



HOUSING INDUSTRY ASSOCIATION



# Housing Australians



Submission to the  
Fair Work Commission

**4 yearly review of Modern Awards**  
***Building and Construction General Onsite Award 2010***  
***Joinery and Building Trades Award 2010***  
**Finalisation of Exposure Drafts (AM2019/17)**

26 October 2020



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## 1. INTRODUCTION

- 1.1.1 On 29 January 2020, the Fair Work Commission (**Commission**) issued a Decision<sup>1</sup> (**January 2020 Decision**) relating to the finalisation of exposure drafts and consequent award variations for Tranche 3 Awards.
- 1.1.2 The Tranche 3 category of Awards were detailed in Attachment A of the January 2020 Decision, and include the *Building and Construction General Onsite Award 2010* (**Onsite Award**), and *Joinery Building Trades Award 2010* (**Joinery Award**).
- 1.1.3 At the request of interested parties, the Commission issued a Statement on 2 March 2020, noting the exposure draft process would be delayed for Construction Awards, including the Onsite Award and Joinery Award, until after final variation determinations were issued by the Construction Full Bench in AM2016/23.
- 1.1.4 On 7 October 2020 the Commission issued a Statement (**October Statement**)<sup>2</sup> noting that since a number of matters had been determined for the Construction Awards, Draft Variation Determinations would be published for each of the Construction Awards.
- 1.1.5 On 8 October 2020, Draft Determinations varying the Onsite Award and Joinery Award were published by the Commission, along with tracked versions of the Exposure Drafts of each award.
- 1.1.6 HIA provides these submissions in response to the Directions set out in paragraph 9 of the October Statement, in response to the Exposure Drafts and Draft Determinations for the Onsite Award (**Onsite Award Draft Determination**) and Joinery Award (**Joinery Award Draft Determination**).
- 1.1.7 HIA notes that these submissions follow the format and clause numbering of the Exposure Draft for the Onsite Award and Exposure Draft for the Joinery Award.

## 2. EXPOSURE DRAFT ONSITE AWARD

### 2.1 CLAUSE 2- DEFINITIONS

#### **Accident Pay**

- 2.1.1 Clause 2 of the Exposure Draft Onsite Award refers to Clause 27.2 for the definition of ‘accident pay.’
- 2.1.2 HIA submits that the definition within Clause 27.2 should be moved to Clause 2, for consistency of drafting, and to ensure that all definitions can be found within the appropriate schedule of the Onsite Award.
- 2.1.3 HIA submits that cross-referencing could be used in place of the repeated text and propose the following amendment to clause 27.1:  

*The employer must pay accident pay (see clause 2)*

*Delete clause 27.2*
- 2.1.4 This approach is also consistent with the treatment of the definition of ‘injury’ for the purposes of Accident Pay which is included at Clause 2 of the Exposure Draft Onsite Award.

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<sup>1</sup> [2020] FWCFB 421  
<sup>2</sup> [2020] FWCFB 5353



## **Adult Apprentice**

- 2.1.5 HIA notes that the definition of *adult apprentice* is contained in both clauses 2 and 14.1(a) of the Exposure Draft Onsite Award.
- 2.1.6 HIA submits that the definition in clause 14.1(a) is preferred. As such, it is proposed that clause 2 be amended to reflect that contained within clause 14.1(a) and that the definitions not be duplicated.

## **2.2 CLAUSE 4- COVERAGE**

- 2.2.1 HIA notes that Clause 4.3, makes reference to clause 4.1 for the purposes of defining 'general building and construction', 'civil construction' and 'metal and engineering construction'. It is HIA's view that the correct reference should be Clause 4.2. Clause 4.2 clarifies the industry sectors that form part of the industry award.

