



HOUSING INDUSTRY ASSOCIATION



Housing Australians



Submission to the
Fair Work Commission

**AM2016/23 – 4 Yearly Review of Modern Awards
Construction Awards**

02/12/2016



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1. INTRODUCTION

1.1 THE PROCEEDINGS

- 1.1.1 On 11 December 2014, the Fair Work Commission (the '**Commission**') issued a Statement finalising sub-groupings for Group 3 and 4 Awards as part of this 4 yearly review of Modern Awards (the '**4 Yearly Review**').¹
- 1.1.2 As per Attachment A to that Statement the *Building and Construction General Onsite Award 2010 (Onsite Award)* and the *Joinery and Building Trades Award 2010 (Joinery Award)* formed a part of the Group 4 Awards, specifically Sub-Group 4E. Of note, by way of Statement dated 21 October 2015, Group 4E was renamed as Group 4C.²
- 1.1.3 On 23 January 2015, the Commission issued a further revised Statement requiring parties to file submissions identifying the nature of any changes to Group 3 and 4 Awards by 2 March 2015. HIA filed submissions in accordance with those Directions.
- 1.1.4 A further Statement, of 24 February 2016³ directed that a conference be convened in relation to Group 4C Awards in order to categorise the various issues raised, seek to resolve matters in dispute and identify those matters that require referral to a separately constituted Full Bench.
- 1.1.5 By way of Directions issued on 26 February 2016 and Statement dated 1 April 2016⁴ a series of conferences commenced, the outcomes of which are captured in His Honour SDP Watsons Report to the Full Bench dated 5 August 2016.
- 1.1.6 By way of Memorandum, on 22 August 2016 the President, His Honour Justice Ross constituted a Full Bench to hear and determine matters relating to the Construction Awards that were outlined in an attachment to that Memorandum.
- 1.1.7 On 26 October 2016, the Commission issued Directions in relation to the Construction Awards requiring the filing of comprehensive written submissions and any witness statements or documentary material on which a party seeks to rely by Friday 2 December.
- 1.1.8 HIA files these submissions in accordance with those Directions.
- 1.1.9 Of the four Modern Awards that form the 'Construction Awards' HIA's primary interest relates to the Onsite Award and the Joinery Award.

Exposure Drafts

- 1.1.10 On 10 May 2016, the Commission issued revised directions for the publication of Group 4 exposure draft Modern Awards and submissions in relation to the drafting and technical issues in 4A, B and C Exposure Drafts.
- 1.1.11 On 20 May 2016, Exposure Drafts were published in relation to the Onsite Award and the Joinery Award and HIA filed submissions on 30 June 2016.

¹ [2014] FWC 8985

² [2015] FWC 7253

³ [2016] FWC 1191 at paragraph 13

⁴ [2016] FWC 1972



1.1.12 Subsequent to this, on 15 July 2016, the Commission issued a further Statement⁵ noting that due to substantial overlap between the claims to vary the Construction Awards and the drafting and technical issues arising out of the Exposure Drafts a course of action would be adopted that would see the substantive claims heard and determined followed by the determination of the remaining drafting and technical issues.⁶

1.1.13 As such, the previous Directions issued on 10 May, insofar as they related to the Onsite Award and Joinery Award were vacated.⁷

1.2 VARIATION APPLICATIONS BEFORE THE CONSTRUCTION FULL BENCH

1.2.1 HIA seeks to vary the Onsite Award and the Joinery Award to insert a New Clause to provide for Time Off In Lieu of Overtime (**TOIL**).

1.2.2 HIA also seeks to vary the following provisions of the Onsite Award:

- Clause 17 – Industry Specific Redundancy Scheme.
- Clause 20 – Tools and Employee Protection Allowance.
- Clause 25 – Fares and Travel Patterns Allowance.
- Clause 31 – Frequency of the Payment of Wages.
- Clause 33 - Hours of Work.
- Clause 38 – Annual Leave Loading.

1.3 THE RESIDENTIAL CONSTRUCTION INDUSTRY

1.3.1 HIA is the voice of the residential building sector of the Australian economy, and represents some 40,000 members throughout Australia. The residential building industry includes both cottage construction and multi-unit apartment buildings. HIA's membership includes builders, trade contractors, design professionals, kitchen and bathroom specialists, manufacturers and suppliers.

1.3.2 The building industry represents an important component of the Australian economy. In August 2016, it was estimated that 272,400 persons were directly employed in building construction, 2.3 per cent of total employment.

1.3.3 The residential construction industry requires a regulatory environment that provides certainty and does not unnecessarily dull its ability to move the economy forward and employ more workers. During the June 2016 quarter, the annualised value of dwelling construction was estimated at \$99.32 billion, equivalent to 5.9 per cent of GDP. Residential construction has become a central driver of domestic demand growth. Apart from its direct effects on economic activity, residential construction also contributes to long-term economic growth by adding to the stock of physical capital. An efficient

⁵ [2016] FWC 4781

⁶ Ibid paragraph 6

⁷ [2016] FWC 4781 at paragraph 11



residential building sector is one of the key requisites for achieving economic competitiveness internationally. Further, the provision of an adequate dwelling stock is one of the key drivers of improved living standards and higher productivity.

- 1.3.4 An estimated 232,540 new dwellings were commenced in 2015/16, an increase of 6.2 per cent on the previous financial year. This is likely to represent the peak of the cycle, however, the HIA forecasts a reduction of 10.1 per cent during 2016/17, taking new home starts down to 209,050. New home building activity has recently reached its highest on record, and at over 4 years in duration, the current upturn is the longest on record. It has been driven by a unique set of factors including a decade of very strong migration from overseas, record low interest rates and largely favourable economic conditions.
- 1.3.5 Independent research by the Centre for International Economics (CIE) shows that for every \$1 increase in construction activity, GDP will rise by \$4.75 as a result. This clearly has positive implications for employment at the economy wide level. The economic benefits of increases in construction activity are even greater in situations such as the current one where the economy is not at full employment.
- 1.3.6 In terms of employment, an extra \$1 million of construction expenditure generates 9 construction jobs. The initial effect of the additional \$1 million worth of construction is 9 positions in construction-related fields, such as carpenters, brick layers, plasterers, etc. In addition to this initial effect there are also production induced effects generating 7 jobs across those businesses manufacturing the materials needed for the additional construction, such as concrete and steel frames, and those businesses supplying and servicing the concrete and steel frame businesses, such as aggregate quarrying and raw steel production. Not all these jobs are necessarily going to be full time, but clearly the employment multiplier effect across businesses involved in construction or closely aligned to construction is considerable.
- 1.3.7 In other words, over and above the direct contribution of construction activity to the economy, the construction industry has 'flow-on' impacts on the activities of other industries.
- 1.3.8 The residential building industry relies very strongly on consumer confidence and is particularly susceptible to economic downturn. Specifically, businesses in the residential construction industry are particularly vulnerable to its cyclical nature.
- 1.3.9 Of note is ABS data on dwelling commencements demonstrating these circumstances, for example:⁸
- Between December 2003 and March 2005 dwelling commencements decreased by 15.3%;
 - Between June 2009 and June 2010 dwellings commencements increased by 52%;
 - Between June and December 2012 dwelling commencements decreased by 18.1%; however
 - Between June 2012 and June 2016 dwelling commencements increased by 81.5%.
- 1.3.10 The construction industry has a high proportion of award-reliant businesses.⁹

⁸ See ABS 8752.0 - Building Activity, Australia

⁹ Wright, S and Buchanan J, December 2013, Workplace Research Centre, University of Sydney Business School Research Report 6/2013 *Award Reliance*, p.17-19



- 1.3.11 This high level of award reliance within the construction sector is of significant relevance to this Four Yearly Review.
- 1.3.12 In May 2016, HIA issued a survey to members (**HIA Member Survey**) in order to canvass their views on a range of issues related to the Modern Awards.
- 1.3.13 Marked Attachment A to these submissions is the Statement of Kristen Lewis which includes at Annexure D a copy of the results of the HIA Member Survey.
- 1.3.14 The HIA Member Survey paints a picture of the typical business operating in the residential construction industry.
- They are a small business with generally between 1-5 employees.¹⁰
 - More than half of the respondents indicated they employ their employees on a full time basis.¹¹
 - The overwhelming majority indicated they engage independent contractors.¹²
 - About half of respondents work solely on residential sites¹³ and half on both commercial and residential sites.¹⁴
 - 65 per cent of respondents indicated they are covered by the Onsite Award¹⁵ while 90 per cent indicated that their business had not entered an Enterprise Bargaining Agreement within the last 6 years.¹⁶
- 1.3.15 These small, non-unionised, award reliant business operating in the residential construction sector must be able operate under Modern Awards that foster flexible work practices and conditions that promote efficiency and productivity to help sustain employment throughout the ebbs and flows experienced by the industry. In light of the current undersupply of dwelling stock relative to demand, a more flexible operating environment would allow the industry to increase output to more appropriate level, thus alleviating the supply shortfall.

2. THE LEGISLATIVE FRAMEWORK

- 2.1.1 Section 156 of the *Fair Work Act 2009* (the '**FWA**') requires that the Commission conduct a review of Modern Awards once every 4 years.
- 2.1.2 The scope of this 4 Yearly Review was outlined in the decision of the Full Bench of the Commission of 17 March 2014 (the '**Preliminary Jurisdictional Decision**')¹⁷ and those principles were subsequently summarised by the Full Bench in the *4 Yearly Review of Modern Awards – Annual Leave*¹⁸ as follows:

¹⁰ 53% of respondents to the HIA Member Survey at pg. 3

¹¹ 57% of respondents to the HIA Member Survey at pg. 4

¹² 91% of respondents to the HIA Member Survey at pg.6

¹³ 49% of respondents to the HIA Member Survey at pg.7

¹⁴ 51% of respondents to the HIA Member Survey at pg. 7

¹⁵ HIA Member Survey at pg.8

¹⁶ HIA Member Survey at pg.9

¹⁷ [2014] FWCFB 1788

¹⁸ [2016] FWCFB 3177 at paragraphs 19-25



‘The modern awards objective is directed at ensuring that modern awards, together with the NES, provide a ‘fair and relevant minimum safety net of terms and conditions’ taking into account the particular considerations identified in paragraphs 134(1)(a) to (h) (the s.134 considerations). The objective is very broadly expressed. No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.

The obligation to take into account the s.134 considerations means that each of these matters, insofar as they are relevant, must be treated as a matter of significance in the decision making process.

*While the Commission must take into account the s.134 considerations, the relevant question is whether the modern award, together with the NES, provides a fair and relevant minimum safety net of terms and conditions. Further, it is not necessary to make a finding that the modern award under review has failed to satisfy at least one of the s.134(1) considerations. As the Full Federal Court said in *National Retail Association v Fair Work Commission*:*

‘It is apparent from the terms of s.134(1) that the factors listed in (a)–(h) are broad considerations which the FWC must take into account in considering whether a modern award meets the objective set by s.134(1), that is to say, whether it provides a fair and relevant minimum safety net of terms and conditions. The listed factors do not, in themselves, pose any questions or set any standard against which a modern award could be evaluated. Many of them are broad social objectives. What, for example, was the finding called for in relation to the first factor (‘relative living standards and the needs of the low paid’)? Furthermore, it was common ground that some of the factors were inapplicable to the SDA’s claim?’

There is a degree of tension between some of the s.134 considerations. The Commission’s task is to balance the various considerations and ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions.

Section 138 of the FW Act is also relevant, it emphasises the importance of the modern awards objective in these terms:

‘A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.’

Section 138 provides that terms only be included in a modern award ‘to the extent necessary to achieve the modern awards objective’. To comply with s.138 the terms included in modern awards must be ‘necessary to achieve the modern awards objective’.



What is 'necessary' in a particular case is a value judgment taking into account the s.134 considerations, to the extent that they are relevant having regard to the submissions and evidence directed to those considerations.'

2.1.3 Relevantly, s134 of the FWA provides:

(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*
- (da) the need to provide additional remuneration for:*
 - (i) employees working overtime; or*
 - (ii) employees working unsocial, irregular or unpredictable hours; or*
 - (iii) employees working on weekends or public holidays; or*
 - (iv) employees working shifts; 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.*

2.1.4 The framework established by the Modern Awards Objectives requires that the Modern Awards be considered with the current industry circumstances in mind as opposed to economic and social conditions that existed in the past.

2.1.5 Notwithstanding that the Full Bench may have regard *'to the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue'*¹⁹, the Full Bench also observed that *'(T)he particular context in which those decisions were made will also need to be considered.'*²⁰ This is particularly relevant for the Onsite Award, an instrument that is largely the

¹⁹ [2014] FWCFB 1788 at paragraph 60

²⁰ [2014] FWCFB 1788 at paragraph 60



result of a history peppered with disputes and conflict leading to the adoption of many consent positions in order to quell industrial unrest since at least the 1960's.

2.1.6 In more recent times, the process of award modernisation simply consolidated a variety of pre-modern state and federal based instruments into one modern award. In HIA's submission, the content of these modern awards were not updated to fit or reflect contemporary needs or circumstances.

2.1.7 This was highlighted by Watson VP in his Minority decision in the Annual Leave Case conducted as part of the transitional review of Modern Awards (the '**2012 Modern Award Review**')

'As a result of the award modernisation process, approximately 1560 federal and state awards were reviewed over a period of about 18 months and replaced by 122 modern awards. A further 199 applications to vary modern awards were made during this period. It is clear from any review of the process that the objects of rationalising the number of awards and attempting to balance the seemingly inconsistent objects of not disadvantaging employees and not leading to increased costs for employers attracted the vast majority of attention from the parties and the AIRC. It was clearly not practical during the award modernisation process to conduct a comprehensive review of the industrial merit of the terms of the awards. Matters that were not put in issue by the parties were not subject to a merit determination in the conventional sense. Rather, terms were adopted from predecessor awards that minimised adverse changes to employees and employers. As the Full Bench explained on a number of occasions, the general approach was as follows:

"[3] In general terms we have considered the applications in line with our general approach in establishing the terms of modern awards. We have had particular regard to the terms of existing instruments. Where there is significant disparity in those terms and conditions we have attached weight to the critical mass of provisions and terms which are clearly supported by arbitrated decisions and industrial merit. We have considered the impact of the provisions based on the information provided by the parties as to current practices."

*It is important to note the limited nature of the task undertaken by the award modernisation Full Bench.'*²¹

2.1.8 Notwithstanding the difficult task faced by the AIRC and the inevitable limitations in a forensic examination of all award conditions in 2008, award modernisation changed the role of awards - no longer are these instruments a result of a dispute settlement process but will evolve through a formal legislated process of 'reviews'²² and 'variation applications'²³ presided over by the Commission.

²¹ [2013] FWCFB 6266 at [198] – [199].

²² s136 of the Act.

²³ ss157 and 160 of the Act.



- 2.1.9 The Commission has observed that these instruments are now regulatory instruments:
‘...the role of modern awards and the nature of the Review are quite different from the arbitral functions performed by the AIRC (and other predecessor tribunals) in the past. The Review is essentially a regulatory function. In the Review context, the Commission is not creating an arbitral award in settlement of an inter parties industrial dispute – it is reviewing a regulatory instrument.’²⁴
- 2.1.10 Based on the evolution of the regulatory framework and the task of the Commission during this 4 Yearly Review HIA sees this are a real opportunity to carry out a forensic examination of the Onsite Award, now a regulatory instrument, to ensure it meets the Modern Awards Objective, which HIA submits it currently does not, the Onsite Award was never ‘modernised’ and is most certainly a relic of the past.

3. TIME OF IN LIEU OF OVERTIME

3.1 THE PROPOSED VARIATION

- 3.1.1 HIA seeks the insertion of the Model TOIL Term as set out at Attachment A to the August 31 2016 decision²⁵ into the Onsite Award and the Joinery Award.
- 3.1.2 A Draft Determination seeking to vary the Onsite Award to insert the Model TOIL Term is attached to these submissions at **Attachment B**.
- 3.1.3 A Draft Determination seeking to vary the Joinery Award to insert the Model TOIL Term is attached to these submissions at **Attachment C**.

3.2 THE DECISION

- 3.2.1 In the matter of *4 yearly review of modern awards—Common issue—Award Flexibility*²⁶ (the ‘**Award Flexibility Decision**’) a Full Bench of the Commission determined to insert a provision allowing for the taking of time off instead of overtime. Of note, the Commission concluded that:

‘Our provisional view is that the variation of modern awards to incorporate the model term is necessary to ensure that each modern award provides a fair and relevant minimum safety net, taking into account the s.134 considerations (insofar as they are relevant), and would also be consistent with the object of the Act. This is so because of the various safeguards provided within the term itself and because it facilitates the making of mutually beneficial arrangements between an employer and employee.’²⁷

²⁴ [2015] FWCFB 4466 at paragraph 253

²⁵ [2016] FWCFB 6178

²⁶ [2015] FWCFB 4466

²⁷ Ibid at paragraph 279



3.2.2 The Decision also set in motion a consultation process:

*'As outlined in paragraph [279], the model term set out in paragraph [267] only reflects our provisional view. Interested parties will be provided with an opportunity to make further submissions directed at both the model term and the proposition that all modern awards be varied to insert the model term. Directions will be issued in relation to the filing of further submissions and a final oral hearing. Submissions filed in accordance with those directions should also address the modern awards objective. We will only reach a concluded view in respect of these issues after considering all of the further submissions.'*²⁸

3.2.3 HIA understands that that process concluded with a Model TOIL Term in the terms referred to in the Draft Determinations at Attachments B and C of these submissions.

3.2.4 Of particular relevance to these proceedings was the following conclusion of the Full Bench:

*'Given the unusual arbitral history and the particular features of the industry covered by the two construction awards (including the operation of daily hire) we think the most expeditious course is to deal with any application to insert a TOIL provision in these awards during the award stage rather than in the settlement of any orders which may arise from our further consideration of the provisional model term.'*²⁹

3.2.5 HIA takes the opportunity provided by the Full Bench in the Award Flexibility Decision to put the case that the insertion of the Model TOIL Term in the Onsite Award and the Joinery Award is necessary to meet the Modern Awards Objectives under s134 of the FWA.

3.2.6 HIA submit that there are three principle reasons that the Commission should adopt the variations as proposed by HIA:

- Firstly, the arbitral history relied on as the barrier to insertion of the TOIL term should not impose a complete bar on the adoption of a variation. All Modern Awards have a unique arbitral history.
- Secondly, HIA relies on HIA Member Survey which indicates a desire for greater flexibility in relation to hours of work and overtime arrangements.
- Thirdly, as was found in the Award Flexibility Decision the variation is necessary to meet the Modern Awards Objectives.

3.3 THE MODERN AWARDS OBJECTIVES

3.3.1 We note that the Full Bench in the Award Flexibility Decision expressed a view as to the satisfaction of the each of the Modern Awards Objectives (deemed to be relevant) in relation to TOIL provisions. HIA submits that these views are undeniably relevant to the current case.

3.3.2 HIA also notes that a number of responses to the HIA Member Survey support the insertion of the TOIL arrangements. HIA concede that there are also a number of responses which indicate that such

²⁸ Ibid at paragraph 309

²⁹ Ibid at paragraph 307



arrangements would not suit their business. However, HIA submit that on balance, there is a clear desire for greater flexibility in relation to the arrangement of hours of work and overtime.

3.3.3 It is also clear from the HIA Member Survey that overtime (including weekend work) occurs on a frequent basis within the residential construction industry, for example, 49% of respondents stated their employees worked overtime 1-2 times per week, while 23% stated their employees worked overtime 3-4 times per week.³⁰ Of specific relevance is that 44% of those businesses that do have their employees work overtime have **had requests from their employees** to have paid leave instead of an overtime payment.³¹

The need to encourage collective bargaining

3.3.4 In respect of s134(1)(b) the Commission in the Award Flexibility Decision stated:

*'We note that TOIL provisions have been a feature of the award safety net for 20 years and there is no evidence to suggest that such provisions have adversely impacted on enterprise bargaining. We also acknowledge that there is a considerable force in the argument put by Ai Group that it is not always appropriate for collective bargaining to provide the solution for flexibility to accommodate individual needs that vary from person to person.'*³²

(our emphasis added)

3.3.5 The comment highlighted above by the Commission is particularly relevant for the residential construction industry that is largely award covered and does not heavily engage in collective bargaining.

3.3.6 This relevance is further borne out in the comments made by individual HIA Members in response to the HIA Member Survey who have indicated a desire to be able to address the needs of their individual employees and the unique circumstances of the business:³³

"We think this is better for some of our workers, but not others. Some take the extra pay, some take time in lieu"

"We allow on a case by case basis"

"As long as it was discussed with the employer and a mutually agreed time was decided, then it would be ok. A choice would be better i.e. payment or leave"

"It would be a great opportunity for some individuals"

³⁰ HIA Member Survey at pg.20

³¹ HIA Member Survey at pg.21

³² [2015] FWCFB 4466 at paragraph 232

³³ HIA Member Survey at pgs 22-33



“I would like to test the theory but know it would not suit all of our workers”

“...I believe this would work in some situation with some employees and not with others. It should be left up to the individual worker and the employer as to whether they wanted to negotiate this type of arrangement”

“Leave should be much more flexible between employers and employees. Staff have varying needs at different times”

“I think it is a great idea, I think it is more beneficial to have time than a few hours of overtime”

“It is totally between employee and employer, not for others to decide”

The need to promote social inclusion through increased workforce participation

3.3.7 In respect of s134(1)(c) the Commission in the Award Flexibility Decision stated:

*‘As we have mentioned, as a general proposition we accept that flexible working arrangements, such as TOIL, may encourage greater workforce participation, particularly by workers with caring responsibilities. The insertion of an appropriate TOIL facilitative provision in modern awards is consistent with the objective of promoting social inclusion through increased workforce participation’.*³⁴

3.3.8 Comments by HIA Members in response to the HIA Member Survey also indicate a desire by employers to provide options that assist those employees with family and caring responsibilities:

“It is an agreement between the employee and the employer. It’s not unusual for employees (to) arrangement to work longer to accrue an extra day for say a long weekend, but should not be forced on employees or employers as in other cases employees need to leave early for family pickup reasons. A good employer is always prepared to be flexible to assist employees, within reason.”

³⁴ [2015] FWCFB 4466 at paragraph 236



The need to promote flexible modern work practices and the efficient and productive performance of work

3.3.9 In respect of s134(1)(d) the Commission in the Award Flexibility Decision stated:

*'We accept the proposition that inserting a TOIL provision into a modern award which provides for overtime but does not presently contain a facilitative provision permitting TOIL, is consistent with the promotion of flexible modern work practices.'*³⁵

3.3.10 Comments by HIA Members in response to the HIA Member Survey indicate a view that TOIL arrangements would provide greater flexibility:

"more flexibility"

"I think that would be a bonus to both employees and us as the employer as another way of managing flexibility"

"It could be beneficial to both parties"

"It would be terrific. I have already addressed my workers regarding this and they are overwhelmingly in favour of it"

"It would work better for both parties, as the job would be done and the employee would get more time off"

"We prefer accrued time. It is hard to quote jobs allowing overtime in it"

"A more flexible workplace works best for all concerned with no detriment to anybody"

"(t) could work if flexible, as work fluctuates in the domestic building industry"

"Flexibility of hours is crucial"

"It is often the employees who ask for this arrangement and yet the award assumes that the employer will take advantage of the employee. The employees are perfectly capable of weighing up their options"

"It is a great option for small business"

³⁵ [2015] FWCFB 4466 at paragraph 238



“Running a small business it helps if we are all flexible”

“Small business needs to be looked at differently to large commercial and union sites as it is not affordable or cost effective”

3.3.11 Further comments by HIA Members in response to the HIA Member Survey indicate a view that TOIL arrangements would enable businesses to better adapt to the ebbs and flows of the residential construction industry:

“It works better as the industry is very seasonable. This way company can ride both busy and quiet periods whilst still offering employee stability of ongoing employment”

“Good, can suite work flow in high and low demand”

“Positive affect due to the nature of the business being feast or famine”

“This would allow us to complete work in a timelier manner making use of good working condition specifically during the warmer months. It could also give employees more flexibility in having time off rather than restricting this to the shutdown period over Christmas. It would also aloe for employees to have additional time off when work is slow or the working conditions are not optimal”

“This would help companies in their busy times and allow days off at slower times”

3.3.12 It would also seem that some businesses already engage in these type of practices without any issues:

“We currently work under this system and it seems to work fine”

“This is how I operate and I can’t see it any other way”

“Is beneficial and in keeping with current practice”

“It would give us more flexibility”

“This is the current system used by our company and employees that work overtime”

“We work on a system of fair and reasonable I give time off and get extra work in a balance system”

The need to provide additional remuneration for employees working overtime or employees working unsocial, irregular or unpredictable hours or employees working on weekends or public holidays, or employees working shifts

3.3.13 HIA submit that this is not a relevant consideration in relation to the proposed variation.

The principle of equal remuneration for work of equal or comparable value

3.3.14 HIA submit that this is not a relevant consideration in relation to the proposed variation.

The impact of the exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

3.3.15 In respect of s134(1)(f) the Commission in the Award Flexibility Decision stated:

'We accept that the flexibility provided by a TOIL term may be said to reduce regulatory burden...'³⁶

3.3.16 A number of respondents to the HIA Member Survey saw the requirements to account for TOIL as imposing additional regulatory burden.

3.3.17 For those businesses, the adoption of TOIL may not be an option. But for those businesses who seek additional flexibility the Model TOIL Term provides a complete process in order to easily facilitate the adoption of TOIL arrangements.

The need to ensure a simple, easy to understand, stable and sustainable modern awards system

3.3.18 In respect of s134(1)(g) the Commission in the Award Flexibility Decision stated:

'... Ai Group submits that providing greater consistency in respect of the TOIL provisions in modern awards will further the objective of making the award system simpler and easier to understand. We accept this submission. Greater consistency in the provisions governing TOIL will make the modern award safety net simpler and easier to understand.'³⁷

3.3.19 While at the time of writing, the process of insertion of the Model TOIL Term had not yet fully concluded, HIA understands that the majority of Modern Awards will include a provision enabling employers and employees to enter into TOIL arrangements. It would seem at odds with the conclusion of the Commission above, not to insert arrangements for TOIL in the Onsite and the Joinery Awards.

The impact of the exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

3.3.20 In respect of s134(1)(h) the Commission in the Award Flexibility Decision stated:

'As we have mentioned, we accept that flexible working arrangements, such as TOIL, may encourage greater workforce participation, particularly by workers with caring responsibilities. We also accept that increasing workforce participation may also result in increased economic output and productivity'.³⁸



³⁶ [2015] FWCFB 4466 at paragraph 242
³⁷ [2015] FWCFB 4466 at paragraph 243
³⁸ [2015] FWCFB 4466 at paragraph 245



3.3.21 HIA submits that the above reasoning be adopted in relation to the Onsite Award and the Joinery Award. The findings above should be afforded significant weight and while the historical development of the Modern Awards has been deemed relevant such considerations must pale in comparison to the overwhelming support for the insertion of TOIL provisions as outlined in the Award Flexibility Decision.

4. INDUSTRY SPECIFIC REDUNDANCY SCHEME

4.1 THE CURRENT PROVISION

4.1.1 Clause 17 of the Onsite Award currently contains an Industry Specific Redundancy Scheme (ISRS) in the following terms:

17.1 *The following redundancy clause for the on-site building, engineering and civil construction industry (as defined) is an industry specific redundancy scheme as defined in s.12 of the Act. In accordance with s.123(4)(b) of the Act the provisions of Subdivision B—Redundancy pay of Division 11 of the NES do not apply to employers and employees covered by this award.*

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.

17.3 *Redundancy pay*
(a) A redundant employee will receive redundancy/severance payments, calculated as follows, in respect of all continuous service with the employer:

| <i>Period of continuous service with an employer</i> | <i>Redundancy/severance pay</i> |
|--|--|
| <i>1 year or more but less than 2 years</i> | <i>2.4 weeks' pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks' pay</i> |
| <i>2 years or more but less than 3 years</i> | <i>4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay</i> |
| <i>3 years or more than but less than 4 years</i> | <i>7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay</i> |
| <i>4 years or more</i> | <i>8 weeks' pay</i> |

(b) Provided that an employee employed for less than 12 months will be entitled to a redundancy/severance payment of 1.75 hours per week of service if, and only if, redundancy is occasioned otherwise than by the employee.

(c) Week's pay means the ordinary time hourly rate at the time of termination multiplied by 38. Hour's pay means the ordinary time hourly rate at the time of termination.

(d) If an employee dies with a period of eligible service which would have entitled that employee to redundancy pay, such redundancy pay entitlement will be paid to the estate of the employee.

(e) Any period of service as a casual will not entitle an employee to accrue service in accordance with this clause for that period.



- (f) *Service as an apprentice will entitle an employee to accumulate credits towards the payment of a redundancy benefit in accordance with this clause if the employee completes an apprenticeship and remains in employment with that employer for a further 12 months.*

17.4 *Redundancy pay schemes*

- (a) *An employer may offset an employee's redundancy pay entitlement in whole or in part by contributions to a redundancy pay scheme.*
- (b) *Provided that where the employment of an employee is terminated and:*
- I. *the employee receives a benefit from a redundancy pay scheme, the employee will only receive the difference between the redundancy pay in this clause and the amount of the redundancy pay scheme benefit the employee receives which is attributable to employer contributions. If the redundancy pay scheme benefit is greater than the amount payable under clause 17.3 then the employee will receive no redundancy payment under clause 17.3; or*
 - II. *the employee does not receive a benefit from a redundancy pay scheme, contributions made by an employer on behalf of an employee to the scheme will, to the extent of those contributions, be offset against the liability of the employer under clause 17.3, and payments to the employee will be made in accordance with the rules of the redundancy pay scheme fund or any agreement relating thereto. The employee will be entitled to the fund benefit or the award benefit whichever is greater but not both.*
- (c) *The redundancy pay scheme must be an Approved Worker Entitlement Fund under the Fringe Benefits Tax Regulations 1992 (Cth).*

17.5 *Service as an employee for the Crown in the Right of the State of Western Australia, the Crown in the Right of the State of New South Wales, Victorian Statutory Authorities, or the Crown in the Right of the State of Victoria will not be counted as service for the purpose of this clause*

4.2 THE PROPOSED VARIATION

- 4.2.1 HIA has submitted a number of options in relation to its proposed variations to Clause 17 of the Onsite Award.
- 4.2.2 HIA's primary position is that the redundancy provisions of the National Employment Standards should apply to those covered by the Onsite Award.
- 4.2.3 A Draft Determination seeking to vary the Onsite Award to remove the ISRS is attached to these submissions at **Attachment D**.
- 4.2.4 HIA's secondary position is that if we are unsuccessful in convincing the Commission of the need to remove the ISRS from the Onsite Award HIA proposes that Clause 17 be varied to as follows:
- Amend the **Definition of Redundancy** provided by Clause 17.2 in the manner outlined in the Draft Determination attached to these submissions at **Attachment E** **OR** the Draft Determination attached to these submissions at **Attachment F**.
 - Insert a new provision that would provide a **Small Business Exemption** included in the Draft Determination attached to these submissions at **Attachment E** and **F**.
 - Insert a new provision that would provide an **Incapacity to Pay** included in the Draft Determination attached to these submissions at **Attachment E** and **F**.



4.3 THE ISRS

- 4.3.1 HIA's principal position is that the ISRS no longer meets the Modern Awards Objectives.
- 4.3.2 The award safety net should be reflective of the safety net established by the Federal Parliament through the FWA and the National Employment Standards (NES).
- 4.3.3 HIA submits that the ability to impose an industry specific scheme that overrides that safety net entitlement undermines the very notion of a safety net that applies to all national system employers and employees and is at odds with the objects of the FWA.
- 4.3.4 The introduction of the ISRS into building and construction awards has a long and 'complex history'³⁹ most of which was canvassed in the Decision of 10 October 1990:⁴⁰

*'My learned friend Mr Kaufman has fulsomely drawn to the Commission's attention the history of redundancy pay in the building industry at least starting with the Full Bench. Of course, it has a significant history before that, and I do not take the Commission to it, but it has been gone over in a number of proceedings and the Commission as presently constituted has been familiar with the redundancy pay problems that have existed not only during the course of these current matters but also the Commissioner was one of the members of the Commission that referred to the Full Bench matters that ultimately ended in the building industry inquiry and the severance pay decision of the Full Bench. But the history of redundancy pay in the building industry goes well beyond 1989, indeed, redundancy pay agreements and awards were being made in the early to mid seventies. Nevertheless, 1989 was the first time in which a decision of a general nature was given in relation to the building industry. The Commission would be aware that that decision of the Full Bench was stayed by order of the High Court of Australia, and the Full Bench itself never came to make an order arising from that decision.'*⁴¹

- 4.3.5 In 1989 the Commission 'adopt(ed) a redundancy payment scheme designed to meet the needs of this industry'⁴² stating that:

'It is clear that many employees work in the building and construction industry for extended periods and are employed by many employers in the normal course of employment. This fact is supported by a number of agreements about employment related matters, for example, the treatment of superannuation, long service leave in some States, and the redundancy agreements made by the Australian Federation of Construction Contractors (AFCC) and the Master Builders' Association of Victoria (MBAV), all of which recognise labour mobility.'

³⁹ Print K1447 16 January 1992

⁴⁰ Print J4870

⁴¹ Ibid

⁴² [1989] AIRC 175 (22 March 1989)



We have decided to recognise this concept of employment and to make special provision for the accrual of redundancy benefits for employees working in this industry and therefore we determine:

- *An employee will be entitled to accrue redundancy benefits up until he or she leaves the industry.*
- *An employer will be required to provide a statement of service of an employee on each occasion that employee's service is terminated.*
- *When an employee decides that he or she no longer wishes to work in the industry, he or she shall produce to his or her current employer a statutory declaration to that effect.*
- *The employee will then be entitled to redundancy benefits commensurate with his/her years of service in the industry.*
- *For the purposes of implementation, credit will be given for service which an employee has given to his/her current employer.*⁴³

4.3.6 The effect of this decision was to establish a system, not dissimilar to portable long service leave schemes that currently exist in the sector across the country, to enable an employee to accrue service in the industry and be paid a 'redundancy payment' when they decide to leave the industry, not when the employment ends with a particular employer.

4.3.7 In the proceedings of October 1990 the Commission was asked to make a consent award, the terms of which were as follows:

'A change in the award definition of redundancy which places the initiation of the redundancy provision with the employer rather than the employee as at present and which exempts dismissal for misconduct or refusal of duty from the redundancy provision.

The introduction of pro rata application of the TCR scale with a maximum payment of eight weeks pay after four or more years of service.

The removal from the award of the "exempt fund concept" and its replacement with a simple "double dipping" exclusion clause which allows "payment made by a fund designed to meet employers liabilities" to be set off against the liability of the employer arising in respect to the award provision.

