



**CIVIL CONTRACTORS
FEDERATION**

Submission

Modern Award Review 2016



9th December 2016



**CIVIL CONTRACTORS
FEDERATION**

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Fair Work Commission

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Submission to Modern Award Review

Please find attached a submission regarding the Modern Award Review 2016.

Yours sincerely,

Chris Melham
Chief Executive Officer (National)
Civil Contractors Federation

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INTRODUCTION

The Civil Contractors Federation (CCF) is the peak industry body representing Australia's civil construction industry. It has branches in all states and territories and around 2000 Contractor and Associate Members nationally.

CCF is an organisation registered under the *Fair Work (Registered Organisations) Act 2009*. It is governed by a National Board comprised of member-elected representatives from each state and territory.

Our registration covers the **entire** civil construction and maintenance industry from Tier 1 publically listed multi-national companies to one-person ABN holders.

CCF Members are responsible for the construction and maintenance of Australia's infrastructure, including roads, bridges, water supply, pipelines, drainage, ports and utilities.

CCF Members also play a vital role in the residential and commercial building construction industry by providing earthmoving and land development services including the provision of power, water, communications and gas.

We are the **only** registered employer organisation with such a diverse and all-encompassing coverage.

Our diverse and complete membership, national coverage with strong individual state branches, and very close linkage to our Members, offers us a unique insight to comment on the Modern Award that most affects our industry.

A commitment to furthering its Members' interests and helping them manage their businesses more effectively is at the core of CCF's operations.

BACKGROUND TO SUBMISSION

On the 3rd of December 2015, the Civil Contractors Federation (CCF) filed a Submission to the 4 yearly modern award reviews proposing 10 variations to the *Building and Construction General On –site Award 2010*, hereby referred to as the Building and Construction Award in the interest of brevity and ease of reading.

Proposed Variations 8 and 9 in the original submission were resolved by Full Bench Decision – [2015] FWCFB 5771, and have been withdrawn. CCF is pressing the remaining eight applications.

On the 23rd of January 2015, President Ross issued directions to interested parties requesting that parties “file a short submission confirming the substantive claims being pursued. CCF filed a short submission on the 30th of September 2016 in according with those directions.

On 10th of October 2016, Vice-President Hatcher directed interested parties to file further evidence and submissions by 2 December 2016. This submission is in response to those latest directions.

The Civil Contractors Federation is pressing eight remaining variations to the *Building and Construction General on Site award 2010*.

Variation 1	Award Clause 17.2 Definition of Redundant
Variation 2	New award Clause Introduction of Junior Rates
Variation 3	Award Clause 31.3 Payment of Wages
Variation 4	Award Clause 22.2 (h) Definition of Dirty Work
Variation 5	Award Clause 24.3 (a) (i) Living Away from Home Allowance
Variation 6	Award Clause 25.2 Travelling Time
Variation 7	Award Clause 25.8 (b) Provision of Transport
Variation 10	Clause 4.10 (b) (ii) Definition of Civil Work v Asphalt Work

It should be noted that whilst CCF's substantive claims remain unchanged, some draft clauses have been amended, and the proposed table of junior rates in Variation 2 Junior Rates has been corrected to place proposed junior rates in the correct ascending age order.

PROPOSED VARIATION I: CLAUSE 17.2 DEFINITION OF REDUNDANT

The nature of the change sought

CCF is seeking to vary the industry specific definition of redundant in the *Building and Construction General On-Site Award 2010* (the ‘Award’) to disallow payment of redundancy benefits to non-redundant employees who terminate the employment relationship of their own accord, and claim redundancy benefits.

The Definition

The industry specific definition of redundant in the Award is provided in Clause 17.2:

17.2 Definition

For the purposes of this clause, redundancy means a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty. Redundant has a corresponding meaning.

This definition of ‘redundant’ is contrary to the accepted understanding of redundancy in employment legislation, or the generally accepted meaning of the word ‘redundant’.

s.119 of the *Fair Work Act 2009* provides a different and universally accepted definition of termination of employment via redundancy:

Entitlement to redundancy pay

(1) An employee is entitled to be paid redundancy pay by the employer if the employee’s employment is terminated:

(a) at the employer’s initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or

(b) because of the insolvency or bankruptcy of the employer.

The Cambridge Online Dictionary defines redundant in the following terms:

“redundant adjective (NOT NEEDED)”

It provides the following specific examples of the meaning of redundant:

“redundant adjective (NOT EMPLOYED)

UK having lost your job because your employer no longer needs you:

To keep the company alive, half the workforce is being made redundant.

Figurative New technology often makes old skills and even whole communities redundant.”

The Oxford Dictionary defines redundant in very similar terms:

“Not or no longer needed or useful; superfluous:

‘an appropriate use for a redundant church’

‘many of the old skills had become redundant’

No longer in employment because there is no more work available:

‘eight permanent staff were made redundant’”

The definition of redundant used in the Award appears to have a recent history. It first appeared in the 1987 the *Building Trades (Construction) Award 1987*, which provided the following definition of redundant:

AN160034 – Building Trades (Construction) Award 1987

51. - REDUNDANCY

(1) Definitions

(a) “Redundancy” means a situation where an employee is terminated by his or her employer other than for reasons of misconduct or refusal of duty.

Clearly under the provisions of this Award an employee's employment needed to be terminated by the employer for the employee to be considered redundant and entitled to redundancy benefits. This definition of redundant was consistent with decision by the Australian Conciliation and Arbitration Commission (C Nos 3690, 3735 of 1981; 127 of 1983) Termination, Change and Redundancy Case (TCR Case) handed down in Melbourne, in 1984.

The TCR Case provided an exhaustive study of the effects of involuntary termination of employment on employees, and set the standards of consultation, period of notice, and redundancy pay provisions to be paid by employers to compensate employees for termination of employment at the initiative of the employer when the employee was no longer required. Australian and overseas redundancy models were submitted to the Commission by the Australian Council of Trade Unions (ACTU), including:

1. The Report on the Inquiry by Mr Justice Richards of the New South Wales Industrial Commission into Recent Mechanization and other Technological Change 1963, the tripartite National Labour Advisory Council Guidelines (NLAC) entitled “Adjusting to Technological Change” [1969] and “Planning for Technological Change” [1972].
2. The Report on Policies for Development of Manufacturing Industry 1975 (Jackson Committee), the Study Group on Structural Adjustment Problems of Australian Manufacturing Industries 1979 (Crawford Committee),
3. The Report of the Committee of Inquiry into Technological Change in Australia 1980 (CITCA Report) and the Communique of the National Economic Summit Conference 1983 (Summit Communique).

The common feature in each of these reports was the fact that redundancy meant termination of employment due to technological change or financial hardship at the employer's initiative only, and not at the employee's.

There were conflicting submissions by the parties as to whether redundancy benefits should also apply to termination of employment due to a company's financial hardship. In its decision the Commission stated in page 34:

"However, in many agreements, and in a number of recent decisions of industrial tribunals, both published and unpublished, no distinction has been made between the causes of redundancy and compensation has been awarded even where redundancy has been due to the economic downturn or some financial disaster which has affected the industry and/or company concerned. Indeed, in our opinion, this would be so in the overwhelming majority of cases where redundancy provisions are awarded. Furthermore, there have only been a relatively small number of cases involving technological change.

In view of this ingrained feature of existing redundancy provisions, we believe it would be too restrictive to limit our prescriptions to cases where redundancy is brought about by technological change or other circumstances within the control of the employer."

The Commission found that employees should be entitled to redundancy benefits regardless of whether the termination of employment was due to technological change or financial hardship, but in both scenarios the termination of employment had to be initiated by the employer for a redundancy situation to exist.

The ACTU relied among others on a decision by Mr Justice Bray in the South Australian Supreme Court in *The Queen v. The Industrial Commission of South Australia; Ex parte Adelaide Milk Supply Co-operative Limited and others* [1077] 44 SAIR 1202 p.1205, which provided the commonly accepted meaning of redundancy in Australia. The decision provided the following decision of redundant:

- (a) refers to a job becoming redundant and not to a worker becoming redundant;*
- (b) recognizes that redundancy situations may not necessarily involve dismissals; and*
- (c) emphasizes that the job or work has disappeared through no fault on the part of the employee;*

This became the accepted definition of redundant in employment, and is still reflected in the provisions of the *Fair Work Act 2009*.

The Breadth of this Definition

When the Modern Award creation process was concluded in 2009, only three (3) of the 122 Modern Awards, the *Building and Construction (General) On-site Award 2010*, the *Plumbing and Fire Sprinklers Award 2010*, and the *Mobile Crane Hiring Award 2010*, provided redundancy benefits to non-redundant employees. **No other industry imposes such a heavy financial burden on employers.**

The Perversion of the Definition

Since the terms of the Termination, Change and Redundancy Case decision were accepted as the standard redundancy provisions, the scope of redundancy in some construction Awards has been taken out of context, and non-redundant employees have become entitled to redundancy benefits in circumstances beyond the intent of the standard provisions.

Construction unions have argued that that these provisions are justified because of the alleged itinerant nature of employment, the age profile of employees and the project-based nature of employment, but little objective evidence was provided by the unions in the 2012 Fair Work Act Review.

CCF submits that even if these statements were true in 1987 it needs to be proven that they are valid now in 2016. The employment landscape in Australia has changed dramatically, with a more mobile workforce and less reliance by employees on long term permanent employment. In the modern Australian workplace the construction industry is not significantly different to other industries.

Redundancy trusts funds such as the Australian Construction Industry Redundancy Trust (ACIRT), ReddiFund in Western Australia, BIRST in South Australia etc. which were created to protect employee redundancy entitlements against rogue employers and company insolvency, have furthered the inappropriate idea that in the construction industry non-redundant employees should be entitled to redundancy entitlements upon termination of employment for any reason other than misconduct.

It is contrary to common sense that a non- redundant employee should be entitled to redundancy pay when leaving their employer entirely of their own accord or terminated by serious misconduct, but that is the current situation in the industry.

The current provisions have been argued historically as necessary to meet the “unique characteristics of the industry, including the itinerant, intermittent and project-based nature of employment. However, the nature of employment has changed markedly in the industry since the 2009 Modern Award was struck, with far more work being undertaken by larger contractors using, in lieu of employed staff, smaller contractors in a sub-contractor arrangement. Employment has thus moved significantly from large to smaller employers, and these smaller employers are far less prone to the highs and lows of the so called “itinerant, intermittent and project-based nature” of this industry.

Furthermore, the far higher skills needed of the modern civil contracting employer mean that employers, particularly small to medium employers, are far less willing to release people they have invested heavily in training and developing, even in a period of less work.

Further, we are not the only industry that includes project based activities, yet we are the only sector of 122 Modern Awards that utilises this definition of redundant. No evidence has been provided to ever support why our industry is manifestly different to those other industries.

The Failure of the Argument

Whether these contentions are accepted or not, the argument the current definition of redundant needs to remain due to the “itinerant, intermittent and project-based nature of employment in our industry” fails completely when the employee leaves gainful, ongoing employment of their own volition. The merits of the argument simply fall apart.

There is no substantive evidence to support the merits of continuing to retain this anti-employment, cost-inducing definition. It is contrary to common sense that a person terminated for serious misconduct should be entitled to redundancy pay. In the same vein, we see no valid argument for an employee who leaves gainful employment entirely of their own accord to receive redundancy payments.

“...the argument the current definition of redundant needs to remain due to the “itinerant, intermittent and project-based nature of employment in our industry” fails completely when the employee leaves gainful, ongoing employment of their own volition”

The Impact

These redundancy obligations discourage permanent employment in the civil construction industry, and place a heavy cost on large and small business alike.

As a peak body engaged with its Members and supporting them through their business endeavours, we are privy to the concerns and frustrations of legislation and regulation that impact on their business. We share their pain and know the issues that anger and confound them. Very few pieces of law cause our Members as much angst as our Award's redundancy provisions. They are seen as manifestly unjust, burdensome, and fundamentally counter to employment

'Very few pieces of law cause our Members as much angst as our Award's redundancy provisions'

The Impact on Employment

Employers in our industry are subjected to an unconditional liability of 1.75 hours redundancy pay per week for each permanent employee, up to 8 weeks redundancy pay for employees with 4 years or more service, which can add up to more than \$7,000 per employee.

Scenarios routinely reported to the CCF that are created by this redundancy regime include situations where:

- The provisions encourage employees to resign to avoid misconduct proceedings;
- Employees resign so they can gain access to the redundancy money for personal reasons
- Employees resign and then reapply for their old jobs.

Not only is this an added direct expense to business, but there is a significant additional cost for the employer in recruiting and retraining replacements, and in the opportunity cost the disruption has on business. CCF Members often report instances where non-redundant, and often much needed, employees leave their employment in order to access redundancy entitlements. These situations create havoc with employers, particularly for employers of small businesses that need to:

- 1) Come up with the money to pay redundancy in a situation where the employee is clearly not redundant, and is often very much needed at work by the employer and the employees;
- 2) Go through the time consuming and expensive exercise of recruiting and often training another employee with the necessary skills to replace the non-redundant employee.

As a result, many employers in the civil construction industry have reported to CCF that they prefer not to employ permanent employees because they cannot afford to, or are naturally unwilling to pay departing, non-redundant employees redundancy benefits. These employers use casual employment as a risk mitigation strategy.

CCF submits that whilst empirical evidence of the use of casual employment in the civil industry is difficult to accurately quantify, it is hard to argue with any logic that these redundancy provisions discourage direct employment by contractors and subcontractors. They contribute to the casualisation of the work force and

encourage the contracting of labour requirements into what has become a proliferation of the labour hire industry.

It must be noted that during the conciliation process of this Award Review union representatives refused to even discuss the possibility of changes to the redundancy scheme in the building Awards.

The ACTU, in its report to the Independent Inquiry into Insecure Work in Australia, *Lives on Hold: Unlocking the Potential of Australia's Workforce*, publicly released at the ACTU Congress on 16 May 2012 available at http://www.actu.org.au/media/349417/lives_on_hold.pdf the ACTU submits that:

The internationalisation of Australia's economy over the past 30 years has undoubtedly improved living standards in Australia. At the same time however, the changes that have occurred in our economy and society have also seen unprecedented growth of insecure work – poor quality jobs that provide workers with little economic security and little control over their working lives.

- *Almost one quarter of all employees in Australia (23.9% or 2.2 million workers), and one fifth of the total workforce, are engaged in casual employment.*
- *Fixed-term employment accounts for just over 4% of all employees, heavily concentrated in a few sectors such as education.*
- *Over one million workers in Australia (9% of the workforce) are independent contractors. Many contractors are in reality economically dependent on a single client, and a significant number of contractors are pressured into sham contracting.*
- *Up to 300,000 workers are employed through labour hire agencies, with little or no job security*

However, unions involved in construction Awards are also providing submissions to the Casual Employment case AM2014/197 arguing for more secure employment. **It seems contradictory that construction unions are allegedly supporting more secure employment in one case whilst at the same time supporting the right of non-redundant employees to collect redundant entitlements, which provide a huge disincentive for employers to engage permanent employees.**

The Impact on Small Business

Small businesses in the civil construction industry are hit particularly hard by these provisions as the Award's redundancy provisions override the redundancy concessions for small business in s.121 of the *Fair Work Act*. Consequently, small businesses in the construction industry are also required to pay redundancy entitlements to non-redundant employees even though the company employs less than 15 employees. Construction is the only industry where small businesses have the same redundancy obligations as big businesses.

Contrary to Award Objectives

CCF submits that the provisions in the *Building and Construction General On-site Award 2010* requiring an employer to pay non-redundant employees redundancy entitlements upon the employee voluntarily terminating the employment relationship are contrary to the Modern Award objective.

This industry specific redundancy scheme is contrary to, and offends each of the Modern Award objectives in s.134 of the *Fair Work Act*:

134 The modern awards objective

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and*
- (b) the need to encourage collective bargaining; and*
- (c) the need to promote social inclusion through increased workforce participation; and*
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (e) the principle of equal remuneration for work of equal or comparable value; and*
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

The *Fair Work Act* provides the Commission with some options to vary an industry-specific redundancy scheme.

