CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

CIVIL CONTRACTORS FEDERATION AUSTRALIA

Submission for the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth)

1. Introduction

Thank you for providing us with the opportunity to submit feedback on the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth) ('the Bill') and for providing the Civil Contractors Federation Australia Ltd, (CCFA), additional time to prepare our submission.

This Bill consisting of 284-pages and another 521-pages for the Explanatory Memorandum contains significant number of amendments. CCF agree with some of the proposals and understands the government's intent on others.

Our submission does not aim to address every detail. This is a Bill that will take time to consider all of the unintended consequences. We note that there may be circumstances where new issues are brought to light, and these needs to be addressed as they arise.

However, this Bill presents a pivotal turning point for the industrial relations system for the civil construction industry. This submission is to ensure that this turn is toward achieving sustainability of the industry and its workforce and not to its detriment.

The civil construction industry has an extremely complex supply chain which is heavily interconnected and heavily dependent on external factors to determine its success or failure. These external factors should be supporting the industry, rather than acting as a fortified barrier that the industry must overcome in order to succeed. Another external factor is the legislative framework that seeks to regulate the industry.

In this instance, the Act presents an external factor to regulate the relationship between the employer and the employee. The turning point for the industry, for this Bill, is whether this external factor is going to help or harm the ability for the industry to continue to contribute to the wellbeing of the nation.

We commend the government on addressing issues that need to be addressed. This includes:

- Extending anti-discrimination rules to include family and domestic violence
- Protecting workers from sham arrangements
- Extending the Asbestos Safety and Eradication Agency to include the emerging safety involving silica
- Protecting workers from the small business exemption for redundancy entitlements.

Unit 13, Level 3, Engineering House
11 National Circuit
Barton ACT 2600

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

We also understand that some of the more controversial conversations, such as labour hire in the mining industry and the regulation of digital platform workers for passenger transportation and food delivery services, are worth having for the protection it provides for workers in specific working environments.

Our concern is that these specific conversations are being broadened to a such a degree that it captures majority of workers, with no regard to the consequences for the industry that they work in.

This submission is to voice the consequences that are very real to the civil construction industry, and to ensure that this turning point is one that benefits not just the industry, but the whole of Australia.

We would request that the least contentious matters of the Bill proceed and the elements of the Bill which are addressed below are paused for further consultation and debate to ensure the intent of the Bill is applied correctly without unintended consequences.

2. Overview of Civil Contractors Federation Australia

Civil Contractors Federation Australia Limited ('CCFA') is the peak national representative body for the civil construction industry in Australia. We represent construction companies across the construction supply chain in all jurisdictions, ranging from tier 1, 2, 3, 4, SME's and one-person ABN holders.

With offices in every major capital city, CCFA is best positioned to speak with authority on behalf of the whole civil construction industry. We have the knowledge and authority to promote, cultivate, and advance positive and relevant civil construction industry policy in Australia, for the benefit of all Australians, by working collaboratively with government and industry at all levels under its federated structure.

The civil construction industry is responsible for the construction and maintenance of Australia's civil infrastructure, including roads, rail, bridges, water supply, pipelines, drainage, ports, and utilities.

Some of the businesses we represent also play a vital role in the residential and commercial building construction industry by providing earthmoving and land development services including the provision of power, water, communications, and gas.

A CCFA commissioned infrastructure report, Rebuilding Australia – A Plan for a Civil Infrastructure Led Recovery, found that for every $1 million invested in the civil construction industry:

- 7.2 workers are employed in the construction and related industries
- $2.95 million of output is contributed to the economy
- $1.3 million is contributed to Australian GDP.

It is crucial to note that any impact on the civil construction industry will have significant impacts to the broader economy and communities.