*A reversion to "service with an employer" as the basis for the accrual of redundancy entitlements as opposed to service "in the industry" as at present.*⁴⁴

(our emphasis added)

⁴³ [1989] AIRC 175 (22 March 1989)
⁴⁴ 10 October 1990 Print J4870



- 4.3.8 Clearly there were problems with the implementation of a ‘portable’ arrangement for redundancy entitlements and the change agreed to saw a redundancy payment made at the end of service with an employer as opposed to the end of service in the industry.
- 4.3.9 Further, based on the terms agreed to above, redundancy payments were intended to operate in a way that triggered a payment on the **initiation of the employer rather than the employee**, indicating that a redundancy payment was never intended to be triggered at the initiation of the employee, in fact the notion that a redundancy payment was only to be triggered at the initiation of an employer is supported by the exclusion of the application of the payment in situations of misconduct and refusal of duty, circumstances that would obviously only be triggered by the employer.
- 4.3.10 These decisions have created a situation in which the definition of ‘Redundancy’ under the Onsite Award is at significant odds with the general understanding of the term and that which is provided by the NES.
- 4.3.11 Under the NES ‘Redundancy’ is the termination of employment because the employer has determined that the employee’s job no longer exists, is not needed or if the employer becomes insolvent or bankrupt.
- 4.3.12 Notwithstanding this, the construction industry through the Onsite Award has its own (and much broader) definition that is interpreted to provide that a redundancy exists if employment ceases for any reason other than misconduct or refusal of duty.
- 4.3.13 This means that an employer is obliged to pay severance whether the employee is terminated by the employer, resigns, retires, loses a required qualification, becomes totally incapacitated for work, dies or is retrenched (just to name a few scenarios).
- 4.3.14 If the Commission is not minded to remove the ISRS and instead refer to the NES within the Onsite Award then the definition of ‘Redundancy’ within the Onsite Award should be reflective of the ordinary and commonly accepted meaning of ‘genuine redundancy’ as devised by the then Australian Conciliation and Arbitration Commission in the 1984 Termination, Change and Redundancy Case (the ‘**TCR Case**’).⁴⁵
- 4.3.15 In the TCR case it was made clear that the right to redundancy referred to situations caused at the initiative of the employer, whether directly as a result of technological change or company restructuring or indirectly because of insolvency or liquidation. This was again confirmed in the 2004 Redundancy Case⁴⁶ in which it was stated that the intended operation of severance pay was primarily directed at ameliorating the ‘inconvenience and hardship’ of sudden job loss and compensation for non-transferable credits.
- 4.3.16 HIA submits that while in the past it has been observed that the *‘The 1984 TCR Test Case specifically did not contemplate the building and construction industry it being excluded from that case’*⁴⁷ the adoption of the standard in the FWA provides fertile ground to challenge such historical conclusions.

⁴⁵ 2 August 1984 Print F6230; (1984) 294 CAR 175

⁴⁶ 26 March 2004 PR032004

⁴⁷ 16 January 1992 Print K1447



4.3.17 During the award simplification process Commissioner Merriman continued to follow the established course of action set in the 1990's:

'Clause 15 - Redundancy

All parties agree that the subject of redundancy is allowable, however, the definition as contained within this award was argued by the Government and some Employers to be inconsistent with the Test case and not "consistent with the use of concepts in industrial practice in Australia". Commissioner Wilks in the Plumbing Industry Award decision [Print Q8609 p33] provides a number of reasons as to why he believes the redundancy provision in that award, which is consistent with this award, is consistent with the use of the concepts in industrial practice in Australia and, therefore, consistent with the Full Bench decision in the CBOA case. In addition to the reasons provided by Commissioner Wilks, the Commission is of the view that a substantial part of the redundancy provisions and entitlements within this award would be allowable under s.89A(n) - notice of termination. The entitlements, given the reasons that they are paid, flow in some circumstances following the giving of notice where in other circumstances they flow from the cessation of the work. For these reasons the Commission is prepared to maintain the existing clause in the award in its current form because, in the Commission's view, it is allowable pursuant to s.89A(2)(m) and (n).'⁴⁸

4.3.18 In its April 2009⁴⁹ decision the Full Bench:

'...decided to include the current industry award redundancy provisions in the modern award as an industry-specific redundancy scheme'.⁵⁰

4.3.19 Such a scheme was said to be permissible via section 141 of the *Fair Work Bill 2009* (as it was at the time) on the basis of a consideration of the following factors:

- when considered in totality, whether the scheme is no less beneficial to employees in that industry than the redundancy provisions of the NES; and
- whether the scheme is an established feature of the relevant industry.

4.3.20 In considering whether to include the award specific redundancy obligation the Full Bench determined that:

'We are satisfied that the redundancy scheme in the building industry award redundancy provisions is an established feature of the building and construction industry. Having regard to the arbitral history and general application of the current redundancy prescriptions within

⁴⁸ 23 July 1999 Print R7494 at paragraph 17

⁴⁹ [2009] AIRCFB 345

⁵⁰ Ibid at paragraph 75



awards in the building and construction industry the scheme is properly described as an industry specific redundancy scheme.⁵¹

...

Whilst, as noted in our 23 January 2009 statement, the current award prescription does not reflect the standard for larger employers arising from the Redundancy Case 2004 decision,³⁰ when regard is had to the slightly more beneficial scale of benefits in earlier years, the broader application of the benefit and the pattern of limited periods of continuous service within the industry to which the building and construction redundancy provisions were directed we are also satisfied that when considered in totality, the scheme is no less beneficial to employees in the industry than the redundancy provisions of the NES. In relation to the pattern of service in the industry, we have relied on to the data supplied by Incolink, BERT and CoINVEST contained in the CFMEU submission of 11 March 2009.⁵²

4.3.21 The arguments made during award modernisation were directed at whether or not the redundancy provisions within construction awards could constitute an industry specific redundancy scheme within the meaning of s141 of the (then) *Fair Work Bill 2008*. The appropriateness of such a scheme for the industry and the terms of the scheme were not fundamentally challenged or considered beyond the context of s141, of note:

‘The Master Builders Australia (MBA) and some other employer bodies contended that the building industry arrangements cannot constitute an industry specific redundancy scheme. It was pointed out that the application of the scheme extends beyond redundancy as defined by the NES. Some suggested that the definition of redundancy in the current award provisions should be modified to reflect the NES. We do not accept these submissions. There are several reasons. First, in determining whether a particular scheme is an “industry specific redundancy scheme” the Commission can have regard to the factors mentioned in the passage we have set out above. Having regard to those factors, we are satisfied that they apply to the scheme. Secondly the definition of redundancy in the NES does not apply to an industry specific scheme. Clause 64, which is in Subdivision C—Limits on scope of this Division – of the NES, provides that Subdivision B does not apply to an employee covered by a modern award which includes an industry-specific redundancy scheme. While Subdivision B sets out the circumstances in which the NES entitlement to redundancy pay arises and to the amount of the entitlement that subdivision does not apply to an industry-specific redundancy scheme. It follows that an industry-specific redundancy scheme can deviate from the NES redundancy prescription in relation to both the circumstances in which the benefits arise and the amount of the benefits. Thirdly, the ability to include an industry-specific redundancy scheme in a modern award implies that the scheme as a whole can be included. A modified scheme might not meet the criterion, found in the consolidated request, that the scheme be a feature of the industry. Finally, the building

⁵¹ [2009] AIRCFB 345 at paragraph 77
⁵² *Ibid* at paragraph 80



industry scheme clearly falls within the definition of industry specific redundancy scheme in s.12 of the Fair Work Bill 2009, the relevant part of s.12 reads:

“industry-specific redundancy scheme means redundancy or termination payment arrangements in a modern award that are described in the award as an industry-specific redundancy scheme.”⁵³

4.3.22 During the 2012 Modern Award Review HIA sought to vary the industry specific redundancy scheme in respect of the definition of redundancy and to insert a small business exemption.

4.3.23 In refusing the grant the variation Watson SDP in *Master Builders Australia*⁵⁴ determined that:

‘The decision of the Award Modernisation Full Bench in respect of the terms of the industry specific redundancy scheme, including its broader application arising from the definition of “redundancy” specifically considered the terms and history of the redundancy prescriptions within modern awards in the building and construction industry and deviations within it from the NES. Most significantly the Award Modernisation Full Bench considered and rejected the suggestion that the definition of “redundancy” should be modified to reflect the NES, the very argument agitated in the current proceedings by the HIA, without identifying any changed circumstances or any other cogent reason to support variation of the Building On-site Award.

The decision of the Award Modernisation Full Bench in respect of the small business exemption in the Building On-site Award is consistent with its general approach to the small business exemption within modern awards, reflected in its 19 December 2008 decision in relation to the making of Priority modern awards. The approach taken—that as a general rule the small business exemption will be maintained, except for pre-modern awards and industries in which there was no small business exemption prior to the Redundancy Case 2004—had regard to the full arbitral and legislative history of redundancy pay for employees of small business.

The HIA has done nothing more than to re-argue some of the issues raised and determined by the Award Modernisation Full Bench in including in the Building On-site Award the industry specific redundancy scheme, in the terms of clause 17. The HIA has put no cogent reasons for altering the terms of clause 17 of the Building On-site Award which were the product of extensive debate and a considered decision by the Award Modernisation Full Bench. This claim by the HIA is refused.⁵⁵

4.3.24 HIA submit that what is abundantly clear from the above is that the appropriateness Clause 17 of the Onsite Award has not fully been considered since at least 1989.

⁵³ [2009] AIRCFB 345 at paragraph 81

⁵⁴[2013] FWC 4576

⁵⁵ Ibid at paragraph 203-205



4.4 THE MODERN AWARDS OBJECTIVES

The relative living standards and the needs of the low paid

4.4.1 HIA submits that this is not a relevant consideration for this variation application.

The need to encourage collective bargaining

4.4.2 All options put forward by HIA to vary Clause 17 of the Onsite Award could encourage collective bargaining.

4.4.3 Parties would be at liberty to negotiate greater benefits than the NES or agree to specific provisions that relate to small businesses.

4.4.4 The current provision provides no flexibilities in relation to negotiated outcomes other than for an employer to agree to make payments into union run Industry Redundancy Trust schemes.

The need to promote social inclusion through increased workforce participation

4.4.5 HIA submits that this is not a relevant consideration for this variation application.

The need to promote flexible modern work practices and the efficient and productive performance of work

4.4.6 The history of the ISRS clearly demonstrates that it is from a bygone era and does not and cannot promote modern flexible work practices.

4.4.7 The decisions of the 1980's and 1990's demonstrate that the adoption of a consent position in relation to the ISRS was seen as a way of resolving the endemic industrial disputation in the sector at the time.

4.4.8 Commissioner Palmer's comments in the decision of October 1990 highlight this:

'These extended proceedings have been carried out against a backdrop of continuous and costly disputation in the field in respect to several aspects of the current award provisions and the operation of the "exempt funds". To approve the agreement on a provisional basis as I have will give the agreement an opportunity to prove that it is capable of overcoming the existing problems.

The existing award provisions are not working because they lack the support and commitment of the industry and particularly the employer respondents. The reasons for this are apparent from the evidence in this matter and whilst the behaviour of the respondents cannot be condoned it is understood. This agreement has the support of all respondents and should therefore be capable of effective application.

As pointed out by Mr Rothman the new agreement is less costly in economic terms, avoids the payment of redundancy in inappropriate situations e.g., dismissal for gross misconduct and does not exceed the TCR scale.

The agreement addresses the matters referred to me by the Full Bench in Print J3518 i.e., the definition of redundancy and the question of eligibility for exemption from redundancy funds not subject to proper control (via the deed of limited adherence provision) and also addresses the issues raised by myself in my statements of 6 February and 24 April and stated elsewhere in



this decision i.e., competition between funds leading to disputation, the use of funds to circumvent the National Wage Case principles, the definition of redundancy and the protection of award based schemes as opposed to "exempt funds" and in my view produces an adequate response to those questions raised by the Bench and myself.

*The agreement is in conformity with the original Full Bench decision except as to the question of "service with the industry" as opposed to service "with the employer" as is now proposed. In this respect it is disappointing that the industry immediately following the Full Bench decision was unable and I suspect unwilling to co-operate to introduce the arrangements envisaged by the Bench. However, it is my view that this agreement is closer to the framework established by the Full Bench than the existing award arrangements and the adoption of the agreement is therefore in many respects the "lesser of the two evils" particularly having regard to the broad support which it enjoys.'*⁵⁶

- 4.4.9 This consent position then flowed throughout the rest of the construction industry, there being subsequent unsuccessful attempts to challenge the application of the provision in other construction awards⁵⁷ and in fact the provision ultimately flowed through to state based awards⁵⁸ not due to any proactive decision making but largely on the basis that no relief could be granted from the effect of the Full Bench decision to introduce redundancy provisions, nor could any relief be offered from the arbitrated decision of Commissioner Grimshaw made in October 1989.⁵⁹
- 4.4.10 Whilst disputation still occurs within the industry it has moved some way from the circumstances that led to the inclusion of the scheme at that time and as such the premise on which the ISRS was first introduced no longer prevails.
- 4.4.11 The current provision is clearly at odds with the need to promote modern flexible work practices and the efficient and productive performance of work.

The need to provide additional remuneration for, employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or employees working shifts

- 4.4.12 HIA submits that this is not a relevant consideration for this variation application.

The principle of equal remuneration for work of equal or comparable value

- 4.4.13 HIA submits that this is not a relevant consideration for this variation application.

⁵⁶ 10 October 1990 Print J4870

⁵⁷ For example see 16 January 1992 Print K1447 and 3 February 1992 Print K1655

⁵⁸ See for example 4 June 1998 Print Q1599

⁵⁹ 3 February 1992 Print K1655



The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.

- 4.4.14 The Statements of both Rick Sasson⁶⁰ and Huan Do⁶¹ provide evidence of the shock and surprise of HIA Members when they understand that they are required to make a redundancy payment in circumstances of resignation. This is felt more strongly in Tasmania as the pre reform *Building and Construction Industry Award (Tasmania)*⁶² did not contain the ISRS.
- 4.4.15 HIA submit that the costs associated with the ISRS are self-evident, on every occasion that an employee leaves an employer (aside from misconduct or refusal of duty) an employer is required to pay redundancy under the ISRS, even in circumstances in which the employee has been engaged for less than 12 months.
- 4.4.16 For a weekly hire full time carpenter this could be up to approximately \$7,000 depending on the employees length of service,⁶³ which would be payable even on resignation. HIA submits that it is absurd that there be a payment incentive to resign. Not only does this negatively impact on staff retentions, employers should not be obliged to budget for resignation payments over which they have no control. The provision as it stands does not represent a fair minimum safety net.
- 4.4.17 In fact, the evidence shows that:
- Payments under the ISRS may lead to business closure.⁶⁴
 - HIA Members see the ISRS as a disincentive to employ.⁶⁵
- 4.4.18 It is for these reasons that (if HIA’s principal position is not adopted) HIA also seeks the insertion of an incapacity to pay provision.
- 4.4.19 This option is currently provided to all national system employers per section 120 of the FWA, yet is unavailable to those under the Onsite Award due the operation of the ISRS which excludes the operation of the provisions of Subdivision B- Redundancy Pay of Division 11 of the NES. Adopting HIA’s variation in this regard would ensure that those employers covered by the Onsite Award are on a level playing field with other businesses across the country and are afforded the same safety net entitlements.
- 4.4.20 The further consequence of this scheme is that it applies to small business – contrary to the prima facie view that redundancy obligations should not apply to small businesses.
- 4.4.21 In 1989, the Commission determined to remove the small business exemption for the redundancy provisions of various building industry awards finding that:

‘In this connection, we find the arguments advanced by Mr Rothman persuasive. Indeed, a number of employers have been prepared to concede this claim. Accordingly, and given the

⁶⁰ At Attachment G to these submissions

⁶¹ At Attachment H to these submissions

⁶² AN170010

⁶³ Based on an hourly rate of \$22.38

⁶⁴ Statement of Rick Sassin at paragraph 14 at Attachment G to these submissions

⁶⁵ Statement of Huan Do at paragraph 15 at Attachment H to these submissions



special characteristics of employment in this industry, the scheme to be provided in the various awards will not provide an exemption for employers who engage fifteen or fewer employees.⁶⁶

4.4.22 Of relevance, the arguments advanced by Mr Rothman representing the Unions were summarised by the Full Bench as follows:

'As to the claim that the clause should apply to enterprises with less than fifteen employees, Mr Rothman submitted that the nature of employment in the building and construction industry was quite different from an established business in other industry sectors. He submitted that unlike other sectors, the nature of subcontracting produced fluctuations in employee numbers.

Further, it was submitted that on any building site there could be several contractors and/or subcontractors with widely varying employee numbers. As a consequence, if the Commission adopted the "fifteen or less" criterion, its application could cause disputes because of different conditions applying on the one site.⁶⁷

4.4.23 With the introduction of the FWA came section 121 which provides an exemption from redundancy payments for employers with less than 15 employees. The statement of the safety net by the FWA should take precedent over a decision of the Commission made over 25 years ago.

4.4.24 The costs associated with the ISRS are exacerbated for small businesses who should be afforded the same protections as those recognised to be necessary for all other small business in Australia.

The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

4.4.25 The inconsistencies between the ISRS and the NES are bewildering to HIA members.⁶⁸

4.4.26 HIA's variations aim to provide consistency between the Onsite Award, the obligations imposed by the FWA and the other 120 Modern Awards that have adopted the NES.

4.4.27 The current circumstances are clearly anomalous.

The likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

4.4.28 HIA submits that that the flow on effects of the arguments raised above would benefit employment growth and competitiveness of the national economy.

⁶⁶ 1989 AIRC 175 (22 March 1989)

⁶⁷ Ibid

⁶⁸ See generally statements of Rick Sassini at Attachment G and Huan Do at Attachment H to these submissions



5. TOOL AND EMPLOYEE PROTECTION ALLOWANCE

5.1 THE CURRENT PROVISION

5.1.1 Clause 20.1 of the Onsite Award provides that a tool allowance must be payable for all-purposes of the award with the amount of the allowance varying depending on the trade.

5.1.2 Specifically, Clause 20.1(a) provides:

A tool allowance must be paid for all purposes of the award in accordance with the following table:

| Classification | Tool allowance \$ per week |
|--|---------------------------------------|
| <i>Artificial stoneworker, carpenter and/or joiner, carpenter-diver, carver, bridge and wharf carpenter, floor sander, letter cutter, marble and slate worker, stonemason or tilelayer</i> | 30.45 |
| <i>Caster, fixer, floorlayer specialist or plasterer</i> | 25.17 |
| <i>Refractory bricklayer or bricklayer</i> | 21.61 |
| <i>Roof tiler, slate-ridger or roof fixer, tradespersons in the metals and engineering construction sector</i> | 15.95 |
| <i>Signwriter, painter or glazier</i> | 7.31 |

5.1.3 The clause also clarifies that the allowance does not include the provision of certain tools and protective equipment that are identified within the Onsite Award and provides that where the employee is provided these tools they are required to be reimbursed.

5.2 THE PROPOSED VARIATION

5.2.1 HIA proposes to vary Clause 20.1 (a) in order to:

- Place a positive obligation on the employee to provide and maintain tools and protective equipment in order to receive the allowance; and
- Expressly state that the allowance will not be paid to an employee if the employer provides all tools and protective boots.

5.2.2 A Draft Determination seeking to vary the Onsite Award is attached to these submissions at **Attachment I**.

5.2.3 The Tool and Employee Protection allowance is an **'expense related allowance'** and, therefore should only be payable where the expense is incurred by the employee in order to reimburse them for the cost associated with purchasing and maintaining tools.

5.2.4 HIA makes this submissions on the following grounds:

- The location of the allowance falls within the section of the Onsite Award entitled **'expense related allowance'**.

- The allowance is adjusted as per clause 20.4(b) in accordance with the adjustment of other expense related allowances.
- Both the meal allowance and the compensation for clothes and tools allowance also contained with the section entitled 'expense related allowance' are only payable where circumstances arise that would lead to the incursion of the expense.
- The history of the award indicates that this allowance was considered a 'reimbursement of expense'.

5.3 INTERPRETATION OF THE ONSITE AWARD

- 5.3.1 It is clear on the face of the Onsite Award, that the allowance provided by Clause 20.1(a) is an 'expense related allowance'.
- 5.3.2 In the case of the meal allowance under clause 20.2, on working overtime for at least one and a half hours after their ordinary hours the employer must pay an amount to meet the cost of a meal. Notably, if the employee is in receipt of reasonable board and lodging or is receiving a distant job allowance and provided with a suitable meal they will not be entitled to the meal allowance.
- 5.3.3 Similarly in the case of the compensation for tools and clothing allowance a reimbursement is to be provided by the employer in certain circumstances, for example where an employees clothes have been '*accidentally spoilt by acid, Sulphur or other deleterious substances, fire, molten metal or corrosive substances*'.
- 5.3.4 In contrast an employer is required to pay the Tool and Employee Protection Allowance regardless of whether the employer provides all of the tools or the employee does not properly maintain their tools.
- 5.3.5 HIA submits that the variation, if adopted would ensure the provision is truly reflective of the nature and application of the allowance.

5.4 THE PURPOSE OF THE TOOL AND EMPLOYEE PROTECTION ALLOWANCE

- 5.4.1 As a consequence of a range of factors in the early part of the 1980, in the 1983 National Wage Case the Australian Conciliation and Arbitration Commission was tasked with, determining whether there should be a return to a centralized wage fixation system, the principles on which such a system should operate and the time for it to come into operation.⁶⁹
- 5.4.2 Principle 9 related to how allowances would be adjusted and provided:

(a) Existing Allowances

(i) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

⁶⁹ National Wage Case 1983 Print F2900, 23 September 1983 at pg.12



(ii) Existing allowances which relate to work or conditions which have not changed may be adjusted from time to time to reflect the movements in wage rates as a result of national wage adjustments.

(iii) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 4.

(b) New Allowances

(i) New allowances will not be created to compensate for disabilities or aspects of the work which are comprehended in the wage rate of the classification concerned.

(ii) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(iii) New allowances to compensate for changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 4.

(iv) New allowances to compensate for new work or conditions will be determined in accordance with the provisions of Principle 10(b).

(v) No other new allowances may be awarded.⁷⁰

5.4.3 In November 1983⁷¹ a dispute arose in relation to a proposal to increase various allowances under the national building industry awards and to introduce a new allowance, the *Building Industry Recovery Procedure Allowance*.

5.4.4 The decision⁷² set out the history of the proceedings which included reference to an agreement entitled '*Memorandum of Understanding for the improvement of Industrial Relations in the Building Industry*', entered into between the parties. The Full Bench noted:

*'...the parties did not seek ratification of their agreement. It was stressed that the Commissions approval was not sought, but we were asked to consider the whole of the agreement as the grounds in support of applications for increases in allowances in the awards, and for approving the introduction of new allowance. The allowances fall into three categories : first, those which are reimbursement of expenses incurred by employees, such as the tool allowance and the allowances for travel; second, work related allowances ; and third, the new proposal, titled Building Industry Recovery Procedure Allowance.'*⁷³

(our emphasis added)

5.4.5 The Commission determined that:

'...the parties proposals for increasing the re-imbusement allowances are correct. The adjustments are in the nature of compensation to employees for monies expended and are

⁷⁰ National Wage Case 1983 Print F2900, 23 September 1983 at pg. 53

⁷¹ F3546

⁷² Ibid at pg. 11

⁷³ Ibid at pg. 4



*contemplated by Principle 9(a)(i); in our view, the proposal should be implemented as soon as possible.*⁷⁴

- 5.4.6 The Commission refused to vary the remaining allowances, that were considered to be related to work performed in the industry, including Industry Allowance and all special rates, and were said to fall within Principle 9(a)(ii).⁷⁵
- 5.4.7 From this point, the Tools and Employee Protection Allowance was simply adopted.
- 5.4.8 No decision during award simplification seemed to consider the proper intent and purpose of the Tool and Employee Protection Allowance⁷⁶ nor was there a decision during award modernisation, that expressly considered the operation of the allowance.
- 5.4.9 The next occasion on which the Commission was asked to consider the Tool and Employee Protection Allowance was during the 2012 Modern Awards Review when HIA applied to vary the Onsite Award in the same terms as that outlined above. The variation was refused, Watson SDP finding that:

*'The payment of the tool allowance is nothing new under the construction awards and has been payable as part of the all purpose rate for on-site tradespeople since the first pre-modern awards/instruments were ever made and that the HIA brought no evidence of the tools that are provided by the employers and whether those tools they provide are fit for the job.'*⁷⁷

- 5.4.10 HIA's principal opposition to the current provision is that an employer is required to pay the Tool and Employee Protection Allowances even in circumstances in which the employer has provided the tools. As such, HIA submits that a case for change is one that turns on the proper construction of the purpose of the allowance, a matter clearly not addressed by the decision of the Commission in *Master Builders Australia*⁷⁸, or in fact in any prior decision of the Commission since 1983.

5.5 THE MODERN AWARDS OBJECTIVES

The need to encourage collective bargaining

- 5.5.1 HIA submits that this is not a relevant consideration for this variation application.

The need to promote social inclusion through increased workforce participation

- 5.5.2 HIA submits that this is not a relevant consideration for this variation application.

The need to promote flexible modern work practices and the efficient and productive performance of work

- 5.5.3 HIA submits that this is not a relevant consideration for this variation application.

⁷⁴ F3546 at pg. 14

⁷⁵ *ibid* at pg.14

⁷⁶ See 23 July 1999 Print R7494, 7 October 1999 Print R9803 and 6 June 2000 Print S6692

⁷⁷ [2013] FWC 4576 at paragraphs 213 - 217

⁷⁸ [2013] FWC 4576



The need to provide additional remuneration for, employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or employees working shifts

5.5.4 HIA submits that this is not a relevant consideration for this variation application

The principle of equal remuneration for work of equal or comparable value;

5.5.5 HIA submits that this is not a relevant consideration for this variation application

The impact of the exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

5.5.6 While it is customary in most trades for each tradesperson (and, in some cases, apprentices) to possess a kit of tools necessary to carry out most classes of work this is not always the case.

5.5.7 The HIA Member Survey indicates that just over half of respondent provide their employees with all the tools and protective boots necessary to carry out their work⁷⁹ but as per the Onsite Award, would still be required to pay the tools allowance. This essentially doubles the cost burden on employers.

5.5.8 HIA submits that the payment of the allowance is simply an additional automatic amount payable to all employees in the industry, which is also payable for all purposes of the award.

The need to ensure a simple, easy to understand, stable and sustainable modern awards system

5.5.9 If HIA's variation it would make it clear that the allowance provided by Clause 20.1(a) is an expense related allowance reflecting the intent of the provision i.e. to reimburse employees for the cost of the tools they provide and their maintenance.

The impact of the exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

5.5.10 HIA submits that this is not a relevant consideration for this variation application

6. FARES AND TRAVEL PATTERNS ALLOWANCE

6.1 THE CURRENT PROVISION

6.1.1 Clause 25 of the Onsite Award currently provides:

25. Fares and travel patterns allowance

25.1 Employees will start and cease work on the job at the usual commencing and finishing times within which ordinary hours may be worked, and will transfer from site to site as directed by the employer. Other than in the case of an employee directed by the employer to pick up and/or return other employees to their homes, time spent by an employee travelling from the employee's home to the job and return outside ordinary hours will not be regarded as time worked. No travelling time payment is

⁷⁹ 52% HIA Member Survey at pg. 43



required except as provided for in clauses 21.1, 24.7, 25.5, 25.7 and 36.3. 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.

25.2 Metropolitan radial areas

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 of the principal post office in a regional city or town in a State or Territory.

25.3 Distant work

The allowance prescribed in clause 25.2 must be paid to employees employed on distant work (as defined in clause 24.1), when the work is carried out within a radius of 50 kilometres from the place where, with the employer's approval, the employee is accommodated.

25.4 Country radial areas

(a) An employer with a business or branch or section thereof (for the purpose of engagement) that is established in any place (other than on a construction site) outside the areas mentioned in clause 25.2, must pay their employees the allowances prescribed in clause 25.2 for work located within a radius of 50 kilometres from the post office nearest the employer's establishment.

(b) Where the employer has an establishment in more than one such place the establishment nearest the employee's nominated address will be used for purposes of this clause and employees are entitled to the provisions of clause 25.5 when travelling to a job outside such radial area.

25.5 Travelling outside radial areas

Where an employer requires an employee to travel daily from inside one radial area mentioned in clauses 25.2, 25.3 and 25.4, to work on a construction site outside that area, the employee will be entitled to:

- (a) the allowance prescribed in clause 25.2 for each day worked; and
- (b) in respect of travel from the designated boundary to the job and return to that boundary:
 - (i) the time outside ordinary working hours reasonably spent in such travel, which will be paid at the ordinary time hourly rate, and calculated to the next quarter of an hour 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.

25.6 Residing outside radial areas

An employee whose residence is outside the radial areas prescribed in clauses 25.2, 25.3 and 25.4 and who crosses a radial boundary to travel to a construction site, will be entitled to the allowance prescribed in clause 25.2 for each day worked but not payment for the time reasonably spent in travelling from the designated radial boundary to the job and return to the radial boundary.



25.7 Travelling between radial areas

The provisions of clause 25.5 will apply to an employee who is required by the employer to travel daily from one of those areas mentioned in clauses 25.2, 25.3 and 25.4 to an area, or to another area, mentioned in clauses 25.2, 25.3 and 25.4.

25.8 Provision of transport

(a) No allowances, other than those prescribed in clauses 25.5 and 25.7 and in the circumstances described in clause 25.8(b), will be payable on any day on which the employer provides or offers to provide transport free of charge from the employee's home to the place of work and return.

(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.

25.9 Transfer during working hours

(a) An employee transferred from one site to another during working hours will be paid for the time occupied in travelling and, unless transported by the employer, must be paid reasonable cost of fares by the most convenient public transport between such sites.

(b) Provided that where an employee agrees to their employer's request to use the employee's own car for such a transfer, the employee must be paid an allowance at the rate of \$0.78 per kilometre.

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; and*
- (ii) any rostered day off taken as prescribed in clauses 33—Ordinary hours of work, and 34—Shiftwork.*

(b) The allowances prescribed in this subclause will be taken into account when calculating the annual leave loading.

(c) The allowances prescribed by this subclause will not be taken into account for calculating overtime, penalty rates, annual or personal/carer's leave entitlements.

25.11 Work in fabricating yard

When an employee is required to perform prefabricated work in an open yard and is then required to erect or fix on-site, the provisions of this clause will apply.

25.12 Apprentices

(a) Apprentices will be entitled to a proportion of the allowances prescribed in clauses 25.2, 25.3 and 25.4 in accordance with the following scale:

- (i) on the first year rate—75% of amount prescribed;*
- (ii) on second year rate—85% of amount prescribed;*
- (iii) on third year rate—90% of amount prescribed;*
- (iv) on fourth year rate—95% of amount prescribed.*

(b) (i) Apprentices will only receive the allowances prescribed in clause 25.12(a) for days when they attend work and any rostered day off.



(ii) Apprentices will not be paid the allowance in clause 25.12(a) for days they attend an RTO for training and assessment in accordance with the contract of training.

(iii) 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 25.12(a).

25.13 Adjustment of living away from home—distant work and fares and travel patterns allowance

The monetary allowances prescribed in clauses 24—Living away from home—distant work, and 25—Fares and travel patterns allowance, will be adjusted in accordance with clause 20.4.

6.2 THE PROPOSED VARIATION

6.2.1 While HIA agrees that there is a need within the Onsite Award to compensate employees for the travel required as part of being employed in the industry HIA proposes to replace Clause 25 in order to clearly outline the obligations of employers and the entitlements of employees in relation to travel arrangements and the payment of daily fares.

6.2.2 A Draft Determination seeking to vary the Onsite Award is attached to these submissions at **Attachment J**.

6.2.3 The proposed variations seeks to address three areas of continual frustration expressed by HIA Members:

1. The outdated notion of ‘radial areas’ which forms the basis for the calculation of a number of entitlements under the current provision.

a. As a consequence current clause 25.3 is proposed to be varied so that ‘Distant Work’ is determined to be when an employee is required to travel to a construction site more than 50km from the employee’s usual place of residence.

2. That the allowance is payable to an employee:

- a. When they starts and finishes work at a construction site; and
- b. Who uses his/her own vehicle or uses public transport

3. An employee will not be entitled to the allowance when the employee:

- a. Is absent from work.
- b. Is not required to attend a construction site due to:
 - i. An RDO.**
 - ii. The employee being required to start and finish work at the employer’s workshop, yard or depot.
 - iii. Is provided by the employer, or is offered to be provided by the employer, accommodation that is located at the construction site.**
 - iv. Is provided a company vehicle.**
 - v. Is provided, or offers to be provided, transport free of charge from the employee’s home to the place of work and return by the employer.
 - vi. Is an apprentice attending an RTO for training and assessment in accordance with the contract of training.

6.2.4 Items 1, 3(b)(i),(iii) and (iv) in **bold** represent substantive changes to the current award provision.

6.2.5 HIA expands on two aspects of the proposed variations below including:



- The discrete issues associated with the current use of ‘radial areas’ which forms the basis for the calculation of a number of entitlements under the current provision.
- The purpose of the Daily Fares Allowance, which is the central issue associated with when it is paid and when it is not paid.

6.3 RADIAL AREAS

6.3.1 Most recently, the concept of ‘radial areas’ within Clause 25 was considered during the 2012 Modern Award Review in *Master Builders Australia Limited*.⁸⁰

6.3.2 In that case, specific variations from both the HIA and the MBA were considered.

6.3.3 HIA applied to vary clause 25.2 to 25.8 in similar terms to that before the Full Bench. Notably, during this 4 Yearly Review HIA seeks to remove the notion of ‘radial areas’. During the 2012 Modern Award Review, HIA sought a reformulation of those areas proposing a number of options that would form the basis from which the 50km radius would be determined.⁸¹

6.3.4 In rejecting HIA’s broader claims the Commission determined that:

‘The HIA brought no evidence of practical problems arising from clause 25, no evidence of changed or otherwise significant circumstances, nor any evidence to support substantive changes to the operation of the provision, through the variation it proposes by reference to the modern awards objective, or by establishing an anomaly or technical problem. No cogent reason has been advanced to vary clause 25 in the manner proposed by the HIA. This variation is refused.’⁸²

6.3.5 Of note, during those proceedings the CFMEU argued that:

‘Contrary to the HIA’s claims, the use of radial areas has been applied in all States (except NSW where they used county boundaries) for a considerable period of time (e.g. radial areas were used in the Carpenters and Joiners Award 1946 for South Australia, Tasmania and Victoria⁸⁶). From time to time issues arise as to whether a particular location is inside or outside a radial area but generally the application of radial areas is well understood by the rest of the country.’⁸³

6.3.6 HIA continues to disagree with these unsubstantiated generalisations and persists with the argument that the notion of ‘radial area’ does not meet the Modern Awards Objectives.

⁸⁰ [2013] FWC 4576

⁸¹ Ibid at paragraph 228

⁸² [2013] FWC 4576 at paragraph 235

⁸³ CFMEU Submission in Reply 25 October 2012 AM2012/48 and others at paragraph 14.3



6.3.7 Evidence relied on by HIA demonstrates that HIA Members do not understand the operation of Clause 25. Annexure A to the Statement of Kristie Burt⁸⁴ is an information sheet provided to HIA members in order to explain the operation of Clause 25 and the operation of the radial areas. Ms Burt has also spoken with numerous HIA Members confused about the operation of the provisions.

