' Union, the Construction, Forestry, Mining and Energy Union, Construction Division, the Electrical Trades Union, the Plumbing Gasfitters Employees Union and the Transport Workers' Union and their membership engaged on the project played a positive and constructive role.

28 Mr *McPherson* stated that from the Unions' perspective a key component of the project's success was the close relationship between the parties built on "*the three pillars*"

communication, cooperation and consultation". That success reflects the leadership, professionalism and dedication of the union officials involved, union delegates, representatives of the Australian Industry Group and Bechtel. The fact that some 99 per cent of contractors engaged on the project were Newcastle and Hunter Valley based was also significant.

29 Mr *McPherson* submitted that the Industrial Relations Commission of New South Wales was a significant positive contributor to the success of the project in the discharge of its jurisdiction afforded by the *Industrial Relations Act*.

30 Mr *McPherson* gave strong support to the project's ethos that "*all accidents are preventable*" and complimented the efforts of management, union officials and employees who were committed to the sustainable achievement of "*Zero Incident Performance*" through continuous improvement practices and statutory compliance.

31 Mr *McPherson* complimented the communications program undertaken on site in the form of project newsletters and safety awareness programs and literature distributed throughout the project by Bechtel and the safety teams. He referred to the tendered materials where the following project safety objectives were canvassed with regular vigour and enthusiasm:

Promote environmental, safety and health objectives as a constant value in designing, planning, training and executing work.

Spread ownership and enhance employee awareness and involvement in environmental, safety and health program implementation.

Optimise the use of continuous improvement practices as the basis for Zero Incident Performance initiatives.

Select subcontractors that are committed to Zero Incident Performance.

Recognise and reward excellence in environmental, safety and health performance.

32 With reference to the achievement of zero lost time due to industrial disputation, Mr *McPherson* submitted:

We did have our problems at different times but like I said earlier on, through the leadership ... and the professionalism of the parties we were able to sit down and discuss those matters and resolve them without any lost time. In the 16 years that I've been a union official and in the 18 years I've been an electrical tradesman, I've never seen a project of this nature that has enjoyed no lost time.

33 Mr *McPherson* referred to the attainment of zero lost time due to industrial disputation and lost time injuries and submitted that result was one that all parties could be proud of.

34 Mr *McPherson* concluded by stating that Unions New South Wales and Newcastle Trades Hall Council would not have any problems recommending the model used for the 3D project for future projects in the Hunter Valley, New South Wales or indeed elsewhere within Australia given its outstanding success.

35 Material tendered by Mrs *Morson* in proceedings and marked MFI 6 contained a series of monthly Project 3D site newsletters setting out a range of construction related news, project milestones, safety management and employee relations initiatives.

36 In submissions, the parties informed the Commission that in addition to setting specific construction goals, PWCS had also set down strict guidelines concerning all aspects of project safety management consistent with its commitment to the occupational health and safety of its own employees and those of contractors working within its coal handling operations.

37 The Commission has observed that the client's expectations insofar as safety was concerned were articulated in a very clear and unequivocal "Message to Employees" contained in the December 2005 *Newsletter* published shortly after the commencement of construction work where PWCS General Manager, Mr G Davidson stated:

The recent launch of project 3D underlines the importance of PWCS Kooragang Operations to the success of the Hunter Valley coal system. The facilities at the Newcastle Port provide the platform for successful delivery of coal to the rest of the world and this expansion will ensure that the continuing growth in demand can be met.

With demand increasing rapidly we need to ensure that the expansion is completed in a timely manner. But this cannot be at the expense of your safety. **Production never comes before your safety at PWCS. If an activity carries an unacceptable level of risk, you have been authorised to stop what you are doing and stay stopped until the risk is adequately addressed.** Work with your team mates and supervisors to develop safe methods before restarting.

We do not operate systems that carry an unacceptable risk of hurting somebody. We won't expose our workforce to risk which we would find unacceptable for our family, friends and colleagues. [emphasis added]

38 Mr Davidson's strong message to employees was reinforced by comments from the PWCS Project Manager, Mr O Scott in the same *Newsletter*:

We have a great opportunity to deliver an expanded facility to PWCS that will be seen as best practice in project delivery. How can we do that? In the main by continuing the great safety efforts to date and ensuring that no one gets hurt. This is challenging - and achievable - through the constant effort of everyone involved. **We must maintain our focus on safety while we deliver a quality product that meets the needs of PWCS Operations and Maintenance.** [emphasis added]

We must remember that we are carrying out construction work within an operating plant that has extra hazards to those we normally associate with construction. Please be aware of the activity in the area where you are working and seek assistance and guidance in dealing with these different hazards.

39 Bechtel's vigilance towards safety was exemplified in the December 2005 *Newsletter* where Project Manager, Mr D Elsdon wrote the following "Message to Employees":

Project 3D offers us an opportunity to build on the great work carried out in the previous Stage 3 Expansion and to once again deliver a successful project to PWCS.

Our main focus on this project must be to **carry out all project activities safely to ensure that every person on this project returns home safely to their families every day.**

Equally important is focus to ensure that the project facilities are constructed safely and that they are safe to operate and maintain.

I encourage you all to maintain the same safety awareness in and around the home.
[emphasis added]

40 The client's resolve that all employees had authority to stop work where that work carried an unacceptable level of risk was reaffirmed by Mr Elsdon in the August 2006 *Newsletter*. In my daily walk-around I see many examples of good task planning and work execution incorporating our project safety initiatives.

However as we experienced recently, despite all this excellent work and effort, it takes but a moment for someone to get hurt. I urge all my fellow team members to remain vigilant and be alert to opportunities to identify patterns and risks and to take immediate action to eliminate them. **You have the authority to stop the work and fix the problem.** [emphasis added]

CONCLUSION

41 The parties have presented the Commission with a series of comprehensive reports universally supporting the success of the PWCS Stage 3D expansion project. There was zero lost time injuries and zero time lost to industrial disputation. The project was completed eight months ahead of schedule and below original budget estimates.

42 From the project's commencement, there was a very strong and unequivocal message to employees from PWCS and Bechtel: *"If an activity carries an unacceptable level of risk, you have been authorised to stop what you are doing"*. In that regard, the various statements and messages of senior PWCS and Bechtel management set out in the project Newsletters provide a very poignant reminder that communication and leadership are important drivers in the achievement of a sustainable safety culture in the construction industry.

43 A zero incident team was established to facilitate a continuous process of improvement, participation, communication and co-operation in project safety and 26 team meetings were conducted. The identification of hazards, assessment of risks and the development and implementation of controls using the job safety analysis tools were an integral part of project safety management. A total of 2,224 formal on-the-job observations were conducted.

44 The majority of contractors, some 99 per cent were Newcastle or Hunter Valley based. Significant training was undertaken by employees engaged on the project. Approximately 350 employees received compulsory leadership and team member training. Some 22 employees received WorkCover accreditation for the operation of elevated work platforms, forklifts and mobile cranes. Five electricians received instrumentation certificates. Apprentices were also engaged on the project.

45 During the course of the site inspections the Commission was most impressed by the mandatory induction program requirement that all employees write their own personal safety plan for the project setting out how they proposed to keep themselves and their fellow workers safe whilst at work. These safety plans were prominently displayed within contractor meeting rooms and crib facilities across the project.

46 The parties variously submitted that Project 3D had built upon the success of past projects including the most recent Hydro Aluminium project in 2004/05 where Unions New South Wales, the Newcastle Trades Hall Council and affiliated Unions party to the Hydro

Aluminium project agreement, provided enormous leadership and goodwill over the life of that project amidst some often difficult industrial circumstances. That project was, on balance, a resounding success on all accounts and must auger well for further strategic investment in the Hydro Aluminium Kurri Kurri Smelter.

47 Having considered the submissions of the parties it is readily apparent that the success of Project 3D and the other projects referred to by the parties was very much built upon the three pillars, described by Mr McPherson and Mrs Morson as "*communication, consultation and cooperation*".

48 It is very evident to the Commission that the development of consultative and cooperative relationships between the Peak Councils, the Unions, Bechtel, contractors and employees based on mutual respect, trust and a preparedness to consider alternative viewpoints has materially contributed to the impressive safety and industrial relations achievements of the project.

49 It is also very evident that the industrial instruments of this Commission that governed construction work on the project and the enthusiastic commitment and cooperation of all parties have also materially assisted the reality and acceptance of "*a fair go all round*" to employees and contractors alike.

50 Parties to the *Port Waratah Coal Services Project 3D Consent (State) Award 2005* and the *Bechtel Australia Pty Ltd Port Waratah Coal Services Project 3D Enterprise Agreement 2005* have clearly demonstrated that the commitment to communication, cooperation and consultation is a model for best practice in the construction industry.

51 Consistent with the comments of Mr McPherson, this project is one where all parties can be justifiably proud and satisfied that their commitment and participation, within a cooperative and consultative framework, has produced a positive result for the client, contractor, subcontractors, unions and employees in delivering an important infrastructure project with a very significant contribution to regional, state and national economic prosperity.

52 This matter is now concluded.

J D Stanton
Commissioner

Industrial Relations Commission of New South Wales

CITATION: Newcastle Trades Hall Council v Westfield Design & Construction Pty Ltd re Kotara Shopping Centre Expansion Project [2006] NSWIRComm 259

PARTIES: Newcastle Trades Hall Council, Unions NSW, Construction, Forestry, Mining and Energy Union (NSW Branch), Electrical Trades Union of Australia, NSW Branch, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales.
Westfield Design & Construction Pty Ltd

FILE NUMBER(S): IRC 1275 of 2006

CORAM: Harrison DP

CATCHWORDS: Notification pursuant to s130 of a dispute - s 146A agreement - consent project award - productivity allowance - fair and reasonable terms of employment

LEGISLATION CITED: Industrial Relations Act 1996
Workplace Relations Act (Cwth) 1996

HEARING DATES: 10/8/06

DATE OF JUDGMENT: 08/10/2006

EXTEMPORE JUDGMENT 08/10/2006

DATE:

LEGAL REPRESENTATIVES: **APPLICANTS**
Mr P McPherson Unions NSW
Mr R Alexander ETU
Mr D Wallace AFME&PKIU

RESPONDENT
Mr A Foster
Newcastle Master Builders Association

JUDGMENT:

- 2 -

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: HARRISON DP

10 August 2006

Matter No IRC 1275 of 2006

Notification under section 130 by Newcastle Trades Hall Council of a dispute with Westfield Design & Construction re Kotara Shopping Centre Expansion Project

DECISION

[2006] NSWIRComm 259

1 This matter arises pursuant to notification on 7 March 2006 by the Newcastle Trades Hall Council (NTHC) of a dispute pursuant to section 130 of the *Industrial Relations Act 1996* ("the Act"). The notification advised of a dispute with Westfield Design & Construction Pty Ltd ("Westfield") concerning the Kotara Shopping Centre Expansion Project ("the Project").

