

# CFMEU

## CONSTRUCTION

**IN THE FAIR WORK COMMISSION**

**Matter Numbers:** AM2014/217 and others

*Fair Work Act 2009*

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

**4 yearly review of modern awards – Award stage – Group 3**

*4 yearly review of modern awards – award stage – exposure drafts – Group 3 awards*

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**SUBMISSION OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY  
UNION (CONSTRUCTION & GENERAL DIVISION) ON ALL PURPOSE  
ALLOWANCES AND OCCUPATIONAL HEALTH AND SAFETY REFERENCES**

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31<sup>st</sup> July, 2017

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## Introduction

1. The Fair Work Commission (the Commission) is currently undertaking a 4 yearly review of modern awards (the Review) as required by s.156 of the Fair Work Act 2009 (the FW Act).
2. On 6<sup>th</sup> July 2017 a Full Bench issued a decision ([2017] FWCFB 3433) on the technical and drafting issues arising out of the awards in Group 3 of the Award stage of the Review. In this decision the Full Bench raised two issues which would potentially affect a number of awards, not just those awards in Group 3. These issues were:
  - All purpose allowances (see paragraphs [360] to [362])
  - Occupational health and safety references (see paragraphs [380] to [382])
3. This brief submission is limited to responding to those issues.

## All Purpose Allowances

4. In paragraph [362] of [2017] FWCFB 3433, the Full Bench invited parties to provide any objections to the proposal (contained in paragraphs [360] and [361]) as to how the pay rates tables in awards should be expressed where all purpose allowances apply. The proposal would appear to be that if the award contained any all purpose allowances that apply to all employees then a table setting out the ordinary hourly rates could be included and a note stating that “*Ordinary hourly rate includes the industry allowance payable to all employees for all purposes.*” If an award contained all purpose allowances that only applied to some employees then an award would only include wage rates calculated on the minimum hourly rate exclusive of any all purpose allowances, and a note be inserted stating “*Rates in tables are calculated based on the minimum hourly rate, see clauses x.1.1 and X.1.2.*”
5. The CFMEU (Construction and General Division) (the CFMEU C&G) objects to this proposal applying to all awards. It is submitted that the best approach would be to deal with this issue on an award by award basis.
6. For example the *Building and Construction General On-site Award 2010* is an award that contains all-purpose allowances that apply to all employees (e.g. the industry allowance and special allowance), some all purpose allowances that apply to particular employees (e.g. tool allowance, leading hand allowance and refractory allowances), and some all purpose allowances that only apply to employers performing certain work at a particular time (e.g. underground allowance and hydraulic hammer allowance). For this award, whilst it may be impracticable to include every possible wage rate taking into account every all purpose allowance, it would be practicable to have tables of wage rates setting out the ordinary hourly rates inclusive of industry allowance, special allowance tool allowance and other trades specific allowances (i.e. carpenter-diver allowance and refractory allowances) with the addition of a note saying that other all purpose allowances may apply.
7. This is not a new approach as the major pre-reform award, the *National Building and Construction Industry Award 2000*, included hourly rates calculated on this basis in clause 18.1.2 of that award.<sup>1</sup> This approach was well understood by the industry and was generally supported. It also assisted in reducing the level of underpayments in the industry.
8. The CFMEU C&G therefore submits that an award by award approach be adopted in regard to the wage rates tables where all purpose allowances apply.

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<sup>1</sup> See for example <https://www.fwc.gov.au/documents/alldocuments/pr983590.htm>

9. Paragraph [362] of [2017] FWCFB 3433 also sought comments on the list of applicable awards containing all purpose allowances set out in Attachment B to that decision. The CFMEU has identified that the list does not include the *Building and Construction General On-site Award 2010*. The following are the relevant allowances for this award:

<b>Award ID</b>	<b>Award Title</b>	<b>All purpose allowances</b>	<b>Applies to</b>
MA000020	<i>Building and Construction General On-site Award 2010</i>	Leading hands allowance (cl.19.2)	Some employees
		Mobile cranes adjustment formula (cl.19.5)	Some employees
		Tool allowance (cl. 20.1(a))	Some employees
		Special allowance (cl. 21.1)	All employees
		Industry allowance (cl.21.2)	All employees
		Underground allowance (cl.21.3)	Some employees
		Carpenter-diver allowance (cl. 21.7)	Some employees
		Refractory bricklaying allowance (cl. 21.8)	Some employees
		Air-conditioning industry and refrigeration industry allowances (cl. 21.11)	Some employees
		Electrician's licence allowance (cl. 21.12)	Some employees
		In charge of plant allowance (cl. 21.13)	Some employees
		Furnace work allowance (cl. 22.2(m))	Some employees
		Acid work allowance (cl.22.2(n))	Some employees
		Hydraulic hammer allowance (cl.22.3(q))	Some employees
		Lift industry allowance (cl.42.2)	Some employees

## Occupational Health and safety References

11. In paragraph [382] of [2017] FWCFB 3433, the Full Bench invited parties to consider the table, in Attachment C to the decision, of relevant clauses in awards where ‘occupational health and safety’ appears, and to comment on any proposed variation.
  12. The issue of including clauses dealing with work health and safety matters is a live issue in other proceedings, namely the consideration of the Construction awards in AM2016/23. Accordingly the CFMEU C&G does not intend making any comment at this stage until the issues in those proceedings have been determined. The CFMEU C&G would therefore request that this Full Bench defer consideration of this issue in the Construction awards until the other Full Bench has made a decision on the issues before it.
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