6.4 THE PURPOSE OF THE ALLOWANCE

6.4.1 The fares and travel patterns allowance provided by Clause 25.1 is said to recognise the *'travel patterns and costs peculiar to the industry, which includes mobility in employment and the nature of employment in construction work'*.

6.4.2 A constant source of frustration for HIA Members is the requirement to pay the Daily Fares Allowances prescribed by Clause 25.2 of the Onsite Award in circumstances in which an employer provides a company vehicle.

6.4.3 Clause 25.8 outlined above clearly provides that:

- The Daily Fares Allowance under clause 25.2 **is not payable** on any day on which the employer provides or offers to provide transport free of charge from the employee's home to the place of work and return;
- The Daily Fares Allowance under clause 25.2 **is 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.

6.4.4 During the 2012 Modern Award Review both the MBA and the HIA brought variation applications in relation to Clause 25.8.

6.4.5 The intent of the variation sought then, is the same at that which is sought during this 4 Yearly Review, that is, to enable an employer who provides their employee with a company vehicle to be exempt from the requirement to pay the Daily Fares Allowance provided by Clause 25.2.

6.4.6 In rejecting both the HIA's and the MBA's variations Watson SDP determined the following:

'It is immediately clear, that the variations sought are erroneously premised on the basis that the fares and travel patterns allowance is prescribed solely in compensation for travel costs.'

The misconceived basis of the fares and travel patterns allowance on which the MBA and HIA submissions are demonstrated on the face of clause 25.1, which requires employees to start and cease work on-site, without payment for travel except in the circumstances specified in clauses 21.1, 24.7, 25.5, 25.7 and 36.3. It then provides that the fares and travel patterns allowance recognises travel patterns and costs peculiar to the on-site building and construction industry, which include mobility in employment and the nature of employment on construction

⁸⁴ At Attachment K to these submissions



work. The two elements are related. As observed by the CFMEU, the provision has a long history, recounted up until 1979 by a Full Bench of the Commonwealth Conciliation and Arbitration Commission in an anomaly matter concerning The National Building Trades Construction Award 1975. The Full Bench approved an increase in the allowance, but noting that problems had arisen from misleading and changing titles to the allowances, they did so on the basis that the title of the clause reflected the purpose of the allowance, renaming it “Compensation for travel patterns, mobility requirements of employees and the nature of employment in the construction work covered by this award”.

Secondly, the HIA variation does not deal with the extent of private benefit and the MBA variant does not require private benefit at all, simply the provision of a vehicle at no cost to the employee for unstated reasons. There is a world of difference between the private benefit of a fully maintained vehicle provided for unlimited private usage and one provided as a “tool of trade” subject to Fringe Benefit Tax exemption, conditional upon private use of certain vehicles “limited to certain work-related travel and non-work-related use that is minor, infrequent and irregular”.

The HIA and MBA proposition that the allowance is provided wholly in relation to travel expenses incurred by employees and should not be paid when the employer meets the costs of transport, ignores the history of clause 25.1, the basis of the fares and travel patterns allowance and the nature of the industry. Those elements of the HIA and MBA applications are dismissed.⁸⁵

- 6.4.7 HIA seeks to deal with the matters raised by Watson SDP.
- 6.4.8 The first matter raised by his Honour essentially relates to the history of the provision, pointing to a decision of 1979⁸⁶ that related to an anomaly regarding fares and travelling allowance.
- 6.4.9 As indicated by his Honour that decision increased the allowance, however the problem that had arisen was due to more than just the name of the clause. The anomaly sought to be resolved related to the payment and non-payment of a particular allowance to plumbers in the construction industry who received the travelling allowance while builder’s labourers did not. Notably, the allowance which gave plumbers 15 minutes travelling time per day was based on the fact that plumbers travel more than other building tradesman.⁸⁷
- 6.4.10 HIA respectfully submit that a decision from 1979 that observed that the change of the name of an award clause had caused some confusion as it relevant purpose should be afforded little weight in the current 4 Yearly Review, particularly when the outcome in that case was largely the result of ‘package’ of changes agreed to by the Master Builders Association and the unions.

⁸⁵ [2013] FWC 4576

⁸⁶ (1979) 229 CAR 630

⁸⁷ Print E1321 (1979) 229 CAR 630 at pg. 631



6.4.11 The purpose and intent of the fares was also dealt with in the decision of *Master Builders' Association of Victoria v Australian Building Construction Employees' and Builders Labourers' Federation*.⁸⁸ In that case the Commission considered clause 16.6 of the *Building Construction Employees' and Builders Labourers Award 1978*.

6.4.12 Clause 16.6 provided in part:

*'Provision of Transport – The allowance prescribed in this clause...shall not be payable on any day on which the employer provides or offers to provide transport free of charge from the employee's home to his place of work and return'*⁸⁹

6.4.13 This is in largely the same terms as current clause 25.8 (a) of the Onsite Award.

6.4.14 In that decision it was held that:

'The fares allowance is determined at a fixed amount per day and is to be paid irrespective of whether the employee incurs any expense in travelling between his home and his particular place of work and return. An employee whose home is alongside his then place of work is just as entitled to be paid the fares allowance as an employee who may be forced to travel many kilometers at great expense from his home to his place of work.

Clause 16.6 relieves an employer from the liability to pay the fares allowance for any day when the provisions of that clause apply. The fact that only one aspect for the justification for the fares allowances is dealt with in cl. 16.6 does not affect the construction of that clause. The construction of the clause depends upon the meaning to be given to the word "transport"...'

*'Accordingly, in our opinion, cl 16.6 should be interpreted as follows: "that the provision of a vehicle by the employer to an employee free of charge to the employee is the provision of transport within the meaning of cl 16.6 when the employee is required, pursuant to his contract of employment to drive that vehicle from his home to his place of work and return on any one day"*⁹⁰

6.4.15 HIA submit that there are three conclusions that can be reached from this decision:

- Notwithstanding clause 25.8(b) current clause 25.8(a) of the Onsite Award would absolve an employer from payment under of the Daily Fares allowance when an employee is required to drive a vehicle provided free of charge from his home to his place of work.

⁸⁸ [1981] FCA 49

⁸⁹ Ibid

⁹⁰ *Master Builders' Association of Victoria v Australian Building Construction Employees' and Builders Labourers' Federation*[1981] FCA 49 at paragraphs 18,19 and 24



- The interpretation of clause 16.6 indicates that exemptions can apply to the general proposition that *‘the allowance is paid irrespective of whether the employee incurs any expense in travelling.’*⁹¹
- Some ‘movement’ to a construction site is expected in order to receive the daily fares allowance. On an RDO, an employee does not travel at all to a construction site. Also, if accommodation is provided at the construction site, it is similarly difficult to argue an entitlement to this allowance.

6.4.16 The decision of *Master Builders Australia [2009] AIRCFB 989* also considered Clause 25.8.

6.4.17 In that case, the MBA sought to include a new clause 25.8 as follows:

*‘In order to be eligible for the allowance prescribed in this clause, the vehicle provided by the employer must be used solely for purposes related to the employee’s employment. Where the vehicle is also used for private use or some other benefit, the allowance will not be payable.’*⁹²

6.4.18 The proposed provision sought to:

*‘clarify that in order to be eligible for daily fares, the vehicle provided must be solely for purposes related to the employee’s employment. Use of the word “sole” would clarify that the eligibility for daily fares must be contingent on the fact that there would be no private use or benefit from provision of the vehicle.’*⁹³

6.4.19 In rejecting the claim the Full Bench determined that:

*‘The variation sought is inconsistent with the terms of cl.38.6 of the NBCIA, upon which cl.25.8 is based. No circumstances have been raised which persuade us to give effect to this variation.’*⁹⁴

6.4.20 The award modernisation Full Bench determined that:

*‘we have included in the exposure draft an MBA formulation of the travel and distant work provision.’*⁹⁵

6.4.21 HIA submits of none of the more recent decisions of the Commission have expressly considered the purpose or intent of the Daily Fares Allowance.

⁹¹ Ibid at paragraph 18

⁹² *Master Builders Australia [2009] AIRCFB 989* at paragraph 33

⁹³ Ibid at paragraph 34

⁹⁴ Ibid at paragraph 36

⁹⁵ [2009] AIRCFB 50 at paragraph 43



6.4.22 The second matter raised by Watson SDP relates to how ‘private benefits’ would be dealt with if a vehicle were provided to an employee free of charge. While HIA does not concede that a variation to the award to provide an exemption from the payment of the Daily Fares Allowance where a company vehicle is provided would also require that the award deal with such matters (which would generally be dealt with in company policies), if the Commission is minded to grant the variation, further consideration could be given to such issues.

6.4.23 HIA submits that aside from a superfluous reference in a decision made in 1981 to the operation of the fares allowance there has been no further express consideration of the purpose or intent of the Fares and Travel Patterns Allowance. This is particularly the case in relation to the express circumstances contained within HIA proposed variation that relate to when, and when not to pay the allowance.

6.5 THE MODERN AWARDS OBJECTIVES

The need to encourage collective bargaining

6.5.1 HIA submits that the proposed variation would have a neutral effect on the need to encourage collective bargaining.

The need to promote social inclusion through increased workforce participation

6.5.2 HIA submits that this is not a relevant consideration for this variation application.

The need to promote flexible modern work practices and the efficient and productive performance of work

6.5.3 The formulation of current Clause 25 is based on decisions from the 1970’s and 80’s and as such those operating under the provision today are not the same as those who may have been involved in or subject to the industrial circumstances that led to the formulation of the clause in the past.

6.5.4 The current provision is at odds with the promotion of flexible modern work practices and acts as a disincentive to provide their employees with company vehicles, without also bearing the burden of additional cost.

6.5.5 33 per cent of respondents to the HIA Member Survey indicated that they provide a company car. For the majority who replied that they did not, the status quo remains⁹⁶, adopting HIA’s variation simply provides support to those in the minority who seek alternative arrangements without the additional cost burden. It is equally relevant to observe that employees may prefer and see benefit in having a company vehicle rather than the an allowance. It is entirely arguable that the benefits conferred by the provision of a vehicle are far greater than that provided by allowance.

The need to provide additional remuneration for, employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or employees working shifts

6.5.6 HIA submits that this is not a relevant consideration for this variation application.



The principle of equal remuneration for work of equal or comparable value

6.5.7 HIA submits that this is not a relevant consideration for this variation application

The impact of the exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

6.5.8 If HIA's variations were adopted, employers in the residential construction industry would be relieved of a number of additional employment costs currently payable in circumstances that seem at odds with the purpose and intent of the Daily Fares Allowance explained above.

6.5.9 In addition, if HIA's variations were adopted, employers in the residential construction industry would also be relieved of the intense regulatory burden associated with the current provision which, in HIA's view, are cumbersome and unwieldy.

The need to ensure a simple, easy to understand, stable and sustainable modern awards system

6.5.10 The provision in its current form is overly complex.

6.5.11 This is clear from the Statement of Kristie Burt marked Attachment K to these submissions. Ms Burt's Statement demonstrates the high volume of assistance required by HIA members in relation to the current provision. Of note, the need to develop the Information Sheet at Annexure A to Ms Burt's Statement coupled with having spoken to over 50 members about the provision and sending out Annexure A to at least 25 different members, demonstrates a need for the provision to be amended to ensure the Onsite Award is simple and easy to understand.

The impact of the exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

6.5.12 HIA submits that if the variation were adopted, in the long term it would have a positive effect on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

7. FREQUENCY OF THE PAYMENT OF WAGES

7.1 THE CURRENT PROVISION

7.1.1 Clause 31.3 of the Onsite Award currently provides:

'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.'



7.2 THE PROPOSED VARIATION

- 7.2.1 HIA seek to vary the Onsite Award in order to allow, the payment of wages on weekly or fortnightly basis and, if by mutual agreement, on a monthly basis.
- 7.2.2 A Draft Determination seeking to vary the Onsite Award is attached to these submissions at **Attachment L**.

7.3 THE AWARD HISTORY

- 7.3.1 HIA submit that issue of the frequency of payment of wages has, in the history of the Onsite Award been largely an uncontested issue and one which has been arrived at by way of consent positions.
- 7.3.2 For example, the award simplification decisions in the *National Building and Construction Industry Award 1990*⁹⁷ generally dealt only with contested matters. The Commission did make the following comment with respect to the payment of wages clause:

‘Clause 20.7 which deals with the particulars for the payment to each employee when wages are paid was argued by some parties as being unnecessary as it is already covered by Regulation 132B of the WR Act. The CFMEU and the MBA argue for its retention on the basis that the award does have some differences from the Regulation and the parties produced a clause which encompasses both. The Commission notes that in the Hospitality decision the Full Bench agreed to the employers’ submissions that such a clause should be deleted. In this matter the major Employers did not make such submissions and therefore the Commission believes the particular subclause is necessary and incidental to an allowable matter, that is payment of wages.’⁹⁸

- 7.3.3 The decision of *Simpson Personnel*⁹⁹ did deal with the specific matter under consideration in this 4 Yearly Review.
- 7.3.4 In that case the applicant applied to vary Clause 31 of the Onsite Award to include a provision for payment of wages on a weekly or fortnightly basis by mutual agreement.
- 7.3.5 While Watson SDP rejected the application he did so on very narrow grounds. Notably His Honour had regard to the 26 June 2009 comment of the Full Bench of the AIRC that:

‘Applications to vary the substantive terms of modern awards will be considered on their merits. It should be noted, however, that the Commission would be unlikely to alter substantive award terms so recently made after a comprehensive review of the relevant facts and circumstances including award and NAPSA provisions applying across the Commonwealth.

⁹⁷ 23 July 1999, 7 October 1999 and 6 June 2000 Prints R7494, R9803 and S6692

⁹⁸ Print R7494 at paragraph 22

⁹⁹ [2010] FWA 2894



*Normally a significant change in circumstances would be required before the Commission would embark on a reconsideration.*¹⁰⁰

7.3.6 Watson SDP went on to state at paragraph 49 that:

'...The comments of the 26 June 2009 Full Bench in relation to applications to vary modern awards, soon after their making, militate against the making of a determination varying the 2010 Modern Award outside the system of 4 yearly reviews of modern awards.'

7.3.7 However, his Honour did vary the Onsite Award to take into account a variety of frequency of payment provisions that existed in pre-modern awards:

*'A consideration of the content of pre-modern award instruments confirms that the terms of clause 31 reflect the predominant existing payment of wages provisions. However, it is clear that some pre-modern award instruments do not contain a requirement for weekly payment and others permit departure from weekly payment by agreement. For employers previously subject to these provisions, a requirement for weekly payment would conflict with the modern awards objective in relation to employment costs and regulatory burden in circumstances where relevant employees would suffer if prevented by the 2010 Modern Award from continuing current arrangements.'*¹⁰¹

7.3.8 Paragraphs 40-44 of that decision outline the frequency of payment arrangements across a range of construction industry pre-reform awards. Attached to these submissions and marked **Attachment M** is a list of those pre-reform awards that provided a range of frequency of payment options and the relevant provisions.

7.3.9 The decision also captured the consideration of the provision during award modernisation:

'In the award modernisation proceedings, the CFMEU's initial draft award contained the clause taken from the NBCIA, with The Australian Workers' Union draft being filed in almost identical terms. During the whole of the award modernisation proceedings relating to the 2010 Modern Award, no party made any submissions in support of fortnightly pay. It [CFMEU] submitted that the CFMEU was the only party to mention the payment of wages clause during the pre-exposure draft consultations for the 2010 Modern Award. When the Full Bench released the exposure draft on 23 January 2009, the payment of wages clause only provided for weekly payment. Following its release, the only written submission to mention fortnightly pay was that of the HIA, but that was only by way of inclusion in their proposal for fortnightly pay with one week in arrears and one week in advance. The CFMEU was the only party to make any oral

¹⁰⁰ [2010] FWA 2894 at paragraph 29

¹⁰¹ [2010] FWA 2894 at paragraph 45



*submissions on the payment of wages clause for the proposed 2010 Modern Award during the post-exposure draft stage.*¹⁰²

7.3.10 The Bench concluding that:

*'The CFMEU contentions as to the circumstances of the making of the 2010 Modern Award were not challenged, save to the extent that the MBA submitted that in its 10 February 2009 submission and more generally during the Stage 2 process, it labelled clause 31 as unduly prescriptive and the HIA submitted that submissions from the employer parties, during the Stage 2 process, reflected an underlying opposition to inflexible prescriptive provisions.'*¹⁰³

7.3.11 During the 2012 Modern Award Review HIA applied to vary the Onsite Award on the same terms as that which is sought before the current Full Bench. It was determined that HIA's variation be heard by the *Modern Award Review 2012 – Award Flexibility*¹⁰⁴ Full Bench (the '**2012 Award Flexibility Decision**'). At that time HIA also sought the vary Clause 7.1 of the Onsite Award, the Award Flexibility term, to add an additional item (h) '*any other matter within the award*'.

7.3.12 In rejecting HIA's application at paragraphs 146 and 147 the Full Bench determined that:

'Issues in respect of frequency of payment have generally been dealt with on an award by award basis...

*In our view the issue of frequency of payment is best dealt with on an award by award basis in the context of either the Transitional Review or the 4 yearly review of modern awards. The relevant award history and the circumstances pertaining to each award are likely to vary and should be dealt with on a case by case basis. The inclusion of such a term within the scope of the model flexibility term would not be consistent with the modern awards objective.'*¹⁰⁵

7.3.13 HIA submit that the opportunity to deal with this matter has clearly been provided for by a Full Bench of the Commission. Coupled with the lack of consideration of the matter during award modernisation, HIA commend the proposed variation to this Full Bench.

7.4 THE MODERN AWARDS OBJECTIVES

The need to encourage collective bargaining

7.4.1 HIA submit that the proposed variation would have a neutral effect on collective bargaining.

¹⁰² [2010] FWA 2894 at paragraph 22

¹⁰³ [2010] FWA 2894 at paragraph 37

¹⁰⁴ [2013] FWCFB 2170

¹⁰⁵ [2013] FWCFB 2170



The need to promote social inclusion through increased workforce participation

7.4.2 HIA submit that this is not a relevant consideration in relation to the current variation.

The need to promote flexible modern work practices and the efficient and productive performance of work

7.4.3 HIA submit that the unjustifiable continued restriction on the ability of an employer to manage its pay cycle detracts from the need to promote flexible modern work practices and the efficient and productive performance of work.

7.4.4 The provision is at odds with Section 323 (1) of the FWA, which provides that:

An employer must pay an employee amounts payable to the employee in relation to the performance of work:

(a) in full (except as provided by section 324); and

*(b) in money by one, or a combination, of the methods referred to in subsection (2)
and*

(c) at least monthly.

7.4.5 While it is clear that a modern award may provide for more frequent payment¹⁰⁶ the legislative provision is relevant to the extent the Parliament has expressed a view about the expectations in relation to the frequency of the payment of wages.

7.4.6 Also particularly relevant is that during the 2012 Modern Award Review, Senior Deputy President Hamberger varied the frequency of payment provision in the *Graphic Arts, Printing and Publishing Award 2010*.¹⁰⁷

7.4.7 At paragraphs 25 and 26 of his decision the Senior Deputy President said:

'There are very few modern awards that require wages to be paid weekly. The great majority of awards, including those which cover a greater number of low paid employees than this award, allow at least for fortnightly pay. The manufacturing award, which covers very similar employees to those covered by the Award, provides for wages to be paid weekly or fortnightly. Where there is agreement between the employer and the majority of employees in the relevant enterprise, or with an individual employee, wages may be paid three weekly, four weekly or monthly. I am satisfied that it is anomalous and unduly prescriptive for the Award to require that wages must be paid weekly. Varying the Award to bring it broadly into line with the manufacturing award will ensure that the Award meets the modern award objectives.

In particular it is consistent with the need to promote flexible modern work practices. Accordingly, Clause 28.1 will be deleted and replaced with a new clause:

¹⁰⁶ EM to the Fair Work Bill 2008 at paragraph 1280 at pg. 205
¹⁰⁷ [2012] FWA 8726; [2013] FWCFB 580



‘Wages must be paid weekly or fortnightly as determined by the employer. Wages may be paid four weekly or monthly if agreed with an individual employee.’¹⁰⁸

7.4.8 HIA strongly submit that the Commission follow the decision of Hamberger SDP in order to ensure that the Onsite Award meets the Modern Awards Objectives.

The need to provide additional remuneration for, employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or employees working shifts

7.4.9 HIA submits that this is not a relevant consideration for this variation application.

The principle of equal remuneration for work of equal or comparable value

7.4.10 HIA submits that this is not a relevant consideration for this variation application.

The impact of the exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

7.4.11 HIA submits that the current provisions has a negative impact on productivity, employment costs and unnecessarily adds to the regulatory burden for employers.

7.4.12 The administration of payroll obligations in the construction industry is a time consuming and cumbersome process. Not only do the hours worked by an employee need to be taken into account, but the existence of the various travel, onsite and occupational allowances means that the nature of the work undertaken needs to be considered as well.

7.4.13 Many large and medium employers in the building industry would ordinarily employ or engage the services of a payroll administrator or administrators to facilitate the payment of wages and calculation of pay entitlements. Some smaller businesses may outsource this function by engaging the services of an external bookkeeper or payroll company, but often the exercise is performed internally.

7.4.14 Regardless of whether or not specialised payroll staff are engaged or contracted, the costs (both direct and indirect) are borne by employers to ensure compliance and to meet an administrative obligation. There are no direct productivity gains for the business of the employer.

7.4.15 In the matter of Simpson Personnel, when considering this Modern Awards Objective, Watson SDP stated that:

‘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.’¹⁰⁹

¹⁰⁸ [2012] FWA 8726

¹⁰⁹ [2010] FWA 2894



7.4.16 Comments from the HIA Member Survey indicates the impact on business who should be paying weekly but are not:¹¹⁰

“I have the book keeper come in fortnightly so if we paid weekly that would impact negatively on our business and our book keep”

“A bit more paperwork – but that’s about all. It’s difficult enough to get the boys to submit their time sheet on time fortnightly – weekly sounds like a nightmare”

“Another cost to the small business which we cannot re-coup”

“Increased administrative costs and cash flow difficulties”

“Increase in unnecessary administrative time”

“Increased administrative cost”

“Cost me more I would have to pay the bookkeeper to come in each week to do the pay”

“Yes would mean an extra pay cycle and increased admin charge”

“This would be double the amount of time required to do pay runs and the payment officer would have to work every week instead of every second week. It would be more time and cost more money. We also have people on different awards, so it would have to change for all of them. That would be very inconvenient”

The need to ensure a simple, easy to understand, stable and sustainable modern awards system

7.4.17 About half of those who responded to the HIA Member Survey were aware that the Onsite Award required the weekly payment of wages.¹¹¹

7.4.18 The current provision is not only cumbersome and recognises that pre-reform awards provided options for alternative payment arrangements, it also is at odds with the need to ensure Modern Awards are simple, easy to understand and stable.

7.4.19 Whilst the recognition of variable payment cycle circumstances across the various pre-modern awards in the decision in Simpson Personnel was welcomed by HIA, the Onsite Award now contains a provision which references award based transitional instruments and Division 2B awards, this sits

¹¹⁰ HIA Member Survey at pgs 38-39

¹¹¹ HIA Member Survey at pg.37



uncomfortably with the notion of ensuring a simple, easy to understand stable Modern Award system and the activities of the Commission to adopt plain language drafting, which would likely frown on the drafting of the current provision.

The impact of the exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

7.4.20 HIA submit that the proposed variation would have a neutral effect on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

8. HOURS OF WORK

8.1 THE CURRENT PROVISION

8.1.1 Clause 33.1 of the Onsite Award provides:

Except as provided in clause 34—Shiftwork, the ordinary working hours will be 38 per week, worked between 7.00 am and 6.00 pm, Monday to Friday, in accordance with the following procedure.

(a) Hours of work and rostered days off

(i) The ordinary working hours will be worked in a 20 day four week cycle, Monday to Friday inclusive, with eight hours worked for each of 19 days and with 0.4 of an hour on each of those days accruing towards the twentieth day, which will be taken as a paid day off. The twentieth day of that cycle will be known as the rostered day off (RDO), and will be taken as outlined in clauses 33.1(a)(i) to 33.1(a)(iii). Payment on such a rostered day off will include accrued entitlement to the allowances prescribed in clauses 25.2 to 25.7. A rostered day off will be taken on the fourth Monday in each four week cycle, except where it falls on a public holiday, in which case the next working day will be taken instead.

(ii) Agreement on alternate RDOs

Where an employer and a majority of employees at an enterprise agree, another day may be substituted for the nominated industry rostered day off.

(iii) Agreement on banking of RDOs

- Where employees are employed on distant work covered by clause 24.1, an employer and a majority of those employees on distant work may agree to accrue up to five rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer.*
- Where the majority of the employees request consultation with their representative(s), that consultation will take place at least five days prior to its introduction.*
- Any agreed arrangement must provide that 13 rostered days are taken off by an employee for 12 months' continuous service.*

(iv) Each day of paid leave taken and a public holiday occurring during any cycle of four weeks will be regarded as a day worked for accrual purposes.

(v) An employee who has not worked, or is not regarded by reason of clause 33.1(a)(iv) as having worked a complete 19-day four week cycle, will receive pro rata accrued entitlements for each day worked or regarded as having been worked in such cycle, payable for the rostered day off, or in the case of termination of employment, on termination.

(vi) Except where agreement has been reached in accordance with clauses 33.1(a)(ii) and 33.1(a)(iii), the prescribed rostered day off or any substituted day may be worked where it is required by the employer and such work is necessary:

- to allow other employees to be employed productively; or*
- to carry out out-of-hours maintenance; or*
- in the case of unforeseen delays to a particular project or a section of it or other reasons arising from unforeseen or emergency circumstances on a project;*
- in which case, in addition to accrued entitlements, the employee will be paid penalty rates and provisions as prescribed for Saturday work in clause 37—Penalty rates.*

(vii) Agreement on working other than the rostered day off cycle

Where an employer and the majority of employees employed at a particular enterprise agree that due to the nature of an employer's operations it is not practicable for the foregoing four week cycle to operate, they may agree to an alternate method of arranging working hours, provided that the ordinary hours worked in any one week from Monday to Friday are within the spread of hours set out in clause 33.1 and that no more than eight ordinary hours are worked in any one day.

(viii) Early starts

The working day may start at 6.00 am or at any other time between that hour and 8.00 am and the working time will then begin to run from the time so fixed, with a consequential adjustment to the meal cessation period. The change to the start time requires agreement between the employer and the employees and their representative(s), if requested.

8.2 THE PROPOSED VARIATION

8.2.1 In sum, the current provision provides that ordinary hours will be worked:

- 38 hours per week.
- Worked between 7am and 6pm.
- On a Rostered Day Off system where ordinary hours will be worked in a 20 day four week cycle, Monday to Friday inclusive, with eight hours worked each of 19 days and with 0.4 of an hour on each of those days accruing towards the twentieth day, which will be taken as a paid day off.

8.2.2 Clause 33.1 also provides for:

- Agreement as to an alternate RDO's.
- Agreement as to the banking of RDO's.



- Agreement on working other than on the RDO cycle.
- Early starts.

8.2.3 HIA’s proposed variation seeks to:

- Provide an option for employers to implement a system for the averaging of hours.
- Enable an employer, where the RDO system is retained, to choose whether to fix one day in the cycle for all employees to take the RDO or to roster employees to take their RDO on different days during the cycle or such other method as agreed by a majority of employees.
- Allow the banking of RDO’s on agreement between the employer and the employee.

8.2.4 A Draft Determination seeking to vary the Onsite Award is attached to these submissions at **Attachment N**.

8.3 THE AWARD HISTORY

8.3.1 During the 2012 Modern Award Review HIA sought a similar variation to that proposed in this 4 Yearly Review.¹¹²

8.3.2 In rejecting the variation application Watson SDP concluded that:

‘The HIA submission re-argued the basis of the hours provision in the Building On-site Award, a matter specifically considered by the Award Modernisation Full Bench when making the Building On-site Award. The HIA provided no evidence of changed circumstances, the effect of the current award provisions at a practical level or other cogent reasons to support the variation of the provision determined by the Award Modernisation Full Bench in light of similar arguments advanced before it during the Part 10A award modernisation process. No cogent reasons have been established to vary the hours provision in clause 33—Ordinary hours of work. This variation proposed by the HIA is refused.’¹¹³

8.3.3 HIA submit that despite claims to the contrary the hours of work clause was not fully considered by the award modernisation Full Bench. While at that time, HIA made similar arguments to that being made during this 4 Yearly Review¹¹⁴, no decision was issued on the matter and subclause 27.2.1 of the *National Building and Construction Industry Award 2000* was simply adopted into the Onsite Awards.

¹¹²[2013] FWC4576 see paragraph 258

¹¹³ Ibid at paragraph 261

¹¹⁴ Transcript 24 February 2009 PN1498 – PN1492



8.4 THE MODERN AWARDS OBJECTIVES

The need to encourage collective bargaining

8.4.1 The hours of work clause is one which is often the subject of enterprise bargaining, yet, as has been outlined, HIA Members in the residential construction industry are generally award covered small businesses. As such, HIA's submits that the proposed variation would have a neutral effect on the need to encourage collective bargaining.

The need to promote social inclusion through increased workforce participation

8.4.2 HIA submit that this is not a relevant consideration in relation to the current variation.

The need to promote flexible modern work practices and the efficient and productive performance of work

8.4.3 As noted at the outset the building industry is cyclical and project based and as such, standard working patterns may not be appropriate to meet the labour needs of all businesses.

8.4.4 Yet inflexibilities in managing hours of work under the Onsite Award are not only a constant irritant for small business in the residential construction industry they directly reduce their capacity to respond to market conditions.

8.4.5 The mandatory use of an RDO system is a constant source of frustration for HIA members. Not only did 67 per cent of respondents to the HIA Member Survey indicated that their employees do not currently receive RDO's,¹¹⁵ an assessment of Individual Flexibility Agreements entered into by HIA Members show that in the overwhelming majority of cases, the RDO system is removed¹¹⁶, members would rather pay substantially higher rates of pay than be bound to such a system.

8.4.6 While some permutations are currently available HIA submit that the provision is cumbersome, can require union involvement and is largely inflexible, for example under subclause 33.1(a)(viii) it is possible to agree to an alternative way of arranging working works provided that:

- The majority of employees in a particular enterprise agrees;
- The ordinary hours worked in any one week from Monday to Friday are worked between 7am and 6pm; and
- That no more than eight ordinary hours are worked in any one day.

8.4.7 It is HIA's view that this simply does not go far enough in order to meet the Modern Awards Objectives. The current inability to 'average' working hours or provide a system for the banking of RDO's is a fundamental restriction on an employer's ability to manage working hours and limits an employee's options when considering the need for more flexible working arrangements.

8.4.8 Despite the permissive nature of s.63 of the FWA allowing Modern Awards to include terms providing for the averaging of hours of work over a specified period, the Onsite Award does not, the Commission has so far refused to include such a provision in the award. Additionally other awards such as the

¹¹⁵ HIA Member Survey at pg. 12

¹¹⁶ See Annexure A to the Statement of Laura Marantz marked Attachment O to these submissions



Joinery Award¹¹⁷ and the *Timber Industry Award 2010*, permit hours of work to be averaged, of note, under the *Timber Industry Award 2010* such averaging arrangements can include Saturday and Sunday.

- 8.4.9 HIA's proposed variation requires agreement with the majority of employees to implement an averaging of hours system; HIA submits that this is an appropriate safeguard.
- 8.4.10 Similarly HIA's proposed system for banking RDO's requires agreement between the employer and the employee both to implement such a system and to take the banked RDO. The proposed variation requires that an employer retain records of the system and pay any banked RDO's out at the end of the employment relationship. There is no disadvantage to an employee for the Onsite Award to provide this type of arrangement; it simply gives employers another option to achieve greater flexibility in the way working hours are arranged.
- 8.4.11 Further to this the concepts HIA proposes are not foreign to the building industry or the Onsite Award itself for example, the banking of RDO's is currently available to those employees on distant work.
- 8.4.12 HIA submit that the current provisions do not go far enough in providing the flexibilities needed by those businesses, particularly small businesses operating in the residential construction industry.

The need to provide additional remuneration for, employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or employees working shifts

- 8.4.13 HIA submits that this is not a relevant consideration for this variation application.

The principle of equal remuneration for work of equal or comparable value

- 8.4.14 HIA submits that this is not a relevant consideration for this variation application.

The impact of the exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

- 8.4.15 As noted above, HIA Members often use the ability to alter the arrangements for when work is performed via an Individual Flexibility Arrangement. However, the costs involved in doing so are significant.
- 8.4.16 One factor to consider is that while an employer can request that an employee work on an RDO, in such circumstances the employer is required to pay Saturday loadings i.e. 150% of ordinary time rates for those first 2 hours and 200% thereafter.
- 8.4.17 Clearly, this inability to set hours of work that suits the needs of businesses exposes them to significant on-costs in the form of overtime penalty rates. Evidence provided by HIA demonstrates that such costs are a 'live' issue and the inability to average hours leads employers in the residential construction industry to use IFA's and pay significantly higher rates of pay in order to arrange working hours to incorporate a certain number of hours of overtime.¹¹⁸

The need to ensure a simple, easy to understand, stable and sustainable modern awards system

¹¹⁷ See clause 28.2
¹¹⁸ See Annexure A to the Statement of Laura Marantz at Attachment O to these submissions



- 8.4.18 HIA submits that rather than entering into costly, complex arrangements, introducing a facilitative provision that allows the option for the averaging of hours is simple and easy to understand.
- 8.4.19 As outlined above, other Modern Awards in the construction industry have averaging of hours provisions and a number of the concepts proposed in HIA's variations are not unknown to the industry.

The impact of the exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

- 8.4.20 HIA submits that providing greater flexibility in the way hours of work are arranged would support the performance of those business in the residential construction industry ultimately improving the performance and competitiveness of the national economy.

9. ANNUAL LEAVE LOADING

9.1 THE CURRENT PROVISION

- 9.1.1 Clause 38.2 of the Onsite Award currently provides

38.2 Payment for annual leave

(a) Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid, in advance, the amount which they would have received for working ordinary time hours if they had not been on leave.

(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 on the following rates, loadings and allowances if such rates, loadings and allowances would have been received by the employee for working ordinary time hours had the employee not been on annual leave:

- *clause 19.1(a)—Minimum wages;*
- *clause 21.2—Industry allowance;*
- *clause 21.3—Underground allowance;*
- *clause 20.1—Tool and employee protection allowance;*
- *clause 24—Living away from home—distant work;*
- *clause 25—Fares and travel patterns allowance; and*
- *clause 19.2—Leading hands.*

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

(c) Instead of the payment in respect of annual leave loading provided for in clause 38.2(b), an employee who would have worked on shiftwork had they not been on leave and where the employee would have received shift loadings prescribed by clause 34—Shiftwork, had they not been on leave during the relevant period and such loadings would have entitled them to a greater amount than the loading of 17.5%, then the shift loading as prescribed in clause 34 will be included in the rate of wage prescribed by clause 38.2(b) instead of the 17.5% loading.

9.1.2 Current Clause 38.2(b) is the focus of HIA's variation.

9.2 THE PROPOSED VARIATION

9.2.1 HIA seeks to amend current Clause 38.2(b) to remove the inclusion of the Fares and Travel Patterns Allowances under Clause 25 from the calculation of the annual leave loading.

