



**Australian Government**

**Workplace Authority**

**Agreement number: 095874986**



ATTENTION: HUMAN RESOURCES MANAGER  
BORGER CRANE HIRE & RIGGING SERVICES PTY LTD  
PO BOX 4186  
PENRITH PLAZA NSW 2750

**Declaration Receipt - Union collective agreement**

This receipt confirms that the Workplace Authority has received a declaration from BORGER CRANE HIRE & RIGGING SERVICES PTY LTD on 05/03/2009.

The employer has declared that a copy of a union collective agreement named BORGER CRANE & RIGGING SERVICES PTY LTD/CFMEU ENTERPRISE AGREEMENT 2009-2011 was provided to the Workplace Authority.

The employer must give a copy of this receipt to each employee covered by the agreement. An employer has 21 days to do this and may be liable for a fine of up to \$3,300 (for an individual) or up to \$16,500 (for a corporation) if this does not happen.

The Workplace Authority will now assess the agreement to determine whether or not it passes the no-disadvantage test. The no-disadvantage test ensures that the agreement does not, on balance, reduce the overall terms and conditions of employment of the employees covered by the agreement. This generally is a comparison between the terms of the agreement and the terms of a relevant award or former state award.

We may need to contact you for extra information to help us complete the test. Employers are encouraged to provide a copy of information they provide to the Workplace Authority to the other party or parties to the agreement. Once completed, we will write to the employer and the union(s) to let them know whether or not the agreement has passed the no-disadvantage test. If the agreement has not passed, we will provide information on variations that may be made to the agreement so that it passes the no-disadvantage test.

The agreement will not start operating until we are satisfied that the agreement passes the no-disadvantage test. Specifically, it will start to operate on the seventh day after the date of issue of a letter from us advising that the agreement has passed the no-disadvantage test.

The employer must give copies of any relevant letters referred to above to each employee covered by the agreement when the employer receives the letter as soon as they can.

The agreement will only operate if was validly made and approved and the relevant signature requirements are met. The union(s) must also be entitled to make the agreement on the basis of union membership and coverage. A multiple business agreement can only operate if the Workplace Authority has authorised the making of the agreement.

If you have any other questions, please contact the Workplace Infoline on 1300 363 264 and quote the agreement number at the top of this receipt. Please keep this receipt for your records.

**Workplace Authority Director**

09/03/2009



Australian Government

Workplace Authority



Human Resources Manager  
BORGER CRANE HIRE & RIGGING SERVICES P  
PO Box 4186  
PENRITH PLAZA NSW 2750

**NOTICE UNDER SECTION 346M OF THE *WORKPLACE RELATIONS ACT 1996***

**Your union collective agreement has passed the no-disadvantage test**

**Date of Issue of this Notice:** 8 April 2009  
**Agreement Number:** 095874986  
**Employer Name:** BORGER CRANE HIRE & RIGGING SERVICES PTY LTD, 98001947413  
**Agreement Name:** BORGER CRANE & RIGGING SERVICES PTY LTD/CFMEU ENTERPRISE AGREEMENT 2009-2011  
**Reference Instrument(s):** AP816842 - Mobile Crane Hiring Award 2002

**Decision**

- Your union collective agreement has passed the no-disadvantage test.
- Your union collective agreement will start operating on the seventh day after the date of issue of this notice.

The employer must take reasonable steps to give copies of this letter to all employees whose employment is subject to the agreement at the time the employer receives this letter. An employer may be liable for a fine of up to \$3,300 (for an individual) or up to \$16,500 (for a corporation) if the employer doesn't do this as soon as they can.

The union(s) party to this agreement will also be sent a copy of this letter.

Attached is some information about the no-disadvantage test and the Australian Fair Pay and Conditions Standard. If you have further questions concerning this notice visit our website at [www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au) or contact the Workplace Infoline on 1300 363 264.

Please retain a copy of this notice for your records.

**Workplace Authority**

**Australian Government****Department of Education, Employment and Workplace Relations**

Our Ref 11184

Mr W Kelly  
Organiser  
CFMEU  
Locked Bag 1  
LIDCOMBE NSW 1825

Dear Mr Kelly

I refer to your submission of 15 May 2009 in which you requested the Department's advice about whether the industrial arrangements, as noted in your request, are compliant with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines, reissued June 2006 (the Guidelines). The following letter is based on your industrial instruments being covered by the *Workplace Relations Act 1996* (the WR Act).