S. 141(3) Varying industry-specific redundancy schemes

(3) The FWC may only vary an industry-specific redundancy scheme in a modern award under Division 4 or 5:

- (a) by varying the amount of any redundancy payment in the scheme; or*
- (b) in accordance with a provision of Subdivision B of Division 5 (which deals with varying modern awards in some limited situations).*
- (4) In varying an industry-specific redundancy scheme as referred to in subsection (3), the FWC:*
 - (a) must not extend the coverage of the scheme to classes of employees that it did not previously cover; and*
 - (b) must retain the industry-specific character of the scheme.*

Omitting industry-specific redundancy schemes

(5) The FWC may vary a modern award under Division 4 or 5 by omitting an industry-specific redundancy scheme from the award.

The View of Industry

The CCF has engaged with its Members over this matter for many years. It is a consistent theme of complaint in all States. There is a strong view in the industry that the redundancy provisions as they stand are inequitable, unnecessarily expensive, and discourage full time employment.

In a survey conducted by CCF over the period 25 November to 7 December 2016 of employers in the industry, some 315 employers from across Australia agreed that:

“For the purposes of this clause, redundancy means a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty or if the employee terminates the employment relationship of his/her own accord. Redundant has a corresponding meaning”

A list of those employers who “Agreed” with this position follows below. It should be noted that **only one** employer submitted that they “Disagreed” with this position and this was because they wanted the industry specific redundancy scheme to be completely removed.

A to Z Contracting Pty Ltd t/as Kennedy Bros Earthmoving
A&P Bridgewater Pty Ltd t/as Bridgeys Earthmoving
A1 Earthworx Mining & Civil Pty Ltd
AAA Asphalt
Abergeldie Complex Infrastructure
ABM Landscaping
Absolute Civil Contracting Pty Ltd
ADJ Constructions Pty Ltd
AJ Pipelines & Constructions Pty Ltd
All Kerb Pty Ltd
All Pavement Solutions
Allroads
Almagro Pty Ltd
Alpine Civil
Andrew Walter Constructions
Antoun Civil Engineering Pty Ltd
Antqip Pty Ltd
APH Contractors
AR Contracting Services Pty Ltd
Ashcroft Holdings Pty Ltd t/as Ashpave
Asmac Constructions Pty Ltd
Asphalt Laying Services Pty Ltd
Athassel Civil Pty Ltd
Austaire Services Plant Hire Pty Ltd
AWJ Civil Pty Ltd
Baden Civil Contracting
Baker Group of Companies
Ballina Concrete Pumping
Bardavcol Pty Ltd
BB & F Constructions Pty Ltd
Beltrame Civil
BetaPave
Better Heavy Movers
BG & L Ostler Pty Ltd

Bick Hire Pty Ltd
Bielby Holdings P/L
Bitupave Ltd (Trading as Boral Asphalt)
BJB Civil Hire
Blu Built Constructions Pty Ltd
Bob Chambers Pty Ltd
Bolte Civil Pty Ltd
Boulder Wall Constructions
Brand Excavations
Brefni Pty Ltd
Bridge and Civil Pty Ltd
Brisbane Screening
Brison Contracting Pty Ltd
Bull Bros Earthmoving
Burgess Earthmoving Pty Ltd
Burke Civil engineering Services P/L
Burnett Civil Pty Ltd
Burton Contractors Pty Ltd
Busselton Civil & Plant Hire
Cambra Holdings T/AS Morgans
Camco (SA) Pty Ltd
Capogreco Excavations Pty Ltd
Carve Earthworks and Constructions Pty Ltd
Catcon
CB Constructions
Central West Civil Pty Ltd
CGB Civil and Rail Pty Ltd
Chadoak Plumbing
Challenge Brick Paving
Channel Earthmoving
Cherio Pty Ltd t/as Cherio Civil Works
Cherrie Civil Engineering
Chris Christensen Excavation Pty Ltd
Christie Civil Pty Ltd
Citywide Civil Engineering NSW Pty Ltd
Civil & Tunnel Pty Ltd
Civil Mining Group Pty. Ltd
Civilnett Pty Ltd
CivilPlus Constructions
Coastwide Civil Pty Limited
Cockerill Contracting
Colemans Contracting and Earthmoving
Conamara Excavations Pty Ltd
Concrib Pty Ltd
Connor Earthmoving Orange Pty Ltd

Coopers Earthmoving & Haulage Pty Ltd
Coops Drainage and Civil
CPA Contracting Pty Limited
Cranes Asphaltting & Bitumen Sealing
CRC Civil Pty Ltd
CREST Constructions
Creteform Pty Ltd
Crusher Rentals Pty Ltd
CV Civil Pty Ltd
Cynergy Communications & Civil P/L
CZL Group Pty Ltd
D & L McCallum
D & M Excavations & Asphaltting Pty Ltd
D&C Garner Constructions Pty Ltd
D&D Traffic
Daracon Group
Davalan Industries Pty Ltd
David Aarts Earthmoving
Davison Earthmovers
Delta Pty Ltd
Demacs Constructions (Aust) P/L
Densford Civil
Diona Pty Ltd
Divalls Earthmoving Bulk Haulage
DML Constructions Pty Ltd
DNT Earthworks & Transport Pty Ltd
Do More Equipment Pty Ltd
Donnelley Civil Pty Ltd
Doval Constructions
Downer EDI Works
Ducats Earthmoving Pty Ltd
Duncan Excavations (NSW) Pty Ltd
Dunmain Pty Ltd
Dynamic Civil Pty Ltd
Earth Built
Earthtec Pty Ltd
Earthtrack Solutions
East Arm Civil
Eichler Earthmovers Pty Ltd
Eire Midland Constructions Pty Ltd
Enviropacific Services Pty Ltd
EP Civil & Earthmoving
Euro Civil Pty Ltd
Explosives Engineering Australia
Fetterplace Civil Pty Ltd

Fine Form Precast
Flynn Haulage & Earthmoving Pty Ltd
Foot and Brown
Ford Civil Contracting Pty Ltd
Friend Civil Pty Ltd
Fusco Group Pty Ltd
Gauci Civil Contracting
Gent Industries Pty Ltd
Geotas
GET GROUP Australia P/L
Ghossayn Group Pty Ltd
Gleeson Civil Engineering
Glennos Constructions Pty Ltd
Grace Civil
Green Civil Con Pty Ltd
Halkitis Bros
Hard Hat Holdings Pty Ltd
Hardy Bros Mining & Civil Construction
Haslin Constructions Pty Ltd
Hazell Bros
Hendrie Bros P/L
Highway Construction
Holzer Quarries Pty Ltd
Hugh & Co
Hunt Civil Pty Ltd
i-LEC Group
Independent Asphalt Services Group Pty Ltd
Insituform Pacific
Italia Stone Group
ITS PipeTech
J & E Asphalt & Civil Pty Ltd
J & M Bashforth & Sons Pty Ltd
Jasons Bobcat Hire Pty Ltd
JBG Contractors (NSW) Pty Limited
JC Excavations (Aust) Pty Ltd
JCM Excavations & Plant Hire Pty Ltd
JDM Contracting
JE & J Robinson Pty Ltd
JE & JA Moore
Jenton Projects Pty Ltd
JF Hull Holdings
JNC Group Australia Pty Ltd
John Lacey Earthmoving Pty Ltd
JRAJ Pty Ltd t/a Woodbury's Haulage and Earthmoving
Judd & Sons P/L

Katala constructions
KCE Pty Ltd
Kent Civil Pty Ltd
Keoughs Plant Hire Pty Ltd
Kerroc Constructions Pty Ltd
KND Services (formerly KND Maintenance)
L J Williams Earthmoving Pty Ltd
Ladex Construction Group Pty Ltd
Lamond Contracting Pty Ltd
Lance Smith Excavations P/L
Lantry Earthmoving Pty Ltd
LDI Constructions (QLD)
Ledacon Pty Ltd
Leed Engeneering and Construction Pty Ltd
Lend Lease
Les Russell & Son Pty Ltd
Liberty Industrial
LR&M Constructions Pty Ltd
M & B Civil Pty Ltd
M Smith & Son Earthmoving Pty Ltd
M&E Pratt
MAAS Administration Pty Ltd
MACA
Macarthur Gas
Macom Services Pty Ltd
Mainland Civil Pty Ltd
Maintenance and Construction Services Australia
Marine & Civil
Maritime Constructions Pty Ltd
Matthews Contracting Pty Ltd
Maxibor Australia Pty Ltd
McKinnon Quarries & Civil
McLennan Earthmoving
McNamee Constructions Pty Ltd
Megex Civil
Menai Civil Contractors Pty Ltd
Mibus Bros (Aust) Pty Ltd
Miniquip
Moane Fitzgerald Constructions Pty Ltd
Motion Civil Pty Ltd
MP Schultz Excavations
MSD Constructions
Mulgoa Quarries Pty Ltd
Multipro Civil
Nace Civil Engineering Pty Ltd

Naric Civil
Neill Earthmoving Pty Ltd
NK Group Services Pty Ltd (Larmans)
Non Destructive Excavations Australia Pty Ltd
Noone Nominees Pty Ltd
Northern Civil Earthworks P/L
Northpipe Constructions Pty Ltd
NQ Excavations
Nviroscope Pty Ltd
Orbital Traffic Management
Ozcom Drilling Pty Ltd
Paluszek Enterprises Pty Ltd
Pan Civil
Paneltec
Paul Clarke & Associates Pty Ltd
Paul Culverson Earthmoving & Farm Contracting Pty Ltd
Pearse Earthmoving
Peter Brown Pty Ltd
Phil Robinson Earthmoving
PHP Asphalt
Piling & Concreting Australia T/A Piling & Civil Australia
PND Civil Group Pty Ltd
Poonindie Pty Ltd t/as TWS Ted Wilson & Sons
Pot Holes R Uss
Powershift Tractors Pty Ltd
Premier Plant Hire (Aust) Pty Ltd
Pridham Earthmovers Pty Ltd
Project Asphalt Pty Ltd
QBC - Queensland Bridge & Civil
Qld Civil Engineering
QMC Group Pty Ltd
QTM
R & R Earthmoving P/L
R D Miller Pty Ltd
Randolph Construction Pty Ltd
Raw Worx P/L
Remedial Civil Solutions Pty Ltd t/as Chalouhi
Retaining Specialists Pty Ltd
Roadline Civil Contractors
Robson Civil Projects
Rohrlach Constructions P/L
RS Connell and Sons P/L
Rugendyke & Bashforth Contracting Pty Ltd
Ryan Earthmoving Pty Ltd
Samsung C&T Corporation

Scape Constructions Pty Ltd
Seaforth Civil
Select Civil
Seymour Whyte Constructions Pty Ltd
Shaw Contracting (Aust) Pty Ltd
Shearer Contracting
Shepherd Group Services (SGS) Pty Ltd
Shoalhaven Excavations
Shumack Engineering
Simpson Construction Co
Simpson Heavy Haulage Pty Ltd t/as Simpson Earth
Smith Plant (Lismore) Pty Ltd
SoilWicks Australia
SOS Excavations Pty Ltd
South Coast Sand & Civil
South Eastern Excavations Pty Ltd
Speedy Gantry Hire
State Asphalts NSW Pty Ltd
Statewide Civil
Stornoway
Sunstate Group QLD
Superboom
T & J Constructions Pty Ltd
Talis Civil Pty Ltd
Tamworth Precision Excavations
Tanami Excavations Pty Ltd
TCM Nominees Pty Ltd
Territory Bitumen Services
The BMD Group
TJ & RF Fordham Pty Ltd trading as TRN Group
Top End Line Markers
Topcoat Asphalt Contractors Pty Ltd
Trade West Pty Ltd
Traffic Control Services
Trico Asphalt P/L
Turners Excavations Pty Ltd
Ultra Earthworks
Vassallo construction P/L
Veolia Water Network Services
WA Limestone
Wade Civil Engineering Pty Ltd
Waeger Constructions Pty Ltd
Ward Civil and Environmental Engineering
Water Industry Solutions
Waterlec Pty Ltd

Waterway Constructions Pty Ltd
Wellco Developments Pty Ltd
Western Earthmoving Pty Ltd
Wilde Civil Pty Ltd
Wilgor Pty Ltd t/as Blayney Earthmoving
Woden Contractors Pty Ltd
Woodstock Contracting Pty Ltd
Yass Earthmovers
Yatala Civil Construction
York Civil Pty Ltd
Youngsons Civil Pty Ltd

Conclusion

The current redundancy provisions of the Award are an unreasonable burden on the industry. They discourage a strong and efficient construction industry, greatly increase the cost of infrastructure, make employee management difficult and discourage employment.

CCF submits that in order to achieve the modern award objectives set in the Act it is necessary to vary the redundancy provisions in the Award.

Rectification

CCF submits that the Fair Work Commission has three options to vary the current redundancy regime in the Building and Construction Award:

Alternative 1

Replace the definition of redundant in Clause 17.2 with the following definition:

“For the purposes of this clause, redundancy means a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty or if the employee terminates the employment relationship of his/her own accord. Redundant has a corresponding meaning.”

This variation would comply with the requirements of s.141 (4) (b) because the provision of the Building and Construction Award will still retain the industry specific character of the redundancy scheme because:

- I. An employee who retires medically unfit whilst employed in the construction industry will still be entitled to redundancy pay.
- II. The state of an employee who passes away whilst employed in the construction industry will still be entitled to claim the employee’s redundancy benefits.
- III. If an employer chooses to pay into a Redundancy Trust a non-redundant employee will still receive redundancy entitlements in accordance with the rules of the fund.

Alternative 2

Vary the amount of pay that is payable to non-redundant employees terminating the employment relationship of their accord in accordance with s.141 (3) (a). The definition of redundant will remain the same, but the amount payable would vary in cases where the employee initiates the termination of employment.

As with Alternative 1, CCF submits this Draft variation would comply with the requirements of s.141 (4) (b) because the provision of the Building and Construction Award will still retain the industry specific character of the redundancy scheme because:

- I. An employee who retires medically unfit whilst employed in the construction industry will still be entitled to redundancy pay.
- II. The state of an employee who passes away whilst employed in the construction industry will still be entitled to claim the employee's redundancy benefits.
- III. If an employer chooses to pay into a Redundancy Trust a non-redundant employee will still receive redundancy entitlements in accordance with the rules of the fund.

Alternative 3

On the alternative CCF proposes that the Building and Construction Awards redundancy scheme is varied by omitting the industry-specific redundancy scheme from the award, and replacing it with the current NES redundancy provisions in s.119 of the *Fair Work Act 2009*.

Proposed variation for Alternative 3

Clause 17 Redundancy

"17.1 Redundancy pay is provided for in the NES"

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Redundancy 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to vary the definition of Redundant in the Building and Construction General On-Site award 2010.

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By inserting in a new clause 17.3 (c) in the following terms:

“For the purposes of this clause, redundancy means a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty or if the employee terminates the employment relationship of his/her own accord. Redundant has a corresponding meaning.”

B. This determination takes effect from XX/XX/XXXX.

SENIOR DEPUTY PRESIDENT

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Redundancy 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to vary the definition of Redundant in the Building and Construction General On-Site award 2010.

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFCB XXXX it is ordered that the above award be varied as follows:

1. By inserting in a new clause 17.2 n the following terms:

‘Notwithstanding any other provision in this award an employee will only receive redundancy pay if, and only if, redundancy is occasioned otherwise than by the employee’.

B. This determination takes effect from XX/XX/XXXX.

SENIOR DEPUTY PRESIDENT

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Redundancy 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to vary the definition of Redundant in the Building and Construction General On-Site award 2010.

