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▶▶▶ **AiG lodges appeal against FWA approval of ETU clauses**

19 May 2011 5:57pm

The AiG has lodged an appeal against last month's rejection by Fair Work Australia of its challenge to contracting out, union membership and right of entry clauses in the Victorian electrical contracting sector pattern agreement.

The employer group in its [notice of appeal](#) filed with the tribunal today maintains that Senior Deputy President Jennifer Acton was wrong to find that the contracting out clause in the first of the deals put up for approval - covering [ADJ Contracting Pty Ltd](#) - didn't require the employer to contravene [s340\(1\)\(a\)](#) of the Fair Work Act (see [Related Article](#)).

The clause the AiG objects to stipulates that employers can only contract out at rates and conditions that at a minimum match the pattern deal, and the AiG also says in its grounds of appeal that Senior Deputy President Acton was wrong in failing to consider whether, or find that, the clause permitted the employer to contravene [s340\(1\)](#).

It also claims Senior Deputy President Acton was wrong to approve the deal because the tribunal couldn't be satisfied that it didn't include any objectionable and therefore unlawful terms - an argument it also put on the deal's right of entry and union membership clauses.

The employer group also argues that Senior Deputy President Acton erred in applying [s192](#) of the Fair Work Act when considering the contracting out clause and failed to consider the proper operation and effect of [s45E](#) and [s45EA](#) of the Competition and Consumer Act. And, it says, she ought to have found that complying with the clause could result in penalties for contravening those provisions.

On the clause in the deal covering right of entry for dispute resolution purposes (15.2(k)), the AiG maintains Senior Deputy President Acton was wrong in finding that (apart from its last paragraph) it was not unlawful.

The AiG is also challenging the finding that the clause in the agreement promoting union membership (16.6(b) and (d)) didn't require a contravention of [s350](#) of the Fair Work Act.

Under the clause, the employer has to promote union membership to all prospective and current employees, and ETU members are encouraged to "participate in Union meetings and exercise their democratic rights".

Chief executive Heather Ridout today said that last month's decision had "considerable cost implications for employers and creates the risk of widespread flow-on of union claims across the construction sector and other industries".

She said the clauses restricted legitimate commercial arrangements between contractors and subcontractors and inhibited the productive organisation of work.

"In the construction industry, what these clauses mean in reality is a return to the damaging practices of the past whereby unions had undue control over building sites, including stopping contractors coming on to a site unless they had an enterprise agreement with the relevant union," she said.

The AiG was not going to "stand idly by and watch the construction industry workplace relations reforms, which have been so successful, evaporate".

The ABCC also intervened to object to the ADJ deal's approval, but Commissioner Leigh Johns this afternoon in a statement said that it wouldn't be appealing last month's decision as the AiG's action today had made doing so redundant.

Some 850 employers and 12,000 employees in the Victorian electrical contracting sector are expected to come under the framework deal struck last year between the ETU (Victorian branch) and the state chapter of NECA (see [Related Article](#)).

ETU Victorian secretary Den Mighell has described the AiG's intervention as "political".

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