

**From:** [Stuart Maxwell](#)  
**To:** [AMOD](#)  
**Subject:** AM2016/23 and Ors - 4 Yrly Review - Construction Awards  
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**Attachments:** [image015.png](#)  
[AM2016-23 and ors -Group 4C Construction awards -CFMEU C&G Sub in Support - 9Dec2016.pdf](#)

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Dear Vice President Hatcher,

In accordance with the extension of time granted on 1<sup>st</sup> December 2016, please find attached the written submission and witness evidence in support of the variations that we propose for the Construction awards in AM2016/23 and ors.

Please note that we were unable to finalise the witness statement of Michael Buchan that was to be inserted at Appendix 13 by the time of filing this submission. The witness statement will be finalised over the weekend and filed first thing Monday morning. We apologise for any inconvenience that this may cause the Commission and other parties.

Yours faithfully,

**Stuart Maxwell**

Senior National Industrial Officer

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# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

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

*Fair Work Act 2009*

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

### Construction Awards

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

[MA000020]

#### Joinery and Building Trades Award 2010

[MA000029]

#### Mobile Crane Hiring Award 2010

[MA000032]

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

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**SUBMISSION OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY  
UNION (CONSTRUCTION & GENERAL DIVISION) IN SUPPORT OF VARIATIONS  
SOUGHT TO GROUP 4C AWARDS**

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9<sup>th</sup> December, 2016

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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 23<sup>rd</sup> January 2015 the President, Justice Ross, issued a Statement ([2015] FWC 618) on the programming for the groups 3 and 4 awards as part of the Review. The Statement requested that parties seeking changes to group 3 and 4 awards during the Review file submissions identifying the nature of any changes proposed by 4pm on Monday 2<sup>nd</sup> March 2015. The CFMEU (Construction and General Division) (the CFMEU C&G) filed a submission in accordance with that request.<sup>1</sup>
3. On the 21<sup>st</sup> October 2015 the President issued another Statement ([2015] FWC 7253) concerning the programming for the awards being dealt with in Groups 3 and 4. This Statement mainly dealt with the programming for submissions on technical and drafting issues relating to the exposure drafts.
4. On the 24<sup>th</sup> February 2016 the President issued a Statement ([2016] FWC 1191) regarding the substantial claims that had been made in regard to the group 3 and 4 awards. The President determined that,

*“Group 4C*

*[13] There are a number of claims to vary the provisions of the Building and Construction General On-site Award 2010, the Plumbing and Fire Sprinklers Award 2010, the Joinery and Building Trade Award 2010 and the Mobile Crane Hiring Award 2010 (collectively the ‘Construction awards’). A conference will be convened by Senior Deputy President Watson in order to categorise the various issues raised in relation to the Construction awards seek to resolve the matters in dispute; and identify those matters that require referral to a separately constituted Full Bench.”*

5. Further Statements were issued by the President on 10<sup>th</sup> May 2016<sup>2</sup>, 15<sup>th</sup> July 2016<sup>3</sup> and 15<sup>th</sup> August 2016<sup>4</sup>. In the 15<sup>th</sup> August 2016 Statement the President referred to the Report<sup>5</sup> of Senior Deputy President Watson on the various claims to vary the provisions in the Construction awards. The Report identified that the common claims in the *Building and Construction General On-site Award 2010*, the *Joinery and Building Trades Award 2010* and

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<sup>1</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014260andors-sub-cfmeu-020315.pdf>

<sup>2</sup> [2016] FWC 2924

<sup>3</sup> [2016] FWC 4781

<sup>4</sup> [2016] FWC 5694

<sup>5</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014260andors-fbreport-050816.pdf>

the *Mobile Crane Hiring Award 2010* would be referred to a separately constituted Full Bench for determination. On 22<sup>nd</sup> August 2016 the President issued a Memorandum<sup>6</sup> establishing the Full Bench under AM2016/23 and identifying the claims to be dealt with by them.

6. Following a mention on 1<sup>st</sup> September 2016 before VP Hatcher<sup>7</sup>, the Full Bench issued Directions<sup>8</sup> on 26<sup>th</sup> October 2016 for the claims identified in the Memorandum. The Directions required parties seeking variations to the Construction awards to file comprehensive written submissions and any witness statements or documentary material on which they sought to rely on, by 5.00pm on Friday 2<sup>nd</sup> December 2016. On Thursday 1<sup>st</sup> December 2016 the CFMEU C&G wrote to VP Hatcher seeking an extension of time to file our submissions and evidence to 5.00 pm on Friday 9<sup>th</sup> December 2016. On the same day we were advised that the Commission had granted our request. This submission is made in accordance with that revised timetable.

### **Summary of CFMEU C&G Claims**

7. The CFMEU C&G has proposed variations to the *Building and Construction General On-site Award 2010*, the *Joinery and Building Trades Award 2010*, and the *Mobile Crane Hiring Award 2010*. Draft determinations setting out the specific variations that we seek are set out in Appendix 1.
8. The only variations sought for the *Joinery and Building Trades Award 2010*, and the *Mobile Crane Hiring Award 2010* relate to the award provisions to apply when an employee is required to work on a distant job/project which requires the employee to live away from home for a period of time. The variations sought in these awards are, save for some exclusions and minor differences, substantially the same as the variation that we seek for the *Building and Construction General On-site Award 2010*. For ease of reference this submission will refer to this common claim as the “living away from home” claim. The clause that we propose is intended to make the entitlements clearer; to ensure that the allowances payable reflect the current costs of accommodation and meals; to better reflect modern means of transport; and in light of recent evidence on the health, safety and welfare impacts of long periods working away from home, provide for improved rest and recreation entitlements.

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<sup>6</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014260andors-memo-220816-.pdf>

<sup>7</sup> [https://www.fwc.gov.au/documents/Transcripts/20160901\\_AM201623.htm](https://www.fwc.gov.au/documents/Transcripts/20160901_AM201623.htm)

<sup>8</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201623-dirs-261016.pdf>

9. There are a number of additional claims that we make for the *Building and Construction General On-site Award 2010*. These claims concern the following clauses of the award,

- Clause 4 – Coverage - the CFMEU C&G proposes a variation to clause 4 to ensure the primacy of this award applying to employees and employers engaged in the on-site building, engineering and civil construction industry. The variation is sought to reflect the general intent of the Commission and its predecessors in the award modernisation process.
- Clause 19 – Minimum wages – the CFMEU C&G proposes that clause 19.3 be varied to include all of the relevant allowances in the hourly rate calculations to reflect the fact that all tradespersons and labourers can be engaged on a daily hire or weekly hire basis under this award. The variations sought would insert the air-conditioning industry and refrigeration industry allowance, and the electrician’s licence allowance in 19.3(a); and insert the refractory allowance and carpenter-diver divisor in 19.3(b).
- Clause 20 – Expense related allowances – the CFMEU C&G proposes the insertion of a new communications equipment allowance for employees required to use two-way radios, walkie talkies, mobile phones, tablets, etc., during hours of work. Where such equipment is required to be used it will be provided for by the employer at no cost to the employee. If the equipment is provided by the employee then the employee must be reimbursed the cost of providing the equipment.
- Clause 22 – Special rates – the CFMEU C&G proposes the insertion of a consolidated special rates allowance. This claim was initially proposed during the 2012 Award Review, but was withdrawn with the intent of reviving the claim during this Review. The variation sought would allow an agreement to be reached, between an employer and an employee, for the employer to pay a consolidated special rates allowance in lieu of the majority of individual special rates that might otherwise apply.
- Clause 28 - National training wage - the CFMEU C&G proposes that clause 28.2 be varied to provide for competency based wage progression through the stages similar to that provided for three year apprenticeships (but keeping the civil construction traineeship wage rates), with a default time served arrangement. This would address the current confusion as to how the trainees progress through the wage structure.
- Clause 33 – Hours of work – The CFMEU C&G proposes that clause 33.1 be varied to insert a new provision so that the daily ordinary hours of work of casual employees

are specified. This will ensure consistency with daily hire and weekly hire employees and remove any ambiguity that may currently exist.

### **The Nature of the Review**

10. The Full Bench in their 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues decision (the Preliminary Jurisdictional Issues decision), stated,

*“[23] The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI’s submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.”<sup>9</sup>*

11. The same Full Bench also made a number of important observations relevant to the conduct of the Review,

*“[24] In conducting the review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the Workplace Relations Act 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective .....In the Review the commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time it was made.*

.....

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<sup>9</sup> [2014] FWCFB 1788

[27] *These policy considerations tell strongly against the proposition that the Review should proceed in isolation unencumbered by previous Commission decisions. In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.*”<sup>10</sup>

12. The above extracts identify that in prosecuting our claims before the Commission that, unless the claim is self-evident and can be determined with little formality, we will need to advance a merit based argument in support of the proposed variations, address the legislative provisions, and provide probative evidence to demonstrate the facts supporting the proposed variation. The extracts confirm that the history of awards are important, particularly the award modernisation proceedings resulting in the creation of the modern awards, and that at the time the modern awards were made there was a legislative acceptance that they achieved the modern awards objective. The extracts also confirm that previous Full Bench decisions relevant to a contested issue are relevant and should be followed unless there are cogent reasons for not doing so.

### **The Living Away From Home Claim**

13. The Living Away From Home claim is the most substantive of the variations sought by the CFMEU C&G and, as previously mentioned, is a common claim across the 3 awards. The clause that we have proposed for the *Building and Construction General On-site Award 2010* is the following<sup>11</sup>:

**“24. *Living away from home—distant work***

**24.1 *Qualification***

(a) *This clause operates when an employee is employed on construction work at such a distance from the employee’s usual place of residence or any separately maintained residence that the employee cannot reasonably return to that place each night, provided that:*

(i) *the employee is not in receipt of relocation benefits; and*

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<sup>10</sup> Ibid

<sup>11</sup> The clause now proposed is slightly different to that previously filed in the Commission in that the allowances sought are higher and the wording for the camping allowance has been revised.

(ii) *the employee has provided the details of their usual place of residence, or any separately maintained address to the employer.*

(b) *The employee is not entitled to payment under this clause if the employee has knowingly made a false statement regarding the details required in clause 24.2.*

#### 24.2 *Employee's address*

(a) *On engagement, an employee must provide the employer with their address at the time of application, the address of any separately maintained residence and, if requested, reasonable documentary proof of those details.*

(b) *No subsequent change of address will entitle an employee to the provisions of this clause unless the employer agrees. Provided that the employer will not unreasonably refuse any request by an employee to change their address.*

(c) *An employer must not exercise undue influence for the purpose of avoiding the obligations under this clause, in persuading an existing employee to give a false address.*

#### 24.3 *Entitlement*

(a) *Where an employee qualifies under clause 24.1 the employer will:*

(i) *pay a living away from home allowance of \$913.88 per complete week. In the case of broken parts of the week the living away from home allowance will be \$130.55 per day. This allowance will be increased if the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed; or*

(ii) *provide the employee with reasonable board and lodging in a well kept establishment with three adequate meals each day; or*

(iii) *provide the employee with accommodation and pay the following allowances for meals each day:*



- *Breakfast*      \$15.00
- *Lunch*            \$15.00
- *Dinner*            \$30.00

; or

(iv) *where employees are required to live in camp, provide all board and accommodation free of charge.*

(b) *The accommodation provided will be of a reasonable standard having regard to the location in which work is performed, including the provision of:*

(i) *a single room (not shared) which is quiet with air conditioning/heating, suitable ventilation, comfortable and clean bedding, appropriate lighting and furnishings, an ensuite with a toilet, shower and basin both with running hot and cold water, a television and tea and coffee making facilities;*

(ii) *reasonable ablution/laundry, recreational and kitchen facilities, as well as reasonable external lighting and fire protection;*

(iii) *communication facilities including email and internet access, and mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable.*

(c) *Where the accommodation provided is in a camp type arrangement at a remote location for a specific construction project, an employee shall retain their own specific room for the duration of the time spent living away from home.*

**24.4** *Messing system where employees are required to live in camp at any one site*

(a) *Where 10 or more employees are engaged, the employer will provide a cook. If there are less than 10 employees, the employer must reimburse employees for food reasonably purchased by them for their own use or must reimburse the reasonable cost of meals consumed in the nearest recognised centre, provided this subclause*

*will not apply where the employee is provided with three meals per day in accordance with clause 24.3(a)(ii).*

- (b) *In camps over 30 people the employer must employ a camp attendant.*

**Camp attendant** *means an employee engaged for the purpose of maintaining a camp in a clean and hygienic condition.*

- (c) *In all camps the employer must provide labour for the purpose of maintaining the camp in a clean and hygienic condition.*

- (d) *Where an employer has established a camp site and provides facilities for employees living in their own caravan, the employer must provide reasonable space for the caravans.*

#### 24.5 *Camping allowance*

*An employee accommodated at a camping site or caravan park where free messing is not provided must receive a camping allowance of \$ 420.00 for every complete week the employee is available for work. In the case of broken weeks, the camping allowance will be \$60.00 per day including any Saturday or Sunday if the employee is in camp and available for work on the working days immediately preceding and succeeding each Saturday and Sunday. If an employee is absent without the employer's approval on any day, the allowance will not be payable for that day and if such unauthorised absence occurs on the working day immediately preceding or succeeding a Saturday or Sunday, the allowance will not be payable for the Saturday and Sunday.*

#### 24.6 *Camp meal charges*

*Where a charge is made for meals in a construction camp, the charge will be fixed by agreement between the employer and the majority of affected employees.*

#### 24.7 *Travelling expenses*

*An employee who is sent by an employer to a job which qualifies the employee for the provisions of this clause will not be entitled to any of the allowances prescribed by clause 25 – Fares and travel patterns allowance,*

*for the period occupied in travelling from the employee's usual place of residence to the distant job, but instead will be entitled to the following benefits:*

*(a) Forward journey*

*(i) An employee must:*

- be provided with appropriate transport from the employee's usual place of residence to the job, or be paid the amount of a fare on the most appropriate method of public transport (including bus, economy air, taxi, and rail with sleeping berths if necessary), and any excess payment due to transporting tools if such is incurred; and*
- be paid for the time spent in travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel; and*
- be paid the allowances set out in clause 23.3(a)(iii) for any meals incurred while traveling.*

*(ii) The employer may deduct the cost of the forward journey fare from an employee who terminates or discontinues employment within two weeks of commencing on the job and who does not immediately return to the employee's place of engagement.*

*(b) Return journey*

*(i) An employee will, for the return journey, receive the same payments provided for the forward journey (see clause 24.7(a)). In addition, daily hire employees will receive an amount of \$20.81 to cover the cost of transport and transporting tools from the main public transport terminal to the employee's usual place of residence.*

*(ii) The return journey payments will not be paid if the employee terminates or discontinues employment within two months of commencing on the job or is dismissed for incompetence*

*within one working week of commencing on the job, or is dismissed for misconduct at any time.*

*(c) Travelling time calculations*

*For the purpose of this clause, travelling time will be calculated as the time taken for the journey from the main bus or rail terminal nearest the employee's usual place of residence to the locality of the work (or the return journey, as the case may be).*

*(d) Daily fares allowance*

*An employee engaged on a job who qualifies under the provisions of this clause and who is required to reside elsewhere than on the site (or adjacent to the site and supplied with transport) must be paid the allowance prescribed by clause 25 – Fares and travel patterns allowance.*

*(e) Weekend return home*

*(i) An employee who notifies the employer, no later than Tuesday of each week, of their intention to return to their usual place of residence at the weekend and who returns to such usual place of residence for the weekend, must be paid an allowance of \$35.28 for each occasion provided that the employee does not miss any ordinary hours of work.*

*(ii) An employee who is receiving the living away from home allowance pursuant to clause 24.3(a)(i) or camping allowance pursuant to clause 24.5 is not entitled to payment under clause 24.7(e)(i).*

*(iii) When an employee returns to their usual place of residence for a weekend or part of a weekend and is not absent from the job for any of the ordinary working hours, no reduction of the allowance in clause 24.3 will be made.*

*(f) Rest and recreation*

*Where an employee is engaged on a job which qualifies the employee for the provisions of this clause and the duration of work on the job*

*is scheduled for more than 8 weeks the employee will be entitled to rest and recreation in accordance with the following:*

- (i) After each continuous 3 week period of work away from home the employee will be entitled to a period of 7 days unpaid rest and recreation leave at the employee's usual place of residence. The 7 day period will be exclusive of any days of travel from the job to the employee's usual place of residence and return to the job. On each occasion that the employee returns to their usual place of residence they will be paid for travel expenses in accordance with clause 24.7(a), (b) and (c) above.*
- (ii) After 12 weeks continuous service (inclusive of periods of rest and recreation) the employee will be entitled to 2 days paid rest and recreation leave and an addition paid day of rest and recreational leave for each subsequent 12 weeks of continuous service.*
- (iii) Payment for leave and travel expenses will be made at the completion of the first pay period commencing after date of return to the job.*
- (iv) The provisions of clause 24.7(f)(i) do not continue to apply where the work the employee is engaged upon will terminate in the ordinary course within a further 28 days after the last period of rest and recreation leave.*
- (v) Service will be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause.*
- (vi) Variable return home*  
  
*In special circumstances, and by agreement with the employer, the return to the usual place of residence entitlements may be granted earlier or taken later than the prescribed date of accrual without alteration to the employee's accrual entitlement.*
- (vii) No payment instead*

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

(viii) *Alternative paid day off procedure*

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

(ix) *Termination of employment*

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

Save for some exclusions, minor word changes and different numbering, we propose the same clause for both the *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*.

14. The above clause is based on the existing clause 24 – Living away from home – distant work, from the *Building and Construction General On-site Award 2010*. The significant changes that we propose are:

- (i) In clause 24.2 add a new provision to preclude employers putting undue pressure on employees to provide a false address.
- (ii) In clause 24.3(a)(i) increase the allowance to \$913.88 per week and \$130.55 per day.
- (iii) In clause 24.3(a) insert a new paragraph (iii) (and renumber the existing (iii) as (iv)) to provide for specific meal allowances to apply where the employer only provides accommodation.
- (iv) In clause 24.3(b) update the minimum accommodation requirements to reflect modern standards and methods of communication.
- (v) In clause 24.3 add a new paragraph (c) to require employers to provide employees who are required to live in a construction camp at a remote location with their own specific room for the duration of the time spent living away from home.

- (vi) In clause 24.5 increase the weekly and daily camp allowance where free messing is not provided and clarify its operation.
- (vii) In clause 24.7(a) clarify that the transport is to be from the employee's usual place of residence and remove the reference to second class rail.
- (viii) In clause 24.7(f) change the employees entitlement to rest and recreation to a period of 7 days unpaid rest and recreation leave (exclusive of any days of travel) after each continuous 3 week period of work where the duration of work on the job is scheduled for more than 8 weeks, and to provide for the paid rest and recreation leave after each 12 weeks of continuous service.
15. The living away from home provision in the *Building and Construction General On-site Award 2010*, and its predecessor awards, has a long history going back over 100 years. In Appendix 2 to this submission we list the major changes that have occurred over this time. Significantly for these proceedings the last major change occurred in 1977, nearly 40 years ago. It is therefore appropriate as part of this Review to modernise the clause and update it to reflect current practices and the cost of accommodation and meals.
16. Attached at Appendices 6 to 15 are witness statements from union officials, organisers and workers who have knowledge of the arrangements for workers required to live away from home. Many of these witnesses have worked on distant projects themselves and provide personal details of the work and accommodation arrangements and the effects on their families. These statements will be referred to where they are relevant to the different parts of our living away from home claim.
17. The changes we propose to the living away from home-distant work clause will be dealt with in the order that they appear in paragraph 14 above.

