

CONCRETE IQ

Concrete IQ is the official newsletter of Master Concreters Australia

ISSUE 3, 2018



BRISBANE ANNUAL GOLF DAY

Members and guests came together on Monday 10 September 2018 to challenge for the Master Concreters Australia Brisbane Golf Day Trophy at the Wynnum Golf Club. We experienced a perfect spring day with our guests enjoying an early tee off to clear blue skies.

This year saw the trophy being wrestled back by the manufacturing community with the team from Liberty Onesteel taking out the spoils for the first time.

Congratulations to all those who took home prizes on the day and thank you

to all our members and guests who took time out from their busy schedules to join us for the Annual Golf Day.

Master Concreters Australia would like to thank our principal sponsor Wagners for supporting and anchoring the event. We would also like to acknowledge our Golf Day partner Holcim who kept everyone watered on course and our numerous hole sponsors for supporting our event. We look forward to seeing everyone at next year's Golf Day.



**MASTER
CONCRETERS**

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**MASTER
CONCRETERS**

MCA HOTLINE

Our highly experienced members can provide advice on various issues affecting concrete contractors through our MCA Hotline.

Members may contact our Hotline representatives or if it is more convenient, call the office on 1300 884 544 and they will start the ball rolling.

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VICE PRESIDENT REPORT **ALBERT PIZZINATO**

It's coming up to nearly a year of me holding the office as Vice President of the Master of Concreters Australia (MCA). It has been a privilege being a member of the Board of Directors, who all value the existence and success of the MCA, the focus of the MCA is to promote and develop professionalism to the business owner, to improve their work and the concrete industry.

Attending meetings with fellow MCA members, it becomes evident that we all experiencing common problems. Staffing problems, workers classifying themselves as concreters but don't understand what they are doing. Concrete supply specification are not considering workability issues. Builder/Developers placing high tolerance measures which are unachievable and hence increasing rectification costs. These are a few issues that members raise. Being part of the MCA, we are able to address these issues and do something about it.

Being a MCA member, we can assist in training concreters. We hold training courses which improve the skills of our workforce helping to improve the quality standard of the industry and our business. We are raising the standard of a concreter.

The MCA has a close association with the concrete suppliers of Australia. We are very grateful for their support, we see it an invaluable association. Having access to key personal in the concrete supply industry, we are able to deal with concrete design issues for our members. We also able to address servicing/ ordering issues, a better understanding of how the process works will assist all concerned. The close association is mutually beneficial.

The MCA also has access to professional services, whether it's insurance requirements, technical engineer advices or legal advice. A phone call is all it takes or sometimes a call to a fellow member might be all that is needed to resolve the issue.

Raising the standards is what we want to achieve. Being part of the MCA, you will be amongst same minded people who want and are committed to make our industry professional. Points of difference like professionalism will help you at time of tender, let's not make the contract value the only deciding factor on a contract being awarded, but contract quality, contract assurance and professionalism. Let's make our industry great.



TACKLING THE YEAR AHEAD

Welcome to the end of year edition of the association's newsletter. As is the norm when we approach the Christmas/New Holidays the pressure is on to complete the various projects before those who are able, can take a well-deserved break. On the association front we continue to provide a range of service and support to our members and receive many calls from the wider community on concrete related issues. As part of our networking program, we held our annual Brisbane Golf Day at the Wynnum Golf Club in September. Congratulations to Liberty Onesteel who took out the spoils on the day.

As we head towards the end of the year we will hold our AGM as part of our statutory reporting requirements. This will include approving financial reports and electing office bearers (Directors) to the executive board of management. Most of our members are able to tap into the various services we provide, which is what we are here for. In some instances, their issues are resolved by engaging with the right organisation or being provided with advice from our senior industry representatives who sit on the board. The ability for the association to provide this level of service could not be achieved without the unwavering support of our board members and we should also not lose sight of the contributions these individuals make beyond managing their own contracting company's.

On the training/education front, the much-anticipated review of the Certificate III in Concreting has been delayed, yet again, with the Government body responsible for approving the reviewed qualification directing that greater feedback from Victoria be included before the report is resubmitted for endorsement.