2 The matter was subject to compulsory conference proceedings on 16 March, 14 July, 4 August and 10 August 2006.

3 Mr P McPherson appeared on behalf of NTHC, Unions NSW and Construction, Forestry, Mining and Energy Union (NSW Branch) (CFMEU). Mr R Alexander appeared on behalf of The Electrical Trades Union of Australia, NSW Branch (ETU). Mr D Wallace appeared on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales (AFME&PKIU). Mr A Foster of the Newcastle Master Builder's Association appeared on behalf of Westfield with Ms M Wood, Solicitor of Holding Redlich Solicitors, Mr R Finlayson and Mr M Chase.

4 Mr McPherson tendered an agreement reached between the parties pursuant to s 146A of the Act (exhibit 1) confirming the jurisdiction of the Commission to resolve the matter in accordance with all powers and functions afforded the Commission by the Act. This referral agreement remains in force until completion of the project or until rescinded or terminated by written agreement between the parties and, so far as necessary or applicable, is an election to alternate dispute resolution in accordance with model dispute resolution processes of Part 13 of the *Workplace Relations Act (Cwth) 1996* ("the WR Act").

5 This was confirmed by Mr Foster on behalf of Westfield.

6 The Project is a major extension of an existing shopping centre within the Westfield Group. The Project is valued at \$140 million and will engage up to 400 employees over an 18 month construction period scheduled for completion in November 2007.

7 Mr McPherson, supported by Mr Alexander and Mr Wallace, submitted that the parties had reached agreement on settlement of the substantive issues, the detail and terms of which are contained in a document titled "Westfield Design & Construction Pty Ltd Kotara Redevelopment Project Award" (exhibit 2) ("the Project Award"), which he put is advanced by consent of the parties.

8 Mr Foster enunciated the consent of Westfield to the Project Award.

9 The Project Award is a comprehensive industrial instrument founded upon safety, consultation, efficiency and productivity, supported by a project productivity allowance of two dollars per hour, dispute resolution procedures, productivity initiatives, and conditions of employment which are fair and reasonable in accordance with s 10 of the Act; and a no extra claims provision.

10 The Project Award is made by consent of the parties to apply from 17 March 2006 until practical completion of the Project as defined by cl 4.9 of the Project Award.

11 It is appropriate to note the goodwill, communication and cooperation between the parties which assisted them in addressing a number of difficult issues during the course of these proceedings, resulting in their agreement pursuant to s 146A of the Act, and the consequent industrial instrument providing a formula for success of the Project.

12 Matter No IRC 1275 is so concluded.

oo0oo

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: HARRISON DP

16 December 2009

Matter No IRC 394 of 2008

Notification under section 130 by Unions NSW of a dispute with Alstom Colongra Gas Turbine Project

STATEMENT

[2009] NSWIRComm 211

- 1 The genesis of these proceedings was a request by Unions NSW for the assistance of the Commission during the construction of the Colongra Gas Turbine Project by Alstom Power Systems.
- 2 The parties advised that they were not in conflict but relied upon the wider definition of "dispute" found in the dictionary to the *Industrial Relations Act 1996* ("the Act") which includes inter alia a "question or difficulty about an industrial matter", to access the jurisdiction and assistance of the Commission.
- 3 The Colongra Gas Turbine Project, adjacent to Munmorah Power Station on the Central Coast of New South Wales, commenced in the latter part of 2007 and is now complete, with the handover of four gas fuelled electricity generating units to Delta Electricity.
- 4 The principal contractor was Alstom Power Systems ("Alstom") which, at the outset of the project, entered into the *Alstom Power Limited Colongra Gas Turbine Project Union Collective Agreement 2007-2010* ("the Agreement"), an industrial agreement made between Alstom and Unions NSW and affiliates pursuant to the *Australian Workplace Relations Act*, which nominated the Commission as presently constituted as the dispute resolution provider.
- 5 The Agreement was supported by a comprehensive employee relations management plan and a fitness for work policy and procedure document.
- 6 Forty seven companies contracting on to the site embraced the co-operative model of industrial relations set out in the Agreement, all adopting a common dispute resolution process.

- 7 This matter has been on foot since the inception of the project as the means by which the Commission could assist the parties by quick response to dispute resolution.
- 8 These proceedings were concluded in a final report back on 8 December 2009.
- 9 Mr P McPherson of Unions NSW appeared on behalf of Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch (AMWU); Construction, Forestry, Mining and Energy Union (NSW Branch) (CFMEU); Electrical Trades Union of Australia, NSW Branch (ETU); Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU); and the Transport Workers' Union of New South Wales (TWU). Mr T Callinan appeared for The Australian Workers' Union, New South Wales (AWU).
- 10 Mr G Gardner appeared on behalf of Alstom Power Systems.
- 11 Mr McPherson noted that during the course of the Project there were approximately 18 monthly communication meetings held on a regular basis, which he put allowed parties to identify and resolve issues.
- 12 The Commission attended site communication meetings on five occasions throughout the Project and conducted two conference proceedings off-site.
- 13 Other than three specific issues all matters were resolved by the parties, the three exceptions were resolved in conciliation.
- 14 The Commission was not required to determine any matter, which is a credit to the parties, all of whom displayed a responsible and mature approach to issues.
- 15 The union officials regularly involved in the Project with Mr McPherson were Mr A Wardrope for the ETU; Mr P Auimatagi for the CFMEU; Mr T Callinan for the AWU; Mr D Wallace for the AMWU; and Mr S McCarney for the CEPU.
- 16 Mr McPherson acknowledged the constructive approach and contribution of officials and delegates of the unions involved.
- 17 This was supported by Mr Gardner, who acknowledged that in any project of this size and complexity issues will arise, submitting that the goodwill of the parties involved in this project fostered resolution in a very professional manner.
- 18 Mr Gardner provided the following employee highlights for the Project, noting that this was the first occasion upon which Alstom had applied a zero tolerance for alcohol and drug screening, which he put worked extremely well.
- 19 Mr Gardner put that:

"Once employees understood what they needed to do there was excellent compliance".

Employee Relations Highlights (October 2007 - November 2009)

- 1268 Pre-employment medicals and drug screens were conducted during the life of the project.
- Over 1100 employees worked on the site from October 2007 to November 2009.
- In May 2009 employee numbers on site peaked at 350.
- Average number of employees on a daily basis over the two year period was around 230
- There were 16 Monthly Employee and Union Communications Meetings
- 47 Contractors worked onsite and there were 47 workplace agreements certified
- The Unions signatories to those Workplace Agreements were the AWU; AMWU; CFMEU; ETU; CEPU; and TWU. The first four unions represented the bulk of the employees on site.
- 72 whole days were lost due to wet weather over project life
- Units 1 & 2 were Commissioned and handed over to Delta Energy on the 27th August 2009
- Units 3 & 4 were Commissioned and handed over to Delta Energy on the 30th November 2009

SAFETY STATISTICS

- Average Number of Persons 294
- Number of Inductions 1059
- Total Project Days 759
- Lost time injury free days 533
- Best lost time injury-free days 533
- Project hours to date 936,176
- Lost time injuries 1
- Days lost to lost time injury 3
- Number of medical treatments 5
- Number of first aid treatments 101
- Near hit reports 155
- Incident reports 111
- Property damage incidents 14
- Environmental incidents 19
(all minor on-site reversible)
- 60 Safety Awards presented by the Committees and the Project Safety Review Group for hazard reporting / identification.

20 Mr Gardner noted that all of the 47 contractor agreements were negotiated independently from Alstom, observing that the resultant system of having a commonality of approach in a co-operative, un-coerced way worked very well.

- 21 The parties are congratulated on their approach to this project and the outcomes achieved. I acknowledge the submission of Mr McPherson that this Project has delivered an important and valuable asset to the people of New South Wales.
- 22 The safety program is especially commendable. Of particular note are the 60 safety awards, an initiative developed by the parties on the suggestion of the unions in the consultative process, which is further evidence of the positive and co-operative relationships developed and applied on the Project.
- 23 The safety and industrial record reflects credit upon employees, management and trade unions, all of whom co-operated positively in achieving site objectives, expressed in the industrial agreements, of the achievement of common goals through communication and consultation with an emphasis on safety which flows to efficiency, productivity and job satisfaction.
- 24 Matter No IRC 394 of 2008 is so concluded.

SAFETY STATISTICS

384	Average Number of Persons
1092	Number of Injuries
729	Total Project Days
523	Lost time injury-free days
523	Best lost time injury-free days
928,178	Project hours to date
1	Lost time injuries
2	Days lost to lost time injury
0	Number of medical treatments
101	Number of first aid treatments
159	New hit reports
111	Incident reports
14	Property damage incidents
12	Environmental incidents
	(all minor on-site incidents)
	60 Safety Awards presented by the Committee and the Project Safety Review Group for hazard reporting & identification
	Mr Gardner noted that all of the 47 contractor agreements were negotiated independently from Astor, assuring that the resultant system of having a consistency of approach in a cooperative and co-ordinated way worked very well.

Industrial Relations Commission New South Wales

Medium Neutral Citation

Request by Unions NSW and Newcastle Trades Hall Council for the assistance of the Industrial Relations Commission of New South Wales re Taggarts Wilpinjong Project [2011] NSWIRComm 164

Hearing Dates

1 March 2011, 6 July 2011, 12 December 2011

Decision Date

14/12/2011

Jurisdiction

Industrial Relations Commission

Before

Harrison DP

Decision

Matter concluded

Catchwords

Coal plant expansion additional 2 million tonnes per annum - completed on schedule - no lost time due to industrial disputes - zero lost time injuries - value of agreement framework for communication and issue resolution client satisfaction

Category

Principal judgment

Parties

Unions NSW

Newcastle Trades Hall Council

Taggart Australia Pty Ltd

Unions NSW and Newcastle Trades Hall Council (Applicant)

Mr J Brickett

Senior Project Manager (Respondent)

File Number(s)

IRC 1476 of 2010

1. The notification in this matter arose pursuant to a request by Unions NSW and Newcastle Trades Hall Council (NTHC) for the assistance of the Commission during the Wilpinjong CHPP Expansion Project ("the Project") by Taggart Global Pty Ltd ("Taggart").
2. Taggart Global Pty Ltd (Taggart) currently have projects in Russia, China, USA, Brazil, Canada, and South Africa. This is the first project by Taggart in Australia.
3. The estimated contract value of this project is \$65,998,081 and will add two million tonnes to the current twelve million tonnes per annum of production. The site is shared with Thiess who carry out contract mining for Peabody Coal Australia.
4. Industrial regulation on the Project is in accordance with the *Taggart Global Australia Pty Ltd Wilpinjong CHPP Expansion Project Union Greenfield Agreement 2010-2012* (AE883115 PR515368) ("the Agreement"). Clause 30, Settlement of Disputes of

the Agreement is the model dispute resolution process available on the Industrial Relations Commission of New South Wales website utilising s 146B of the Industrial Relations Act 1996 ("the Act").