#### Employees Address

18. The current clause has a provision in clause 24.1 that disqualifies an employee from the entitlements under the clause if they give a false address. There is no corresponding provision that deals with employees being pressured to give a false address so that the clause does not apply. The change we propose to fix this issue is to insert a new clause 24.2(c) in the following terms:

“(c) *An employer must not exercise undue influence for the purpose of avoiding the obligations under this clause, in persuading an existing employee to give a false address.*”

19. The variation would restore a provision that was contained in the pre-modern *National Building and Construction Industry Award 2000*, which stated,

*“37.2.2 Provided however, that the Employer shall not exercise undue influence, for the purpose of avoiding its obligations under the award, in persuading the prospective employee to insert a false address.”*<sup>12</sup>

20. The variation is in similar terms to an existing provision currently found in clause 21.9(b) of the *Plumbing and Fire Sprinklers Award 2010*, which provides as follows:

*“(ii) The employer will not exercise undue influence, for the purpose of avoiding its obligations under this award, to persuade the employee to give a false address. No subsequent change of address will entitle an employee to the provisions of this clause unless the employer agrees.”*

21. The intent of the clause is to address the problem of workers facing undue pressure to give a false address in order to get a start on a distant project. The problem is commonly referred to as “gate starts” where an employee is told that there is a new project coming up, but that if they want to be employed on the new project they will need to have a local address.

22. The witness statements of Frank O’Grady (Appendix 6), David Kelly (Appendix 7) and Graham Pallot (Appendix 8) set out their experience of the prevalence of gate starts. The problem is more of an issue in the civil sector, particularly in NSW and WA, than other areas of the building and construction industry.

23. From time to time tribunals have been called upon to deal with disputes regarding an employee’s address and their entitlement to the living away from home provisions. In 1994 Commissioner Jones, in considering a dispute between Thiess and the CFMEU, noted that,

*“Questions also have arisen as to whether there was an unwritten position that presupposes the likelihood of obtaining a position with Thiess or any other regional competitor would be lessened unless a prospective employee held a local address to the project.”*<sup>13</sup>

24. The provision in the pre-modern awards was intended to address this “unwritten position” and to give some protection to employees.

25. In 2003 in dealing with a dispute between the John Holland Group and the CFMEU, Deputy President Harrison of the NSW Industrial Commission found that,

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<sup>12</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap790741/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap790741/asframe.html)

<sup>13</sup> Print L4476 <https://www.fwc.gov.au/documents/decisionssigned/html/l4476.htm>



*“The evidence in this matter, from the applicants, is that each engaged in some form of subterfuge in respect to their usual place of residence or address. However, on the evidence before me I find that they were, in the terms of the award, persuaded or induced to do so by the promulgation of the policy by the company. The company put in place a policy of employment of locals, but no procedure to support it. The evidence of Mr Botticchio and the evidence of Mr Mouton reveals that in the actual engagement the award was not consulted. That the usual place of residence form was regarded as something to satisfy the client and done as an afterthought.*

*In each of the subterfuges put forward by the employees there was surrounding it sufficient information and evidence for anyone who wanted to look to reveal that their usual place of residence was not that disclosed on the form completed at the requirement of the company, most usually at the induction after employment, bringing down any defence that the company may have to this application.”<sup>14</sup>*

26. A Full Bench in *Abigroup Contractors Pty Ltd v Construction, Forestry, Mining and Energy Union* (2014 FWAFB 24), in an appeal against a decision of Commissioner Ryan, said that,

*“[9] It is readily apparent that an employee is entitled to an allowance if the employee lives so far from the job that it is unreasonable to expect him or her to go home each night. However, by cl 37.1.2 an employee is bound by the address stated to the employer at the time of engagement, provided that no duress was applied to the employee in that regard, and no entitlement to the allowance arises if the employee wilfully provided a false address. The only possible rationale for this proviso must be to discourage employees from providing an address that would not trigger entitlement to the allowance in order to secure employment, and then claiming the allowance on the basis that the address given at the time of employment is not in fact the correct address. Inherent in that proposition lies the notion that an employer will obviously prefer to engage people who live close enough to the job that it need not pay the allowance.*

*[10] It can be seen that an employee is not bound by the address given on application in two situations:*

- if the employee made a false statement under duress or;*
- where the employer exercised undue influence, for the purpose of avoiding its obligations under the award, in persuading the prospective employee to insert a false address.”*

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<sup>14</sup> [2003] NSWIRComm 113 (at 162)

27. The current provision in the *Building and Construction General On-site Award 2010* is a result of the award modernisation process. When the Full Bench of the AIRC released the exposure draft they said,

*“[43] We have included in the exposure draft, an MBA formulation of travel and distant work provisions.”*<sup>15</sup>

28. The MBA formulation<sup>16</sup> did not include the provision identified in paragraph 19. The only explanation given for their whole clause was to remove confusion.<sup>17</sup>

29. We accept that the CFMEU C&G raised the issue of the removal of the provision (identified in paragraph 19) during the award modernisation proceedings, as in our written submission of 13<sup>th</sup> February 2009<sup>18</sup> we stated:

*“4.62 In clause 25.2 of the exposure draft, which deals with an employee’s address for the purpose of determining an employee’s entitlement to receive the living away from home entitlements, a number of important protections have been omitted. These protections, identified in clause 35.2.2, 35.2.4 and 35.2.5 of Version 3, concern a prohibition on an employer exercising undue influence on an employee to insert a false address, what documentation can be used as proof of an employee’s usual address, and that the usual place of address determines the application of the clause. These provisions were inserted into the construction awards to remove disputation occurring over this issue, especially in regard to payments for traveling to and from home to the distant location and entitlements for rest and recreation. We strongly urge the Commission to retain these provisions.”*

No other party however made any comment on this particular issue, and nothing more was said by the AIRC Full Bench.

30. In light of ongoing disputes in the industry as reflected by the witness evidence and the cases referred to above we submit that it is appropriate for the Commission to reinsert the provision.

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<sup>15</sup><http://www.airc.gov.au/decisionssigned/html/2009aircfb50.htm>

<sup>16</sup> See Attachment C to the MBA’s 5<sup>th</sup> December 2008 submission, [http://www.airc.gov.au/awardmod/databases/building/Submissions/Masterbuilders\(7th\)\\_submissions\\_building.pdf](http://www.airc.gov.au/awardmod/databases/building/Submissions/Masterbuilders(7th)_submissions_building.pdf)

<sup>17</sup> Ibid at 7.1

<sup>18</sup> [http://www.airc.gov.au/awardmod/databases/building/Submissions/CFMEU\\_stage\\_2\\_ED.pdf](http://www.airc.gov.au/awardmod/databases/building/Submissions/CFMEU_stage_2_ED.pdf)

### Increase in Daily and Weekly Allowance

31. Under clause 24.3(a) of the *Building and Construction General On-site Award 2010* the employer has three options to compensate employees required to live away from home. They are:
- (i) Pay an allowance on a weekly/daily basis; or
  - (ii) Provide reasonable board and lodgings in a well-kept establishment with 3 adequate meals a day; or
  - (iii) If the employees are required to live in a camp, provide all board and accommodation free of charge.
32. The options under the current award have largely remained unchanged since the award simplification proceedings in 1999/2000 which re-arranged the order, i.e. under the NBCIA 1990 the first option was to provide the worker with reasonable board and lodging<sup>19</sup>. It is the experience of the CFMEU, as the evidence of our witnesses demonstrates (e.g. see O’Grady at paragraphs 13 to 15), that the most common practices are for employers to pay for the cost of accommodation and meals, or pay for the accommodation and pay an amount for meals. The payment of the allowances only is the least used option, although this is changing (see Pallot at paragraph 13).
33. The daily and weekly allowances provided for in clause 24.3(a)(i) are to be paid where board and lodging is not provided by the employer. The allowances are therefore intended to cover the cost of the employee providing, or more accurately purchasing board and lodgings. The daily allowance is 1/7<sup>th</sup> of the weekly amount.
34. The current award amounts are \$478.44 per completed week, and \$68.45 per day in the case of broken parts of a week. The allowance may be increased if the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed. The increasingly common practice where the allowance is paid, is to just pay the amount prescribed by the award or enterprise agreement (see Pallot at paragraph 13). We submit that the minimum award amounts are woefully inadequate in today’s modern society and need to be significantly increased.
35. The rationale and level of the weekly and daily payments has changed over time. When the “*Archer Award*” for builders labourers was made in 1913, Justice Higgins gave the following explanation:

“ COUNTRY WORK

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<sup>19</sup> <https://www.fwc.gov.au/documents/awardsandorders/j4733.doc> at clause 24(3)

*When, as often happens, a man is taken from the city or town to help on a building in the country, the practice is very unsettled, and there is considerable friction. In my opinion, a man ought to have his fares paid to and from the job, to have his time of travelling (not exceeding 8 hours) treated as ordinary time of working, and to get some allowance for the fact that he usually has to maintain two homes – one for his family, and one for himself. Sometimes he camps on the country job and brings his tent; sometimes he finds lodgings- and board and lodging cost more than a few years ago; sometimes he is found in board and lodging by the employer. The claim is for 3d. per working hour more where the man finds himself, or 2s. per day of 8 hours. I have been in the habit of (roughly) estimating the board and lodging at 15s. per week, and the relief to the home table occasioned his absence at 10s.; and this estimate would make 5s. per week the proper extra payment to be made to him. Probably this estimate ought to be revised in view of the recent advance in the cost of living; and I therefore award an extra payment of 2d. per hour, or 7s. 4d. for a 44 hours week – in effect, 1s. per day extra for each day of absence. I may point out that in Tasmania and in some New South Wales cases the extra pay for country work is 1s. 6d. per day, which is greater than my award.*

*This extra payment is based on the assumption that the man must live away from his home. All seem to agree that this is the best rough test of what is country work; but as the award has to be definite so as to preclude disputes, I accept the suggestion of Mr. Langford, a master builder, and fix 20 miles from his home or his post office as the limit at which “country work” begins, if he live in Sydney or in Melbourne, 10 miles if he live in Brisbane or Adelaide, and 6 miles if he live in Geelong, Bathurst or other such centres.”<sup>20</sup>*

36. By 1923 the “Anthony Award” for carpenter and joiners provided payments of 6s. per day and 30s. per week for employees engaged on distant work (see Appendix 2).
37. In 1945 the genesis of the current award provision was created and the *Building Trades of Victoria Award* included a more comprehensive clause which included a requirement for an employer to provide board and lodging or the payment of an allowance and the provision of sleeping accommodation (see Appendix 2).
38. In the *Carpenters and Joiners (NSW) Award 1961* the provision was again changed. This new provision was the result of an agreement reached between the Amalgamated Society of Carpenters and Joiners (ASC and J), the Master Builders Association of New South Wales,

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<sup>20</sup> 7 CAR 210 @ 229-230

the Employers Federation of New South Wales, the Timber Trade Industrial Association and the Commonwealth Department of Works. It required the employer to provide reasonable board and lodging “*or pay an allowance of £12 12s. per week of seven days but such allowance shall not be wages. In the case of broken parts of a week occurring at the beginning or end of a period of distant work the allowance shall be all living expenses actually and reasonably incurred but not exceeding £12 12s.*”<sup>21</sup>

39. During the same period Commissioner Webb, of the Commonwealth Conciliation and Arbitration Commission, also dealt with the *Carpenters and Joiners Award 1962* (which covered Victoria, South Australia and Tasmania). In the decision creating the award Commissioner Webb increased the allowances in that award, stating,

“ *As to the second claim the Union claimed the current money amounts of 20s. per day and 65s. per week should be increased to £5 per day and £20 per week. The employers argued that the money amounts are unimportant as there is a proviso that the amounts shall be increased if the employee satisfies the employer that he incurred a greater outlay than that prescribed.*

*The Commission cannot accept the employers’ argument. Almost invariably to-day where an employee travels on behalf of his employer, he does so in the knowledge that he has a fixed rate, related to current costs, for accommodation with the proviso that if, for any reason, only more costly accommodation is available, he is re-imbursed.*

*The weekly rate will be £12 12s. and for less than a full week £2 per day”*<sup>22</sup>

40. When the *National Building Trades Construction Award 1975* was made, Justice Evatt decided that,

*“Allowances for Distant Jobs*

*The distant jobs allowance rates were determined informally. New South Wales employers position was reserved because of appeals pending before the Industrial Commission of New South Wales relating to allowances. After argument on 14 February 1975 the Commission decided that New South Wales employers should be bound by the rates determined for board and camping but that leave should be reserved to all parties to apply for a variation of the rates should there be any change*

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<sup>21</sup> 98 CAR 77 at 87

<sup>22</sup> 101 CAR 433 at 452

*in the equivalent rate paid under comparable awards. The new rates are to apply immediately to new jobs and to existing projects after three months.*”<sup>23</sup>

Justice Evatt set the allowances at \$56 per week of seven days and \$8 per day in the case of broken parts of the week.

41. Since 1975 the allowances have been increased based on movements in the relevant CPI. As far as we can ascertain there has been no significant review of the allowances, particularly in light of changes in society’s expectations of the standard of accommodation to be provided.

42. In 1983 in dealing with an application to vary the *Australian Workers’ Union Pipeline Construction (Western Australian) Award 1982*, Commissioner Merriman gave some insight as to how the allowances for board and lodging were determined in that award, stating,

*“In my view the allowance which was established in April 1983 was based on an averaging concept involving hotel costs, caravan parks, flats and other accommodation costs. A range of accommodation was envisaged at the time the allowance was established and I do not believe that the material placed before me justifies any increase in this allowance as the averaging concept adopted in April 1983 allowed for a wide range and type of accommodation which in my view provided ample scope for the period of this project. I therefore reject the union claim for an increase in this allowance.”*<sup>24</sup>

43. It is clear from the short analysis provided above that payment of the allowance has changed over time and that it is now intended to cover the costs incurred rather than the difference between the costs incurred and the money saved for not living at home.

44. In determining what is an appropriate allowance for the award in 2016/17 there is obviously a need to identify what the allowance is intended to cover. Clause 24.3(a)(ii) sets out what the alternative is to paying the allowance, i.e.

(ii) *provide the worker with reasonable board and lodging in a well kept establishment with three adequate meals each day;*

45. The existing clause 24.3(b) gives a limited insight as to what a reasonable standard of accommodation is, as it refers to “*ablution/laundry, recreational and kitchen facilities, as well as reasonable external lighting, mail facilities, radio or telephone contact and fire protection*”, but we submit that this is more intended towards camp accommodation rather

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<sup>23</sup> Print C7322, p.11

<sup>24</sup> Print F3332

than other alternatives such as hotel/motel or house/apartment rental accommodation. The pre-reform awards had a separate provision for accommodation that was not a camp, e.g. the *National Building and Construction Industry Award 2000* in clause 37.3.1(b) provided that,

*“(reasonable board and lodging shall mean lodging in a well kept establishment with three adequate meals each day, adequate furnishings, good bedding, good floor coverings, good lighting and heating with hot and cold running water, in either a single room or twin room if a single room is not available)”<sup>25</sup>*

46. We submit that in 2016 most workers and employers have a good understanding of what reasonable lodgings are, and that as a general rule furnished accommodation (inclusive of a separate bathroom) of at least a 3 star level would meet that expectation. Our proposed variation to clause 24.3(b) is intended to reflect that standard of accommodation.
47. As for the requirement to provide three adequate meals per day we submit that this should not need any explanation. With the public awareness and constant media attention to the daily nutritional intake requirements of people the notion of what is an adequate meal is now generally well understood.<sup>26</sup>
48. As we have identified what the payment of the allowance is intended to cover, i.e. the employee obtaining or purchasing accommodation equivalent to a 3 star hotel/motel and three adequate meals per day, the next step is to determine a figure for that allowance on either a weekly or daily rate. We suggest that there are a number of options available to the Commission, e.g.
- (i) Use the Australian Taxation Office (ATO) determination (TD2016/13)<sup>27</sup> on reasonable travel expenses to determine the allowance.
  - (ii) Use surveys/publications of meal costs and hotel/motel and other accommodation (e.g. house/apartment/chalet/caravan rental) charge rates.
  - (iii) Averaging costs using a combination of (i) and (ii) above.
49. The preferred option of the CFMEU C&G is option (ii), which is a modification of the method identified by Commissioner Merriman in the *Australian Workers' Union Pipeline Construction (Western Australian) Award 1982* (see paragraph 42 above). This we submit is a low cost option relevant for a minimum rates award. We see the ATO figures (option (i)) as

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<sup>25</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap790741/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap790741/asframe.html)

<sup>26</sup> The Federal Government publishes such information in the internet, see <https://www.eatforhealth.gov.au/food-essentials/how-much-do-we-need-each-day/putting-it-all-together>

<sup>27</sup> <https://www.ato.gov.au/law/view/pdf/pbr/td2016-013.pdf>

providing a high range cost whereas the method in option (iii), taking the average of the two, provides a mid-range cost. The mid-range cost is perhaps more reflective of the actual costs that would normally be incurred by workers required to provide their own accommodation and meals particularly in capital cities but, because the award has national application and covers a range of locations, we have conservatively sought the low range figure and retained the existing provision for the allowance to be increased if the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed.

50. Starting with the ATO determination TD2016/13, at the outset we recognise that the amounts set out in the determination are not the amounts recommended to be paid but are the amounts the ATO has determined are reasonable and for which the ATO does not require substantiation where these amounts are used for taxation deductions. As the determination recognises:

*“It is important to remember that in ‘setting the reasonable amount ... the Commissioner does not determine the amount of allowance an employee should receive or an employer should pay their employees. The amount of an allowance is a matter to be determined between the payer and the payee’. (Refer to paragraph 33 of TR 2004/6.)”*

51. Notwithstanding this qualification we submit that they are a useful proxy for determining the different levels of accommodation and meal costs in State/Territory capital cities and regional towns. Using the figures in Table 1 (Employees annual salary - \$117,450 and below) and Table 4 (High cost country centres – accommodation expenses) we have calculated the average allowances across the four cost centres (i.e. capital cities, tier 2 country centres, other country centres and high cost country centres) to be \$149.24 per night (\$1044.65 per week) for accommodation, \$102.15 per day (\$715.05 per week) for meals and a total average of \$251.39 per day (\$1759.70 per week). (See Appendix 3 for the figures used in our calculations).

52. Turning to the method suggested by option (ii), for the calculation of the accommodation costs we have used the following information for the capital cities and a selection of country centres (high cost country centres and tier 2 country centres):

- Cost of 3 star accommodation for 1 night on 1<sup>st</sup> December 2016 sourced from the [www.booking.com](http://www.booking.com) website (see Appendix 4); and
- The lowest median rental prices for houses and units sourced from the [www.realestate.com.au](http://www.realestate.com.au) website (see Appendix 5).