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By deleting Clause 17, and replacing it with the following Clause 17:

17.1 Redundancy pay is provided for in the NES.

B. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 2: INTRODUCTION OF JUNIOR RATES TO THE AWARD

The nature of the change sought

The *Building and Construction General On-Site Award 2010* (the ‘Award’) does not have Junior Rates of Pay and in being so is:

- counter to the objectives of the Modern Award;
- is anti-employment,
- is considerably limiting businesses incentive and scope to grow the next generation of construction workers.

CCF seeks to have the Award modified to include for Junior Rates.

The History

The Award’s predecessor, the *National Building and Construction Award 1990* did provide Junior Rates in Clause 20:

20.5.3(a) The minimum ordinary rate of pay to be paid to junior workers shall be in accordance with the percentages as set out below (calculated to the nearest ten cents, less than five cents to be disregarded) applied to the aggregate of the tradespersons minimum weekly rate prescribed in 18.1 and the special allowance prescribed in 18.2 of this award:

	%
<i>Between 16 and 17 years of age</i>	<i>42</i>
<i>Between 17 and 18 years of age</i>	<i>55</i>
<i>Between 18 and 19 years of age</i>	<i>75</i>
<i>Between 19 and 20 years of age</i>	<i>88</i>
<i>Over 20 years of age</i>	<i>100</i>

Junior rates were also included in the building industry awards before that. In 1987, the AN160034 – *Building Trades (Construction) Award 1987* contained the following rates for junior employees:

(6)(a) The ordinary rates of pay to be paid to junior employees shall be in accordance with the percentages set out below applied to the sum of the tradesperson's weekly rate set out in Clause 8(2)(a) and the appropriate special allowance prescribed in 8(5).

	%
<i>Between 16 and 17 years</i>	<i>42</i>
<i>Between 17 and 18 years</i>	<i>55</i>
<i>Between 18 and 19 years</i>	<i>75</i>
<i>Between 19 and 20 years</i>	<i>88</i>
<i>Over 20 years of age</i>	<i>100</i>

Under the provisions of the *Fair Work Act 2009* junior rates is an allowable matter that may be included in modern awards. Section 139 provides that:

139 Terms that may be included in modern awards—general

(1) A modern award may include terms about any of the following matters:

(a) minimum wages (including wage rates for junior employees, employees with a disability and employees to whom training arrangements apply),

The Act also provides a definition of Junior employees in s.21, the Dictionary :

“junior employee means a national system employee who is under 21.”

Junior Rates were universally utilised in the civil construction industry prior to the making of modern awards . In March 2008, the Full Bench of the Industrial Relations Commission stated in paragraph 71 of its Award Modernisation Decision (AM2008/1–12):

“Junior and apprentice rates

[71] The federal awards and NAPSAs with which we are dealing contain a very wide range of rates for junior employees and apprentices. The relevant instruments fix percentages of the adult wage for juniors and apprentices based on a host of historical and industrial considerations, most of which can only be guessed at. It is not possible to standardise these provisions on an economy-wide basis, at least not at this stage. We have adopted the limited objective of developing new rates which constitute a fair safety net for each of the modern awards based on the terms of the relevant predecessor awards and NAPSAs. We have attempted to strike a balance as between, in some cases, wildly varying provisions. In the case of junior employees the rates will be expressed as a percentage of the rate for the relevant adult classification. In the case of apprentices the rates will generally be expressed as a percentage of the relevant trade rate.”

In a recent junior rates decision – *General Retail Industry Award 2010 – Junior Rates* [2014] FWCFB 1846 the Commission reaffirmed the relevance of Junior Rates:

[103] We consider that the rationale for junior rates of pay remains relevant and that discounted rates continue to be justified. This is particularly so in the retail industry given the large number of juniors who are employed in it.

(emphasis added)

We agree with this statement. Currently, of the 122 Modern Awards nearly two thirds (78) have Junior Rates. However, our Award was not included in the list of prioritised awards, and to the great loss of our industry, junior rates were subsequently dropped. There appears to be no substantive historical reason for this loss, and certainly none that remains valid in 2016.

CCF submits that Junior Rates must be re-inserted into the *Building and Construction General On-Site Award 2010* as part of this 4-yearly award review.

Industry Specific Perspectives

Demand for Labour in Increasing

The demand for workers in the civil infrastructure workers across Australia is growing it is NOT staying the same. There are a number of reasons for this:

1. The population is increasing, and more infrastructure is needed to support them.
2. Community's 'acceptable level' of infrastructure is rising as our standard of living is rising, and so more infrastructure is needed
3. Infrastructure assets age, and must be maintained and eventually replaced.
4. A number of states have significant infrastructure backlogs, and they are, or will for the reasons above, trying to recover these, and so more infrastructure is needed.

Boom Labour

In NSW, BIS Shrapnel's CCF commissioned research (Feb 2015) stated that the size of the civil infrastructure workload was to increase by 70% between 2016 and 2019, and would then hold at those levels for at least the next ten years. The size of this work volume will peak at close to \$19 billion per annum. Some will no doubt argue this labour can and should be sourced through upskilling, but this ignores that there is always a boom somewhere in Australia.

The cyclical nature of boom workload in different States is normal. We have had WA, SA, Qld and NT have all had the peak over the past 25 years; Victoria is having a mini-boom now and NSW will soon be the leader.

The point being that there is always a boom in our industry somewhere in Australia and for the reasons above, always a demand for "boom labour". What we as a country must do is ensure we have enough labour supply entering the market to handle replacement plus what is needed for the increased work required for the reasons given above. If we are to build our infrastructure with Australians, we must always be creating the next generation of workers, and that generation needs to be larger than the one before it.

"If we are to build our infrastructure with Australians, we must always be creating the next generation of workers, and that generation needs to be larger than the one before it."

An Aging Workforce

In its 2015 Economic Scan, SkillsDMC, the then Industry Skills Council for the Resources and Infrastructure industry forecast that over the ten years, nearly 1 in 5 of the industry's workforce would reach retirement age. We are pressed to not only find new labour, but replacements for an ever aging workforce.

Technology

It is not just gross numbers that drive our industry's need for new young people. The nature of our work is changing, and we need young people who will be comfortable working in this environment.

The civil industry is becoming more technically complex at a rapid rate. Current major productivity improvements in safety, machine efficiency, engineering, and management systems are largely being driven via technology improvements. A recent conference on 14-15 November 2016 in Sydney run by CCF "Productivity Improving Technology" highlighted the technological advancements that are now being made available to the industry.

For example, multiple point GPS systems is now routine for a 15 tonne grader, allowing it to scrape in three dimensions to an accuracy of 10mm. The operation of such technological advancements can quite simply leave some workers behind - it is not always possible to upskill.

Upskilling is of course almost always the preferred option of employers. It is cheaper, less risk, and quicker to upskill than it is to hire a Junior:

- Experienced workers have a known entity in an existing worker and with a person who has a previous record in the industry.
- An experienced worker is, by virtue of experience alone significantly safer than a Junior; requiring far less supervision and basic workplace training.
- Expensive machinery is not put in the hands of individuals lightly. Maturity is a key factor.

But industry cannot always find experienced workers – by definition new people must join the industry to replace those that retire or leave, and we must bring in new people to handle the increase infrastructure workload that is occurring across Australia.

Furthermore, our Members report to us that the older generation of our workforce can have difficulty adapting to this new technology. To maximise the efficiencies available from technology advancements, our industry needs to bring in young people who will be comfortable handling such technology.

Any argument put forward that industry seeks to profiteer off young workers is fanciful – industry prefers to upskill. However, upskilling cannot solve any industries long term continual need for new labour.

“Any argument put forward that industry seeks to profiteer off young workers is fanciful – industry prefers to upskill”

Safety

The civil infrastructure industry is an inherently high risk industry. We typically have high impact workplace incidents.

Whilst a generalisation, it is not contentious to say that younger people have a different risk acceptance profile than older people, and that they have fewer life experiences to balance those risk accepting tendencies.

This means Juniors are more dangerous from a personal safety perspective, but also more dangerous from a machinery damage perspective. To manage this, an employer who hires a Junior must provide far more supervision than for an older worker. This is not only a higher direct expense, but is a significant opportunity cost for the employer. Some Members have told CCF that these total costs are so high that they have policies in place not to hire young people.

In a high risk industry such as ours, incentives are even more important to promote the hiring of younger workers.

“In a high risk industry such as ours, incentives are even more important to promote the hiring of younger workers”

Age Relevance on Unskilled Tasks – Countering the Argument

Some might argue that when performing basic manual tasks such as general labourers the age of the employee is irrelevant (particularly when no formal training is provided to the junior employee other than the usual senior employee mentoring on site) and therefore the value of the work performed by a junior employee is the same.

This argument is false, as it ignores a fundamental reality that should already be clear from our submission: Employers prefer to upskill from people they already have or know of. They prefer to place into skilled roles people they already know and have trialed.

Not every person who enters, or could enter, our industry, needs or wants (see below) to join it as an apprentice or a trainee. Entry into the industry as an unskilled worker is a very valid entry point into a complete career in our industry. History shows this to be true, as many of the owners of the businesses who are Members of CCF entered the industry as junior employees' decades ago. Regulatory burdens that only provide a financial incentive for employers to employ young people as an Apprentice or a Trainee are not consistent with other awards, other industries, and the objectives of the Modern Awards.

It seems somewhat obvious that what our industry needs is a pathway for young to enter the industry, that will give them time to learn the industry, become safe, be observed and mentored, and then to use their disposition to technology to advance into more skilled roles when and if ready.

Unskilled Is a Preferred Pathway for Some

Many young employees and school leavers want to undertake a trial period of employment in the industry to ensure it is suitable, before committing to a formal traineeship or apprenticeship, and a career in civil construction; likewise, employers prefer junior employees and school leavers to work for a trial period before committing to the expense of enrolling a junior employee in formal training.

Under the terms of Clause 15.6 of the Award the full cost of training is borne by the employer. Once a formal traineeship or apprenticeship is entered into, it is difficult to terminate it if it is found that the industry is unsuitable for the junior employee.

CCF submits that the Award should not force people at a young age to choose entry into the industry by the skilled route only

Impediments

But why is our industry not already doing this?

The answer is because the total cost of hiring a junior is too comparatively expensive. A 17 year old needs more supervision, more mentoring, than a 25 year old. If the wages of a 17 year old are the same as a 25 year old, a typical employer will take the 25 year old on virtually every occasion.

The View of Industry

The CCF has engaged with its Members over this matter for many years. It is a consistent theme of complaint in all States.

In a survey conducted by CCF over the period 25 November to 7 December 2016 of employers in the industry, some 317 employers agreed that:

“The elimination of Junior Rates has had a profound effect on youth employment and training in the industry because it discourages employment of young people and school leavers. The lack of Junior Rates in this award has greatly contributed to the current skill shortage in the industry, and the very low number of apprenticeship and traineeships undertaken in the civil construction industry.”

A list of those employers who “Agreed” with this position follows below. It should be noted that **not one** employer submitted that they “Disagreed” with this position.

A to Z Contracting Pty Ltd t/as Kennedy Bros Earthmoving
A&P Bridgewater Pty Ltd t/as Bridgeys Earthmoving
A1 Earthworx Mining & Civil Pty Ltd
AAA Asphalt
Abergeldie Complex Infrastructure
ABM Landscaping
Absolute Civil Contracting Pty Ltd
ADJ Constructions Pty Ltd
AJ Pipelines & Constructions Pty Ltd
All Kerb Pty Ltd
All Pavement Solutions
Allroads
Almagro Pty Ltd
Alpine Civil
Andrew Walter Constructions
Antoun Civil Engineering Pty Ltd
Antqip Pty Ltd
APH Contractors
AR Contracting Services Pty Ltd
Ashcroft Holdings Pty Ltd t/as Ashpave
Asmac Constructions Pty Ltd
Asphalt Laying Services Pty Ltd
Athassel Civil Pty Ltd
Austaire Services Plant Hire Pty Ltd
AWJ Civil Pty Ltd
Baden Civil Contractiing
Baker Group of Companies
Ballina Concrete Pumping
Bardavcol Pty Ltd
BB & F Constructions Pty Ltd
Beltrame Civil
BetaPave

Better Heavy Movers
BG & L Ostler Pty Ltd
Bick Hire Pty Ltd
Bielby Holdings P/L
Bitupave Ltd (Trading as Boral Asphalt)
BJB Civil Hire
Blu Built Constructions Pty Ltd
Bob Chambers Pty Ltd
Bolte Civil Pty Ltd
Boulder Wall Constructions
Brand Excavations
Brefni Pty Ltd
Bridge and Civil Pty Ltd
Brisbane Screening
Brison Contracting Pty Ltd
Bull Bros Earthmoving
Burgess Earthmoving Pty Ltd
Burke Civil engineering Services P/L
Burnett Civil Pty Ltd
Burton Contractors Pty Ltd
Busselton Civil & Plant Hire
Cambra Holdings T/AS Morgans
Camco (SA) Pty Ltd
Capogreco Excavations Pty Ltd
Carve Earthworks and Constructions Pty Ltd
Catcon
CB Constructions
Central West Civil Pty Ltd
CGB Civil and Rail Pty Ltd
Chadoak Plumbing
Challenge Brick Paving
Channel Earthmoving
Cherio Pty Ltd t/as Cherio Civil Works
Cherrie Civil Engineering
Chris Christensen Excavation Pty Ltd
Christie Civil Pty Ltd
Citywide Civil Engineering NSW Pty Ltd
Civil & Tunnel Pty Ltd
Civil Mining Group Pty. Ltd
Civilnett Pty Ltd
CivilPlus Constructions
Coastwide Civil Pty Limited
Cockerill Contracting
Colemans Contracting and Earthmoving
Conamara Excavations Pty Ltd

Concrib Pty Ltd
Connor Earthmoving Orange Pty Ltd
Coopers Earthmoving & Haulage Pty Ltd
Coops Drainage and Civil
CPA Contracting Pty Limited
Cranes Asphaltting & Bitumen Sealing
CRC Civil Pty Ltd
CREST Constructions
Creteform Pty Ltd
Crusher Rentals Pty Ltd
CV Civil Pty Ltd
Cynergy Communications & Civil P/L
CZL Group Pty Ltd
D & L McCallum
D & M Excavations & Asphaltting Pty Ltd
D&C Garner Constructions Pty Ltd
D&D Traffic
Daracon Group
Davalan Industries Pty Ltd
David Aarts Earthmoving
Davison Earthmovers
Delta Pty Ltd
Demacs Constructions (Aust) P/L
Densford Civil
Diona Pty Ltd
Divalls Earthmoving Bulk Haulage
DML Constructions Pty Ltd
DNT Earthworks & Transport Pty Ltd
Do More Equipment Pty Ltd
Donnelley Civil Pty Ltd
Doval Constructions
Downer EDI Works
Ducats Earthmoving Pty Ltd
Duncan Excavations (NSW) Pty Ltd
Dunmain Pty Ltd
Dynamic Civil Pty Ltd
Earth Built
Earthtec Pty Ltd
Earthtrack Solutions
East Arm Civil
Eichler Earthmovers Pty Ltd
Eire Midland Constructions Pty Ltd
Enviropacific Services Pty Ltd
EP Civil & Earthmoving
Euro Civil Pty Ltd

Explosives Engineering Australia
Fetterplace Civil Pty Ltd
Fine Form Precast
Flynn Haulage & Earthmoving Pty Ltd
Foot and Brown
Ford Civil Contracting Pty Ltd
Friend Civil Pty Ltd
Fusco Group Pty Ltd
Gauci Civil Contracting
Gent Industries Pty Ltd
Geotas
GET GROUP Australia P/L
Ghossayn Group Pty Ltd
Gleeson Civil Engineering
Glennos Constructions Pty Ltd
Grace Civil
Green Civil Con Pty Ltd
Halkitis Bros
Hard Hat Holdings Pty Ltd
Hardy Bros Mining & Civil Construction
Haslin Constructions Pty Ltd
Hazell Bros
Hendrie Bros P/L
Highway Construction
Holzer Quarries Pty Ltd
Hugh & Co
Hunt Civil Pty Ltd
i-LEC Group
Independent Asphalt Services Group Pty Ltd
Insituform Pacific
Italia Stone Group
ITS PipeTech
J & E Asphalt & Civil Pty Ltd
J & M Bashforth & Sons Pty Ltd
J K Williams Contracting Pty Ltd
Jasons Bobcat Hire Pty Ltd
JBG Contractors (NSW) Pty Limited
JC Excavations (Aust) Pty Ltd
JCM Excavations & Plant Hire Pty Ltd
JDM Contracting
JE & J Robinson Pty Ltd
JE & JA Moore
Jenton Projects Pty Ltd
JF Hull Holdings
JNC Group Australia Pty Ltd