5. Pursuant to that procedure Commissioner Stanton inspected the site at the request of the parties on 1 March 2011. The Commission as presently constituted undertook inspection on 6 July 2011.
6. The matter was subject to final report back on the Project on 12 December 2011 before the Commission as presently constituted. Mr J Brickett, Senior Project Manager for Taggart, appeared with Mr E Dudin, Assistance Project Manager. Mr P McPherson of Unions NSW appeared on behalf of the Peak Council and affiliated unions.
7. Mr Brickett reported that the project had achieved performance completion on schedule and identified highlights of the Project, which was completed without any lost time due to industrial disputes, as including:
 - Awarded Contract on September 17 th , 2010
 - Practical Completion date of October 15 th , 2011
 - Performance Completion date of November 30 th , 2011
 - Developed and signed Model Agreement
 - Over 320,000 man-hours worked
 - Over 650 inductions
 - ZERO lost time injuries
 - Conducted monthly communications meetings
 - Main contractors included
 - Illawarra Engineering Services
 - Whitten Brothers
 - IPower
 - O'Donnell Griffin
 - Hardy Brothers
 - Retaining Solutions
8. Mr McPherson advised that there had been eight site communication meetings held over the life of the Project with increasing participation in each meeting.
9. The parties jointly advised that the client Peabody had recently written to all contractors, subcontractors and their employees engaged in the Project, conveying their satisfaction with the outcome and enclosing a small token of appreciation for the contribution of all concerned.
10. The parties acknowledged that the industrial agreement provided an effective framework for communication and issue resolution that contributed positively to the success of the Project.
11. Mr Brickett acknowledged the value of good working relationships which further contributed to the success of Taggart's first Australian project.
12. The parties are congratulated on the success achieved. The efficient completion of this Project further enhances the capacity of the Hunter Valley Coal Chain to contribute to the economy, which is of National, State and Regional significance.
13. Matter No IRC 1476 of 2010 is so concluded.
14. **Representation** Mr P McPherson



**Industrial Relations Commission
of New South Wales**

Case Title: Request By Unions NSW And The Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Thiess Sedgman Joint Venture Bengalla Project

Medium Neutral Citation: [2012] NSWIRComm 32

Hearing Date(s): 20/4/12

Decision Date: 26/4/12

Jurisdiction: Industrial Relations Commission of New South Wales

Before: Harrison DP

Decision:

Catchwords: Coal Industry Expansion Project - section 146B disputes procedure - project completion ahead of schedule, on budget, no lost time due to industrial matters. Successful proactive industrial relations, mutual respect and communication.

Legislation Cited: Industrial Relations Act 1996

Category: Principal

Parties: Unions NSW
Newcastle Trades Hall Council
Thiess Sedgman

Representation

Mr P McPherson, Unions NSW
Mr P Meyer, Thiess Sedgman

File number(s): IRC 1469 of 2010

Publication Restriction:

DECISION

1. The notification in this matter arose pursuant to a request by Unions NSW and Newcastle Trades Hall Council (NTHC) for the assistance of the Commission during the construction of the Bengalla Coal Mine, a Thiess Sedgman Joint Venture Project ("the Project").
2. Industrial regulation on the site was in accordance with the *Thiess Sedgman Joint Venture Bengalla CHPP Upgrade Project Union Collective Greenfield Agreement 2010* (AE883117 PR505369) ("the Agreement"). Clause 30, Settlement of Disputes nominated the Industrial Relations Commission of New South Wales (IRC) as the dispute resolution provider in exercise of functions and process for Project communication and consultation. Pursuant to the Agreement the parties sought the assistance of the Commission to conduct a site inspection and conference.
3. The *Walz Construction Company Pty Ltd Bengalla CHPP Upgrade Project Greenfields Agreement 2011* (AE885044 PR508287) also applied to the site, nominating the IRC as the dispute resolution provider.
4. Commissioner Stanton conducted an inspection and conference on 29 March 2011.
5. The Commission as presently constituted undertook inspection and conference on 5 July 2011 and a Statement subsequently issued.
6. Further conference took place on 20 April 2012. Mr McPherson appeared on behalf of Unions NSW and NTHC. Mr P Meyer, Project Manager, appeared on behalf of Thiess Sedgman with Mr J Kosanovic, Construction Manager.
7. The Thiess Sedgman Joint Venture is a combination of Sedgman, with over 30 years' experience in CHPP design, and the 76 years of experience of Thiess in construction and project management.

8. The Project is now successfully completed 41 days ahead of schedule and within budget.
9. The Project involved the expansion of the Coal Handling Preparation Plant (CHPP) to 10.7 million tonnes per annum capacity; and associated works, including the addition of a second module and Run of Mine (ROM) upgrade.
10. The Project value was to the order of \$84 million, of which some \$38 million was on site construction work.
11. The Project adopted critical success factors in the following terms:
 1. Workplace free of incidents and injuries
 2. Delivered on time
 3. Achieve plant performance guarantees
 4. No unscheduled interruptions to the existing operations
 5. Demonstrate good project execution - including communication with and to all stakeholders
 6. Minimise CHPP shutdown durations
12. The Thiess Sedgman Joint Venture has adopted a commendable leadership philosophy and employee relations strategies:
 - i. TSJV Commitments & Leadership Philosophy
 1. Our commitment is to:
 13. Provide a workplace free of incidents and injuries
 14. Demonstrate leadership
 15. Ensure legislative compliance
 16. Integrate risk management in all phases of the project
 17. Communicate appropriately with all stakeholders
 18. Train and develop the workforce
 19. Manage fatigue and fitness for work requirements
 20. Review subcontractor compliance through regular audits
 21. Manage any grievances or concerns raised in an appropriate timeframe, ensuring industrial harmony on site
 - i. ER Strategy
 - EBA
 22. Developed a model agreement
 - HR/ER Management Plan
 23. Ensure legislative and site culture compliance

24. Mandatory for all subcontractors engaged on the Project

25. Review subcontractor compliance through regular audits

- Consultation and Communication forums

26. Communicate appropriately with all stakeholders

27. Ensure legislative compliance - ROE and FWA requirements

28. During the course of inspection and site discussions it was clearly apparent that these standards were routinely applied on site.

29. The agreed communication processes were routinely applied, as was a comprehensive safety model commencing with induction assessment, documented training and reporting processes of absenteeism in the following categories:

1. Work Environment/Conditions
2. Systems/Standards/Procedures
3. Tools and Equipment
4. People (Behavioural Category)

30. Positions

31. Actions

32. Protection

33. A pre-start meeting record was kept as part of the overall communication process.

The Take Five observation and reporting process was actively implemented against a well-documented behavioural matrix which identified those areas of responsibility for management, supervisors and everyone on site to achieve continuous improvement of the safety culture.

34. Project management adopted a "one team" approach which included a daily pre-start meeting conducted by senior management involving all employees on site in which a selected specific topic was discussed and then reinforced by separate sub-contractor pre-start discussions.

35. Lead and lag indicators of progress were advised in the following terms:

i. Lead Indicators	Project Total
ii. JHA (job hazard action) completed:	5184
iii. Safety Interactions	4418
iv. Safety audits	14
v. Alcohol tests	23277
vi. Drug tests	306

vii. Hazards Reported during inspections	156
viii. HSE Improvements	28
ix. Safety meetings	56
x. Site Inspections	710

xi. Lag Indicators	Project Total
xii. Site hours worked	237542
xiii. Lost time injury (LTI)	1
xiv. Medical treatment case	2
xv. Restricted work injury	1
xvi. First aid case	14
xvii. Property Damage	12
xviii. Near miss	19
xix. Fire	2
xx. Travel	3

36. It was reported that the Project was characterised by good working relationships and communication between contractor/client, sub-contractors, employees and the unions.
37. There was no lost time due to industrial issues, all of which were resolved by the parties as they were identified within the communication process.
38. A further feature of the Project was the need to provide industry training as many employees had not worked on major construction projects prior to engagement.
39. In the close-out conference held on 20 April 2012 the parties confirmed that the effort and investment in safety processes, communication and training had been totally justified in the Project outcome which achieved the required plant performance guarantee of processing 200,000 tonnes of raw coal within two weeks of start up with 98% availability, no unscheduled interruptions to the existing operations, and minimised coal handling plant shutdown durations during the course of the Project.
40. This is a commendable achievement and is a credit to all those involved in the Project. The outcomes are even more creditable when consideration is given to the difficulty of working within and around the ongoing operations which involved complex and tight logistical access with the impact of unseasonable wet weather.
41. It is evident that the parties have used their industrial agreement as the foundation of mutual respect and communication in exercise of positive, proactive industrial relations.

42. Matter No IRC 1469 of 2010 is so concluded.

Project Total	*****	xx. Lag indicators
137841		xii. See above worked
1		xiii. Lost time injury (LTI)
2		xiv. Medical treatment cases
1		xv. Restricted work days
14		xvi. First aid cases
14		xvii. Property Damage
18		xviii. Near miss
2		xix. Fire
1		xx. Travel

36. It was reported that the Project was characterised by good working relationships and communication between contractor, sub-contractor, employees and the unions.

37. There was no lost time due to physical issues, all of which were resolved by the parties as they were identified within the communication process.

38. A further feature of the Project was the need to provide industry training as many employees had not worked on prior construction projects due to engagement.

39. In the close-out conference held on 20 April 2012 the parties confirmed that the effort and investment in safety processes, communication and training had been fully justified in the project outcome which achieved the required plant performance guarantee of processing 500 000 tonnes of raw coal within two weeks of start up with 95% availability, no unscheduled stoppages to the existing operations and minimised cost impacting plant shutdown durations during the course of the Project.

40. This is a commendable achievement and a credit to all those involved in the Project. The outcome was even more creditable when consideration is given to the difficulty of working within and around the ongoing operations which involved complex and tight logistical access with the impact of unseasonable wet weather.

41. It is evident that the parties have used their voluntary agreement as the foundation of mutual respect and communication in a series of positive, proactive industrial relations.