Industry reporting has indicated that building activity has softened in the second half of the calendar year. It is anticipated that steady construction levels (at the reduced rate) will be experienced

in 2019, albeit with a number of external influences possibly coming to bear on the sector. It will be waiting game to see whether the global financial uncertainty, currently being experienced, will have a flow on affect into 2019. This being on top of the already reduced levels of building investment as the economy suffers for low wage growth and increased cost of living expenses. If we throw into the mix an impending Federal election we could be facing a bumpy year ahead.

As our Queensland members would be aware the Building Industry Fairness (BIF) Security of Payments Act 2017 was introduced in November last year. The BIF Act included a suite of reforms including the introduction of project bank accounts, improved provisions for progress payments and subcontractor's charges and changes to the adjudication registry. Phase 1 (the implementation of project bank accounts for government projects between \$1M and \$10M) commenced on 1 March 2018. The act also required a panel be established to review of the operation and effectiveness of the reforms that have been introduced. Members should note that the findings of the panel will provide opportunities to identify improved security of payment outcomes for industry prior to the commencement of Phase 2, whereby Project Bank Accounts will apply to all building and construction projects valued over \$1M. The association will continue to update members on the developments as they come to hand.

The 2019 construction environment is shaping up to be more competitive than this year, which will keep everyone busy winning those tenders. Keeping this in the back of our mind I wish our members and many stakeholders an enjoyable festive season and ask that you all come back safe and sound for 2019.

David Lingard
CEO, Master Concreters Australia



CEO'S REPORT

SUSTAINING MEMBERS



THE FAIRNESS TEST: DOES YOUR CONTRACT HOLD UP?

Prior to 2016, the *Australian Securities and Investment Commission Act 2001 (ASIC Act)* and *The Australian Consumer Law (ACL)* only offered protection for unfair contract terms to consumers, not small businesses. This left small businesses, who sometimes lacked the resources to understand and negotiate contract terms, vulnerable to unfair terms in standard form contracts where they are often offered on a 'take it or leave it' basis.

Following legislative amendments made in 2016, the ASIC Act and the ACL now extend consumer protection to small business contracts that meet the prescribed criteria. They address the vulnerability of small businesses by allowing unfair contract terms to be declared void or if the contract can continue without the unfair term, to have the unfair term severed from the contract. The amendments operate to reduce a party's incentive to include and enforce unfair terms in small business contracts, resulting in more efficient allocation of risk.

Contracts affected by the new legislative amendments are those where:

- a) at least one party is a business that employs less than 20 people (this includes casual employees employed on a regular or systematic basis);
- b) the upfront price payable under the contract is:
 - i. \$300,000 or less; or
 - ii. \$1,000,000 or less, if the contract is for more than 12 months; and
- c) subject to limited exemptions, the contract is a standard form contract (i.e. a pre-prepared contract that is not generally negotiated or is offered on a 'take it or leave it' basis) for the supply of goods or services or grant of an interest in land.

It is important to remember that the small business unfair contracts regime only applies to standard form contracts entered into or renewed on or after 12 November 2016.

WHAT IS AN UNFAIR TERM?

A term of a small business contract is unfair if:

1. it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term;
2. it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
3. it would cause detriment, whether financial or otherwise, to a party if it were to be applied or relied on.

Whether a term of a contract is 'unfair' will also include consideration of:

1. the form of the contract as a whole (not just the provision in isolation); and
2. the extent to which the term is transparent (whether it was expressed in plain language or presented clearly and made available to the contracted parties affected by the term).

Since the introduction of the small business unfair contracts regime, the Australian Competition and Consumer Commission (ACCC) has succeeded in a number of Court cases against businesses challenging unfair contract terms. This indicates that some businesses may not have considered whether their contracts are subject to the unfair contract terms provisions or are reluctant to take steps to address the risks.

WHAT TYPE OF UNFAIR CONTRACT TERMS HAVE BEEN INVALIDATED SO FAR BY THE COURTS?