4.3 *For the purposes of clause ~~4.1~~ 4.2:*

## **2.3 CLAUSE 7- FACILITATIVE PROVISIONS**

- 2.3.1 HIA submits that Clause 7.2 should also contain the following facilitative provisions, as the following award provisions depart from the standard award approach:
- Clause 16.6, Requirement to work on a day that is an RDO.
  - Clause 16.11(a), Early starts, employees.
  - Clause 21.1(b), Reimbursement of tools.
  - Clause 21.1(c), Reimbursement of protective or other clothing or equipment.
  - Clause 39.12, Time off instead of payment for overtime.
  - Clause 31.6, Excessive leave accruals: general provision.

## **2.4 CLAUSE 14- APPRENTICES**

- 2.4.1 For readability purposes, HIA submits Clause 14.6(a) be amended and drafted as follows:
- (a) *All fees charged by a RTO and the cost of all prescribed textbooks for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within:*
- (i) *six months of commencement of the apprenticeship or a stage of the apprenticeship; or*
- (ii) *within three months of the commencement of training provided by the RTO.*
- whichever is the later, unless there is unsatisfactory progress.*

- 2.4.2 Reference to '(RTO)' in Clause 14.8(a), should have the brackets removed.
- 2.4.3 For consistency of drafting, HIA submits the words 'in lieu of' should be replaced with 'instead of', in Clause 14.8(d).

## **2.5 CLAUSE 16- ORDINARY HOURS OF WORK AND ROSTERING ARRANGEMENTS**

### ***Accrual towards an RDO on days not worked***

- 2.5.1 The interaction of Clause 16.3 with the Part-day public holidays schedule has been raised in AM2014/201 and AM2019/17.<sup>3</sup> These proceedings are ongoing.

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<sup>3</sup> HIA Correspondence, 19 October 2019



2.5.2 It would appear that Clause 16.3 fails to consider circumstances where a part-day public holiday may fall on a day which is otherwise partially taken as an RDO. The clause does not account for how accrual towards an RDO will operate in part-day public holiday circumstances, as the accrual entitlement '0.4 of one hour of each day towards a RDO for any public holiday where an employee is not required to work' operates on the assumption that a public holiday is a full day.

### **Other conditions for working ordinary hours- Early Starts**

2.5.3 HIA submits that Clause 16.11(a) can be re-worded to ensure the provision is simple and easy to understand, and consistent with the language used within the Onsite Award.

2.5.4 The current drafting of Clause 16.11(a) can be amended as follows:

*The working day may start at 6.00 am or at any 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 and the meal break will be adjusted accordingly. The change to the start time requires agreement between the employer and the employees and their representative(s), if requested.*

## **2.6 CLAUSE 18- MEAL BREAKS**

2.6.1 HIA submits that Clause 18.3(f) should be amended as follows:

*The provisions of clauses 18.3(b), 18.3(c), and 18.3(e) will not apply to an employee who is ~~allowed~~ entitled to the rest periods prescribed in clauses 18.6 and 18.7.*

## **2.7 CLAUSE 19- MINIMUM RATES**

### **Minimum Rates Table**

2.7.1 HIA opposes the inclusion of the reference to 'full time employee' within the minimum rates table at Clause 19.1(a).

2.7.2 In submissions to the Plain Language Full Bench dated 22 March 2019 (**March 2019 Submission**), HIA made the following submission:

3.1.3 *Minimum weekly rates within the Onsite Award are not confined to full-time employment. The Onsite Award has four types of employment, daily hire, full-time weekly hire, part-time weekly hire, and casual. As such adding 'full time employee' against the minimum weekly rate in clause 19.1(a) may in fact cause more confusion and is inconsistent with the language used throughout the award. For example, the Onsite Award refers to daily hire employees, and weekly hire employees in the context of clause 19.3, hourly rate calculation. The proposed language is also at odds with the definition of 'ordinary time hourly rate' in clause 3 of the Onsite Award which assists the reader to carry out the calculation of the applicable rate of pay.*

3.1.4 *Additionally, the current wording of Clause 19.1(b) sufficiently explains the application of the minimum weekly wage by reference to clause 3 which sets out how the minimum weekly wage applies to an employee's applicable type of employment:*

*19.1(b) The rates in clause 19.1(a) prescribe minimum classification rates only. The payment of additional allowances is required by other clauses of this award in respect of both weekly and hourly payments. The ordinary time hourly rate for an employee's classification is set out in clause 3.*