**Your Industrial Instruments as detailed below are Code Compliant.**

Please refer to the individual assessment of each instrument below.

Please note that some agreements may now contain terms and conditions which are prohibited content under the WR Act. Similarly, some federal awards may contain terms and conditions which are now non-allowable matters. Clauses containing prohibited content or non-allowable matters are void and unenforceable. It is important you note the on-site application of clauses containing prohibited content is not permitted under the WR Act and is non-compliant with the Code and Guidelines. I have not examined your industrial instruments for all void and unenforceable terms. You may therefore wish to seek legal advice, contact your industry association, or to ensure your agreement does not contain prohibited content, the Workplace Authority Workplace Agreements Information Service on 1300 366 632 or their website at [www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au).

Although it is important agreements and awards comply with the Code and Guidelines, it is equally important the practical, on-site application of any award or agreement also be compliant with the Code and Guidelines. The Office of the Australian Building and Construction Commissioner monitors behaviour on sites to which the Code and Guidelines apply, and investigates any alleged breaches of them.

**The Borger Crane Hire & Rigging Services Pty Ltd / CFMEU Enterprise Agreement 2009-2011**

I have examined the Borger Crane Hire & Rigging Services Pty Ltd / CFMEU Enterprise Agreement 2009-2011 and consider it to be compliant with the requirements of the Code and Guidelines.

I would advise you that the practical on-site application of the agreement should also be compliant with the Code and Guidelines. In this context I draw your particular attention to the clauses at Attachment A.

**The Mobile Crane Hiring Award 2002**

Award clauses that operate in conjunction with agreements must also meet the requirements of the Code and Guidelines. I note the above agreement draws upon the Mobile Crane Hiring Award 2002. I have examined the Award as at 27 January 2006 and consider it to be compliant with the requirements of the Code and Guidelines as, in my view, clauses of the Award which would otherwise not be compliant with the Code and Guidelines have been displaced by the above Agreement and contain non-allowable matter and are therefore unenforceable and have ceased to have effect. A detailed assessment is set out at **Attachment B**.

I would advise you that the practical on-site application of the award should also be compliant with the Code and Guidelines. In this context I draw your particular attention to the clauses at **Attachment B**. Under the WR Act, some award clauses are void and unenforceable as they contain matters which are now non-allowable. To apply these clauses on-site would be non-compliant with the Code and Guidelines.

Please note this assessment may not apply should the workplace arrangements vary from those set out above.

As mentioned, this assessment relates to the Guidelines, reissued June 2006. You may obtain a copy of the Guidelines from [www.workplace.gov.au/building](http://www.workplace.gov.au/building).

For general information regarding the implications of the workplace reforms for your industrial arrangements you can contact the Workplace Infoline on 1300 363 264.

If you have any further questions please feel free to contact the National Code Assessment Hotline on 1300 731 293 or email: ([building@deewr.gov.au](mailto:building@deewr.gov.au)).

Yours sincerely



Brad Bretland  
Assistant Director  
Building Industry Branch  
Workplace Relations Implementation Group

19 May 2009

## Attachment A

<b>Business Name: Borger Crane Hire &amp; Rigging Services Pty Ltd</b>	
<b>Agreement Name:</b>	Borger Crane Hire & Rigging Services Pty Ltd / CFMEU Enterprise Agreement 2009-2011

Agreement clauses that may be non-compliant with the Code and Guidelines subject to their practical on-site application				
Clause Number & Title		Issue	Guidelines Number & Title	
7	Company Consultative Committee	Industrial instruments must not require an employer to consult or seek the approval of a union over the number, source, type or payment of labour	8.10.4.4	Workplace reform - Consulting union
7	Company Consultative Committee	An employee's right to choose whether or not to join a union must be properly respected	8.5.2	Freedom of association
7	Company Consultative Committee	Names of contractors or subcontractors are not to be provided to the union	8.5.3.2	Freedom of association - Contractor names to union
10.2	Productivity Allowance	Site allowances must be specified in an industrial instrument certified under the WR Act, approved under relevant State legislation, or provided for in a project agreement or project award	8.10.4.7	Workplace reform - Site allowances
11.2	Redundancy	An industrial instrument must not contain selection criteria for redundancy that ignores the employer's operational requirements, such as last on first off clauses	8.10.4.3	Workplace reform - Last on first off
29	Delegates And Their Rights	Shop stewards and union delegates who perform a similar function to union officials must also meet the right of entry provisions of the WR Act	8.6.3	Right of entry - Union delegates
29	Delegates And Their Rights	An employee's right to choose whether or not to join a union must be properly respected	8.5.2	Freedom of association