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

3. Casual employment (Part 1 of Schedule 1) and definition of employment (Part 15 of Schedule 1)

The High Court of Australia ('HCA') in *WorkPac Pty Ltd v Rossato* [2021] HCA 23 noted at 57-61:

> "A court can determine the character of a legal relationship between the parties *only by reference to the legal rights and obligations which constitute that relationship*. The search for the existence or otherwise of a "firm advance commitment" must be for enforceable terms, and not unenforceable expectations or understandings that might be said to reflect the manner in which the parties performed their agreement…[S]omething that is not binding cannot meaningfully be described in a court of law as a "commitment" at all. Some *amorphous, innominate hope or expectation falling short of a binding promise enforceable by the courts is not sufficient to deprive an agreement for casual employment of that character*." [emphasis added]

Gordon J upheld this reasoning in *Workpac v Rossato* in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 at 162:

> "…totality of the legal rights and obligations provided for in the contact, construed according to the established principles of contractual interpretation."

This reasoning was further upheld by the HCA in *ZG Operations Australia Pty Ltd v Martin Jamsek* [2022] HCA 2.

We have concerns that this Bill seeks to go beyond the legal relationship between the parties into the realm of obscurantism. The Bill states in 15A(2)(b) that "whether the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work is to be assessed…on the basis that a firm advance commitment can be in a form commitment can be in a form of the contract of employment, or irrespective of the terms of that contact, in the form of a mutual understanding or expectation between the employer and employee."

Section 3 goes even further to say that "for the purposes of paragraph (2)(b), a mutual understanding or expectation may be inferred from conduct of the employer and employee after entering into the contract of employment or from how the contract is performed."

The Bill also seeks to insert 15AA into the Act to determine the ordinary meanings of "employee" and "employer" in reference to s 15:

15AA Determining the ordinary meanings of employee and employer

(1) For the purposes of this Act, whether an individual is an employee of a person within the ordinary meaning of that expression, or whether a person is an employer of an individual within the ordinary meaning of that expression, is to be determined by ascertaining the *real substance, practical reality and true nature of the relationship between the individual and the person.*

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

(2) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person:
   (a) The totality of the relationship between the individual and the person must be considered; and
   (b) In considering the totality of the relationship between the individual and the person, regard *must be had not only to the terms of the contact governing the relationship, but also to other factors relating to the totality of the relationship, including, but not limited to, how the contract is performed in practice.*"

The terms "real substance", "practical reality", "true nature", and "must be had not only to the terms of the contact governing the relationship, but also to other factors relating to the totality of the relationship, including, but not limited to, how the contract is performed in practice" also gives the effect that it looks outside of the contract.

Our concern is that the wording of the Bill would allow for matters outside of the contract to determine the legal relationship of the parties. This will create circumstances where a legal relationship between parties can be created outside of the contract, nullifying the existence of the legally binding contract in the first instance.

There is an additional concern that the use of vague terms such as "real substance", "practical reality", "true nature", and "must be had not only to the terms of the contact governing the relationship, but also to other factors relating to the totality of the relationship, including, but not limited to, how the contract is performed in practice" will increase the legal and financial burden across the whole supply chain.

This will cause increase costs of projects, decreased competition, stifle productivity, and make it extremely difficult for the industry to positively contribute to broader social, economic, and environmental outcomes for Australia.

Recommendation 1
CCFA submits that Part 1 of Schedule 1 be removed from the Bill.

Recommendation 2

CCFA submits that Part 15 of Schedule 1 be removed from the Bill.

If there needs to be new definition of employment under Part 15, CCFA submits that the definition should only include the phrases "totality of the relationship" and "by reference to the legal rights and obligations which constitute that relationship."

The provision would read as follows:

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

15AA Determining the ordinary meanings of employee and employer

(1) For the purpose of this Act, whether an individual is an employee of a person within the ordinary meaning of that expression, or whether a person is an employer of an individual within the meaning of that expression, is to be determined by ascertaining the totality of the relationship between the individual and the person by reference to the legal rights and obligations which constitute that relationship.

Note: This section was enacted as a response to the decisions of the High Court of Australia in *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd* v Jamsek [2022] HCA 2.