Industrial Relations Commission of New South Wales

CORAM: HARRISON DP
8 May 2012

MATTER NO IRC 1466 OF 2010

Request By Unions NSW and Newcastle Trades Hall Council for assistance of the Industrial Relations Commission of New South Wales re Newcastle Coal Infrastructure Group 2AA and 2F construction site

Matter No IRC 572 of 2010

NCIG Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd and Unions NSW and affiliates

STATEMENT

1. These proceedings arise from a request on behalf of Project participants by Unions New South Wales and Newcastle Trades Hall Council for the assistance of the Commission in respect to the Newcastle Coal Infrastructure Group (NCIG) 2AA and 2F construction Project ("the Project").
2. Conference proceedings took place on site on 2 May 2012 followed by an inspection of the Project, in accordance with the ongoing program of communication and co-operation.
3. Those in attendance were:
 - a. Mr W Dawson, Construction Manager Aurecon Hatch
 - b. Mr P McPherson, Unions NSW and Newcastle Trades Hall Council
 - c. Mr T Callinan, The Australian Workers' Union, New South Wales
 - d. Mr S Kelleher, Australian Industry Group
 - e. Mr B Layzell, Area Manager, Aurecon Hatch
 - f. Mr M Clark, Area Manager, Aurecon Hatch
 - g. Mr W Grout, Area Manager, Aurecon Hatch
 - h. Mr G Smith, Construction Manager, Sandvik
 - i. Mr C O'Donnell, Superintendent, AbiGroup

- j. Mr A Russell, Site Manager, Downer Australia
 - k. Mr T Roberti, Project Manager, Wormald
 - l. Mr M Irving, Construction Manager, Laing O'Rourke
 - m. Mr A Balafas, Project Engineer, Franki Pile
 - n. Mr M O'Grady, Supervisor, Ward Civil
 - o. Mr M Morrison, Project Manager, John Holland
 - p. Mr C Farrelly, Union Delegate, AbiGroup
 - q. Mr C Hall, Union Delegate, John Holland
 - r. Mr B Donn, Union Delegate, Laing O'Rourke
4. There were approximately 60 separate collective agreements on Stage 1 of the Project and there are currently 25 separate collective agreements applicable on the site which use the provisions of section 146b of the New South Wales *Industrial Relations Act 1996* ("the Act") to nominate the Industrial Relations Commission of New South Wales ("the Commission") as the dispute resolution provider, continuing the successful project formula applied in the region.
 5. Mr Dawson gave a presentation of site progress in which he confirmed that Stage 1 is complete; Stage 2AA is proceeding on schedule; as is Stage 2F, approved in September 2011. Stages 2AA and 2F will bring the facility to a capacity of 66 million tonnes of coal per annum when completed towards the end of 2013.
 6. Mr Dawson provided Project information showing that there have been over 6.5 million man hours worked on the Project to date, with no lost time injury during Stages 2AA and 2F; 8 medical treatments and 69 first aid treatments. There have been 27,282 Take 5 safety inspections and 4,382 inductions on site during Stages 2AA and 2F. The current workforce is approximately 770 workers on site per day, comprising 530 for Stage 2AA and 240 for Stage 2F.
 7. Mr McPherson noted:
 8. the site has been active for four years to date and that, inclusive of pre-start negotiations, the unions have invested five years in the Project;
 9. there have been 43 monthly communication meetings on the Project since its inception;
 10. the communications and relationships formed, together with the capacity for quick recourse to the Commission, had contributed to no lost time due to industrial issues on the Project.
 11. Mr McPherson expressed his view that no lost time due to injury or industrial issues was a great achievement, given the scope of the Project and number of workers involved.
 12. Mr Dawson expressed his appreciation of the role played by the Unions in maintaining positive and effective communications on the site. This was supported by the representatives present for Sandvik and Abigroup and endorsed by the other representatives present.
 13. Mr Callinan of the AWU expressed his hope that management and employees of the various contractors will take the positive lessons learnt on this Project in respect to communication, co-operation and consultation with them to future projects.
 14. The parties then proceeded with on-site inspection and the matter adjourned for further conference and inspection on site at 10 am on 27 November 2012.

15. The parties will continue further monthly communication meetings and retain the capacity to seek relisting of the matters on short notice if required should there be any issue which requires the assistance of the Commission.

Mangoola Coal Project

07-JUL-2010 14:17 From:IRCNEWCASTLE

61249270154

To:0249261177

P.3/5

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: HARRISON DP

Wednesday, 7 July 2010

Matter No IRC 493 of 2010

Request by Unions NSW for the assistance of the Industrial Relations Commission of NSW in prevention of industrial disputes - Mangoola Coal Project

**STATEMENT
[2010] NSWIRComm 88**

- 1 These proceedings arose by notification from Unions NSW on behalf of affiliates with members employed at Mangoola Coal Project near Muswellbrook.
- 2 The relevant industrial regulation is the *Downer EDI Engineering Mangoola Coal Mine Construction Project Greenfield Agreement 2008-2012* ("the Agreement"). This Agreement was negotiated between the parties in March 2009, was subject to approval by the Australian Government Workplace Authority (AG No 095933343), and applies to the scope of works set out in Appendix 3 thereto until 31 December 2012.
- 3 Clause 30, Settlement of disputes of the Agreement nominates the Commission in Newcastle in the capacity of either Fair Work Australia or the Industrial Relations Commission of New South Wales as the dispute resolution provider.

- 4 The Agreement is comprehensive and includes continuous improvement, communications, and safety provisions common to many successful projects within the Hunter region.
- 5 Consistent with these values and the principles of communication, consultation and co-operation inherent therein, the parties requested the presence of the Commission for the purpose of site inspection and overview, which occurred on 1 July 2010. Those present were:

Ian Ash	Project Director	Downer EDI
Peter Chircop	Operations Manager	Downer EDI
Chris Keygan	Construction Manager	Downer Project
D. Whitehead	Dogman/Crane	Downer Power
Greg Keen	Rigger-Crane Driver	Downer Mech
Mark Cross	Welder	Downer Mech
D. Holloway	Rigger	Downer Project
Richard Pegg	HR Manager	Downer EDI
Chris Smith	Construction Manager	Holstan
Luke Dunstan	Project Manager/Director	Holstan
Craig Silcock	Steelfixer	Holstan
Peter McPherson	Industrial Officer	Unions NSW
Tony Callinan	Organiser	The Australian Workers' Union, NSW
A. Wardrope	Organiser	The Electrical Trades Union of Australia, NSW Branch
Daniel Murray	Snr Advisor-Construction	AiGroup
Emma Morson	Snr Advisor-Workplace Relations	AiGroup
Leanne Davies	Snr Advisor-Workplace Relations	AiGroup

- 6 The relevant works are a package of approximately \$400 million being undertaken by Downer EDI Engineering and sub-contractors for Xstrata Mangoola Coal. Progress to date is: Design 99% complete; Procurement 80% complete; and Construction 25% complete. Construction is scheduled for completion in January 2011.
- 7 Employment on site is anticipated to increase from approximately 180 at present to some 300 by September 2010. The Project is on schedule and has

a commendable safety and environmental record detailed in the schedule below:

Hours worked	116190
Lost Time Injury	nil
Medical Treatments	nil
Restricted Work Duties	2
Near Misses	9
Take 5's	4094
Environmental Incidents	4
Inductions	253
Recordable Work Injury Frequency Rate	17.2

- 8 There has been no lost time due to industrial issues and only six first aid injuries since the site establishment on 1 December 2009.
- 9 The site has adopted innovative site induction, drug, alcohol and fatigue management procedures, and site safety policies, such as vehicles making deliveries to site must be loaded in such a way that they can be unloaded without employees having to climb from the ground on to the load to do so.
- 10 The progress to date is a credit to all parties involved and further underscores the value of open communication and emphasis on safety on the construction projects in the region.
- 11 These proceedings are stood over generally with leave to relist at the request of either party as may be required.
- 12 In the event that further proceedings are not required in the interim, the parties request a further site inspection and project overview which is scheduled for Wednesday, 24 November 2010 at 10am.



Industrial Relations Commission of New South Wales

Case Title: Request By Unions NSW and Newcastle Trades Hall Council for assistance of the Industrial Relations Commission of New South Wales re Newcastle Coal Infrastructure Group 2AA and 2F Construction Project

Joined With

NCIG Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd and Unions NSW and affiliates

Medium Neutral Citation: [2013] NSWIRComm 94

Hearing Date(s): 21 October 2013

Decision Date: 8 November 2013

Jurisdiction: Industrial Relations Commission of New South Wales

Before: Harrison DP

Decision: Project completed

Catchwords: Major coal infrastructure project. \$2.5 billion Project completed six months ahead of schedule. \$200 million under budget. No lost time due to industrial dispute. Exemplary safety record. Co-operative and active implementation of industrial agreement with assistance of the Commission. Positive engagement by Unions, employees and management in safety and productivity issues.

Legislation Cited: Industrial Relation Act 1996

Cases Cited:

Texts Cited:

Category: Principal Judgment

Parties: Unions NSW
Newcastle Trades Hall Council
Aurecon Hatch
Hatch & Associates Pty Ltd
AiGroup

Representation

- Counsel:

- Solicitors: Mr P McPherson, Unions NSW and
Newcastle Trades Hall Council
Mr S Kelleher, AiGroup

File number(s): IRC 1466 of 2010
IRC 572 of 2010

Publication Restriction:

DECISION

1 These proceedings arise from a request on behalf of Project participants by Unions New South Wales and Newcastle Trades Hall Council for the assistance of the Commission in respect to the Newcastle Coal Infrastructure Group (NCIG) 2AA and 2F construction Project ("the Project").

2 Final Conference proceedings took place on 21 October 2013

3 Those in attendance were:

Mr P McPherson, Unions NSW and Newcastle Trades Hall Council
Mr S Kelleher, AiGroup

Mr W Dawson, Construction Manager Aurecon Hatch

- 4 The Project is now complete and has been handed over to the client.
- 5 The overall cost of the Project was \$2.5 billion to construct a 66 million tonne per annum export coal loader in the Port of Newcastle.
- 6 The Project was completed six months ahead of schedule and some \$200 million under budget.
- 7 All stages were ahead of schedule:
 - Stage 1 - 3 months ahead of schedule
 - Stage 2AA - 4 months ahead of schedule
 - Stage 2F - 6 months ahead of schedule
- 8 The early completion of each stage and the Project overall has allowed export of in excess of 33 million tonnes of coal, earning substantial revenue for all coal chain participants which would not otherwise have been possible.
- 9 The achievements of the Project have been recognised by a number of industry awards:

Silver Award 2012 in Safety from Australian Bulk Handling Review

Project of the Year Award PACE Zenith Awards 2012

Gold Award for Excellence in Project Management 2011

Gold Medal Australia's Best Building Construction and Mining Magazine 2011

WorkCover NSW Leadership in Safety Award 2010

Bulk Handling Facility of the Year 2010 from Australian Bulk Handling Review

Award for Excellence in Technology Chartered Institute of Logistics and

Transport Australia 2010

Finalist International Bulk Journal Awards 2010

Highly Commended Engineering Australia Award 2010

2010 Hatch Global Award for Project Excellence

PFI Awards 2010 – Best Asia Pacific Infrastructure Deal
FinanceAsia 2008 – Best Asia Pacific Infrastructure Deal
PFI Awards 2008 – Best Asia Pacific Infrastructure Deal
CFO Magazine Awards 2008 and 2011 – Best Project Finance Deal
Infrastructure Partnerships Australia 2011 – Project of the Year

- 10 The commercial and operational achievements are of significance to the region, the state and the nation.
- 11 These achievements were founded upon a strong communications and consultation framework detailed in the industrial agreements applied in a diligent and responsible manner by all parties.
- 12 Negotiation of the first Greenfield agreement commenced in July 2007. Mr Peter McPherson of Unions NSW led the negotiations for the unions; Mr Stuart Gordon, then of AiGroup, led the negotiations for the employers. The parties reached agreement on 21 December 2007.
- 13 A site inspection conducted by the Commission as presently constituted during the course of the negotiations reviewed an area of reclaimed wasteland which was environmentally and geophysically challenging. No work had yet commenced.
- 14 The Project commenced in 2008, noted in a Statement by the Commission as presently constituted in Matter No IRC 1760 of 2008 (12 May 2009) dealing with Stage 1 of the Project, in which I said:
 - 1 The Newcastle Coal Infrastructure Group (NCIG) comprises BHP Billiton - through Hunter Valley Energy Coal; Centennial Coal; Donaldson Coal; Peabody Energy; Felix Resources; and Whitehaven Coal, in joint venture to construct a coal export terminal on Kooragang Island in Newcastle Harbour.
 - 2 Hatch Associates Pty Ltd ("Hatch") are managing construction works and have made an industrial agreement with Unions NSW, Newcastle Trades Hall Council and others to cover work on the site.