John Lacey Earthmoving Pty Ltd
JRAJ Pty Ltd t/a Woodbury's Haulage and Earthmoving
Judd & Sons P/L
Katala constructions
KCE Pty Ltd
Kent Civil Pty Ltd
Keoughs Plant Hire Pty Ltd
Kerroc Constructions Pty Ltd
KND Services (formerly KND Maintenance)
L J Williams Earthmoving Pty Ltd
Ladex Construction Group Pty Ltd
Lamond Contracting Pty Ltd
Lance Smith Excavations P/L
Lantry Earthmoving Pty Ltd
LDI Constructions (QLD)
Ledacon Pty Ltd
Leed Engineering and Construction Pty Ltd
Lend Lease
Les Russell & Son Pty Ltd
Liberty Industrial
LR&M Constructions Pty Ltd
M & B Civil Pty Ltd
M Smith & Son Earthmoving Pty Ltd
M&E Pratt
MAAS Administration Pty Ltd
MACA
Macarthur Gas
Macom Services Pty Ltd
Mainland Civil Pty Ltd
Maintenance and Construction Services Australia
Marine & Civil
Maritime Constructions Pty Ltd
Matthews Contracting Pty Ltd
Maxibor Australia Pty Ltd
McKinnon Quarries & Civil
McLennan Earthmoving
McNamee Constructions Pty Ltd
Megex Civil
Menai Civil Contractors Pty Ltd
Mibus Bros (Aust) Pty Ltd
Miniquip
Moane Fitzgerald Constructions Pty Ltd
Motion Civil Pty Ltd
MP Schultz Excavations
MSD Constructions

Mulgoa Quarries Pty Ltd
Multipro Civil
Nace Civil Engineering Pty Ltd
Naric Civil
Neill Earthmoving Pty Ltd
NK Group Services Pty Ltd (Larmans)
NL Drainage
Non Destructive Excavations Australia Pty Ltd
Noone Nominees Pty Ltd
Northern Civil Earthworks P/L
Northpipe Constructions Pty Ltd
NQ Excavations
Nviroscope Pty Ltd
Orbital Traffic Management
Ozcom Drilling Pty Ltd
Paluszek Enterprises Pty Ltd
Pan Civil
Paneltec
Paul Clarke & Associates Pty Ltd
Paul Culverson Earthmoving & Farm Contracting Pty Ltd
Pearse Earthmoving
Peter Brown Pty Ltd
Phil Robinson Earthmoving
PHP Asphalt
Piling & Concreting Australia T/A Piling & Civil Australia
PND Civil Group Pty Ltd
Poonindie Pty Ltd t/as TWS Ted Wilson & Sons
Pot Holes R Uss
Powershift Tractors Pty Ltd
Premier Plant Hire (Aust) Pty Ltd
Pridham Earthmovers Pty Ltd
Project Asphalt Pty Ltd
QBC - Queensland Bridge & Civil
Qld Civil Engineering
QMC Group Pty Ltd
QTM
R & R Earthmoving P/L
R D Miller Pty Ltd
Randolph Construction Pty Ltd
Raw Worx P/L
Remedial Civil Solutions Pty Ltd t/as Chalouhi
Retaining Specialists Pty Ltd
Roadline Civil Contractors
Robson Civil Projects
Rohrlach Constructions P/L

RS Connell and Sons P/L
 Rugendyke & Bashforth Contracting Pty Ltd
 Ryan Earthmoving Pty Ltd
 Samsung C&T Corporation
 Scape Constructions Pty Ltd
 Seaforth Civil
 Select Civil
 Seymour Whyte Constructions Pty Ltd
 Shaw Contracting (Aust) Pty Ltd
 Shearer Contracting
 Shepherd Group Services (SGS) Pty Ltd
 Shoalhaven Excavations
 Shumack Engineering
 Simpson Construction Co
 Simpson Heavy Haulage Pty Ltd t/as Simpson Earth
 Smith Plant (Lismore) Pty Ltd
 SoilWicks Australia
 SOS Excavations Pty Ltd
 South Coast Sand & Civil
 South Eastern Excavations Pty Ltd
 Speedy Gantry Hire
 State Asphalts NSW Pty Ltd
 Statewide Civil
 Stornoway
 Sunstate Group QLD
 Superboom
 T & J Constructions Pty Ltd
 Talis Civil Pty Ltd
 Tamworth Precision Excavations
 Tanami Excavations Pty Ltd
 TCM Nominees Pty Ltd
 Territory Bitumen Services
 The BMD Group
 TJ & RF Fordham Pty Ltd trading as TRN Group
 Top End Line Markers
 Topcoat Asphalt Contractors Pty Ltd
 Trade West Pty Ltd
 Traffic Control Services
 Trico Asphalt P/L
 Turners Excavations Pty Ltd
 Ultra Earthworks
 Vassallo construction P/L
 Veolia Water Network Services
 WA Limestone
 Wade Civil Engineering Pty Ltd

Waeger Constructions Pty Ltd
 Ward Civil and Environmental Engineering
 Water Industry Solutions
 Waterlec Pty Ltd
 Waterway Constructions Pty Ltd
 Wellco Developments Pty Ltd
 Western Earthmoving Pty Ltd
 Wilde Civil Pty Ltd
 Wilgor Pty Ltd t/as Blayney Earthmoving
 Woden Contractors Pty Ltd
 Woodstock Contracting Pty Ltd
 Yass Earthmovers
 Yatala Civil Construction
 York Civil Pty Ltd
 Youngsons Civil Pty Ltd

CCF submits that the absence of a Junior Rates regime in our Award is contributing to our industry employee young people. Our industry needs, as exists in most other industries, an incentive for industry to employ Juniors.

Compare Junior Rates

The cost of employing new school leavers and other young people new to the industry under the Award is currently much higher than in other industries. The minimum classification for a junior employee entering the industry without an apprenticeship or a traineeship is CW1 (a) regardless of age.

The current rate of pay for a CW1 (a) is \$743.68 per week, inclusive of Industry and Special Allowances, for the first 3 months.

In addition, such an employee is entitled to a Daily Travel Allowance, in accordance with Clause 25 of the Award, currently \$17.43 per day. Therefore, the real cost of employing a junior employee who is not a trainee or an apprentice for trial period is \$19.57 per hour plus \$17.43 travel allowance per day. If casual employment is used for the trial period a 25% casual loading must be added to the hourly rate of the new employee, **bringing the total hourly rate in our industry to \$ 24.46 per hour plus the \$17.43 travel allowance per day.**

Compare our Award with the cost of employing a young employee for a trial period in:

1. the *Timber Industry Award* 000071:

Age	Award Rate for Level 2, General Timber Stream	Hourly Rate
16	40%	\$7.70
17	55%	\$10.73

18	70%	\$13.47
19	85%	\$16.36
20	100%	\$19.52

2. The *Gardening and Landscaping Award 2010*:

Age	Award Rate at Introductory Level	Hourly Rate
17 years or under	70%	\$12.39
18	80%	\$14.16
19	90%	\$15.93
20	100%	\$17.70

If the probation period is successful and both the employer and the employee are willing to enter into a traineeship or apprenticeship arrangement, junior employees are unwilling to revert back to traineeship or apprenticeship rates.

This lack of junior rates has contributed to the current skills shortage in the civil construction industry, and to the very low number of young employees entering the civil construction industry.

Failure to Comply with Objectives of the Modern Award

CCF submits that the lack of Junior Rates in the *Building and Construction General On-Site Award 2010* is contrary to the Modern Award objective in s.134 of the Fair Work Act, particularly:

s.134 (1)

- (c) *the need to promote social inclusion through increased workforce participation; and*
- (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

Proposed variation

CCF proposes that the following table, based on Clause 20.5.3 *junior worker's wages (per week)* of the previous *National Building and Construction Industry Award 1990* is inserted in the *Building and Construction General On-site Award 2010*:

The minimum wages for an unapprenticed or non –trainee junior are:

Between 16 and 17 years of age
Between 17 and 18 years of age
Between 18 and 19 years of age
Between 19 and 20 years of age
Over 20 years

% of CW3 level

42%
55%
75%
88%
100% of appropriate classification

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Junior Rates 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to insert Junior Rates in the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By inserting the following new Clause 19.7 (c):

(a) The minimum ordinary rate of pay to be paid to junior workers shall be in accordance with the percentages as set out below:

The minimum wages for an unapprenticed or non –trainee junior are:

Between 16 and 17 years of age
Between 17 and 18 years of age
Between 18 and 19 years of age
Between 19 and 20 years of age
Over 20 years

% of CW3 level

42%
55%
75%
88%
100% of appropriate classification

(b) Industry allowance

Where a junior worker works in circumstances which would entitle a tradesperson to the industry allowance prescribed in 24.1 of this award the following extra rates, expressed as a percentage of that industry allowance, shall be paid:

	Percentage
Between 16 and 17 years of age	40
Between 17 and 18 years of age	72
Between 18 and 19 years of age	95
19 years of age and over	100

B. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 3: CLAUSE 31.3 WEEKLY PAYMENT OF WAGES

The nature of the change sought

CCF seeks to reduce the regulatory burden, the administrative burden, and additional costs associated with an archaic clause in the *Building and Construction General On-Site Award 2010* (the 'Award')

The Provision

The *Fair Work Act 2009* in S.323 (1) (C) provides that employers may pay employees weekly, fortnightly or monthly. Clause 31.3 of the Award provides no flexibility for employers and employees other than weekly pay cycles. The Award currently provides in Clause 31.3:

"Payments must be paid and available to the employee not later than the end of ordinary hours of work on Thursday of each working week. Where an employer made payment less frequently in compliance with a relevant award or award-based transitional instrument, prior to the making of this award on 1 January 2010, or where an employer made payment less frequently in compliance with a Division 2B State award, prior to 1 January 2011, the employer may continue to make payment at that frequency, subject to the agreement of employees and/or a majority of employees if required by the relevant award, award-based transitional instrument or Division 2B State award."

Enterprise Agreements and individual employment contracts provide greater flexibility for payment of wages than the Award. If an employer chooses to use the Award as the preferred employment instrument there is no flexibility for that employer to pay wages fortnightly unless that arrangement existed prior to the 1st of January 2010 or the 1st of January 2011 as the case may be.

CCF is only aware of two other awards, the Joinery and Building Trades Award 2010 [MA000029] and the Plumbing and Fire Sprinklers Award 2010 [MA000036] that force employers to pay employees weekly without provision for other pay cycles. .

The Impact

This provision has thus become a significant administrative burden for employers in the civil industry that choose to use the Award as their preferred employment instrument. It limits the ability for employers to implement cost and time effective payroll cycles.

Before the modern Award many employers were covered by federal awards and NAPSAs that allowed for greater flexibility in the frequency of the payment of wages, including NSW Plant, &c., Operators on Construction (State) Award and the NSW General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award.

This issue appears not to have been properly considered by the parties during the busy award modernisation process.

However, soon after the implementation of the modern Award an application was made by Simpson Personnel Pty Ltd, matter number 2010 (AM 2008/15) to vary the Award to include in Clause 31 a provision

for payment of wages on a fortnightly basis by mutual agreement between employers and employees where such arrangement did not exist prior to the modern award.

This application was supported by major employer industrial organisations. A number of submissions were made by these organisations supporting the variation. These are some quotes mentioned by the Commission in its decision Simpson Personnel Pty Ltd (AM2010/22);

1. **Business SA** submitted that clause 31 of the Award restricts employers from paying either weekly or fortnightly, requiring payment must be paid and available to the employee not later than the end of ordinary hours of work on Thursday of each working week. It submitted that relevant pre-modern awards – the Building and Construction Workers (State) Award NAPSA, the AWU/CFMEU Construction and Maintenance Award (South Australia) 1989 NAPSA and the Australian Workers’ Union Construction and Maintenance Award 2002 (AWU Construction and Maintenance Award), whilst providing for payment no later than the cessation of ordinary hours of work on Thursday of each working week, each provide for “any alternative mutual arrangement between an employer and an employee”. “Payments must be paid and available to the employee not later than the end of ordinary hours of work on Thursday of each working week or fortnight.”
2. The **MBA** submitted that provisions within a number of predecessor awards of the 2010 Modern Award upon which it believes clause 31 is based, permitted fortnightly payments and clause 31 imposes new restrictions not be known to a large number of employers, especially small businesses.
3. **A FEI** supported the application. It submitted that the 2010 Modern Award now applies to many employers who were previously covered by federal awards or NAPSA’s that allowed for greater flexibility in the frequency of the payment of wages, citing the NSW Plant, &c., Operators on Construction (State) Award and the NSW General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award, and applies to some industry sectors where on-site work was previously covered by other industry awards which included more flexible arrangements for payment of wages.

Senior Deputy President Watson subsequently acknowledged in paragraph 34 of his decision the cost burden that frequency of payment of wage imposed on employers:

[34] I am, however, satisfied that the payment of wages and the frequency thereof will impact upon employment costs and the regulatory burden, a consideration required by s.134(1)(f) of the Act. A greater frequency of payment will increase administrative costs of employing labour and impose a greater regulatory burden, which should be avoided, particularly in circumstances where employees have been subject to less frequent payment under previously applicable award-based transitional instruments

Further, Senior Deputy President Watson agreed to vary the Award in the following terms:

[50] I am not satisfied that making a determination varying the 2010 Modern Award generally, as sought by the applicant or its supporters, is necessary to achieve the modern awards objective. I am, however, satisfied that a variation permitting employers, who were availing themselves of a longer frequency of payment permitted by a relevant award or award-based transitional instrument

applying to them immediately before the making of the 2010 Modern Award, to continue to do so is necessary to achieve the modern awards objective. Accordingly, I will make a determination varying the 2010 Modern Award in those more limited terms. Any broader review of clause 31 of the 2010 Modern Award should await the 4 yearly reviews of the modern awards.

CCF submits that this issue should be revisited as part of this Award review. The comments by Senior Deputy President Watson regarding the costs and regulatory burden caused by this archaic requirement - made six (6) years ago - remain even more true today given the employment costs and regulatory burden in the civil construction industry are now higher than ever.

Failure to Comply with Objectives of the Modern Award

The CCF contends that s31.3 of the Award are contrary to the modern award objectives in s.134(1)(d), (f) and (h) of the *Fair Work Act 2009*, which respectively identify the objectives of as follows:

- “the need to promote flexible modern work practices and the efficient and productive performance of work”,
- “the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden” and
- “the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

In all three instances the Award no longer keeps pace with the needs of business, employees, or normal practice in Australia.

Proposed Variation

CCF proposes that Clause 31.3 of the *Building and Construction General On-site Award 2010* is replaced with the following Clause 31.3:

31.3 Payments must be paid and available to the employee not later than the end of ordinary hours of work on each Thursday for weekly pay arrangements, or every second Thursday for fortnightly pay arrangements.

MA 000020

DRAFT DETERMINATION

Fair Work Act 200

s.156 (2) — 4 Yearly Review of Modern awards

Weekly Pay 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to vary Clause 31.3 of the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By deleting Clause 31.3 and replacing it with the following Clause:

31.3 Payments must be paid and available to the employee not later than the end of ordinary hours of work on each Thursday for weekly pay arrangements, or every second Thursday for fortnightly pay arrangements.

2. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 4: CLAUSE 22.2 (H) DEFINITION OF DIRTY WORK

The nature of the change sought

The *Building and Construction General On-site Award 2010* (the 'Award') in Clause 22.2 (h) has a provision requiring employers to pay employees a disability allowance in the following terms:

(h) Dirty Work

"An employee engaged in unusually dirty work must be paid an additional 3.2% of the hourly standard rate per hour."

However, no definition of 'dirty work' or 'unusually dirty work' is provided in the Award.

CCF is seeking to have a clear definition of "unusually dirty work" inserted in the Award to identify situations where this allowance should be paid. The lack of a clear definition leads to unnecessary tension between employees and employers, additional regulatory burdens, unnecessary costs for employers, and a complex dispute resolution process.

We submit that all Award provisions which require an employer to pay employees a disability allowance to perform work under particular environmental circumstances must be unambiguous and clearly define the conditions required to attract payment.

The provision of an allowance for dirty work appears to be an abnormality in the Building and Construction Award. The conditions for payment of disability allowances in the Building and Construction Award are generally very clear, with detailed descriptions of the circumstances when allowances apply. There are 62 disability allowances in Clause 21 and 22 of the Award. Many allowances have different values depending on the circumstances; for example the compressed air allowance in Clause 22.4 (g) has 6 different values depending on the kPa of pressure.

The history of this allowance in the Award is unclear. The National Building Award had identical terms to those in the Modern Award at Clause 25.1.6, but without a definition of dirty work.

The *Metal, Engineering and Associated Industries (State Award)* publication C0081 had provision for dirty work in the following terms:

5.9.3 (g) Dirty Work - Where an employee and their supervisor agree that work (other than ship repair work) is of an unusually dirty or offensive nature, refer to Item 5 (i) of 5.9.3(t).

Where an employee and their supervisor agree that certain ship repair work is of an unusually dirty or offensive nature, refer to Item 5 (ii) of 5.9.3(t).

Chapter 10 Part 3 Section 2 - Dirty or Offensive Work Allowance of the Defence Personnel Pay and Conditions Manual provides that:

Eligibility for the dirty or offensive work allowance

10.3.2.3 Employees are eligible for the allowance if they are required to perform duties:

- that the employee's supervisor agrees are of an unusually dirty or offensive nature, or
- using (or in close proximity to those using) epoxy-based materials or materials that include, or require the addition of, a catalyst hardener and reactive additives or two pack catalyst, or
- in a place where offensive fumes are present

10.3.2.4 *The allowance is not paid to an employee:*

- *if there is no agreement between the employee and the supervisor that the work is of an unusually dirty or offensive nature, or*
- *if their normal duties are usually of a dirty nature.*

Example: employees undertaking motor mechanic duties are not usually eligible for this allowance given that their normal duties are of a dirty nature.

The Award already provides disability allowances for employees using epoxy materials in Clause 22.2 (i) (ii) Toxic Substances and 22.2(j) Fumes. In fact, as previously stated the Building and Construction Award contains 62 disability allowances covering every circumstance that may be encountered in a building site.

Failure to Comply with Objectives of the Modern Award

The Modern Award objectives are set out in s.134 of the *Fair Work Act 2009* at 134 (g) and (d) requires Modern Awards to take into account:

“(d) the need to promote flexible modern award practices and the efficient and productive performance or work.”

“(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards”

CCF submits that a clear definition of dirty work in the *Building and Construction General On-site Award 2010* is required for this award to meet its objectives.

Proposed variation

New paragraph added to clause 22.2 (h) of the *Building and Construction General On-site Award 2010*:

“Unusually dirty work is defined as a situation where the employee is required to work on a site with dirty or contaminated substances or materials not commonly found on building and construction sites, and these substances or materials not covered by any other disability allowances paid under this award”.

In the alternative, if no suitable definition can be agreed upon, we submit that this allowance should be removed in its entirety from the *Building and Construction General On-site Award 2010*.

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Dirty Work Allowance 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to deal with Clause 22.2 (h) Dirty Work Allowance in the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFCB XXXX it is ordered that the above award be varied as follows:

1. By inserting the following new Clause 22.2 (h):

“Unusually dirty work is defined as a situation where the employee is required to work on a site with dirty or contaminated substances or materials not commonly found on building and construction sites, and these substances or materials not covered by any other disability allowances paid under this award”.

2. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 5: CLAUSE 24.3 (A) (I) LIVING AWAY FROM HOME ALLOWANCE

The nature of the change sought

The CCF seeks to add clarity to a highly contentious area of *Building and Construction General On-site Award 2010* (the 'Award') – the payment of Living Away from home allowance.

The Allowance

The Award' in Clause 24.1 provides a living away from home entitlement for employees on the following terms:

24.1 Qualification

(a) This clause operates when an employee is employed on construction work at such a distance from the employee's usual place of residence or any separately maintained residence that the employee cannot reasonably return to that place each night, provided that:

(i) the employee is not in receipt of relocation benefits;

(ii) the employee is maintaining a separate place of residence to which it is not reasonable to expect the employee to return each night; and

(iii) the employee has provided the details of their usual place of residence, or any separately maintained address to the employer.

(b) The employee is not entitled to payment under this clause if the employee has knowingly made a false statement regarding the details required in clause 24.2.

24.3 Entitlement

(a) Where an employee qualifies under clause 24.1 the employer will:

(i) Pay a living away from home allowance of \$454.75 per complete week. In the case of broken parts of the week the living away from home allowance will be \$65.06 per day. This allowance may be increased if the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed; or

(ii) Provide the worker with reasonable board and lodging in a well-kept establishment with three adequate meals each day; or

(iii) Where employees are required to live in camp, provide all board and accommodation free of charge.

The value of the accommodation component and the value of each meal are not specified in the Award. This lack of clarity causes considerable tension, and a propensity for disputes between employers and employees.

Moreover, many employers prefer the reduced administration burden of paying for the employee's accommodation directly to an establishment, and to pay meals allowances directly to the employee. Many accommodation establishments do not provide meals or cooking facilities, or only provide breakfast.

It should be noted that CCF is only seeking to specify the value of the meals included in the Living Away from Home Allowance, in order to provide clarity about the entitlement. We are not seeking to vary the value of the current living away from home allowances in the Award; the Fair Work Commission has updated this allowance each year through the National Minimum Wage Orders, in accordance with Clause 20.4 of the Award:

20.4 Adjustment of expense related allowances

(a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

(b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Tool and employee protection allowance	Eight Capitals Consumer Price Index
Compensation for clothes and tools	Eight Capitals Consumer Price Index
Meal allowance	Meals out and take away foods sub-group
Living away from home—distant work	Domestic holiday travel and accommodation sub-group
Camping	Average of Food and non-alcoholic beverages, housing and transport groups
Fares and travel patterns allowance	Transport group
Weekend return home	Transport group
Transport and transporting tools	Transport group

Failure to Comply with Objectives of the Modern Award

The modern award objective in is provided in s.134 of the *Fair Work Act 2009*:

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:*
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and*
 - (e) the principle of equal remuneration for work of equal or comparable value; and*
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards;*

CCF submits that a clear definition in the *Building and Construction General On-site Award 2010* of a reasonable meals allowance to be paid is required for this award to meet its objectives.

Proposed variation

CCF proposes a new sub-clause 24.3 (iii) is inserted in the *Building and Construction General On-site Award 2010* on the following terms:

(iii) or, where the employer provides accommodation only, the following meal allowances will be paid to the employee:

Breakfast \$xx

Lunch \$xx

Dinner \$xx

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Living Away from Home Allowance 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to deal with Clause 24.3 of the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By inserting the following new Clause 24.3 (iii):

iii) or, where the employer provides accommodation only, the following meal allowances will be paid to the employee:

Breakfast \$xx

Lunch \$xx

Dinner \$xx

2. Renumbering Clause 24.3 (iii) to 24.32 (iv)

3. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 6: CLAUSE 25.2 TRAVEL ALLOWANCE

The nature of the change sought

CCF submits that a change is necessary to the provision of an allowance for travel under the *Building and Construction General On-site Award 2010* (the 'Award') to a small group of employees who do not travel as part of their work.

The Issue

Many employees in civil construction industry perform maintenance, repairs and other work on earthmoving plant, trucks and equipment at the employer's premise, sheds and workshops. These employees rarely, if ever, travel to and work on building sites, but under the current Award, employers are required to pay these employees two separate disability allowances to compensate for the alleged 'special travel requirements' of the industry.

The first travel allowance is provided in Clause 21.1 (i) of the Award, which provides an all-purpose Special allowance in the following terms:

21.1 Special allowance

(a) Employees must be paid a special allowance of \$7.70 per week to compensate for the following matters:

(i) excess travelling time incurred by employees in the on-site building and construction industry;
and

(ii) the removal of loadings from the various building awards in this industry.

(b) This allowance will not be adjusted.

The second allowance is a daily travel allowance provided in clause 25:

Clause 25 .1 provides the justification for additional compensation for travel:

"The fares and travel patterns allowance recognises travel patterns and costs peculiar to the industry, which include mobility in employment and the nature of employment on construction work."

Clause 25.2 provides the value of the allowance:

An employee, other than an employee in the metal and engineering construction sector who is required to commence or cease work at the employer's workshop, yard or depot other than on a construction site, must be paid an allowance of \$17.43 per day for each day worked when employed on construction work, at a construction site located:

(a) within a radius of 50 kilometres of the GPO in a capital city of a State or Territory; or

(b) within a radius of 50 kilometres

Clause 25.10 prescribes the circumstances under which the allowance in clause 25.2 .is paid:

25.10 Daily entitlement

(a) The travelling allowances prescribed in this clause will be payable for:

(i) any day upon which the employee performs or reports for duty, or allocation of work

In the National Building award and state awards, employee classifications were construction specific, and could only be performed on building sites, therefore the daily allowance applied to all employees.

The creation of the modern Award introduced it to new trades and other employee classifications from the *National Metal and Engineering On-site Construction Industry Award 2002* that were performed by employees in workplaces other than on building sites on a daily basis.

The table below includes employee’s classifications from Schedule B of the Building and Construction Award that are not required to work on building site daily or regularly, if ever.

Occupation	Classification
Electrical Fitter	CW3
Electrical Mechanic	CW3
Fitter	CW3
Motor Mechanic	CW3
Plant Mechanic	CW3
Welder 1 st Class	CW3
Welder special Class	CW3
Mechanical Trades Person	CW4

The *National Metal and Engineering On-site Construction Industry Award 2002* provided a travel allowance for employees when working “*On-sites*” only. On-site had the following meaning:

4.1 On-site construction work shall mean:

4.1.1 Metal trades work performed in the work of construction, fabrication, erection and/or installation work or work incidental thereto when it is carried out at a construction site which is specifically established for the purpose of constructing, fabricating, erecting and/or installing the following:

4.1.1(a) power stations, oil refineries, terminals and depots; chemical, petro-chemical and hydrocarbon plants; and associated plant, plant facilities and equipment;

4.1.1(b) major industrial and commercial undertakings and associated plant, plant facilities and equipment including undertakings for the processing and/or smelting of ferrous and non-ferrous metals, the processing of forest products and associated by-products, acid and fertiliser plants, cement and lime works, and other major industrial undertakings of a like nature;

4.1.1(c) plant, plant facilities and equipment in connection with the extraction, refining and/or treatment of minerals, chemicals and the like;

4.1.1(d) transmission and similar towers, transmission lines and associated plant, plant facilities and equipment;

4.1.1(e) lifts and escalators as prescribed in appendix A - Lift Industry;

4.1.1(f) metal trades work on other engineering projects.

4.1.2 Maintenance and/or repair and/or servicing work carried out on site by the employees of contractors or subcontractors in connection with contracts for on-site construction work referred to in 4.1.1.

Clause 20 provided the amount payable and further conditions for the payment of the daily travel allowance:

FARES AND TRAVELLING ALLOWANCES

20.1 The following fares and travelling time allowance shall be paid to an employee working within the prescribed radii of the GPO in each capital city or where appropriate the Central Post Office of the nearest regional/provincial centre or other than provided in 20.3.3, from accommodation arranged by the employer.

	Per day
	\$
<i>New South Wales, Victoria, Queensland and ACT - within a 50 kilometre radius</i>	<i>16.50</i>
<i>South Australia and Tasmania - (other than provided for below) within a 30 kilometre radius</i>	<i>15.20</i>
<i>Air-conditioning industry - South Australia - within a 50 kilometre radius</i>	<i>16.50</i>
<i>Lift industry - within a 50 kilometre radius</i>	<i>16.50</i>

20.2 Payment of the allowance prescribed in 20.1 shall be subject to the employee starting and finishing work on the construction site at the usual starting and finishing times.

20.3 Provided that payment shall not be made:

20.3.1 for any day on which the employee is absent from work for any reason;

20.3.2 for any day the employer provides or offers to provide transport from where the employee is living to the construction site and return (including transport from accommodation provided by an employer in accordance with clause 21 – Living award from home – distant construction sites, when such accommodation is not situated at the job site);

20.3.3 where an employer provides or offers to provide accommodation which is located at the construction site;

20.3.4 for any day employees are required to commence or cease work at the employer's workshop, yard or depot other than on a construction site.

The *National Building and Construction Industry Award 2000* [Transitional] also provided a daily travel allowance only to employees working on building sites. Clause 38 of the - *National Building and Construction Industry Award 2000* [Transitional] provided the following terms:

38.1 Metropolitan radial areas

Except for Operators in New South Wales (see 38.13 hereof), the following fares and travel patterns allowance shall be paid to employees for travel patterns and costs peculiar to the industry which include mobility requirements on employees and the nature of employment on construction work.

38.1.1 Victoria, Queensland and Western Australia

When employed on work located within a radius of 50 kilometres from the GPO Melbourne, the GPO Brisbane, the GPO Perth, or the principle post office of Bendigo, Ballarat or Geelong - \$16.50 per day.

38.1.2 South Australia

When employed on work located within a radius of 30 kilometres from the GPO Adelaide - \$15.20 per day.

38.1.3 Tasmania

When employed on work located within a radius of 30 kilometres from the GPO Hobart or the principle post office Launceston - \$15.60 per day.

38.1.4 New South Wales

When employed on work located within the county of Cumberland, county of Northumberland or county of Camden - \$16.50 per day.

38.1.4(b) When employed on work located within a radius of 50 kilometres from the principle post office in the cities of Penrith, Newcastle, or Campbelltown, and the employers business or branch (other than a construction site) is established in such cities - \$16.50 per day.

When the *National Metal and Engineering On-site Construction Industry Award 2002* and the *National Building Award 2000* (among others) were merged into the modern *Building and Construction Award* subclause 20.2 of was omitted from the new modern award.

This omission resulted in the Award providing employees with a new entitlement to a daily travel allowance in Clause 25.2 that was not intended to apply to employees not working on site on building sites.

In the National Building Award there were a very limited number of classifications that could be usefully employed in a workshop or yard away from a building site. The Award specified that these employees not working on building sites were not entitled to the travel allowance. Clause 31.4(c) provided that:

38.1.4(c) Provided that the allowance shall not be payable to an employee whose regular place of employment is a carpentry or joinery shop or painting shop or signwriting shop, except when an employee is required to commence work away from the regular place of employment.

It seems clear that daily travel allowance was intended to apply to employees working on-site at building sites only. Further evidence that the daily travel allowance was only intended to be paid to employees required to work on a building site provided by Clause 38.13, and particularly 38.13.1 b) of the National Building Award which provided in relation to operators (plant operators) in NSW:

38.13 Operators in New South Wales

Notwithstanding the above, the following provisions shall apply to operators in New South Wales:

38.13.1 An allowance of \$16.50 per day shall be paid by the employer to employees to compensate for excess fares and travelling time to and from places of work:

38.13.1(a) provided that if the employer provides or offers to provide transport free of charge to any employee from and to a point established at a distance of not more than 3.2 kilometres from the employee's residence then an allowance of \$6.30 shall be paid;

38.13.1(b) provided further that the provisions of this paragraph shall not apply to any employee when required to report to a fixed establishment or a fixed place of reporting which is not a construction site.