4. Regulated Labour Hire Arrangement Orders (Part 2-7A in Part 6 of Schedule 1)

When the *Fair Work Amendment (Equal Pay for Equal Work) Bill 2022* (Cth) ('Equal Pay for Equal Work Bill') was introduced into Parliament on 10 February 2020, the intent of the Equal Pay for Equal Work Bill was to address labour hire in particular industries that are; (1) a known failure in the market; and (2) do not currently provide for casual employment in their award. The Equal Pay for Equal Work Bill was referred to the Senate Education and Employment Legislation Committee on 28 July 2023 and the report on 24 October 2022 concluded that the Equal Pay for Equal Work Bill should not be passed as the scope of the bill was not comprehensive enough for its intended objective.

CCFA submits that the current Bill has swung too far in the opposite direction in that it has become too comprehensive and will capture industries outside of its intended use. The intention from the Hon Tony Burke MP's National Press Club speech is to "not to get rid of labour hire" as there are "lots of appropriate uses for labour hire" but to make sure that worker's wages are not undercut when they are on an Enterprise Agreement (EA). The Bill, however, is much broader than this intention.

The Bill seeks to enforce a regulated labour hire arrangement order ('RLHAO') to apply to any situation where "any employer supplies or will supply, either directly or indirectly, one or more employees of the employer to a regulated host to perform work for the regulated host; and a covered employment instrument that applies to the regulated host would apply to the employees if the regulated host were to employ the employees to perform work of that kind."

There is no clear exemption in the legislation for employees working for subcontractors, who are working for a head contractor, who would be considered a 'regulated host' for the purposes of the provision. In making its determination, the Fair Work Commission ('FWC') may consider "whether the performance of the work is or will be wholly or principally for the provision of a service, rather than the supply of labour, to the regulated host."

For the civil construction industry, this is a "loophole" that could have massive repercussions. It could allow for a push for "on hire" employees of subcontractors on a construction project to be paid at the same rate

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

as the head contractor's EA. Furthermore, as subcontractors routinely work across multiple major projects at the same time, unions would choose to apply for an order with the regulated host that has the most generous EA in the region. In this way the highest rates of pay – no matter how out of step with industry norms – could become the new standard.

The administrative and financial burden on businesses of dealing with multiple orders would be overwhelming. The legislation would give unions the unrestricted right to apply for orders in regard to any employee they are entitled to represent. It is reasonable to assume they will use this right energetically. In the civil construction industry, unions will inevitably focus their efforts on major government projects where an EA is in place with the head contractor. The subcontracting, and overall supply chain, on a major project is large and complex, and typically can include hundreds of businesses that could be captured by the proposed legislation. Many of these businesses operate broadly across the sector. In addition to subcontracting on major projects, they also work for local governments, land developers, and other private sector clients.

It is not hard to envisage how the implementation of a RLHAO for a single major infrastructure project in a state would have far-reaching effects across the entire civil construction industry in that state. Our industry could be subject to an unsustainable pay rate explosion across all sectors adding significant costs to infrastructure delivery in Australia.

The explanatory memorandum states the intention is "protecting bargained wages in enterprise agreements from being undercut by the use of labour hire workers who are paid less than those minimum rates." It is highly unrealistic to suggest that because a long-term and highly productive employee is on a certain pay rate, that the same rate should apply to a temporary labour hire employee. For example, a skilled permanent excavator operator will be much more productive than a labour hire worker who is less skilled, but whose services are necessary to cope with a temporary high workload. Under the proposed legislation, an employer would be forced to pay both excavator operators the same hourly rate.

In the face of this very real prospect, it is no comfort to be told by the Minister that it is not his intention. The only consideration that will matter in the end is the wording of the legislation, and how it will be used by unions to aggressively pursue ever-higher pay rates, with their expectations based on whatever is currently the most generous EA in the industry. This issue is reinforced by the fact that the government has provided little evidence of this so-called loophole.

The Building and Construction General On-site Award 2020 [MA000020] already applies to employers that supply "labour on an on-hire basis" in clause 4.5. The term "on-hire" means "the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client." This absence of the "on-hire" clause is a particular concern for awards that do not currently have provisions that relate to "on-hire" employers, such as the Black Coal Mining Industry Award 2020 [MA000001] and the Mining Industry Award 2020 [MA000011].