We have not included caravan accommodation in the calculations due to the limited number of locations that offer this type of accommodation and that generally the prices are equivalent to, if not dearer than, 3 star hotel/motel accommodation.

53. The average cost of 3 star hotel/motel accommodation across the three cost centres (capital cities, high cost country centres and country centres) is \$ 118.35 per night/ \$828.45 per week. The average cost of private rental accommodation, based on the median rental prices for the cost centres, is \$363.15 per week for a house and \$290.04 per week for a unit. The average cost across the different types of accommodation (i.e. 3 star hotel/motel accommodation, house rental and unit rental) is \$70.55 per night/ \$493.88 per week.
54. In regard to average meal costs these are more difficult to determine as obviously the prices will vary depending on the type of establishment the meals are sourced from, whether the meal is in a restaurant/café or take away, if the meals are taken in the hotel/motel, etc. For workers not living in a camp the common practice is to source their meals from cafés and restaurants rather than cooking in their hotel room or other accommodation (which often have very limited cooking facilities and fridge/freezer space).
55. If a worker took their meals in a hotel restaurant this would generally be the most expensive option. For example a breakfast in the Rydges Hotel, St. Kilda, Victoria, ranges in price from \$16 -\$24<sup>28</sup> before adding juice and coffee. Evening meals would range from \$25 to \$50+ depending on the establishment and the meal ordered. Similar prices would apply in café's or restaurants, e.g.:
- At empire6714 in Karratha<sup>29</sup> breakfasts range from \$11 to \$28.50, and \$5 for coffee. Lunch prices are similar.
  - At SeaSalt in Exmouth<sup>30</sup> breakfasts range from \$14 to \$21.50, with an extra \$4.50 for coffee. Lunch prices range from \$8.50 (for a sandwich) to \$29.50, with coffee extra.
  - At Metro Bakery and Café in Mount Gambier<sup>31</sup> breakfasts range from \$8 to \$19 with coffee extra.
  - At the Westland Hotel in Whyalla<sup>32</sup>, main courses for dinner range from \$19 to \$45.<sup>33</sup>

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<sup>28</sup> <https://www.zomato.com/melbourne/the-hub-hotel-rydges-st-kilda/menu#tabtop>

<sup>29</sup> <http://www.empire6714.com.au/menu/>

<sup>30</sup> <http://www.seesalt.com.au/>

<sup>31</sup> <http://www.metrobakeryandcafe.com.au/menu/>

<sup>32</sup> <http://www.westlandhotel.com.au/>

<sup>33</sup> <http://www.westlandhotel.com.au/images/menus/Dinner%20Menu%2021-04-2016.pdf>

- At the Eros Café in Adelaide<sup>34</sup>, breakfasts range from \$7.90 to \$16.50 with coffee extra.
- At the Cbar in Townsville<sup>35</sup> breakfasts range from \$7 to \$19 with drinks extra.

56. Another option for workers would be food delivery services. The prices of food delivery services on first glance appear to be in the range of \$13 to \$20<sup>36</sup> per meal but this does not include the delivery cost of \$15-\$22 per meal.<sup>37</sup> The more traditional home delivery services from restaurants have a minimum charge usually in the \$25 to \$35 range.<sup>38</sup>

57. Charges in construction camps for casual visitors are generally in the \$24- \$27 range.<sup>39</sup>

58. To complete the picture the following are a range of prices sourced from websites catering to holidaymakers and backpackers:

- According to the Lonely Planet website<sup>40</sup> the average mid-range cost for breakfast or lunch in a Café is between \$20 - \$40.
- The Budgetyourtrip<sup>41</sup> website has the daily cost of food and water at just over \$45.
- The aglobewelltravelled.com<sup>42</sup> website has the average costs for eating out in Australia at:
  - Coffee: \$3.50-\$4.00
  - Lunch (sandwich or similar): \$6-\$8
  - Lunch (restaurant): \$12-\$20
  - Dinner (take out): \$10-\$20
  - Dinner (restaurant): \$20-\$35

59. From the above analysis it is quite obvious that the current overtime meal allowance of \$14.54 (see clauses 20.2(a) and 24.7(a)(i) of the current award) is too low to meet the cost of an adequate evening meal to be provided for employees living away from home and is

<sup>34</sup> <http://www.eroskafe.com.au/index.php/menus/breakfast>

<sup>35</sup> <http://www.cbar.com.au/>

<sup>36</sup> <http://www.gourmetdinerservice.com.au/mains.html>

<sup>37</sup> <https://www.gourmetdinerservice.com.au/delivery>

<sup>38</sup> <https://www.menulog.com.au/takeaway/ballarat> ; <https://www.menulog.com.au/takeaway/adelaide>

<sup>39</sup> See witness statements of Graham Pallot (Appendix 8) and Paul Ferreira (Appendix 9)

<sup>40</sup> <http://www.lonelyplanet.com/australia/money-costs>

<sup>41</sup> <http://www.budgetyourtrip.com/australia>

<sup>42</sup> <http://aglobewelltravelled.com/2015/01/30/backpacking-australia-much-cost/>

borderline for the cost of breakfast and lunch. The evidence shows that the real costs incurred by employees who have to pay for their own meals are in the range of:

- Breakfast \$12 to \$26
- Lunch \$12 to \$30+
- Dinner \$24 to \$45+

60. We submit that as the award refers to 3 adequate meals per day, and recognising that workers should eat a varied diet, it is appropriate for the Commission to take into account the fact that workers living away from home will eat or obtain their food from a variety of establishments. It therefore follows that these establishments will fall within the ranges outlined above. On that basis we submit that allowances appropriate for the minimum safety net should be set at \$15 each for breakfast and lunch and \$30 for dinner.

61. Having arrived at the average costs for the different types of accommodation and appropriate allowances for meals the final step is to calculate a rate for the overall allowance for accommodation and meals in accordance with the options identified in paragraph 48 above. The relevant figures are the following:

<b>Option</b>	<b>Accommodation (per week)</b>	<b>Meals (per week)</b>	<b>Total (per week)</b>	<b>Total (per day)</b>
(i) Average using the TD2016/13 figures <sup>43</sup>	\$1044.65	\$705.15	\$1749.80	\$249.97
(ii) Average from survey data	\$493.88 <sup>44</sup>	\$420.00	\$913.88	\$130.55
(iii) Average of (i) and (ii)	\$769.27	\$562.58	\$1331.85	\$190.26

62. As indicated in paragraph 49 above our preferred option is (ii), which we submit is a conservative option appropriate for a minimum rates award. Based on the above calculations and analysis we submit that the appropriate minimum amounts to be paid to employees, where employers do not provide meals and accommodation, are \$130.55 per day/\$913.88 per week.

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<sup>43</sup> See paragraph 51

<sup>44</sup> See paragraph 53

### Meal allowances - Where Accommodation Only is Provided

63. In clause 24.3(a) we propose the insertion of a new provision (24.3(a)(iii)) that would cater for situations where employers provide accommodation only and want to pay an allowance for meals. The proposed provision is:

*“(iii) provide the employee with accommodation and pay the following allowances for meals each day:*

- *Breakfast*            \$15.00
- *Lunch*                \$15.00
- *Dinner*               \$30.00

*;or”*

64. The rates of the allowances we seek are based on the reasoning set out in paragraphs 54 to 60 above. We propose that the award should provide for three separate payments, i.e. for breakfast, lunch and dinner, rather than one daily payment as this would allow for situations in which breakfast is included in the accommodation package.

65. The provision of separate meal allowances where accommodation only is provided is not a new phenomenon. In 1997, in dealing with a dispute between the AWU-FIME Amalgamated Union and the RTA over the conditions to apply to employees who were performing work away from their normal place of employment and were being accommodated away from home, it was noted by Justice Marks that:

*“On 12 October 1995 the RTA issued a personnel circular No 95/3 which stated that the Chief Executive had approved and wages staff had voted to accept increases to camping and sustenance allowances effective generally after 1 September 1995. Included within this circular was some material headed "Board and Lodgings" which was said to reflect significant changes to the method of providing board and lodgings. It enabled staff to elect to receive a daily allowance for all meals and incidental expenses with the RTA arranging and paying for accommodation only in lieu of the RTA arranging and paying for all accommodation and meals. Employees electing to receive the daily allowance would be paid \$45 per day consisting of breakfast of \$12, lunch of \$8, dinner of \$20 and incidentals of \$5.”<sup>45</sup>*

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<sup>45</sup>*Awu-Fime Amalgamated Union, New South Wales v Roads and Traffic Authority* [1997] NSWIRComm 50 (17 April 1997)

66. In that case the provisions of the enterprise agreement, in that they applied to wages staff, were modelled substantially on the provisions of the *General Construction and Maintenance Civil and Mechanical Engineering etc. (State) Award*.
67. Although the Construction awards have not, as yet, included this option of providing accommodation and paying an allowance for meals, it is readily found in enterprise agreements that have been negotiated with the CFMEU for workers who regularly live away from home for variable periods of time. As the witness statements of Frank O’Grady and David Kelly identify, it is a common provision in refractory enterprise agreements<sup>46</sup> where workers are frequently required to live away from home.
68. We submit that the modern construction awards should set minimum rates for the meal allowances for three adequate meals per day where this type of arrangement is applied.

#### Minimum Accommodation Standards

69. In clause 24.3(b) the CFMEU C&G seek to update the minimum accommodation requirements to reflect modern standards and methods of communication. The new clause 24.3(b) that we propose is the following:

*“(b) The accommodation provided will be of a reasonable standard having regard to the location in which work is performed, including the provision of:*

- (i) a single room (not shared) which is quiet with air conditioning/heating, suitable ventilation, comfortable and clean bedding, appropriate lighting and furnishings, an ensuite with a toilet, shower and basin both with running hot and cold water, a television and tea and coffee making facilities;*
- (ii) reasonable ablution/laundry, recreational and kitchen facilities, as well as reasonable external lighting and fire protection;*
- (iii) communication facilities including email and internet access, and mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable.”*

70. The provision in the proposed 24.3(b)(ii) is part of the existing clause 24.3(b). The new parts are the proposed 24.3(b)(i) which is intended to clarify the standard of accommodation expected, and the proposed 24.3(b)(iii) which seeks to update the means of communication to be provided reflecting the modern technology now available.

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<sup>46</sup> E.g. see <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae407882.pdf> at Appendix C and <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae411412.pdf> at clause 25.

71. In regard to the proposed 24.3(b)(i), the wording contained in the clause is intended to reflect the equivalent 3 star accommodation standard which we submit is the minimum level that should be provided under the award. The standard set by the clause is also equivalent to the standard of accommodation now provided in most of the construction camps established for remote projects.<sup>47</sup>

72. The standard proposed would ensure that the award met the minimum requirements recommended by the ILO. The recommendations of the ILO, R115 - Workers' Housing Recommendation, 1961 (No. 115)<sup>48</sup>, includes the following provision :

*“II. Housing Standards*

*7. The housing standards referred to in Paragraph 19 of the General Principles should relate in particular to—*

*(a) the minimum space per person or per family as expressed in terms of one or more of the following, due regard being had to the need for rooms of reasonable dimensions and proportions:*

*(i) floor area;*

*(ii) cubic volume; or*

*(iii) size and number of rooms;*

*(b) the supply of safe water in the workers' dwelling in such ample quantities as to provide for all personal and household uses;*

*(c) adequate sewage and garbage disposal systems;*

*(d) appropriate protection against heat, cold, damp, noise, fire, and disease-carrying animals, and, in particular, insects;*

*(e) adequate sanitary and washing facilities, ventilation, cooking and storage facilities and natural and artificial lighting;*

*(f) a minimum degree of privacy both—*

*(i) as between individual persons within the household; and*

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<sup>47</sup> See for example <http://www.mobileaccommodationcamps.com.au/project-photos.html> ; <http://www.searipple.com.au/about/> ; <http://www.stayover.com.au/stayover-karatha-wa>

<sup>48</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312453](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312453)

*(ii) for the members of the household against undue disturbance by external factors; and*

*(g) suitable separation of rooms devoted to living purposes from quarters for animals.*

8. *Where housing accommodation for single workers or workers separated from their families is collective, the competent authority should establish housing standards providing, as a minimum, for—*

*(a) a separate bed for each worker;*

*(b) separate accommodation of the sexes;*

*(c) adequate supply of safe water;*

*(d) adequate drainage and sanitary conveniences;*

*(e) adequate ventilation and, where appropriate, heating; and*

*(f) common dining rooms, canteens, rest and recreation rooms and health facilities, where not otherwise available in the community.*

9. *Workers' housing standards should be revised from time to time to take account of social, economic and technical development and increases of real income per head.*

10. *In general, and in localities where employment opportunities are not of a temporary character, workers' housing and related community facilities should be of durable construction.*

11. *The aim should be to construct workers' housing and related community facilities in the most suitable materials available, having regard to local conditions, such as liability to earthquakes.” (Underlining added)*

73. Item 52 of the ILO R175 - Safety and Health in Construction Recommendation, 1988 (No. 175)<sup>49</sup> is also relevant as it requires that:

*“52. Suitable living accommodation should be made available for the workers at construction sites which are remote from their homes, where adequate transportation between the site and their homes or other suitable living accommodation is not*

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[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312513:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312513:NO)

*available. Men and women workers should be provided with separate sanitary, washing and sleeping facilities.”*

74. In a recent dispute over the payment of camping allowances, SDP O’Callaghan gave an insight to what is an acceptable standard of accommodation, where he said that ,

*“[34] On the material before me I have concluded that Transfield concede the camping allowance is payable when employees are accommodated in drilling rig camps which do not provide for single room, serviced and catered accommodation. I have adopted the premise that employees who are required to sleep in accommodation of this, or a lower standard will also be paid the camping allowance.”*<sup>50</sup>

75. In a subsequent decision on the same dispute SDP O’Callaghan decided that,

*“[25] I have adopted the position that, rather than external locational considerations, the criteria for application of the camping allowance should simply relate to:*

- *single room accommodation,*
- *serviced accommodation,*
- *the provision of meals, and*
- *access to common social amenities or areas.*

*[26] On the information provided to me I am not satisfied that any of the camp locations identified by Transfield are inherently deficient in these respects so as to give rise to an obligation to pay the camping allowance in clause 7.6.”*<sup>51</sup>

76. We would also point out that in October 2015 the Queensland Government’s Infrastructure, Planning and Natural Resources Committee released a report from the “*Inquiry into fly-in, fly-out and other long distance commuting work practices in regional Queensland*” (the QLD Inquiry Report).<sup>52</sup>In regard to the quality of housing for FIFO workers The report noted that,

*“Anecdotal evidence suggested that the quality of non-resident worker accommodation varies widely. Submitters raised several concerns relating to the quality of accommodation facilities including:*

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<sup>50</sup> [https://www.fwc.gov.au/documents/decisionssigned/html/2014fwc1713.htm#P128\\_11864](https://www.fwc.gov.au/documents/decisionssigned/html/2014fwc1713.htm#P128_11864)

<sup>51</sup> [2014] FWC 6498

<sup>52</sup> <https://www.parliament.qld.gov.au/documents/committees/IPNRC/2015/FIFO/02-rpt-009-09Oct2015.pdf>



- *The design of the accommodation and the impact on sleep and fatigue management*
- *Isolating conditions*
- *Shared facilities*
- *Lack of recreational facilities*
- *Unsuitable conditions for nightshift workers ( for example using an outdoor toilet in daylight rest hours)*
- *Quality of food provided*
- *Lack of reliable access to phone and internet services to maintain relationships with family and friends*
- *Onerous rules and regulations, and*
- *‘motelling’ or ‘hot-bedding’ arrangements”<sup>53</sup>*

77. The Committee also noted that a 2013 University of Queensland (UQ) report found that,

*“Facilities that were particularly sought after and where demand outstripped supply included:*

- *Having exclusive use of a room*
- *Having the same room each swing*
- *Having internet and TV connections to the room.*

*Submitters raised these concerns with the committee during its inquiry.*

*The report also stated that ‘ perhaps the most important finding from the survey is the extent to which respondents value their privacy and personal space’ and recommended several strategies relating to accommodation to improve worker wellbeing, including one focussed on ensuring workers had access to quiet sleeping arrangements, which the committee noted improve fatigue management:*

*Accommodation camps should be designed to maximise peace and privacy. As far as possible, sleeping quarters should be distanced from communal areas and comfortable beds and blackout curtains provided to minimise sleep disturbance. Hot-bedding was highlighted as a particular adverse arrangement.”<sup>54</sup>*

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<sup>53</sup> Ibid, p.42-43

<sup>54</sup> Ibid, p.44-45

78. In June 2015 the Parliament of Western Australia Legislative Assembly Education and Health Standing Committee released its final report on “*The Impact of FIFO work practices on mental health*”<sup>55</sup>(the WA Inquiry Report). This report included a section concerning on-site accommodation and facilities. The Report said the following:

**“Accommodation**

*.....The Committee visited several accommodation facilities in the Pilbara to familiarise itself with the standards of these facilities.*

*The accommodation the Committee saw was similar across most sites, and matched what submitters had previously told the Committee. The Committee noted a definite distinction between accommodation for production workers and that of construction workers. Accommodation for those working production was often more permanent in nature, larger, newer, and of a higher standards. Accommodation for those in construction was often temporary in nature (e.g. demountable) and smaller.*

*The Committee also observed some other notable variation amongst accommodation facilities. This included the size of beds in each of the accommodation facilities. On some accommodation sites restrictions on the size of an accommodation facility’s footprint meant that rooms were small and cramped. While the accommodation was adequate, it was by no means comparable to living in a domestic dwelling.”*

79. We submit that construction workers should not be treated as second class citizens and receiver a lesser standard of accommodation compared to production workers. The decisions of SDP O’Callaghan, the recommendations of the ILO and the QLD Inquiry Report support the standard of accommodation we propose to be included in the award.

80. In regard to our proposed 24.3(b)(iii), the provision of “*communication facilities including email and internet access, and mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable*”, we submit that this is simply an update of the award to reflect modern methods of communication. The current award clause 24.3(b) refers to the provision of “*mail facilities, radio or telephone contact*”.

81. With the advent of email and video calling applications, such as Skype and Facetime, there has been a major reduction in the number of people who still use traditional mail, i.e. postal

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[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/2E970A7A4934026448257E67002BF9D1/\\$file/20150617+-+Final+Report+w+signature+for+website.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/2E970A7A4934026448257E67002BF9D1/$file/20150617+-+Final+Report+w+signature+for+website.pdf)

services, to communicate with family and friends. A recent Senate Committee Report on “Performance, importance and role of Australia Post in Australian communities and its operations in relation to licensed post offices”<sup>56</sup> found that:

*“1. The postal environment worldwide is experiencing rapid and significant change. In Australia, the substitution of digital communications for letters is now so pervasive that Australia Post is reporting escalating losses in its letter business.”(page xv)*

.....

