

# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

**Matter Numbers:** AM2016/23, AM2014/260, 274 and 278

*Fair Work Act 2009*

Part 2-3, Div 4 –s.156 - 4 yearly review of modern awards

### Construction Awards

#### Building and Construction General On-Site Award 2010

[MA000020]

#### Joinery and Building Trades Award 2010

[MA000029]

#### Mobile Crane Hiring Award 2010

[MA000032]

*4 yearly review of modern awards – award stage –Group 4C awards*

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**CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION  
(CONSTRUCTION & GENERAL DIVISION) SUBMISSION ON DRAFT  
DETERMINATIONS ISSUED ON 23<sup>RD</sup> NOVEMBER 2018**

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7<sup>th</sup> December, 2018

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## Introduction

1. On 26<sup>th</sup> September 2018 the Fair Work Commission Full Bench issued a Decision ([2018] FWCFB 6019) (the decision) on the substantive matters under consideration regarding the Construction Awards as part of the 4 yearly review of modern awards. In paragraph [468] of the decision the Full Bench indicated that draft determinations would be issued to give effect to the variations identified in paragraphs [139], [143], [145]-[146],[153], [156], [184], [202], [294], [365]-[366], [420], [427], [441], [456] and [460], and that interested parties would be given an opportunity to comment on the form of the draft determinations.
2. On 23<sup>rd</sup> November 2018 the Full Bench, in accordance with paragraph [468], issued draft determinations for the *Building and Construction General On-site Award 2010*, the *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*. The Full Bench also issued directions that parties wishing to comment on the form of these draft determinations should do so by 5.00pm on Friday 7<sup>th</sup> December 2018. This brief submission is made in accordance with those directions.

### Draft Determination for the *Building and Construction General On-site Award 2010*

#### Item A.10 – Variation to clause 25

3. The variation to clause 25 seeks to replace the existing clause 25 with a new clause 25- Travelling time entitlements. The only issue that the CFMMEU C&G wishes to raise in regard to this proposed variation is the title of the clause. No party sought a change to the title and it was not suggested in the decision that the clause title would be changed. As noted in paragraph [181] of the decision “*the allowance compensates employees, on an averaging basis, for the cost and inconvenience associated with variable travel to and from work*”. As the clause deals with more than “travel time” the CFMMEU C&G submits that it would be preferable to keep the title of the clause as “Fares and Travel Patterns Allowance” and change the title of clause 25.1 to either “Daily Fares and Travel Patterns Allowance” or simply “Daily Allowance”.

#### Item A.16 – Variation to clause 38.2(b)

4. The variation to clause 38.2(b) does more than what was intended by the decision at paragraph [441]. The intention of the Full Bench was to vary the clause so that it “*should simply provide that the 17.5% loading is to be calculated by reference to the amount identified in clause 38.2(a)*”. The variation under item A.16 does more than that, as by deleting the whole of clause 38.2(b) it also deletes the words “**This loading will also apply to proportionate leave on lawful termination**”. No party sought the removal of this provision, no submissions were made on the issue, and the decision itself does not say that the provision is to be removed. The CFMMEU C&G therefore submits that the words be re-inserted into the new clause 38.2(b). It is also submitted that the words “base rate” should be replaced with the word “amount” to remove any confusion with the base rate as referred to in s.90(1) of the Fair Work Act 2009 (which clause 38.2(a) applies instead of). The CFMMEU C&G submits that the new clause should provide as follows:

“(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 amount payable under clause 38.2(a).

This loading will also apply to proportionate leave on lawful termination.”

**Draft Determinations for the *Joinery and Building Trades Award 2010* and *Mobile Crane Hiring Award 2010***

5. The variations proposed to clause 24.5 Transfers, travelling and working away from usual place of work, of the *Joinery and Building Trades Award 2010*, do not include a variation to clause 24.5(a)(xiv) as contemplated by paragraph [153] of the decision. It is submitted that 25(a)(xv) (as renumbered) should read:

“(xv) For the purposes of clause 24.5(a) economy return fare means the total cost of the most common method of public transport between the employee’s usual residence and the distant job and return.”
6. The CFMMEU C&G also raises the issue that although the Full Bench has decided to vary the rest and recreation provisions in the *Building and Construction General On-site Award 2010* (to provide for 7 days unpaid rest and recreation leave at the employees usual place of residence after each continuous 4 week period of work away from home) it would appear from the draft determination that no such variation is proposed for the rest and recreation provisions in the *Joinery and Building Trades Award 2010*. The CFMMEU C&G submits that, as noted in paragraph [86] of the decision, the CFMMEU C&G claim in regard to the living away from home provisions included inserting the same provisions in the *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*.
7. The rest and recreation provisions in clause 24.5(a) of the *Joinery and Building Trades Award 2010* currently provide as follows:

“(vi) Subject to clause 24.5(a)(vii), after three months’ continuous service on a distant job to which an employee has been directed to attend, and thereafter at four monthly periods of continuous service thereon, an employee may return to their usual residence at a weekend.

(vii) Where the location of a distant job is in an area to which air transport is the only practical means of travel, an employee may return to their usual residence after five months’ continuous service and if the employee does so the employee is entitled to two days leave with pay in addition to the weekend. An employee may also return to their usual residence after each further period of five months’ continuous service and in each case if the employee does so the employee is entitled to two days leave, of which one day must be paid.”
8. The provisions set out above are more onerous than the provisions being replaced in the *Building and Construction General On-site Award 2010*. The *Mobile Crane Hiring Award 2010* contains no rest and recreation provisions. The CFMMEU C&G submits that, consistent with the decisions regarding the living away from home allowance entitlement (see paragraph [143] of the decision), the standard of accommodation (see paragraph [146] of the decision) and the travelling expenses – mode of travel (see paragraph [153] of the decision), an equivalent variation to that set out in paragraph [156] of the decision should also be made to both the *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*.