The particular concern for the industry is that any impact on the ability for the industry to manage their own workforce will significantly impact the industry in a number of ways including:

- Significant increased costs across the whole supply chain which could impact already allocated budgets for major infrastructure projects.

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

- Reduced competition between employers for workers leading to decreased innovation and productivity while also leading to stagnant wages
- Increased strain on the already tight labour market
- Increased hostility and anti-collaborative behaviours between employers and employees
- Increased time to major infrastructure projects.

Labour hire allows the industry to have a mobile, flexible, scalable, and sustainable workforce that can be helpful in the project-based, seasonal, tender-based environment that the industry operates in. The mobility of the workforce is of particular benefit as the workforce can transition from project to project to maintain higher rates of employment over the long term.

Although there have been exclusions made in the Bill for a surging workforce (of 3 months), this does not take into consideration the average lengths to complete projects that can easily be over 3 months.

If this Bill is passed in its current form, it will have a major impact on the productivity of the industry, which means more resources for less work. This means less essential infrastructure projects completed for the advancement of Australia and its people.

Recommendation 3

CCFA submits that any provision regarding labour hire should only be applied to work performed which is covered by modern awards that are a known failure in the market, and do not currently provide for casual employment in their award. This would include the Black Coal Mining Industry Award [MA000001] and the Mining Industry Award 2020 [MA000011], which are of the most concern and the main reason for the enactment of this amendment.

If this not accepted by the Committee, we submit that there needs to be carve-out provision that excludes employees who are performing work that is covered by the Building and Construction General On-site Award [MA000020]. This would be similar to the one that was accepted by the Committee in our submission to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* (Cth).

The provision would read as follows:

> (11) The FWC must not make a *regulated labour hire arrangement order* if the arrangement order would cover employees in relation to the general building and construction work.

The meaning of general building and construction work would need to include "civil construction within the meaning of paragraph 4.3(b) of the Building and Construction General On-site Award 2020 as in force at the applicable time."

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

5. Workplace delegates' rights (Part 7 of Schedule 1)

CCFA respects the right of freedom of association and the ability for a worker to be represented for work health and safety matters. Our concern is that this Bill, in its current form, would have unintended consequences to the balance of powers in the workplace relations system.

CCFA would first like to note that there has been no evidence provided to suggest that there is a loophole for workplace delegates' that would warrant an increase in their powers.

The current power of workplace delegates' was summarised in *Maritime Union of Australia v Fair Work Commission* [2015] FCAFC 56 at 14:

> "A person granted an entry permit is conferred extensive power. Entry permits confer rights which significantly erode the common law right of occupiers to exclude those to whom they do not wish to grant entry. The Commonwealth legislature has nevertheless long concluded that conferring such powers is necessary in the context of industrial law. But it has also long sought to strike a balance between common law rights and otherwise untrammelled power."

This was further referenced in the decision of *In the matter of the Entry Permit of Jason Lawrence O'Mara* [2021] FWC 3155.

We are not recommending that workplace delegates' powers need to be reduce, as we understand that there needs to be a necessary power balance. Our concern is that there is no confidence for workplace delegates' to be able to handle more power than what they currently have.

The unions have a history of contraventions, with the most recent one of interest being *Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (BBQ Case)* [2023] FedCFamC2G 668.

In *BBQ Case*, Vasta J referenced *CFMMEU v ABCC (The Non-Indemnification Personal Payment Case)* [2018] FCAFC 97 at 40:

> "The Union acts through its officials, of whom Mr Myles was, and is, one. The penalty against the individual must be a burden or have a sting to be a deterrent. The history of contravening by the Union, all undertaken through its officials, reflects a willingness to contravene the Act and to pay the penalties as a cost of its approach to industrial relations. Mr Myles has a history of significant contravention. A personal payment order of the kind to which we will come will bring home to him, and others in his position, that he, and they, cannot act in contravention of the Act knowing that Union funds will always bale him, or them, out."