There have been a number of successful challenges by the ACCC across several

decisions. Each of these decisions have identified four common contract terms that were found by the Courts to be unfair contract terms and therefore void and unenforceable:

1. terms providing one party (but not the other party) a right to unilaterally vary a term or condition of a standard form contract, including the price;
2. terms providing one party (but not the other party) the right to automatically renew a standard form contract;
3. terms that give one party (but not the other party) a right to terminate a standard form contract; and
4. liability and indemnity terms which impose an unusually broad and onerous liability and indemnity on one party.

This is by no means an exhaustive list. Whilst these clauses were considered unfair terms in their particular context, those contexts may be found in many other business contracts. There will almost certainly be different contexts found in other business contracts, potentially resulting in other unfair contract terms being declared void and unenforceable.

A primary example is the ACCC's case against JJ Richards. Since the small business unfair contracts regime commenced in November 2016, JJ Richards had entered into 26,000 contracts, many of which were small business contracts that contained standard terms and conditions.

The ACCC commenced proceedings against JJ Richards which resulted in the Federal Court making declarations to declare the following eight of JJ Richards' standard form clauses void:

1. **Price adjustment clause:** allowing JJ Richards to unilaterally adjust its prices during the term of the

agreement by giving its customer 30 days' notice of the increase;

2. **Automatic renewal clause:** allowing JJ Richards to automatically renew a contract unless terminated by giving 30 days' written notice before the end of the term;
3. **Exclusivity clause:** granting JJ Richards exclusive rights to provide services to the customers' premises;
4. **Agreed times clause:** removing liability away from JJ Richards where it was unable to perform a collection pursuant to the contract;
5. **No credit without notification clause:** allowing JJ Richards to charge customers for services not rendered for reasons beyond the customer's control;
6. **Credit terms clause:** allowing JJ Richards to suspend its service but continue to charge the customer if payment is not made in accordance with the credit terms;
7. **Termination clause:** preventing customers from terminating their contracts unless they pay all monies outstanding; and
8. **Indemnity clause:** creating an unlimited indemnity on JJ Richards even where the loss was not caused by the customer.

ARE ANY DEFENCES AVAILABLE?

If you have received a complaint in relation to an alleged unfair contract term, the unfair term may be justified if the party receiving the benefit of the alleged unfair contract term is able to demonstrate that:

1. the one-sided term or condition is reasonably necessary to protect the party's position;
2. the term or condition is not unfair in the circumstances as a whole; and
3. the term or condition does not create a significant imbalance in the rights and obligations of the parties to the contract.

We are yet to see how these exceptions will be applied and considered by the Federal Court. Until then, the success of the ACCC in challenging unfair contract terms gives an early indication that it will be difficult to establish that an unfair contract term was necessary to protect a party's legitimate business interests.

WHAT SHOULD BE DONE?

Whilst it is not illegal for a standard form contract to contain unfair contract terms, the consequences of a term being found to be unfair is that it becomes void and unenforceable (i.e. the term will not be binding on the parties to the contract but the rest of the contract will continue to apply, to the extent it is capable of doing so) and the affected party potentially seeking compensation for losses resulting from the unfair term.

Some businesses will naturally be hesitant to move away from standard terms they are familiar with or which they have used over a long period of time. Such hesitation may be costly because the ACL provisions have changed the drafting game.

Drafting standard form contract terms now requires much greater care and thought. A strong understanding of the legitimate interests of the business that each term is designed to protect is essential, as is an awareness of what can impact on the transparency of contract terms.

If you have not reviewed your standard form contract terms and conditions to ensure they are compliant, now is the time to act. Failure to do so will place your business at risk of facing prosecution from the ACCC and your contract terms being declared void and unenforceable.

All businesses should be conducting a legal risk review on existing standard form contracts against the four most commonly found unfair contract terms. If your contracts contain similar or identical clauses, they should be reviewed and if necessary, removed or redrafted to ensure they strike a balance between your rights and interests and the rights and interests of your customers.

THOMSON GEER
LAWYERS

If you have any questions in relation to this article or for any other legal issues, feel free to contact the Thomson Geer Help Desk to discuss.

P: +61 2 8248 5810

E: legalhelpdesk@tglaw.com.au

Mutual Brokers Pty Ltd (MB) are able to provide the members of the MCA a wide range of insurance products that will meet the industry requirements and expectations.