*“3.2 However, the growth of other means of communications has been felt by Australia Post, and indeed, postal services across developed economies. E-substitution, such as SMS, e-mail and the Internet, has seen significant shifts away from letters, for example the use of email or the Internet for banking services.” (p.21)*

82. The issue of communication facilities was also an issue identified in recent FIFO inquiry reports. In the QLD Inquiry Report already mentioned, it said the following,

#### **“6.4 Access to technology**

*Many submitters considered that access to reliable phone and Internet services was important for the wellbeing FIFO workers and essential for maintaining relationships. The FACE Network recommended that employers should provide workers with adequate access to internet and communication technology at all times, including during the work day, and especially in workers’ private rooms. ETUQ supported the view that the services be provided in a private environment and suggested that this be considered when determining licences/lease applications.*

*These views were also supported by the findings of the 2013 University of Queensland’s report into Factors linked to the well-being of Fly-In Fly-Out (FIFO)Workers, which found that,*

[T]he desire for a private room where they can use the internet, phone family and friends, or watch TV at a time of their choosing, and without other people nearby, was clearly expressed. The ability to connect with family and friends is important for the psychological health of FIFO workers – a sense of belonging reduces stress and loneliness and reassures people that they play an important role in the lives of people closest to them.

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[http://www.aph.gov.au/~media/Committees/Senate/committee/ec\\_ctte/Australia\\_Post\\_in\\_Australian\\_communities/report/report.pdf?la=en](http://www.aph.gov.au/~media/Committees/Senate/committee/ec_ctte/Australia_Post_in_Australian_communities/report/report.pdf?la=en)

*The UQ report recommended:*

Design improvements in accommodation villages that focus on enhancing people's personal space and communication channels. Private rooms with direct internet access and their own TV/video connections were highly valued."<sup>57</sup>

83. In the Qld Inquiry Report it said,

***“Communication***

*A worker's ability to communicate with friends and family when on site has been described to the Committee as their lifeline. The importance of regular, reliable communications technology allowing a worker to maintain contact with their families and support networks cannot be underestimated.*

*At various times throughout the inquiry, the Committee heard from numerous sources that one of the leading causes of stress and anxiety for FIFO workers arises from strained relationships with family members that remain at home while the FIFO employee is at site. Regular access to reliable and inexpensive communications, including internet and traditional telephone communications, is amongst the most important mechanisms available to FIFO workers to remain in touch with their families and home lives. Maintaining relationships in the absence of access to communications is undoubtedly more difficult.*

.....

*Multiple submitters have highlighted their frustrations with their inability to communicate regularly with their family, or to be able to do everyday tasks such as pay bills and organise medical appointments.*

*FIFO workers of today have greater expectations with regard to the quality and sophistication of communications technology. Many resource companies reported that they provide wireless broadband access and mobile coverage for workers in accommodation facilities. This leads to an expectation amongst workers that they will be able to use mediums such as Skype to stay in contact with their families.”<sup>58</sup>*

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<sup>57</sup> <https://www.parliament.qld.gov.au/documents/committees/IPNRC/2015/FIFO/02-rpt-009-09Oct2015.pdf>, p.46-47

<sup>58</sup> Ibid, p.78-79

84. The Report from the WA Inquiry included a recommendation that,

***“Recommendation 16***

*That the Minister for Mines and Petroleum ensure the Code of Practice on FIFO work arrangements emphasises the importance of providing high quality, reliable and accessible communications technology in FIFO accommodation village.* <sup>59</sup>

85. Further evidence as to the importance of adequate communication facilities is included in the witness statements of Graham Pallot (Appendix 8), Dean Reilly (Appendix 10), Kris Woodward (Appendix 11) and Danny Callaghan (Appendix 12). We submit that the award should be updated to ensure that employees have reliable and accessible communications technology when living away from home.

Provision of Specific Room in Camp Accommodation

86. In clause 24.3 the CFMEU C&G proposes that an additional new paragraph (c) be inserted to require employers to provide employees who are required to live in a construction camp at a remote location with their own specific room for the duration of the time spent living away from home. The new provision is only intended to apply where employees are required to live in a construction camp and the employees will be engaged for an ongoing period on a project, i.e. they will be working under a roster arrangement including rest and recreation periods at home in between periods of work at the project.

87. Up until fairly recently the usual practice on remote projects was for employees to have their own room in a construction camp for the duration of their employment on the project (e.g. see the witness statement of Danny Callaghan at Appendix 12). Recently however we have witnessed attempts by employers to introduce a practice commonly referred to as “motelling” under which an employees’ belongings, (e.g. work and other clothing, family pictures, toiletries, books, plants and other personal items) that are usually kept in their accommodation are packed up in boxes when an employee leaves the project for a period of rest and recreation or annual leave, so that their room can be given to another worker. On the employees return to the job they are allocated a room which may be a different room in another location in the camp which they then have to refurbish with their belongings.

88. In late 2009 a major dispute arose on the Woodside Pluto LNG Project in Western Australia due to a proposal by the head contractor on the project, Foster Wheeler Worley Parsons

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<sup>59</sup> Ibid,p.80

(FWWP), to introduce motelling. The proposal was summarised in a decision of C. Cloghan as:

*“[13] The vast majority of the employees are employed on a fly in fly out basis. As a result of the nature of this employment arrangement, in most cases, the employees are provided with accommodation. It is important to note that the accommodation is not provided by the Applicant employers but by FWWP.*

*[14] For those employees who are provided with accommodation, the accommodation is in the form of various camps in or on the outskirts of the township of Karratha.*

*[15] FWWP has made a decision to introduce the concept of “motelling” into the camp known as Gap Ridge Village.*

*[16] As the name suggests, “motelling” describes where employees in Gap Ridge Village will not have designated accommodation but will be assigned a “donga” for the duration of a roster cycle. At the end of the cycle, the employee places any personal items in storage and retrieves them when assigned a new donga at the beginning of the next roster cycle.*

*[17] The purpose of “motelling”, it seems to me from the Project’s perspective is to optimise occupancy of the entire stock of accommodation and enable a greater number of employees to be employed on the Project without requiring additional accommodation. This last issue is significant, in view of the Applicants, as there is a shortage of accommodation in the area.*

*[18] For the employees, there is the obvious “downside” of not coming back to the same accommodation, immediate environs and presumably neighbours.”<sup>60</sup>*

89. Significantly for the purposes of the award the proposal that led to the dispute was not instigated by the direct employers of the employees but by a third party, the head contractor.

90. The practice of motelling is strongly opposed by construction workers. The evidence of Graham Pallott, Paul Ferreira, Danny Callaghan, Dean Reilly and others, affirm that workers find the practice unacceptable and say why they do so. We would also argue that it is inconsistent with the ILO recommendations to the extent that it represents an “*undue disturbance by external factors*” on the privacy of workers.

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<sup>60</sup> [2010] FWA 847

91. Significantly the issue of motelling was another issue raised during the QLD and WA Inquiry Reports. In the QLD Inquiry Report the issue was addressed in section 6.2 and after considering the issue the committee in recommendation 8 said,

*“Recommendation 8*

*The committee recommends as part of the development of a whole-of-government policy framework for managing FIFO impacts, the Queensland Government include minimum standards for the provision of substantial temporary and permanent accommodation for FIFO workers that include:*

- (a) room design that provides for adequate protection from noise and light to aid with fatigue management*
- (b) permanent private spaces for each employee and storage facilities*
- (c) reliable access to communication services in a private space*
- (d) access to health services, including social activities and gyms*
- (e) recreational areas to encourage socialising, and*
- (f) a variety of healthy food options, and*

*That the standards advise against the practice of “motelling’ or hot-bedding’.”<sup>61</sup>*

92. The WA Inquiry Report made similar findings. The Report identified the different types of accommodation room allocation used (Permanent, Rotational (motelling), Shared, and Hot Bedding) and noted that,

*“The CME stated that permanent accommodation (the same room allocated to each employee every swing) is regularly used in accommodation villages that service onshore resources projects, particularly those with a permanent workforce.*

.....

*However, this practice only occurs for permanent employees engaged in production on the project. The Committee noted that accommodation for construction workers on resource projects was often of a lower standard, temporary in nature, and separate from where production employees were accommodated.*

...

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<sup>61</sup> <https://www.parliament.qld.gov.au/documents/committees/IPNRC/2015/FIFO/02-rpt-009-09Oct2015.pdf>, p.50

*Submitters to the inquiry identified several features of the motelling practice that had the potential to increase stress and the sense of isolation in workers. Workers spending significantly more time on site than at home with their family can become disconnected from a sense of place and belonging. Having a dedicated room allows workers to identify with that space, get to know their neighbours, and make it their home away from home. Representatives from the Creating Communities Australia organisation told the Committee that:*

*..people's preference is not to motel... one of the reasons they prefer not to motel is that notion ... [of] the consistency of place .. You will see in different people's rooms, they will bring things from home – put photos up or put a rug down – to make it feel like home.*

*The Committee heard that motelling 'disrupts the community fabric and social cohesiveness of accommodation villages'. Allocating workers a new room at the commencement of each swing removes a sense of certainty and ownership over their accommodation, and prevents them from socialising with neighbours.*

.....

*The issue of safety and security was also raised with the Committee in relation to motelling. Unions reported their female members had raised concerns around 'some issues with young women getting billeted close to wet mess and having issues around potential harassment'. This was reported by mental health workers who provide services on site:*

*We have talked to quite a few women who have felt very unsafe and we have certainly dealt with issues of sexual harassment and sexual assault [...] The only way to know who is knocking on your door is to open it because they have blackout and there is no lock on the flyscreen.*

.....

*The Committee does not know the significance of any cost implications for resource companies should the practice of motelling end. However, one senior executive from a major resource company told the Committee that the cost difference would be 'negligible', and that the cost for provision of accommodation on mining projects accounts for between one and two per cent of total costs.*

...



*Despite the information from the CME that hotbedding has not been ‘utilised in recent history’ in WA, the Committee is concerned by ‘shared accommodation’ practices. Sharing a small room with two beds compromises an employee’s privacy. Witnesses told the Committee that workers were being offered financial incentives to accept shared accommodation (e.g. in fly camps).*

*The Committee is of the view that motelling and related practices which remove permanency from an individual’s accommodation arrangements do constitute a safety and health issue. The Committee does not accept that the practice offers any benefits to a workers’ wellbeing when on site, and views the practice as a means through which companies can minimise their costs.*

.....

*Nonetheless, the practice should be minimised as much as possible, and preferably abolished.”<sup>62</sup>*

93. We submit therefore that there are strong and compelling reasons for the proposed clause 24.3(c).

#### Weekly and Daily Camp Allowance

94. The initial variation to clause 24.5 sought by the CFMEU C&G was only intended to increase the weekly and daily camp allowance where free messing is not provided. After researching the clause and receiving feedback from our branches on possible overlap with clause 24.3(a)(iv), we now seek a clause that not only increases the allowances but which also has altered wording to better reflect the application of the clause. What we now seek is the following:

*“24.5 Camping allowance*

*An employee accommodated at a camping site or caravan park where free messing is not provided must receive a camping allowance of \$ 420.00 for every complete week the employee is available for work. In the case of broken weeks, the camping allowance will be \$60.00 per day including any Saturday or Sunday if the employee is in camp and available for work on the working days immediately preceding and succeeding each Saturday and Sunday. If an employee is absent without the*

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<sup>62</sup> Ibid, p85-89

*employer's approval on any day, the allowance will not be payable for that day and if such unauthorised absence occurs on the working day immediately preceding or succeeding a Saturday or Sunday, the allowance will not be payable for the Saturday and Sunday."*

95. The change in the wording is to make it clear that this allowance is only payable where employees are accommodated at a camping site or caravan park without free messing, and does not apply to employees accommodated in modern construction camps (where board and lodging is to be provided free of charge).
96. To explain the change in wording in the clause it is instructive to trace the history of the camping allowance in relevant awards. The camping allowance was traditionally a provision found in civil construction awards (as opposed to the distant work provisions found in building awards). The major authority on the issue is *Re Labourers, General (State) and Other Award* (48 AR 757), where the Industrial Commission of NSW was dealing with applications to increase the camping area allowance from 4s. to 7s. per day in the *Labourers General (State) Award* and the *Government Railways (Construction) Award*. In the decision Justice Ferguson referred to his reasoning in an earlier decision when he varied the *Engine Drivers, &c., General (Public works Department, Irrigation Commission, Commissioner for Main Roads, and Metropolitan Meat Industry Commissioner) Award* in 1941 ([1941] AR 721),

*"In many camps employees are able to reach their homes at the week-end, but this often entails considerable expense. The camps are usually situated in isolated districts, away from ordinary shops and places of amusement. A shop carrying a varied stock is, however, often found in the camp. Men have to eat either in their tents or at benches provided in or near the kitchen. Where there is a plentiful water supply showers are provided and there is generally a building where the men may meet for conversation and games.*

*A summing-up of the relative advantages and disadvantages of enforced camp life leads to the conclusion that some hardship is involved to the employees in living in these remote places. They are withdrawn from the society of their families and friends. In the event of sickness or accident, though first-aid treatment is available, some time must elapse before the patient can be taken to hospital or receive medical attention, and transport must often be made over rough roads."*<sup>63</sup>

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<sup>63</sup> 48 AR 757 at 760

97. Justice Ferguson then went on to trace the history of similar variations made to other awards. He noted that the *Government Railways and Tramways (Construction) Award* and the *Government Railways, Gangers on Construction (Permanent Way – Wages Staff) Award* was varied following a dispute of railway employees at the Hawkesbury River Bridge, in which the Full Bench of the Industrial Commission said,

*“The present general allowance found in many awards in this State of a camping allowance of 15s. per week of five days or over or 3s. per day for a lesser number of days was originally introduced by Ferguson J., in Engine Drivers .....In the course of this statement, however, he makes no reference to additional living cost involved in camping, presumably because there was no evidence on this point before the Commission when the said camping allowance was fixed. There is now uncontradicted evidence before the Commission with reference to the added cost and in our view this must be weighed in together with the matters mentioned by Ferguson J., in fixing a reasonable and adequate camping allowance and so correcting the anomaly in this respect we find to have been established.*

.....

*In the light of all the circumstances the Commission considers that all those men who are called upon to takeover work or duties away from their usual homes and to camp on the job are entitled to be paid a sum of 4s. per day camping allowance for each day the employees find it necessary to remain in the camp.”<sup>64</sup>*

98. Justice Ferguson also referred to the decision of Cantor J., in the *Electricians &c. (state Award)* where it said,

*“I quite agree with what Mr. Dunnett has argued, that the camping allowance specified in clause 6(c) of the Electricians Award includes a sum by way of disability allowance, but I think also that it includes something for cost of commodities, perhaps extra cost of commodities, to which an employee camping is exposed.”<sup>65</sup>*

99. Justice Ferguson went on to decide as follows:

*“The history of the matter thus summarised shows that in respect of awards where camping was a common condition of carrying out work an allowance of 4s. per day for each day of the week during which the employees found it necessary to remain in camp was allowed.*

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<sup>64</sup> Ibid., at 761-762

<sup>65</sup> Ibid., at 762-763

*In none of the assessments of the allowances which have been referred to is there any indication of how the particular sums granted were made up, and I do not think that a dissection into the component parts is possible. As settled by the judgement of the Full Bench, an allowance of 4s. per day or 28s. per week of seven days was intended to compensate men (a) for taking over work or duties away from their usual homes and camping on the job, together with such disadvantages as might be associated with living under camp conditions and (b) any added cost beyond the cost of living in their own homes.*

.....

*Evidence has been given before me of the cost of food for employees living in camp. I have carefully weighed the whole of the evidence and given mature consideration to the well-prepared and presented arguments of the parties.*

.....

*In all the circumstances I think it is proper to maintain the standard of fixation allowed to these employees by the Full Bench of the Industrial Commission of a general allowance without particularising its component parts. This will be accomplished by raising the said allowance of 4s. to 5s. per day or 35s. per week, as has already been done in the case of some awards which have been referred to.”<sup>66</sup>*

100. In the same decision Ferguson J., also dealt with an application to vary the *Water Supply and Sewerage Employees, Wages Division (Metropolitan) Award*. He noted that the clause he was dealing with here was different to that contained in other awards dealt with in his judgement as it made provision for a weekly amount.<sup>67</sup> The weekly allowance also covered any fares incurred at the week-end by employees travelling away from camp to their homes and return. In granting an increase he noted that this had already been done in the *Carpenters and joiners and Bricklayers Construction (State) Award* which provided in clause 11, Distant Jobs,

*“(iv) Where a distant job is of less duration than six days, all living expenses actually and reasonably incurred shall be allowed. On jobs of longer duration the employer shall provide reasonable board and lodging and where this is not done an allowance of 42s. 0d. per week shall be paid, but such allowance shall not be wages.*

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<sup>66</sup> Ibid., at 763-764

<sup>67</sup> Ibid., at 764

*This subclause shall not apply to any employee engaged on work in connection with the construction and/or maintenance of water supply and sewerage works, roads, bridges, water conservation and irrigation works or harbour reclamation works carried out by Government authorities. Such an employee shall be paid the sum of 35s. per week and shall in addition be provided with the same camping and other facilities as are prescribed in the award binding the majority of employees of the project on which he is employed.”<sup>68</sup>*

101. As for a more contemporary explanation of the camping allowance, C. Laing in *John Holland Construction & Engineering Pty Ltd v Australian Rail, Tram and Bus Industry Union*, in dealing with a dispute over allowances noted that,

*“[4] The second issue is more complex and requires more detail. Essentially it goes to the level of allowances payable for incidental expenses for employees provided with hotel and motel accommodation. Linked to that second issue is the level of payment that should be provided to employees who are required to be accommodated in company caravans and/or camp arrangements with a cook and food supplied. Under existing arrangements employees accommodated in hotels/motels are paid incidental expenses of \$5.50 while those accommodated in a caravan or camp are paid a camping allowance of \$20.45 per day. The PTU argues that the hotels/motel incidental expenses should be the same as for the caravan/camp accommodation and that that allowance should in any case be increased to \$30.45 because the employer has agreed to increase the caravan/ camping allowance for employees not provided a cook or food to \$40.30.*

.....

*[6] It is useful to note that the "without cook" rate of \$40.30 has been agreed. The company moreover argues that the new rate is justified because of the inconvenience and time required by employees each day to prepare their own meals and to clean up after they have completed what may be a fairly lengthy work shift. The company believes that the existing differential between the "without cook" rate and "with cook" does not properly recognise the disadvantages of being without the cook. It accepts however that there should be some lesser increase for the "with cook" allowance and has agreed that it should move to \$23.30. It also accepts that the*

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<sup>68</sup> *Ibid.*, at 766

*incidental allowance for hotel/motel accommodation should be increased in line with public sector increases to \$8.15.”*<sup>69</sup>

102. Even more recent was the decision of SDP O’Callaghan<sup>70</sup>, who dealt with a dispute over the payment of a camping allowance in the *Transfield Services (Santos Hydrocarbons Production and Processing Facilities) Project Work, Maintenance Services and Central Resource Management Enterprise Agreement 2012*. The clause in the enterprise agreement was the following,

*“7.6 Camping Allowance*

*Where all reasonable avenues have been exhausted and it is necessary to camp out overnight because an employee cannot return to Tirrawarra, Moomba, Dullingari, Ballera, Jackson or Meerenie the employee will be paid a camping allowance as set out in Schedule 2.*

*This allowance will not be paid when the employee can be accommodated in these locations.”*

103. His Honour noted that,

*“[32] The clause appears to be predicated on all employees being located, at either Tirrawarra, Moomba, Dullingari, Ballera, Jackson or Meerenie. Clearly this is not the case. If the clause is read on the basis that an employee not accommodated at Tirrawarra, Moomba, Dullingari, Ballera, Jackson or Meerenie must receive the camping allowance, this creates obvious inequities. These include the application of this provision to employees not engaged in the Cooper basin and gives rise to doubts about what is meant by the reference to camping. Camping out overnight appears to refer to accommodation arrangements quite separate to accommodation in a camp in circumstances which involve open air, or tent accommodation or other makeshift arrangements. The uncertainty created by these terms means that, in order to determine how the clause operates, I must have regard to extraneous material.*

.....