Vasta J reasoned at 65-66 that:

> "In my view, the position of the second respondent is one where he should have been setting an example of adherence and compliance with the law. The actions of the second respondent were bad enough…and…there is little doubt that, he would have known that he had just contravened s. 500 of

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

> the FW Act…[T]o then blatantly contravene in the exact same manner some five days later, illustrates why the deterrent aspect of the imposition of the pecuniary penalty must contain the necessary sting or else it will not be an effective deterrent at all."

There is also a concern that provision allowing workplace delegates' to have "reasonably communication" with "any other persons eligible to be such members" will be interpreted broadly in such a way as to try and increase their membership numbers rather than increasing workplace health and safety.

Recommendation 4
CCFA submits that Part 7 of Schedule 1 be removed from the Bill.

6. Withdrawal from amalgamations (Part 13 of Schedule 1)

The previous *Fair Work (Registered Organisations) Act 2009* (Cth) allowed for a three-year window (more than two years but not more than five years). The *Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamations) Act 2020* (Cth) was passed, enabling de-mergers of amalgamated unions within 5 years of their amalgamation. This Bill seeks to revert the de-merger timeframes back to the previous standard.

This will reduce competition and limit an individual's right to freedom of association. It will also limit the flexibility to ensure that the most appropriate representative has the most appropriate coverage for the most appropriate workers.

Recommendation 5

CCFA submits that Part 13 of Schedule 1 be removed from the Bill.

7. Wage theft (Part 14 of Schedule 1)

CCFA does not contend the criminalising of wage theft, as it is important to protect workers from intentional underpayment. We would, however, like to comment on the way in which small businesses are dealt with under the Bill.

The Bill allows for small businesses to avoid penalties through two avenues:

1. The Voluntary Small Business Wage Compliance Code ('VSBWCC')
2. Cooperation agreement

We note that we do not currently know how the VSBWCC will be written, and are unable to comment on its effectiveness at this time.

However, we do know that many small businesses do not have the resources and the "voluntary" nature of the VSBWCC will not be realised as many will simply join up for the protection that it provides.

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

We also know that the added layer of complexity will significantly reduce the confidence for small businesses to enter and operate in the economic market. This will stifle entrepreneurship, stakeholder diversity, competition between employers, and overall productivity of Australia.

Recommendation 6

CCFA submits that Part 14 of Schedule 1 be paused for further consultation until the VSBWCC and Cooperation agreements are disclosed and fully understood.

8. Unfair contract terms of services contract (Part 3A-5 in Part 16 of Schedule 1)

The Bill seeks to amend the Act for the FWC "to establish a framework for dealing with unfair contract terms of services contracts" and to "establish procedures for dealing with unfair contract terms that…are quick, flexible, and informal…and address the needs of principals and independent contractors." The Bill then seeks to establish this framework through the FWC which would be given power to set aside all or part of a contract or amend or vary a contract.

CCFA submits that the framework that this Bill intends to establish already exists; the judiciary branch of government. The FWC is a national administrative tribunal and cannot exercise judicial power. While there may be ways in which judicial processes dealing with unfair contracts terms may be streamlined, any developed framework for the FWC should not interfere with the constitutional role of the judiciary.

We also note that there could be circumstances where the use of the term "services contract" could be broadly interpreted to reach further than what is intended in the Bill.

Recommendation 7

CCFA submits that Part 16 of Schedule 1 be removed from the Bill.

9. Collective agreements (Division 3A in Part 16 of Schedule 1) and "employee-like worker" (Subdivision B in Part 16 of Schedule 1)

The Bill seeks to allow for the following collective agreements:

- Employee-like worker
- Road transport.

CCFA acknowledges the importance of freedom of association, and the ability for someone to choose to join or not to join a union. This means that a worker has the right to collectively bargain as part of their union entitlements.

CCFA would like to ensure that for similar reasons that were accepted by the Committee in our submission to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* (Cth), that employees in relation to the general building and construction work are exempt from forced collective bargaining.