Key insurance products applicable to the concrete industry include:

- Public and Products Liability Insurance
- Management Liability Insurance - Directors and Officers and Statutory Liability
- Plant, Equipment and Motor Insurance
- Contract Works Insurance
- Trade Credit Risk Insurance
- Property Owners Insurance
- Workers Compensation – Advice across all jurisdictions

Mutual Brokers will conduct a full review of your current insurance program on a no cost basis.

The review will provide the following services:

- Review of your existing insurance program to ensure adequacy of cover
- Recommendations in respect of the policy coverage
- Alternative quotation
- Workers Compensation review

MB have been established since 1985, with offices in Canberra and Sydney. We pride ourselves on the professionalism of our qualified staff, who have a clear understanding of our client's needs.

MB have a number of clients that have been in the concrete industry over 30 years. MB are a member of the National Insurance Brokers Association.

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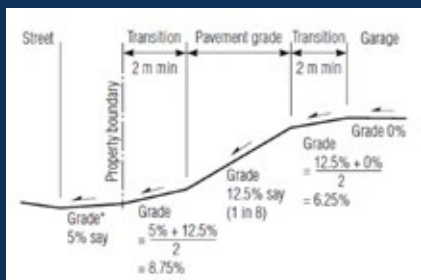
Phone: (02) 6282 9722

RESIDENTIAL CONCRETE DRIVEWAYS AND PATHS

The basic function of residential pavements such as driveways, paths and patios is to provide safe, easy access onto or around a property. Concrete is typically used to not only provide a durable paving surface, but one which can also incorporate a wide range of decorative finishes to complement the design and landscaping of the residence. While providing a concrete pavement on the ground is relatively straightforward, there are many aspects of residential pavement design and construction that need to be considered in order to produce a finished product that will satisfy both the functional and aesthetic requirements demanded by home owners.

CCAA has updated their data sheet relating to residential concrete driveways and paths, which provides guidance on the planning, design, construction, maintenance and specification aspects that need to be considered to ensure a successful concrete paving project.

For further reading go to https://www.ccaa.com.au/imis_prod/documents/CCAA_DATASHEET_Residential_driveways_and_paths_TT_Review1.pdf



INNOVATION... IT'S EASIER THAN YOU THINK

When you hear the word innovation, what comes to mind? For many people, they think of large technology companies, manufacturing changes, industry leaders and global trend setters. Although the innovations that you see in the industries mentioned definitely make an impact on a global scale, the reality is that you too can innovate in your business every single day.

You see, innovating is really just finding the answer to a simple question: "How do I serve my customers even better than I did yesterday?"

If you are looking to deliver value and serve your customers better than you did yesterday, looking at the way that you can modify processes, upgrade your product and service offerings and upskill your people, then you are an innovator.

To get to the essence of innovation we need to understand human behaviour. Fundamentally, we are all the same. What drives your behaviour is the same as that which drives your customers'. At their core, your customer is:

- Greedy
- Impatient
- Lazy
- Vain

Stay with me on this one... ask yourself; would you prefer to have one million dollars or ten dollars? The obvious answer is a million dollars. Gee! You are greedy. Would you prefer that million dollars today or in 12 months' time? See? You are so impatient. Would you like me to deposit that one million dollars directly into your account, or would you like me to give you a cheque that you need to bank yourself and then wait five days for it to clear? Wow! Pretty lazy there, aren't you? Finally, would you like me to shake your hand, pat you on the back, and tell you how much I value our relationship when I give you the

million dollars? Of course! See? You are just as vain as anybody else.

As we are all the same at a fundamental level, it's really quite simple to meet the above needs:

- As people are greedy, give them more than they expect
- As people are impatient, give it to them quickly!
- Most people are lazy, so make it easy for them
- Finally, appeal to people's vanity by making them feel good in the process.

As you can see, innovation isn't that complicated, however for each business it may be different. Implementation will take time, thought and training. To challenge the status quo; to break the unbroken and to continue to improve the way you are serving your customers requires a consistent approach. It is not just a process, it is a philosophy.

I suggest that you take the characteristics that we have discussed above, approach your team and see what they can come up with to appeal to your client's greed, laziness, impatience and vanity. Have fun in the process and all the best to continue to be a leader in your field.