- 3 The parties, while not in dispute, rely upon the broader definition of that term (which includes a question, difficulty or situation that is likely to give rise to an industrial dispute if preventative action is not taken) to seek the assistance of the Commission in facilitation of the communication process prescribed by their industrial agreement.
 - 4 In furtherance of assisting communication, safety and productivity on the Project a conference and site inspection took place on 29 October 2008 (see Statement of 31 October 2008).
 - 5 The parties sought a further site inspection and conference proceedings, which took place on 6 May 2009.
 - 6 The communications process set out in the *Hatch Associates Pty Ltd NCIG CET Project Greenfield Agreement 2008-2010* ("the Agreement") continues to be the foundation of communication, consultation and co-operation between the parties, as detailed in the Statement issued by the Commission as presently constituted on 31 October 2008.
 - 7 Some 55 industrial agreements have now been made in respect to the Project, covering a range of contractors and sub-contractors; 50 of which make use of the provisions of s 146B of the *Industrial Relations Act 1996* to nominate the Industrial Relations Commission of New South Wales as the dispute resolution provider. All of those agreements have included the principles of productive working relationships founded on mutual respect and communication.
- 15 The parties entered into a further industrial agreement for Stages 2AA and 2F which contained the principles of communication, consultation and co-operation.
- 16 The *Hatch Associates Pty Ltd NCIG CET Stages 2AA and F Project Union Greenfield Agreement 2010-2014* ("the Agreement ") was approved by Fair Work Australia as it then was on 12 August 2010 (AG2012/2126) PR 500521.
- 17 The parties to the Agreement are set out in Clause 2 in the following terms:
2. PARTIES TO THE AGREEMENT
- Australian Industry Group, Unions NSW, Newcastle Trades Hall Council have assisted in the negotiation of the terms of this Agreement. The parties bound by this Agreement are:
- (a) Hatch Associates Pty Ltd;

- (b) All Employees of Hatch Associates Pty Ltd engaged on the NCIG CET Stages 2AA and 2F Project whether members of the organisations listed in (c) or not; and
- (c) The organisations that represent the employees defined in (b), namely:
- (i) Australian Workers' Union -Newcastle and Northern Regions Branch;
 - (ii) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union - NSW Branch;
 - (iii) Construction, Forestry, Mining and Energy Union - Construction and General Division, NSW Divisional Branch;
 - (iv) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union -Electrical, Energy and Services Division, NSW Divisional Branch;
 - (v) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union -Plumbing Division, NSW Divisional Branch; and
 - (vi) Transport Workers' Union of Australia -NSW Branch.
- 18 An introductory note to the Agreement states:
- "This Greenfield Agreement was negotiated by the NCIG CET Stages 2AA and 2F Project Manager, Australian Industry Group and Unions NSW, Newcastle Trades Hall Council and the relevant unions with coverage of the construction work within the scope and application of the Agreement. The Agreement was negotiated for the purpose of providing contractors, at the pre-tender stage, with a project specific model of a Greenfield agreement they could use on the project if they choose to. Use of the model agreement is at the contractor's discretion."
- 19 In the order of 100 contractors and sub contractors have chosen to make an agreement in similar terms adopting the principles of communication detailed therein.
- 20 The Agreement sets rates of pay, conditions of employment, hours of work and provides for individual flexibility arrangements in the usual manner.
- 21 The Agreement details:
- Employer Leadership Responsibilities Clause 9a
 - Employee Responsibilities Clause 9b
 - Commitment to Continuous Improvement Clause 10

- Project Code of Conduct, Work Rules & Fair Work System Clause 11
 - Dispute Resolution Clause 30
 - Project Communication and Consultation Clause 33
- 22 Site Safety related matters are dealt with compatibly by mutual delegation in Clause 12 and in detail in Appendix 1 to the Agreement.
- 23 Clause 30 Dispute Settlement Procedures nominates the NSW Industrial Relations Commission as the dispute resolution provider for the parties to the Agreement.
- 24 A standing arrangement for quick response existed between the parties and the Commission that either Deputy President Harrison or Commissioner Stanton would be available to list proceedings instantly if matters arose in a monthly meeting which required assistance.
- 25 This facility was not utilised as the parties were able to deal with matters in the consultation process.
- 26 Clause 33 specifies the consultation mechanism to be applied on the project. Clause 33 states:
- 33. Project Communication and Consultation
 - (a) As a means to assist with ensuring effective and efficient consultation and communication processes to deal with Project issues and updates and to discuss issues affecting Employees, communication meetings with Employees will be held on a monthly basis unless otherwise agreed.
 - (i) Appointed Employee representatives shall be entitled to meet with the Union party representatives prior to any meetings of Employees conducted under this clause without deduction of pay for up to one hour for each meeting.
 - (ii) Subject to (e) of this clause, Project Management will convene a meeting of Employees each month to

discuss Employee matters specific to the Project and the operation of the Agreement. The meeting shall be from 9.00am to 10.00am or as otherwise agreed.

- (iii) Following this meeting Employee representatives will meet with Project Management to clarify issues that may have arisen.
- (iv) Excepting the time provided for in subclause(a), (b) and (c) of this clause and subclause 33(a), any time lost during working hours due to attendance at meetings of Employees shall not be paid.
- (v) The right for Employees to participate in the meeting referred to in this clause may be withdrawn by Project Management at any time should Employees attend meetings outside the times and dates provided for in this clause.

(b) Where the Employer proposes to introduce changes in production, program, organisation, structure or technology that are likely to have significant effects on employees in the relevant branch/site, the Employer will as soon as reasonably practicable consult, in a meaningful way, with the employees affected by the proposed changes and their union(s) prior to a final determination on any such change.

(i) "Significant effects" include termination of employment; major changes in the composition, operation or size of the employer's workforce or in his skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(ii) "Meaningful Consultation" includes providing affected employees and the relevant Union(s) with a bona fide opportunity to discuss the Employer's decision(s). In order to facilitate meaningful consultation, the Employer will provide relevant information including:

- the reasons for the proposed change,
- the number and category of employees likely to be affected; and
- the period over which any change may be intended.

(iii) It is the intent of the Parties to utilise the Communication Process outlined above to give effect to this consultation provision.

- 27 In accordance with these obligations there have been 62 consecutive monthly communication meetings and 13 site inspections and reports to the Commission with consequent publication of Statements.
- 28 In total, Mr McPherson, on behalf of Unions NSW and Newcastle Trades Hall Council, participated in 99 face to face meetings with contractors, subcontractors and their employees; as well as countless day to day communications by telephone, text and email.
- 29 The first of the site consultative meetings took place on 13 August 2008.
- 30 During the course of the Project Mr McPherson maintained his representation of the Peak Councils, Unions NSW and the Newcastle Trades Hall Council (NTHC); Mr T Callinan, Mr R Downie and Ms K Thomsom represented The Australian Workers' Union, New South Wales (AWU). Mr Garry Kennedy represented the NTHC; Mr J Page represented The Electrical Trades Union of Australia, NSW Branch (ETU); Mr P Harris represented the Construction, Forestry, Mining and Energy Union (NSW Branch) (CFMEU); Mr D Wallace represented the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch (AMWU); and Mr S McCarney represented the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union -Plumbing Division, NSW Divisional Branch (CEPU).
- 31 The site inspections and reports to the Commission were well attended by management, union officials and delegates.
- 32 Mr Wayne Dawson held the role of Construction Manager throughout the entire period of the Project. Mr Stuart Gordon, assisted by Ms Emma Morson, appeared for AiGroup in the proceedings in the early stages of the Project. Ms Morson was the AiGroup representative on behalf of the contractors for

the substantial period of the Project, supported by Mr Kelleher and Ms Davies in the latter stages.

- 33 A total of 104 representatives participated in the formal site inspections and report proceedings conducted by the Commission.
- 34 The Project is an exemplary model of what can be achieved by the active and co-operative application of a sound industrial agreement. As noted by Mr Callinan of the AWU in the course of a site conference, some contractors have taken their positive experiences from this Project to other work in the region.
- 35 All participants are deserving of recognition and respect for their contribution.
- 36 Only one safety issue involved recourse to the Commission dealt with by Commissioner Stanton swiftly in formal proceedings; and one matter of entitlement dealt with by the Commission as presently constituted and resolved by the parties in private conference.
- 37 Matters No IRC 572 and 1466 of 2010 are so concluded.



Industrial Relations Commission of New South Wales

Case Title:	Request by Unions NSW and the Newcastle Trades Hall Council on behalf of Port Waratah Coal Services Limited, Bechtel Australia Pty Ltd, Australian Industry Group and the Civil Construction Unions for the assistance of the Industrial Relations Commission of NSW
Medium Neutral Citation:	[2013] NSWIRComm 100
Hearing Date(s):	4 November 2013
Decision Date:	28 November 2013
Jurisdiction:	Industrial Relations Commission of New South Wales
Before:	Harrison DP
Decision:	Project completed. Matter concluded.
Catchwords:	Kooragang Island Coal Loader expansion and upgrade project for PWCS (KEP Project). Project value \$1.6 billion; 5.4 million hours worked over 2,939 days; 76,000 real time safety assessments; 6,000 inductions; 420 training courses offered, over 7,000 qualifications achieved. Co-operative industrial relations founded on enterprise agreement. No lost time due to injury or industrial dispute. Innovative safety and communication procedures. Section 146B overview by Commission. Project completed six months ahead of schedule and \$300 million under budget.



