

Level 14, 121 Exhibition St, Melbourne 3000
 GPO Box 2392, Melbourne, Victoria, 3001
 T: 1800 105 105

Ref: COR/24/30401

Graeme Johnson
 Chief Executive Officer
 Fulton Hogan Australia Pty Ltd
 Lvl 1, Bld 7, Botanicca Corporate Park
 572 Swan Street, Richmond VIC 3121

By email: graeme.johnson@fultonhogan.com.au

Dear Graeme,

Victorian Construction Industry Formal Review and request for action

I am writing regarding recent announcements made by the Victorian Government pertaining to the construction industry, specifically in the context of Victoria's transport infrastructure program.

The Victorian Government has zero tolerance for coercive, criminal and unlawful behaviours in the Victorian construction sector. You would be aware that on 15 July 2024, the Premier announced that the Victorian Government would establish an independent review to strengthen the power of Victorian Government bodies who are engaged with construction companies and construction unions to respond to allegations of criminal or unlawful conduct in the Victorian construction sector.

The independent review will be undertaken by Mr Greg Wilson as a Formal Review under the *Inquiries Act 2014*, with an interim report to be provided by 29 August 2024 and a final report by 29 November 2024. A copy of the Terms of Reference is attached for your information.

I encourage you to participate in the review process once avenues to do so are advised.

I also note that the Premier has written to:

- the Chief Commissioner of Victoria Police and the Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC), referring recently-reported matters for investigation; and
- Commonwealth Minister for Employment and Workplace Relations, the Honourable Tony Burke MP, requesting the Commonwealth Government exercise its powers under the *Fair Work Act 2009* to review – and if necessary, terminate –enterprise agreements

on Victorian construction sites to prevent criminal activity. Minister Burke has confirmed the Fair Work Ombudsman will review all enterprise agreements made by the Victorian branch of the CFMEU's construction division that apply to Victorian "Big Build" projects.

VIDA welcomes the above initiatives.

VIDA notes that the reported behaviours, including the presence on site of persons with known criminal associations, could pose a risk to the health and safety of site-based personnel. It is a requirement of safety legislation that such behaviours are identified and eliminated so far as is reasonably practicable.

Where you are Principal Contractor, your organisation is the duty holder with management and control of relevant sites, and your organisation has statutory obligations to:

- provide a working environment that is safe and without risks to health; and
- monitor the conditions at any workplace under its management and control.

Obligations pertaining to health and safety are contained in your contract(s) with VIDA, regardless of whether you are Principal Contractor.

VIDA is seeking to ensure that appropriate steps are being taken to report and prevent any occurrence of criminal or unlawful activity (including any coercive conduct leading to the award of contracts or subcontracts), and the presence of persons with known criminal associations, on VIDA projects.

As such, VIDA requests that you:

1. **Report to Victoria Police:** immediately report any known or suspected instances of criminal or unlawful conduct, or involvement of people with known criminal associations, on VIDA projects to Victoria Police to support the Premier's recent referral to Victoria Police. VIDA is engaging with Victoria Police to establish a contact point for this purpose, which will be communicated separately.
2. **Report to VIDA:** on an ongoing basis, report to VIDA any instances of conduct which you observe on VIDA projects of the kind that has been reported in the media, including but not limited to:
 - requests or demands by individuals for preferential treatment of contractors, subcontractors, suppliers or individuals;
 - intimidation, bullying, harassment or coercive conduct in pursuit of an industrial agenda; or
 - unreasonable or unnecessary staffing or work practice demands by individuals.

This does not fetter or otherwise impact:

- any reporting obligation your organisation may have at law to another agency or body, such as Victoria Police, the Fair Work Ombudsman, WorkSafe, ComCare, IBAC or the Australian Competition and Consumer Commission (ACCC);

- any reporting your organisation may otherwise choose to undertake to another agency or body notwithstanding that there may not be an obligation to do so at law; or
- contractual roles and responsibilities in your contract(s) with VIDA, including with respect to the management of health and safety and industrial relations.

Any reports will be treated with strict confidentiality and will not be passed on outside VIDA, nor any actions taken, without further engagement with you or the person making the report. If your report involves the provision of personal information, please ensure any legislative privacy requirements are met, including to enable VIDA to collect that information.

3. **Identify, investigate and eradicate conduct:** take all steps reasonably available to identify (for example through police record checks on relevant individuals, or other monitoring or reporting), investigate and if necessary eradicate any criminal or unlawful conduct including conduct of the kind that has been reported in the media, in relation to VIDA projects. In addition, VIDA can potentially exercise its contractual powers to direct the removal of particular individuals from sites. If you believe these powers should be exercised in relation to an individual please contact VIDA at the email address below with supporting information for VIDA's consideration.

Please also pass these requests to relevant subcontractors and suppliers.

Should you wish to contact VIDA in relation to any matter canvassed in this letter VIDA has established a dedicated email address IndustryReporting@mtia.vic.gov.au. Alternatively, you may wish to use VIDA's Integrity Hotline, available at <https://vida.stoplinereport.com>, which includes a telephone reporting avenue.

Thank you for your attention to these matters.

Yours sincerely



Kevin Devlin
Director-General

26 / 07 / 2024

Inquiries Act 2014

APPOINTMENT OF A FORMAL REVIEW INTO VICTORIAN GOVERNMENT BODIES' ENGAGEMENT WITH CONSTRUCTION COMPANIES AND CONSTRUCTION UNIONS

Establishing Instrument

I, Jacinta Allan, the Premier of Victoria, appoint Gregory Wilson to constitute a Formal Review to inquire into and report on the terms of reference specified in this instrument under section 93(1) of the *Inquiries Act 2014*.