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

We also note that although these provisions intend on addressing specific workers, such as digital platform workers (Uber, Uber Eats, DoorDash, etc), it can be broadened to include independent contractors that advertise their services on digital platforms and consultants that provide services to specific major projects.

These workers require the flexibility and mobility in the project-based working environment that consists in the civil construction industry. An independent contractor has the ability to maintain employment across the industry which helps maintain a sustainable level of employment.

Recommendation 8

CCFA submits that any collective agreements imposed on the road transport industry and employee-like workers needs to carve-out the civil construction industry.

The recommended format would be as follows:

> "A collective agreement cannot be made if the agreement would cover employees in relation to the general building and construction work."

10. Close

We want to thank you again for providing us with the opportunity to write a submission for the Committee report on the Bill. We hope that this submission provides some insight into the concerns that we have for the civil construction industry and Australia if this Bill is passed in its current form.

We note that the emotion garnered towards the idea of "closing loopholes" does not actually line up with the intention of the agenda behind it. There is a difference between closing a loophole and creating such a broad and far-reaching legislative framework that the "loophole" is not addressed as its root cause, but simply overshadowed by more oppressive loopholes that will appear if this Bill is passed in its current form.

These more oppressive loopholes will restrict competition and stifle productivity.

Alex Robson, Deputy Chair of the Productivity Commission, has reinforced in a speech to the House of Representatives Standing Committee on Economics on 15 September 2023 that "Australia's productivity performance has been anaemic for quite some time" with a decline of 3.6% over the year to June. The solution given by Robson is to increase economic dynamism, competition, and business formation. The only real way to increase real wages is to increase productivity. These findings have been reconfirmed in the Productivity Commission's *Advancing Prosperity*.

CCFA submits that the current issue for the civil construction industry is not wage growth. It is the stagnant productivity rates that the industry has faced for the past 30 years according to Infrastructure Australia's Infrastructure Market Capacity report.

CCFA Ltd Office
ABN 89 618 345 261

(02) 6273 8312
www.civilcontractors.com
ccfnat@civilcontractors.com

CIVIL CONTRACTORS FEDERATION AUSTRALIA LTD

The issue of productivity requires the whole system to be re-examined to increase competition between employers to secure workers. The current system restricts the ability for workers to flow into more productive firms, where the employers are fighting against unions for an enterprise agreement rather than each other for workers. There needs to be a system that allows for workers to flow to more productive firms and create competition horizontally across employers to improve their productivity and incentives to secure more workers that will help increase profits, wages, and overall productivity. The Reserve Bank of Australia notes that "[U]nit labour costs (ULCs), which measure the labour costs associated with producing one unit of output, decrease as labour productivity increases, meaning that firms can offset the effect of wage increases on profits with productivity improvements."

The issues of wage growth cannot be discussed without understanding the complex nature of productivity growth, which thrives on flexibility and mobility of the workforce and competition to secure more workers to increase productivity and wages. This Bill attempts to solve wage growth through artificial solutions that are prescriptive and rigid, increasing the barriers for competition and creating a fortified barrier to increasing productivity and real wages.

Australia has productivity anaemia, and CCFA submits that this anaemia needs to be solved through genuine increases in competition between employers rather than the workplace relation systems.

CCFA would like to further reiterate the importance of strengthening the whole of industry's supply chain, and the complexity of our supply chain means that there simply cannot be a "one-size-fits-all" approach for industrial relations management. Assuming that these amendments could achieve this would be detrimental to the industry, and to the nation.

This Bill is more far-reaching than it is intending to be, and this Bill cannot be passed without more consideration of the consequences of the industries that will be caught up with the use of such broad language.

The objective of the *Fair Work Act 2009* (Cth) ('the FW Act') is to "provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians." These recommendations need to be taken seriously to avoid diminishing cooperation and stifling productivity.

CCFA formally makes this submission for consideration of the Committee. If you require any more information, please do not hesitate to contact us.

Mick Boyle
President
Civil Contractors Federation Australia
5 October 2023

Unit 13, Level 3, Engineering House
11 National Circuit
Barton ACT 2600