9.2.2 This is consistent with the variation proposed above in relation to Clause 25 which would see the deletion of Clause 25.10(b):

'The allowances prescribed in this subclause will be taken into account with calculating the annual leave loading.'

9.2.3 HIA had originally proposed a more comprehensive variation to Clause 38.2(b) however no longer presses that matter.¹¹⁹

9.2.4 A Draft Determination seeking to vary Clause 38.2(b) of the Onsite Award is attached to these submissions at **Attachment P**.

9.3 THE AWARD HISTORY

9.3.1 During the 2012 Modern Award Review HIA applied to vary Clause 38.2(b) of the Onsite Award. HIA's variation application was heard by the Annual Leave Full Bench in AM2012/8 and others.

9.3.2 However while agreeing to vary the Onsite Award in part, the Full Bench in its decision¹²⁰ rejected HIA's substantive claim:

'The CFMEU initially recognised that the current wording of clause 38.2(b) in the modern award could be interpreted as requiring annual leave loading to be paid on all the rates, loading and allowances prescribed even if an employee is not entitled to them. So, they initially proposed that the phrase "(if applicable)" be added after the prescribed rates, loadings and allowances. They opposed the variations in so far as the variations sought to remove some of the rates, loadings and allowances prescribed.

We are persuaded the absence of a reference to the annual leave loading only being paid on the applicable rates, loadings and allowances prescribed is a relevant anomaly arising from the Part 10A award modernisation process.

We will vary clause 38.2(b) of the modern award by deleting the phrase "rates, loadings and allowances prescribed by" and replacing it with the phrase "following rates, loadings and allowances if such rates, loadings and allowances would have been received by the employee

¹¹⁹ See HIA Submission dated 2 March 2013 at paragraphs 7.1.4 and 7.1.5
¹²⁰ [2013] FWCFB 6266



for working ordinary time hours had the employee not been on annual leave” and by deleting the phrase “(if applicable)” after the words “Leading hands”.

We are not persuaded the modern award is not achieving the modern awards objective or otherwise not operating effectively, without anomalies or technical problems arising from the Part 10A award modernisation process because of the breadth of matters it prescribes. We, therefore, decline the other variations sought by the HIA and MBA to clause 38.2(b).¹²¹

9.3.3 Of note what is proposed in this 4 Yearly Review differs from that which was previously sought. As such, HIA submit that this decision can only be of limited relevance. HIA’s current variation application has not before been considered by a Full Bench of the Commission.

9.4 THE MODERN AWARDS OBJECTIVES

The need to ensure collective bargaining

9.4.1 HIA submit that the proposed variation would have a neutral effect on the need to encourage collective bargaining.

The need to promote social inclusion through increased workforce participation

9.4.2 HIA submit that this is not a relevant consideration in relation to the current variation.

The need to promoting flexible modern work practices and the efficient and productive performance of work

9.4.3 HIA submit that this is not a relevant consideration in relation to the current variation.

The need to provide additional remuneration for, employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or employees working shifts

9.4.4 HIA submits that this is not a relevant consideration for this variation application.

The principle of equal remuneration for work of equal or comparable value

9.4.5 HIA submits that this is not a relevant consideration for this variation application.

The impact of the exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

9.4.6 There are three primary costs associated with annual leave loading:

- The direct costs of paying the additional payments while employees are on leave;
- The administrative cost associated with annual leave loadings; and
- The additional cost associated with increases in wages and allowances.

¹²¹ [2013] FWCFB 6266 at paragraphs 112-115



- 9.4.7 In practice many in the residential construction industry use the limited flexibility offered by Individual Flexibility Agreements to manage annual leave loading, incorporating the payment into one higher 'all up rate'. This is clear from Annexure A to the Statement of Laura Marantz.¹²²
- 9.4.8 The current calculation of the rate, that includes the Fares and Travel Patterns Allowance is not payable for all-purpose of the award, supporting the notion that its inclusion in the loading is simply to provide a 'bonus' as opposed to a representation of any real wage losses suffered while on annual leave. This notion is further exacerbated by the fact that under 25.10(c) of the Onsite Award the Fares and Travel Patterns allowances are not to be taken into account for the calculation of annual leave.
- 9.4.9 HIA can see no reason why amounts payable under Clause 25 of the Onsite Award should be included in the calculation of annual leave loading when they are not included for the purpose of the wages payable while on annual leave, not only is this confusing it also imposes an unjustifiable regulatory burden on business, particularly small business.

The need to ensure a simple, easy to understand, stable and sustainable modern awards system

- 9.4.10 The removal of the requirement to factor in an additional allowance into the calculation of annual leave loading will make the provision simpler to administer and more readily reflect the purpose of the Fares and Travel Patterns Allowance outlined above making the Onsite Award easier to understand.

The impact of the exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

- 9.4.11 HIA submits that this is not a relevant consideration for this variation application

¹²² See Attachment O to these submissions



INDEX OF ATTACHMENTS

| ATTACHMENT | DOCUMENT |
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| C | DRAFT DETERMINATION – TOIL – JOINERY AWARD |
| D | DRAFT DETERMINATION – ISRS – REPLACE WITH THE NES |
| E | DRAFT DETERMINATION – ISRS – REPLACE CURRENT DEFINITION OF REDUNDANCY, INSERT SMALL BUSINESS EXEMPTION & INSERT INCAPACITY TO PAY PROVISION |
| F | DRAFT DETERMINATION – ISRS – REPLACE CURRENT DEFINITION OF REDUNDANCY, INSERT SMALL BUSINESS EXEMPTION & INSERT INCAPACITY TO PAY PROVISION |
| G | STATEMENT OF RICK SASSIN |
| H | STATEMENT OF HUAN DO |
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| K | STATEMENT OF KRISTIE BURT |
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| P | DRAFT DETERMINATION – ANNUAL LEAVE LOADING |



IN FAIR WORK COMMISSION

FWA Matter No:
AM2016/23

Applicant:
Housing Industry Association

RE: FOUR YEARLY REVIEW OF THE MODERN AWARDS


STATEMENT OF KIRSTEN LEWIS

I, Kirsten Lewis of 79 Constitution Ave, Campbell ACT 2612, HIA Economics Coordinator state as follows:

- 1 I have been employed with the Housing Industry Association Limited (HIA) for 10 years.
- 2 I am currently employed as the HIA Economics Coordinator.
- 3 As Economics Coordinator I provide support and assistance to the HIA Economics Team. I am also responsible for the dissemination of member surveys and the compilation of the results of those member surveys.
- 4 I have the authority to swear this statutory declaration on behalf of HIA.
- 5 On 23 May 2016, I caused the Member Survey entitled 'Modern Awards Survey' (**Member Survey**) to be sent to HIA members.
- 6 Attached and marked **Annexure A** is a copy of the Member Survey.
- 7 The period within which HIA members could respond to the Member Survey was 8pm 23 May 2016 to approximately 6pm 21 June 2016.
- 8 Attached and marked **Annexure B** is a copy of the email sent to HIA members (**Member Email**).
- 9 HIA Members could respond to the Member Survey via a web link within the Member Email.
- 10 Attached and marked **Annexure C** is a copy of the report received indicating the number of recipients of the Member Email.
- 11 Annexure C states that :
 - a. The Member Email was sent to 26,102 email addresses.
 - b. Of those 26,102 email addresses:
 - i. 672 were invalid email addresses; and
 - ii. 1620 were duplicate email addresses.




- 12 On my analysis of Annexure C, 23,810 HIA members received the Member Survey.
- 13 In July 2016, I caused a report to be generated containing the results of the Member Survey (**Report**).
- 14 Attached and marked **Annexure D** is a copy of the Report.
- 15 The Report states that 290 HIA members responded to the Member Survey.

Signature of person making statement: 

Declared at Canberra

on 29.11.2016

Before me:

Signature of Witness: 

Name of Witness: DAVID HUMPHREY - Solicitor

Address of Witness: 79 Constitution Ave, Campbell ACT 2612

Lodged by: Housing Industry Association

Address for Service: 4 Byfield Street North Ryde 2113

Telephone: (02) 9978 3334

Facsimile: (02) 9888 6677

Email: m.adler@hia.com.au

Modern Awards Survey

1. What is the size of your business?
 - 1-5 employees
 - 6 -15 employees
 - 16-30 employees
 - 31 -100 employees
 - 100 + employees

2. Do you currently employ (select more than one if applicable)
 - Full time employees
 - Part time employees
 - Casual employees

3. Which state are you based in?
 - NSW
 - QLD
 - SA
 - WA
 - NT
 - Tasmania
 - ACT

4. Is your business a (select one) -
 - PTY LTD company
 - Sole Trader
 - Partnership

5. Are you a (select more than one if applicable) -
 - Builder
 - Renovator
 - Developer
 - Manufacturer
 - Supplier

6. Do you engage contractors?
 - Yes
 - No

7. Do you work on:

- residential construction sites only
- both residential and commercial construction sites
- commercial construction sites only

Agreements/Awards

An employee's minimum terms and conditions of employment are set out in a Modern Award. A Modern Award will apply to an employer and their employees based on the industry they are in and the work they do.

Instead of a Modern Award some employees may be covered by an Enterprise Bargaining Agreement (often called EBAs). An Enterprise Bargaining Agreement is a legally binding agreement, negotiated between an employer and their employees/ the employee's union and approved by the Fair Work Commission that sets out the pay and working conditions of those people covered by it.

8. Select the Modern Award that applies to you:

- The Building and Construction General Onsite Award
- The Joinery and Building Trades Award
- Timber Industry Award
- More than one of the above awards applies
- Other, please specify _____

9. In the last 6 years has your business entered into an Enterprise Bargaining Agreement?

- Yes
- No
- Don't know

10. Has your business and your employees ever been covered by an Enterprise Bargaining Agreement?

- Yes
- No
- Don't know

11. Have you or your employees ever been approached to enter into an Enterprise Bargaining Agreement?

- Yes
- No
- Don't know

12. Are any of your employees covered by an Individual Flexibility Agreement?

An Individual Flexibility Agreement is an arrangement entered into between an employer and an individual employee that enables the parties to agree to alter some limited terms and conditions of a Modern Award.

- Yes
- No
- Don't know

Hours of Work

Only answer this question if you are covered by the *Building and Construction General Onsite Award (Onsite Award)*.

Under the Onsite Award ordinary working hours are to be worked on an RDO System.

This means that in a 20 day four week cycle, Monday to Friday inclusive, eight hours is worked for each of 19 days and with 0.4 of an hour on each of those days accruing towards the twentieth day, which will be taken as a paid day off. The twentieth day of that cycle will be known as the rostered day off (RDO).

13. Do your employees currently receive RDO's?

- Yes
- No

14. What would be the effect on your business if your employees did not receive RDO's?

15. What would your preferred method for arranging hours of work?

- The RDO system outlined above
- 38 hours averaged over a 7 day week
- 38 hours per week, with 8 hours work each day Monday – Thursday and 6 hours worked on Friday.
- Other, please specify _____

16. In your opinion, is the current requirement to operate on an RDO system appropriate for the residential construction industry?

Overtime

Generally when an employee works more than their ordinary hours per week (for example more than 38 hours in a week, outside the span of ordinary hours (for example,

before 7am and after 6pm) or on weekends), an employer is required to pay the employee at overtime rates being, for example, time and a half or double time.

17. Do your employees currently work overtime?

- Yes
- No

18. If you answered yes above, how often do your employees work overtime (including weekends)?

- Never
- 1-2 times per week
- 3-4 times per week
- 5-6 times per week
- Other, please specify _____

19. Has an employee ever requested that instead of being paid for the overtime worked it is accrued and taken as paid leave at another time?

- Yes
- No
- Don't know

20. What would be the effect on your business if your employees could accrue overtime worked towards leave taken at another time?

21. Would your answer change if:

a) For each hour worked, the employee was entitled to one hour paid leave?

- Yes
- No

b) For each hour worked, the employee was entitled to 1.5 hours or 2 hours paid leave i.e. the number of hours of paid leave accrued by an employee was equal to the rate at which the employee would have been paid had they worked the overtime?

- Yes
- No

22. Do you have any other comments about the ability of an employer and employee to agree to accrue overtime worked towards paid leave taken at another time?

Only answer the following questions if your employees are employed under the Building and Construction General Onsite Award.

Payment of Wages

23. Do you currently pay your employees their wages

- Weekly
- Fortnightly
- Monthly
- Other, please specify _____

24. Based on your previous answer, why do you pay wages on that basis?

25. Did you know that under the Building and Construction General Onsite Award you are required to pay wages weekly?

- Yes
- No

26. If you do not currently pay wages weekly, what would be the effect on your business if you were required to?

27. Do you provide a company vehicle to your award based employees?

- Yes
- No
- Other, please specify _____

28. Where a company vehicle is provided do you cover the cost of fuel?

- Yes
- No
- Other, please specify _____

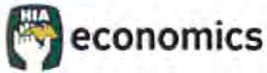
29. Where a company vehicle is not provided do you provide a fuel card or reimburse your employees for the cost of fuel?

- Yes
- No
- Other, please specify _____

30. Do you provide your employees with all of the tools and protective boots necessary to carry out the work?

- Yes
- No
- Other, please specify _____

Annexure B



Dear HIA Member

The Fair Work Commission is currently reviewing the Building and Construction General Onsite Award 2010 or the Joinery and Building Trades Award 2010. HIA is surveying members to gain insight into the operation of various clauses within the Building and Joinery Awards to help the Fair Work Commission understand the practices of real employers in the residential construction industry. This will enable the Commission to make more informed decisions in this part of its current review of modern awards.

We know that your time is valuable and we thank you very much for participating. The survey is important to the process being undertaken by the Fair Work Commission. The survey should take between 5-10 minutes.

Your assistance with this research would be greatly appreciated.

[Please click here to begin the survey](#)

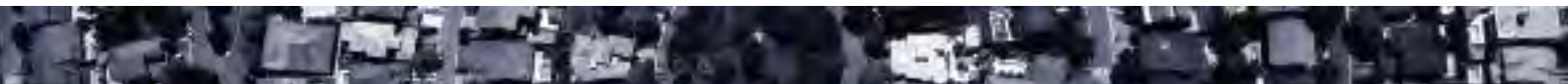
All responses are strictly confidential. Should you have any questions please contact Kirsten Lewis on 02 6245 1393 or economics@hia.com.au

Kind Regards,

Harley Dale
Chief Economist
Housing Industry Association Ltd
79 Constitution Ave, Campbell ACT 2612
Phone: 02 6245 1393 Fax: 02 6257 5658
Visit our website: <http://economics.hia.com.au>

Annexure C

| Message Log ID | Message Date | Subject | Total Subscribers | Total Blank | Total Invalid | Total Duplicates | Total Sent |
|----------------|------------------------|---|-------------------|-------------|---------------|------------------|--------------|
| 11243 | 20/05/2016 12:35:00 PM | Attention HIA Members Survey on the Modern Award* | 26102 | 0 | 672 | 1620 | 23810 |



Building and Joinery Awards

July 2016



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Respondents qualifying information

Survey details:

The survey was conducted over May to July 2016. 290 people across the HIA membership responded to the survey.

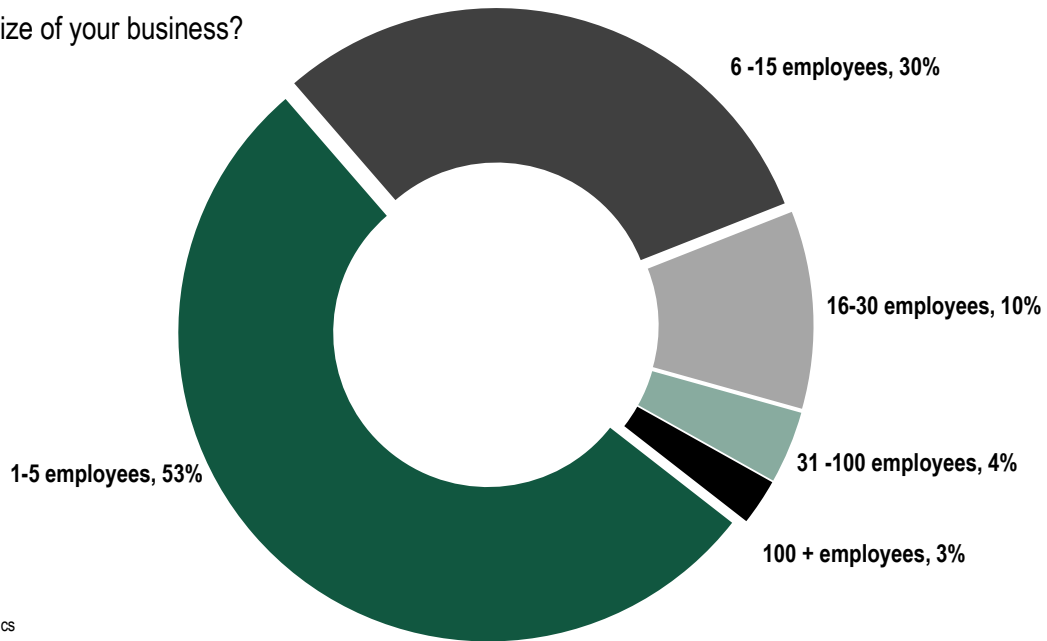
53 per cent of respondents stated their business comprised 1-5 employees, 57 per cent employed full time staff. 32 per cent were based in New South Wales, 26 per cent in Victoria and 16 per cent in Queensland. 73 per cent stated they were a company, 53 per cent stated they were builders and 91 per cent engaged contractors.

Responses to the survey questions are outlined below.

What is the size of your business?

53 per cent of respondents stated they had 1-5 employees followed by 30 per cent stating 6-5 employees. 10 per cent stated 16-30 employees, 4 per cent stated 31-100 employees and 3 per cent stated 100+ employees.

What is the size of your business?



Source: HIA Economics

On a state by state breakdown:

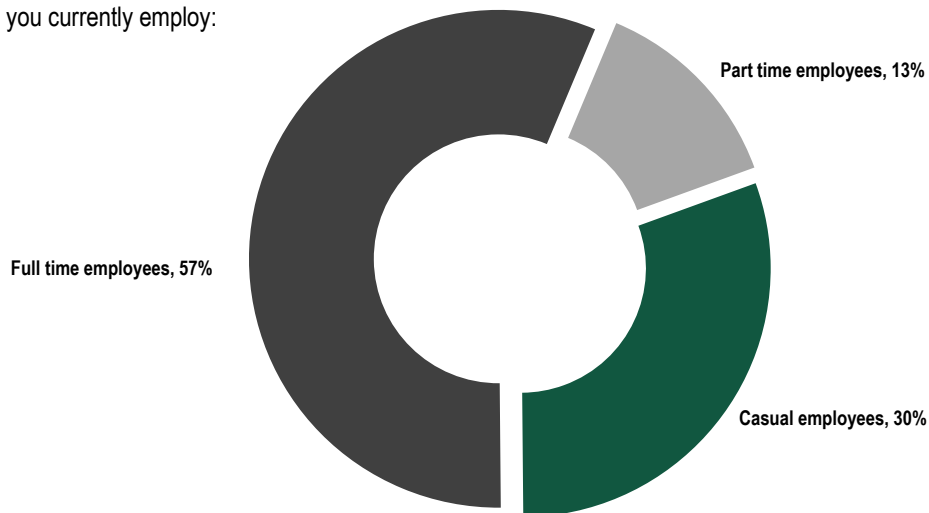
| | 1-5 employees | 6-15 employees | 16-30 employees | 31-100 employees | 100+ employees |
|------------------------------|---------------|----------------|-----------------|------------------|----------------|
| Australian Capital Territory | 70% | 20% | 0% | 10% | 0% |
| New South Wales | 48% | 40% | 9% | 2% | 1% |
| Northern Territory | 67% | 0% | 33% | 0% | 0% |
| Queensland | 44% | 29% | 23% | 4% | 0% |
| South Australia | 46% | 38% | 13% | 4% | 0% |
| Tasmania | 62% | 33% | 5% | 0% | 0% |
| Victoria | 63% | 19% | 7% | 4% | 7% |
| Western Australia | 50% | 28% | 6% | 11% | 6% |



Do you currently employ:

57 per cent of respondents stated they employ full time employees, followed by 30 per cent who stated casual employees and 13 per cent stated part time employees.

Do you currently employ:



Source: HIA Economics

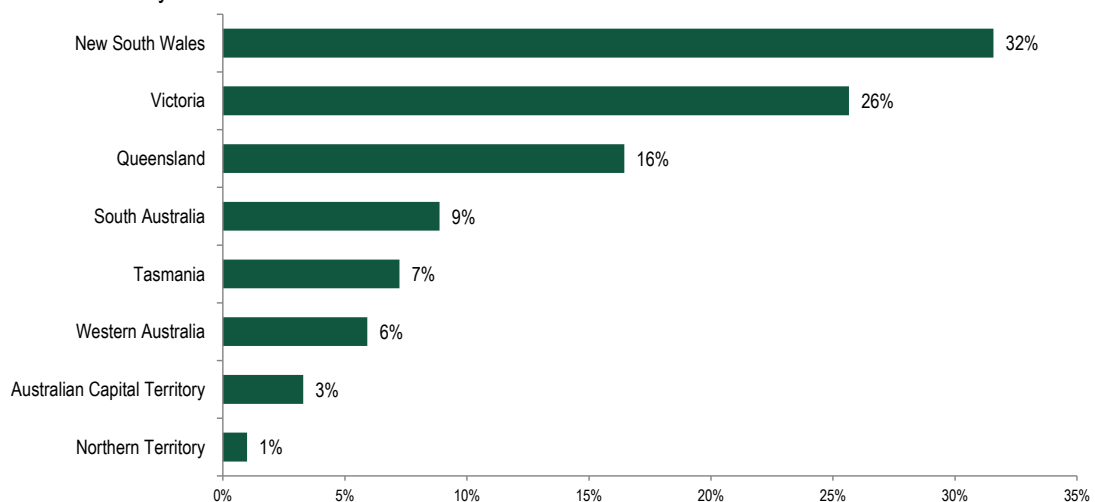
On a state by state breakdown:

| | Casual employees | Full time employees | Part time employees |
|------------------------------|------------------|---------------------|---------------------|
| Australian Capital Territory | 33% | 60% | 7% |
| New South Wales | 28% | 58% | 15% |
| Northern Territory | 43% | 29% | 29% |
| Queensland | 35% | 55% | 11% |
| South Australia | 38% | 49% | 13% |
| Tasmania | 29% | 61% | 10% |
| Victoria | 28% | 60% | 12% |
| Western Australia | 27% | 53% | 20% |

Which state are you based in?

32 per cent of respondents were based in New South Wales: 26 per cent in Victoria: 16 per cent in Queensland:

Which state are you based in?



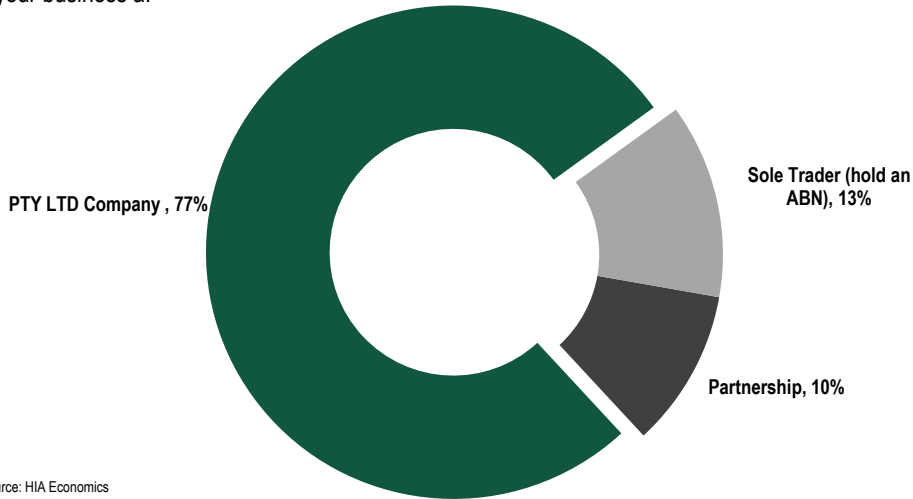
Source: HIA Economics



Is your business a:

The majority of respondents, 77 per cent stated their business as Pty Ltd Company followed by 13 per cent Sole Trader and 10 per cent Partnership.

Is your business a:



Source: HIA Economics

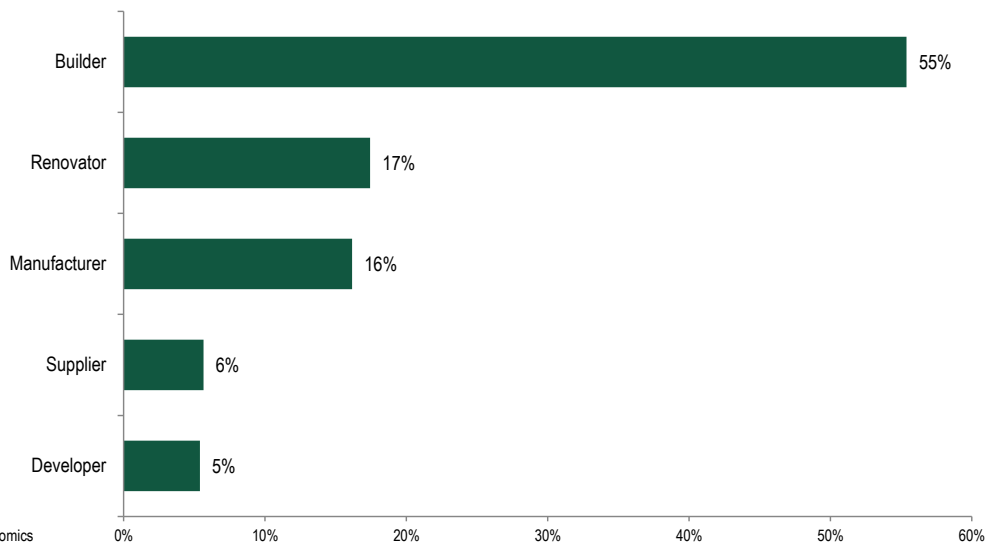
On a state by state breakdown:

| | Partnership | PTY LTD Company | Sole Trader (hold an ABN) |
|------------------------------|-------------|-----------------|---------------------------|
| Australian Capital Territory | 10% | 90% | 0% |
| New South Wales | 12% | 76% | 12% |
| Northern Territory | 0% | 100% | 0% |
| Queensland | 6% | 85% | 8% |
| South Australia | 13% | 79% | 8% |
| Tasmania | 29% | 52% | 19% |
| Victoria | 5% | 75% | 19% |
| Western Australia | 11% | 78% | 11% |

Are you a:

55 per cent of respondents stated their business as Builder followed by 17 per cent Renovator, 16 per cent Manufacturer, 6 per cent Supplier and 5 per cent Developer.

Are you a:



Source: HIA Economics



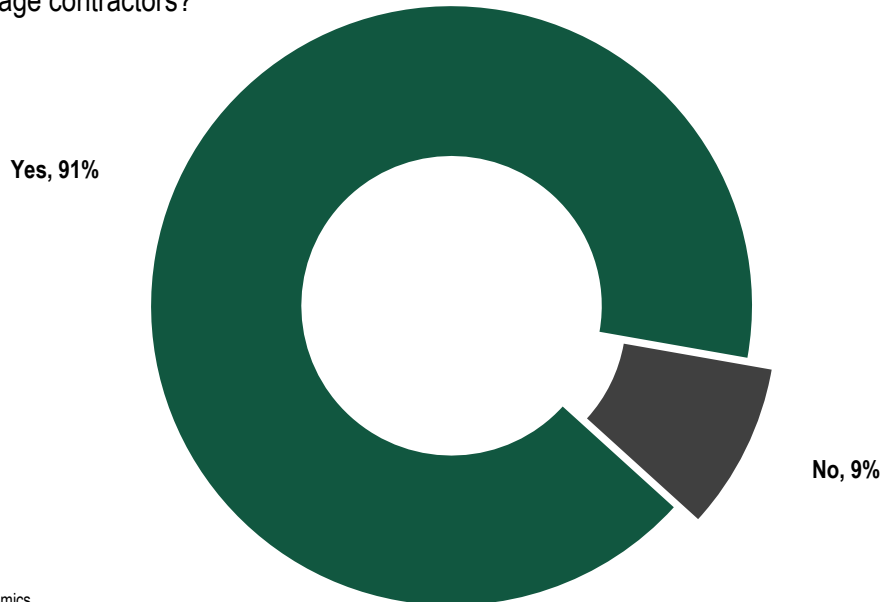
On a state by state breakdown:

| | Builder | Developer | Manufacturer | Renovator | Supplier |
|------------------------------|----------------|------------------|---------------------|------------------|-----------------|
| Australian Capital Territory | 62% | 0% | 15% | 15% | 8% |
| New South Wales | 58% | 6% | 16% | 16% | 4% |
| Northern Territory | 75% | 0% | 0% | 25% | 0% |
| Queensland | 50% | 3% | 18% | 21% | 8% |
| South Australia | 50% | 3% | 25% | 13% | 9% |
| Tasmania | 67% | 11% | 4% | 19% | 0% |
| Victoria | 59% | 7% | 14% | 17% | 3% |
| Western Australia | 30% | 0% | 26% | 22% | 22% |

Do you engage contractors?

The majority of respondents, 91 per cent stated they engaged contractors.

Do you engage contractors?



Source: HIA Economics

On a state by state breakdown:

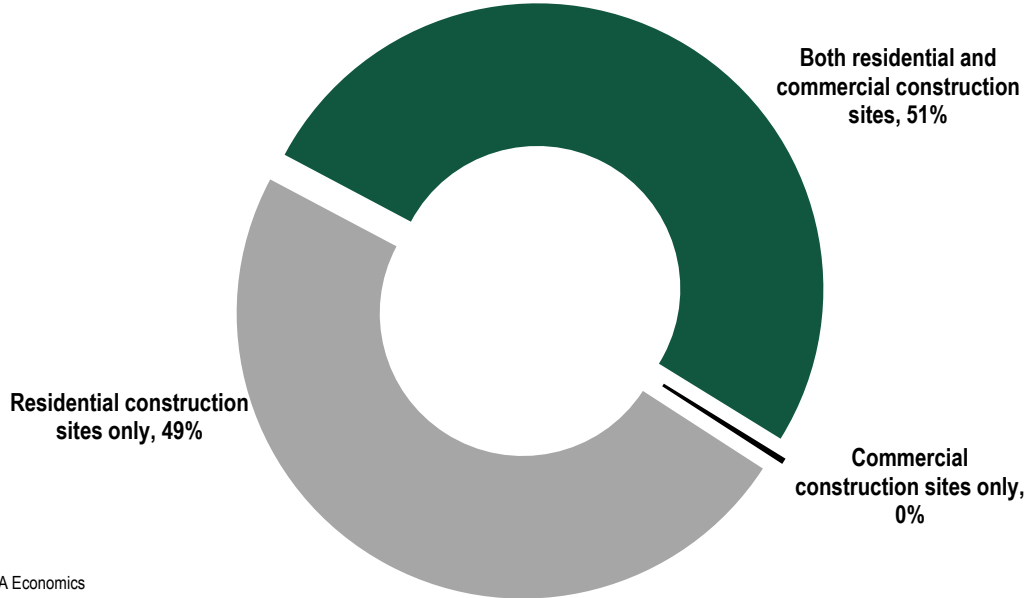
| | No | Yes |
|------------------------------|-----------|------------|
| Australian Capital Territory | 0% | 100% |
| New South Wales | 8% | 92% |
| Northern Territory | 0% | 100% |
| Queensland | 6% | 94% |
| South Australia | 17% | 83% |
| Tasmania | 5% | 95% |
| Victoria | 15% | 85% |
| Western Australia | 0% | 100% |



Do you work on:

51 per cent stated they work on both residential and commercial construction sites, 49 per cent stated they worked on residential construction sites only and 0.3 per cent on commercial construction sites only.

Do you work on:



Source: HIA Economics

On a state by state breakdown:

| | Both residential and commercial construction sites | Commercial construction sites only | Residential construction sites only |
|------------------------------|--|------------------------------------|-------------------------------------|
| Australian Capital Territory | 40% | 0% | 60% |
| New South Wales | 54% | 1% | 45% |
| Northern Territory | 67% | 0% | 33% |
| Queensland | 65% | 0% | 35% |
| South Australia | 58% | 0% | 42% |
| Tasmania | 48% | 0% | 52% |
| Victoria | 33% | 0% | 67% |
| Western Australia | 72% | 0% | 28% |



Agreements/Awards

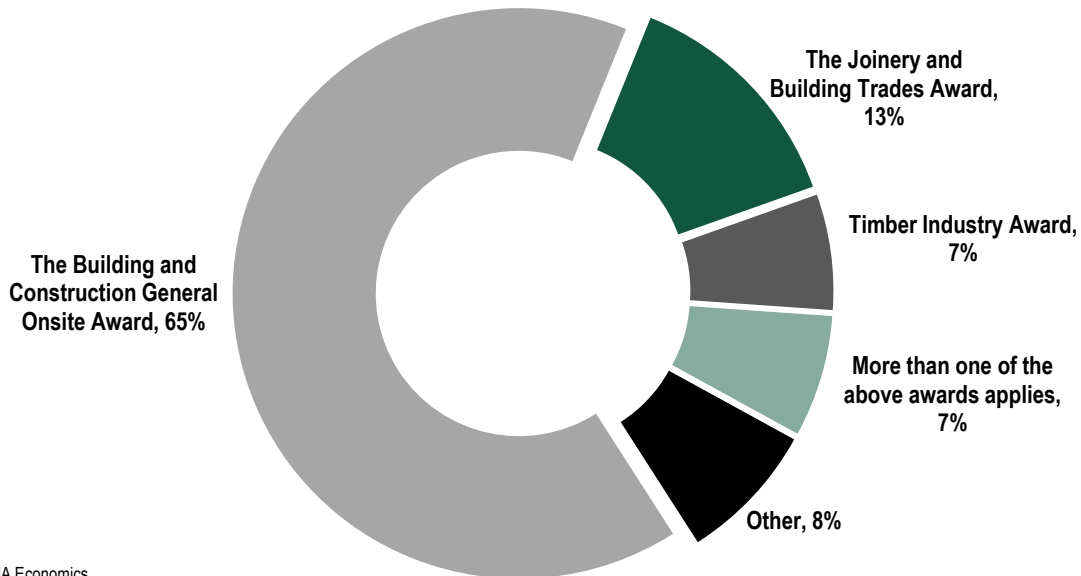
An employee’s minimum terms and conditions of employment are set out in a Modern Award. A Modern Award will apply to an employer and their employees based on the industry they are in and the work they do.

Instead of a Modern Award some employees may be covered by an Enterprise Bargaining Agreement (often called EBA’s). An Enterprise Bargaining Agreement is a legally binding agreement, negotiated between an employer and their employees/the employee’s union and approved by the Fair Work Commission that sets out the pay and working conditions of those people covered by it.

Select the Modern Award that applies to you:

The majority of respondents, 65 per cent stated they work under the Building and Construction General Onsite Award, 13 per cent the Joinery and Building Trades Award, 7 per cent equally under the Timber Industry Award and More than one of the above awards applies to their business.