3.1.5 *As such HIA opposes the provisional view.*

2.7.3 Consequently in the Full Bench Decision [2019] FWCFB 5409 it was determined that the inclusion of the words ‘full-time employee’, would not be adopted in the Onsite Award:

*We confirm that the approach suggested by Ai Group will be adopted across all exposure drafts, save for the Building On-Site and the Joinery Awards. In relation to those two awards the issue can be the subject of further submissions in response to the publication of the next iteration of exposure drafts.*<sup>4</sup>

2.7.3 HIA maintains the views as expressed in our March 2019 Submission, and confirms that the wording within the Exposure Draft Onsite Award Clause 19.1(b) appropriately explains the application to minimum weekly wages, and no change is needed to the minimum rates table.

**Leading Hands**

2.7.4 To keep with contemporary wording, HIA recommends Clause 19.2(a) is reworded as follows:

*A person specifically appointed to be a leading hand must be paid at the rate of the following percentages of the weekly rates in clause 19.1(a) of the highest classification supervised, or the employee’s own rate, whichever is the higher, in accordance with the number of ~~persons in the employee’s charge~~ persons supervised.*

2.7.5 For consistency, HIA also recommends the heading ‘In charge of’ within the table at Clause 19.2(a) is replaced with the words ‘Persons Supervised’.

**Responsible Body - Training Packages**

2.7.6 Within Clause 19.7(d)(iii) the Construction and Property Services Industry Skills Council (CPSISC) is referred to. The management of training packages is now taken care of by the Australian Industry Skills Committee (AISC).

2.7.7 HIA suggests that more generic language may need to be used within the Exposure Draft Onsite Award to avoid any confusion.

**National Training Wage**

2.7.8 In proceedings before the Full Bench allocated to determine National Training Wage Schedule-Award Specific Schedules (AM2016/15 and AM2016/17) HIA made submission dated 8 September 2017 which raised concern with inconsistent terminology in Clause 28 of the Onsite Award.

*Included at clause A.1.1 is ‘wage level A, B or C, see clause 28’. Current clause 28.3 of the Onsite Award refers to Skill Level A and Skill Level B. HIA submits that the inconsistency in terminology should be remedied to avoid confusion.*

2.7.9 In reply submissions dated 22 September 2017 the CFMMEU supported this view:

7. *In regard to the issue of the inconsistent terminology used in the proposed schedule and clause 28 of the Building and Construction General On-site Award 2010, the CFMEU C&G advises that this issue was identified by the AIG in AM2016/23 – 4 Yearly Review of Modern Awards – Constructions Awards. The AIG proposed that the wording in clause 28.3(a) be changed to “Wage Level A” and “Wage Level B”. In its reply submission in AM2016/23 the CFMEU C&G said that it supported this variation. The CFMEU C&G therefore submits that there is no opposition to the variation being made by either this Full Bench or the Construction Awards review Full Bench.*

<sup>4</sup> At paragraph 114



2.7.8 Proceedings regarding the National Training Wage Schedule for the Onsite Award were placed on hold until substantive matters in the Construction Group of Awards (AM2016/23) were determined. At the time of preparing this submission, these proceedings had not been reconvened.

2.7.10 It is HIA's view that it is appropriate that the proposed terminology changes be made during this Exposure Draft process. As such the following change to Clause 19.10(c)(i) and (ii) is proposed:

- Replace 'Skill level B' with 'Wage Level B'; and
- Replace 'Skill level A' with 'Wage Level A.'

## 2.8 CLAUSE 20- PAYMENT OF WAGES

### *Payment of Wages Full Bench in AM2016/8*

2.8.1 At the time of preparing this submission, HIA's frequency of wages claim before the Payment of Wages Full Bench in AM2016/8, remained under consideration. HIA's claim seeks to vary Clause 20.3 to allow for more flexibility regarding the frequency of the payment of wages, including the option to pay wages weekly, fortnightly or monthly (if mutually agreed).