The building and construction awards preceding the modern Building and Construction Award did not require an employer to pay daily travel unless the employee was required to start and finish work on a construction site.

The distinction between working on site or not working on site was lost during the making of the Building and Construction award, resulting in the current provisions in Clause 25 requiring employers to pay all employees a daily travel allowance regardless of whether the employee is required to work on site or not.

CCF submits that the daily travel allowance provisions in the Award are an aberration. We have received reports from Members of great tension between employees who receive the allowance because they travel, and those that never travel.

These provisions seem illogical, requiring employers to compensate employees for disabilities related to working on building sites when not working on building sites.

Failure to Comply with Objectives of the Modern Award

CCF submits that daily travel provisions of the *Building and Construction General On-site Award 2010* are contrary to the modern award objectives in s.134 of the *Fair Work Act 2009*, and particularly:

(d) the need to promote flexible modern work practices and the efficient and productive performance of work;

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;

We submit that employees not required to work on a building site should not be entitled to the daily travel allowance in clause 25.2 of the Award, and were never intended to receive this allowance in previous building and construction awards. Employees working in construction but not on building sites are compensated for any travel expenses by the provisions of Clause 21.1, Special Allowance of the Award.

Employees in industries other than construction working on the same location everyday are required to attend work at their own expense.

We propose that the Award be varied to specifically exclude from receipt an employee not working on a building site as part of their normal duties the travel allowance in Clause 25.2 of the Award.

Proposed variation

CCF proposes that the following new Sub-clause 25.10 (a) (iii) is inserted in the Building and Construction General Award:

(iii) the travel allowances prescribed in this clause will not be payable to employees not required to work on a building site as part of their normal duties

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Daily Travel Allowance 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to deal vary a new Clause 25.2 of the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By inserting the following new Clause 25.10 (a) (iii):

(iii) the travel allowances prescribed in this clause will not be payable to employees not required to work on a building site as part of their normal duties;

2. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 7: CLAUSE 25.8 (B) PROVISION OF TRANSPORT

The nature of the change sought

CCF submits that a change to the *Building and Construction General On-site Award 2010* (the 'Award') is necessary to cease the provision of a travel allowance being given to some employees who also receive a fully funded motor vehicle as part of their remuneration package.

We proposed that Clause 25.8(b) of the Award is varied to exclude employees who are issued with a company vehicle free of charge receiving the Travel Allowance prescribed in 25.2 Metropolitan Radial Areas.

The Issue

An employee who is provided with a vehicle free of charge by an employer does not incur travel cost, nor does the employee suffer the circumstances described in Clause 25.1 of the Award when provided with a fully maintained company vehicle to travel from home to a work site within the radial areas prescribed in Clause 25.2 Metropolitan Radial Areas.

Employees covered by the Award already receive an all-purpose allowance for alleged travel disabilities in Clause 21.1.

21.1 Special allowance

(a) Employees must be paid a special allowance of \$7.70 per week to compensate for the following matters:

(i) excess travelling time incurred by employees in the on-site building and construction industry;
and

(ii) the removal of loadings from the various building awards in this industry.

(b) This allowance will not be adjusted.

20.3.2 for any day the employer provides or offers to provide transport from where the employee is living to the construction site and return (including transport from accommodation provided by an employer in accordance with clause 21 Living award from home distant construction sites, when such accommodation is not situated at the job site);

Failure to Comply with Objectives of the Modern Award

CCF submits that travel provisions for employees who receive a motor vehicle as part of their package and are under the *Building and Construction General On-site Award 2010* are contrary to the modern award objectives in s.134 of the *Fair Work Act 2009*, and particularly:

(d) the need to promote flexible modern work practices and the efficient and productive performance of work;

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;

We submit that it is an aberration, unwarranted, unfair to employers, and unfair to other workers for who the travel allowance was created. In short, it is.

We propose that the Award be varied to specifically exclude for those employees provided with a funded motor vehicle be prevented from “double-dipping”, and also enjoying the allowance.

Proposed Variation

CCF proposes that Clause 25.8 (b) of the *Building and Construction General On-site Award 2010* is deleted.

~~25.8 (b) The allowance prescribed in this clause will be payable on any day for which the employer provides a vehicle free of charge to the employee for a purpose related to their contract of employment, and the employee is required by the employer to drive this vehicle from the employee’s home to their place of work and return.~~

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Provision of Transport 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On-Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to delete Clause 25.8 (b) of the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By deleting Clause 25.8 (b):

25.8 (b) The allowance prescribed in this clause will be payable on any day for which the employer provides a vehicle free of charge to the employee for a purpose related to their contract of employment, and the employee is required by the employer to drive this vehicle from the employee's home to their place of work and return. 2. This determination takes effect from XX /XX/XXXX

2. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT

PROPOSED VARIATION 10: CLAUSE 4.10 (B) (II) OF AWARD COVERAGE OVERLAP

The nature of the change sought

CCF submits that clause 4.10 (b) (ii) of the *Building and Construction General On-site Award 2010* (the 'Award') be deleted.

The Issue

Whilst the work covered under the subclause is part of the civil construction and maintenance industry, CCF proposes the removal of subclause 4.10 (b) (ii) from the Award so as to allow the *Asphalt Industry Award 2010* to regain exclusive coverage of the asphalt industry pursuant to s. 160 and s,163 (1) of the *Australian Fair Work Act 2009*.

The introduction of the asphalt industry into the Award has created a number of problems for employers, including:

1. An unnecessary overlap in the coverage of asphalt work between these two awards that did not exist prior to the creation of the modern awards.
2. Demarcation disputes by competing unions.
3. Uncertainty for employers about which award applies to employees when planning tenders and work, and when determining employment conditions for employees; and
4. Increased the cost of performing asphalt work under the Building and Construction award traditionally performed under the Asphalt award.

Each of these issues is addressed in this submission.

1. Overlap of award coverage contrary to the modern award objective.

When the modern Building and Construction Award was made in 2010 a new subclause 4.10 (b) (ii) was inserted, which introduced asphalt and bitumen work to the award coverage for the first time; this clause provides the following additional definitions of civil work:

(ii) road making and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt;

This Clause provides identical terms to those in the *Asphalt Industry Award 2010*:

(a) Definition of asphalt industry

For the purpose of this clause, asphalt industry means roadmaking and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt.

The Building and Construction Award predecessor, the *National Building and Construction Award 2000* did not cover asphalt work. Clauses 4.13 and 4.14 defined construction work in the following terms:

4.13.1 For the purposes of 6.1.1 of this award, means all work performed under this award in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures, including the making, assembling or fixing of woodwork and fittings in connection therewith, the making, preparing, assembling, and fixing of any material necessitating the use of tradesperson's tools or machines including all work performed by stonemasonry classifications (provided that in the states of South Australia, Victoria, Western Australia and Queensland work in Stonemasonry yards and/or shops and in cemeteries shall not be regarded as construction work) and the prefabricating of a building in an open yard.

4.13.2 For the purpose of this definition maintenance is confined to tradesperson's employed by building and construction industry employers respondent to this award.

4.14 Construction work

4.14.1 For the purposes of 6.1.2 of this award, means all work performed under this award in connection with the erection, repair, renovations, maintenance, ornamentation or demolition of buildings or structures.

4.14.2 For the purpose of this definition maintenance is confined to persons employed by private building and construction industry employer's respondent to this award.

Clause 6.1.1 provided Tradesperson classification descriptions, and Clause 6.1.2 provided Labourers classification descriptions, but asphalt or bitumen work was not mentioned at all.

The asphalt industry was covered by industry specific asphalt and bitumen awards, including the following awards:

- *Asphalt and Bitumen Industry (NSW and ACT) Award 1999 AP766022*
- *Asphalt and Bitumen Industry (Queensland) Award 2000 AP765981*
- *Asphalt and Bitumen Industry Asphalt and Bitumen Industry (WA) Award 2000 AP766093*

These asphalt industry awards provided a consistent definition of the asphalt industry, in the following terms:

7.2 This award shall apply to the employment, by a respondent employer, of all employees whether members of the Union or not employed in or in connection with the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt.

During the modern award review employer groups expressed concerns about the proposal to insert the asphalt industry into the Building and Construction sectors, including this quote from Boral Australian Construction Materials in Matter No AM200811:

Asphalt has always had its own identity industrially. It has many features that are at odds with both building and construction.

- *The asphalt industry is a large and complex industry in its own right in the Australian market*
- *The asphalt industry has its own identity in the market place*

- *The asphalt industry has a separate and distinct history of industrial regulation to the building and/or construction industry*
- *The asphalt industry's employment pattern is 'manufacturing' in nature being on-going and long term with a very high level of full time employment which markedly contrasts the transient, project based nature of the employment pattern in the building and/or construction industry*
- *Employment conditions in the asphalt industry reflect this settled 'manufacturing' employment pattern*
- *The asphalt industry has a mature and responsible industrial history with the AWU who have exclusive coverage. Including the asphalt industry in an award that regulates a materially different industry (building and/or construction, plumbing, electrical contracting, painting etc) exposes the industry to unions that have no right of coverage which would promote industrial disharmony in the asphalt industry*
- *Lastly, given the critical role that awards will play in the 'better off' test it is very important that employers can easily understand which award will apply to this test. Employers have historically understood the asphalt industry to have its own identity and maintaining a separate award will therefore assist this process.*

2. Demarcation disputes by competing unions

In order to address or avoid demarcation disputes with unions some civil construction companies have been forced to divide their operations into two separate entities, one under the Building and Construction Award doing civil work and another covered by the asphalt industry award.

3. Uncertainly for employers about the applicable the employment terms for employees.

Employers find it difficult to ascertain the award coverage between ground preparation prior to asphalt being laid and laying of asphalt and bitumen on a prepared surface. For most employers, the plain English interpretation is contained in the award title. The Asphalt industry award is better placed to cover asphalt road making work.

Often, seeking expert advice does not provide categorical advice. It is one of the stated modern award objectives that whilst an employer may be covered by more than one award, modern awards must be easy to understand, and avoid overlapping. Clearly, in this case this objective has not been achieved.

4. Increased the cost of performing asphalt work under the Building and Construction award traditionally performed under the Asphalt award.

The inclusion of asphalt work into the Building and Construction Award since 2010 has reportedly increased the cost of asphaltting for those companies who have adopted, or been forced to adopt, the Building and Construction Award.

The Building and Construction Award provides the following classifications and pay rates for asphalt operations;

CW1 Bitumen Worker	\$21.40
CW3 Bitumen Sprayer	\$22.40
CW4 Bitumen Sprayer (driver)	\$23.03

(These above rates include the all-purpose Industry and Special Allowances and the Bitumen Work disability Allowance)

The Building and Construction Award provides a disability allowance in Clause 22.2 (p) in the following terms:

(p) Bitumen work

An employee handling hot bitumen or asphalt or dipping materials in creosote must be paid an additional 4.0% of the hourly standard rate per hour.

This allowance adds \$ 0.82 per hour to the wages cost of employers engaged in asphalt work under the Building and Construction Award which does not apply to employers engaged in asphalt work under the Asphalt Award.

The Asphalt Industry Award contains the following classifications and rates of pay:

Skill Level 1	\$19.28
Skill Level 2	\$20.32
Skill Level 3	\$21.09
Skill Level 4	\$22.19
Skill Level 5	\$22.37

(The above rates include the all-purpose Industry and Inclement Weather Allowances).

In the Asphalt Industry Award Skill Level 1 and Skill Level 2 employees are new entrants in the industry. The majority of employees are classified in Skill Levels 3 and 4.

The Asphalt Award provides the following job descriptions for these classifications:

A Skill Level 3 *employee;*

“has completed up to three months’ on-the-job training; is capable of working productively under routine supervision; but is not yet a fully productive member of a spray or paving crew”

A Skill Level 4 employee:

“the employee has an endorsed licence for the operation of heavy vehicles, is competent in the operation of the major pieces of plant and equipment utilised in the work team and who can perform all manual tasks in the work team.

B.4.2 In asphalt production plants this will mean an employee who is deemed competent to operate the plant with a minimum of supervision.

On face value, it would appear that wages cost to employers is very similar between awards; the rate may appear lower under the Building and Construction Award. The minimum award rate for a CW3 Bitumen sprayer is \$21.58 per hour; the minimum rate for a Level 4 employee in the Asphalt Award is \$22.19, all applicable industry allowances included.

However, the Building and Construction Award has introduced a number of allowances and other provisions that were not intended to apply to the asphalt industry, greatly increasing wages costs for employers. Some examples include:

- a) Redundancy Provisions; Industry specific redundancy provisions in Clause 17 of the Building and Construction Award that entitles employees to redundancy even when terminating the employment is of their own accord, with no exemptions for small employers. The modern Asphalt Award and its predecessors contain redundancy provisions in accordance with the NES.

- b) Ordinary Hours of Work; Ordinary hours of work in the Building and Construction Award are between the hours of 7 am and 6 pm. Penalty rates apply to work commencing before 7 am. In the Asphalt Award the span of ordinary hours is between 6am and 6 pm.
- c) Travel Allowance; A daily Travel Allowance of \$17.43 per day in Clause 25.1 applies to employees who perform asphalt work under the Building and Construction Award. The Building and Construction Award provides the following explanation for the entitlement. *“The fares and travel patterns allowance recognises travel patterns and costs peculiar to the industry, which include mobility in employment and the nature of employment on construction work.”*

Asphalt industry employees do not suffer the alleged disabilities described in 25.1 of the Building and Construction Award for on-site construction employees. The awards preceding the asphalt industry awards did not provide daily travel allowance for employees, and there is no evidence that the need for a daily travel allowance for asphalt industry employees was ever raised by unions.

- d) Shift Work Provisions; Clause 34.2 (a) Civil Construction Sector, of the Building and Construction Award provides the following definition of shiftwork:
“shiftwork means any system of work in which operations are being continued by the employment of a group of employees upon work on which another group had been engaged previously”
Asphalt work is usually organised at night when roads and traffic lines can be closed and traffic redirected. The work is usually done by one group of employees working nightshift. Operations generally cease during the day when traffic returns to normal.

That means that although asphalt employees may work nightshift for long periods of time, the work is not classed as shift work because another group of employees does not continue operations *“upon work on which another group had been engaged previously”*.

Instead the Building and Construction Award classifies this work as working outside of ordinary hours in Clause 36.2

“All time worked beyond an employee’s ordinary time of work (inclusive of time worked for accrual purposes as prescribed in clauses 33—Ordinary hours of work and 34—Shiftwork), Monday to Friday, must be paid for at the rate of time and a half for the first two hours and at double time thereafter.”

Clause 33.1 of the Building and Construction Award provides that Ordinary Hours of work are between 7am and 6 pm. Therefore, any hours worked between 6 pm and 7 am are paid at the rate of time and half for the first two hours and double time thereafter.

The modern Asphalt Award provides afternoon and nightshift allowances in Clause 22.2 in the following terms:

22.2 Afternoon and night shift allowances

(a) Employees whilst working on afternoon or night shift will be paid 15% more than their ordinary rate.

(b) An employee who is required to work on any afternoon or night shift that does not continue for at least five successive afternoons or nights will be paid at the rate of time and a half and all time worked in excess of eight hours must be paid for at the rate of double time.

- (c) An employee who (except at the employee's own request):
- (i) during a period of engagement on shift, works night shift only;
 - (ii) remains on a night shift longer than four successive weeks; or
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift cycle each cycle will, during such engagement, period or cycle be paid 30% more than the employee's ordinary rate for all time worked during ordinary working hours on such night shift.
- (d) The loadings provided for in clause 22.2 are not cumulative.

Clearly, these provisions have dramatically increased the cost of any asphalt work transferred from the Asphalt Industry Award to the Building and Construction Award.

A company tendering for asphalt work under the terms of the Building and Construction award will be at a great disadvantage if competing against companies able to tender for the same work under the Asphalt Industry award.