*[34] On the material before me I have concluded that Transfield concede the camping allowance is payable when employees are accommodated in drilling rig camps which do not provide for single room, serviced and catered accommodation. I*

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<sup>69</sup> *John Holland Construction & Engineering Pty Ltd v Australian Rail, Tram and Bus Industry Union* [2000] AIRC 1353; 203/00 P Print S3602

<sup>70</sup> [2014] FWC 6498

*have adopted the premise that employees who are required to sleep in accommodation of this, or a lower standard will also be paid the camping allowance.”*<sup>71</sup>

104. Further evidence that the camping allowance is meant to apply where employees are accommodated at camping sites and caravan parks is found on the ATO website, in taxation rulings, e.g.

*“The taxpayer receives a camping allowance for staying overnight at camping sites and caravan parks for work purposes. As the taxpayer is away from their ordinary residence for only short periods of time, the allowance is not considered to be a living-away-from-home allowance and is assessable under the ordinary income provisions.”*<sup>72</sup>

105. It is clear from the above authorities that the camping allowance in the modern award is intended to compensate employees living in a camping site or caravan park to compensate them for being accommodated in a lesser standard than hotel/motel accommodation, for not being provided with a cook, and for providing their own food, including the preparation of the food and cleaning up afterwards. What then needs to be determined is at what monetary rate the allowance should be set. Rather than trying to set individual amounts for each of the disadvantages just mentioned, we submit that a simple option should be used and the amount should not be less than the amounts determined for employees who are provided with accommodation in a hotel/motel, but who are required to purchase their own meals. We therefore claim amounts of \$60 per day/ \$420 per week.

#### Transport From the Employee’s Usual Place of Residence

106. In clause 24.7 the CFMEU C&G seeks to clarify that the transport is to be from the employee’s usual place of residence and to update the clause so that it refers to modern travel arrangements. In 24.7(a)(i) we seek to change the first dot point to the following:

*“(a) Forward journey*

*(i) An employee must:*

- be provided with appropriate transport from the employee’s usual place of residence to the job, or be paid the amount of a fare on the most appropriate method*

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<sup>71</sup> 2014 FWC 1713 at [32]

<sup>72</sup> <http://law.ato.gov.au/atolaw/view.htm?docid=%22AID%2FAID2002459%2F00001%22>

*of public transport (including bus, economy air, taxi, and rail with sleeping berths if necessary), and any excess payment due to transporting tools if such is incurred; and”*

107. The dot point that we propose removes the reference to second class rail and adds taxi as a form of public transport that may be used. In most cases an employee would utilise a combination of the travel methods identified in travelling from their usual place of residence. Rail tickets no longer refer to second class, and in NSW sleeping berths require the purchase of a first class ticket.<sup>73</sup>

108. In 24.7(c) we also seek minor word changes to remove any ambiguity as to what transport hub is to be used for the calculation of travelling time. The clause we seek is the following:

*“(c) Travelling time calculations*

*For the purpose of this clause, travelling time will be calculated as the time taken for the journey from the main bus or rail terminal nearest the employee’s usual place of residence to the locality of the work (or the return journey, as the case may be).”*

109. The clause proposed above deletes the reference to “central or regional” bus or rail terminal and replaces it with “main” bus or rail terminal. It also deletes the reference to “air” terminal as there would in the overwhelming majority of cases be a rail or bus terminal closer to an employees’ residence.

### Rest and Recreation

110. One of the other more significant changes that we seek to the distant work clause is contained in our proposed clause 24.7(f), which reads as follows:

*“(f) Rest and recreation*

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

*(i) After each continuous 3 week period of work away from home the employee will be entitled to a period of 7 days unpaid rest and*

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<sup>73</sup>[http://www.nswtrainlink.info/your\\_journey/on\\_board/seating](http://www.nswtrainlink.info/your_journey/on_board/seating)



*recreation leave at the employee's usual place of residence. The 7 day period will be exclusive of any days of travel from the job to the employee's usual place of residence and return to the job. On each occasion that the employee returns to their usual place of residence they will be paid for travel expenses and travel time in accordance with clause 24.7(a), (b) and (c) above.*

- (ii) After 12 weeks continuous service (inclusive of periods of rest and recreation) the employee will be entitled to 2 days paid rest and recreation leave and an additional paid day of rest and recreational leave for each subsequent 12 weeks of continuous service.*
- (iii) Payment for leave and travel expenses will be made at the completion of the first pay period commencing after date of return to the job.*
- (iv) The provisions of clause 24.7(f)(i) do not continue to apply where the work the employee is engaged upon will terminate in the ordinary course within a further 28 days after the last period of rest and recreation leave.*
- (v) Service will be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause.*
- (vi) Variable return home*

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

- (vii) No payment instead*  
*Payment of travel expenses and leave with pay as provided for in this clause will not be made unless utilised by the employee.*
- (viii) Alternative paid day off procedure*

*If the employer and the employee so agree, any accrued rostered days off (RDO) as prescribed in clause 33 – Ordinary hours of work,*

*may be taken, and paid for, in conjunction with and additional to rest and recreation leave.*

(ix) *Termination of employment*

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

111. The changes sought in this clause are to change the entitlement to Rest and Recreation (R and R) to a period of 7 days unpaid leave at the employees usual place of residence (exclusive of travel days) after 3 weeks continuous work away from home. The entitlement to R and R would only apply where the employees’ work on a project is scheduled to last for more than 8 weeks, and there is a limitation on the taking of R and R where the work to be performed is due to terminate within a further 28 days of the last period of R and R leave. There is also a modification to the days of paid R and R leave which would accrue after periods of 12 weeks continuous service.

112. R and R leave has been a feature of construction awards for well over 50 years. Before the advent of fly in/ fly out (FIFO) projects, workers usually travelled to distant projects by rail and in 1945 employees covered by the *Building Trades of Victoria Award* were entitled to return home at the week-end after 3 months of continuous service and thereafter at 3 monthly intervals.<sup>74</sup>

113. In 1961 the unions sought to reduce the time away from home and claimed a return home monthly at the employer’s expense, in lieu of every 3 months. C. Webb refused the claim, “*As nothing was put to the Commission that the existing provision is inadequate and the fact that this sort of provision is somewhat general*”.<sup>75</sup>

114. By the time the *National Building Trades Construction Award 1975* was made the R and R provision had been improved so that an employee engaged on a distant job was allowed to return home at the weekend after 2 months continuous service and thereafter at three monthly intervals.<sup>76</sup> This award when made also had air travel for distant work as a leave reserved matter.

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<sup>74</sup> See Appendix 2

<sup>75</sup> 101 CAR 433 at 452

<sup>76</sup> Print C6006

115. On 8<sup>th</sup> December 1977 Alley J., issued an order<sup>77</sup> varying the *National Building Trades Construction Award 1975* which provided for 2 days paid R and R leave in addition to the weekend. The new paragraph 25.4 (b) was as follows:

*“(b) Notwithstanding the provisions of paragraph (a) of this sub-clause, where the location of a distant job is in that area of the State of Western Australia north of latitude 26°S, or in any other area to which air transport is the only practical means of travel, an employee may return home after 4 months continuous service and shall in such circumstances be entitled to 2 days leave with pay in addition to the weekend. Thereafter the employee may return home after each further period of 4 months continuous service, and in each case he shall be entitled to 2 days leave of which 1 day shall be paid leave. Payment for leave and reimbursement for any economy airfare paid by the employee shall be made at the completion of the first pay period commencing after the date of return to the job.”*

116. The explanation for the change was set out in a separate decision issued by Alley J. on 8<sup>th</sup> December 1977<sup>78</sup>. The Building Workers Industrial Union of Australia had made a claim for *“Return air fare plus 2 days leave with pay after 2 months employment (on a distant job where other forms of transport are not practical for the return home) and thereafter three monthly intervals.”* Although the evidence presented only dealt with the situation in Western Australia the claim was intended to apply throughout the coverage of the award. Alley J., referred to the history of the granting of leave with air transport to employees in the North-West sector of Western Australia which went back to 15<sup>th</sup> December 1960 when the Court of Arbitration of Western Australia varied the award applying to building trades because of the problems applying the distant work clause to work in the North-West. He then went on to note that the *National Building Trades Award* was extended to cover Western Australia on 25<sup>th</sup> November 1975 and that,

*“At that time the major construction project in the north western area of that State was the Telfer Gold Mine site where the principal contractor was Austin-Anderson Pty. Ltd. That contractor was faced with the situation where the award granted any employee on a distant job the entitlement of returning home after two months continuous service and thereafter at three monthly intervals, but made no provision for payment of air fares in areas where there is no rail transport. Austin Anderson adopted the practice of granting leave at the intervals stipulated in the award clause and providing air transport without cost to the employee. In addition to the weekend*

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<sup>77</sup> Print D5375

<sup>78</sup> Print D5367

*absence, the employee was granted two days leave without pay in respect of every return visit home.*

*Following negotiations between the parties, the National Building Trades Award was varied on 18 June 1976 and the existing provision as to air travel for distant work was inserted as sub-clause 25.4(b). This provides for return home after 6 months continuous service and an additional two day's pay.”<sup>79</sup>*

117. The evidence before Alley J., was that the members of the BWIU in Western Australia had been dissatisfied for some time at the infrequency of the return visits home provided in the award and that dissatisfaction had been heightened by a comparison with the Telfer site where an employee was returned home on 4 occasions in one year whereas the award only provided for 2 visits home in a year. The employers countered by arguing that they were aware of no agitation for any alteration of the clause and raised the substantial cost of granting the union's claim. Despite the employers evidence Alley J. was satisfied that there was genuine dissatisfaction amongst the workers in the North-West and found that,

*“I am conscious of the high cost of affording free air transport to remote areas, and I also believe that long absences from home is one of the ordinary disabilities which are recognised as being incidental to work in areas such as the North-West sector of Western Australia. Nevertheless, I believe that a case has been made out for some improvement and I propose to vary the award so as to provide an entitlement to leave at four monthly intervals. The entitlement to 2 days leave with pay will be retained for the first visit home, and thereafter the entitlement will be 2 days leave, of which one day only shall be paid leave.*

*Although the evidence dealt only with Western Australia there can be no logical reason for confining the improvements to work in that State, as the same considerations must obviously apply to work in any remote area where air transport is the only practical means of transport.”<sup>80</sup>*

118. On 24<sup>th</sup> November 1986 C. Coleman varied Part 2.2 of Appendix J of the *National Building Trades Construction Award 1975*, which dealt with the conditions to apply on the North West Shelf Gas Project (Western Australia). The variations included the following:

*“9-REST AND RECREATION*

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<sup>79</sup> Ibid, p.2

<sup>80</sup> Ibid, p.3

(a) *Employees engaged on work to which this appendix applies and who qualify for rest and recreation leave in accordance with subclause 24.8 of this award shall be entitled to such leave after 10 weeks continuous service in lieu of the four months of continuous service provided therein.*

(b) *The provision of this subclause shall operate on and from 22 May 1986.*<sup>81</sup>

119. Subclause 9 of Part 2.2 of Appendix J was further varied by C. Laing on 26<sup>th</sup> May 1989 to provide as follows:

*“9-REST AND RECREATION*

*Employees engaged on work to which this appendix applies and who qualify for rest and recreation leave in accordance with subclause 24.8 of this award shall be entitled to such leave:*

(a) *after ten weeks continuous service in lieu of the four months of continuous service provided therein if they are in receipt of the allowance prescribed in subclause 7(a) of this appendix to cover expenses reasonably incurred for board and lodging; or*

(b) *After eight weeks continuous service in lieu of the four months of continuous service provided therein if they are provided with board and accommodation in the Hearson Construction Village single persons quarters.*<sup>82</sup>

120. A number of construction awards were consolidated by Ludeke J., on 2nd November 1990, to create the *National Building and Construction Industry Award 1990*<sup>83</sup>. When the award was made clause 24. Living away from home – distant work, contained the following R and R provision:

*“Rest and recreation*

*Rail or road travel*

(8) (a) *An employee who proceeds to a job which qualifies him/her to the provisions of this clause, may, after two months continuous service thereon and thereafter at three monthly periods of continuous service thereon, return to his/her usual place of residence at the weekend. If he/she does so he/she shall be paid the*

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<sup>81</sup> Print G5360

<sup>82</sup> Print H7910

<sup>83</sup> Print J7433

*amount of a bus or second class return railway fare to the bus or railway station nearest his/her usual place of residence on the payday which immediately follows the date on which he/she returns to the job; provided no delay not agreed to by the employer takes place in connection with the employee's commencement of work on the morning of the working day following the weekend.*

*Provided, however, that if the work upon which the employee is engaged will terminate in the ordinary course within a further 28 days after the expiration of any such period of two or three months as herein before mentioned, then the provisions of this subclause shall not be applicable.*

#### *Air travel*

*(b) (i) Notwithstanding any other provisions contained in (a) above and in lieu of such provisions, the following conditions shall apply to an employee who qualifies under 24(1) above and where such construction work is located north of twenty-sixth parallel of south latitude in Western Australia or in any other area to which air transport is the only practicable means of travel, an employee may return home after four months continuous service and shall in such circumstances be entitled to two days leave with pay in addition to the weekend.*

*Thereafter the employee may return to his/her usual place of residence after each further period of four months continuous service, and in each case he/she shall be entitled to two days leave of which one day shall be paid leave.*

*Payment for leave and reimbursement for any economy air fare paid by the employee shall be made at the completion of the first pay period commencing after the date of return to the job.*

*Provided, however, that if the work upon which the employee is engaged will terminate in the ordinary course within a further 28 days after the expiration of any such period of four months as hereinbefore mentioned, then the provisions of this paragraph shall not be applicable.*

#### *Remote area of Western Australia*

*(ii) Employees on jobs north of latitude 26 degrees south or elsewhere in the State of Western Australia shall be entitled in accordance with 24(8)(b) hereof to travel to their usual place of residence, or Perth whichever is the closest to the job and return provided that reimbursement of air fare in no case shall exceed the economy air fare from the job to Perth and return; unless an employee has been sent by his/her employer or selected or engaged by the employer or agent to go to such job from a place which is a greater distance from the job than Perth and the employee returns to that place in which event reimbursement shall include the return air fare for the greater distance.*

*Limitation of entitlement*

*(c) An employee shall be entitled to either (a) or (b) herein and such option shall be established by agreement as soon as practicable after commencing on distant work. The entitlement shall be availed of as soon as reasonably practical after it becomes due and shall lapse after a period of two months provided that the employee has been notified in writing by the employer in the week prior to such entitlement becoming due of the date of entitlement and that such entitlement will lapse if not taken before the appropriate date two months later. (Proof of such written notice shall lie with the employer.)*

*Service requirements*

*(d) For the purpose of this subclause service shall be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause or as prescribed in the clause 25(6) - Annual leave, continuous service provisions.*

*Variable return home*

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

*Non-payment in lieu*

*(f) Payment of fares and leave with pay as provided for in this subclause shall not be made unless availed of by the employee.”*

121. The more generous provisions were retained in Appendix J for the North West Gas Project (i.e. R and R after 10 weeks/8 weeks) and the Argyle Diamond Mine project (R and R after 3 months) in Western Australia.
122. When the pre-reform awards went through the award simplification process the R and R provisions in the new *National Building and Construction Industry Award 2000* were unchanged.<sup>84</sup>
123. The last change to the R and R provisions were made when the modern award was created by the AIRC. In the modern *Building and Construction General On-site Award 2010* made on 3<sup>rd</sup> April 2009<sup>85</sup>, the R and R provisions in clause 24.7 added additional words at the end of the first dot point in clause 24.7(f)(ii) so that it read:

“(ii) *Air travel*

- *Notwithstanding any other provisions contained in clause 24.7(f)(i) and instead of such provisions, the following conditions will apply to an employee who qualifies under clause 24.1 where such construction work is located in any other area to which air transport is the only practicable means of travel. An employee may return home after four months’ continuous service and will in such circumstances be entitled to two days’ leave with pay in addition to the weekend, provided that the entitlement in respect of an employee in the civil construction sector will arise after 10 weeks’ continuous service.” (Underlining added)*

The additional wording was added due to most civil construction awards providing for R and R after 10 weeks.

124. Under the current *Building and Construction General On-site Award 2010* there are now three different entitlements for R and R:
- Weekend return home after 2 months and thereafter at 3 monthly periods of continuous service where travel is by rail or road travel;
  - A return home after 4 months continuous service with 2 days paid leave in addition to the weekend where air transport is the only practical means of travel, and thereafter at 4 monthly intervals (with 2 days leave, one of which is to be paid); and

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<sup>84</sup> Print S0643

<sup>85</sup> PR986361



- A return home after 10 weeks continuous service (plus the same paid days of leave and thereafter at 4 monthly intervals) where air transport is the only practical means of travel for employees in the civil construction sector.

We submit that with the advent of low cost airfares (now nearly equivalent to rail fares<sup>86</sup>) there is no longer any justification for the differing standards depending on the method of transport or the sector of the building and construction industry that an employee works in.

125. More importantly we submit that the R and R provisions are outdated and no longer appropriate for a modern award. There are compelling reasons as to why workers should have an entitlement to return home on R and R on a regular basis after shorter periods working on distant jobs. These reasons have been identified in a number of recent inquiries into fly in/fly out (FIFO) and drive in/drive out (DIDO) arrangements.

126. In February 2013 the House of Representatives Standing Committee on Regional Australia released “*Cancer of the Bush or salvation of our cities?*”, a report on the Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia.<sup>87</sup> During its considerations the Committee:

- Received 232 submissions and 23 supplementary submissions;
- Received 21 exhibits provided during public hearings;
- Held 26 public hearings across South Australia, Queensland, Western Australia, New South Wales, Victoria and in Canberra;
- Heard from 275 witnesses at public hearings; and
- Conducted site inspections in all of the above states and in the Northern Territory.

127. In the report the Committee majority said the following in regard to Shift Length:

“2.62 *A wide range of roster arrangements are utilised by the resources industry. Rosters typically consist of a set number of days on-site and a set number of days off-site, with an on-site day typically consisting of a twelve-hour shift. Rosters, both shift-length and on/off cycles, are a key issue which was relatedly raised throughout the inquiry.*

2.63 *Shift patterns, or cycles as they are often called, can range from short, nine days on five days off, cycles to the much longer, twenty-eight days on seven*

<sup>86</sup> The lowest rail fare from Sydney to Melbourne is \$45; the lowest airfare for Sydney to Melbourne is \$69.