2.8.2 Within the same proceedings, Master Builders Australia's (MBA) seek to vary Clause 20.3 in a similar way. HIA also understands that MBA have claims outstanding in relation to Clause 20.2, and Clause 20.5.

2.8.3 HIA notes an error at Clause 20.3 which should be varied to replace the reference to Clause 1.1 with Clause 20.6.

## 2.9 CLAUSE 21- EXPENSE-RELATED ALLOWANCES

### *Meal allowance*

2.9.1 HIA submits that for consistency of drafting the words 'one and a half hours' within Clause 21.2 should be replaced with '1.5 hours.'

## 2.10 CLAUSE 23- OTHER ALLOWANCES

### *In charge of plant*

2.10.1 HIA submits clause 23.9(a) could be re-worded as follows to ensure that the award is simple and easy to understand:

(a) *In charge of plant means an employee who is responsible for overseeing and directing work:*

*(i) when 2 or more employees are employed at the plant at the one time, the employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility;*

*(ii) an employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility over one or more other employees;*

*(iii) when the employee is the only person of that class employed on the plant the employee who does the general repair work of the plant in addition to the work of operating, but not when the employee merely assists a fitter or engineer to do such work; or*

*(iv) where shifts are worked, the employee who is directed to carry out the general repair work of the plant in addition to the work of operating, but not when the employee merely assists a fitter or engineer to do such work.*





## 2.11 CLAUSE 26- TRAVELLING TIME ENTITLEMENTS

### *Travelling Outside Ordinary Hours*

2.11.1 HIA submits Clause 26.3 should be varied as follows to provide clarity and consistency with Clause 16.1 of the Exposure Draft Onsite Award, where 'ordinary working hours' is defined:

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

### *Distant Work Payment*

2.11.2 In accordance with a number of decisions impacting on the Exposure Draft Onsite Award<sup>5</sup> Clause 26 has been substantially varied.

2.11.3 The 26 September 2018<sup>6</sup> set out the rationale for the variation as follows:

*"We also consider there is substance to the proposition advanced by the HIA that clause 25 is unnecessarily complex and confusing. We have had some regard to the evidence adduced by the HIA concerning member confusion about the obligations under clause 25, but primarily we have taken into account the way in which the clause is drafted. In particular, the provisions concerning distant work (clause 25.3), travel outside radial areas (clause 25.5), into radial areas from a residence outside any radial area (clause 25.6) and between radial areas (clause 25.7) are complex both in expression and their relationship to each other and to the primary criterion for payment in clause 25.2. We consider that clause 25 should be varied, so that the fares and travel pattern allowance and other travelling time entitlements are simplified as follows..."*

2.11.4 HIA seeks to raise a matter in relation to the operation of Clause 26.4(b) as set out in the Exposure Draft Onsite Award which provides for payment in relation to distant work, specifically that the distant work payment is:

- Payment for time outside ordinary working hours reasonably spent in travel, 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
- Any expense necessarily and reasonably incurred in such travel, which will be \$0.47 per kilometer where the employee uses their own vehicle.

2.11.5 The distant work payment under the previous provision (see clause 26.5(b) in the tracked version of the Exposure Draft Onsite Award) limited the payment to the travel from the radial area boundary to the job and return to that boundary. For example, the time spent in travel from the employees home to the radial boundary did not form a part of the distant work payment, only the time spent travelling for the radial boundary to the job. This differs from Clause 26.4(b) set out in the Exposure Draft Onsite Award which would appear to require payment for all time spent in travel from the employees home to the job. This represents a significant change, which HIA submit was not intended.

2.11.6 HIA submits that the provision be clarified by inserting the words in red below to ensure Clause 26.4(b) continues to operate in the same way as the predecessor provision:

*The distant work payment **in respect of travel from the metropolitan radial area to the job and return to the metropolitan radial area** is:*

<sup>5</sup> [2018] FWCFB 6019, [2019] FWCFB 6860 and [2019] FWCFB 8564  
<sup>6</sup> [2018] FWCFB 6019 at paragraph 284



## 2.12 CLAUSE 27- ACCIDENT PAY

2.12.1 It is HIA's view the definition of Accident Pay as per Clause 27.2 should be contained within Clause 2 of the Onsite Award.