Select the Modern Award that applies to you:



Source: HIA Economics

On a state by state breakdown:

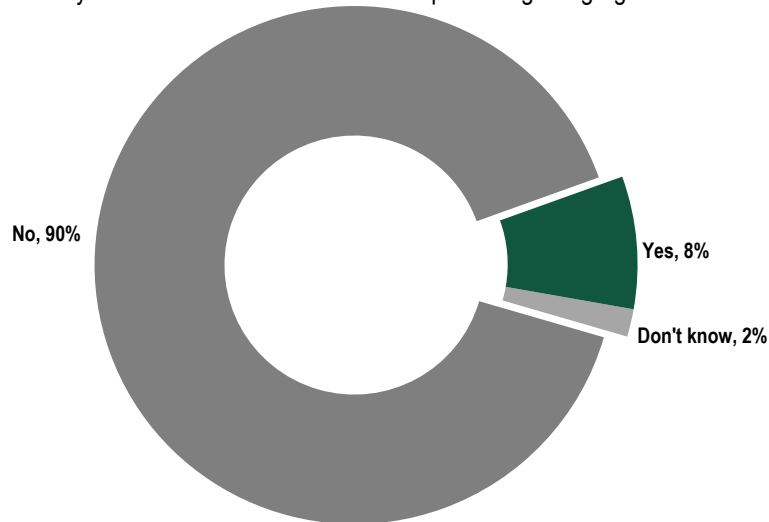
| | More than one of the above awards applies | Other | The Building and Construction General Onsite Award | The Joinery and Building Trades Award | Timber Industry Award |
|------------------------------|---|-------|--|---------------------------------------|-----------------------|
| Australian Capital Territory | 0% | 10% | 60% | 30% | 0% |
| New South Wales | 3% | 5% | 71% | 15% | 5% |
| Northern Territory | 33% | 33% | 0% | 33% | 0% |
| Queensland | 4% | 6% | 67% | 10% | 13% |
| South Australia | 4% | 8% | 63% | 17% | 8% |
| Tasmania | 5% | 0% | 81% | 14% | 0% |
| Victoria | 14% | 10% | 63% | 11% | 3% |
| Western Australia | 11% | 22% | 39% | 6% | 22% |



In the last 6 years has your business entered into an Enterprise Bargaining Agreement?

Nearly all respondents, 90 per cent stated over the last 6 years their business has not entered into an Enterprise Bargaining Agreement.

In the last 6 years has your business entered into an Enterprise Bargaining Agreement?



Source: HIA Economics

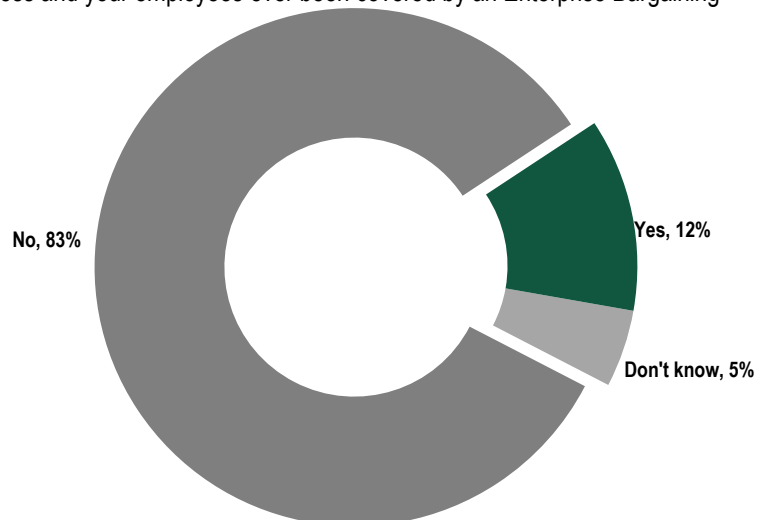
On a state by state breakdown:

| | No | Yes | Don't know |
|------------------------------|------|-----|------------|
| Australian Capital Territory | 90% | 10% | 0% |
| New South Wales | 85% | 12% | 3% |
| Northern Territory | 100% | 0% | 0% |
| Queensland | 94% | 6% | 0% |
| South Australia | 92% | 8% | 0% |
| Tasmania | 100% | 0% | 0% |
| Victoria | 93% | 5% | 1% |
| Western Australia | 78% | 17% | 6% |

Has your business and your employees ever been covered by an Enterprise Bargaining Agreement?

The majority of respondents, 83 per cent stated their business and employees have not been covered by an Enterprise Bargaining Agreement, 12 per cent stated they have been covered by an Enterprise Bargaining Agreement and 5 per cent stated they didn't know.

Has your business and your employees ever been covered by an Enterprise Bargaining Agreement?



Source: HIA Economics



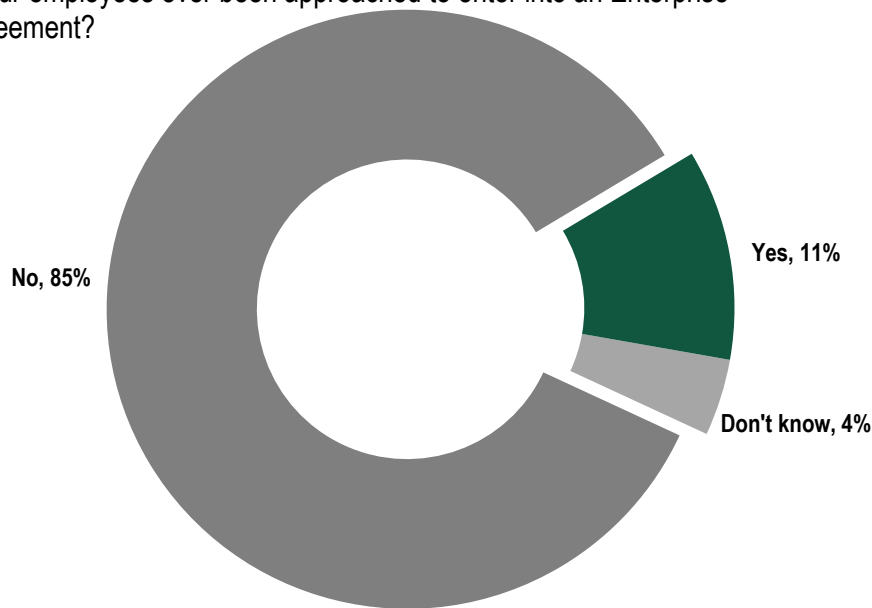
On a state by state basis:

| | No | Yes | Don't know |
|------------------------------|------|-----|------------|
| Australian Capital Territory | 100% | 0% | 0% |
| New South Wales | 76% | 15% | 9% |
| Northern Territory | 100% | 0% | 0% |
| Queensland | 83% | 15% | 2% |
| South Australia | 79% | 17% | 4% |
| Tasmania | 95% | 5% | 0% |
| Victoria | 89% | 8% | 3% |
| Western Australia | 72% | 17% | 11% |

Have you or your employees ever been approached to enter into an Enterprise Bargaining Agreement:

The majority of respondents, 85 per cent stated they have not been approached to enter into an Enterprise Bargaining Agreement.

Have you or your employees ever been approached to enter into an Enterprise Bargaining Agreement?



Source: HIA Economics

On a state by state basis:

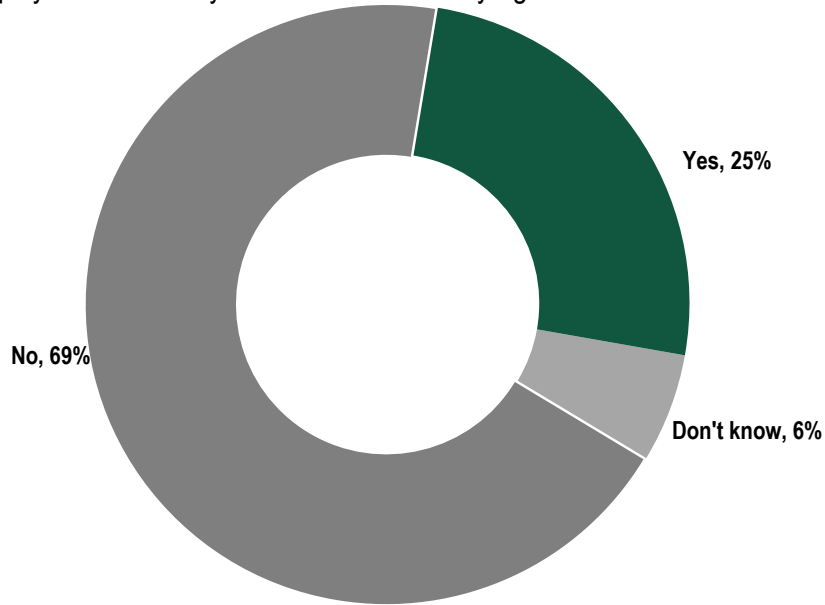
| | No | Yes | Don't know |
|------------------------------|------|-----|------------|
| Australian Capital Territory | 90% | 10% | 0% |
| New South Wales | 84% | 12% | 4% |
| Northern Territory | 100% | 0% | 0% |
| Queensland | 83% | 15% | 2% |
| South Australia | 75% | 13% | 13% |
| Tasmania | 95% | 0% | 5% |
| Victoria | 86% | 11% | 3% |
| Western Australia | 78% | 17% | 6% |



Are any of your employees covered by an Individual Flexibility Agreement?

The majority of respondents, 69 per cent stated their employees are not covered by an Individual Flexibility Agreement. 25 per cent stated their employees are covered by an Individual Flexibility Agreement and 6 per cent stated they didn't know.

Are any of your employees covered by an Individual Flexibility Agreement?



Source: HIA Economics

On a state by state basis:

| | No | Yes | Don't know |
|------------------------------|-----|-----|------------|
| Australian Capital Territory | 80% | 20% | 0% |
| New South Wales | 71% | 24% | 5% |
| Northern Territory | 67% | 33% | 0% |
| Queensland | 52% | 38% | 10% |
| South Australia | 67% | 29% | 4% |
| Tasmania | 81% | 14% | 5% |
| Victoria | 75% | 21% | 4% |
| Western Australia | 61% | 28% | 11% |



Hours of work

Under the Building and Construction General Onsite Award ordinary working hours are to be worked on an RDO system.

This means that in a 20 day four week cycle, Monday to Friday inclusive, eight hours is worked for each of 19 days and with 0.4 of any hour on each of those days accruing towards the twentieth day, which will be taken as a paid day off. The twentieth day of that cycle will be known as the rostered day off (RDO)

Do your employees currently receive RDO's?

The majority of respondents, 67 per cent stated their employees currently do not receive RDO's and 33 per cent stated their employees do.

Do your employees currently receive RDO's?



Source: HIA Economics

On a state by state basis:

| | No | Yes |
|------------------------------|------|-----|
| Australian Capital Territory | 33% | 67% |
| New South Wales | 57% | 43% |
| Northern Territory | 100% | 0% |
| Queensland | 76% | 24% |
| South Australia | 63% | 38% |
| Tasmania | 56% | 44% |
| Victoria | 82% | 18% |
| Western Australia | 78% | 22% |



What would be the effect on your business if your employees did not receive RDO's

Responses are provided in their entirety (19 per cent of respondents provided a comment)

Australian Capital Territory: Better able to meet clients' needs without down time.

Australian Capital Territory: I already lose one man a week at Tech, very hard for a small firm, then rain days, sick days.

Australian Capital Territory: More productivity, more profit to the business, therefore, we could employ more people! Simple isn't it?

New South Wales: angry employees

New South Wales: Beneficial

New South Wales: Better productivity, however we still need to be onsite 8hrs a day as this affects other trades Alternative is to shut down sites completely. This affects self-employed contractors as they generally don't take RDO's.

New South Wales: Financial limitations

New South Wales: Improved customer service as the business would be operational continually without shutting down for the day

New South Wales: increased productivity

New South Wales: Increased productivity

New South Wales: Increased productivity with regards to onsite installations

New South Wales: Initially some concern by employees, in the long run very little impact.

New South Wales: It would be better

New South Wales: More production

New South Wales: more productivity

New South Wales: more productivity.

New South Wales: Negative

New South Wales: Minimal

New South Wales: No effect. All our employees work overtime and do not have their RDO's on the day as they like to use them if they want a long weekend or some other time off because of family etc.

New South Wales: None

New South Wales: None

New South Wales: Significant cost saving

New South Wales: That would be really good more hours of work on overtime

New South Wales: The boy's would just take days off instead of using an RDO that that have saved.

New South Wales: They would be paid for hours worked and take a day off when they needed to do something private.

Queensland: It would be a benefit to productivity

Queensland: lower cost and increased productivity

Queensland: more onsite work achieved

Queensland: more productivity, they would get more pay as would also get paid overtime on the day off. Just set a standard 8hr/day, 40 hour work week and everything excess is at overtime rates and keep things simple.

Queensland: More time

Queensland: Nil

Queensland: Nothing

Queensland: Probably be more productive.

South Australia: More profitable

South Australia: No effect

South Australia: RDO sometimes used as lay days when jobs not ready if possible, would have to pay full time employee for these days off otherwise. Hard to pay employees when I'm not getting paid, nice to have that flexibility.

Tasmania: Better working arrangements

Tasmania: lose flexibility to give them RDO when it rains etc

Tasmania: More sick days

Tasmania: Negligible, as our employees stagger their RDO's for private reasons.

Tasmania: None

Tasmania: Nothing we mainly hire casuals

Tasmania: We find having to manage RDO's particularly onerous and it's hard to explain to clients that no one is on-site because they have an RDO. If employees work through their RDO then the only time they can take them is in January which means that they don't use all on their annual leave which puts further pressure on us.



Tasmania: We have operated on the RDO system for over 10 years and we would not appreciate loss of the RDO system.

Victoria: Better Productivity

Victoria: Extra costs of overtime wages.

Victoria: Higher wage costs

Victoria: It would improve output

Victoria: more work done

Victoria: Productivity would increase. It would be easier for us to make our margin which has been really difficult over the last 8 years

Victoria: RDO's are a good time for me to work on the business without interruptions. If there were no RDO's, I would have to do this work at other times, e.g. weekends. RDO's also reduce the amount of sick leave taken for 'sickies' when employees need to have a personal day off.

Victoria: They would leave.

Victoria: They would take more time off

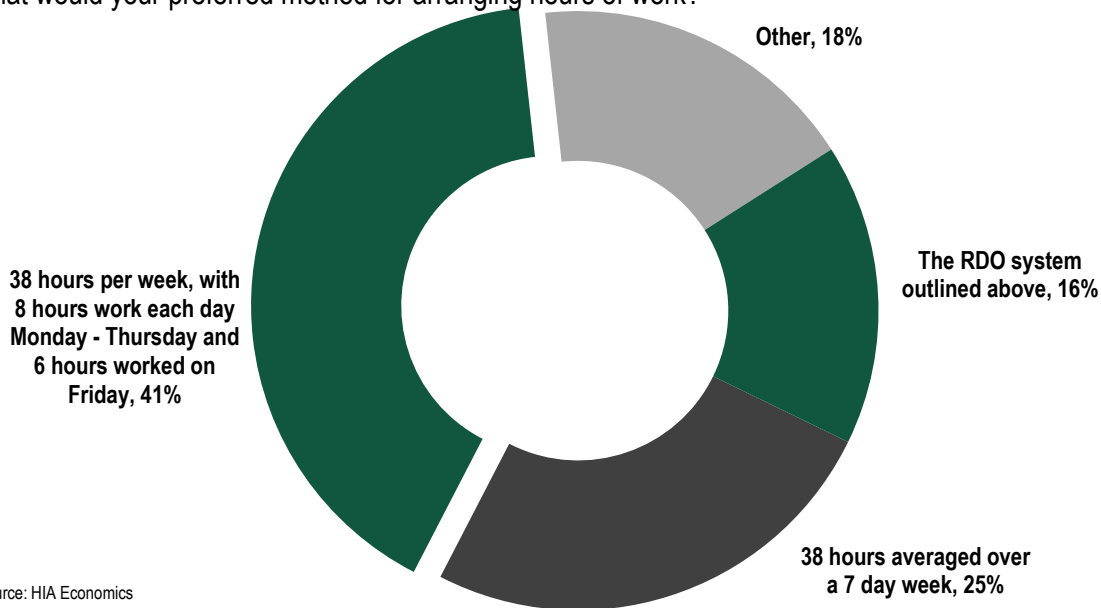
Victoria: Unhappy employees

Western Australia: More flexible work days

What would your preferred method for arranging hours of work?

41 per cent of respondents stated they would prefer 38 hours per week with 8 hours work each day Monday – Thursday and 6 hours worked on Friday. 25 per cent stated 38 hours averaged over a 7 day week and 16 per cent stated the RDO system outlined above.

What would your preferred method for arranging hours of work?



Source: HIA Economics

On a state by state breakdown:

| | 38 hours averaged over a 7 day week | 38 hours per week, with 8 hours work each day Monday - Thursday and 6 hours worked on Friday | Other | The RDO system outlined above |
|------------------------------|-------------------------------------|--|-------|-------------------------------|
| Australian Capital Territory | 0% | 50% | 17% | 33% |
| New South Wales | 20% | 43% | 10% | 26% |
| Northern Territory | 100% | 0% | 0% | 0% |
| Queensland | 35% | 44% | 15% | 6% |
| South Australia | 13% | 25% | 38% | 25% |
| Tasmania | 22% | 50% | 17% | 11% |
| Victoria | 34% | 38% | 20% | 9% |
| Western Australia | 11% | 33% | 44% | 11% |



In your opinion, is the current requirements to operate on an RDO system appropriate for the residential construction industry?

Responses are provided in their entirety (57 per cent of respondents provided a comment)

Australian Capital Territory: No as we are only a small company

Australian Capital Territory: NO, it is ridiculous! There is NO work ethic anymore for employees. It seems that employees just want to 'Turn up' to get paid and to collect the benefits, and not really have to work! It's time to wind this back, and then we might be able to employ more people!

Australian Capital Territory: Yes.

New South Wales: As long as it is flexible which we always allow.

New South Wales: I don't think so.

New South Wales: I think the RDO system should be an option negotiated between employer and employee/s not a requirement.

New South Wales: Losing a whole day every four weeks for a RDO is not good for overall production in small businesses.

New South Wales: no

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: no

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No

New South Wales: No I don't feel that it works in the residential field, need flexibility, it's hard enough to have apprenticeships and co-ordinate a 4 day week for them.

New South Wales: NO I prefer to work 8hrs per day, 5 days a week

New South Wales: No it is not flexible enough

New South Wales: No, It basically gives workers 2.5 extra week's holiday a year as RDO's are generally taken on request or as blocks

New South Wales: no, it's not, would rather see the base rate for Carpentry employees raised to suit the abolishment of RDO

New South Wales: no, not for small business

New South Wales: No. It's outdated.

New South Wales: No. Residential sub-contractors keep on working no matter what the day.

New South Wales: No. The cost of housing is far too expensive as it is. This is not the only reason, but part of a larger problem that accumulates costs that are then transferred onto customers.

New South Wales: Not really

New South Wales: Start and finish times are not always definite so we need flexibility

New South Wales: Stupid - nothing would ever get done. Some trades (eg painters, plasterers) seem to have early knock-off Fridays, but sparkies, carpenters and plumbers generally don't.

New South Wales: The current arrangement to operate on an RDO system is outdated and inappropriate for any industry now.

New South Wales: This system does not work for us as a small residential builder as we do not have enough staff to allow us to effectively manage the RDO's without impacting workflows and project progress

New South Wales: We are a micro company. RDO's just don't work in our day to day schedule. I do not think that RDO's are appropriate for the residential construction industry for micro companies.

New South Wales: We can work to it. Most clients are OK with having a day off site a month

New South Wales: Why does the Employer have to pay travel on a RDO when the Employee does not travel to work on that RDO.

New South Wales: Yes

New South Wales: Yes



New South Wales: Yes

New South Wales: Yes

New South Wales: Yes

New South Wales: Yes

New South Wales: yes

New South Wales: yes

New South Wales: Yes it seems to work ok because we have to abide by it.

New South Wales: Yes work hard for six day a week then enjoy a long weekend

New South Wales: Yes, it allows time to catch up on office work etc

New South Wales: yes, why should it be different to commercial work?

Northern Territory No

Queensland: Depends on the individual, some prefer to take the money and keep working with no RDO's

Queensland: I guess it's beneficial. Sometimes there are clients that require works to be completed on a weekend and it's hard to limit to 38 hours a week. It's also hard to have employees take days off due to the current work load

Queensland: No

Queensland: No

Queensland: No

Queensland: no

Queensland: No

Queensland: No

Queensland: No

Queensland: No

Queensland: No

Queensland: no

Queensland: No does Australia want affordable housing or not.

Queensland: No it is entirely inappropriate for smaller construction companies in general. We already deal with delay issue due to weather etc. Having labourers and carpenters on rostered days off interferes greatly with construction programming.

Queensland: No it is ridiculous. It is disruptive to business, worksites and clients. Employees should be paid for the hours they work, not accruing hours each day.

Queensland: NO! everyone on site works 8 hrs / day minimum anyway, RDO's are simply an inconvenience to all as we have many staff who ask to be paid out their RDO and want to work so they get overtime pay & get the job done. RDO's really should be phased out. If people want a day off, take it as Annual Leave like every other award/profession. If people want to leave early, then they should start early or take it as leave/unpaid leave. RDO's are overcomplicating what could be a simple award and pay per hour/standard day with everything in excess of 8 hours paid at overtime rates

Queensland: No.

Queensland: No. Construction Industry usual involves hard manual labour and it's too much to expect staff on a Friday afternoon to keep up that level of activity.

Queensland: no. it makes no sense at all. On site is a waste of time.

Queensland: No. My business is only very small with myself and 1 apprentice as an employee. All other workers are engaged as sub-contractors. Losing one day's labour/productivity every 20 days will cause increased delays to my projects.

Queensland: NO. Pressures from many sources require 1 man/small business to wear many hats. Cost of administration is ridiculous.

Queensland: Yes

Queensland: Yes

Queensland: Yes

Queensland: yes

Queensland: Yes and no

South Australia: No

South Australia: No

South Australia: no

South Australia: No

South Australia: No it is not.

South Australia: No, it is not economically viable hence people now using Sub Contractors as opposed to employing.

South Australia: No. It makes programming difficult. It adds a substantial cost to the business.

South Australia: No. No. No. Did I say NO. NO

South Australia: Not flexible enough



South Australia: We don't use it, therefore do not see it as a benefit to the residential construction industry

South Australia: Yes

South Australia: Yes

South Australia: Yes

Tasmania: An RDO system is not appropriate in the residential system as clients in that industry are highly emotive and want their house built as soon as possible. RDO's compounded by inclement weather days (where we still have to pay employees).

Tasmania: Depends on the type of business you are operating.

Tasmania: No

Tasmania: No

Tasmania: No

Tasmania: No

Tasmania: no

Tasmania: No

Tasmania: No, different sized businesses in different locations need the ability to manage flexibility with their workers to determine the best arrangement of working days themselves without the need for establishing individual flexibility arrangements.

Tasmania: No. Employees should be able to work whatever they like. We should pay them for eighty hours a fortnight and any extra time they do they should be able to take off in lieu when they wish.

Tasmania: No. We are a small company and sometimes RDO's are not convenient for our workload which varies.

Tasmania: Not for our small business. We require all hands on deck every work day, since we do not have enough employees to cover RDO's and the works we perform cannot be closed down for any one work day. (Commercial clients especially would think that would be a joke). If an employee works more than the 7.6 hours, they receive penalty rates.

Tasmania: Not really

Tasmania: Up to individual businesses to come to an agreement with employees.

Tasmania: Yes

Tasmania: Yes

Victoria: Employees work 38 hours per 5 day week no RDO

Victoria: it becomes hard to plan for RDO's when weather and delivery times are constant variables. We would be happy to pay for a 40 hour week

Victoria: no

Victoria: No

Victoria: No

Victoria: NO

Victoria: No

Victoria: NO

Victoria: No

Victoria: No

Victoria: No

Victoria: No

Victoria: No

Victoria: No

Victoria: No

Victoria: no

Victoria: No

Victoria: no

Victoria: No, it is not appropriate for residential construction.

Victoria: NO as it's a whole day of no productivity this country already has enough public holidays / sick days & holidays

Victoria: No as there are many types & sizes of businesses & different things will work for each. & also employees' needs are different.

Victoria: No because it's disruptive

Victoria: No it is not appropriate, as we can't always predict what works will be undertaken or materials will arrive at site on the day of the RDO. Also with inclement weather in our industry will change the working schedule on a daily basis. My employees and I would much rather work and get paid the 40 hours a week and have no RDO or the 2 hours less every Fridays to make the 38 hour week.

Victoria: No need

Victoria: no RDO too much down time

Victoria: No, as many residential developments are constructed with a mix of employees and subcontractors. Under Worksafe guidelines and practices the builder is required to exercise control and safety of sites whilst works are in progress. This cannot be exercised by the builder or his management staff when they are of on RDO's. Many



of the jobs subcontracted require labourers and they too cannot attend if away on RDO's. The Subcontractors run their businesses on a 5 day to 6 day working week and need sites to operate during this period.

Victoria: NO, I don't believe so, as there is a timeline is a job is to finished on time and if RDO's were a requirement it would not enable this to be done.

Victoria: No, it never works out that way and are more likely to leave early on a Friday than have a whole day off.

Victoria: no, it should be more flexible, we are not going forward, and productivity is going backwards. Too many rules and restrictions

Victoria: NO, The Building industry is a very tight margin industry and especially in the Residential Market, I don't think RDO's should even be applied to the residential industry.

Victoria: No. in a small business it is a momentum breaker and especially when it is attached to a long weekend or Easter.

Victoria: No. It might work for the profitable government, road infrastructure, apartment and multi storey building sector, but it is a real struggle to make a margin (profit) in the residential sector as it is, and the rates of pay are already too high. An RDO is like an automatic bonus and delays job progress.

Victoria: No. Many of the workers in this industry are self-employed and cannot afford to take a day off. In the residential sector they have a negative effect on productivity. It can be similar to a person in a workplace having a sick day. Things just don't function as well when a vital member of a team is not there.

Victoria: No. RDO systems have been phased out of most industries due to the being inefficient and uneconomic.

Victoria: No. Stupid idea

Victoria: No. Where contractors are used and mostly work across a number of sites at any one time, we need to provide as much opportunity as possible for them to do their job.

Victoria: Not appropriate at all. We need flexibility, we need people to turn up every day to work. Buildings are on a tight time line to be completed, RDO's would slow the process. There are already down times with rain days and public holidays. All are contractors, self-employed this needs to be maintained

Victoria: Not For small businesses

Victoria: on occasions

Victoria: RDO's would add a ridiculous cost to the domestic industry, just as in has to the commercial industry.

Victoria: With consumerism gone mad we all work on time constraints regarding contracts. Employees need to have a more flexible work environment that is consultative with their employer. Employees and employers must have the flexibility to set arrangements that work for their business and the employees' needs. With good communication and respect there is simply no reason why more flexible arrangements cannot work.

Victoria: Works good for me.

Victoria: yes

Victoria: Yes

Victoria: Yes

Victoria: Yes

Victoria: Yes

Victoria: Yes.

Victoria: Yes. The accrued 2 hours per week are sometimes good to have for wet days or quieter periods.

Western Australia: Has just become the norm and we find ways to make it work

Western Australia: NO

Western Australia: No

Western Australia: No not for residential construction

Western Australia: No, builders just want to book you in when it suits them they don't want to hear that you are one or two man down and can't offer a service

Western Australia: No. Work has to be done when it's there to be done. Not possible to schedule RDO's in our business.

Western Australia: Not anymore. An option is required. Our apprentice works on the RDO system but other fulltime employees are on an IFA as their choice so that they can work any hours over and above full time hours without a day off. They prefer the extra money.



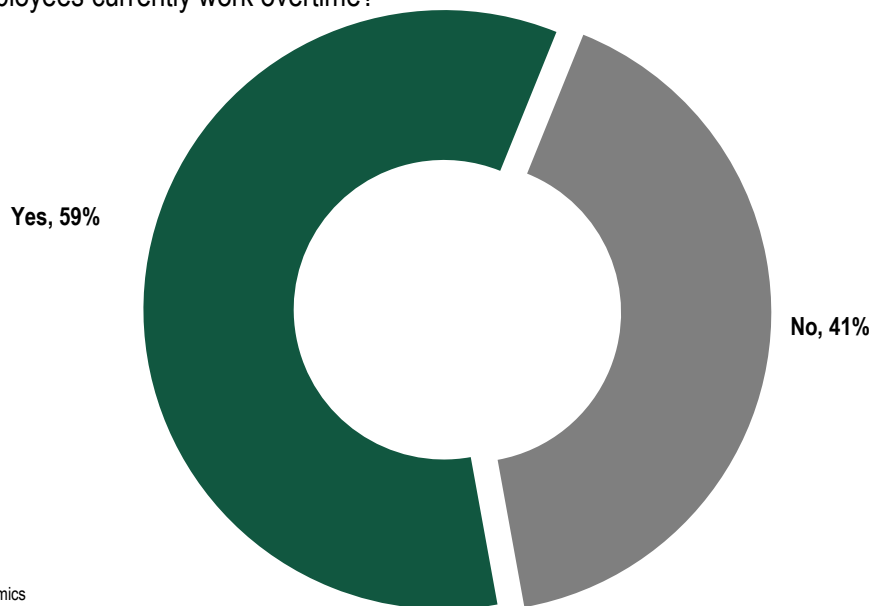
Overtime

Generally when an employee works more than their ordinary hours per week (for example more than 28 hours in a week, outside the plan of ordinary hours (for example, before 7am and after 6pm) or on weekends), an employer is required to pay the employee at overtime rates being, for example, time and a half or double time.

Do your employees currently work overtime?

59 per cent of respondents stated their employees currently work overtime and 41 per cent stated their employees do not.

Do your employees currently work overtime?



Source: HIA Economics

On a state by state basis:

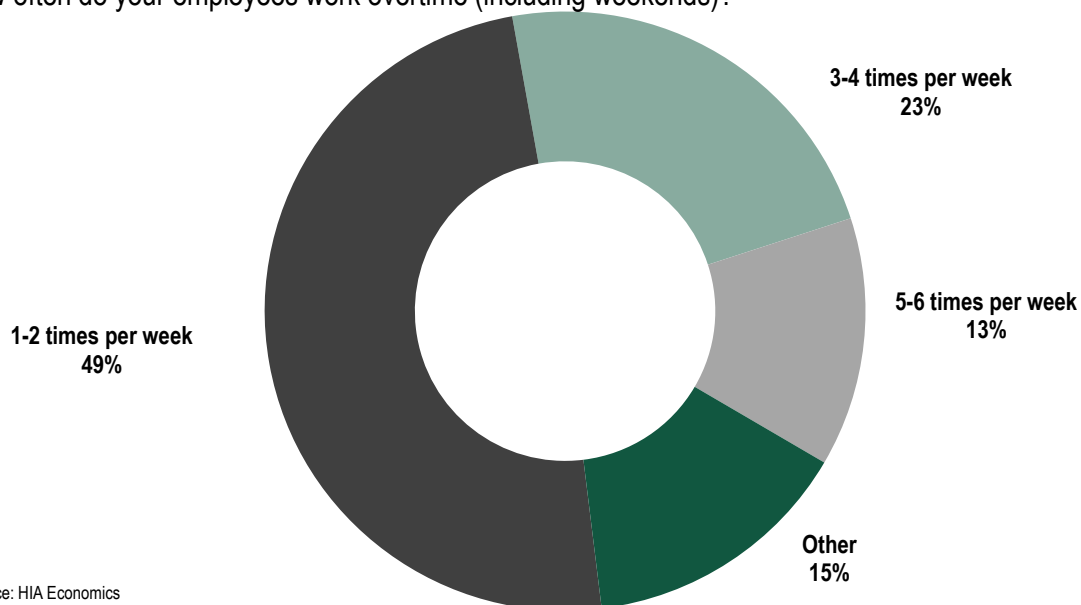
| | No | Yes |
|------------------------------|-----|-----|
| Australian Capital Territory | 20% | 80% |
| New South Wales | 42% | 58% |
| Northern Territory | 33% | 67% |
| Queensland | 31% | 69% |
| South Australia | 54% | 46% |
| Tasmania | 48% | 52% |
| Victoria | 44% | 56% |
| Western Australia | 39% | 61% |



How often do your employees work overtime (including weekends)?

Of the 59 per cent of respondents that stated they have employees' currently working overtime. 49 per cent of respondents stated their employees worked overtime 1-2 times per week, 23 per cent stated their employees for 3-4 times per week. 14 per cent stated other, 13 per cent stated 5-6 times per week and 1 per cent stated their employees worked overtime 2 times per month.

How often do your employees work overtime (including weekends)?



Source: HIA Economics

Other responses stated:

- 2 times per month
- a couple of times each month
- as need basis
- couple of hours a month not every month or every employee
- generally work a 40hr week so 2hrs per week
- just during heavy workload periods
- Mostly as required.
- occasionally as required
- once a fortnight
- once a month - rarely
- once every 6 months
- once or twice a month
- once or twice a month
- only when required
- only when work allows it
- 1-5
- 1 - 2 times per month
- 1-2 month
- rarely
- sometime
- varies
- varying
- when needed
- when required

On a state by state basis:

| | 1-2 times per week | 3-4 times per week | 5-6 times per week | Other |
|------------------------------|--------------------|--------------------|--------------------|-------|
| Australian Capital Territory | 38% | 25% | 25% | 13% |
| New South Wales | 46% | 24% | 13% | 17% |
| Northern Territory | 0% | 0% | 100% | 0% |
| Queensland | 48% | 27% | 9% | 15% |
| South Australia | 64% | 18% | 18% | 0% |
| Tasmania | 73% | 0% | 18% | 9% |
| Victoria | 54% | 17% | 12% | 17% |
| Western Australia | 27% | 55% | 0% | 18% |



Has an employee ever requested that instead of being paid for the overtime worked it is accrued and taken as paid leave at another time?

Of the 59 per cent of respondents that stated they have employees' currently working overtime. 56 per cent of respondents stated an employee has not requested instead of being paid for the overtime worked it is accrued and taken as paid leave at another time, 44 per cent stated an employee has made the request.

Has an employee ever requested that instead of being paid for the overtime worked it is accrued and taken as paid leave at another time?



Source: HIA Economics

On a state by state basis:

| | No | Yes |
|------------------------------|------|-----|
| Australian Capital Territory | 50% | 50% |
| New South Wales | 64% | 36% |
| Northern Territory | 100% | 0% |
| Queensland | 55% | 45% |
| South Australia | 55% | 45% |
| Tasmania | 36% | 64% |
| Victoria | 49% | 51% |
| Western Australia | 73% | 27% |



What would be the effect on your business if your employees could accrue overtime worked towards leave taken at another time?

Responses are provided in their entirety (84 per cent of respondents provided a comment)

Australian Capital Territory: Haven't thought about it but probably no effect if managed appropriately

Australian Capital Territory: Impact would be significant if they weren't available for more than 1 day when only working sporadically extra. I liken this to the RDO system which is nonsense. It doesn't hurt for staff to work extra when required to do so but that time should be afforded to them for something important or to get away earlier on a Friday afternoon. Plus, it becomes hard to manage.