Conclusion

The coverage of Asphalt road making under two awards is contrary to the purpose of the *Fair Work Act 2009* and the stated modern award objective in s.134 ():

- (f) the likely impact of any exercise of modern award powers on business, including productivity, employment cost and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards".

On the 12th of September 2008 in Award Modernisation (AM 2008/1-12) at paragraph 15 Justice Giudice, President of the then Australian Industrial Relations Commission stated:

Rules for Avoiding Overlap

[15] Clause 9 of the Minister's request refers to the desirability of avoiding overlap between awards and, in cases of overlap or potential overlap, the inclusion of clear rules to identify which award applies. We have attempted to meet this objective in the manner in which the application clauses have been drafted. Modifications may be necessary, to clarify the operation of the provisions or to improve their efficacy, in light of comments on the drafts.

Clearly, in the case of the overlap between the coverage between the *Building and Construction General On-site Award 2010* and the *Asphalt Industry Award 2010* this objective was not met, and there are not clear rules to identify which award applies to the operation of asphalt work. It remains a problem for employers.

During the award modernisation process the consequences of introducing these cross-coverage issues in the industry were not properly considered, and should be addressed as part of the 4-yearly award review.

CCF's proposed variation will give the Asphalt Award primacy for the asphalt industry, address the current award overlap and provide clear rules to identify which award applies to asphalt work in accordance with the aims expressed during award modernisation.

CCF submits that the *Fair Work Act* provides the Fair Work Commission with powers to address this irregularity under s.156, which provides;

(2) In a 4 yearly review of modern awards, the FWC:

(a) must review all modern awards; and

(b) may make:

(i) one or more determinations varying modern awards;

(ii) one or more modern awards; and

(iii) one or more determinations revoking modern awards.

Note: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

CCF submits that the proposed draft variation meets the special criteria required to deal with award variations in s.136 of the Act, which provides:

Special rule about reducing coverage

(1) The FWC must not make a determination varying a modern award so that certain employers or employees stop being covered by the award unless the FWC is satisfied that they will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them. Special rule about making a modern award

(2) The FWC must not make a modern award covering certain employers or employees unless the FWC has considered whether it should, instead, make a determination varying an existing modern award to cover them.

Special rule about covering organisations

(3) The FWC must not make a modern award, or make a determination varying a modern award, so that an organisation becomes covered by the award, unless the organisation is entitled to represent the industrial interests of one or more employers or employees who are covered or will be covered by the award.

CCF submits that removing Clause 4.10 (b) (ii) from the *Building and Construction General On-Site Award 2010* complies with the requirements of s.163 of the Act:

1. Another modern award the *Asphalt Industry Award 2010* will cover employees and employers engaged in asphalt operations and road making if this variation is adopted.
2. CCF's proposed variation will not require the making of a new award.
3. All employer and employee organisation covered by the proposed variation will be entitled to represent the interests of their members under the asphalt industry.

Proposed variation

CCF proposes that Clause 4.10 (b) (ii) is deleted from the *Building and Construction General On-site Award 2010*:

~~(ii) road making and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt;~~

MA 000020

DRAFT DETERMINATION

Fair Work Act 2009

s.156 (2) — 4 Yearly Review of Modern awards

Award Overlap Building and Construction General On Site Award and the Asphalt Industry award 4-Yearly Modern Award Review

The Civil Contractors Federation

(AM2014/260)

Building and Construction General On Site Award 2010

[MA 000020]

SENIOR DEPUTY XXXX

DEPUTY PRESIDENT XXXX

COMMISSIONER XXXX

MELBOURNE, XX/ XX/ 2017

Application to delete Clause 4.10 (b) (ii) of the Building and Construction General On-Site award 2010

A. Further to the decision issued on XX //XX/ 201 [2014] FWCFB XXXX it is ordered that the above award be varied as follows:

1. By deleting Clause 4.10 (b) (ii):

~~“road making and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt;~~

2. This determination takes effect from XX /XX/XXXX

SENIOR DEPUTY PRESIDENT



Attachment 1:

'Affidavit In Support Of the Civil Contractors Federation Application to Introduce Junior Rate to the Award' by Mr David Castledine, CEO, CCF NSW

Attachment 2:

'Affidavit In Support Of the Civil Contractors Federation Application to Vary the Definition of Redundancy in the Award' by Mr David Castledine, CEO, CCF NSW

Attachment 3:

Affidavit 'Submission by the Civil Contractors Federation (CCF) - Definition of Redundant' by Mr David O'Connor, Executive General Manager, Diona Pty Ltd

Attachment 4:

Affidavit 'Submission by the Civil Contractors Federation (CCF) -Introduction of Junior Rates' by Mr David O'Connor, Executive General Manager, Diona Pty Ltd

Attachment 5:

Affidavit 'Submission by CCF to Fair Work Commission in response to the 4 yearly modern award review' – Redundancy by Mr John Hovey, Managing Director, Hovey Group of Companies

Attachment 6:

Affidavit 'Submission by CCF to Fair Work Commission in response to the 4 yearly modern award review' – Junior Rates by Mr John Hovey, Managing Director, Hovey Group of Companies

Attachment 7:

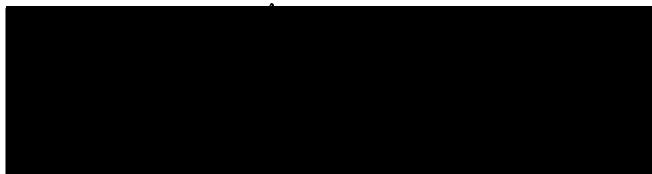
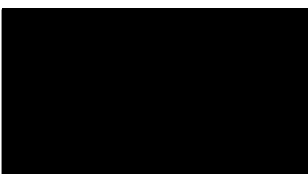
Affidavit 'Submission to the Fair Work Commission, The 4 yearly Modern Award Review, Clause 17.2 Definition of Redundant' by Mr Peter Middleton, Director, Woden Contractors

AM2014/260 – Building and Construction General On-Site Award 2010 [MA000020]

**AFFIDAVIT IN SUPPORT OF THE CIVIL CONTRACTORS FEDERATION APPLICATION TO
INTRODUCE JUNIOR RATE TO THE AWARD**

I, David Castledine, of [REDACTED] affirm:

1. I commenced my employment with the Civil Contractors Federation in March 2011.
2. I have been employed from commencement as the Chief Executive Officer of the New South Wales Branch of the Civil Contractors Federation. In that capacity I am responsible for a range of activities including:
 - a. Management of the Branch in accordance with the strategic directions of the Branch Board;
 - b. Member engagement and advocacy; and
 - c. Assisting the Civil Contractors Federation National Office as directed by the Branch Board.
3. By virtue of my role as the Chief Executive Officer of the New South Wales Branch of the Civil Contractors Federation I have since September 2014 held the position of Executive Director of the Resources and Infrastructure NSW Industry Training Advisory Body, an organisation contracted to the NSW Government to provide advice on workforce development issues including industry demand for labour and skills.
4. I make this affidavit based on my knowledge, information and belief unless otherwise stated. When I make statements based on information provided to me, I identify the source of that information and otherwise believe them to be true and correct.
5. In the time I have been employed by the Civil Contractors Federation I have:
 - a. attended in the order of 100 Member engagement events across regional and metropolitan New South Wales primarily in the capacity of the convenor, organiser and/or speaker;
 - b. spoken at those events individually to in order of 1,000 employers and other industry participants, such as suppliers of equipment and services to the industry; and
 - c. on average five communications with individual Members per working day, equating to in excess of 5,000 engagements over the period of my employment.
6. In my meetings and communications with Members they have:
 - a. repeatedly and consistently raised the issue of the industry's ageing workforce, skills shortages and the lack of incentive for employers to engage or target school leavers to join the industry due to the high cost without junior rates.. This discourages young employees because they do not see promotion of the industry by employers who are not hiring schools leavers;

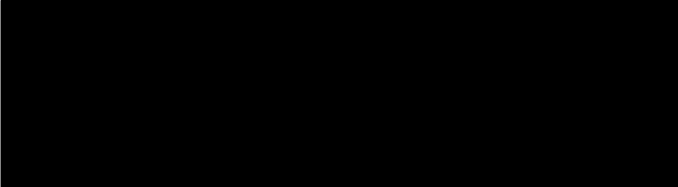


- b. repeatedly explained the comparatively higher safety risks associated with employing a young person, requiring training at a very high cost to the employer given the lack of junior rates for young employees;
 - c. repeatedly and consistently raised with me the issue of the high cost involved in employing and trialling school leavers and junior employees when compared to older people; and
 - d. repeatedly and consistently raised with the need for junior rates to be included in our modern award to encourage the employment of younger people.
7. In my discussions with Civil Contractors Federation officers and Branch Chief Executive Officers from the other states over my period of employment, they have advised me they have had similar feedback from their Members.
 8. Over the period 25 November to 7 December 2016 I managed the conduct of a survey by the New South Wales Branch of the Civil Contractors Federation to employers in the civil construction and maintenance industry. The results of this survey are included in the Civil Contractors Federation's written submission. In my opinion the results overwhelming support the views expressed to me over my meetings and communications with Members that a lack of Junior Rates in this Award is a serious impediment to the creation of youth employment opportunities in the construction industry.
 9. The collated survey results of all the Civil Contractors Federation Branches confirms this view is widely held across Australia.
 10. It is my opinion, formed from my engagement with industry participants and officers of the Civil Contractors Federation, that the re-establishment of Junior Rates in our industry's Award, as described in the Civil Contractors Federation submission, will greatly encourage the employment of junior employees. I also believe that it will significantly open up much needed opportunities for young people to enter the industry and in doing so help create the next generation of civil construction workers.

Affirmed by the deponent)
 in New South Wales)
 on 7th December 2016)



Before me:



Signature of witness

KERIM BEKIR BACIK

Name of witness

Australian Legal Practitioner

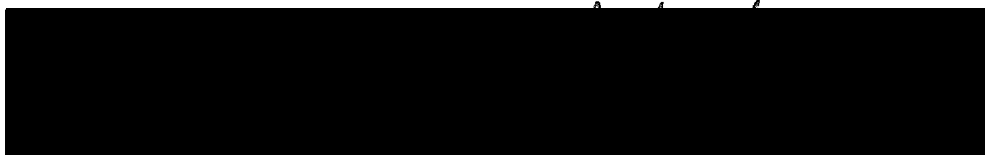
4/12/16 O'Connell St Sydney

AM2014/260 – Building and Construction General On-Site Award 2010 [MA000020]

**AFFIDAVIT IN SUPPORT OF THE CIVIL CONTRACTORS FEDERATION APPLICATION TO VARY
THE DEFINITION OF REDUNDANCY IN THE AWARD**

I, David Castledine, of Unit [REDACTED] affirm:

1. I commenced my employment with the Civil Contractors Federation in March 2011.
2. I have been employed from commencement as the Chief Executive Officer of the New South Wales Branch of the Civil Contractors Federation. In that capacity I am responsible for a range of activities including:
 - a. Management of the Branch in accordance with the strategic directions of the Branch Board;
 - b. Member engagement and advocacy; and
 - c. Assisting the Civil Contractors Federation National Office as directed by the Branch Board.
3. I make this affidavit based on my knowledge, information and belief unless otherwise stated. When I make statements based on information provided to me, I identify the source of that information and otherwise believe them to be true and correct.
4. In the time I have been employed by the Civil Contractors Federation I have:
 - a. attended in the order of 100 Member engagement events across regional and metropolitan New South Wales primarily in the capacity of the convenor, organiser and/or speaker;
 - b. spoken at those events individually to in order of 1,000 employers and other industry participants, such as suppliers of equipment and services to the industry; and
 - c. on average five communications with individual Members per working day, equating to in excess of 5,000 engagements over the period of my employment.
5. In my meetings and communications with Members they have:
 - a. repeatedly said that the current Redundancy provisions are not equitable in so far as they must be paid to employees who resign of their own volition when work remains available;
 - b. repeatedly said that the current Redundancy provisions are an unreasonable financial burden on employers and the industry;
 - c. repeatedly said that the current Redundancy provisions greatly increase the costs of infrastructure;
 - d. repeatedly said that the current Redundancy provisions can create considerable negative employee management issues; and
 - e. repeatedly said that the current Redundancy provisions dissuade the employment of full time staff, in favour of labour hire and casual staff.



6. In my discussions with Civil Contractors Federation officers and Branch Chief Executive Officers from the other states over my period of employment, they have advised me they have had similar feedback from their Members.
7. Over the period 25 November to 7 December 2016 I managed the conduct of a survey by the New South Wales Branch of the Civil Contractors Federation to employers in the civil construction and maintenance industry. The results of this survey are included in the Civil Contractors Federation's written submission. In my opinion the results overwhelmingly support the views expressed to me over my meetings and communications with Members that the current Redundancy provision of the Award are unreasonable, are not achieving any of the modern award objectives, and should be changed.
8. The collated survey results of all the Civil Contractors Federation Branches confirms this view is widely held across Australia.
9. It is my opinion, formed from my engagement with industry participants and officers of the Civil Contractors Federation over the past six years, that the current Redundancy provisions in the Award are not equitable, do not encourage full time permanent employment, nor help create an efficient and competitive infrastructure industry, given that they permit a person to receive Redundancy when the employer has ongoing employment available but chooses to resign. Moreover, the current Redundancy provisions in the Award create tensions in the work environment, increase the cost of infrastructure, and discourage full time employment and investment in the workforce.
10. The adoption of CCF's proposed variation to the definition of redundant in the Award will help address the issues raised in paragraph 5 and 9 of this affidavit and in CCF's submission, and will help make the infrastructure industry much more efficient, delivering value for money for much needed public and private infrastructure in Australia.


Affirmed by the deponent)
 in New South Wales)
 on 7th December 2016)


 Signature of the deponent

Before me:



Signature of witness



Name of witness

Australian Legal Practitioner

LA 12 O'Connell St
 Sydney NSW 2001

Affidavit

Fair Work Commission

Award: Building and Construction General On-site Award 2010

RE: Submission by the Civil Contractors Federation (CCF) – Definition of Redundant

Affidavit of: David Charles O'Connor

Address: [REDACTED]

Occupation: Executive General Manager, Diona Pty Ltd

Date: 6th December 2016

I, David O'Connor of [REDACTED] in the state of New South Wales, Executive General Manager affirm:

1. I make this affidavit based on my own knowledge, information and belief unless otherwise stated. Where I make statements based on information provide to me, I identify the source of that information and otherwise believe it to be true and correct.
2. Diona Pty Ltd is a civil engineering company, founded in 1980. Diona is a design and construction service provider for medium-to-large utility infrastructure projects in Australia. Diona became part of the Calibre Group 1 July 2015.
3. I have held the position of Executive General Manager since 2010 and I am responsible for:
 - a. Safety and wellbeing of employees and subcontractors of Diona.
 - b. Leading business culture and encouraging core values to be embodied at all levels of the business
 - c. Implementing operational strategies and plans as per Diona's strategic business plans and budgets.
 - d. Ensuring Diona's performance is high quality, to customer expectations and in accordance with Diona's safety standards and quality policies.
 - e. Monitoring and controlling the company's performance and finances in accordance with budgets and our strategic business plans.
 - f. Maintaining and developing key customer relationships.
 - g. Ensuring all staff are effectively employed and adequately trained to safely perform their tasks in an ethical and responsible manner.
 - h. Ensuring that Diona meets all its legal requirements, including those relating to occupational health and safety.
 - i. Maintaining and efficiently utilising Diona's physical assets and resources.
4. My career at Diona commenced in 1996 whilst I was completing my high school studies. Since then I have worked on-site in the capacity of a skilled labourer, plant operator, pipelayer, leading hand and supervisor. Within the back office environment I have worked in our plant and procurement departments, payroll and, for several years I oversaw the recruitment and allocation of all personnel across national operations. My experience and exposure to all roles within Diona enable me to fully understand our business and the challenges it faces.
5. I hold a Bachelor of Civil and Environmental Engineering and a Diploma in Engineering Practice. I am a graduate of the Australian Institute of Company Directors and member of the NSW Civil Contractors Federation (CCF) Board.