Category: Principal

Parties: Unions NSW
Newcastle Trades Hall Council
Port Waratah Coal Services Limited
Bechtel Australia Pty Ltd
AiGroup
The Australian Workers' Union, New South Wales
The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, NSW Branch
The Construction, Forestry, Mining and Energy Union (NSW Branch)
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union - Electrical, Energy and Services Division, NSW Divisional Branch
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union - Plumbing Division, NSW Divisional Branch
The Transport Workers' Union of New South Wales

Representation

Mr P McPherson, Unions NSW and Newcastle Trades Hall Council

Mr G Lindner, Project Manager, Bechtel

File number(s): IRC 946 of 2010

Publication Restriction:

DECISION

1. Port Waratah Coal Services Limited (PWCS) operate export coal loading terminals in the Port of Newcastle at Carrington and Kooragang Island.
2. The Kooragang Island facility has been subject to expansion and improvement over the past decade.
3. Project 3D, completed in 2007 by Bechtel Australia Pty Ltd (Bechtel), increased total capacity of the Kooragang Coal Loader by 13 million tonnes per annum to 77 million tonnes per annum; and the capacity of the Port of Newcastle to 102 million tonnes per annum. The completion of this stage was detailed in a Statement by Commissioner Stanton on 23 February 2007 [2007] NSWIRComm 1012.
4. The features of Project 3D identified in the Statement by Commissioner Stanton were:
 5. 160 Million Dollars
 6. 600,333 man hours
 7. Zero lost time injuries
 8. Zero lost time due to industrial disputes
 - a. Collective agreement endorsed by Commission
 - b. Communications process
 - c. Quick response dispute resolution process
 - d. Mandatory personal safety plans - every employee was required to develop their own plan
 - e. Commitment to training and skill development - every employee was promised that they would receive training and would leave the project on completion with at least one additional occupational qualifications
 - f. Leadership

- g. Committed and aligned teams and team members
 - h. Commitment to shared achievable project goals and objectives
 - i. Performance recognition
 - j. Commitment and effort applied to communications
9. These proceedings cover the next stages of the expansion of the Kooragang Coal Loader for PWCS by Bechtel, known as the Kooragang Expansion Projects (KEP) incorporating Stages 3Exp, MPC, and P145 which increased export coal loading capacity to 145 million tonnes per annum.

10. The works undertaken include:

i. 3Exp

- 11. Upgrade of the Stage 2 and 3 in-loading stream and stacking stream from 6,600 to 8,500 tonnes per hour (tph)
- 12. Three new 8,500 tph stackers and deconstruction of two original stackers
- 13. Three new 8,000 tph reclaimers and deconstruction of two original reclaimers
- 14. A defined integrity scope to support Project scope reliability
- 15. New reclaim conveyor 4.18

i. MPC

- 16. Additional stockyard capacity of 1,000,000 tonnes of storage
- 17. Dredging of 900,000m³
- 18. K7 Berth and Shipping Conveyor 7.04 Extension
- 19. Upgrade of the original Stage 1 Dump Station, Sample Plant, conveyors, head chutes and shuttle from 6,600 to 8,500 tph
- 20. Upgrade of original Stage 1 Stacking Stream from 6,600 to 8,500 tph
- 21. Two new 8,500 tph stackers and deconstruction of two original stackers
- 22. A defined integrity scope to support Project scope reliability

i. P145

- 23. New inbound 4 conveyor stream

- 24. Fourth rail in road with three outbound departure rails
- 25. Reclaimer conveyor system upgrade
- 26. Fourth dump station to be built
- 27. 07.03 conveyor extension to K7 wharf

28. The total value of the KEP is \$1.6 billion

29. Industrial Agreement

30. Bechtel entered into an industrial agreement with Unions NSW, Newcastle Trades Hall Council and Construction Unions to cover this work.

31. The *Bechtel Australia Pty Ltd Port Waratah Coal Services Kooragang Expansion Project Agreement 2010-2014* (the Agreement) was approved by Fair Work Australia (as it then was) on 11 May 2010 (AG2010/870 [2010] FWAA 3723).

32. The parties to the agreement are detailed in Clause 2 in the following terms:

- i. Bechtel Australia Pty Ltd;
- ii. All Employees of Bechtel Australia Pty Ltd engaged on the Port Waratah Coal Services Kooragang Expansion Project whether members of the organisations listed in (c) or not.
- iii. The organisations that represent the Employees defined in 3(c), namely:
 - 1. Australian Workers Union. Newcastle, Central Coast and Northern Regions Branch (AWU);
 - 2. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, NSW Branch (AMWU);
 - 3. Construction, Forestry, Mining and Energy Union - Construction and General Division, NSW Branch (CFMEU);
 - 4. Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union - Electrical, Energy and Services Division, NSW Divisional Branch (ETU);
 - 5. Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union - Plumbing Division, NSW Divisional Branch (CEPU); and
 - 6. Transport Workers' Union of NSW (TWU).

33. The Agreement sets out wages and conditions of employment and hours of work within a framework of co-operation and mutual responsibility, with innovative safety and communication procedures.

34. Sub Clause 5(c) Application and Scope of Agreement states:

- i. This Agreement is designed to enable the Company, its Employees and their representatives to co-operate with the objective of ensuring:
 1. the project is safe and no one is injured in their work;
 2. all environmental protection requirements are met;
 3. the Employees are treated fairly;
 4. the Employees have the opportunity to contribute ideas to improve the work process;
 5. the project has no lost time due to industrial differences and is free of disputes; and
 6. the work is completed on time.

35. The parties committed themselves to training in Clause 14 which is founded upon a commitment that all employees could leave the job with more skills and qualifications than they arrived.

36. Clause 14(d) states:

- i. Training
- ii. Training and development opportunities that provide opportunity to increase efficiency and productivity will be developed that:

37. are consistent with the Employer's business requirements;

38. are relevant to the needs and expectations of Employees;

39. may be taken either on or off the Site; and

40. may be conducted when work cannot proceed eg. due to inclement weather.

- i. The Employer shall be responsible for the cost of training and wages during the time involved in training provided that where an Employee undertakes training without the Employer's approval the Employer will not be responsible for costs of wages.

41. The Agreement further provided a site communication process at Clause 34 in the following terms:

- i. In order to ensure the effective operation of the Agreement, Project Management and the Employer will participate in consultation with Union representatives.
 - a. Appointed Employee representatives shall be entitled to meet with the Union party representatives prior to any meetings of Employees conducted under this clause without deduction of pay for up to one hour each meeting.
 - b. Subject to (e) of this clause, Project Management will convene a meeting of Employees each month to discuss Employee matters specific to the Project and the operation of the Agreement. The meeting shall be from 9.00am to 10.00am or as otherwise agreed.
 - c. Following this meeting Employee representatives will meet with Project Management to clarify issues that may have arisen.
 - d. Excepting the time provided for in subclause (a), (b) and (c) of this clause and subclause 33(a), any time lost during working hours due to attendance at meetings of Employees shall not be paid.
- ii. The right for Employees to participate in the meeting referred to in this clause may be withdrawn by Project Management at any time should Employees attend meetings outside the times and dates provided for in this clause.

42. Clause 35 Settlement of Disputes detailed the obligations of all parties to dispute resolution, procedures therefore and at Clause 35(e) nominates a member of the Industrial Relations Commission of New South Wales as the dispute resolution provider in accordance with section 146B of the Industrial Relations Act 1996.

43. The Agreement is completed by Appendix 1 - Project Code of Conduct & Work Rules which provides detail of the conduct and behaviour required on the project.

44. Sub-Contractors and Contractors entered into a further 20 agreements in respect to work on the site which supported the principles of the Bechtel Agreement.
45. These agreements were further supported by detailed induction processes and a site safety policy carried on from Project 3D, aptly described by Commissioner Stanton in his Statement of 23 February 2007 at paragraphs 37 to 40 in the following terms:
46. The Commission has observed that the client's expectations insofar as safety was concerned were articulated in a very clear and unequivocal "*Message to Employees*" contained in the December 2005 *Newsletter* published shortly after the commencement of construction work where PWCS General Manager, Mr G Davidson stated:
1. The recent launch of project 3D underlines the importance of PWCS Kooragang Operations to the success of the Hunter Valley coal system. The facilities at the Newcastle Port provide the platform for successful delivery of coal to the rest of the world and this expansion will ensure that the continuing growth in demand can be met.
 2. With demand increasing rapidly we need to ensure that the expansion is completed in a timely manner. But this cannot be at the expense of your safety. **Production never comes before your safety at PWCS. If an activity carries an unacceptable level of risk, you have been authorised to stop what you are doing and stay stopped until the risk is adequately addressed.** Work with your team mates and supervisors to develop safe methods before restarting.
 3. We do not operate systems that carry an unacceptable risk of hurting somebody. We won't expose our workforce to risk which we would find unacceptable for our family, friends and colleagues. [emphasis added]
47. Mr Davidson's strong message to employees was reinforced by comments from the PWCS Project Manager, Mr O Scott in the same *Newsletter*:
1. We have a great opportunity to deliver an expanded facility to PWCS that will be seen as best practice in project delivery. How can we do that? In the main by continuing the great safety efforts to date and ensuring that no one gets hurt. This is challenging - and achievable - through the constant effort of everyone

involved. **We must maintain our focus on safety while we deliver a quality product that meets the needs of PWCS Operations and Maintenance.**
[emphasis added]

2. We must remember that we are carrying out construction work within an operating plant that has extra hazards to those we normally associate with construction. Please be aware of the activity in the area where you are working and seek assistance and guidance in dealing with these different hazards.

48. Bechtel's vigilance towards safety was exemplified in the December 2005 *Newsletter* where Project Manager, Mr D Elsdon wrote the following "*Message to Employees*":

1. Project 3D offers us an opportunity to build on the great work carried out in the previous Stage 3 Expansion and to once again deliver a successful project to PWCS.
2. Our main focus on this project must be **to carry out all project activities safely to ensure that every person on this project returns home safely** to their families every day.
3. Equally important is focus to ensure that the project facilities are constructed safely and that they are safe to operate and maintain.
4. I encourage you all to maintain the same safety awareness in and around the home. [emphasis added]

49. The client's resolve that all employees had authority to stop work where that work carried an unacceptable level of risk was reaffirmed by Mr Elsdon in the August 2006 *Newsletter*:

1. In my daily walk-around I see many examples of good task planning and work execution incorporating our project safety initiatives.
2. However as we experienced recently, despite all this excellent work and effort, it takes but a moment for someone to get hurt. I urge all my fellow team members to remain vigilant and be alert to opportunities to identify patterns and risks and to take immediate action to eliminate them. **You have the authority to stop the work and fix the problem.**
[emphasis added]

50. This safety policy was much used but never abused.

51. Final proceedings in this matter took place on Monday, 4 November 2013; the last construction worker finished on the site on Friday, 1 November 2013.

52. The project was completed six months ahead of schedule and some \$300 million under budget; 5.4 million man hours were worked across the job.