Australian Capital Territory: Nil.

Australian Capital Territory: Rarely would an employee undertake overtime in our business as they are generally lazy and do not want to work - they would rather just get all the handouts!

Australian Capital Territory: That would be preferable as sometimes there is a lot of work all at once and sometimes the employees finish at lunchtime Fridays

Australian Capital Territory: There would be more down time as staff would be off

New South Wales: a build-up of money for me to much to pay out all at once.

New South Wales: Already take too much time off. Holidays, RDO's, wet weather, sick leave and Tafe if applicable. Not many productive days left in a year

New South Wales: As a small business. It could be quite crippling as the juggling of time v's leave is just another cost/time monitoring that we just don't have.

New South Wales: as long as leave is taken at a convenient time

New South Wales: bad

New South Wales: Be good

New South Wales: beneficial to both business and employee

New South Wales: Beneficial

New South Wales: Big effect we need staff on the ground working

New South Wales: Complete disaster. Either do the work that is required instead of screwing the office staff with work as they wish & allow clients to wait their turn

New South Wales: Could be ok

New South Wales: Difficult to schedule work

New South Wales: Disruptive

New South Wales: Disruptive and hard to manage with people wanting time off at inappropriate times and busy periods.

New South Wales: far too difficult in this size business.

New South Wales: Financial limitations... extra administrative burden

New South Wales: Greater flexibility.

New South Wales: Hard to program work depending on time accrued

New South Wales: Haven't really considered this option

New South Wales: higher cost to employ

New South Wales: Huge

New South Wales: I do not know. It would depend on the attitude of the employee whether he was flexible.

New South Wales: I feel this would affect productivity as we have a large amount of construction supervisors with tight deadlines and if additional leave was taken this could potentially increase our build times.

New South Wales: I think it would be fine if this was the case, however it is good to keep things separate.

New South Wales: It could help with delaying cash out, but long term would make no difference.

New South Wales: It only really works if we as an employer have control as to when time accrued can be taken - ie great if we can make it when quieter on work front. Not good if an employee is able to bank up big chunks of extra time to take off - again we do not have enough staff to enable us to do this.

New South Wales: It usually only happens in few months prior to Christmas when the employee is short of holiday pay. No real effect on business.

New South Wales: It would be a flexible arrangement

New South Wales: It would be difficult to track & fund as the billable hours are linked to a job.

New South Wales: It would be unaffordable.



New South Wales: It would become messy for production planning and reaching overall production targets.

New South Wales: It would compensate the Employer giving fee time-off to the Employee to meet appointments

New South Wales: It would reduce the cost of my wages and would be quite beneficial as we do a lot of overtime.

New South Wales: It would reduce the costs of meeting deadlines during very busy periods and allow employees to take time off when work is slow.

New South Wales: It would save some \$\$, since they take time off anyways when they need it.

New South Wales: It's hard in a small business to lose a man to accrued o/t as there aren't enough workers to cover when they are missing.

New South Wales: Loss of productivity and ability to properly schedule work

New South Wales: maybe help with cash flow from time to time but I am not certain without more consideration

New South Wales: mite be a good idea

New South Wales: More flexibility

New South Wales: Most are contractors so it does not affect us

New South Wales: Negative as I require everybody onsite at all times for work to run smoothly.

New South Wales: Negligible

New South Wales: Minimal

New South Wales: No effect as the may need time off for a family matter and will work extra hours to take the time off

New South Wales: none

New South Wales: None

New South Wales: None as this is pretty well how we operate

New South Wales: Not acceptable

New South Wales: Not good, I'd rather pay the overtime than loose manpower.

New South Wales: Not having labour when needed

New South Wales: Ok

New South Wales: Positive

New South Wales: Rather extra time off than extra dollars. Can find an extra pair of hands to help if

someone is away - can't find extra dollars for overtime.

New South Wales: Save money on penalty rates

New South Wales: Significant regards away from work - do then we need to employ others to take up void?

New South Wales: Strain on cash flow

New South Wales: That seems ok

New South Wales: That system would work better for both employer and employee

New South Wales: That would be ok, as long as it is in conjunction with the company and work. The employee would have to request a day off in advance

New South Wales: That would help with costing of jobs. Over time kills the profit margins etc. Sometimes it would help families have more time with Father / Mother.

New South Wales: That would make work outcomes more manageable

New South Wales: This could work but again adds to the office work. If an employee works many hrs o/t they would accrue a lot of time off for me this not productive as I would be shorthanded on those days & it could be constitutive days off which would be even harder. This could cause problems for other trades as the job would slow with lack of labour on site.

New South Wales: This is a better option it's not financially viable to have employees doing overtime

New South Wales: This would be our preferred option. As a small business, the cost of wages can be the difference between a profitable job or not.

New South Wales: This would not suit our business at all. We close down over the Xmas period for four weeks per year as most of our clients and building industry in general also close at this time.

New South Wales: Too much availability for leave thus leaving the company understaffed

New South Wales: Unsure

New South Wales: We are flexible with our staff leave times and generally agree to give time off that suites the employee not on a calendar day as the RDO system would have it. It would be better financially for us if time in lieu was taken as we cannot on forward the costs for overtime rates

New South Wales: We currently work under this system and it seems to work fine.



New South Wales: When the time off was taken would have to be negotiated, depending on the urgency of work on site.

New South Wales: Would be better

New South Wales: Would leave the business short at critical times as employers feel bad rejecting a leave form when the employee wants the leave to occur souring the relationship. As employees are highly skilled having people to replace during busy times is problematic.

New South Wales: Wouldn't really affect it

New South Wales: Yes this could be taken in quiet time's suit employee and employer

Northern Territory: Great

Northern Territory: Reduces the availability of manpower. Our employees prefer the monetary consideration.

Queensland: As it does not happen often it works fine for us

Queensland: As long as we were able to negotiate the timing of the leave with the employ I would not object to doing it!

Queensland: big imposition

Queensland: Extra book and hour keeping to follow how much time would be owing and having the funds available to pay these leave hours.

Queensland: Fair method no change

Queensland: Good

Queensland: Good for both parties

Queensland: I could offer more overtime and it would be more cost effective for the Company.

Queensland: I would find myself understaffed

Queensland: it works better as the industry is very seasonal. This way company can ride both busy and quiet period whilst still offering employee stability of ongoing employment.

Queensland: It would be very disruptive when the employees decided to take that leave. I would prefer to pay them for the hours they do.

Queensland: It would be very disruptive with more holiday time off which I could not manage

Queensland: It would help to even out our cash flow

Queensland: It would leave us short staffed and unable to complete jobs

Queensland: It would leave us short staffed on those days

Queensland: It would not affect us much as we rarely do overtime hours and most of our employees like the extra cash

Queensland: It would probably be easier on my cash-flow. It would need to be capped though. Another option is to work overtime and the money accrued is put towards tools of the trade.

Queensland: It would ruin the labour scheduling and time to complete projects. Overtime is rates destroy small business especially when employees manipulate their hours to get the higher pay rate.

Queensland: It would take more administration hours to ensure accurate recordings. Possibility of down time being more noticeable by having an employee absent for a whole day and managing when each employee took their accrued leave.

Queensland: little effect but a good idea

Queensland: Loss of manufacturing time

Queensland: Management are not interested

Queensland: nil

Queensland: No affect

Queensland: No effect

Queensland: No effect

Queensland: Not sure - probably would be better.

Queensland: Nothing

Queensland: That would just add another layer of record keeping in an already overly burdened system.

Queensland: The time taken would have to be at an agreed time so as not to interrupt the flow of work within the factory. I would prefer to pay overtime as it is worked.

Queensland: This flex-leave is very similar to most government and large organisation awards/pay agreements. This would be better as if they left early or wanted an extended holiday they can use banked flex-leave rather than take leave without pay once their leave entitlement is up. It would make it easier for the masses of tradies to understand they can take time off and still be paid whereas otherwise they may have had to take leave without pay (which sometimes ends up them asking for an employer loan when they realise they don't have enough saving to cover their mortgages whilst on leave). Flex leave (with the option to pay it out on request) would be beneficial for the whole workplace.

Queensland: this would be cost effective for this business



Queensland: This would be positive

Queensland: This would be very beneficial for our business! Overtime is such a great expense that we monitor it very closely. If they accrued hours towards time off it could be negotiated at a time that was beneficial for the employee and the employer.

Queensland: We think this is better for some of our workers, but not others. Some take the extra pay, some take time in lieu.

Queensland: With people taking holidays all the time it would have a similar effect as dealing with RDO's

Queensland: Would a benefit as long as it wasn't loaded time

Queensland: would place too much pressure on remaining staff to pick up the work.

Queensland: Would work well.

Queensland: Wouldn't affect the business or cash flow much.

South Australia: Costs and no workers

South Australia: Fantastic for both employer and employee. The employee would have a day off to run errand, doctors' appointments, tax accountant meetings etc without having to take time off during the work week and they would get paid for it. The employer would get more work with flexibility of working hours and then have warning that the employee would be having a whole day off

South Australia: Good

South Australia: Good, can suit work flow in high and low demand

South Australia: Great idea

South Australia: I totally agree with this system

South Australia: it would be a big inconvenience as some of my work needs to be done after hour

South Australia: It would be difficult to administer.

South Australia: it would impact our cash flow and managing jobs

South Australia: Nil

South Australia: nil affect

South Australia: No one would work overtime - they all want the money

South Australia: Not economically viable

South Australia: Not much

South Australia: Ok

South Australia: Our employees only work minimal overtime and usually prefer to be paid for it. If they know that more overtime is available, ie work a Saturday morning, sometimes they request to swap it for time off. If it remains as hour for hour that would be OK. Usually overtime is required to speed up progress on a site, time off defeats the purpose of them working the extra hours. Keeping records of time owed would create more work in the office.

South Australia: positive affect due to the nature of the business being feast or famine

South Australia: This is how I operate and I can't see it another way. 38 paid hrs a week any anything over that (between 7am and 6pm) into RDO account.

Outside normal hours then overtime rates would apply. Residential Carpenter on contract, some days are longer and some are shorter, some days effected by the weather, others have to work extra to be ready for next stage\trades. That flexibility is vital

South Australia: We allow it on a case by case situation

South Australia: we would close down the Company

South Australia: We would get rid of them really quick.

South Australia: Would be ok as long as they were not paid 17% leave loading on top

Tasmania: As long as it was discussed with the employer and a mutually agreed time was decided, then it would be ok. A choice would be better i.e. payment or leave.

Tasmania: Close business

Tasmania: Depends on number of factors - how much notice employee gives before taking time owed how much time employee takes at given time how much time accrues before employee requests cash in lieu

Tasmania: I think that would be a bonus to both employees and us as the employer as another way of managing flexibility within our work place

Tasmania: It could be beneficial to both parties.

Tasmania: It just compounds the fact that at some time we would have to give them the time off on top of their 4 weeks annual leave. This would make it very difficult to have continuity in residential market where we need to keep all homes under construction moving not only for client satisfaction but for cash flow.

Tasmania: It would be terrific. I have already addressed my workers regarding this and they are overwhelmingly in favour of it.



Tasmania: it would work better for both parties, as the job would be done and the employee would get more time off

Tasmania: More administration, more accounting - prefer to pay overtime (rarely have a need in our business) and cost it to job that is being worked at that particular time.

Tasmania: Negative effect

Tasmania: nil

Tasmania: None

Tasmania: None

Tasmania: None really, they don't work a lot of overtime. When they do want to bank their overtime as leave, they want to take it at our Christmas shut down period.

Tasmania: Not sure

Tasmania: Scheduling of staff is difficult in the construction industry because it doesn't follow a 9-5 pattern. Jobs may become more demanding at times therefore not having all staff available can make things difficult. Work can fall behind in time and therefore the impact of time in lieu would hit the bottom line. In short time in lieu would be and from experience is difficult to manage.

Tasmania: We prefer accrued time. It is hard to quote jobs allowing overtime in it.

Tasmania: Would be hard covering the extra time off with the limited staff

Tasmania: Wouldn't allow it to happen

Victoria: A more flexible work place works best for all concerned with no detriment to anybody.

Victoria: A Pain

Victoria: A small effect to the cash flow if it was paid out at one time. ie after a years accrual and at Christmas holidays.

Victoria: Accruing time off would not be an issue

Victoria: As long as this can be scheduled in beforehand, alternative supervision and or labour can be inserted to cover the absence of the time in lieu worker, and production can be maintained and sites can remain open.

Victoria: costly administration. Company to small, it would be like having flexi time.

Victoria: could lose a large percentage of the work force too often.

Victoria: Disrupt continuity of labour supply to manufacturing demand planning

Victoria: Does not fit our current arrangements

Victoria: Don't know at this stage

Victoria: Good

Victoria: Good impact - flexibility.

Victoria: hard to manage

Victoria: Huge Benefit, again the Residential Margins are too tight to be paying over time.

Victoria: I could work if flexible, as work fluctuates in the domestic building industry

Victoria: I don't know

Victoria: I prefer to operate this way, but leave it to an employee to choose.

Victoria: I would prefer if time was accrued to take at a time when the business can plan around that time, such as employing a sub-contractor to fulfil that role temporarily.

Victoria: I would prefer time in lieu instead on paying T1/2 or double time

Victoria: if agreed to by both parties would be OK

Victoria: In small amounts it would have no effect at all. If too much was accrued it could be hard to plan work ahead.

Victoria: Increased costs

Victoria: Is beneficial and in keeping with current practice

Victoria: it could make it difficult for planning and work flow

Victoria: it will be more difficult to manage the scheduling

Victoria: It would be better financially as paying overtime is a massive hit to any profit of a small margin

Victoria: It would give us more flexibility.

Victoria: it would involve an extra amount of paperwork to track

Victoria: It would make human resources management more difficult.

Victoria: keeping track of hours is a pain it is easier to pay the overtime as it is worked

Victoria: Lost productivity

Victoria: Nil

Victoria: Nil

Victoria: no

Victoria: no effect



Victoria: no effect

Victoria: No effect we are flexible to any option that makes our employees happy and we also have a lot of mums so time flexibility is good.

Victoria: no problem

Victoria: No problem as long as mutually convenient.

Victoria: No trouble doing that

Victoria: Not appropriate. The award has lost touch with the requirements within the domestic residential housing sector.

Victoria: not necessary just work the standard hours and go home.

Victoria: Not preferred. Workload would be difficult to manage.

Victoria: not suitable for my business

Victoria: Not suitable for small business

Victoria: not workable

Victoria: one should be paid for work carried out. There should be no ongoing affect

Victoria: Positive in that it enables our business to utilise labour when it is required at award rates and to grant leave when it will have the least impact.

Victoria: Production would be slowed down far too much

Victoria: This is how they are paid back for the extra hours but it is not billed at time and a half or double time, just the same. Extra 8 hours means at some stage they get time in lieu, day off or two half days, flexibility is what required, not is paying people extra of money for a few extra hours worked

Victoria: This is the current system used by our company and employees that work overtime.

Victoria: This would allow us to complete work in a timelier manner making use of good working conditions specifically during the warmer months. It would also give employees more flexibility in having time off rather the restricting this to the shutdown period over Christmas. It would also allow for employees to have additional time off when work is slow or the working conditions are not optimal.

Victoria: This would be beneficial

Victoria: This would help companies in their busy times and allow days off at slower times. I've heard some companies cut hours back down to three days a week, due to being slow, which we've not done.

Victoria: This would justify the existence current overtime rates which are ridiculously high. It would

also cause delay costs. We always avoid overtime as we simply make a financial loss for every minute overtime is worked. We only do overtime if we desperately need to get something complete.

Occasionally there are some employees who go slow knowing there is a deadline that must be met, and do this so that they can get overtime. It doesn't work for smaller businesses. Our customers won't pay us anything for overtime so why should we pay it. Occasionally we have workers who are from overseas. They cannot believe how high the overtime rates in this country are.

Victoria: too much down time

Victoria: Too painful to manage

Victoria: Very disruptive to labour availability

Victoria: We have an understanding, while the work is there we work, when the work is not there any days in lieu he can then choose to take off

Victoria: We would go broke.

Victoria: Would benefit greatly

Victoria: Would affect cash flow.

Victoria: Yes it would rather pay as they do the overtime.

Western Australia: An unprofitable business. No workers no business

Western Australia: cash flow issues, taking too much leave during the year affects our production

Western Australia: I would hold more off their money and in the case off builders not paying I might struggle to fulfil my duties on time

Western Australia: It would be better to have this option but that the employer gets to say yes or no to this option.

Western Australia: It would have a positive effect as the leave can be taken at a suitable time for both Employer and Employee and it would not affect the cash flow of the business dramatically.

Western Australia: Limited effect. Rostering would require some adjustments. Flexibility depends on amount of employees seeking leave at any given time.

Western Australia: Not sure

Western Australia: OK

Western Australia: Potential lack of staff. Would need to hire additional staff to cover the additional annual leave. Staff would mostly prefer OT at 1.5x rather than annual leave at 1.0x



Western Australia: Ripple effect, too many taking holidays at the same time hard to manage.

Western Australia: the need to replace somebody more often would be difficult if you did not have someone available and able to fit straight in to their position. Covering someone for their standard time off would already be difficult and to add more time to that would seem like added pressure unless their position was unskilled, eg site labourer.

Western Australia: This would be a disaster

Western Australia: two weeks of leave is required to be taken at annual shutdown, scheduling in extra leave would be very difficult, keeping track of the accruing extra leave in lieu of overtime would also be difficult.

Western Australia: Would not do it

Western Australia: Would not suit our business model as it would cause additional absences from work and make it difficult to schedule works

Western Australia: would prefer to pay the overtime as more time off is less productive

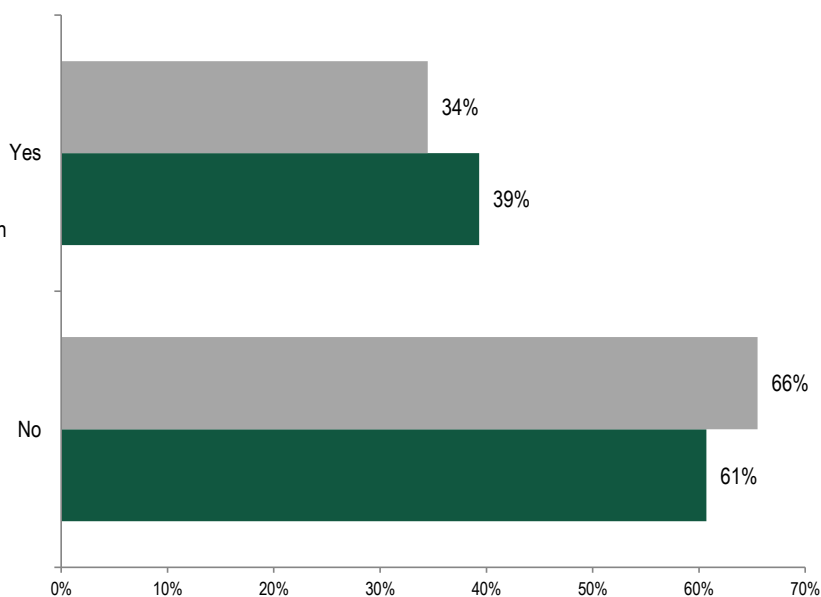
Would your answer change if:

66 per cent of respondents stated it would not change their answer to their employees accruing overtime worked towards leave taken at another time if for each hour worked, the employee was entitled to 1.5 hours or 2 hours paid leave i.e. the number of hours of paid leave accrued by an employee was equal to the rate at which the employee would have been paid had they worked the overtime. 34 per cent state it would change their answer.

61 per cent of respondents stated it would not change their answer if for each hour worked, the employee was entitled to one hour paid leave. 39 per cent stated it would change their answer.

Would your answer change if:

- For each hour worked, the employee was entitled to 1.5 hours or 2 hours paid leave i.e. the number of hours of paid leave accrued by an employee was equal to the rate at which the employee would have been paid had they worked the overtime?
- For each hour worked, the employee was entitled to one hour paid leave?



Source: HIA Economics



On a state by state basis:

Would your answer change if: For each hour worked, the employee was entitled to one hour paid leave?

| | No | Yes |
|------------------------------|-----|-----|
| Australian Capital Territory | 80% | 20% |
| New South Wales | 57% | 43% |
| Northern Territory | 67% | 33% |
| Queensland | 56% | 44% |
| South Australia | 71% | 29% |
| Tasmania | 62% | 38% |
| Victoria | 60% | 40% |
| Western Australia | 67% | 33% |

Would your answer change if: For each hour worked, the employee was entitled to 1.5 hours or 2 hours paid leave i.e. the number of hours of paid leave accrued by an employee was equal to the rate at which the employee would have been paid had they worked the overtime?

| | No | Yes |
|------------------------------|-----|-----|
| Australian Capital Territory | 60% | 40% |
| New South Wales | 73% | 27% |
| Northern Territory | 67% | 33% |
| Queensland | 60% | 40% |
| South Australia | 54% | 46% |
| Tasmania | 71% | 29% |
| Victoria | 62% | 38% |
| Western Australia | 67% | 33% |

Do you have any other comments about the ability of an employer and employee to agree to accrue overtime worked towards paid leave taken at another time?

Responses are provided in their entirety (37 per cent of respondents provided a comment)

Australian Capital Territory: It's now 7.30pm, I have been working since 6.30am this morning, and just about finished doing the book work for the day! I don't get overtime, I don't receive any days off in lieu of hours worked! I actually own this business - who's going to pay me overtime??

Australian Capital Territory: Too hard to keep track

Australian Capital Territory: We wouldn't offer overtime if they accrued loading on overtime as leave

New South Wales: Accrued paid leave gives the employee the ability to call in absent at short notice knowing they have time in Lue.

New South Wales: All overtime should be a standard rate unless the day goes over 12 hours.

New South Wales: As long as it suits both parties

New South Wales: As long as there is an agreement between the two parties then this would be OK.

New South Wales: Company operating under various awards so the availability to accrue leave as such would create problems with other staff possibly not having the same options.

New South Wales: Everyone should be allowed to be subbies. There isn't enough money in the residential industry competing against project homes having everyone at rate work. It is really, really hard to employ fellas on hourly rate to ensure quality in a boutique building firm.

New South Wales: good idea

New South Wales: Has to be lodged with the employer and a suitable time is agreed with both parties. Could not be taken without approval



New South Wales: I believe it is a good system and I have seen it work constantly in the public service however, the building industry is very different and it would depend on the personality of the workers. I know there would be workers who would suddenly take their accrued leave because the project they were working on was one they didn't like and didn't want to do.

New South Wales: I don't think it would work with our set up.

New South Wales: I would not want employees able to convert overtime to holiday pay on a regular basis. Would converted overtime accrue holiday leave loading? How would all of this be accounted for?

New South Wales: I would support such an idea. I think it would be a win win

New South Wales: If it was paid above the normal rate I would have to charge the clients. It would be difficult to convince them, they are not very likely to agree to it (my clients are all home owners).

New South Wales: It has to be fair for both parties

New South Wales: It is often the employee who asks for this arrangement and yet the award assumes that the employer will take advantage of the employee. The employees are perfectly capable of weighing up their options.

New South Wales: It should be an agreement negotiated between the employer and employee. More flexibility is required in general, the government always thinks it knows best. Look at the cost involved in government run departments, if they didn't have endless funds they would all go broke.

New South Wales: It would be a great opportunity for some individuals

New South Wales: Most of the guys are looking for money straight away.

New South Wales: No but generally, Australians work too many hours, which is bad for work / life balance and men's' commitments to take an active parenting role with their children. Flexibility of hours is crucial

New South Wales: No Comments

New South Wales: No problems, the more they are at work the better for the company. If we can do a better turnover the better for all.

New South Wales: Not acceptable in my business

New South Wales: Not sure

New South Wales: Our employees work overtime every day. It is already difficult to close 4 weeks per year.

New South Wales: Overtime is too expensive, we don't go there despite our employees wanting to work extra hours.

New South Wales: Paid leave would disrupt the flow of the job for a small building company.

New South Wales: Stupid

New South Wales: There are times when I think it is good and would like to be able to discuss with employee - eg if at the end of a project had to work a Saturday and then Monday taken off instead

New South Wales: Think it's a more flexible system, however we struggle some time with actual hrs paid vs actual hrs worked.

New South Wales: To be agreed by the two parties

New South Wales: We only allow them to have time off for each hour worked = one hour paid leave otherwise they are not allowed time off.

Northern Territory: they prefer money asap

Queensland: 1. Payment at excess rates is not consistent with other workplaces eg the government (the biggest employer in Australia) 2. Currently overtime pay does not attract an additional 9.5% super, if it was to be converted to FLEX-Leave and paid at a ratio of 1 hour paid leave, and then essentially it is paid at rates of 1.095% which is an ADDITIONAL 10% over the standard anyway. 3. If flex accrued leave is allocated at anything more than 1:1 hour, then employers simply would choose to pay overtime rates, or you will find most tradies will be cut off at 8 hours flat, which will heavily impact the industry as a lot of our staff would not survive or continue in the industry with only minimum hours - this would stunt the construction & building industry.

Queensland: have done it before when employees have needed forward payment of wages and have then worked extra hours to repay the forward payment

Queensland: I would agree to it if it was hour for hour

Queensland: I would like to test the theory, but know it will not suit all of our workers

Queensland: In our business leave is too much of a liability as it is. We have to force staff to take leave at times suitable to the needs of the business. More leave days would not be helpful.

Queensland: It doesn't work for our business



Queensland: It works if the employee can be trusted to keep a record of the time and then take time that is convenient for both parties, not just one or the other. I believe this would work in some situations with some employees and not with others. It should be left up to the individual worker and the employer as to whether they wanted to negotiate this type of arrangement.

Queensland: Mutual agreements

Queensland: No, overtime isn't an issue

Queensland: The challenge is that it's all about when it's taken, we can't put on people to just for a week if all the employees end up with 6 weeks holiday because of overtime

Queensland: The decision should be made between the employer and employee to suit their situation, not directed by an award

Queensland: The employment should be based on salary with reasonable extra hours incorporated in it. It comes down to whether as a country we want to be viable in the world economy as our labour costs are very high which in return makes businesses non-competitive in global economy. Consumers say they want local products but are unwilling to pay for it as the costs can be very high. That is not to say it needs to be slave labour but it is about finding a balance between cost of labour and financial viability for the businesses in the competitive market where the same labour force that is our consumer is not prepared to pay higher prices for goods. This impacts mainly on small to medium business which doesn't have resources of multimillion industries but form very large percentage of the employers.

Queensland: To be able to afford to continue to employ new people hourly rates should increase but overtime be paid at normal hourly rate

Queensland: Very hard to estimate labour on small jobs if overtime rates are paid, so prefer to use contractors and pay above the award rates to employees.

South Australia: I think it would be good especially if taken when work load slowed down

South Australia: I think it's a great option for small business

South Australia: It is good to give the employee and employer the option but we would like to see it remain at hour for hour.

South Australia: Leave should be much more flexible between employers and employees. Staff have varying needs at different times.

South Australia: Nope except that it wouldn't interest anyone here I don't think

South Australia: our employees do not work overtime

South Australia: Overtime is not an option. This company cannot afford it.

South Australia: That would be good

South Australia: The overtime hours should only be paid out at normal time earnings as the employee is being the benefit of a paid day off

South Australia: There is enough time taken by employees now without additional time taken off

South Australia: We reward everyone for work performed regardless of what time or day they do it in. We DO NOT force anyone to work when they do not want to.

Tasmania: Generally not in favour of this. As we are a small employer, labour flow is vital to our planning and we could not afford to have too many employees off at the same time.

Tasmania: I think it should be an amicable agreement between employer and employee.

Tasmania: If it works for the individual company then it should be an option.

Tasmania: if the employee wishes that should be the deal.

Tasmania: In my experience it doesn't work. You end up owing employees more and more time off in leave and this results in less progress which impacts the business growth and therefore your ability to employ more people.

Tasmania: Not great but I can work with it in my business

Tasmania: Strict guidelines about how long could be accrued before leave taken. Would only work in our business if taken within same pay period

Tasmania: The request for the leave needs to be mutually agreed and acceptable so as not to hinder the workings of the business.

Victoria: Admin issues

Victoria: again get paid for work done, other than that productivity suffers as history is showing

Victoria: As per my comment in question 16 it is a common sense win win for all concerned

Victoria: Being a small business it is hard to manage the production with annual leave and personal leave,



not alone adding another cost of administration for accrued overtime.

Victoria: Employers and employees must have the flexibility to work out their own arrangements without penalty. We are all adults working in an adult work with employee knowledge of their rights well documented. For this industry to continue to move ahead we have to work together as a unit to ensure that this industry continues to grow and prosper.

Victoria: I have already stated this. I think it is the only way forward. You need flexibility without incurring extra costs for the employer because they can't pass on the extra paid time

Victoria: I support flexible time management agreements like this, as there are some days when overtime has to be worked to complete a task, but on other days the work is finished earlier, so a system that takes into account the total hours worked in any pay period is much better.

Victoria: I think an hour of work for an hour of paid leave is fair. However there needs to be a limit on time so not to exploit workers. If a worker does a 60 hour week they need to be compensated financially. I would say perhaps the entitlement for an RDO can be accrued for leave at another time. So 2 hours per week, maybe more?

Victoria: I think it is a great idea, I think it is more beneficial to have time than a few hours of overtime. It would also good to be able to both with employees some in time and some in paid overtime.

Victoria: I think it is would be fine to accrue time to be taken at a mutually convenient time at an ordinary hours rate

Victoria: If you have a good relationship with the employees it's a good system

Victoria: It is an agreement between the employee and the employer. It's not unusual for employees arrange to work longer to accrue an extra day for say a long weekend, but should not be forced on employees or employers as in other cases employees need to leave early for family pickup reasons etc. A good employer is always prepared to be flexible to assist employees, within reason.

Victoria: it is totally between employee and employer, not for others to decide.

Victoria: it will kill small businesses

Victoria: It would make resource planning more difficult.

Victoria: Most people don't want to work overtime and will not work overtime regardless of the

incentives any more. So productivity is closely managed through developing more effective and efficient work systems. Work must be managed within realistic time frames accounting for people's abilities to complete the work in the prescribed time. We have deliberately stayed small to account for such 'people-based' work environment. You simply can't have both; high productivity turn over at the expense of staff satisfaction, or lower turnover rates with higher staff satisfaction.

Victoria: My employees get paid over the award and are expected to say back a finish works when required no accrued leave

Victoria: No. This system seems to work well at our business as it is a mutual agreement between employer and employee.

Victoria: Not suitable For Small businesses

Victoria: Over time should be paid at the standard hourly rate.

Victoria: Overtime rates should be reduced. We domestic builders are struggling to survive. So much so that many builders I speak to simply don't pay overtime, as it makes more sense to risk breaking the law. These sorts of things are not invented by people who live in the real world.

Victoria: Paying double time is very hard on our business

Victoria: Running a small business it helps if we are all flexible.

Victoria: Small business needs to be looked at differently to large Commercial and union sites as it is not affordable or cost effective.

Victoria: Stupid idea

Victoria: The overtime hours worked in our business are irregular and only small OT in hours (say 1/2 to 1 1/2)

Victoria: There needs to be plenty of notice given to the employer for this system to work. It could allow for more flexibility for the employee, which can help both parties.

Victoria: These arrangements should be allowable under modern awards if both parties are in agreement.

Victoria: This is not appropriate within our area of the industry

Victoria: Very hard to accrue time off as it never gets taken and better on the cash flow if paid at the time of work. If their pay goes up then liable to pay more on the accrued time as well.



Victoria: We work on a system of fair & reasonable I give time off & get extra work in a balance system

Western Australia: 1 hour equals 1 hour. No super for time in lieu taken. Taken at the discretion of the employer.

Western Australia: Both parties should be able to agree without the need for it to be legislated in the award. The award is complicated enough without adding to it. Question also regarding the annual leave loading - would that apply if the award stated the leave had to be equal to the rate the employee would have been paid for overtime? Computing nightmare.

Western Australia: Don't accrue pay what's due set the time cleaner

Western Australia: for each hour worked for only 1 hour entitled leave would be slightly worth agreeing to because of the monetary benefit but would need to be able to use by the employer when there is no work at other times for that employee.

Western Australia: I believe you should take what is your and be responsible with it

Western Australia: If agreed mutually when leave is to be taken, then would assist in providing more flexibility so that in quiet times the leave could be taken. Currently experiencing a quiet time, and would be helpful to retain staff for longer if they could take annual leave during the quiet months. So, yes would be a good help to provide that flexibility and if done at 1 for 1 then cost neutral.

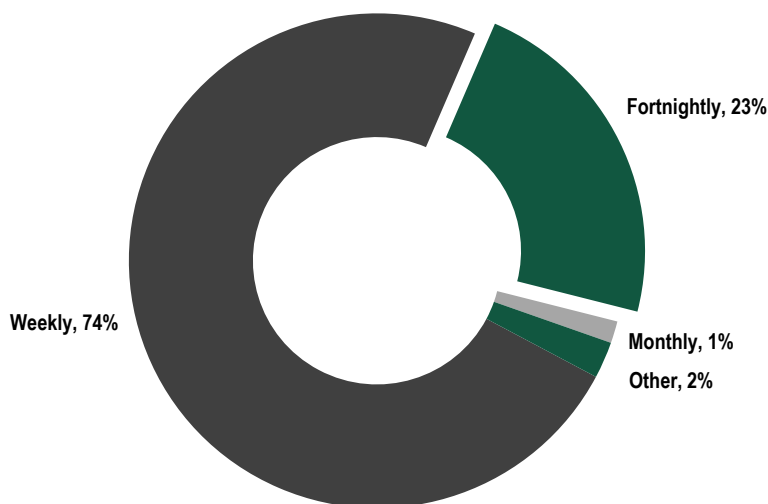
Western Australia: the accrued time would need to be capped to 38 hours

Western Australia: We only employ contractors

Do you currently pay your employees their wages:

74 per cent of respondents stated they currently pay their employees' wages weekly, 23 per cent stated wages were paid fortnightly, 2 per cent other and 1 per cent monthly.

Do you currently pay your employees their wages



Source: HIA Economics

On a state by state breakdown:

| | Weekly | Fortnightly | Monthly | Other |
|------------------------------|--------|-------------|---------|-------|
| Australian Capital Territory | 67% | 17% | 0% | 17% |
| New South Wales | 87% | 12% | 1% | 0% |
| Northern Territory | 0% | 100% | 0% | 0% |
| Queensland | 68% | 26% | 0% | 6% |
| South Australia | 50% | 50% | 0% | 0% |
| Tasmania | 72% | 28% | 0% | 0% |
| Victoria | 71% | 21% | 4% | 4% |
| Western Australia | 67% | 33% | 0% | 0% |



Why do you pay wages:

Australian Capital Territory: As per the award

Australian Capital Territory: Better for cash flow and in accordance with award

Australian Capital Territory: Convenient

Australian Capital Territory: specified in award

Australian Capital Territory: To be in control of cash flow, plus they wouldn't last 2 weeks without money.

Australian Capital Territory: To work in with the quarterly Business Activity Statement (BAS).

