



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Construction awards

(AM2016/23)

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010

[MA000020]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT HAMILTON
DEPUTY PRESIDENT GOSTENCNIK
COMMISSIONER GREGORY
COMMISSIONER HARPER-GREENWELL

SYDNEY, XX MONTH 2018

4 yearly review of modern awards – Group 4 awards – Construction awards – Building and Construction General On-site Award 2010 – substantive matters

A. Further to the Full Bench decision issued by the Fair Work Commission on 26 September 2018 [[\[2018\] FWCFB 6019](#)], the above award is varied as follows:

1. By deleting the words “clause 25.12(b)” appearing in clause 15.2(c) and inserting “clause 25.5(b)”.
2. By deleting the words “clause 25.12(a)” appearing in clause 15.8(b) and inserting “clause 25.5(a)”.
3. By deleting the word “adult” appearing in clause 19.1(a).
4. By deleting clause 20.1 and inserting the following:

20.1 Tools and protective or other clothing or equipment

- (a) An allowance in recognition of the maintenance and provision of the standard tools of trade must be paid for all purposes of the award in accordance with the following table:

Classification	Tool allowance \$ per week
Artificial stoneworker, carpenter and/or joiner, carpenter-diver, carver, bridge and wharf	31.69

Classification	Tool allowance \$ per week
carpenter, floor sander, letter cutter, marble and slate worker, stonemason or tilelayer	
Caster, fixer, floorlayer specialist or plasterer	26.20
Refractory bricklayer or bricklayer	22.49
Roof tiler, slate-ridger or roof fixer, tradespersons in the metals and engineering construction sector	16.60
Signwriter, painter or glazier	7.61

- (b) Where any other tools are required by the employer for the performance of work by a tradesperson covered by paragraph (a), or where in the case of any other employee any tools are required for the performance of work, the employer shall:
 - (i) by agreement with the employee, reimburse the employee for provision of the tools; or
 - (ii) provide the tools.
- (c) Where any protective or other clothing or equipment, other than safety boots, is required by the employer for the performance of work, the employer shall:
 - (i) by agreement with the employee, reimburse the employee for provision of the clothing or equipment; or
 - (ii) provide the clothing or equipment.
- (d) Where employees are required either by the employer or by legislation to wear steel toe capped safety boots the employer will reimburse employees for the cost of purchasing such boots on commencement of work. Subject to fair wear and tear, boots will be replaced each six months if required and sooner if agreed.

5. By deleting clause 24.1 and inserting the following:

24.1 Qualification

The entitlements under this clause apply 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:

- (a) the employee is not in receipt of relocation benefits;
- (b) the employee is maintaining a separate place of residence to which it is not reasonable to expect the employee to return each night; and
- (c) the employee has provided the correct details of their usual place of residence, or any separately maintained address, to the employer.

6. By deleting clause 24.2 and inserting the following:

24.2 Employee's address

- (a) On engagement, an employee must provide the employer with their address at the time of application and the address of any separately maintained residence. An employee must not knowingly make a false statement regarding the details required in clause 24.1(c).
- (b) The employer must take reasonable steps to verify the address details provided by the employee. Reasonable steps may include requesting documentary proof of the address, such as by the provision of a driver's licence, but do not include investigating the veracity of the documentary proof that is provided by the employee.
- (c) Despite clause 24.1(c), the employer will be liable to pay or provide the entitlements under this clause to an employee who satisfies clause 24.1(a) and (b) if the employee has failed to provide the correct address details and the employer has failed to take reasonable steps to verify the address details in accordance with paragraph (b). However the employer will not be liable to pay or provide the entitlements under this clause if the employer has requested documentary proof of the employee's address details and the employee has provided fraudulent documents in response to that request.
- (d) No subsequent change of address will entitle an employee to the provisions of this clause unless the employer agrees.