## Attachment B

<b>Business Name: Borger Crane Hire &amp; Rigging Services Pty Ltd</b>	
<b>Award Name:</b>	Mobile Crane Hiring Award 2002
<b>Agreement this award is incorporated into:</b>	Borger Crane Hire & Rigging Services Pty Ltd / CFMEU Enterprise Agreement 2009-2011

**Non-allowable Matters**

On the commencement of the Workplace reforms on 27 March 2006 a number of formerly allowable award matters ceased to be allowable. Such matters are no longer enforceable as part of the award. These include: conversion from casual employment to another type of employment; restrictions on the range and duration of training arrangements, restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement, union picnic days and trade union training leave.

Prior to the commencement of the reforms the following clauses were non-compliant with the Code and Guidelines:

<b>Award clauses that are non-compliant with the Code and Guidelines which have ceased to have effect as they may contain non-allowable matter as defined in the WR Act</b>				
<b>Clause Number &amp; Title</b>		<b>Issue</b>	<b>Guidelines Number &amp; Title</b>	
8.1	Settlement Of Disputes	An employee's right to choose whether or not to join a union must be properly respected	8.5.2	Freedom of association
8.2 8.3	Settlement Of Disputes	An employee must have freedom of choice in deciding whether to be represented and, if so, by whom	8.7.4	Dispute settlement - Freedom of choice in representation
9.4.2 9.4.3	Casual Employment	Industrial instruments must not contain provisions that restrict an employer's short or long term labour requirements	8.10.4.4	Workplace reform - Restriction on labour
App A 1.15.3 1.15.4 1.15.5	Project Disputes Procedure	An employee must have freedom of choice in deciding whether to be represented and, if so, by whom	8.7.4	Dispute settlement - Freedom of choice in representation

In my view, elements of these clauses contain matter which are now most likely not allowable under the WR Act, and have therefore ceased to have effect as of 27 March 2006. To the extent that the relevant elements of those clauses are now unenforceable because they are not allowable, those clauses of the award are now compliant with the requirements of the Code and Guidelines. It should be noted that it would be non-compliant with the WR Act, and the Code and Guidelines to apply the non-allowable content in these clauses on-site.

While these comments represent the views of the Department, it is not appropriate for the Department to provide formal legal advice about the operation of the Act or the status of the terms of the award. If you require legal advice, you might like to consider consulting an independent legal adviser.

<b>Non-compliant award clauses which do not apply as they are displaced by the Agreement</b>				
<b>Clause Number &amp; Title</b>		<b>Issue</b>	<b>Guidelines Number &amp; Title</b>	
8.1	Settlement Of Disputes	An employee's right to choose whether or not to join a union must be properly respected	8.5.2	Freedom of association
8.2 8.3	Settlement Of Disputes	An employee must have freedom of choice in deciding whether to be represented and, if so, by whom	8.7.4	Dispute settlement - Freedom of choice in representation
9.4.2 9.4.3	Casual Employment	Industrial instruments must not contain provisions that restrict an employer's short or long term labour requirements	8.10.4.4	Workplace reform - Restriction on labour
App A 1.15.3 1.15.4 1.15.5	Project Disputes Procedure	An employee must have freedom of choice in deciding whether to be represented and, if so, by whom	8.7.4	Dispute settlement - Freedom of choice in representation

<b>Award clauses that may be non-compliant with the Code and Guidelines subject to their practical on-site application</b>				
<b>Clause Number &amp; Title</b>		<b>Issue</b>	<b>Guidelines Number &amp; Title</b>	
19.2	Time And Wage Records	Right of entry of an employee or official of the union is to be in strict compliance with the WR Act or relevant OH&S or State legislation	8.6.2	Right of entry - Access to records

<b>Award clauses that may be non-compliant that do not apply as they are displaced by the Agreement</b>				
<b>Clause Number &amp; Title</b>		<b>Issue</b>	<b>Guidelines Number &amp; Title</b>	
8.1	Settlement Of Disputes	Shop stewards and union delegates who perform a similar function to union officials must also meet the right of entry provisions of the WR Act	8.6.3	Right of entry - Union delegates
8.1	Settlement Of Disputes	An employee's right to choose whether or not to join a union must be properly respected	8.5.2	Freedom of association