For more information on growing your business contact the PROTRADE United team on 1300 767 774.

Written by Jon Mailer
CEO of PROTRADE United
www.protradeunited.com.au



ANOTHER GOOD YEAR OF RETURNS

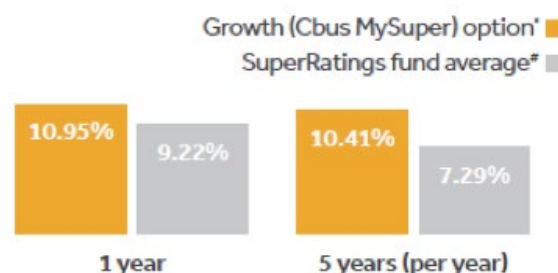
The good news for Cbus members is the Growth (Cbus MySuper) option has delivered a 10.95% return* over the 2017/18 financial year.

This return has been achieved despite rising US interest rates, international elections and the threat of a US-China trade war.

Strong returns from global and Australian share markets along with a solid contribution from infrastructure and property, including Cbus Property*, have seen another year of double-digit returns for members.

We're well underway with our new strategy of managing more funds for our members in-house and reducing our use of external fund managers. Our Cbus team has seen success with an international share portfolio and our first direct infrastructure transaction and will soon take on more Australian and international shares. Members will benefit from lower overall investment costs.

Performance to 30 June 2018



Past performance is not a reliable indicator of future performance.

* Investment performance for the Growth (Cbus MySuper) option is based on the crediting rates, which is return minus investment fees, the Trustee Operating Cost and taxes. Excludes account keeping administration fees.

+ Cbus Property Pty Ltd is a wholly-owned subsidiary of Cbus and has responsibility for the strategic performance and management of Cbus direct property developments and investments.

SuperRatings Fund Crediting Rate Survey SR50 Balanced (60-76) Index for June 2018 reported for 18 July 2018

SuperRatings is a ratings agency that collects information from super funds to enable performance comparisons – visit www.superratings.com.au.

The information is about Cbus. It doesn't take into account your specific needs, so you should look at your own financial position, objectives and requirements before making any financial decisions. Read the relevant Cbus Product Disclosure Statement and related documents to decide whether Cbus is right for you. Call 1300 361 784 or visit www.cbussuper.com.au for a copy.

United Super Pty Ltd ABN 46 006 261 623 AFSL 233792 as Trustee for Cbus ABN 75 493 363 262.

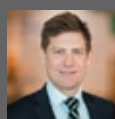


BUILDING A SUPER FUTURE WITH CBUS

Through Cbus Property*, we:

- Invest in property developments across Australia
- Create jobs in the building and construction industry
- Contribute to the Australian economy and deliver returns

For your business super needs contact:



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Consultant, QLD



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Cbus' Trustee: United Super Pty Ltd ABN 46 006 261 623 AFSL 233792 Cbus ABN 75 493 363 262.



Master Concreters Australia provides a range of services and support specifically for concrete contractors. Give your company that professional edge by joining your trade association.

- Access to technical information
- Industry helpline for concrete contractors
- Discounted training for members
- Business mentoring service
- Newsletters, industry news and information
- Networking opportunities with other contractors

27 Morrisby Street
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www.mca.net.au

Master Concreters Australia is the industry trade association working for and supporting concrete contractors.



COMPANY DETAILS

Company name: _____

Contact name:

Postal address:

Telephone: _____

Email:

Signature: _____

Send your completed application for to:

Master Concreters Australia, 27 Morrisby Street, Geebung QLD 4034

Or scan and email to info@mca.net.au

MEMBERSHIP DETAILS

MEMBERSHIP CATEGORY (Please tick main area)

- ☐ Contractor Domestic
\$500 +GST per annum
- ☐ Contractor Commercial
\$900 +GST per annum

PAYMENT DETAILS (Please tick)

MEMBERSHIP CATEGORY (Please tick main area)

- ☐ Credit card number and expiry date
- _____
- Expiry date: ____ / ____
- ☐ Master Concreters Australia to contact me for a payment via EFT or Direct Debit.

*Members must hold appropriate license for scope of works.