7. By deleting clause 24.3 and inserting the following:

24.3 Entitlement

- (a) Where an employee qualifies under clause 24.1 the employer will:
 - (i) pay the employee the greater of \$70.81 per day or an amount which fully reimburses the employee for all reasonable accommodation and meal expenses incurred;
 - (ii) provide the worker with accommodation and three adequate meals each day;
 - (iii) provide the worker with accommodation and reimburse the employee for all reasonable meal expenses; or
 - (iv) where employees are required to live in camp, provide all board and accommodation free of charge.
- (b) Any accommodation provided under clause 24.3(a) must be in accordance with contemporary living standards taking into account the particular circumstances of the location in which the work is performed and must include reasonable

washing, laundry, recreational, kitchen, external lighting, communications and fire protection facilities.

8. By deleting clause 24.7(a)(i) and inserting the following:

(i) An employee must:

- be provided with appropriate transport or be paid the amount of a fare on the most appropriate method of public transport to the job, and any excess payment due to transporting tools if such is incurred; and
- be paid for the time spent in travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel; and
- be paid \$15.06 per meal for any meals incurred while traveling.

9. By deleting clause 24.7(f) and inserting the following:

(f) Rest and recreation

Where an employee is engaged on a job which qualifies the employee for the provisions of this clause and the duration of work on the job is scheduled for more than 8 weeks the employee will be entitled to rest and recreation in accordance with the following:

- (i) After each continuous 4 week period of work away from home the employee will be entitled to a minimum period of 7 days unpaid rest and recreation leave at the employee's usual place of residence, of which 5 days shall be exclusive of travel from the job to the employee's usual place of residence and return to the job. On each occasion that the employee returns to their usual place of residence they will be paid for travel expenses in accordance with clause 24.7(a), (b) and (c) above.
- (ii) After 12 weeks continuous service (inclusive of periods of rest and recreation) the employee will be entitled to 2 days' paid rest and recreation leave and an additional paid day of rest and recreational leave for each subsequent 12 weeks of continuous service.
- (iii) Payment for leave and travel expenses will be made at the completion of the first pay period commencing after date of return to the job.
- (iv) The provisions of clause 24.7(f)(i) do not continue to apply where the work the employee is engaged upon will terminate in the ordinary course within a further 28 days after the last period of rest and recreation leave.
- (v) Service will be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause.
- (vi) **Variable return home**

In special circumstances, and by agreement with the employer, the return to the usual place of residence entitlements may be granted earlier or taken later than the prescribed date of accrual without alteration to the employee's accrual entitlement.

(vii) No payment instead

Payment of travel expenses and leave with pay as provided for in this clause will not be made unless utilised by the employee.

(viii) Alternative paid day off procedure

If the employer and the employee so agree, any accrued rostered days off (RDO) as prescribed in clause 33—Ordinary hours of work, may be taken, and paid for, in conjunction with and additional to rest and recreation leave.

(ix) Termination of employment

An employee will be entitled to notice of termination of employment in sufficient time to arrange suitable transport at termination or must be paid as if employed up to the end of the ordinary working day before transport is available.

10. By deleting clause 25 and inserting the following:

25. Travelling time entitlements

25.1 Fares and travel pattern allowance

- (a) In recognition of the travel patterns and costs peculiar to the industry, which include mobility in employment and the nature of employment on construction work, an employee is to be paid an allowance of \$17.43 per day for each day worked when the employee starts and finishes work on a construction site, or is required to perform prefabricated work in an open yard and is then required to erect or fix on-site.
- (b) An employee will not be entitled to the allowance in paragraph (a) on any day where the employer:
 - (i) provides or offers to provide transport free of charge from the employee's home to the place of work and return; or
 - (ii) provides a fully maintained vehicle free of charge to the employee.

25.2 Travelling between construction sites

An employee transferred from one site to another during working hours will be paid:

- (a) for the time spent in travelling; and

- (b) if the employer does not provide transport:
 - (i) the reasonable cost of fares for public transport between construction sites; or
 - (ii) where the employee uses their own vehicle the employee must be paid an allowance at the rate of \$0.78 per kilometre.

