

26 February 2024

The Honourable Meaghan Scanlon MP
Minister for Housing, Local Government and Planning
Minister for Public Works
By email: housing@ministerial.qld.gov.au

Dear Minister

As a collective of peak industry bodies in Queensland we represent the developers, contractors and subcontractors building the housing, health, education and other capital works projects in Queensland, as well as the selling agents of new housing.

Collectively, we raise serious concerns as to the negative impact on the wider construction sector, as well as clients and taxpayers, of the Queensland Government's Best Practice Industry Conditions (BPICs) that exist by virtue of the Best Practice Principles (BPPs). These Conditions have flow-on impacts on housing, infrastructure affordability, energy prices to consumers and water prices to users.

Construction companies wanting to tender for BPP projects (and subcontractors for building BPP projects) are essentially being pushed to sign either an EBA or project agreement with the CFMEU. The current CFMEU EBA applicable to building projects has been presented as a non-negotiable five year agreement.

Large unit developments subject to current EBA conditions are becoming too expensive to build, largely due to lost time and productivity, which is explained in more detail below. Essential government infrastructure projects have similarly been delayed.

While we acknowledge the intent of BPPs to raise safety standards, diversity, equity and remuneration, we are collectively of the view there are significant negative impacts of BPICs that extend beyond these goals.

At a time when there is record expenditure from the state government in construction of building and infrastructure, value for money is vitally important and achieving improved productivity in the industry is key to this. Unfortunately BPICs are having the opposite effect. We are already at a point where projects are not proceeding because expected costs and length of time to construct means the project cannot pass a feasibility assessment. If conditions improving productivity were included in the next BPICs this would go some way towards improving outcomes for workers, businesses and home buyers into the future, although acknowledging that the current EBA has a five year term.

We set out below some examples of measures that could improve the next iteration of BPICs.

Flexibility – RDOs

BPICs provide for additional rostered days off (RDOs) to those in the relevant Awards. In practice, these must be taken on the same day by all workers, meaning sites are shut down for 26 days each year for RDOs.

RDOs were introduced to compensate for longer hours worked per week (above 38 hours) and to assist in management of fatigue.

If RDOs could be negotiated on two fronts, it would assist contractors manage their schedule, for reasons set out below.

Firstly, to enable employers to elect whether to require additional weekly hours with RDOs, or to have a 38 hour working week without RDOs (or fewer RDOs). Secondly, to permit RDO days to be negotiated so that the entire site is not necessarily shut down. This would provide additional flexibility and choice for workers as well as businesses.

Another benefit of flexible RDOs would be a much-reduced impact of union activity days on construction schedules. As it is the typical practice for all workers to attend union activities, where they are scheduled within a few days of an RDO, multiple days of lost productivity on site can occur, due to the nature of construction and scheduling.

In the 2023 calendar year there were six union activity days, and five of these occurred two business days before or after an RDO. This results in a disrupted week (or two) where major works often cannot be performed and need to be postponed.

Flexibility – working hours

Contractors are contractually required to manage construction sites and achieve completion times. Yet, projects subject to BPICs (and now EBAs) are such that principal contractors are unable, with any certainty, to predict and schedule work due to the application of the conditions by the union.

For example, BPICs provide that hours may be worked outside the specified working hours Monday to Friday, only where it is agreed with the union. Overtime may also be worked, provided it is with union agreement.

If union agreement is not granted, there is little a principal contractor can do. If hot weather is predicted, and a particular subcontractor is willing to commence early in order to complete a task that is on the critical path before temperatures require the implementation of heat management, unless union agreement is provided for that early start, the day is lost.

If BPICs removed the requirement for union agreement where working alternative hours was reasonably required, and/or replaced it with an obligation not to unreasonably withhold agreement to working alternative hours, this may assist.

Inability to predict productive working hours

In addition to the above implications, the BPICs (and EBA) provide an ability for a (paid) work stoppage of two hours every day to attend union meetings or participate in union activities. The clause, whether used or not, is likely to impact the scheduling of work and predicting the time to complete, for tendering purposes. The use of this provision could result in a contractor being substantially disrupted and may not qualify for any contractual relief from the Principal. For example, if a stoppage occurs mid-concrete pour this would result in dumping concrete and removing partially poured concrete, with time, cost and environmental consequences (as has occurred on projects with the BPIC/ EBA recently).

We suggest this ability for union meetings (which are in addition to prestart meetings, toolbox talks, safety talks and the like) be subject to reasonable limitations, that would not impact negatively on site safety, and we are happy to discuss reasonable options.

Other provisions that have the potential to substantially disrupt a project are the application of the weather conditions. These can result in site shutdowns without a risk-based assessment (or consideration of the contractor's own hazard management procedure), causing significant delay and disruption to the project, typically at the contractor's risk and expense.

We are happy to discuss further and provide examples if required.

Productive construction methods

As the BPICs add substantial time to completion of a construction project, it would be useful to include in the next BPICs conditions actively supporting the use of innovative and productive methods of working, including the use of automation, to improve productivity and address labour shortages.

Other steps

Another step the Government could take is to defer the *Work Health and Safety and Other Legislation Amendment Bill 2023*. In our view, the Bill does not contain provisions that would result in an improved safety outcome in the construction sector, but does contain provisions that could hamper productivity further, such as the expanded cease work powers. We note the CFMEU is also critical of the Bill.

A significant step towards improving productivity in the construction sector would be to re-establish the Queensland Productivity Commission and task it with conducting a Construction Industry Productivity Review.

We welcome discussion on options to improve construction sector productivity (without compromising safety and quality), with both Government and unions.

Yours sincerely

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