New South Wales: Administration costs

New South Wales: always done this

New South Wales: Always have and employees prefer

New South Wales: Award

New South Wales: Award requirement

New South Wales: Awards and preferred company cycle

New South Wales: Balance of meeting employee demands re employment & trying to reduce admin time & costs

New South Wales: Because it is in their work agreement

New South Wales: Because they always broke

New South Wales: Best for employee

New South Wales: Better for cash flow

New South Wales: Both parties prefer it.

New South Wales: Cash flow

New South Wales: Cash flow reasons

New South Wales: Control of cash flow, ease of bookkeeping, and employee requirements

New South Wales: Convenient and easier for cash flow

New South Wales: Easier

New South Wales: Easier on the cash flow

New South Wales: easier to track and follow

New South Wales: easy

New South Wales: Easy to keep track of Part of agreement

New South Wales: Employee wants it that way and we have done it that way for over 20 years

New South Wales: Employees want to be paid each week

New South Wales: For employees' cash flow

New South Wales: Have always believed it to be best

New South Wales: have done so for 20+ years

New South Wales: HIA apprentices scheduled payments

New South Wales: It is appreciated by employees

New South Wales: It is easier for our cash flow. And most of our employees have mortgages or family.

New South Wales: It is the award and we always have

New South Wales: It's a requirement

New South Wales: it is what they receive under the award

New South Wales: It's the law

New South Wales: it's the law & they need to be paid weekly as they pay their rent weekly & aren't that good with controlling their funds.

New South Wales: It's the law plus it suit us & them

New South Wales: Regulations

New South Wales: Required

New South Wales: Requirement

New South Wales: Requirement. Plus it's better for the employees' cash flow.

New South Wales: So I don't have to spend my entire life in the office. We are a small business and I couldn't afford to be in the office doing pays weekly.

New South Wales: So I know where my business sits financially all the time

New South Wales: So my employees have money every week. In my experience if they were paid fortnightly they would spend it and be broke after the first week. They then ask for payment in advance or even fuel money.

New South Wales: Staff prefer this method

New South Wales: Suits employees

New South Wales: suits the employee

New South Wales: That is what our employees want

New South Wales: That is what the employee wants and we have a verbal agreement



New South Wales: that's the law

New South Wales: They cannot budget

New South Wales: They cannot go more than a week without being paid

New South Wales: This timeframe suits our cash flow

New South Wales: To comply with the Award.

New South Wales: To get it done

New South Wales: tradition

New South Wales: We find that our employees can budget better this way.

New South Wales: we just always have

New South Wales: What employee's demand

New South Wales: When we started the business the workload was so busy it was easier to only have to worry about the wages and timesheets once a fortnight instead of once a week. We continued to do that for the last 25 years. Our employees prefer it that way as well because they don't have to worry about their time sheets being handed in every week.

Northern Territory: A company set up 40 years ago wages were set up to be paid fortnightly. Operation has been based on that arrangement ever since including payments from principals.

Queensland: 1. we have to under the award. 2. Because our staff are not able to cope with their bills, commitments & budgeting on a fortnightly or monthly basis. Paying weekly is an administrative burden. It would be simpler to pay FN or monthly.

Queensland: At employees' request

Queensland: Demanded by employees

Queensland: Due to the award

Queensland: easier

Queensland: Easier for us and better for employee

Queensland: easier on cash flow and to keep track on hours

Queensland: Easier to manage cash flow

Queensland: Employee request

Queensland: Good for employees

Queensland: habit, the way we have always done it

Queensland: Helps with my cash-flow.

Queensland: I thought we had to.

Queensland: industry convenience

Queensland: It is requirement of the building award.

Queensland: It's the law

Queensland: Just do

Queensland: Law

Queensland: Less admin and better cash flow

Queensland: Manages our finances and cash flow better

Queensland: Most people find it easier to manage their finances weekly and I don't think it's fair to make them wait. I pay ourselves weekly so that we can take advantage of saving interest on our mortgage repayments by then paying them weekly.

Queensland: one less processing cycle, they are not hired under the onsite award as they are office staff

Queensland: So I can at least have one week that I don't need to worry about admin of wages.

Queensland: So staff have money week to week

Queensland: Staff have been conditioned to weekly pay cycles.

Queensland: That is the expected "normal"

Queensland: They demand to be paid weekly

Queensland: they live week to week.

Queensland: they need regular payments

Queensland: To make it easier on our workers/employees Subcontractors get paid 14 days from the date of the invoice as jobs usually take more than a week to 100% complete and we don't pay them until the job has been signed off by management

Queensland: Works with our systems

South Australia: Actually didn't realize it should be weekly. Employees are happy to be paid fortnightly. Fortnightly condenses the Administration time.

South Australia: Agreement between employer and employees and it is in the award

South Australia: Always have

South Australia: because some employees require weekly to pay their bills and buy goods

South Australia: Busy life, young family hard to sit down and do office work every week but wouldn't like to be paid monthly myself so middle ground I guess

South Australia: Cash flow

South Australia: cycle we started

South Australia: Have always done it this way. When set up I thought fortnightly was the industry



standard. When I worked in other industries fortnightly pay was always the case.

South Australia: I thought this was the requirement

South Australia: It suits our business needs and our employees' needs and it's 'always been this way'

South Australia: Keep good with the guys

South Australia: Payroll is a time consuming process. We have found it more efficient do payroll once a fortnight. It also allows for easier cash flow management. We have a written agreement with each of our employees that they are paid fortnightly.

South Australia: Time to do pay run

South Australia: We are required to do so

South Australia: We have found employees prefer the constant money steam. It means they don't need to budget with their money quite so much. If we pay fortnightly we have had employees approach us for early wage payment because they have run out of money.

Tasmania: agreed with workers

Tasmania: As per the award.

Tasmania: Because it's in the award

Tasmania: Because we have always done so and it's a requirement of the award.

Tasmania: Easier to keep track of cash flow

Tasmania: Employee request

Tasmania: Have done for over 10 years

Tasmania: It is a requirement

Tasmania: It works better for us from an administrative and cash flow perspective

Tasmania: It works for us

Tasmania: Most employees live from week to week and can't manage money.

Tasmania: No real reason.

Tasmania: Our employee's prefer this.

Tasmania: Staff wanted weekly

Tasmania: Works for both

Victoria: Always have and haven't seen the need to change as it is done electronically

Victoria: always have employees like it

Victoria: As per award

Victoria: As per award. Allows a real time analysis of our business.

Victoria: Award.

Victoria: because easy cash flow and easier for the workers to budget

Victoria: Better for employees to manage their income + better for our Cash flow

Victoria: bookkeeper comes in fortnight

Victoria: Cash flow and legality

Victoria: cash flow

Victoria: Cash flow projections.

Victoria: convenience

Victoria: convenience for both parties

Victoria: convenience for us both

Victoria: Easier

Victoria: easier for me to manage cash flow.

Victoria: Easier on the cash flow and provides for greater flexibility for the employee

Victoria: Easiest

Victoria: easy

Victoria: Employees cannot manage their money to last a full month

Victoria: Employees need regular payment to maintain lifestyle and bills

Victoria: employees' request

Victoria: Good balance between admin time for processing pay and employees getting regular payments.

Victoria: Help them budget

Victoria: I think that's the requirement and the employee prefers it

Victoria: It is an award requirement.

Victoria: It is better for the employer and the employee

Victoria: It is much easier on cash flow, the employees prefer weekly, some young employees cannot manage their finances fortnightly

Victoria: It suits their needs, like not getting paid on Friday, or getting paid monthly so as to help them save and budget better. It's up to them how they want it.

Victoria: Just easier to process payroll fortnightly and work out with the business cash flow.

Victoria: manage cash flow

Victoria: More convenient, cost effective



Victoria: More cost effective and easier to manage a smaller pay run.

Victoria: Most jobs take longer than a week to complete and easier to balance fortnightly than weekly.

Victoria: Not sure

Victoria: Only works part time and that is his preference

Victoria: Reduced overheads

Victoria: Regulation requirement.

Victoria: Requirement

Victoria: Routine

Victoria: Senior, technical and management staff gets paid monthly. Admin, Accounts, clerical staff get paid fortnightly. This is done based on their general ability to manage money.

Victoria: So that I avoid costs building up too high and getting out of control.

Victoria: Suits employees & required

Victoria: That's the system

Victoria: they like it that way

Victoria: to assist in the employees' cash flow it's expected.

Victoria: Try asked for that

Victoria: we just do & it's easier for them to budget themselves

Victoria: Why not?

Western Australia: as it is how the award informs us to pay our employees

Western Australia: As of legal reasons.

Western Australia: because I have to and for cash flow

Western Australia: Easier for both employee and employer to manage

Western Australia: No reason

Western Australia: They can be paid monthly but we think that is too long in between pays so we pay fortnightly.

Western Australia: We just always have

Did you know that under the Building and Construction General Onsite Award you are required to pay wages weekly?

56 per cent of respondents stated they knew they were required to pay wages weekly and 44 per cent stated they did not know they were required to pay weekly.

Did you know that under the Building and Construction General Onsite Award you are required to pay wages weekly?



Source: HIA Economics



On a state by state basis:

| | No | Yes |
|------------------------------|-----|------|
| Australian Capital Territory | 17% | 83% |
| New South Wales | 39% | 61% |
| Northern Territory | 0% | 100% |
| Queensland | 47% | 53% |
| South Australia | 50% | 50% |
| Tasmania | 50% | 50% |
| Victoria | 45% | 55% |
| Western Australia | 56% | 44% |

If you do not currently pay wages weekly, what would be the effect on your business if you were required to?

Australian Capital Territory: I have the book keeper come in fortnightly so if we paid weekly that would impact negatively on our business and our book keeper.

Australian Capital Territory: Nothing.

New South Wales: A bit more 'paperwork' - but that's about all. It's difficult enough to get the boys to submit their time sheet on time fortnightly - weekly sounds like a nightmare.

New South Wales: Another cost to the small business which we cannot re-coup. We have 8 people working full-time (paid as casuals) so fall into an awkward category of not a sole trader, but not a big business. I find the home warranty reviews, insurance, taxation, monthly PAYG reporting, quarterly bas, taxable payments reporting payroll, long service, WHS onerous as is, without having to do weekly pays. Fair Work has to remember that most business' are small ones like us, not bloody Lend Lease's and Metricon's etc etc.

New South Wales: Cash flow wouldn't be as accurate

New South Wales: Increased administrative costs & cash flow difficulties

New South Wales: It wouldn't affect anyone but me. I do the wages. I would have to constantly pay the wages without time sheets though because the boys already whinge about getting them in on time fortnightly.

New South Wales: no

New South Wales: No

New South Wales: None

New South Wales: None

New South Wales: Nothing

New South Wales: Pay weekly

New South Wales: We pay weekly

New South Wales: We would incur additional admin costs & put extra time pressure on all staff

New South Wales: We would need to adjust our payroll cycle but if it was a requirement we would do it.

Northern Territory: Cash flow adjustments Admin work flow adjustments

Queensland: Additional admin costs

Queensland: creates larger workload at one time when processing

Queensland: employee knocking on my door with no money.

Queensland: I would close my business.

Queensland: More Admin and less cash flow

Queensland: more people

Queensland: Nil

Queensland: Nil

Queensland: Nil

Queensland: No change

Queensland: no change

Queensland: None

Queensland: not huge issue

Queensland: Nothing

Queensland: They are on contract with fortnightly pays

Queensland: We already pay weekly

Queensland: Would affect my cash-flow.

South Australia: Change of system ONLY



South Australia: Increase in unnecessary Administration time.

South Australia: Increased administration costs

South Australia: More un-necessary office work every week.

South Australia: no effect on business, on site all day. All office work/pays done in own time after hours, just more time in office away from family

South Australia: The biggest effect would be time lost in the office.

Tasmania: Cash flow would be affected as billing intervals are at best mixed and sometimes outside of a month.

Tasmania: It would add to the administrative burden of having to chase up timesheets each week and put pressure on our cash flow given that our contracts are predominantly stage based payments and not progress paid. Even if they are progress paid generally they would be monthly claims at best.

Tasmania: Just a lot more book work.

Tasmania: less time for office staff

Tasmania: None

Tasmania: We pay weekly

Tasmania: Zero

Victoria: Additional non-value added administration time.

Victoria: admin cost would increase for small business

Victoria: Already pay weekly

Victoria: cost me more I would have to pay the bookkeeper to come in each week to do the pay

Victoria: Extra costs, more overheads

Victoria: Increased overheads

Victoria: Just makes it more onerous on administration demands.

Victoria: more office work

Victoria: More work for HR.

Victoria: Nil

Victoria: no effect

Victoria: No real effect

Victoria: no, it would only affect the worker

Victoria: None

Victoria: none

Victoria: Nothing

Victoria: We pay weekly

Victoria: We would go broke. Clients rarely pay on time and we have to allow for this. Rarely the directors are in a position to draw an income for themselves, effectively using their wages as a quasi-overdraft to cover the periods of poor cash flow.

Victoria: Yes would mean an extra pay cycle and increased admin charge.

Western Australia: More time required in the office for book work

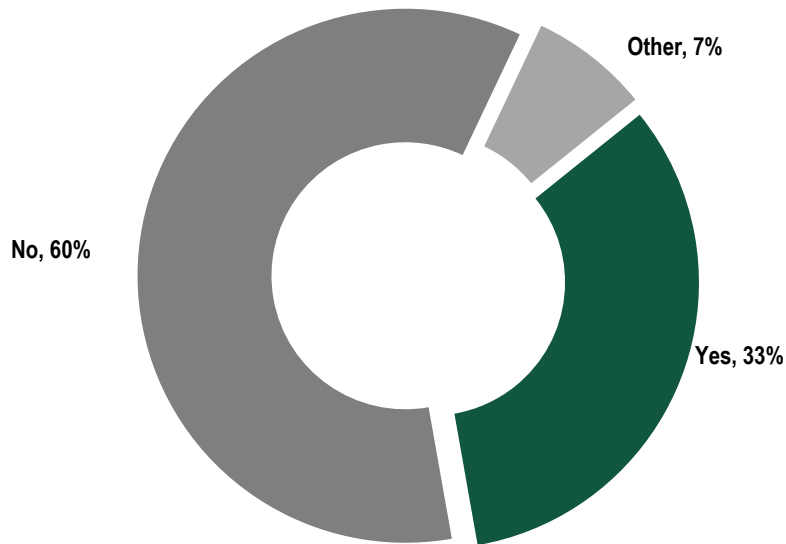
Western Australia: This would double the amount of time required to do pay runs and the payment officer would have to work every week instead of every second week. It would be more time and cost more money. We also have people on different awards, so it would have to change for all of them. That would be very inconvenient.



Do you provide a company vehicle to your award based employees?

60 per cent of respondents stated they did not provide a company vehicle to their award based employees, 33 per cent stated they did and 7 per cent stated other.

Do you provide a company vehicle to your award based employees?



Source: HIA Economics

Other responses provided:

- one vehicle only
- Only supervisors
- cars are provided as required
- Fuel allowance
- our apprentice has a vehicle but no other staff
- Site Supervisors only
- some
- some
- some
- Some of them
- some qualified workers
- Supervisor supplied ute
- to some employees
- To some not all employees
- we have a work vehicle

On a state by state basis:

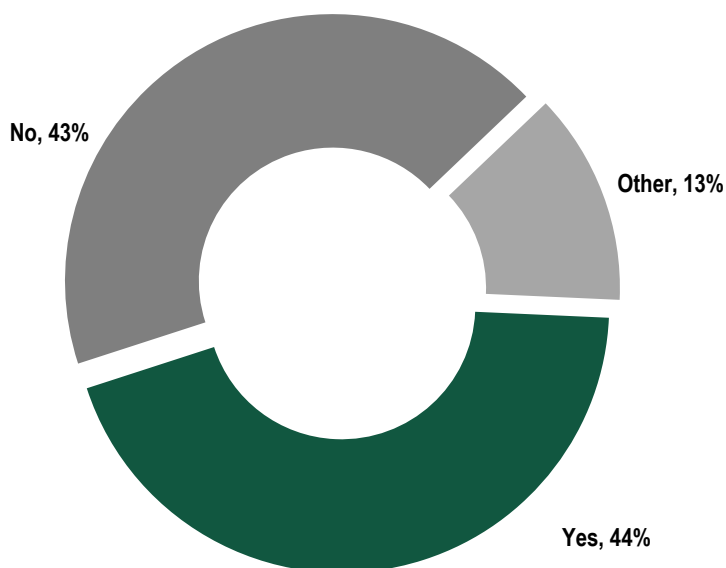
| | No | Other | Yes |
|------------------------------|-----|-------|------|
| Australian Capital Territory | 83% | 0% | 17% |
| New South Wales | 62% | 6% | 32% |
| Northern Territory | 0% | 0% | 100% |
| Queensland | 53% | 6% | 41% |
| South Australia | 38% | 13% | 50% |
| Tasmania | 67% | 6% | 28% |
| Victoria | 70% | 7% | 23% |
| Western Australia | 22% | 22% | 56% |



Do you cover the costs of fuel?

Of the 67 per cent of respondents who stated they do not provide a company vehicle to award based employees. 44 per cent of respondents stated they cover the cost of fuel for award based employees provided with a company vehicle, 43 per cent stated they did not and 13 per cent stated other.

Do you cover the cost of fuel?



Source: HIA Economics

Other responses provided:

- All travel together
- depends on distance from home to job
- if travelling out of town
- ones with a vehicle
- Only for our project managers
- only for supervisors without cars
- out of town
- pay travel allowance
- Payment per kilometre
- Relevant allowance paid
- sometimes
- Toll
- Travel allowance
- Travel allowance
- Travel allowance
- Travel allowance
- Travel Allowance is paid to employees that don't have a fuel card
- Yes but only to supervisor and for company tipper truck

On a state by state breakdown:

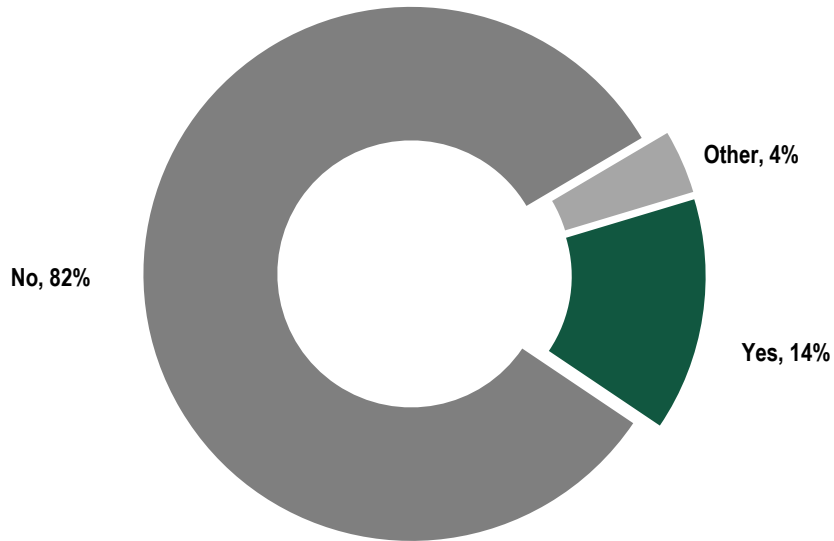
| | No | Other | Yes |
|------------------------------|-----|-------|-----|
| Australian Capital Territory | 80% | 0% | 20% |
| New South Wales | 34% | 17% | 49% |
| Queensland | 50% | 10% | 40% |
| South Australia | 25% | 13% | 63% |
| Tasmania | 46% | 8% | 46% |
| Victoria | 49% | 12% | 40% |
| Western Australia | 25% | 25% | 50% |



Do you provide a fuel card or reimburse your employees for the cost of fuel?

Of the 56 per cent of respondents which stated they did not cover the cost of fuel. 82 per cent stated they did not provide a fuel card or reimburse their employees for the cost of fuel. 14 per cent stated they did and 4 per cent stated other.

Do you provide a fuel card or reimburse your employees for the cost of fuel?



Source: HIA Economics

Other responses provided:

- only our project managers
- if using vehicle travelling out of town
- Sometimes

On a state by state basis:

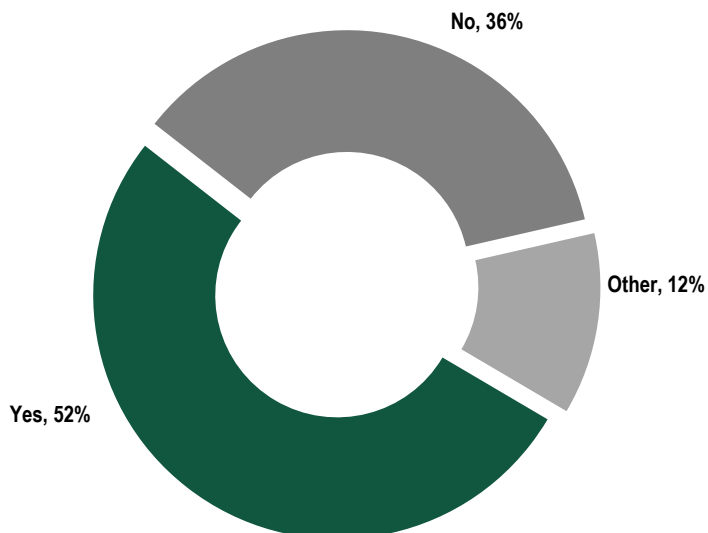
| | No | Other | Yes |
|------------------------------|------|-------|------|
| Australian Capital Territory | 100% | 0% | 0% |
| New South Wales | 75% | 0% | 25% |
| Queensland | 75% | 8% | 17% |
| South Australia | 67% | 33% | 0% |
| Tasmania | 100% | 0% | 0% |
| Victoria | 92% | 4% | 4% |
| Western Australia | 0% | 0% | 100% |



Do you provide your employees with all of the tools and protective boots necessary to carry out the work?

52 per cent of respondents stated they provide their employees with all the tools and protective boots necessary to carry out their work. 36 per cent stated they did not provide this equipment for their employees and 12 per cent stated other.

Do you provide your employees with all of the tools and protective boots necessary to carry out the work?



Source: HIA Economics

Other responses provided:

- as required or requested
- boots and some tools
- Depends on whether they are careless with the equipment. But we supply adequate gear.
- For specific safety purposes on a particular job.
- I don't supply boots
- I provide protective gear, and some tools however my employees are required to have some tools.
- I will when I get some, I already do for some contractors
- most 90% tools & PPE provided
- Not all items
- Not boots all others listed
- not boots, but other protective gear
- Only as per the award, not all tools as they get a tool allowance
- PPE is provided and basic tools, other tools are their own.
- Protective clothing and some tools. Employees prefer to buy their own power tools.
- provide tools, not boots
- Shared
- some are supplied, some have their own
- some but not all
- Some of tools
- some tools & all protective gear
- Some tools & equipment are provided.
- Some tools supplied. all safety
- sometimes
- They are paid a tool allowance, but only for their personal hand tools. We supply most.
- They purchase selected tools themselves
- Tool allowance
- Tools
- Tools
- Tools and uniforms but not boots
- tools only & pay allowance
- tools yes, boots no
- We provide all PPE, they provide some of their own tools
- we provide PPE, major tools and give them an allowance each pay towards their own tools
- weekly allowance
- work attire is their responsibility
- Yes some employees not all
- Yes to PPE and no to boots
- Yes to tools but they supply boots



On a state by state basis:

| | No | Other | Yes |
|------------------------------|-----------|--------------|------------|
| Australian Capital Territory | 30% | 0% | 70% |
| New South Wales | 31% | 12% | 57% |
| Northern Territory | 33% | 33% | 33% |
| Queensland | 56% | 10% | 33% |
| South Australia | 25% | 21% | 54% |
| Tasmania | 43% | 14% | 43% |
| Victoria | 32% | 12% | 56% |
| Western Australia | 33% | 6% | 61% |



economics

MA000020 PRxxxxxx

FAIR WORK COMMISSION
DETERMINATION



Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Construction Award
 (AM2016/23)

BUILDING AND CONSTRUCTION GENERAL ONSITE AWARD 2010
 [MA000020]

Building, metal and civil construction industries

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

[XXX 2017]

4 yearly review of modern awards – Construction Awards.

A. Further to the Full Bench decision issued by the Fair Work Commission on [xxx] the above award is varied as follows:

1. Insert new clause 36.17:

36.17 Time off instead of payment for overtime

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), 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.

(h) The employer must keep a copy of any agreement under clause 36.17 as an employee record.

(i) 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.

(j) 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 (b) 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).

(k) 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 24.6.

2. 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___

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

- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

MA000029 PRxxxxxx

FAIR WORK COMMISSION
DETERMINATION



Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Construction Award
 (AM2016/23)

JOINERY AND BUILDING TRADES AWARD 2010
 [MA000029]

Building, metal and civil construction industries

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

[XXX 2017]

4 yearly review of modern awards – Construction Awards.

- A. Further to the Full Bench decision issued by the Fair Work Commission on [xxx] the above award is varied as follows:
1. Insert new clause 30.9:

30.9 Time off instead of payment for overtime

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), 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.

(h) The employer must keep a copy of any agreement under clause 36.17 as an employee record.

(i) 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.

(j) 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 (b) 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).

(k) 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 24.6.

2. 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___

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

- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

MA000020 PRxxxxxx



FAIR WORK COMMISSION
DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Construction Award
(AM2016/23)

BUILDING AND CONSTRUCTION GENERAL ONSITE AWARD 2010
[MA000020]

Building, metal and civil construction industries

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

[XXX 2017]

4 yearly review of modern awards – Construction Awards.

A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:

1. Delete clauses 17.1 – 17.3
2. Insert new clause 17.1

Redundancy pay is provided for in the NES.

3. Renumber existing clauses 17.4, 17.5, 17.6 and 17.7 as 17.2, 17.3, 17.4 and 17.5.

B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

MA000020 PRxxxxxx

FAIR WORK COMMISSION
DETERMINATION



Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Construction Award
 (AM2016/23)

BUILDING AND CONSTRUCTION GENERAL ONSITE AWARD 2010
 [MA000020]

Building, metal and civil construction industries

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

[XXX 2017]

4 yearly review of modern awards – Construction Awards.

- A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:
1. Delete current clauses 17.2 and replace with the following

For the purpose of this clause, redundancy means:

 - a situation where employment ceases at the initiative of an employer other than for reasons of misconduct or refusal of duty, or
 - where employment ceases because of the insolvency or bankruptcy of the employer.

Redundant has a corresponding meaning.
 2. Insert new Clause 17.4 Small Employer

For the purposes of this clause small employer means an employer to whom the NES does not apply because of the provisions of s.121(1)(b) of the Act.
 3. Insert new Clause 17.5 Incapacity to Pay
 - (a) If an employee is entitled to be paid an amount of redundancy pay by the employer because of clause 17; and
 - (b) the employer:
 - i. obtains other acceptable employment for the employee;
 - or

- ii. cannot pay the amount.
 - (c) On application by the employer, the FWC may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate.
 - (d) The amount of redundancy pay to which the employee is entitled under clause 17 is the reduced amount specified in the determination.
4. Renumber existing clauses 17.4, 17.5, 17.6 and 17.7 as 17.6, 17.7, 17.8 and 17.9.
- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

MA000020 PRxxxxxx

FAIR WORK COMMISSION
DETERMINATION



Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Construction Award
 (AM2016/23)

BUILDING AND CONSTRUCTION GENERAL ONSITE AWARD 2010
 [MA000020]

Building, metal and civil construction industries

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

[XXX 2017]

4 yearly review of modern awards – Construction Awards.

A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:

1. Insert new clause 17.2(b)

Clause 17 does not apply where the employment ends at the initiative of the employee.

2. Insert new clause 17.4 Small Employer

For the purposes of this clause small employer means an employer to whom the NES does not apply because of the provisions of s.121(1)(b) of the Act.

3. Insert new clause 17.5 Incapacity to Pay

- (a) If an employee is entitled to be paid an amount of redundancy pay by the employer because of clause 17; and
- (b) the employer:
 - i. obtains other acceptable employment for the employee; or
 - ii. cannot pay the amount.

- (c) On application by the employer, the FWC may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate.
 - (d) The amount of redundancy pay to which the employee is entitled under clause 17 is the reduced amount specified in the determination.
- 4. Renumber existing clauses 17.4, 17.5, 17.6 and 17.7 as 17.6, 17.7, 17.8 and 17.9.
- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

IN FAIR WORK COMMISSION

FWA Matter No:
AM2014/260

Applicant:
Housing Industry Association

RE: FOUR YEARLY REVIEW OF THE MODERN AWARDS

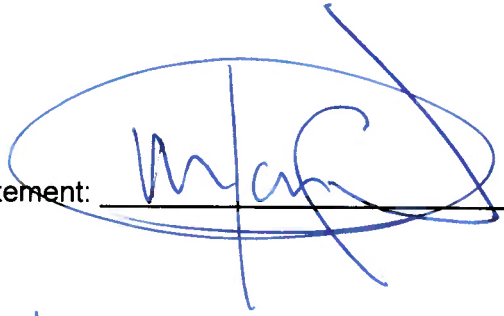
STATEMENT OF RICK SASSIN

I, Rick Sassin of 30 Burnett St North Hobart, Tasmania, HIA Executive Director - Tasmania state as follows:

- 1 I commenced employment with the Housing Industry Association Limited (HIA) on 8 July 2014.
- 2 I am currently employed as the Executive Director - Tasmania.
- 3 I have the authority to make this statement on behalf of HIA.
- 4 In my role I am responsible for the effective and efficient servicing of HIA members in the Tasmanian region and for the management and effective operation of each of HIA's businesses and the trading success of the organisation.
- 5 It is also a key part of my role to influence State and Local government to adopt policies and economic settings that benefit the residential building industry, HIA members and their customers.
- 6 On a day to day basis I have very limited contact with the Modern Awards, my focus as regional director is on the servicing of members and the operation of each of HIA's commercial businesses.
- 7 HIA has approximately 1,000 members in Tasmania.
- 8 I regularly engage with members through member events, member committee meetings and additionally speak directly to approximately two members per week.
- 9 Based on my experience, the Tasmanian economy is highly competitive with a small employment base. Most businesses operating in the residential construction industry in Tasmania are small businesses.
- 10 Generally, the biggest complaint made by HIA members is the red tape burden that these businesses must comply with that is imposed by government processes and legislative requirements.
- 11 I am aware that HIA have made a number of applications to vary the *Building and Construction General On-site Award 2010 (Onsite Award)*.

- 12 During my time at HIA I have spoken with at least half a dozen members about the Industry Specific Redundancy Scheme (**ISRS**) and provided them information and advice on their obligations in collaboration with HIA Workplace Advisors.
- 13 Specifically, members are often shocked and surprised that the obligation applies even if an employee resigns and feel that it is unfair that the building and construction industry is the only industry where you have to pay redundancy if someone chooses to leave of their own accord. Members have expressed the view that this requirement and additional cost seems very onerous despite the fact that builders have the same costs of running a business as other industries, if not more given the amount of regulation it is subject to.
- 14 Members with long term employees have expressed concerns that a payment under the ISRS may lead to the closure of the business.
- 15 I have also discussed with members the option, provided under the Onsite Award, for an employer to make payments into a redundancy fund.
- 16 In my experience it seems difficult for members to contemplate further regular payments on top of the 9.5% superannuation contribution and 2% into TasBuild for Long Service Leave. Most are at a loss to understand how, with so many overheads, a small building business could absorb these costs in a declining economy and continue to compete with the larger operators.
- 17 In preparing this statement I spoke to a number of HIA members in order to get their permission to disclose details of their business or seek that they provide statements directly on the impact of the ISRS on their business.
- 18 In relation to both requests all HIA members refused. Members advised me that they did not want to become a 'target' for the union and feared drawing their unwarranted attention.

Signature of person making the statement:
Declared at Hobart
on 30 November 2016



Before me:

Signature of Witness:



Name of Witness:

TONY PARKER

Address of Witness:

6A ELBODEN ST. SM. HOBART

Lodged by: Housing Industry Association
Address for Service: 4 Byfield Street North Ryde 2113

Telephone: (02) 9978 3334
Facsimile: (02) 9888 6677
Email: m.adler@hia.com.au

IN FAIR WORK COMMISSION

FWA Matter No:
AM2016/23

Applicant:
Housing Industry Association

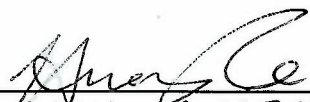
RE: FOUR YEARLY REVIEW OF THE MODERN AWARDS

STATEMENT OF HUAN DO


I, Huan Do of Station Place & Port Road Hindmarsh South Australia 5007, Workplace Advisor state as follows:

- 1 I commenced employment with the Housing Industry Association Limited (HIA) in January 2012.
- 2 I am currently employed as the Workplace Advisor for the South Australian and the Northern Territory region.
- 3 In my role I am responsible for providing information, assistance and advice to members in the SA/NT region in relation to building and construction matters, industrial relations and workplace relations matters and other legally or compliance related matters that may arise for members in the region. This includes assisting members with understanding the requirements and obligations of the applicable modern awards.
- 4 I provide this information, assistance and advice to HIA members through a number of channels such as telephone advice, face-to-face meetings and via presentations at information sessions. When required I also assist in the development of information sheets and contribute materials to a fortnightly email newsletter and a quarterly publication.
- 5 I have the authority to swear this statement on behalf of HIA.
- 6 HIA has approximately 3000 members in the SA/NT region.
- 7 I speak directly to approximately 50 members per week and also engage with members through member events.
- 8 I am aware that HIA have made a number of applications to vary the *Building and Construction General On-site Award 2010 (Onsite Award)*.
- 9 In my experience as a Workplace Advisor one matter that causes significant concern is the Industry Specific Redundancy Scheme (ISRS).
- 10 I would take approximately 5-10 calls per month about the Industry Specific Redundancy Scheme.

- 11 Most members who enquire about the ISRA are small businesses. Some operate just in the residential construction industry, but some will also work on commercial sites. These small businesses often have long term employees.
- 12 Generally members are shocked and surprised that they are required to pay redundancy pay to an employee who is resigning.
- 13 While the advice I provide is in accordance with the award provision, unfortunately members will often advise me that they simply cannot afford to make the payment.
- 14 In my experience members also feel that it is unfair that an employee who has another job is entitled to redundancy pay and that this is a form of 'double dipping'.
- 15 The overwhelming feedback from members that I have received is that they will not take on employees because of the obligations imposed by the ISRS.
- 16 I spoke to a number of HIA members in order to get their permission to disclose details of their business or seek that they provide statements directly on the impact of the ISRS on their business.
- 17 In relation to both requests all HIA members refused. Members advised me that they did not want to become a 'target' for the union and feared drawing their unwarranted attention.

Signature of person making declaration: 
Declared at HINDMARSH, SOUTH AUSTRALIA
on 29 NOVEMBER 2016

Before me:

Signature of Witness: 
Name of Witness:
Address of Witness: Benton Gardner 15 Edward St. Norwood.

| | |
|---|---|
| Lodged by: Housing Industry Association Address for Service: 4 Byfield Street North Ryde 2113 | Telephone: (02) 9978 3334 Facsimile: (02) 9888 6677 Email: m.adler@hia.com.au |
|---|---|



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

COMMISSION GREGORY

COMMISSIONER HARPER-GREENWELL

[XXX 2017]

4 yearly review of modern awards –Construction Awards.

