2.3.2009

The Australian Fair-Pay Commissioner
The Australian Fair-Pay Commission
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Dear Commissioner,

SUBMISSION TO FAIR-PAY COMMISSION

In response to the call for submission I write to advise the Commission of concerns I have in relation to one major aspect associated with the terms of employment and pay structure within the industry in which I operate.

Background

1. The nature of the business is “Commercial Construction” oriented and involves the engagement of floor covering installers.

2. The level of full time employment of installers by companies undertaking contracts in this sector is estimated at less than 5% of the total pool of available labour.

3. The main operating mode of installers is to operate as sub-contractors. The sub-contractors make services available to the broader industry on a project by project basis.

4. The current Federal Award and negotiated EBA rates are well documented; however, the general earning capacity of sub-contractors is well in excess of the levels set by such awards. It is often the case an individual can earn between $2,000 and $6,000 per week.

5. In respect of the earning ability of installers of the industry it is apparent the level of earning capacity exceeds all awards and documented agreements.
6. The sub-contractors offer labour, and often materials, to the broader community on the basis of project by project.

7. The sub-contractors undertake such projects on the basis of a lump sum agreement determined at the start of the project. Often variation to these rates apply due to prevailing conditions on site.

8. All sub-contractors have responsibility for their entities own taxation requirements and associated business costs related to day to day operations.

9. Companies engaging sub-contractors who are signatories to industry Enterprise Bargaining Agreements (EBA’s) are held liable for benefits on behalf of the engaged individuals. These benefits include: Superannuation payable to C+Bus, redundancy benefits payable to Incolink, Long Service contribution payable to SEET and Income protection payable to a Union generated fund.

This submission calls for the following reviews:

a) The current earning capacity of the small number of employees engaged in the industry and the revenues of the sub-contractor entities is not the focus of this submission. The current earning capacity in the industry is considered in the higher levels. I do not call for a reduction in the earning capacity.

b) I call on acknowledgement that entities / sub-contractors offering services to industry are viewed by authorities as a legitimate business, therefore, be held accountable.

c) The abolition of the taxation tests which determine the validity and the definition of an employee when an entity / sub-contractor operates as a valid and bone-fide sub-contractor.

d) The abolition of benefits to sub-contractors paid by third parties and the mandatory payment of these benefits by the sub-contracting entity in line with standard business practices. Such costs are at the cost of the entity / sub-contractor.

e) The abolition of entities / sub-contractors being treated as employees under the State Revenue payroll tax system.
Closing comments:

The engagement of entities / sub-contractors offering their services and labour to industry do so on the basis of running their own business. People do so to enjoy the benefit of maintaining a life style which they have chosen – amongst those benefits:-

- flexibility in the working hours and type of work to be undertaken
- an earning capacity exceeding the Federal award by 2 or 3 times
- the right to select what work is to be undertaken and at what price
- the ability to claim deductions which have not been met by the entity / subcontractor
- running the business as a “potential” black economy business to offset taxation
- ignore statutory obligations for additional employees the entity / subcontractor engages from time to time, such as Workcover.

I am asking the commission to determine and let it be known that entities / sub-contractors who operate with an ABN must meet all obligations as must all other business operators. I also call on the commission to rule that all benefits are a cost of business and to be met by the business, whether a sole trader, partnership, trust or limited Co.

Thank you for your time.

Yours sincerley,

J White