<sup>87</sup>

[http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=ra/fifodo/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ra/fifodo/report.htm)

*days off, cycles. The typical length of a roster cycle is usually linked to the distance that is needed to be travelled to the mine-site, with DIDO arrangements generally using shorter roster patterns than FIFO arrangements.*

2.64 *A survey conducted by the Australian Mineral and Mines Association (AMMA) found that respondents were generally happy with their roster cycles, which included: two weeks on two weeks off, eight days on six days off, six weeks on six weeks off and five weeks on five weeks off.*

2.65 *Based on employee retention rates, the AusIMM observed that the roster pattern with the lowest level of employee turnover is nine days on, five days off. AusIMM also suggested that this might be due to this roster granting employees every second weekend off, providing them with greater opportunity to engage with their family. Industry employers Ensham and Vale, who both use a seven days on seven days off roster, stated that their rosters were developed to prevent workforce fatigue and to grant their employees time with their family.”<sup>88</sup>*

128. The above comments were mainly made in the context of the resources sector, but we submit that the recognition of shorter roster cycles on reducing worker fatigue and enabling employees to have more time with their families equally applies for construction projects.

129. In the report’s discussion on ‘fly-out’ communities in chapter 4 it noted that,

*“4.3 Despite the obvious attractions of FIFO for workers such as high remuneration, it was put to the inquiry that the ‘FIFO lifestyle’ can be accompanied by a range of damaging consequences for participants such as relationship stress and breakdown, excessive alcohol and drug use, depression and violence amongst FIFO workers.”<sup>89</sup>*

And that,

*“4.15 Key to the FIFO work experience is the standard of the accommodation and the health impacts of the work practice.”<sup>90</sup>*

130. The report’s discussion on social isolation and the routine separation from family support and informal social controls highlights the negative impact that living in remote

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<sup>88</sup> Ibid.,p.22-23

<sup>89</sup> Ibid, p.90

<sup>90</sup> Ibid, p.92

accommodation camps can have on the well-being of FIFO workers. The anecdotal evidence referred to is quite disturbing,

*“It is possible that you may never see the person in the donga next to yourself let alone know them. Earlier this year, for example, a 55 year-old man was found dead in a donga in the Pilbara. Whilst there were no suspicious circumstances, what was surprising was that the deceased had lain in this donga for several days before anyone discovered anything was wrong. Clearly there must be a problem where an individual can lie dead in a room for a number of days before he is discovered.”*

*“from the camps that I have been to and just seeing how institutionalised and segregated these camps can be, I think it would be great if you could get outside that camp and go and play a game of touch footy or soccer with local communities. I think it would certainly help just to be able to step outside of that institutionalised environment”*

*“Social isolation for construction workers .... could be improved by being located within the Roxby Downs Township environment. Anecdotally workers are more likely to see the benefits of the town and operating environment if exposed to all elements and is more likely to lead to some electing to stay in Roxby downs and potentially relocate.”*

*“Non resident workers endure exacting working conditions, isolation, boredom, limited living conditions and community isolation causing in some cases an increase in drunkenness and violence.”<sup>91</sup>*

131. The report also looked at the health impacts on FIFO workers and made the following comments,

*4.52 As with many of the issues raised in this report, there is a lack of data relating to the direct and indirect health impacts of the FIFO lifestyle.*

*4.53 The efforts of those employers who are making a conscientious effort to support their employees’ wellbeing should be acknowledged and there are many that are doing so.*

*4.54 However, evidence to the inquiry indicates that there are health concerns that are likely to be specific to or exacerbated by the FIFO lifestyle that need a targeted health policy focus. Disease as a result of risk-behaviours, alcohol*

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<sup>91</sup> Ibid, p.94-95

*and other substance misuse and depression and anxiety appear to require particular attention.”<sup>92</sup>*

132. As previously mentioned in this submission, in October 2015 the Queensland Government’s Infrastructure, Planning and Natural Resources Committee released the report from the “*Inquiry into fly-in, fly-out and other long distance commuting work practices in regional Queensland*”.<sup>93</sup> Whilst this inquiry was not as extensive as that of the House of Representatives Standing Committee, it still received 235 submissions and conducted 12 regional hearings in the Central Queensland and Darling Downs regions.<sup>94</sup>

133. This report includes statistics which give an indication of the relative size of the FIFO construction workforce that existed in Queensland in 2013- 2014:

“ *Surat Basin*

*Between June 2012 and June 2014, the number of estimated non-resident workers on-shift in the Surat Basin increased 125 percent from an estimated 6,440 persons to 14,490 persons. The increase is linked to the FIFO/DIDO construction workforces of three CSG projects, which are estimated to have peaked in 2014.*

.....

*Gladstone region*

*The estimated non-resident workers on-shift in the Gladstone region in June 2014 increased by 36 percent from 4,885 to 6,655 persons in June 2013. Most of these workers were engaged in constructing three LNG processing plants, a coal export terminal and other associated infrastructure.”<sup>95</sup>*

134. One significant section of this report dealt with rostering practices. In its discussion it noted that,

*“Longer work rosters can suit people who have to commute a long way. However, according to FIFO families, the greatest impact on the families of FIFO workers is when the worker’s roster is long (three or more weeks) or the worker is away for considerably longer than they are at home, such as on a four week on, one week off or a three week on, one week off.*

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<sup>92</sup> Ibid, p.100

<sup>93</sup> <https://www.parliament.qld.gov.au/documents/committees/IPNRC/2015/FIFO/02-rpt-009-09Oct2015.pdf>

<sup>94</sup> Ibid, p.2

<sup>95</sup> Ibid, p.9-10

*Beyondblue commented on the findings of the Western Australian (WA) inquiry into FIFO regarding the impact of high compression rosters (ie. rosters with longer periods at work than at home) on families: it found that such rosters have negative impacts on family relationships. A FIFO worker relevantly commented that if a roster has fewer rest days compared to work days, it can lead to tiredness, resentment and sadness at missing family occasions, the homemaker feeling unsupported, family breakdown and suicide. Another submitter described how a high compression roster leads to workers being less focussed on their work, anger issues and a higher rate of safety incidents.*

*The Australian Manufacturing Workers' Union submitted that the following factors relating to rostering arrangements can cause stress for the worker and their family*

- *length of time away from family*
- *missing out on key life events*
- *isolation and remoteness*
- *poor telecommunications, and*
- *adjustment between home and work.*

*The FACE Network submitted that issues with rostering can be worse for contract workers. Other submitters commented that often contractors have their staff working on longer roster cycles than principals and that many contractors make their employees work at different sites on their days off.*

*Most submitters who commented on rosters favour even time rosters, or close to even time rosters over more compressed rosters to enable better work/life balance.”<sup>96</sup>*

135. The report also dealt with the issue of fatigue which was a consistent concern raised in the submissions. The Committee commented that,

*“The impacts associated with commuting, rostering and fatigue are related and each affect the well-being of FIFO workers and their families.*

.....

*The committee is of the view that further work needs to be undertaken in order to determine best practice guidelines for commuting, rostering and fatigue management related to FIFO work. The committee considers that these impacts are different to other types of industries with shift work due to the commuting components.*

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<sup>96</sup> Ibid, p.55

*The committee recommends that the Minister include best practice principles for commuting, rostering and fatigue management in the whole-of-government policy for managing the impacts of FIFO work practices and that the policy emphasise that resource companies have a duty of care to workers for ensuring their safety and well-being when travelling for work.”<sup>97</sup>*

136. The report also dealt with the issue of the mental health of FIFO workers. The committee recognised that the FIFO lifestyle can, for a range of reasons, exacerbate a person’s predisposition to mental health problems and went on to recommend that the Queensland Government investigate options for providing mental health support services for FIFO workers; that further research be undertaken; and that the social impact assessment process consider the mental health of workers and the accommodation standards include measures addressing mental health needs and access to effective workplace health initiatives.<sup>98</sup>
137. As also previously mentioned, in June 2015 the Parliament of Western Australia, Legislative Assembly Education and Health Standing Committee, released its final report on “*The Impact of FIFO work practices on mental health*”.<sup>99</sup> The inquiry was initiated in response to concerns within the community, parliament and media at reports that nine fly-in, fly-out (FIFO) workers had suicided in a 12-month period. The inquiry received over 130 formal submissions and many more informal contacts and phone calls from individuals wishing to contribute.<sup>100</sup> Several members of the Committee undertaking the inquiry flew to Karratha in February 2015 and then visited Chevron’s Gorgon Project on Barrow Island, the Chevron Wheatstone site, BHP Billiton’s Yandi site, and Rio Tinto’s Wickham facilities.<sup>101</sup> The report noted that the Committee was aware of the other inquiries being undertaken by the Federal and Queensland Parliaments and the degree of attention on FIFO work arrangements was a reflection of the concerns amongst the community.<sup>102</sup>
138. Significantly this report clarifies that although the focus of the report was on the resources sector, this included both the construction and operation of resource projects. According to the Chamber of Minerals and Energy (CME) in November 2014 there were approximately 102,300 workers in the resource sector in WA, of which 67,000 were

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<sup>97</sup> Ibid, p.59

<sup>98</sup> Ibid, p.64

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[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/2E970A7A4934026448257E67002BF9D1/\\$file/20150617+-+Final+Report+w+signature+for+website.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/2E970A7A4934026448257E67002BF9D1/$file/20150617+-+Final+Report+w+signature+for+website.pdf)

<sup>100</sup> Ibid, p.i

<sup>101</sup> Ibid, p.2

<sup>102</sup> Ibid p.6

employed via fly-in, fly-out (FIFO) arrangements, doing both construction and operational work.<sup>103</sup> Although the CME could not provide the total number of employees working in construction they did say that around 80% of those working in the resources sector doing construction do fly in, fly out.<sup>104</sup>

139. The report (in Finding 4) found that “*Research suggests that the prevalence rate of mental health problems amongst the FIFO workforce could be approximately 30 per cent, significantly higher than the national average of 20 per cent.*” The Committee recommended that further independent research be undertaken involving a range of different sites and include both construction and production workers.<sup>105</sup>

140. The Committee looked at the characteristics of FIFO work that posed a challenge to worker’s mental health. One of the issues was rosters and fatigue. In regard to rosters it said that,

*“The Committee has found that roster patterns worked by production workers and construction contractors can differ significantly. Production workers are often either employed directly by resource project operators, or a large contracting company employed by the operator. While there may be some degree of variation, these employees generally work a lower compression roster such as two weeks on, one week off, or an even-time roster such as two weeks on, two weeks off. Even-time rosters are often back-to-back with another employee.*

*It was reported to the Committee that workers employed in resource project construction typically work four weeks on, one week off. Construction projects last for a limited time and have tight deadlines for completion, requiring a higher compression roster. On this point, the Construction, Forestry, Mining and Energy Union (CFMEU) made the comment:*

Something that we get a bit sick and tired of hearing, particularly amongst the resource sector, is that construction is short-term work; it does not really matter; it is short-term work; you are on a four and one, and that is the way it is; construction will be complete in two years or 18 months; and then we will look after our production and our maintenance crew, which are normally on an equal-time roster scenario.

.....

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<sup>103</sup> Ibid, p.7

<sup>104</sup> Ibid, p.8-9

<sup>105</sup> Ibid, p.21

*The Committee heard that one of the main sources of concern for FIFO workers, regardless of job, is the length of rosters worked. Rosters were identified by most submitters as a key source of stress impacting on their personal relationships and mental wellbeing. UnionsWA suggested that:*

[r]osters, particularly in the construction industry, are a large problem. The four and one rosters pose a greater health threat than the two-and-one rosters.

*The effects of higher compression rosters have been reported in research conducted by the FIFO Australian Community of Excellence Network (FACE), which found that these rosters impacted on work-life balance, led to feelings of isolation and loneliness, higher levels of psychological distress and adverse effects on family relationships. There was some level of willingness to accept this within the industry with BHP Billiton stating that it ‘acknowledges the concern expressed by some stakeholders as to the potential impact of extended roster length on mental health.’*

.....

*The comments from this individual are broadly representative of the feedback the Committee received from other witnesses.....*

Three weeks on, one week off (3/1): ..I noticed more incidents & injuries on site, I also noticed more people on the project going through divorce, there was also guys suffering isolation & anger issues in their final week on-site also suffering depression due to time away from family (particularly their kids – also with dad away so long & home for such short periods teenagers would get into trouble without a father figure). Only being home for one week also prevented a full rest as 3 weeks away from home chores and & issues build up which require to be dealt with in just week which consumed most of your week off. This roster mainly allows for 10 hours work a day for fatigue management, this creates 2 types of people (alcohol drinkers or people to sit in their rooms), both have very negative affects in the mental state of individuals & also a very bad culture which is taken home with them on R&R....

Four weeks on, one week off (4/1) ....I am working this roster for the first time at...[in WA] on the [XX] project, I haven’t been here very long but I know a couple of people have already committed suicide on the project & a large number of people are walking around like zombies. There have been a



much larger amount of injuries & incidents than I am used to on projects I have been on in the past. There is a huge fatigue issue & the morale is so low it creates a huge loss in concentration which leads to more accidents & injuries as well as depression & other mental health issues. There is a huge turnaround of people on this project, meaning most are new to the project & the industry which is reflected in the lack of understanding in safety & importance of following processes & procedures which means higher incident and injury rates.

*Other witnesses who discussed the issue of rosters with the Committee emphasised the need for lower compression rosters; a preference for even-time rosters and the importance of workers being able to choose which roster suited them best. Lower compression rosters were seen to be preferable in terms of family and personal relationships, and mental health and wellbeing. Higher compression rosters were seen to be preferable by some due to increased earning capacity on a higher compression roster.*

*There appears to be an appetite amongst workers, particularly in construction, for lower compression roster. The CFMEU reported to the Committee that:*

an Enterprise Agreement was rejected by over 80% of construction workers on Barrow Island on the basis of workers requesting shorter more family and worker friendly rosters, which will effectively deliver a pay reduction for FIFO workers.

*The length of time spent away from home has impacts in a worker's ability to build and maintain relationships with family and friends, conduct personal business and seek help for any issues, medical or otherwise, that they may have. When in the care of an employer on camp, workers are limited in their ability to live a 'normal' life and enjoy the same kinds of supports and relationships they have at home. This can have the effect of exacerbating any existing or emerging issues that a worker is facing.”<sup>106</sup>*

141. The Committee also identified the phenomenon of compression creep as a significant issue. Compression creep is where time travelling home at the conclusion of a swing eats into the time off for workers (e.g. a worker has 7 days R and R but the first and last days are spent travelling which reduces the actual time at home to 5 days). While the Committee

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<sup>106</sup> Ibid, p.63-67

acknowledged the difficulty in factoring travelling time into an individual's roster, they said that travel time must be included in an employer's assessment of a worker's risk factors.<sup>107</sup>

142. The Committee then went on to make the following recommendation:

***“Recommendation 12***

*That the Minister for Mines and Petroleum ensure the Code of Practice on FIFO work arrangements addresses the issue of rosters, with the aim of encouraging even-time rosters, and rosters that support mental health and wellbeing such as two weeks on, one week off, or the 8 days on, 6 days off roster. Rosters of greater compression than this can result in fatigue and pose significant risks to workers' mental health and wellbeing, and should be reduced.”*<sup>108</sup>

143. The circumstances relating to rostering arrangements for distant workers identified in the three inquiry reports highlight the problems faced by construction workers engaged on distant work and who are required to live away from home. We have provided additional evidence of the impacts on workers and their families of rostering arrangements through the witness statements of:

- Michael Buchan (Appendix 13);
- Josh Burling (Appendix 14);
- Danny Callaghan (Appendix 12);
- Roland Cummins (Appendix 15);
- Paul Ferreira (Appendix 9);
- David Kelly (Appendix 7);
- Frank O'Grady (Appendix 6);
- Graham Pallot (Appendix 8);
- Dean Reilly (Appendix 10); and
- Kris Woodward (Appendix 11).

These statements are indicative of the personal perspectives of construction workers who are engaged on distant work. Attached to the witness statement of David Kelly are very personal accounts from a worker and his wife of the impact of FIFO work on their relationship. They are a poignant example of the matters that we have raised. The Statement of Kris Woodard also gives an insight into the Barrow Island dispute over shorter rosters referred to in the WA Inquiry Report (see paragraph 140 above).

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<sup>107</sup> Ibid, p.68

<sup>108</sup> Ibid., p.69

144. In addition to this evidence the CFMEU C&G set up an on-line petition on the [www.megaphone.org.au](http://www.megaphone.org.au) website. The purpose of the petition was to enable workers to indicate their support for the unions claim and allow them to make comments if they so desired. We saw this as a more practicable way for workers to express their views rather than asking workers to send individual emails to the Commission.

145. The petition<sup>109</sup> went live on Tuesday 29<sup>th</sup> November 2016. By 5pm on Friday 2<sup>nd</sup> December 2016, 1627 individuals had signed the petition. At the time of filing this submission the number had increased to 1787. As well as signing the petition a number of workers and/or their family members put their own comments, which included the following:

*“Time to recognize the time spent away from family to provide for the family and travel time should be outside of R&R time.*

*Bernard”*

*“As the grandmother of two young grandchildren I see daily the impact having daddy away has. With no reliable work locally, my son had no choice to work away from home to ensure financial stability for his family. This is a huge personal sacrifice to earn a decent wage, currently he is home for whole 6 days out of 35. Keeping families together should be a priority of all decent human beings.*

*Judith”*

*“I work a 4/1 roster with 7days R&R. One day of that I have to fly back, so its only really 6 days with my family. Its soul destroying when you only see 6 days in 28. Time to move towards 3/1 or even time rosters.*

*Jason”*

*“the 4th week is always low production from workers because it mental and physically tiring.*

*Jared”*

*“I have signed in because i have been a worker who works all over Australia. To long have we bent our back for companies that believe we owe them. I love work sounds strange sit and think about it. We as the workers only want decent conditions and a bit of respect for what we do.*

*Andrew”*

*“Need a friendlier family roster & own room & privacy.*

*Leon”*

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<sup>109</sup> <https://www.megaphone.org.au/petitions/improve-r-r-for-construction-workers>

*“You pay a heavy family life when you work away, you should be duly compensated for it*

*Mark”*

*“The amount of mental illnesses at the moment and having to work away from loved ones which would cause more depression just to pay the bills because we have had so many pay cuts lately, and big businesses still trying to cut allowances from the workers just trying to make a living, no wonder why there are so many suicides in this already dangerous industry.*

*Anthony”*

*“Its hard being away for a month and home 10 days and for 3 years i have missed Christmas and birthdays and anniversaries and special moments in my kids life. Videos and photos just dont cut it all the time. And top it off i nearly didnt make my own wedding due to work refusing holidays. Its always a battle to get time off due to never being a good enough reason.*

*Phil”*

*“It's only fair for the workers not to have there travel and flights included in there days off. Even on the good money, 1 week off after 4 weeks work cannot be good for mental health*

*Jamie”*

*“Because too many of us fall between the fifo cracks .Us, the workers & our families all experience hardships that really needs better compensation....Its tough on all of us...*

*Peter”*

*“Having worked away from home for extended periods myself I know the importants of time at home with family and the added cost of living away, You still have the same bills at home so you need that little bit extra to off set the additional cost of being away. Good call guys!*

*Michael”*

*“Working away for long periods at a time are tough on all family members. Less time away the better*

*David”*

*“I signed cause i support my partner and believe everyone needs to be looked after especially on rnr its just not long enough. Need more family time. They (kids and partner) miss out on everything.*

*Cass”*

*“Iv done more than 6 month away this year. I was coming home for 2 day a month. My relationship has been under a lot of presure because i just havent been home.*

*Peter”*

*“The current roster is killing families, and motelling should NEVER have started*

*Ken”*

*“Millionares Billionares Governments & Big Bissiness don't do all the work themselves, they need us, a society is made from everyones contribution & we seem to have to tighten our belts while the fat cats get fatter, we want a fairer share & quality time with our families, not Ferrarries & \$1000 dinners, time to get real.*

*Ioan”*

*“FIFO work can be a double edged sword. Financially rewarding, but with little time at home emotionally devastating for the family.*

*John”*

*“Working four weeks with only one or two sundays off is a recipe for disaster, and those disasters HAVE BEEN HAPPENING!!*

*Ben”*

*“I have signed this petition as I've been a fifo worker for nearly 2 decades, I understand the strains and the effects it has on family.*

*Jay”*

146. The comments that we have extracted from the petition, and the petition itself, demonstrate the extent to which workers (and their families) feel strongly about the issue of rostering arrangements and the need for adequate R and R, and show the support for the variations sought by the CFMEU C&G. We intend to provide a copy of the petition in a pdf format to the Commission, however, as the petition will included the first names and surnames of the signatories, identify the State in which they live, their occupation and whether or not they are a union member, we will be making an application for a non-publication order before doing so.