This instrument comes into effect on the date it is executed.

1. Background

On 15 July 2024, I announced that the Victorian Government would establish an independent review to strengthen the power of Victorian Government bodies who are engaged with construction companies and construction unions to respond to allegations of criminal or other unlawful conduct in the Victorian construction sector. The announcement followed allegations in the media of criminal activity involving the Construction Forestry and Maritime Employees Union (“Union”) and allegations of criminal associations within the Union.

In response to these allegations, and in addition to the announcement of an independent review, I wrote to the:

- Chief Commissioner of Victoria Police referring the allegations for investigation;
- Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC) referring the allegations for investigation;
- National Executive of the Australian Labor Party to immediately suspend the Union’s construction division from the Victorian Labor Party. The National Executive has now taken this action; and
- Commonwealth Minister for Employment and Workplace Relations, the Honourable Tony Burke MP, requesting the Commonwealth Government exercise its powers under the Fair Work Act 2009 to review – and if necessary, terminate – Union enterprise bargaining agreements on Victorian construction sites to prevent criminal activity. Minister Burke has confirmed the Fair Work Ombudsman will review all enterprise

agreements made by the Victorian branch of the Union's construction division that apply to Victorian "Big Build" projects.

2. Terms of Reference

Having regard to the background set out above, you are required to inquire into, report on and make any recommendations you consider appropriate in relation to the following terms of reference:

- (a) The current roles, responsibilities and powers of the Commonwealth and the Victorian Government to investigate or respond to allegations of criminal or other unlawful conduct in the Victorian construction sector, including but not limited to:
 - i. any coercive, bullying or intimidatory practices or conduct;
 - ii. the power of the Victorian Infrastructure Delivery Authority to direct the removal of individuals engaging in criminal or other unlawful conduct from Victorian worksites; and
 - iii. protections for whistleblowers and complainants;
- (b) The effectiveness of the matters in (a) and any legal or procedural deficiencies in the Victorian regulatory regime, having regard to the roles, responsibilities and powers of any relevant Commonwealth bodies, including as they may relate to criminal or other unlawful conduct or practices of a systemic nature in the Victorian construction sector;
- (c) The role of Victorian Government bodies managing construction projects ("Project bodies") in relation to:
 - (i) workplace relations, operations and practices, and health and safety matters applying under both Victorian and Commonwealth law and practices; and
 - (ii) the apportionment of responsibility and oversight for these matters between parties to contracts delivering construction projects; and
- (d) Law and practices applicable to the selection of health and safety representatives, right-of-entry permit holders and union delegates in or on Victorian worksites.

3. Conduct of the Review

Without limiting the scope of your review or the scope of any recommendations arising out of your review that you may consider appropriate, you are directed in the conduct of the inquiry of your review to:

- (a) Conduct your inquiry in accordance with this instrument, the *Inquiries Act 2014*, and all other relevant laws.
- (b) Otherwise conduct your inquiry as you consider appropriate, subject to the matters set out in section 99 of the *Inquiries Act 2014*. This may include but is not limited to obtaining information, documents, evidence and written submissions, conducting consultations and adopting any informal and flexible procedures and practices;
- (c) Provide an accessible and supportive forum for participants to participate in your inquiry, including accommodating their choices as to how they wish to participate in your inquiry to the extent it is practicable to do so and without limitation on the powers of the Formal Review set out in the *Inquiries Act 2014*; and
- (d) Have regard to the desirability of conducting your inquiry and producing your report without unnecessary cost or delay.

4. Reporting

You are required to deliver a report of your inquiry to me in accordance with the following timetable:

- (a) an Interim Report by 29 August 2024 in respect of any interim findings and recommendations; and
- (b) a Final Report by 29 November 2024 in respect of your final findings and recommendations.

5. Recommendations

Your report may contain any recommendations, consistent with the terms of reference, that you consider appropriate arising out of your inquiry, including, but not limited to, recommendations about:

- (a) Existing limitations in Victoria's legislative powers over certain workplace relations and related matters, and their interaction with Commonwealth law — for example the operation of matters subject to the *Occupational Health and Safety Act 2004* or the *Victorian Crimes Act 1958*, and those matters regulated by the *Fair Work Act 2009* (Cth) or the *Crimes Act 1914* (Cth);
- (b) The establishment of clear processes and protections for whistleblowers and complainants who notify any Victorian Government bodies of any allegations of criminal or other unlawful conduct in the Victorian construction sector; and
- (c) The operation of Commonwealth law as applying to registered organisations.

6. Exercise of powers

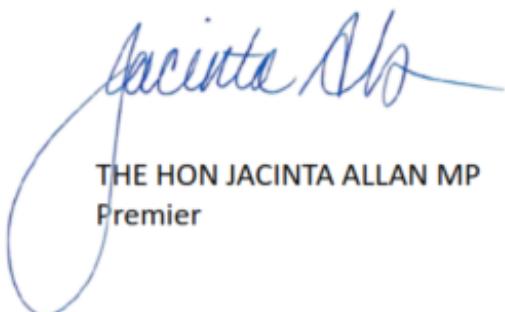
You may exercise the powers of a Formal Review in accordance with the *Inquiries Act 2014*. You may enter into agreements or arrangements for the provision of services to support your inquiry, including, without limitation, any agreements or arrangements with one or more Australian legal practitioners for the provision of legal services.

7. Expenses and Financial Obligations

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to a maximum amount to be approved by the Premier (in consultation with the Treasurer) in conducting your review.

Dated: 20 / 7 / 2024

Responsible Minister:



THE HON JACINTA ALLAN MP
Premier