## 2.13 CLAUSE 29- OVERTIME

### *Payment for working overtime*

2.13.1 HIA submits the use of the words '*employee's ordinary time of work*' in Clause 29.4 is an undefined term, and should be amended as follows to ensure consistency of language:

*All time worked beyond an employee's ~~ordinary time of work~~ ordinary working hours (inclusive of time worked for accrual purposes as prescribed in clauses 16—Ordinary hours of work and 17—Shiftwork), Monday to Friday, must be paid for at the rate of 150% of the ordinary hourly rate for the first 2 hours and 200% thereafter.*

### *Work during meal break- day worker*

2.13.2 HIA submits that Clause 29.6 of the Exposure Draft Onsite Award should be moved to Clause 18.1 as a new subsection (d). It is HIA's view that all provisions relating to meal breaks should be contained within the same section of the Onsite Award.

2.13.3 On the current drafting, employers unfamiliar with the operation of these provisions are largely left unaware of the penalty rates applicable when an employee works through a meal break. There is nothing in Clause 18.1 indicating the application of Clause 29.6. As such Clause 29.6 should be moved to sit within Clause 18.1.

2.13.4 HIA further suggests the use of consistent and simpler language. Clause 29.6 uses the terms 'for finishing of work' and 'the prescribed time of finishing' whereas Clause 18.1 uses the term 'cessation of work'. As such HIA recommends the following amendments to Clause 29.6:

#### *29.6 Work during meal break—day workers*

- (a) *If an employer requires an employee to work during the time prescribed by clause 18.1 for ~~finishing of work~~ the meal break, the employee must be paid at the rate of 200% of the ordinary hourly rate for the period worked between the prescribed time ~~of finishing~~ for the meal break under clause 18.1 and the beginning of the time allowed in substitution for the meal break.*
- (b) *If the ~~finishing time~~ meal break provided in accordance with clause 29.6(a) is shortened at the request of the employee to the minimum of 30 minutes prescribed in clause 18.1 or to any other extent (not being less than 30 minutes) the employer will not be required to pay more than the ordinary hourly rate of pay for the time worked as a result of such shortening, but such time will form part of the ordinary working time of the day.*

This would also prevent any controversy arising as to the application of the term 'usual finishing time' as defined by clause 18.3(d).



## 2.14 CLAUSE 30- PENALTY RATES

2.14.1 For readability purposes, HIA submits Clause 30.4 could be redrafted as follows:

### **30.4 Paid crib time during overtime—Saturday and Sunday**

- (a) *This provision operates in place of clause 18.1.*
- (b) *An employee working overtime on a Saturday or working on a Sunday must be allowed a paid crib time of 20 minutes after 4 hours' work, to be paid for at the ordinary hourly rate of pay. ~~but this provision~~*
- ~~(b)(c)~~ *Clause 30.4(b) ~~will~~ does not prevent any arrangements being made for the taking of a 30 minute unpaid meal period, ~~the time~~ in addition to the paid 20 minutes in accordance with Clause 30.4(b). ~~being without pay. This provision operates in place of clause 18.1(a).~~*
- ~~(b)(d)~~ *In the event of an employee being required to work in excess of a further 4 hours, the employee must be allowed to take a paid crib time of 30 minutes which will be paid at the ordinary hourly rate of pay. ~~This provision operates in place of clause 18.3(a) and 18.3(b).~~*

## 2.15 CLAUSE 31- ANNUAL LEAVE

### **Payment for annual leave**

2.15.1 HIA submits that Clause 31.2 should be amended for clarity, and to reflect consistency of language throughout the Exposure Draft Onsite Award as follows:

*Instead of the base rate of pay as referred to in section 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~~ ordinary working hours, at their ordinary time hourly rate, if they had not been on leave.*

## 2.16 CLAUSE 32- PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

2.16.1 HIA submits for consistency of wording in the Onsite Award, and the National Employment Standards, the following amendment should be made to Clause 32.2:

*32.2 If an employee is terminated by the employer and is re-engaged by the same employer within a period of 6 months, then the employee's unclaimed balance of ~~sick~~ personal/carers leave will continue from the date of re-engagement. In such case the employee's next year of service will commence after a total of 12 months has been served with that employer excluding the period of interruption in service from the date of commencement of the previous period of employment or the anniversary of the commencement of the previous period of employment.*

## 2.17 CLAUSE 33- PARENTAL LEAVE AND RELATED ENTITLEMENTS

2.17.1 HIA submits for consistency with the drafting of the Onsite Award, '33.1' should be inserted before 'Parental leave and related entitlements are provided for in the NES.'

## 2.18 CLAUSE 34- COMMUNITY SERVICE LEAVE

2.18.1 HIA submits for consistency with the drafting of the Onsite Award, '34.1' should be inserted before 'Community service leave is provided for in the NES.'



## 2.19 CLAUSE 35- UNPAID FAMILY AND DOMESTIC VIOLENCE LEAVE

2.19.1 HIA submits for consistency with the drafting of the Onsite Award, '35.1' should be inserted before '*Unpaid family and domestic violence leave is provided for in the NES.*'

## 2.20 CLAUSE 40- TERMINATION OF EMPLOYMENT

2.20.1 Clause 40 of the Exposure Draft Onsite Award clearly has sub-headings which notify of the notice of termination by an employee. To make very clear to readers of the Onsite Award that there is a difference in requirements for notice of termination by an employer, HIA recommends the following change:

### **40.1 Notice of termination by an employer**

*(a) NOTE: The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.*

### **40.12 Notice of termination by an employee**

*(a) Clause 40.12 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.*

*NOTE: by section 123(3)(a) clause 40 does not apply to daily hire employees working in the building and construction industry.*

2.20.2 Consequential adjustments to numbering for the remainder of Clause 40 would be required should this recommendation be adopted.

## 2.21 SCHEDULE B- SUMMARY OF MONETARY ALLOWANCES

### **All purpose allowances**

2.21.1 The Electricians License Allowance should include an astrix (\*) instead of the footnote 1.

## 2.22 SCHEDULE D- NATIONAL TRAINING WAGE

2.22.1 As noted above, Schedule D is subject to National Training Wage- Award Specific Schedule proceedings in AM2016/15 and AM2016/17.

### 3. EXPOSURE DRAFT JOINERY AWARD

#### 3.1 CLAUSE 2 - DEFINITIONS

##### **Accident Pay**

- 3.1.1 Clause 2 of the Joinery Award Exposure Draft refers to Clause 22.2(a) for the Definition of 'accident pay.'
- 3.1.2 HIA submits that the definition within Clause 22.2(a) should be moved to Clause 2, for consistency of drafting, and ensuring all definitions sit within the appropriate schedule of the Onsite Award.
- 3.1.3 HIA submits that cross-referencing could be used in place of the repeated text and propose the following amendment to clause 22.1:

*The employer must pay accident pay (see clause 2)*

*Delete clause 22.2(a)*

##### **All-Purposes**

- 3.1.4 In its decision of 13 July 2015<sup>7</sup> the Commission held that a definition of 'all purposes' would be included in all exposure draft modern awards.
- 3.1.5 Consequentially, the Exposure Draft Joinery Award contains the following:
- all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave (see clause 21.2).*

- 3.1.6 This definition is in both Clause 2 and Clause 21.2 and in HIA's view this is an unnecessary duplication.
- 3.1.7 HIA submits that the definition in Clause 2 be retained and the definition in Clause 21.2 be deleted.

#### 3.2 CLAUSE 7 - FACILITATIVE PROVISIONS FOR FLEXIBLE WORKING PRACTICES

- 3.2.1 HIA notes the following should be added to clause 7.2:
- Clause 17.1 – Rostering arrangements.
  - Clause 18.1(b) – Meal breaks.
  - Clause 24.9(b) – Time off instead of payment for overtime.
  - Clause 27.5(b) - Excessive leave accruals: general provision.