6. In my role of Board Member and Chairperson of CCF's Industrial Relations and Human Resources Subcommittee I keep abreast of the issues facing our industry and hear our members concerns first hand. The issue of redundancy is the most common complaint and concern for employers in the industry.

Data Analysis

7. In order to prepare this statement I directed our payroll manager to use payroll and financial reports to compile data. I have reviewed the data and am satisfied it has been properly generated.
8. At date of this statement, all civil construction worker employees of the company are covered by the Diona Pty Ltd Enterprise Agreement 2015-2019, which is underpinned by the Building and Construction General On-site Award 2010.
9. The current redundancy obligations in the Building and Construction General On-site Award 2010 impose an unreasonable financial burden on business.
10. The current redundancy provision within the award does not enable Diona to minimise our redundancy obligations despite our company policy of ensuring employer initiated redundancies are minimised by proactively retaining our crews during periods of downturn.
11. No other industry in Australia is forced to carry this financial burden. The current redundancy provision financially rewards employees who voluntarily terminate their employment after one years' service and punishes employers who try to hold on to their employees. It does not encourage a stable workforce, and discourages investment in workforce skills.
12. The current redundancy provision discourages our industry from engaging permanent employees, as casual employees are paid redundancy entitlements in the 25% loading so that the employer does not have a growing liability which the employee can cash at any time by leaving the employment. .
13. The current award clause on redundancy is not in accordance with the NES, and it is contrary to common sense that an employee has an entitlement to redundancy payment when they have left on-going, permanent employment of their own accord.
14. The Industry specific redundancy scheme as it currently stands, which provides no incentive to commit to long term employment, by employers and employees alike, is contributing to a transient workforce. In my opinion this is also contributing to the current skills shortage within our industry.
15. The current award redundancy clause is particularly unfair on small businesses. Although Diona is not a small business, this redundancy provision has a financially negative impact on our business due to our relationship with smaller subcontractors.
16. To eliminate this financial burden, on small business in particular, I support CCF's proposal to vary the definition of redundant in clause 17.2 of the Building and Construction General On-site Award 2010 so that an employee who terminates their employment of their own accord, has no entitlement to redundancy pay.
17. A variation of the definition of redundant in the award as proposed by CCF will still ensure protection for workers when they are made redundant, as per the definition and intention of the NES, whilst simultaneously removing the financial burden on employers.
18. I believe that if the award redundancy definition was aligned with the NES definition, more employers within our industry would engage permanent employees in preference to casual employees.
19. Amending the award redundancy provision to ensure it only applies to genuine redundancies will remove the financial incentive for employees in our industry to move from employer to employer after only one years' service. This will result in a more stable workforce.
20. A more stable workforce will encourage businesses within our industry to train and develop their workforce. This will reduce the current skills shortage. Currently there is no incentive for employers to invest in training the workforce when employees can chose to resign and be paid redundancy to take their skills elsewhere.

Affirmed by the deponent)
at Rouse Hill)
in NSW)
on 6 December 2016)
Before me:)



Signature of deponent



Signature of witness

Mojgan Aserazad

NSW JP 211790

07/12/2016

Affidavit

Fair Work Commission

Award: Building and Construction General On-site Award 2010

RE: Submission by the Civil Contractors Federation (CCF) – Introduction of Junior Rates

Affidavit of: David Charles O'Connor

Address: [REDACTED]

Occupation: Executive General Manager, Diona Pty Ltd

Date: 6th December 2016

I, David O'Connor of [REDACTED] in the state of New South Wales, Executive General Manager affirm:

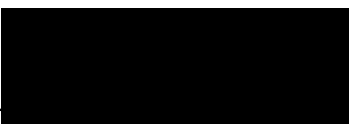
1. I make this affidavit based on my own knowledge, information and belief unless otherwise stated. Where I make statements based on information provide to me, I identify the source of that information and otherwise believe it to be true and correct.
2. Diona Pty Ltd is a civil engineering company, founded in 1980. Diona is a design and construction service provider for medium-to-large utility infrastructure projects in Australia. Diona became part of the Calibre Group 1 July 2015.
3. I have held the position of Executive General Manager since 2010 and I am responsible for:
 - a. Safety and wellbeing of employees and subcontractors of Diona.
 - b. Leading business culture and encouraging core values to be embodied at all levels of the business.
 - c. Implementing operational strategies and plans as per Diona's strategic business plans and budgets.
 - d. Ensuring Diona's performance is high quality, to customer expectations and in accordance with Diona's safety standards and quality policies.
 - e. Monitoring and controlling the company's performance and finances in accordance with budgets and our strategic business plans.
 - f. Maintaining and developing key customer relationships.
 - g. Ensuring all staff are effectively employed and adequately trained to safely perform their tasks in an ethical and responsible manner.
 - h. Ensuring that Diona meets all its legal requirements, including those relating to occupational health and safety.
 - i. Maintaining and efficiently utilising Diona's physical assets and resources.
4. My career at Diona commenced in 1996 whilst I was completing my high school studies. Since then I have worked on-site in the capacity of a skilled labourer, plant operator, pipelayer, leading hand and supervisor. Within the back office environment I have worked in our plant and procurement departments, payroll and, for several years I oversaw the recruitment and allocation of all personnel across national operations. My experience and exposure to all roles within Diona enable me to fully understand our business and the challenges it faces.
5. I hold a Bachelor of Civil and Environmental Engineering and a Diploma in Engineering Practice. I am a graduate of the Australian Institute of Company Directors and member of the NSW Civil Contractors Federation (CCF) Board.

6. In my role of Board Member and Chairperson of CCF's Industrial Relations and Human Resources Subcommittee I keep abreast of the issues facing our industry and hear our members concerns first hand. The issue of Junior rates is a common complaint for employers in the industry.

Data Analysis

7. In order to prepare this statement I directed our payroll manager to use payroll and financial reports to compile data. I have reviewed the data and am satisfied it has been properly generated.
8. At date of this statement, all civil construction worker employees of the company are covered by the Diona Pty Ltd Enterprise Agreement 2015-2019, which is underpinned by the Building and Construction General On-site Award 2010. The Diona EBA is silent on Junior Rates.
9. In my experience the elimination of junior rates from the modern award has impacted my business decisions in regard to the engagement of staff and subsequent training and development of Diona employees.
10. There is no incentive for Diona to engage a school leaver or an entry level employee under the age of 20 as all employees commence on the same EBA rate of pay, regardless of age.
11. The additional business responsibilities of employing a junior, such as a necessity for increased mentoring and supervision, are not offset.
12. At date of this statement Diona has two employees under the age of 20, in a workforce of 180.
13. It is my educated opinion that the lack of junior rates within the modern award has contributed to the current skill shortage within the industry due to a reduction in the numbers of trainees and apprentices on a national level. We are currently experiencing difficulty in recruiting pipelayers and plant operators.
14. I am of the opinion that the skills shortage issue will be addressed by inserting a junior rates table based on the previous National Building and Construction Industry award 1990, in the Building and Construction General On-site Award 2010.
15. The insertion of a junior rates table in the award will provide the incentive to employers within the civil construction industry to engage, train and retain junior aged employees, particularly those straight out of school.
16. By incentivising employers to engage junior aged employees, more opportunities will become available for school leavers to experience working as a civil construction worker.
17. The insertion of a junior rates table will provide Diona with a financial based model and business reasoning to engage employees under the age of 20, and to develop a progression plan to develop a skilled workforce from junior level.
18. The increased employment of juniors within our industry will undoubtedly positively contribute to addressing the current and foreseeable skills shortage.

Affirmed by the deponent)
at Rouse Hill)
in NSW)
on 1st December 2016)
Before me:)



Signature of deponent



Signature of witness

Mojgan Asevad
NSW JP 211790
07/12/2016

Affidavit

CCF (Civil Contractors Federation)

Re: submission by CCF to Fair Work Commission in response to the 4 yearly modern award review

Affidavit of: John Graham Hovey

Address:

[REDACTED]

Occupation: Managing Director

Date: December 7, 2016

I, John Graham Hovey, of [REDACTED], Managing Director of the Hovey Group of Companies, affirm:

1. I make this statement based on my own knowledge, information and belief.
2. I am the Managing Director of the Hovey Group of Companies, which includes MJB Industries, Australind Premix and JAK Civil Pty Ltd (previously known as S & J Excavations) JAK Civil is a financial member of the CCF.
3. I established the business in 1988.
4. I have worked in the Civil Construction industry for over 30 years, and in that time have held Board positions with the Civil Contractors Federation and the Master Builders Association. I have broad industry experience in all facets of the Civil Construction industry. I am also involved in local Community organisations, including Rotary and the Men's Shed.
5. In my Board and Managing Director role I am constantly engaged in industry issues and with industry groups. I provide, and receive feedback on various aspects of the industry which affect business, its people and all interested parties.
6. I am aware of the CCF seeking to vary the industry specific definition of redundant in the Building and Construction General On-Site Award 2010 to stop payment of redundancy benefits to employees who terminate their own employment of their own accord.
7. We have recently lost a Cert IV trained employee to a Local Government body. He was a 457 Visa employee (now a permanent resident), employed as a Drainer. JAK Civil provided ongoing training to this employee over the last four (4) years, which culminated in him gaining his Cert IV Civil Construction (Supervision) qualification. He left of his own accord. Paying a redundancy package to this employee places an unreasonable financial burden on the business.
8. Research (2015) by HILDA (Household, Income and Labour Dynamics of Australia), Department of Employment shows that today the average job tenure is 3.3 years. That is 14 to 15 employers from age 18 to retirement (assumed at 65). Flexibility is fast becoming more important than stability and loyalty. This doesn't encourage or create a steady workforce.
9. Industry is being milked by the employee to better themselves at the expense of the employer. It could be viewed as being unethical and immoral.
10. It makes no sense at all to assert that an employee should be entitled to a redundancy payout when they are leaving of their own choice to seek employment elsewhere, commonly with a competitor in the industry.
11. The award also provides for small business employers to pay redundancy entitlements to employees who terminate their own employment for any reason.


Affirmed by the deponent)

at Bunbury)

in Western Australia)

on 7 December 2016)


Before me:)


Signature of witness

Signature of witness

Name of witness **CHRISTOPHER M. MILLS**
Justice of the Peace
WA 4798

.....
Position


Signature of deponent

Affidavit

CCF (Civil Contractors Federation)

Re: submission by CCF to Fair Work Commission in response to the 4 yearly modern award review

Affidavit of: John Graham Hovey

Address: [REDACTED]

Occupation: Managing Director

Date: December 7, 2016

I, John Graham Hovey, of [REDACTED], Managing Director of the Hovey Group of Companies, affirm:

1. I make this statement based on my own knowledge, information and belief.
2. I am the Managing Director of the Hovey Group of Companies, which includes MJB Industries, Australind Premix and JAK Civil Pty Ltd (previously known as S & J Excavations) JAK Civil is a financial member of the CCF.
3. I established the business 1988.
4. I have worked in the Civil Construction industry for over 30 years, and in that time have held Board positions with the Civil Contractors Federation and the Master Builders Association. I have broad industry experience in all facets of the Civil Construction industry. I am also involved in local Community organisations, including Rotary and the Men's Shed.
5. In my Board and Managing Director role I am constantly engaged in industry issues and with industry groups. I provide, and receive feedback on various aspects of the industry which affect business, its people and all interested parties.
6. I am aware of the employment issues affecting the industry and of CCF members employing workers under the provisions of the award under review, in this case redundancy and lack of junior rates.
7. The Hovey Group employs approximately 100 people, of which approximately 35 are employed with JAK Civil. None are under 18 years of age. There are two secondary schools, Australind Senior High School and Mercy Catholic College in Australind who have approximately 250 students graduating each year. None of these are entering the Civil Construction Industry in any labour capacity.
8. The current industry award is a disincentive to engage young workers as the Building and Construction General On-Site Award 2010 does not have junior rates of pay. It is not financially viable to employ, for example, a 16-17 school leaver, because of the prohibitive pay rate demanded by the award.
9. An experienced worker is required to accompany a junior or new worker, thereby increasing the cost further. Impositions such as lost productivity and the additional employment cost to train the young worker and provide the experienced worker impact the business financially. There is also the issue of employee morale, given the young worker is earning comparable wages to an employee who has vastly more experience and skills.
10. The benefits of reducing the award rate for young workers include encouraging employers to place juniors in the workforce, particularly youngsters who may have left school and are not academically inclined, thereby building their skill set and providing the motivation to be job ready for future roles by embedding them in a workplace culture of learning and support.
11. In my experience the current young person entering the workforce doesn't have the basic life skills necessary to be a valued contributor to the workforce. These skills aren't being taught at home as they once were. Inevitably, it is left to business and industry to fill the role as life skills teacher.

12. Due to the lack of junior rates, it has led to a gap in the workplace where there is a definite shortage of young labour in the Civil Construction Industry that can be moulded and mentored into the many areas of our industry. The evidence clearly shows we have an ageing workforce, and the current system to attract young people into the industry is not working.

Affirmed by the deponent)

at Burbury)

Signature of deponent

in Western Australia)

on 7 December 2016)

Before me:)

Signature of witness

Name of witness

CHRISTOPHER M. MILLS
Justice of the Peace
WA 4798

Position

Submission to the Fair Work Commission

The 4 yearly Modern Award Review

Clause 17.2 Definition of Redundant

**Peter Middleton
Director
Woden Contractors**

1. My name is Peter Middleton, I am 63 years old and a resident of the Australian Capital Territory.
2. I have been involved in Australian construction industry for over 40 years working on projects in the ACT, NSW, Vic, QLD and WA.
3. I am the recent past Managing Director of Woden Contractors and remain a director of the group.
4. I have been employed by The Wodens group since 1985 managing construction projects in the ACT and surrounding region. Prior to that, I worked for the French company Citra Constructions, on major infrastructure projects in the states listed above.
5. I hold a degree from Sydney University in Civil Engineering, am a Fellow of the Institution of Engineers of Australia and a Graduate of the Australian Institute of Company Directors.
6. Woden Contractors is a medium sized civil construction company specializing in the building of roads, bridges, pipelines, rural and residential subdivisions and sporting facilities.
7. The company currently employs 75 people ranging from engineers, surveyors, skilled foremen and Diesel fitters through to skilled earthmoving plant operators, pipe-layers and labourers.
8. The company invests significant time and money in training young industry entrants through traditional trade training (Diesel fitters and welders) and formalised on-the-job and independently supervised training for earthmoving plant operators, pipe-layers and a range of technical staff.
9. Employees of the company are paid on an 'above-award' basis to the conditions of the Building and General On-site Award 2010, as amended, and the National Employment Standards.
10. Without any doubt, the current definition of redundancy in the award is perverse, a disincentive to train young people and acts contrary to the aims of encouraging long term employment.

11. Employers wanting to act responsibly in terms of offering their people stable work are handicapped by an individual's incentive to change employers just to access a bonus of up to 8 weeks of pay, despite not being made redundant in the true sense.
12. The current definition of redundancy plays into the hands of lazy employers who do not train young employees but poach skilled workers as needed.
13. It defies common sense to pay individuals a bonus for leaving a job of their own accord.
14. Woden Contractors have been badly affected by the current definition of redundancy. In 2016 alone we have had to pay redundancy to 8 employees with length of service, in one case, of 9 years. A total of 45 weeks of redundancy pay has been made for the above employees who have all left of their own accord.
15. The above is a major cost impost and works against our desire to continue with our long-term policy of training industry entrants when so many of our competitors can avoid such overhead costs.
16. I have no issue with having a redundancy provision in the award but request that the current definition is amended to exclude those employees who leave a job of their own accord.
17. In parallel to the above, it would also be sensible to have the rules relating to the operation of the redundancy trust altered such that payments made by an employer on behalf of an employee are returned if the employee leaves a job of their own accord.

Peter Middleton



8th December 2016