A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:

1. Amend clause 20.1(a) to add the following:

except where the employer provides the employee with all tools and protective boots necessary to carry out the work or if the employee fails to bring tools to work or to maintain tools so that they are safe and suitable for use.

B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT



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
 COMMISSION GREGORY
 COMMISSIONER HARPER-GREENWELL

[XXX 2017]

4 yearly review of modern awards –Construction Awards.

- A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:
1. Delete current clause 25.
 2. Insert new clause 25 as follows:

25 Fares and travel patterns allowance

25.1 Daily Fares 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.
- b) This clause will apply when an employee is required to perform prefabricated work in an open yard and is then required to erect or fix on-site.
- c) An employee will not be entitled to the allowance prescribed in subclause (a) when the employee:
 - i. Is absent from work.
 - ii. Is not required to attend a construction site due to:
 - A. An RDO.
 - B. The employee being required to start and finish work at the employer's workshop, yard or depot.

- iii. Is provided by the employer, or is offered to be provided by the employer, accommodation that is located at the construction site.
 - iv. Is provided a company vehicle.
 - v. Is provided, or offers to be provided, transport free of charge from the employee's home to the place of work and return by the employer.
 - vi. Is an apprentice attending an RTO for training and assessment in accordance with the contract of training.
- d) The allowances prescribed by this subclause will not be taken into account for calculating overtime, penalty rates, annual leave, annual leave loading or personal/carer's leave entitlements.

25.2 Time spent in travel

a) Travelling between construction sites

- i. An employee, transferred from one site to another during working hours, will be paid for the time spent in travelling.
- ii. If the employer does not provide transport:
 - A. An employee is entitled to the reasonable cost of fares for public transport between construction sites; or
 - B. Where an employee uses their own vehicle the employee must be paid an allowance at the rate of \$0.78 per kilometre.

b) Outside ordinary hours

Time spent traveling 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.

25.3 Distant Work

- a) If an employee is required to travel to a construction site more than 50km from the employee's usual place of residence, the employee will be entitled to:
 - i. payment for the time outside ordinary working hours reasonably spent in travel, paid at the ordinary time hourly rate, and calculated to the next quarter of an hour 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.
- b) This provision does not apply when, at the commencement of employment, the employee's usual place of residence was more than 50km from the construction site on which the employee was initially engaged.

25.4 Apprentices

- a) An apprentices will be entitled to a proportion of the allowances prescribed in clauses 25.1(a) and 25.3 in accordance with the following scale:
 - i. on the first year rate—75% of amount prescribed;
 - ii. on second year rate—85% of amount prescribed;
 - iii. on third year rate—90% of amount prescribed;

- iv. on fourth year rate—95% of amount prescribed.
- b) Apprentices will only receive the allowances prescribed in clause 25.4(a) for days when they attend work.
- c) 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 25.4(a).

25.5 Adjustment of living away from home—distant work and fares and travel patterns allowance

The monetary allowances prescribed in clauses 24—Living away from home—distant work, and 25—Fares and travel patterns allowance, will be adjusted in accordance with clause 20.4.

- 3. Delete the words ‘distant work’ from the title of clause 24.
- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

IN FAIR WORK COMMISSION

FWA Matter No:
AM2016/23

Applicant:
Housing Industry Association

RE: FOUR YEARLY REVIEW OF THE MODERN AWARDS

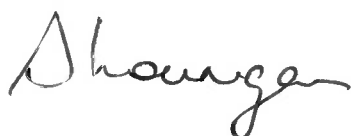
STATEMENT OF KRISTIE BURT

I, Kristie Burt of 28 Collie Street, Fyshwick, Australian Capital Territory, Workplace Adviser state as follows:

- 1 I commenced employment with the Housing Industry Association Limited (HIA) in May 2013.
- 2 I am currently employed as a Workplace Adviser for the ACT/Southern NSW region.
- 3 In my role I am responsible for providing information, assistance and advice to members in the ACT/Southern NSW region in relation to building and construction matters, industrial relations and workplace relations matters and other legal or compliance related matters that may arise for members in the region. This includes assisting members with understanding the requirements and obligations of the applicable Modern Awards.
- 4 I provide this information, assistance and advice to HIA members through a number of channels such as telephone advice, face-to-face meetings and via presentations at information sessions. When required, I also assist in the development of information sheets and contribute materials to a fortnightly email newsletter and a quarterly publication.
- 5 I have the authority to swear this statement on behalf of HIA.
- 6 HIA has approximately 1300 members in the ACT/Southern NSW region.
- 7 I speak directly to approximately 30 members per week and also engage with members through member events.
- 8 I am aware that HIA have made a number of applications to vary the *Building and Construction General On-site Award 2010 (Onsite Award)*.
- 9 During my time working for HIA, I have received feedback from members in relation to the fares and travel patterns allowance which is set out in clause 25 of the Onsite Award.



- 10 In particular I have dealt with a number of enquiries in relation to the daily allowance described in clause 25.2 (**Daily Fares Allowance**).
- 11 It is my belief that I have spoken to approximately over 50 members during my time with HIA in relation to Clause 25 of the Onsite Award.
- 12 As this is a common enquiry, HIA have developed guidance material for HIA members in relation to Clause 25 of the Onsite Award.
- 13 Attached and marked **Annexure A** is a copy of *Fares and Travelling Allowances under the Building and Construction General Onsite Award 2010 (the Award)*.
- 14 In the past two years, I have sent Annexure A to at least 25 different members.
- 15 In my experience the feedback about the daily fares and travel allowance generally comes from members who are operating small businesses. The feedback is generally negative.
- 16 In my experience, many of our members comply with the provisions of the Onsite Award either by paying the Daily Fares Allowance or by using an individual flexibility agreement to include it in a higher overall hourly rate of pay.
- 17 The daily fares and travel allowance generally costs our members \$87.15 per week on top of the hourly rates of pay, superannuation, portable long service leave, WorkCover insurance and other costs of employment.
- 18 I have found that a number of members I speak to are confused about what fares and travel patterns allowance they are required to pay, if any. In my experience members often think they are complying with the Onsite Award by supplying their staff with a company vehicle or, if they are using a personal vehicle, by providing a fuel card and a contribution to maintenance and repairs.
- 19 In 2015 I presented at an information session held by HIA. There were approximately 25 members in attendance.
- 20 The members who attended raised concerns with the daily fares and travel allowance.
- 21 Members generally thought that it seemed unfair that the daily fares and travel allowance was payable to employees who lived one street away from the construction site or where the employee walked to work. They were further concerned that the allowance was payable where a work vehicle, including fuel and maintenance costs, was provided to the employee. The members in attendance at this information session were generally quite negative about the fares and travel patterns allowance.



Signature of person making declaration: *K-B-V*
Declared at [insert City] FYSHWICK ACT
on [insert date] 30/11/16

Before me:

Signature of Witness: *Shougen*
Name of Witness: ALLISON HOUCIGAN
Address of Witness: 21 TEMORA PLATE QUEANBETAN NSW 2620

| | |
|---|---------------------------|
| Lodged by: Housing Industry Association | Telephone: (02) 9978 3334 |
| Address for Service: 4 Byfield Street North Ryde 2113 | Facsimile: (02) 9888 6677 |
| | Email: m.adler@hia.com.au |



INFORMATION SHEET

Workplace Services

Current at: 1 July 2014
HIA ref no: ZFSIRE0796D

Fares and Travelling Allowances under the Building and Construction General Onsite Award 2010 (the Award)

Under the Award employees are entitled to travel allowances in certain circumstances. Outlined below are a number of different situations where an employee may be entitled to an allowance and the amount of those allowances.

1. Employer provides transport

For any day on which the employer provides, or offers to provide, transport free of charge from the employee's home to the worksite and return, the employee is not entitled to a daily fares allowance. (Note: provision of a vehicle only is not considered provision of transport under this section).

What this means is that if the employer offers to make arrangements for the employee to be picked up and dropped home from work, the daily fares allowance will not be payable.

2. Employee makes own way to work - metropolitan area

Where the employee makes their own way to a site located within 50 km of:

- the General Post Office (GPO) in a capital city; or
- the principal Post Office in a regional city or town

The employee is entitled to daily fares allowance of \$17.43 per day.

Travel to work is not considered to be time worked in these circumstances.

3. Employee makes own way to work – Country area

In country areas, where the employee makes their own way to a site located within 50 km of the Post Office nearest the employer's establishment, then the employee is entitled to daily fares allowance of \$17.43 per day

Travel to work is not considered to be time worked in these circumstances.

4. Employee travels between radial areas

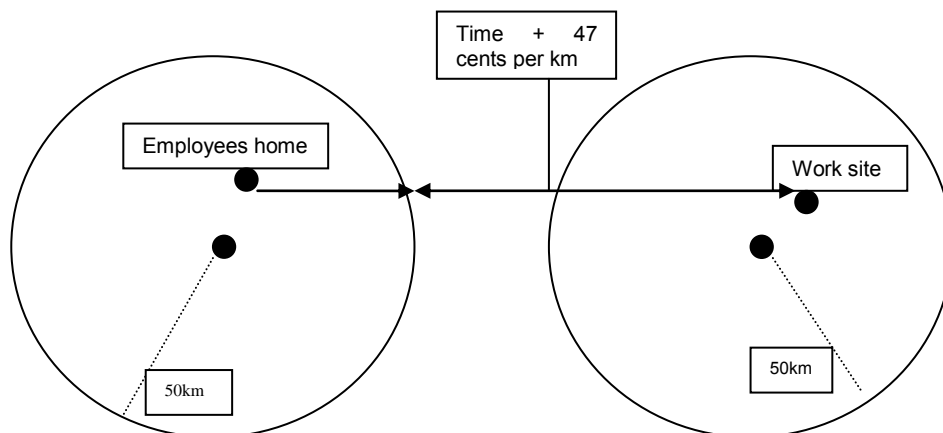
Where the employee is required to travel from one radial area (outlined above) to another radial area the employee is entitled to:

- daily fares allowance of \$17.43 per day; and
- in respect of travel from the designated radial boundary to the job and return to that boundary:
 - payment for the time the employee spends outside ordinary working hours travelling from the radial boundary to the job and return to the boundary,

DISCLAIMER - The above is intended to provide general information in summary form. The contents do not constitute specific advice and should not be relied upon as such. Formal specific advice should be sought by members with respect to particular matters before taking action.

phone 1300 650 620 | fax 1300 655 953 | enquiries@hia.com.au | hia.com.au

- which is paid at the ordinary time hourly rate*, calculated to the next quarter of an hour with a minimum payment of one half an hour per day for each return journey; and
- an extra 47 cents per km for the distance from the radial boundary to the job and return to the boundary where the employee uses their own vehicle.



* **Ordinary time hourly rate** replaces any references in the Award to 'hourly rate', 'ordinary rates', 'wage' etc.

5. Employer provides transport to distant work and/or between sites

Where the employee gets picked up from home and driven to a site that is outside the 50km radius, the employee is entitled to payment for the time the employees spends travelling from the radial boundary to the job and return to the boundary

Note: Daily fares allowance is **not** payable as transport is provided by employer.

Where the employer provides transport between worksites during the day the time that it takes to travel between sites during the day is considered to be working time.

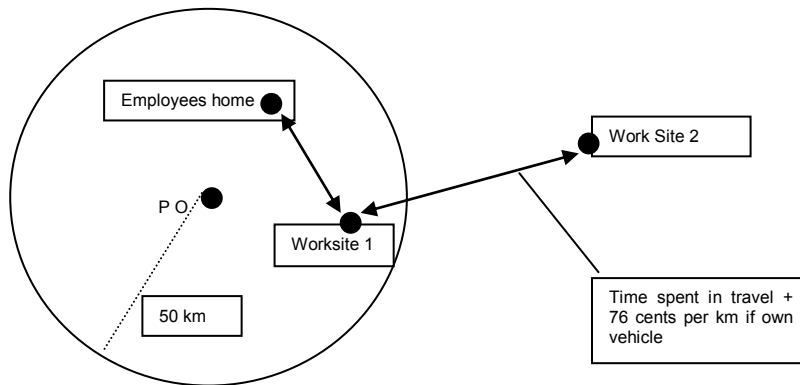
6. Employee makes own way to work - then travels between worksites

Where the employee makes their own way to work (under situations 2 and 3 above) and is then required to travel from that worksite to another worksite, the employee is entitled to:

- daily fares allowance of \$17.43 per day; and
- the time that it takes to travel between sites during the day is considered to be working time.

and either;

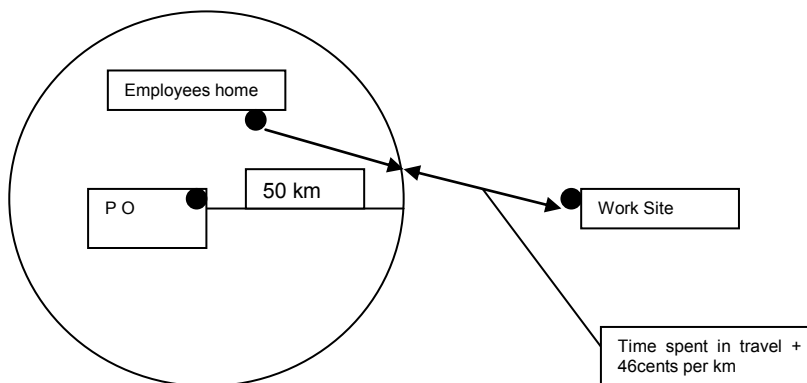
- the reasonable cost of fare for public transport between sites where transport is not provided by the employer; or
- 78 cents per km where the employee is required to use their own vehicle.



7. Employee makes own way to distant work

Where the employee makes their own way from within a radial area to a worksite located outside the 50km radial area the employee is entitled to:

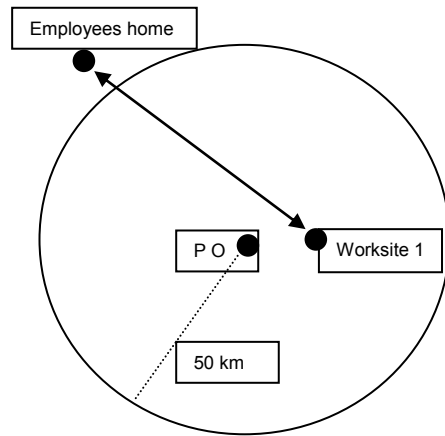
- daily fares allowance of \$17.43 per day; and
- in respect of travel from the designated radial boundary to the job and return to that boundary:
 - payment for the time the employee spends outside ordinary working hours travelling from the radial boundary to the job and return to the boundary,
 - which is paid at the ordinary time hourly rate*, calculated to the next quarter of an hour with a minimum payment of one half an hour per day for each return journey; and
 - an extra 47 cents per km for the distance from the radial boundary to the job and return to the boundary where the employee uses their own vehicle.



8. Employee resides outside radial area

Where an employees lives outside a radial area and crosses a radial boundary to a worksite the employee is entitled to daily fares allowance of \$17.43 per day.

Travel to work is not considered to be time worked.



Apprentices

The daily fares allowance of \$17.43 per day differs for apprentices. Apprentices are entitled to a proportion of this as follows:

| Year of apprenticeship | Proportion of allowance | Amount per day |
|------------------------|-------------------------|----------------|
| First year | 75% | \$13.07 |
| Second year | 85% | \$14.82 |
| Third year | 90% | \$15.69 |
| Fourth year | 95% | \$16.56 |

Other situations

If you have an employee travel situation which does not fit within those circumstances outlined above, please call your HIA workplace advisor on 1300 650 620 for further information on travel entitlements.



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
COMMISSION GREGORY
COMMISSIONER HARPER-GREENWELL

[XXX 2017]

4 yearly review of modern awards –Construction Awards.

- A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:
1. Delete current clauses 31.3
 2. Insert new clause 31.3

Payments must be paid and, to the extent of the employer's control, be made available to the employee not later than the end of ordinary hours of work on Thursday of each working week or fortnight as determined by the employer, or monthly if mutually agreed.

- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

Pre-Modern Award Payment Cycles

| Pre-Modern Award | Clause |
|--|--|
| <i>Building and Construction Industry (Northern Territory) Award 2002 - AP812941</i> | 5.7.1 Wages shall be paid weekly unless otherwise mutually agreed between the employee and the employer. |
| <i>Roof Slaters and Tilers (Victoria) Award 2002 - AT818507</i> | <p>17.1 All wages, allowances and other monies may be paid weekly or fortnightly by cheque or direct funds transfer to an employee's bank account (subject to the provisions of the Workplace Relations Act).</p> <p>17.2 Where direct funds transfer is used payment details, in full, are to be received no later than Friday of the pay week. In all other methods, payment is to be made no later than the time of cessation of work on the Thursday of each pay week.</p> |
| <i>South Australian Civil Contracting Industry Award 1999 - AP798273</i> | 5.6.2(a) Wages shall be paid on Thursday of each week, except by agreement between the employer and the majority of employees affected, it may be paid fortnightly (but, in such a case, payment shall be by EFT or cash only). If by majority agreement, new employees shall be paid on the same basis as current employees working at the same job location. |
| <i>Civil Construction, Operations and Maintenance General Award - State 2003 SA - AN140061</i> | 5.7.1 Subject to clause 5.7.2, all employees shall be paid at least once in every fortnight, and where reasonably practicable, in the employer's time and at the office of the employer or on the job as may be mutually arranged. Not more than 4 days pay shall be kept in hand in the case of fortnightly payment otherwise not more than 2 days pay shall be kept in hand. |
| <i>Building Trades Award 1968 WA - AN160037</i> | <p>11.1 (a) Actual 38 ordinary hours- In the case of an employee whose ordinary hours of work are arranged so that he works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked each week.</p> <p>(b) Average of 38 ordinary hours - In the case of an employee whose ordinary hours of work are arranged so that he works an average of 38 ordinary hours each week during a particular four week cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the four week cycle.</p> |
| <i>Australian Workers' Union Construction and Maintenance Award 2002 - AP815828</i> | <p>22.2.1 Employees shall be paid their wages in working hours.</p> <p>22.2.2 Wages shall be paid during ordinary working hours of work on Thursday of each week.</p> <p>22.2.5 Nothing shall prevent any alternative mutual arrangement between an employer and an employee.</p> |

| | |
|--|--|
| <p><i>AWU/CFMEU Construction and Maintenance Award (South Australia) 1989 - AN150011</i></p> | <p>33 (a) Employees shall be paid their wages in cash, or where agreement is reached between the employer and the employee, payment of wages may be made by cheque or electronic funds transfer. Wages shall be paid during ordinary working hours of work on Thursday of each week. Nothing shall prevent any alternative mutual arrangement between an employer and an employee.</p> |
| <p><i>Australian Workers' Union Construction and Maintenance Award 2002 – AT815828</i></p> | <p>22.1 Employees shall be paid their wages in cash, or where agreement is reached between the employer and the employee, payment of wages may be made by cheque or electronic funds transfer.</p> <p>22.2.2 Wages shall be paid during ordinary working hours of work on Thursday of each week.</p> <p>22.2.5 Nothing shall prevent any alternative mutual arrangement between an employer and an employee.</p> |
| <p><i>Asphalt and Bitumen Industry (Southern States) Award 1999 – AP766012</i></p> | <p>18.1 Wages will be paid no later than Thursday, weekly or fortnightly, either:</p> <ul style="list-style-type: none"> • According to the actual ordinary hours worked each week or fortnight; or • By agreement between the employer and the majority of employees in the relevant enterprise, wages may be paid three weekly, four weekly or monthly. Agreement in this respect may also be reached between the employer and an individual employee. |
| <p><i>Asphalt and Bitumen Industry (Queensland) Award 2000 – AP765981</i></p> | <p>23 Wages shall be paid weekly. Where a majority of employees agree wages shall be paid at least fortnightly. Wages shall be paid by electronic bank transfer, unless otherwise agreed between the employer and a majority of employees.</p> |
| <p><i>Metal Trades (General) Award 1966 – AN160206</i></p> | <p>18 Actual 38 ordinary hours: In the case of an employee whose ordinary hours of work are so that the employee works 38 ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.</p> <p>Average of 38 ordinary hours: In the case of an employee whose ordinary hours of work are arranged so that the employee works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.</p> |
| <p><i>Engine Drivers (Building and Steel Construction) Award No. 20 of 1973 – AN160114</i></p> | <p>19 Actual 38 ordinary hours: In the case of an employee whose ordinary hours of work are arranged so that he works 38 ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary</p> |

| | |
|---|---|
| | <p>hours worked each week or fortnight.</p> <p>Average of 38 ordinary hours: In the case of an employee whose ordinary hours or work are arranged so that he works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.</p> |
| <i>Building Trades (Government) Award 1968 – AN160036</i> | 10 Employees wages will be paid fortnightly into a nominated account of either an approved Building Society, Credit Union or Bank and employees will not be allowed time off to collect their pay advice slips during normal working hours. |
| <i>Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979 – AN160008</i> | <p>14 Actual 38 ordinary hours: In the case of an employee whose ordinary hours of work are arranged so that he works 38 ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.</p> <p>Average of 38 ordinary hours: In the case of an employee whose ordinary hours or work are arranged so that he works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.</p> |
| <i>Bricklayers and Tuckpointers (Mixed Industry) (SA) Award – AN150018</i> | 14 All wages, allowances and/or moneys due up until the time of cessation of work at the end of a pay period, shall be paid no later than 48 hours after the end of such pay period or otherwise by mutual agreement. Wages may be paid weekly or fortnightly where it is by mutual agreement between the employer and the employee. |
| <i>Glass Workers (State) Award – AN120232</i> | 35 Wages shall be paid weekly. However, by agreement, wages may be paid fortnightly, four weekly or monthly. |
| <i>Glass Makers (State) Award – AN120231</i> | 20 Wages shall be paid fortnightly and not more than 3 days wages shall be kept in hand. Provided that no existing practice at a site shall be altered, except by mutual agreement between the union and the employer, and provided that, by mutual agreement between the employer and the employee, normal weekly wage and penalty payments (where applicable) may be averaged and the employer shall pay the employee such average amount as that employee's normal weekly wage. |



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Construction Award (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
COMMISSION GREGORY
COMMISSIONER HARPER-GREENWELL

[XXX 2017]

4 yearly review of modern awards –Construction Award

A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:

1. Delete clause 33.1 and replace with the following:

Except as provided elsewhere in this award, the ordinary hours of work for an employee are 38 or an average of 38 hours per week not exceeding 152 hours in 28 days.

2. Delete clause 33.1(a) and replace with the following:

33.1 Ordinary Hours of Work – Rostered Day Off (RDO) Cycle

- a) Ordinary hours must be worked as eight hours per day, between 7.00 am and 6.00 pm Monday to Friday, over a 20 day four week cycle, with 0.4 of one hour of each day worked accruing as a paid RDO in each cycle.
- b) Each day of paid leave taken (except the paid RDO) and any public holiday occurring during any cycle of four weeks will be regarded as a day worked for accrual purposes.

33.2 Determining the RDO

- a) Where ordinary hours of work are set in accordance with clause 33.1 the paid RDOs must be implemented:

- i. by the employer fixing one day in a cycle in which all employees will be off; or
 - ii. by the employer rostering employees off on various days in a cycle so that each employee has a paid RDO during the cycle; or
 - iii. by any other method which is agreed by the employer and a majority of employees.
- b) Where any paid RDO falls on a public holiday, the next working day must be taken as the paid RDO unless an alternative day is agreed in writing between the employer and an employee.

33.3 Pro-Rata entitlements

- a) An employee, who has not worked a complete 19-day four week cycle, will receive pro rata accrued entitlements for each day worked or in the case of termination of employment, on termination.

33.4 Banking RDOs

- a) An employee and the employer may agree to a banking system of up to a maximum of five RDO's to be taken at times mutually convenient to the employer and the employee.
- b) When an RDO is banked, an employee is required to work on what would normally have been the employee's RDO.
- c) When working on an RDO under this banking system clause 33.5 does not apply.
- d) Five days' notice in writing must be provided by either party before taking banked RDOs.
- e) If employment comes to an end any banked RDOs must be paid to the employee at the ordinary time hourly rate.
- f) The employer must maintain a record of:
- i. the number of RDOs banked; and
 - ii. the date on which an employee takes a banked RDO.

33.5 Working on an RDO

- a) An employee, who works on a paid RDO that was fixed in accordance with clause 33.2 or any substituted day, must be paid in accordance with the provisions prescribed for Saturday work in clause 37 of this award.

33.6 Ordinary Hours of Work – Averaging of Hours

- a) Where it is agreed between a majority of employees and the employer that a paid RDO in each cycle is not practicable then agreement may be reached in writing on an alternative method of implementing ordinary hours, including:
- i. 38 hours within a work cycle not exceeding seven consecutive days;
 - ii. 76 hours within a work cycle not exceeding 14 consecutive days;

- iii. 114 hours within a work cycle not exceeding 21 consecutive days;
 - iv. 152 hours within a work cycle not exceeding 28 consecutive days; or
 - v. any other work cycle during which a weekly average of 38 ordinary hours are worked.
- b) Not more than 10 hours exclusive of meal breaks are to be worked in any one day.
 - c) Overtime will be payable for all hours worked outside the ordinary hours of work as determined in accordance with clause 33.6(a) above.
3. Renumber 33.1(b) – (e) as 33.7, 33.8. 33.9. 33.10.
- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT

IN FAIR WORK COMMISSION

FWA Matter No:
AM2016/23

Applicant:
Housing Industry Association

RE: FOUR YEARLY REVIEW OF THE MODERN AWARDS

STATEMENT OF LAURA MARANTZ

I, Laura Marantz of 70 Jolimont Street, East Melbourne, Victoria, Workplace Adviser state as follows:

- 1 I commenced employment with the Housing Industry Association Limited (HIA) in November 2015.
- 2 I am currently employed as a Workplace Adviser for Victoria and Tasmania.
- 3 In my role I provide information, assistance and advice to members in Victoria and Tasmania in relation to building and construction matters, industrial relations and workplace relations matters and other legally or compliance related matters that may arise for members in these states. I provide this information, assistance and advice through different methods including speaking to members on the telephone, face-to-face meetings, presentations, and by contributing to a fortnightly email newsletter and a quarterly publication. I also contribute to the development of information sheets which can be distributed to members.
- 4 The information, assistance and advice I provide to members includes assisting them with understanding the requirements and obligations of applicable modern awards. I assist members with creating employment related documents such as letters of engagement and policies through HIA's HR Docs offering.
- 5 I have the authority to swear this statement on behalf of HIA.
- 6 HIA's HR Docs offering is a comprehensive online library of HR documents that HIA assists HIA members to create on a fee for service basis. There are over 100 HR specific documents in the library including:
 - contracts
 - letters of engagement
 - individual flexibility agreements
 - workplace policies
 - checklists and procedures

Laura Marantz

Kerry

- template letters and forms.

- 7 When HIA members call for assistance with, for example putting together a letter of engagement, individual flexibility agreement (IFA), policy, procedure or other HR specific document, HIA's Workplace Advisers are able to assist the members through our HR Docs offering.
- 8 On or about 1 September 2016 I was asked by Melissa Adler, Executive Director – Workplace Relations at HIA to review the IFAs HIA have assisted members with through HR Docs.
- 9 Attached and marked **Annexure A** is a copy of the Summary of IFAs.
- 10 I compiled the summary by accessing HR Docs and looking at the IFAs which had been created on behalf of HIA members since the inception of the HR Docs offering. I excluded any IFAs which appeared to be duplicates.
- 11 The column of the Summary of IFA's entitled 'Amendment' provides a description of the amendment to the award clause(s), as agreed to between the employer and the individual employee, in accordance with Clause 7 – Award Flexibility of the *Building and Construction General Onsite Award*. I have de-identified the employers for the purposes of this statement and allocated a letter to each employer. Where a letter is repeated this indicates that that same employer has been assisted with more than one IFA.

Signature of person making declaration: Laura Marantz
 Declared at EAST MELBOURNE
 on 1 DECEMBER 2016

Before me:

Signature of Witness: Kevin
 Name of Witness:
 Address of Witness:

KEITH WILLIAM RYAN
 Level 3, 70 Jolimont Street, East Melbourne VIC 3002
 An Australian Legal Practitioner within the meaning
 of the Legal Profession Uniform Law (Victoria)

| | |
|---|---------------------------|
| Lodged by: Housing Industry Association | Telephone: (02) 9978 3334 |
| Address for Service: 4 Byfield Street North Ryde 2113 | Facsimile: (02) 9888 6677 |
| | Email: m.adler@hia.com.au |

Annexure A

Summary of IFAs

| | Dated | State | Business | Amendment |
|---|-------|-------|------------|--|
| 1 | 2014 | QLD | Employer A | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Daily fares allowance. |
| 2 | 2015 | QLD | Employer A | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Leading hands allowance. • Meal allowance. • Tool and employee protection allowance. • Special allowance. • Industry allowance. • Daily fares allowance. • Up to 6 hours of overtime per week. |
| 3 | 2015 | NSW | Employer B | Higher rate of pay incorporating: <ul style="list-style-type: none"> • 38 hour week with no RDO. • Daily fares allowance . • Up to 2 hours of overtime per day up to 3 days per week. • First 6 hours of work on a Saturday. |
| 4 | 2015 | NSW | Employer C | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Daily fares allowance. • 38 hour week with no RDO. • Up to 6 hours' overtime. • Up to 6 hours' work on a Saturday. • Annual leave loading. |
| 5 | 2015 | NSW | Employer C | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Daily fares allowance. • 38 hour week with no RDO. • Up to 6 hours' overtime. • Up to 6 hours' work on a Saturday. • Annual leave loading. |
| 6 | 2015 | NSW | Employer C | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Daily fares allowance. • Up to 40 hours per week Monday to Friday. • Up to 6 hours' overtime Monday to Friday. • Up to 6 hours' work on a Saturday. |
| 7 | 2015 | QLD | Employer D | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Daily fares allowance. • Annual leave loading. |
| 8 | 2015 | NSW | Employer E | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Leading hand allowance. • First aid allowance. • Fares and travel patterns allowance. |

Laura Marantz

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|----|------|-----|------------|---|
| | | | | <ul style="list-style-type: none"> Up to 42 hours per week with no RDO. |
| 9 | 2016 | SA | Employer F | Higher rate of pay incorporating: <ul style="list-style-type: none"> 38 hour week with no RDO. Up to 4 hours' overtime. |
| 10 | 2016 | SA | Employer F | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Annual leave loading. |
| 11 | 2015 | NSW | Employer G | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Up to 45 hours per week including up to 5 hours on a weekend with no RDO. Annual leave loading. |
| 12 | 2016 | NSW | Employer H | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Annual leave loading. |
| 13 | 2016 | NSW | Employer I | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Overtime and penalty rates up to 2 hours per week. |
| 14 | 2016 | NSW | Employer J | Higher rate of pay incorporating: <ul style="list-style-type: none"> Unclear but appears to provide for no RDO. Up to 45 hours per week. Up to 6 hours' work on a Saturday. Annual leave loading. Leading hands allowance. |
| 15 | 2016 | ACT | Employer K | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. 38 hour week with no RDO. |
| 17 | 2016 | NSW | Employer L | Higher rate of pay incorporating: <ul style="list-style-type: none"> 38 hour week with no RDO. Up to 50 hours per week. Daily fares allowance. Leading hand allowance. Annual leave loading. |
| 18 | 2016 | NSW | Employer M | Higher rate of pay incorporating: <ul style="list-style-type: none"> Up to 40 hours per week with no RDO. Daily fares allowance. Annual leave loading. |
| 19 | 2016 | NSW | Employer L | Higher rate of pay incorporating: <ul style="list-style-type: none"> 38 hour week with no RDO. Up to 50 hours per week. Daily fares allowance. Leading hand allowance. Annual leave loading. |
| 20 | 2016 | NSW | Employer N | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. |

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| | | | | <ul style="list-style-type: none"> Up to 45 hours per week, including up to 5 hours on a weekend, with no RDO. Annual leave loading. |
| 21 | 2016 | NSW | Employer O | Higher rate of pay incorporating: <ul style="list-style-type: none"> Up to 40 hours per week with no RDO. |
| 22 | 2016 | NSW | Employer P | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Annual leave loading. |
| 23 | 2016 | ACT | Employer Q | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. |
| 24 | 2016 | QLD | Employer R | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Annual leave loading. Up to 46 hours per week. |
| 25 | 2016 | QLD | Employer R | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Annual leave loading. Up to 46 hours per week. |
| 26 | 2016 | NSW | Employer S | 38 hour week with no RDO. |
| 27 | 2016 | SA | Employer T | Higher rate of pay incorporating: <ul style="list-style-type: none"> 38 hour week with no RDO Up to 42.5 hours per week. Daily fares allowance. Annual leave loading. Up to 7.5 hours work on Saturday. |
| 28 | 2016 | SA | Employer T | Higher rate of pay incorporating: <ul style="list-style-type: none"> Up to 42.5 hours per week with no RDO. Daily fares allowance. Annual leave loading. |
| 29 | 2016 | NSW | Employer L (most likely variation of previous IFA) | Higher rate of pay incorporating: <ul style="list-style-type: none"> 38 hour week with no RDO Up to 46 hours per week. Daily fares allowance. Leading hand allowance. Annual leave loading. |
| 30 | 2016 | NSW | Employer U | Higher rate of pay incorporating: <ul style="list-style-type: none"> Up to 40 hours per week with no RDO. |
| 31 | 2016 | NSW | Employer V | Higher rate of pay incorporating: <ul style="list-style-type: none"> Up to 42.5 hours per week. Daily fares allowance. |
| 32 | 2016 | NSW | Employer V | Higher rate of pay incorporating: <ul style="list-style-type: none"> Up to 42.5 hours per week. |
| 33 | 2016 | NSW | Employer P | Higher rate of pay incorporating: <ul style="list-style-type: none"> Daily fares allowance. Annual leave loading. |
| 34 | 2016 | QLD | Employer W | Higher rate of pay incorporating: |

Laura Marantz

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|----|------|-----|------------|--|
| | | | | <ul style="list-style-type: none"> • Up to 45 hours per week with no RDO. • Daily fares allowance. |
| 35 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 36 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 37 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 38 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 39 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 40 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 41 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 42 | 2017 | QLD | Employer X | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Up to 42 hours per week with no RDO. • Annual leave loading. |
| 43 | 2016 | ACT | Employer Y | Higher rate of pay incorporating: <ul style="list-style-type: none"> • Leading hand allowance. • Daily fares allowance. • Up to 42 hours per week with no RDO. • Annual leave loading. |

Laura Marantz

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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
COMMISSION GREGORY
COMMISSIONER HARPER-GREENWELL

[XXX 2017]

4 yearly review of modern awards – Construction Awards.

- A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:
1. Delete current clause 38.2 (b).
 2. Insert new clause 38.2(b)

(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 on the following rates, loadings and allowances if such rates, loadings and allowances would have been received by the employee for working ordinary time hours had the employee not been on annual leave:

- clause 19.1(a)—Minimum wages;
- clause 21.2—Industry allowance;
- clause 21.3—Underground allowance;
- clause 20.1—Tool and employee protection allowance;
- clause 24—Living away from home—distant work; and
- clause 19.2—Leading hands.

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

- B. This determination comes into operation from [xxx]. 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 [xxx].

PRESIDENT