#### 3.3 CLAUSE 12- CASUAL CONVERSION

- 2.3.1 HIA notes an administrative change to Clause 12.2 of the Exposure Draft Joinery Award appears to have an error, by way of reference to Clause 11.7. HIA submits such reference should remain as Clause 12.

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<sup>7</sup> 4 Yearly Review of Modern Awards [2015]FWCFB 4856 at para 91

### 3.4 CLAUSE 13 – APPRENTICES

#### **Responsible Body - Training Packages**

- 3.4.1 Within Clause 13.5(c) the Construction and Property Services Industry Skills Council (CPSISC) is referred to. The management of training packages is now taken care of by the Australian Industry Skills Committee (AISC).
- 3.4.2 HIA suggests that more generic language may need to be used within the Exposure Draft Joinery Award to avoid any confusion.

#### **School-based Apprentices**

- 3.4.3 The reference to School-based Apprentices has been changed in Clause 13.11(c) of the Exposure Draft Joinery Award, to state Clause 13 is subject to Schedule D- School-based Apprentices, where as it was previously confined to Clause 13.11- Apprentice Training.
- 3.4.4 HIA submits the redrafted Clause 13.11(c) should be a standalone clause within Clause 13.

### 3.5 CLAUSE 22 - ACCIDENT PAY

- 3.5.1 It is HIA's view the definition of Accident Pay and Injury as per Clause 22.2 should be contained within Clause 2 of the Onsite Award.

### 3.6 CLAUSE 27 - ANNUAL LEAVE

- 3.6.1 HIA submits that the following NOTE in Clause 27.2(d) of the Exposure Draft Joinery Award be deleted:

*NOTE: Where an employee is receiving overaward payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the Act).*

- 3.6.2 It is HIA's view that within the context of the Exposure Draft Joinery Award the NOTE is confusing and largely irrelevant.
- 3.6.3 Under Section 16 of the *Fair Work Act 2009* **Base Rate of Pay** is defined as:

*...the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:*

- (a) incentive-based payments and bonuses;*
- (b) loadings;*
- (c) monetary allowances;*
- (d) overtime or penalty rates;*
- (e) any other separately identifiable amounts*

- 3.6.4 Under the Exposure Draft Joinery Award, clause 26.2(a) specifically excludes the operation of the *base rate of pay* and, consequentially, does not apply to the calculation of the wages an employee receives while on annual leave.
- 3.6.5 Further clause 26.2(b) already addresses how over-award payments are to be dealt with when making payments while an employee is on annual leave.





### 3.7 CLAUSE 29- PARENTAL LEAVE AND RELATED ENTITLEMENTS

- 3.7.1 For the sake of consistency throughout the Exposure Draft Joinery Award (see for example Exposure Draft Joinery Award Clause 14), HIA submits that '29.1' be should inserted for referencing purposes.

### 3.8 CLAUSE 31- UNPAID FAMILY AND DOMESTIC VIOLENCE LEAVE

- 2.8.1 For the sake of consistency throughout the Exposure Draft Joinery Award (see for example Exposure Draft Joinery Award Clause 14), HIA submits '31.1' should be inserted for referencing purposes.

### 3.9 CLAUSE 36- TERMINATION OF EMPLOYMENT

- 3.9.1 Clause 36 of the Exposure Draft Joinery Award clearly has sub-headings which notify of the notice of termination by an employee. To make very clear to readers of the Joinery Award that there is a difference in requirements for notice of termination by an employer, HIA recommends the following change:

#### **36.1 Notice of termination by an employer**

NOTE: The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.

#### **~~36.1~~ 36.2 Notice of termination by an employee**

- 3.9.2 Consequential adjustments to numbering for the remainder of Clause 36 would be required should this recommendation be adopted.