53. In the final conference of 4 November 2013 Mr Grant Lindner, Project Manager Bechtel, provided the following detail in respect to industrial relations performance and achievement:

54. 2939 days worked - 8 years continuous work at PWCS

55. Over 76,000 "real time" risk assessments completed

56. Over 6000 inductions and re-inductions completed

57. 5.4 million work hours

58. Zero lost time injuries

59. Zero lost time due to industrial disputes

60. 97% local contractors & employees

61. \$1.6 Billion overall spend

a. and in respect to Training and Employee Development:

b. Re/Inductions (L1, 2, LB Switchroom)

c. Confined Space Awareness

d. PWCS Supervisor Training

e. PJO, Hazard, Restart, Change of Management Training

f. Manual Handling Refresher

g. TAFE Electrical Awareness

h. Drug and Alcohol Supervisor training

i. Sediment and Erosion Controls Workshop

j. Harassment and Bullying Training

k. BSDP Training

l. Spill Response Training

m. Environmental Incident Notification

- n. Blood Born Pathogen Training
- o. People Base Learning Tools
- p. Fatigue Management
- q. Working at Heights
- r. Cert II Fire Extinguisher Inspections (SOA)
- s. New Contractor Start Up Training
- t. Advanced Life Support (FA)
- u. Bechtel Crane and Rigging
- v. Zip Team (Zero Incident Prevention)
- w. Dogman
- x. Safety Leadership Workshop
- y. Senior First Aid
- z. Rail Industry Safety Induction
- aa. Basic Incident Cause Analysis Method Investigation
- bb. Fire Warden
- cc. Advanced Resuscitation
- dd. PWCS Authorised Supervisor
- ee. Total Attendees - 7035
- ff. Total Courses - 420
- gg. Total Hours - 39,503
- hh. Average Attendance - 98.2%

62. Mr Lindner identified the factors to success as:

- 63. Genuinely concerned about the workforce and their safety
- 64. Open honest relationships
- 65. Understand that communication is a vital part to any relationship
- 66. Good Industrial Relations Agreements
- 67. Local workforce content
- 68. Stable workforce

69. Look after the project people as well as their families

70. Mr McPherson, appearing on behalf of Unions NSW, Newcastle Trades Hall Council and the Construction Unions, noted the co-operative working relationships between the Unions, Management and AiGroup.

71. There were 38 Communication Consultative meetings on the project, the last on 13 August 2013 and regular site inspections and progress reports to the Commission.

72. A standing arrangement for quick response existed between the parties and the Commission that either Deputy President Harrison or Commissioner Stanton would be available to list proceedings instantly if matters arose in a monthly meeting which required assistance.

73. The Project outcomes are a credit to all participants. Management are congratulated on the leadership and commitment to safety, communication and positive relationships.

74. The Trade Union officials and site delegates are congratulated on their contribution which has, throughout the Project, been co-operative, responsible and productive of a quality outcome for their members, contractors and the client.

75. Matter No IRC 946 of 2010 is so concluded.

.....



Industrial Relations Commission of New South Wales

Case Title: Request by Unions NSW for the assistance of the Industrial Relations Commission of New South Wales re Ravensworth North Construction Project

Medium Neutral Citation: [2013] NSWIRComm 108

Hearing Date(s): 27 November 2013

Decision Date: 16 December 2013

Jurisdiction: Industrial Relations Commission of New South Wales

Before: Harrison DP

Decision: Matter concluded

Catchwords: Coal Mine Construction Project - Application of Enterprise Agreement - Completion ahead of schedule and under budget - No lost time injuries - Safety performance better than Mangoola, regarded as global benchmark - No lost time due to industrial disputes - Section 146C dispute resolution and pro-active communication procedures - Leadership principles - Commitment to optimal productivity, efficiency and flexibility - Maturity of industrial parties.

Legislation Cited: Industrial Relations Act 1996

Cases Cited:

Texts Cited:

Category:

Parties: Unions NSW
Newcastle Trades Hall Council
Downer EDI
AiGroup

The Automotive, Food, Metals,
Engineering, Printing & Kindred
Industries Union (AMWU)
The Communications, Electrical,
Electronic, Energy, Information,
Postal, Plumbing and Allied Services
Union of Australia (CEPU)
The Communications, Electrical,
Electronic, Energy, Information,
Postal, Plumbing and Allied Services
Union of Australia, Plumbing Division,
NSW Divisional Branch (CEPU)
The Australian Workers Union (AWU)
The Construction, Forestry, Mining
and Energy Union (Construction &
General Division) NSW Branch
(CFMEU)
The Transport Workers Union of Australia
NSW Branch (TWU)

Representation

- Counsel:

- Solicitors: Mr P McPherson Unions NSW
Ms E Morson AiGroup

File number(s): IRC 11 of 1123

Publication Restriction:

DECISION

1. These proceedings concern a major upgrade and expansion of the Ravensworth North Coal Mine in the Hunter Valley.
2. The value of the Project is in the order of \$1.6 billion. The Downer EDI component is \$600 million which is in the labour intensive mechanical and electrical engineering components. The Downer EDI portion did not include civil works, road construction or equipment procurement which accounted for the substantial expenditure.

3. Construction works were commenced in June 2011 and carried out in two stages to operational completion in October 2013.
4. The matter was subject to final report back proceedings on 27 November 2013. Those present were:
 - a. Peter McPherson Unions NSW/NTHC
 - b. Emma Morson AiGroup
 - c. Ian Ash Project Director QCC Resources
 - d. Adrian Holz Project Manager EIC Downer Australia
 - e. Daniel Demellweek Project Manager CSMP QCC Resources
2. The parties entered into the *Downer ED1 Engineering Ravensworth Coal Mine Construction Project Union Collective Greenfield Agreement 2011 ("the Agreement")* which was approved by Fair Work Australia, as it then was, on 14 March 2011 [AE884623 PR507551]. The Agreement took effect seven days after the date of approval and remains in force to 31 December 2013.
3. The Agreement was varied by application to the Fair Work Commission on 21 January 2013 [2013] FWCA465.
4. The parties to the Agreement are set out in Clause 2 thereof in the following terms:
 - i.2.1 Downer ED1Engineering Projects Pty Ltd
 - ii.2.2 Downer ED1Engineering Power Pty Ltd
 - iii. 2.3 All Employees of Downer ED1 Engineering Projects Pty Ltd and Downer ED1 Engineering Power Pty Ltd engaged on the Ravensworth North Coal Mine Construction Project in the classifications detailed in Clause 7 of this Agreement whether members of the organisations listed in clause 2.4 or not; and
 - iv. 2.4 The organisations that represent the employees defined In clause 2.3 namely:
 1. 2.4.1 The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union (AMWU) and it's officers;

2. 2.4.2 The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) and its officers;
 3. 2.4.3 The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, NSW Divisional Branch (CEPU) and its officers;
 4. 2.4.4 The Australian Workers Union (AWU) and its officers;
 5. 2.4.5 The Construction, Forestry, Mining and Energy Union (Construction & General Division) NSW Branch (CFMEU) and its officers;
 6. 2.4.6 Transport Workers Union of Australia NSW Branch
5. In addition to delivering wages and conditions of employment the Agreement includes innovative commitments by the parties that this Agreement will not be relied upon as a precedent.
- a. The parties to this Agreement commit themselves to the achievement of optimum productivity, efficiency and flexibility during the course of construction of the Project.
 - b. The parties agree to ensure co-operation between "construction" and "operations" personnel in carrying out their respective duties as may be required during the life of the Project and at various stages of handover from construction to operations.
 - c.
- i. **9.1 Employer Leadership Responsibilities**
 - ii. The Parties to this Agreement consider leadership crucial to the achievement of the Project goals. The responsibilities of all leaders are to strive to:
 6. Establish and maintain a safe and healthy work area and to ensure safe and healthy work practices are used at all times by all Employees.
 7. As a matter of fundamental priority, to focus on 'people' issues within the team.
 8. Deal with each team member with fairness, equity and respect.
 9. Recognise the talents and capabilities of all members of the team and encourage excellence.

10. Address any concerns raised by Employees promptly, obtaining advice and assistance from functional support personnel if necessary.
11. Ensure an environment is created where all personnel are able to work to the full extent of their capability subject only to regulatory requirements.
12. Provide timely open and frequent information regularly on the status of the Project and contract to all Employees.
13. Engage in strong interactive communication processes.
14. Establish and maintain continuous improvement and drive for excellence within the team.
15. Personally comply with and ensure team compliance with Project Code of Conduct and Work Rules.
16. Understand and apply the intent and provisions of this Agreement and to seek appropriate advice in respect of provisions not clearly understood. To provide leadership to the team in respect of the application of this Agreement.
 - a.

i. 9.2 Employee's Responsibilities

- ii. The responsibilities of all Employees are to strive to:

17. Maintain a safe and healthy work area and to ensure safe and healthy work practices are used at all times. Take responsibility for personal safety and that of team mates.
18. Deal with team mates and with team leaders with fairness, equity and respect.
19. Work towards Project and team goals to the full extent of personal capability. Undertake any work task assigned subject only to meeting any applicable regulatory requirement.
20. Raise any personal concerns or grievance directly with the immediate supervisor. Pursue the process of resolution of grievances in accordance with the guidelines established in the Settlement of Disputes Procedure in Clause 30 hereof.
21. Engage in open honest communication with all Employees.
22. Respond positively to opportunities to improve personal performance.
23. Actively support continuous improvement in work methods and the drive for excellence within the team.
24. Comply with Project Code of Conduct and Work Rules (Appendix 2)
25. Seek and develop a clear understanding of the intent and provisions of this Agreement.

26. The Agreement provided a platform for the parties to co-operate to achieve outstanding Project outcomes.

27. Mr Ash advised that notwithstanding a four month delay at the outset of the Project, attributed to difficulty in the approvals process, Stage 1 was completed six weeks ahead of schedule and the Project overall almost three months ahead of the contractual completion dates.

28. The Downer scope of works included:

i. Raw Coal Handling

29. New secondary sizing system

30. New stockpile

31. Tertiary sizing station

32. New overland conveyor system

i. CPP

2 x new modules adjacent to Module 1

33. Upgrade existing Module 1 dense medium cyclones, magnetite recovery circuit

34. Retrofit two existing thickeners

35. New tailings disposal pumping system

i. Product Handling

36. Increase length of Module 1 stockpile & add two feeders

37. New stockpile with stacker & reclaim tunnel

38. New conveying system for new stockpile

39. Increase existing reclaim system & train loader

i. Coarse Reject Handling

40. Increase existing system

41. Extend conveying system by 3.2km

i. CHPP EI&C

42. Low voltage reticulation & control system

43. Automate existing train load-out system

i. HV Works

44. 66 /11kV substation

45. 66kV relocation

46. 11kV site reticulation

i. **330kV Transmission Line Relocation**

47. Install 48 new towers and restring

48. Remove redundant towers

i. **Exclusions**

49. Bulk earthworks

50. MIA

51. Dams, water management systems & tailings disposal

52. The Agreement was based on the Downer EDI Engineering Mangoola Coal Mine Construction Project Greenfield Agreement 2008-2012 (AG No 095933343) ("the Mangoola Agreement") which reflected the market rate for construction work in the region; and also incorporated the key factors of the co-operative model of industrial relations, see [2010] NSWIRComm 88 7 July 2010.