147. The recent dispute at Barrow Island over the rostering arrangements as referred to above reveals that many workers see rostering arrangements as more important than monetary rewards.

148. A roster of two weeks on, one week off or 8 days on, 6 days off would be an ideal situation for construction workers, but we recognise that this may not be achievable through the award review process given that the award contains minimum standards not ideal standards. There is overwhelming evidence however that the current award provisions, where R and R is only available after between 8 weeks continuous service (for employees who travel by road or rail) and up to 16 weeks for employees who travel by air, is not only outdated but more to the point unacceptable by any measure of modern standards. There is also clear evidence that modern rosters which provide for periods of longer than 3 weeks continuous work without providing for adequate time at home on R and R, such as the 4 in 1 roster, are detrimental to workers and their families. They are also unacceptable and a continuing factor in the high level of not only depression and mental problems of workers, but also family and relationship breakdowns.

149. The evidence shows the high value and priority that workers, required to live away from home on distant work, place on the time spent at home on R and R. How important having a clear 7 days at home is, and that it should exclude the travel on the first and last day of R and R. The evidence supports our claim that the minimum standard should be R and R of at least 7 clear days at home after 3 weeks continuous service.

150. In regard to the 2 days paid leave for R and R after 12 weeks continuous service and an additional day after each subsequent period of 12 weeks continuous service, this is an averaging of the existing provisions (i.e. an average of the entitlement after 8 weeks for road and rail travel, 10 weeks for air travel on civil construction projects, and 16 weeks for air travel on other projects) to create one standard. Given the significant reductions in travel costs, especially air travel, there is no justification for the differing standards.

#### Mobile Crane Hiring Award 2010

151. The existing clause in the *Mobile Crane Hiring Award 2010* that deals with employees engaged on distant work is clause 14.3(e), which provides as follows:

*“(e) Accommodation and overnight allowance*

*Where an employee is required by the employer to be away from home overnight they will be reimbursed the cost of, or be provided with, first class accommodation, including full board, by the employer. In addition \$14.77 will be paid for each night the employee is required to be away from home.”*

The current award is silent on issues such as single room accommodation, travel time and travel costs, and R and R.

152. The clause we seek for the *Mobile Crane Hiring Award 2010* is the same as that proposed for the *Building and Construction General On-site Award 2010*, except that it retains the reference to first class accommodation and the overnight incidentals allowance.

153. Employees of mobile crane hiring companies, depending on a company’s operations, can regularly be called upon to work away from home. This can, for example, be for work on a mine site, major shutdown maintenance work in an industrial complex, maintenance work on a remote wind farm, railway maintenance work or emergency work following a major accident or natural disaster.

154. As workers under this award can be accommodated in the same types of accommodation as construction workers (i.e. accommodation camps, motel/hotels, etc.), indeed on many projects they work alongside construction workers, the submissions and evidence provided above are also relevant for this award.

Joinery and Building Trades Award 2010

155. The clause we seek for the *Joinery and Building Trades Award 2010* is the same as that proposed for the *Building and Construction General On-site Award 2010*, except that it doesn’t include the reference to construction camps or the camping allowance. The reason for this is that the instances in which employees covered by this award would be required to live away from home on distant work would be limited. The only employees that would be entitled to the provisions are likely to be glass and glazing workers<sup>110</sup>, shopfitters and specialised tradesperson such as stonemasons or carpenters and joiners engaged on boutique work. The witness statement of David Kirner (appendix 16) attests to the circumstances in which workers under this award may be required to work on a distant project. Any such

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<sup>110</sup> [https://www.fwc.gov.au/documents/documents/agreements\\_applications/ag2016\\_7004.pdf](https://www.fwc.gov.au/documents/documents/agreements_applications/ag2016_7004.pdf)  
<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae401913.pdf>  
<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae899175.pdf>

employees would normally be housed in hotel/motel type accommodation and would not be accommodated in a construction camp, camping site or caravan park.

156. The current clauses in both awards are very similar which is consistent with the history of the pre-reform awards. The clause in the *National Joinery and Building Trades Products Award 2002*<sup>111</sup> contained all of the same key features as the pre-reform *National Building and Construction Industry Award 2000*, and the awards were generally varied at the same time where the provisions were common.
157. Surprisingly the existing clause in the *Joinery and Building Trades Award 2010* is very similar but not identical to that in the *Building and Construction General On-site Award 2010*. For example the modern *Joinery and Building Trades Award 2010* has a right to return home at the weekend after 3 months (clause 24.5(a)(vi)), and after 5 months where air travel is the only practical means of transport (clause 24.5(a)(vii)). These provisions were inserted as part of the award modernisation proceedings<sup>112</sup> but there was no explanation as to why the provisions were different to the pre-reform Joinery Award (which had weekend return after 2 months and thereafter at 3 months service, except where air travel was involved which required 4 months service). The provision is also inconsistent with the stated intent of the AIRC Award Modernisation Full Bench who said,

*“[113] The terms and conditions in the award largely reflect those in the National Joinery and Building Trades Products Award 2002. However, the casual conversion clause reflects that in other modern awards. The apprentice provisions have been simplified and adult apprentice wage rates consistent with those in other modern awards have been included. The apprentice provisions recognise there are both 3 and 4 year apprenticeships covered by the award. Where practical allowances have been simplified. The adjustment of allowances reflects industry practice.”*<sup>113</sup>

158. We recognise that the same provisions for R and R were contained in the exposure draft<sup>114</sup> (of the *Joinery and Building Trades Award 2010*) but it appears that the significant change was not picked up by any party during the award modernisation proceedings. This oversight however does not have major implications for these proceedings as what we now seek is a different standard based on the evidence we have put forward in this Review.

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<sup>111</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap817265/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap817265/asframe.html)

<sup>112</sup> <http://www.airc.gov.au/awardmod/databases/building/Modern/joinery.pdf>

<sup>113</sup> <http://www.airc.gov.au/awardmod/databases/building/Decisions/2009aircfb345.htm>

<sup>114</sup> [http://www.airc.gov.au/awardmod/databases/building/Exposure/joinery\\_exposure.doc](http://www.airc.gov.au/awardmod/databases/building/Exposure/joinery_exposure.doc)



159. The evidence in paragraphs 116 to 146 above has equal application to workers covered by the *Joinery and Building Trades Award 2010* who may be required to live away from home for periods of work greater than 2 months.

160. We also rely on the evidence presented for the *Building and Construction General On-site Award 2010* to support the other provisions in the clause we now seek as set out in the draft determination in Appendix 1.

### **Other Variations Sought to the Building and Construction General On-site award 2010**

161. As mentioned in paragraph 9 above there are a number of additional claims that we make for the *Building and Construction General On-site Award 2010*. This submission will deal with each of them in the order that the clauses currently appear in the award.

#### Clause 4 – Coverage

162. Clause 4 of the *Building and Construction General On-Site Award 2010* ('On-Site Award') provides for coverage of the On-Site Award in the following terms:

*“4. Coverage*

*4.1 This industry award covers employers throughout Australia in the on-site building, engineering and civil construction industry and their employees in the classifications within Schedule B—Classification Definitions to the exclusion of any other modern award.*

*4.2 Without limiting the generality of the exclusion, this award does not cover employers covered by:*

*(a) the Manufacturing and Associated Industries and Occupations Award 2010;*

*(b) the Joinery and Building Trades Award 2010;*

*(c) the Electrical, Electronic and Communications Contracting Award 2010;*

*(d) the Plumbing and Fire Sprinklers Award 2010;*

*(e) the Black Coal Mining Industry Award 2010;*

*(f) the Mining Industry Award 2010; or*

*(g) the Quarrying Award 2010; or*

*(h) the Pre-Mixed Concrete Award 2010.*

*4.3 The award does not cover an employee excluded from award coverage by the Act.*

*4.4 The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.*

*4.5 The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.*

*4.6 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.*

*4.7 This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.*

*4.8 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.*

*NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.”*

163. The CFMEU submits that the wording of the current clause 4.2 be varied as follows:

*“Without limiting the generality of the exclusion in clause 4.1 and except for employers of employees engaged on-site performing work in the classifications contained in this award, this award does not cover employers covered by:*

- (a) *the Manufacturing and Associated Industries and Occupations Award 2010;*
- (b) *the Joinery and Building Trades Award 2010;*
- (c) *the Electrical, Electronic and Communications Contracting Award 2010;*
- (d) *the Plumbing and Fire Sprinklers Award 2010;*
- (e) *the Black Coal Mining Industry Award 2010;*
- (f) *the Mining Industry Award 2010; or*
- (g) *the Quarrying Award 2010; or*
- (h) *the Pre-Mixed Concrete Award 2010.”*

164. This wording better reflects the general intent of the Commission and its predecessors in the award modernisation process. That intent is to make awards applicable to all award-covered employees in the relevant industry. This was made clear by what was said by the Full Bench in the first major decision on Award Modernisation [2008] AIRCFB 550 at [12]:

*“In a general sense we consider that these considerations require the Commission to make awards primarily on broad industry lines and, as far as practical, to make those awards applicable to all award-covered employees in the relevant industry”*

165. This intent has not been reflected in the On-Site Award because of the excluded awards in the current Clause 4.2. The wording proposed by our Clause 4.2 will allow the normal process of resolving overlapping coverage in Clause 4.8 to apply. Clause 4.8 reflects the general position relating to overlapping coverage introduced by the Award Modernisation - Decision - Full Bench [2008] AIRCFB 1000 at [28] to [30].

166. The problem with the award in its present form is that in relation to employees employed on site by the employers covered by the excluded awards in Clause 4.2, Clause 4.8 and the similar provisions in the excluded awards are prevented from doing their normal work.

167. This is made clear by the decision of the Full Bench in *CFMEU v B J Jarrad Pty Ltd* [2013] FWCFB 8740 which stated at [38]:

*“Clause 4.2 of the On-site Award provides that “[w]ithout limiting the generality of the exclusion, this award does not cover employers covered by: ... the Plumbing and Fire Sprinklers Award 2010”. Given the finding that the Company is covered by the*

*Plumbing Award, it follows that the On-site Award does not cover the Company. In these circumstances, it is not necessary to consider the operation of clause 4.6 of the Plumbing Award and clause 4.8 of the On-site Award and, in particular, which award contains the classifications “most appropriate to the work performed by the employee[s] and to the environment in which the employee[s] normally [perform] the work”.*

168. In that case it was made clear that the *Plumbing and Fire Sprinklers Award 2010* (‘Plumbing Award’) has a clause similar to Clause 4.8 of the On-Site Award but the provisions of Clause 4.2 meant that those clauses were rendered otiose.

169. In the case of *The Australian Workers' Union v Coffey Information Pty Limited* [2013] FWCFB 2894, a Full Bench considered another award excluded by virtue of Clause 4.2 of the On-Site Award, namely the *Manufacturing and Associated Industries and Occupations Award 2010* 3 (‘Manufacturing Award’). The Full Bench considered the interaction of the two awards as follows:

*“[22] The awards contain interaction rules to govern the situation when more than one award may apply. Clause 4.2(a) of the On-Site Award, set out above, excludes the application of the On-site Award if the employees are covered by the Manufacturing Award. Clause 4.2(a) of the Manufacturing Award excludes the operation of that award if the coverage is based only on the occupational coverage of the award and the employer is covered by another award containing a classification which is more appropriate to the work performed by the employee.*

*[23] These provisions require a consideration of whether there is a more appropriate classification in the On-site Award, on the assumption that it otherwise applies. In our view the provisions establish a priority in favour of the Manufacturing Award where there is not a more appropriate classification in another applicable award.*

*[24] We are unable to conclude that the classifications in the On-site Award are more appropriate to the classifications in the Manufacturing Award.... “*

170. Although the provision in the Manufacturing Award relating to interaction of awards has only limited applicability, it nevertheless prevents any resort to the normal provision relating to overlapping coverage on the basis of “most appropriate” classification found in clause 4.8 of the On-Site Award.

171. The present wording of Clause 4.2 has frustrated the intent of Clause 4.8 to deal with questions of overlapping coverage. That intent was described in the decision of Watson SDP in *Master Builders Australia Limited* [2013] FWC 4576 when an attempt was made to expand the exclusions in clause 4.2 and change the wording of Clause 4.8. His Honour said:

*“[154] Such an outcome is inconsistent with the clear terms of clause 4.8, as a mechanism applied generally across modern awards for deciding which modern award applies in the case of overlap or potential overlap. Further, in relation to the Building On-site Award, it is inconsistent with the clear distinction of the Award Modernisation Full Bench, between work undertaken in the context of the on-site building, engineering and civil construction industry and comparable work under classifications which is not undertaken in that on-site context. Such a distinction is clear in the decisions of the Award Modernisation Full Bench in relation to concrete batching, roadmaking and landscaping. The HIA proposal would fundamentally alter the effect of the provision and the position of the Award Modernisation Full Bench, considered both generally and in relation to potential overlap in respect of the Building On-site Award.*

*[155] Clause 4.8 was included in the Building On-site Award by the Award Modernisation Full Bench, in terms reflected generally within modern awards, to provide a basis for deciding which modern award applies in the case of overlap, having regard to the terms of the consolidated Award Modernisation Request and the submissions of interested parties. The variation proposed by the HIA fundamentally alters the intent and the effect of the provision formulated by the Award Modernisation Full Bench. The HIA’s case in support of the variation was directed to addressing confusion amongst its members in circumstances of potential overlap in coverage. However, the variation proposed by the HIA to the provision determined by the Award Modernisation Full Bench, to apply where an employer is covered by more than one modern award, significantly alters the effect of the clause, being directed to removing work from the coverage of the Building On-site Award, rather than providing a process to apply where overlap exists. No proper basis has been advanced for altering the focus within clause 4.8, from the work performed by the employee and to the environment in which the employee normally performs the work, to the employer’s predominant work activities. No basis has been established to support the inclusion of the HIA’s proposed clause 4.8(a) which is, in effect, a provision narrowing the coverage of the Building On-site Award and not, as it was intended to be, a basis for deciding which modern award applies in the case of overlap. The HIA has not made out a cogent reason for departing from the provision*

*determined by the Award Modernisation Full Bench decision, generally or in the particular circumstances of the on-site building and construction industry. This element of the HIA application is refused.”*

172. The variation proposed by the CFMEU should be made to remove the priority to be given to the excluded awards in current Clause 4.2. This is an unmeritorious consequence of the current wording.

#### Clause 19 – Minimum wages

173. The CFMEU C&G proposes that clauses 19.3(a) and 19.3(b) be varied to include all of the relevant allowances in the hourly rate calculations, to reflect the fact that all tradespersons and labourers can be engaged on a daily hire or weekly hire basis under this award. The variations sought would insert the air-conditioning industry and refrigeration industry allowance, and the electrician’s licence allowance in 19.3(a); and insert the refractory allowance and carpenter-diver divisor in 19.3(b).

174. The clauses we propose would read as follows:

*“19.3 Hourly rate calculation*

*(a) Daily hire employees—follow the job loading*

*(i) The calculation of the hourly rate will take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.*

*(ii) For this purpose the hourly rate, calculated to the nearest cent (less than half a cent to be disregarded), will be calculated by multiplying the sum of the appropriate amounts prescribed in:*

- clause 19.1—Minimum wages;*
- clause 21.2—Industry allowance;*

*and where applicable,*

- clause 20.1—Tool and employee protection allowance;*
- clause 21.3—Underground allowance;*

by 52 over 50.4 (52/50.4) rounded to the nearest cent, adding to that subtotal the amount prescribed in clause 21.1—Special allowance, and dividing the total by 38.

(iii) Provided that in the case of a carpenter-diver, the divisor will be 31.

(iv) Where appropriate the following allowances will be added to the hourly rate after the calculation in (ii) above:

- For refractory bricklayers and their assistants the allowance contained in clause 21.8—Refractory bricklaying allowance;
- For air conditioning workers  $1/38^{\text{th}}$  of the allowance contained in clause 21.11—Air-conditioning industry and refrigeration industry allowances;
- For electrical workers  $1/38^{\text{th}}$  of the allowance contained in clause 21.12—Electrician's licence allowance.

(b) Weekly hire employees

The hourly rate will be calculated by adding the amounts prescribed in:

- clause 19.1—Minimum wages;
- clause 21.1—Special allowance;
- clause 21.2—Industry allowance;

and, where applicable:

- clauses 20.1—Tool and employee protection allowance;
- clause 21.3—Underground allowance;
- clause 21.11—Air-conditioning industry and refrigeration industry allowances;
- clause 21.12—Electrician's licence allowance; and
- clause 21.13—In charge of plant allowance;

and dividing the total by 38.

*Provided that:*

- *in the case of a carpenter-diver, the divisor will be 31; and*
- *for refractory bricklayers and their assistants the allowance contained in clause 21.8—Refractory bricklaying allowance will be added to the hourly rate.”*

175. The above clause will remove any ambiguity as to the whether or not the allowances are payable for all purposes and are to be included in the ordinary hourly rate.