### 3.10 SCHEDULE B —SUMMARY OF HOURLY RATES OF PAY

- 3.10.1 In its decision of 13 July 2015, the Commission held the following:

*The Full Bench supports the inclusion of detailed schedules of hourly rates in modern awards but we agree that it is prudent to not adopt a 'one size fits all' approach and to develop rates tables in consultation with the interested parties. The complexities of rates in some awards (e.g. Vehicle Manufacturing, Repair, Services and Retail Award 2010) do not lend themselves to being accurately and efficiently summarised in such a schedule. Further, the views of interested parties in awards such as the Manufacturing and Associated Industries and Occupations Award 2010 (the Manufacturing award) has led to a tailored schedule that relies on the interaction of the schedule with the more detailed provisions governing when a penalty or loading is payable, rather than inserting a complex and lengthy series of tables. Parties are encouraged to review the schedules and make submissions about the accuracy and utility of such schedules during the award stage for Groups 2, 3 and 4.<sup>8</sup>*

- 3.10.2 HIA is concerned that while the overarching intention of this Schedule is to provide clarity in relation to rates of pay aiding in compliance and providing certainty the sheer number of tables, the various iterations (particularly in relation to apprentice rates) and the conditional nature of the rates due to the variable application of all-purpose allowances may lead to inadvertent non-compliance.
- 3.10.3 As such, it is HIA's preliminary view that due to the complexity of wage rate calculations under the Exposure Draft Joinery Award only a Table of Rates, similar to that adopted in Schedule C of the *Manufacturing and Associated Industries and Occupations Award 2020* (**Manufacturing Award**) be inserted.

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<sup>8</sup> [2015] FWCFB 4658 at paragraph 62



3.10.4 As such, HIA proposes that:

- Schedule B of the Exposure Draft Joinery Award be renamed – Summary of Wage Rates.
- The table at Attachment A to these submissions be inserted as B.1.
- The existing content of Schedule B be deleted in its entirety.

3.10.5 If the Commission remains minded to include the material currently within the Exposure Draft Joinery Award, HIA would submit that:

- The explanatory provision similar to those included in the Manufacturing Award (see for example C.1.1, C.2.1 and C.2.2 of the award) be included in the Exposure Draft Joinery Award.
- It be made clear that the rates outlined under B.3 and B.5 include the industry allowance.

3.10.6 Further HIA submits, the following amendment should be made to B.1.1 to clarify that ordinary hourly rate is defined by Clause 2 of the Joinery Award Exposure Draft:

*In accordance with Clause 2, the Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 21.2, this forms part of the employee's ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.*



## ATTACHMENT A

<b>Full-time and Part-time employees</b>	
<b>Working hours</b>	<b>% of minimum ordinary hourly rate/ Minimum casual ordinary hourly rate</b>
Ordinary hours	100%
Ordinary hours on a Saturday	150%
Ordinary hours on a Sunday	200%
Work on a public holiday	250%
Overtime – first 2 hours Monday to Saturday	150%
Overtime –after 2 hours Monday to Saturday or after 12 noon on a Saturday	200%
Overtime on a Sunday	200%
Public Holiday	250%
<b>Shiftworkers</b>	
<b>Continuous</b>	
Day	100%
Early morning or early afternoon	125%
Afternoon or night	150%
<b>Non-Continuous</b>	
First 2 hours	150%
After 2 hours	200%
Public Holiday	250%
Overtime – Monday to Sunday	200%

<b>Casual employees</b>	
<b>Working hours</b>	<b>% of minimum ordinary hourly rate/ Minimum casual ordinary hourly rate</b>
Ordinary hours	125%
Ordinary hours on a Saturday	175%
Ordinary hours on a Sunday	225%
Work on a public holiday	275%
Overtime – first 2 hours Monday to Saturday	175%
Overtime –after 2 hours Monday to Saturday or after 12 noon on a Saturday	225%
Overtime on a Sunday	225%
Public Holiday	275%
<b>Shiftworkers</b>	
<b>Continuous</b>	
Day	125%
Early morning or early afternoon	150%
Afternoon or night	175%
<b>Non-Continuous</b>	
First 2 hours	175%
After 2 hours	225%
Public Holiday	275%
Overtime – Monday to Sunday	225%