25.3 Travelling outside ordinary hours

Time spent travelling from an employee's home to their job and return outside ordinary hours will be unpaid unless the employer directs the employee to pick up and return other employees to their homes.

25.4 Distant work payment

- (a) If an employee is required to travel to a construction site that is:
 - (i) not located in a metropolitan radial zone in which the employee's usual place of residence is located; and
 - (ii) more than 50 kms by road from the employee's usual place of residence;the employee will be entitled to the distant work payment in paragraph (b) in addition to the allowance in clause 25.1.
- (b) The distant work payment is:
 - (i) payment for the time outside ordinary working hours reasonably spent in travel, paid at the ordinary time hourly rate, calculated to the next quarter of an hour, and with a minimum payment of one half an hour per day for each return journey; and
 - (ii) any expenses necessarily and reasonably incurred in such travel, which will be \$0.47 per kilometre where the employee uses their own vehicle.
- (c) Despite paragraph (a), the distant work payment is not payable when, at the commencement of employment, the employee's usual place of residence was more than 50km by road from the construction site on which the employee was initially engaged.
- (d) In this subclause, a metropolitan radial area is the area within a radius of 50 kilometres of:
 - (i) the GPO of a capital city of a State or Territory; or
 - (ii) the principal post office in a regional city or town in a State or Territory.

25.5 Apprentices

- (a) An apprentices will be entitled to a proportion of the allowances prescribed in clauses 25.1 and 25.4 in accordance with the following scale:
- (i) on the first year rate - 75% of the amount prescribed;
 - (ii) on the second year rate - 85% of the amount prescribed;
 - (iii) on the third year rate - 90% of the amount prescribed;
 - (iv) on the fourth year rate - 95% of the amount prescribed.
- (b) When a school-based apprentice attends off-the-job training or assessment not at the school at which they are enrolled they will receive 25% of the allowance prescribed in clause 25.1

25.6 Adjustment of allowances

The monetary allowances prescribed in clause 24, clause 25.1, clause 25.2(b)(ii) and clause 25.4(b)(ii) will be adjusted in accordance with clause 20.4.

11. By deleting the words “Payment on such a rostered day off will include accrued entitlement to the allowances prescribed in clauses 25.2 to 25.7” appearing in clause 33.1(a)(i).

12. By inserting after the definition of “night shift” in clause 34.1(a) the following definition:

early morning shift means a shift commencing at or after 11.00pm and before 4.30am

13. By deleting clause 34.1(b)(i) and inserting the following:

(i) afternoon, night and early morning shift— ordinary time hourly rate plus 50%

14. By inserting the following note as a new paragraph after the end of clause 36.7:

Note: overtime and shiftwork for apprentices is dealt with in clause 15.3.

15. By inserting clause 36.17 as follows:

36.17 Time off instead of payment for overtime

- (a) Clause 36.17 does not apply to daily hire employees or casual employees.
- (b) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

- (c) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 36.17.
- (d) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 36.17 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (e) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 36.17 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (f) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (g) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 36.17 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (h) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (f), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

- (i) The employer must keep a copy of any agreement under clause 36.17 as an employee record.
- (j) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (k) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 36.17 will apply, including the requirement for separate written agreements under paragraph (c) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (l) If, on the termination of the employee’s employment, time off for overtime worked by the employee to which clause 36.17 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 36.17.

16. By deleting clause 38.2(b) and inserting the following:

- (b) In addition to the payment prescribed in clause 38.2(a), an employee must receive during a period of annual leave a loading of 17.5% calculated and paid by reference to the base rate payable under clause 38.2(a).

17. By inserting Schedule H as follows:

Schedule H—Agreement for time off instead of payment for overtime

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer
representative: _____

Signature of employer
representative: _____

Date signed: ___/___/20___

24. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from X December 2018. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after X December 2018.

VICE PRESIDENT

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