53. In that Statement I noted at Paragraph 9 that:

- i. The site has adopted innovative site induction, drug, alcohol and fatigue management procedures, and site safety policies, such as vehicles making deliveries to site must be loaded in such a way that they can be unloaded without employees having to climb from the ground on to the load to do so.

54. Mr Ash provided the following information on site safety and environment achievements to end October 2013:

a. Hours worked	2,081,225
b. Lost Time Injury	0
c. Medical Treatment Injury	8
d. Restricted Work Injury	4
e. Environmental Incidents (Significant)	0
f. Inductions	1,300
g. Total Recordable Injury Frequency Rate	5.77

55. Project highlights included:

Safety performance markedly improved from Mangoola

i. Criteria	Ravensworth	Mangoola
ii. Total Man hours	2,081,225	875,700
iii. Peak Manning	645	394
iv. Lost Time Injuries	0	0
v. Medical Treatment		
vi. Injuries	8	3
vii. Restricted Work		
viii. Injuries	4	4
ix. Total Recordable		
x. Injuries	12	7
xi. Total Recordable		
xii. Injury Frequency Rate	5.77	8.17

56. Mr Ash advised that Mangoola had in some quarters become a global benchmark on construction safety achievements; and that those achievements had been substantially bettered on this Project which recorded a Total Recordable Injury Frequency Rate almost 30 percent better on almost 60% more hours worked.

57. Industrial highlights included:

58. Mangoola debrief & Ravensworth introduction was held on 29 June 2011 at IRC Newcastle.

59. Downer Union Collective Greenfield Agreement (EBA) based on Mangoola was signed by all parties in January 2011.

60. An EBA variation was approved by Fair Work Australia on 21 January 2013.

61. IRC of NSW site visits took place on 19 September 2012 and 15 May 2013.

62. Continued site communication meetings on second Wednesday each month;

63. 12.00 to 13.00 Officials met with delegates

64. 13.00 to 14.00 Officials addressed employees

1. * 14.00 to 15.00 Officials and delegates held discussions with Downer management

65. AIG were engaged by Downer as employer representative organisation.
66. Downer communicated regularly with Unions NSW on matters relating to;
67. Site safety committee
68. Lockdown day and public holiday working proposals
69. Demobilisation plans
70. Redundancies

71. A private conference was held at IRC Newcastle on 20 February 2012 as an aid to resolve issues at that time.
72. The 10/4 roster was introduced on site and used with a combination of 11/3 for electrical works.
73. Unions NSW assisted Downer management in addressing the employees to encourage them to co-operate and fill out the new forms required under the legislation FBT changes for LAHA in 2012.

74. Mr Ash noted that the Ravensworth North Project was a progression for EDI from Mount Owen Coal Mine Construction Project at \$70 million, Liddell Expansion Project at \$100 million, Mangoola at \$400 million and a quantum leap to \$600 million on this Project.

75. The Ravensworth North Project was logistically and geographically difficult in that:
 - a. limited space in some of the worksites
 - b. some work requiring completion in the vicinity of ongoing coal mine operations and within strict shut down parameters

77. Mr Ash noted that Downer undertook more work than planned with direct labour as commercially acceptable prices were not available from subcontractors. I observe that whether this was a result of the challenges on the site or the strong demand in the construction market at the time is immaterial, the fact is that Downer were able to engage direct employees

under the Agreement and complete the work safely to quality, cost and time requirements. This highlights the value of the Agreement and relevance of rates of pay and conditions which afforded attraction, retention and outcomes superior to those available from competitive tendency.

78. Mr Ash complimented his management team for their commitment to the principles of safety and performance through communication and co-operation, and in particular credited Mr Demellweek with drawing together a team under the Agreement to execute the Stacker component of this work which he put was a huge success.

79. Mr Ash noted that as a result of success on this Project, Downer has developed an expertise in the design and construction of Stackers with 13 more now planned world-wide.

80. Mr McPherson expressed his view that the Project outcomes were a credit to all involved.

81. Mr McPherson noted that the first meeting to discuss an enterprise agreement took place on 21 November 2010. This was followed by a further ten meetings with Downer EDI and three meetings with other companies to reach the Agreement approved on 14 March 2011.

82. Mr McPherson put that there were 21 monthly communication meetings on site and six separate proceedings before the Commission, two of which were on site, as well as countless informal communications.

83. These meetings and proceedings before the Commission involved officials of all construction unions listed below, as well as various site delegates and management representatives, all of whom can take credit for the success of the Project:

- a. Peter McPherson Unions NSW, Newcastle Trades Hall Council
- b. Adam Wardrope ETU

- c. Peter Harris CFMEU
- d. Tony Callinan AWU
- e. Daniel Wallace AMWU

84. Mr McPherson further expressed the value of the structure afforded the parties by ready recourse to the Commission.

85. Mr McPherson put that the issues around rosters, inclement weather, workplace health and safety, amenities, living away from home and travel were most prevalent.

86. Ms Morson noted that, while she had been involved in this Project at the outset, Mr Shaun Kelleher had been the officer of the AiGroup with responsibility for advice to the Project throughout the substantial and critical aspects.

87. Ms Morson supported the observations of Mr Ash and Mr McPherson crediting all parties with a contribution to the success of the Project, and noted that AiGroup had been involved in making eleven separate agreements involving different contractors on the site and the 2013 variation to the Agreement.

88. Ms Morson acknowledged the issues identified by Mr McPherson, emphasising that resolution of the issues as they arose without disruption to the site or loss of wages by employees reflected the industrial maturity of the parties.

89. I commend all of the participants in the Project, which again demonstrates the capacity for a wholly successful outcome for clients, contractors and employees when management and unions are able to engage on the basis of mutual respect for the rights and obligations expressed in a sound industrial agreement.

90. Matter No IRC 1123 of 2011 is so concluded.

HUNTER PROJECT ARRANGEMENT "AN EXEMPLARY MODEL": TRIBUNAL

<http://www.caselaw.nsw.gov.au/action/PJUDG?jgmid=168533>

3 December 2013 9:45am

The NSW IRC has lauded agreements that provided innovative communication and consultative provisions helped to deliver multi-billion-dollar coal port construction projects in Newcastle without industrial disputes and with minimal lost time due to injuries, while an IR academic says the "Hunter model" of collaboration and cooperation deserves "national attention".

The success of the co-operative model that underpinned the projects, together with the oversight of NSW IRC deputy president Rod Harrison and Fair Work Commissioner John Stanton, could have further reverberations, as it could form the basis of proposed research exploring whether the Fair Work Commission should adopt a more regional focus (see [Related Article](#)).

In final reports on the [\\$2.5 billion Newcastle Coal Infrastructure Group third coal terminal project](#) and the [\\$1.6 billion upgrade of Port Waratah Coal Services' coal loader](#), Deputy President Rod Harrison said representatives of Unions NSW, the Newcastle Trades Hall Council, coal unions, AiG and the terminal operators held monthly communication meetings with employees and with each other, along with regular site inspections, and demonstrated a continuing willingness to resolve issues quickly and effectively.

He said the successful consultation meant that a standing arrangement for either himself or Fair Work Commissioner John Stanton to be called on to list matters quickly was not needed at any stage of either project.

Deputy President Harrison is also expected to soon release his final sign-off of the [\\$500 million Ravensworth North project](#), after the parties submitted their final reports to him on November 27.

Newcastle University Professor Mark Bray said the three projects were among some 25 large construction projects completed successfully since 2000 "through what is increasingly being called the 'Hunter model'".

"The components of this model include good coordination, effective representation, cooperative consultation and reasonable compensation within a framework supervised by the Commission," he said.

"The model deserves national attention."

Unions NSW industrial officer Peter McPherson said the monthly communication meetings were the "key to the success of this model".

"If something came up, it wasn't left to sit around and fester. Issues could be raised quickly, talked about and sorted out," he said.

McPherson said the agreements were the easy part of the process, with the hardest part being dealing with so many different contractors during the projects.

"There were a whole range of different contractors, each with their own cultures. It was a constant work in progress".

\$2.5 billion NCIG project final stage an "exemplary model"

Deputy President Harrison described the NCIG project, which finished six months ahead of schedule and \$200 million under budget, as an "exemplary model of what can be achieved by the active and

co-operative application of a sound industrial agreement".

Deputy President Harrison said that the "principles of productive working relationships founded on mutual respect and communication" included in the [Hatch Associates Pty Ltd NCIG CET Stages 2AA and F Project Union Greenfield Agreement 2010-2014](#) were ultimately adopted in agreements covering more than 100 contractors and sub-contractors.

Over the life of the project, 62 consecutive monthly communication meetings and 13 site inspections were held, while some 104 representatives of Unions NSW and the Newcastle Trades Hall Council, construction unions, AIG and the project took part in formal site proceedings and Commission report-back proceedings.

He credited Peter McPherson with taking part in "99 face to face meetings with contractors, subcontractors and their employees as well as countless day to day communications by telephone, text and email".

More than 5,500 people were inducted to the construction site, with over 800 working at any one time. There were only two lost time Injuries in over eight million hours worked.

\$1.6 billion Kooragang Expansion Project

The \$1.6 billion Kooragang Expansion Project increased the Port Waratah Coal Services' Kooragang Coal Loader's annual export coal loading capacity from 113 million tonnes to 145 million tonnes a year.

Deputy President Harrison said the [Bechtel Australia Pty Ltd Port Waratah Coal Services Kooragang Expansion Project Agreement 2010-2014](#) set out wages, conditions and working hours within a "framework of co-operation and mutual responsibility, with innovative safety and communication procedures".

Twenty contractors and subcontractors working on the site then adopted the agreement.

With the last construction worker finishing on the site on November 1 this year, the project was completed six months ahead of schedule and some \$300 million under budget.

Some 6,000 inductions were made to the site, during the project's 5.4 million working hours.

About 40 communication consultative meetings were held, along with regular site inspections and progress reports to the Commission.

"The Project outcomes are a credit to all participants. Management are congratulated on the leadership and commitment to safety, communication and positive relationships," he said.

"The Trade Union officials and site delegates are congratulated on their contribution which has, throughout the Project, been co-operative, responsible and productive of a quality outcome for their members, contractors and the client."

[Request By Unions NSW and Newcastle Trades Hall Council for assistance of the Industrial Relations Commission of New South Wales re Newcastle Coal Infrastructure Group 2AA and 2F Construction Project Joined With NCIG Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd and Unions NSW and affiliates \[2013\] NSWIRComm 94 \(8 November 2013\)](#)

[Request by Unions NSW and the Newcastle Trades Hall Council on behalf of Port Waratah Coal Services Limited, Bechtel Australia Pty Ltd, Australian Industry Group and the Civil Construction Unions for the assistance of the Industrial Relations Commission of NSW \[2013\] NSWIRComm 100 \(28 November 2013\)](#)