#### Clause 20 – Expense Related Allowances

176. The CFMEU C&G proposes the insertion of a new communications equipment allowance for employees required to use two-way radios, walkie talkies, mobile phones, tablets, etc., during the hours of work. The new clause we seek is the following:

***“20.5 Communications Equipment Allowance***

*Where an employee is required to use two-way radios, walkie talkies, mobile phones, tablets, or other communication devices, during the hours of work, such equipment will be provided by the employer (including payment for any service or other charges incurred). Where such equipment is provided by the employee and required to be used during working hours, then the employee must be reimbursed the cost of providing the equipment and any service or other charges incurred.”*

177. It would be trite to say that the building and construction industry is now in a period of transformation through the use of new technology. There are many examples of significant technological advances that are now starting to have an impact. The use of prefabricated kitchens and bathrooms, commonly called pods, are currently now being installed on construction sites in Sydney. Donga’s or accommodation units used in construction camps are now prefabricated. Robotic jackhammers<sup>115</sup> and bulldozers<sup>116</sup> are also being developed and Volvo, the car and truck company, is developing a robotic asphalt laying machine.<sup>117</sup>

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<sup>115</sup>

<https://www.bing.com/videos/search?q=robotic%20construction%20equipment&qs=n&form=QBVR&pq=robotic%20construction%20equipment&sc=0-25&sp=-1&sk=#view=detail&mid=196709B8645C7EB9F3CD196709B8645C7EB9F3CD>

<sup>116</sup>

<https://www.bing.com/videos/search?q=robotic%20construction%20equipment&qs=n&form=QBVR&pq=robotic%20construction%20equipment&sc=0-22&sp=-1&sk=#view=detail&mid=7BA74B8B8F72FF4A82F97BA74B8B8F72FF4A82F9>

<sup>117</sup> <https://www.youtube.com/watch?v=v2RnK4U99VU>



178. This variation seeks to deal with one small aspect of that technological change, i.e. the change in the way in which communications occur on site. Traditional methods such as walkie talkies or two-way radios are still used, but there has been an increase in the extent to which mobile phones, smart phones and tablets are being used. The normal industry practice is for employers to provide these communication devices at no cost to the employee, although this is not always followed.

179. Communication providers are now promoting how modern communication devices can improve productivity.<sup>118</sup> Major construction companies such as Laing O'Rourke are increasing their use and giving a clear indication of the future direction.<sup>119</sup> Who is responsible for the cost of providing this equipment however is currently a grey area and not covered by the award. This variation seeks to address this issue.

#### Clause 22 – Special Rates

180. The CFMEU C&G proposes the insertion of a new consolidated special rates allowance. This claim was initially proposed during the 2012 Award Review, but was withdrawn with the intent of reviving the claim during this Review. The variation now sought would allow an employer to pay a consolidated special rates allowance in lieu of the majority of individual special rates that might otherwise apply. The variation sought is to insert the following new clause 22.1(f):

*“(f) Subject to the following conditions an employer and an employee may agree to the employee being paid a consolidated special rates allowance of 7.9% of the weekly standard rate:*

*(i) The consolidated special rates allowance is in compensation of all special rates except the following:*

- Hot work*
- Cold work*
- Confined space*
- Swing scaffold*
- Asbestos*
- Asbestos eradication*
- Suspended perimeter work platform*
- Towers allowance*

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<sup>118</sup> <https://blog.optus.com.au/business/new-construction-technology/>

<sup>119</sup> <https://readify.net/case-studies/written-case-studies/laing-orourke/>

• *Compressed air work*

- (ii) *The consolidated special rates allowance will be paid as a flat allowance for each hour worked (including time worked for the accrual of RDO's).*
- (iii) *The agreement for the payment of the consolidated special rates allowance shall be recorded in the time and wages records.*
- (iv) *This consolidated special rates allowance will not apply where an employee is receiving the air-conditioning industry and refrigeration industry allowances contained in clause 21.11."*

181. The clause we propose is not a mandatory provision, but is a facilitative provision that would address the following concern expressed by the AIRC Full Bench during the Award Modernisation proceedings,

*"[40] In the 23 January 2009 statement we referred to the large number of allowances in some industries and raised the possibility of rationalising them. Progress on this issue has not been rapid. While we have not included many allowances which are either obsolete or for one reason or another inappropriate for inclusion in a safety net award, there are large national industries such as manufacturing and building and construction which still have far too many detailed allowance provisions. Despite our urging little has been achieved by consent in those industries. Regrettably further rationalisation will have to await the foreshadowed award reviews.*

.....

*[88] .....We have referred above to our preference for a rationalisation of such allowances, as expressed at paragraphs [20] and [21] of our statement of 23 January 2009. Notwithstanding, efforts by the MBA to address this issue, most recently in its eleventh submission (dated March 2009), we have not received sufficient material and input from interested parties to allow us to attempt to rationalise allowances at this stage. Such an exercise should, however, be given some priority in any future review of the modern award."*<sup>120</sup>

182. We submit that the clause that we propose is one way of allowing employers and employees to agree to rationalise the allowances paid without affecting the rights of those employers who want to continue to pay the individual special rates for the specific occasions

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<sup>120</sup> 2009 AIRCFB 345

on which they would be payable. The allowances not included in the consolidated special rates allowance are those allowances which would have limited application and/or only apply to employees of companies that specialise in certain areas of work (e.g. asbestos removal).

Clause 28 - National training wage

183. The CFMEU C&G proposes that clause 28.2 be varied to address the current confusion as to how civil construction trainees progress through the wage structure and to provide for competency based wage progression through the stages similar to that provided for three year apprenticeships (but keeping the existing civil construction traineeship wage rates). The clause we seek is the following:

***“28.2 Civil construction traineeships***

(i) *The minimum weekly rate payable to civil construction trainees undertaking a Certificate III level qualification will be as follows:*

<b><i>Item</i></b>	<b><i>Stage 1</i></b>	<b><i>Stage 2</i></b>	<b><i>Stage 3</i></b>
	<b><i>\$</i></b>	<b><i>\$</i></b>	<b><i>\$</i></b>
<i>Base rate</i>	<i>606.26</i>	<i>648.06</i>	<i>698.16</i>
<i>Industry allowance</i>	<i>28.98</i>	<i>28.98</i>	<i>28.98</i>
<i>Special allowance</i>	<i>7.70</i>	<i>7.70</i>	<i>7.70</i>
<i>Total weekly rate</i>	<i>642.94</i>	<i>684.74</i>	<i>734.84</i>

(ii) *Progression through the wage levels will be in accordance with the following table:*

<b><i>Stage of traineeship</i></b>	<b><i>Minimum training requirements on entry</i></b>
<i>Stage 1</i>	<i>On commencement and prior to the attainment of the minimum training requirements specified for Stage 2</i>

*Stage 2*

- *On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or*
  - *12 months after commencing the traineeship,*
- whichever is the earlier.*

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*Stage 3*

- *On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or*
  - *12 months after commencing Stage 2,*
- whichever is the earlier.*

”

184. In regard to the issue of progression through the stages we understand that there is agreement from the employer organisations to the time served progression, i.e. at 12 monthly intervals. This aspect of the variation would remove the current uncertainty or ambiguity as to how to apply the wages rates for each stage. In regard to the issue of competency based wage progression we understand that this part of the proposed variation is not supported by the employer organisations.

185. Prior to Award Modernisation the pre-reform *National Building and Construction Industry Award 2000* contained the following provision:

*“39.2 Civil operations traineeships*

*39.2.1 Definitions*

*39.2.1(a) A traineeship is a system of structured on-the-job training with an employer and off-the-job training with an approved training provider accessed through a contract of training. A traineeship provides three stages of training resulting in the trainee achieving a qualification at CW3 level (equivalent to AQF level 3).*

*Progression through each stage will be dependent on the trainee passing the required competency based assessment.”<sup>121</sup>*

This part of the clause had remained unchanged since the civil operations traineeship was first inserted into the *National Building and Construction Industry Award 1990* by consent on 18<sup>th</sup> October 1995.<sup>122</sup> At that time there were specific competencies attached to each stage so that a trainee did not progress to the next wage level until all of the specified competencies had been achieved. The competency based wage progression that applied at that time was therefore well understood.

186. Over time the lock step approach to training for trainees (and apprentices) was abandoned in favour of an approach which now allows for an individual training plan to be agreed upon between an employer, employee and RTO. Under this arrangement it is now up to these parties to agree on what order the training required for the qualification will follow and when the assessments are to occur. The qualification itself sets out the number of competencies required and identifies which are core (mandatory) competencies and which are electives.<sup>123</sup>

187. The CFMEU C&G’s proposal is intended to re-insert competency based wage progression as provided for in the originating award clause, but modified to take into account the new training arrangements and in line with the model that has now been adopted for apprenticeships. The proposed clause also makes it clear that 38.2 only applies to certificate III level qualifications. As most Certificate III level civil construction traineeships are normally intended to have a nominal duration of 3 years<sup>124</sup> we have used the 3 year apprenticeship competency based wage progression model from clause 19.7(b)(i)(C) of the existing *Building and Construction General On-site Award 2010*.

188. The Commission in its 2013 decision on *Apprentices, Trainees and Juniors* identified the benefits of competency based wage progression (CBWP), stating,

*“[270] The national training system has provided for apprentices and other vocational training students to progress through courses on the basis of the acquisition of competency for several decades. Where this results in an apprentice acquiring competencies more quickly the employer has the ability to apply those additional competencies in the workplace and may gain some productivity benefits.*

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<sup>121</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap790741/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap790741/asframe.html)

<sup>122</sup> Print M5693

<sup>123</sup> See for example the Certificate III in Civil Construction Plant Operations at

[http://training.gov.au/TrainingComponentFiles/RII/RII30815\\_R1.pdf](http://training.gov.au/TrainingComponentFiles/RII/RII30815_R1.pdf)

<sup>124</sup> [https://www.training.nsw.gov.au/cib\\_vto/cibs/cib\\_648.html#vto5](https://www.training.nsw.gov.au/cib_vto/cibs/cib_648.html#vto5)

*However, this competency based training progression must be distinguished from CBWP. CBWP means that upon the acquisition of the competencies associated with a particular year or stage of the apprenticeship, the apprentice is entitled to be paid the minimum wage rate associated with the next year or stage. CBWP should also be distinguished from competency based completion. The system for regulation of apprenticeships has traditionally allowed for earlier completion and in some cases for later completion. The ability to complete an apprenticeship early where all the necessary competencies have been achieved is now more widespread and a number of awards provide for it.*

*[271] A number of reports provided to the Commission refer to the benefits of CBWP for apprentices including:*

- Providing incentive for apprentices to apply themselves to their training and to persevere with that training.*
- Recognition and reward for effort.*
- The capacity to respond more effectively to the skill needs of the economy through the production of qualified tradespersons more quickly.*
- The encouragement of higher quality training and training which is more attuned to the emerging needs of industry by better integration of on and off-the-job learning and stronger partnerships between employers of apprentices and Registered Training Organisations (RTOs). This arises because the achievement of competency involves the combination of both on and off-the-job learning, and because competency based progression requires better integration of the process of competency sign off between apprentices, employers and RTOs.*
- Increased labour market opportunities as local skills formation is facilitated rather than relying on importation of temporary skilled labour.*
- Improved opportunities for more mature existing workers in an industry to have their skills recognised and to complete apprenticeships within a reduced time frame.*

- *More flexible and responsive RTOs. CBWP will create market pressure from apprentices and in some cases employers for RTOs to provide more flexible approaches to training delivery so as to enable recognition of existing skills and differential rates of progression adapting to the needs of individual learners and businesses. This will enhance productivity.*

*[272] No party argued against the value of CBWP provided it was properly implemented.”<sup>125</sup>*

189. The same Full Bench in deciding to vary the awards went on to state that:

*“[293] Overall the evidence supports a conclusion that CBWP award provisions have achieved the objective of facilitating CBWP in those awards where they have been in existence for some time. The corresponding reforms to the training system and to industry culture are occurring progressively but are not yet complete.*

*[294] We consider that if awards are varied to facilitate CBWP then some employers and RTOs will utilise the opportunity. There is nothing raised by the employer organisations that satisfies us that it would be harmful to introduce such facilitative provisions into awards.*

*[295] We are satisfied that it is consistent with the modern awards objective for the Commission to facilitate the introduction of CBWP for apprentices in awards where it is not already provided for. We agree with the submission of the Commonwealth that the adoption of CBWP in awards supports the modern awards objective of promoting flexible modern work practices and the efficient performance of work (s.134(1)(d) of the Act). We are also satisfied that such a provision will promote productivity in that it will facilitate a more skilled workforce (s.134(1)(f)).”*

190. We therefore submit that as the Commission has already recognised the benefits of competency based wage progression, and that including such arrangements in an award is consistent with the modern awards objectives, the award should be varied in accordance with our draft determination.

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<sup>125</sup> [2013] FWCFB 5411

### Clause 33 – Hours of work

191. The CFMEU C&G proposes that clause 33.1 be varied to insert a new provision so that the daily ordinary hours of work of casual employees are specified, to ensure consistency with daily hire and weekly hire employees and to remove any ambiguity that may currently exist.

192. In correspondence to the Commission in March 2015<sup>126</sup> the Fair Work Ombudsman (FWO) identified a number of clauses in award from the “*queries commonly raised with the FWO and issues which may be a source of uncertainty for workplace participants to understand and implement award entitlements*”. One of the issues raised for the *Building and Construction General On-site Award 2010* was the following:

*“The FWO has received enquiries about how to determine the ordinary hours of work for a casual employee under this award (as this is relevant to determining when overtime rates are payable).*

*Under clause 14.6, a casual employee required to work overtime will be entitled to the overtime rates at clause 36 plus an additional 25%. Under clause 36.2, overtime rates of pay apply for "all time worked beyond an employee's ordinary time of work".*

*As ordinary hours are defined at clause 33.1, in accordance with a procedure which includes rostered days off and a 20 day work cycle, it may be unclear:*

- *whether, or how, this procedure should be applied to a casual employee; and*
- *if this procedure should not be applied to a casual employee, how to otherwise determine a casual employee's ordinary hours of work in order to establish when overtime rates apply.”*

193. The issue was discussed amongst the parties during the consultations that took place before SDP Watson that resulted in his Honours report of 5<sup>th</sup> August 2016.<sup>127</sup> In the attachment to the report item 16 identified that the matter was unresolved stating that:

***“Arbitration required***

*Disagreement as to whether roster cycle applies to casuals–*

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<sup>126</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014217andors-corr-fwo-020315.pdf>

<sup>127</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014260andors-fbreport-050816.pdf>



*CFMEU will seek to vary to make application to casuals clear as per circulated draft.”*

194. The circulated draft that the report referred to was the following clause proposed by the CFMEU C&G:

*“Insert a new clause 33.1(f) as follows:*

*33.1(f) Hours of work – casual employees*

- (i) The maximum ordinary hours of work of a casual employee shall be eight hours per day and 38 hours per week worked between 7am and 6pm Monday to Friday. All hours worked in excess of ordinary hours (per day and/or per week) and on weekends and public holidays will be paid at the appropriate penalty rates.*
- (ii) If a casual employee works under an RDO system of hours of work, 0.4 of an hour of the ordinary hours worked each day, Monday to Friday, shall accrue towards a paid rostered day off.*
- (iii) All other provisions of clause 33 shall apply.”<sup>128</sup>*

The intent of the proposed clause is to make it clear that the ordinary hours of work each day and/or week for casual employees are the same as for daily hire and weekly hire employees, i.e. a maximum of 8 ordinary hours per day and 38 hours per week worked between 7am to 6pm Monday to Friday.

195. Clause 33 currently provides as follows:

*“33. Ordinary hours of work*

*33.1 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*

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<sup>128</sup> In our submission at <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014260andors-sub-cfmeu-010716.pdf> the clause we propose uses the numbering from the Exposure Draft

*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.*

*(b) Hours of work—part-time employees*

*(i) Notwithstanding the provisions of this clause and clause 34—Shiftwork, an employee working on a part-time basis may be paid for*

*actual hours worked and in such instances the employee will not be entitled to accrue time towards a rostered day off, and further provided that such employee will not work on the rostered day off.*

*(ii) An employer and employee may agree that the part-time employee accrues time towards a rostered day off as provided by this clause and clause 34—Shiftwork. In such instances, the part-time employee will accrue pro rata entitlements to rostered days off in accordance with clause 33.1(a)(v).*

*(c) Washing time*

*The employer will provide sufficient facilities for washing and five minutes will be allowed before lunch and before finishing time to enable employees to wash and put away gear.*

*(d) Work in compressed air*

*The working hours and conditions of employees working in compressed air will be those as from time to time prescribed in the code of the Standards Association of Australia for work in compressed air, Part 1 Airlock Operations.*

*(e) Hours—underground work*

*(i) Underground means in any trench, shaft, drive or tunnel more than 6.1 metres (20 feet) below the surface of the ground or any drive or tunnel over 4.6 metres (15 feet) in length or where the drive or tunnel is timbered irrespective of the depth, or any live sewer more than 2.4 metres (8 feet) below the surface of the ground. Nothing in this clause will entitle a person working in a trench by pot and shot method or otherwise at a depth less than 6.1 metres (20 feet) below the surface of the ground to be paid as a miner.*

*(ii) The hours of work of employees working underground and all dependent work above the ground will begin at the whistle and end at the surface. The hours of work for underground work will be 38 per week worked in accordance with the provisions of clauses 33.1(a)(i) and 33.1(a)(ii). Each day's work will include half an hour crib break*

*and if two shifts are worked they will be worked between the hours of 6.00 am and midnight.*

*(iii) A week's work will be 30 hours per week, exclusive of crib time, except in the following cases:*

- *miners driving tunnels with a superficial area not exceeding 12.2 metres (40 feet);*
- *miners sinking shafts over 15.2 metres (50 feet) in depth; and*
- *persons packing and/or scabbling in dead ends and/or boddler working.”*

196. Our initial position was that the proposed clause was unnecessary given that the current award covers casual employees<sup>129</sup>, there is no exclusion for casuals in the current hours of work clause (clause 33), and clauses 33.1(a)(i) and 33.1(a)(iv) make it clear that the maximum ordinary hours per day are eight hours, however given the correspondence from the FWO and the perceived ambiguity or uncertainty we submit that the proposed clause is now necessary.

## **The Financial Impact on Employers**

197. Before addressing the legislative provisions relevant to the Review we wish to address the possible financial impact on employers if the variations that we seek are approved by the Commission.

198. In regard to the proposed variations for clause 4- Coverage, clause 19 – Minimum wages, clause 20 – Expense related allowances, clause 22 – Special rates, and clause 33 – Hours of work there would be no cost increases for employers, as:

- the variation to clause 4 –Coverage, will have no financial impact as it is directed to re-affirming the coverage of the award as intended by the AIRC Full Bench in the award modernisation proceedings;
- the variation to clause 19 - Minimum wages, does not impose any additional costs on employers as it merely identifies those allowances that are already payable and that should be included in the hourly rate calculations;
- the variation to clause 20 – Expense related allowances, would have no financial impact for the majority of employers as they already provide the

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<sup>129</sup> [https://www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000020/default.htm](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000020/default.htm)

required communication equipment. There may be a minor cost increase for those employers not doing the right thing and who expect employees to pay for their own communication equipment (whilst the employer gets the benefit);

- the variation to clause 22 – Special rates, will have no cost impact as it is merely a facilitative arrangement to allow an employer to pay a consolidated allowance rather than a range of individual allowances; and
- the variation to clause 33 –Hours of work, will have no cost implication as it merely clarifies the existing award provision in respect of casuals and removes the possibility for any uncertainty.

199. The variation to clause 28 – National training wage, would possibly have some cost impact for employers where a trainee progresses through the stages more quickly than the default 12 monthly time periods because of the achievement of the required number of competencies. This would be offset however by having a more productive worker with increased skills in a lesser period of time.

200. As for our living away from home claim we accept that this would lead to an increase in costs for some employers. The size of this cost increase is difficult to assess and would be different for individual employers depending on the extent to which their workforce is required to work away from home, and the length of the total period away. For those employers who already provide accommodation and meals and whose employees spend less than 2 months on distant work there would be no increase. Similarly for those employers who currently pay the award living away from home daily or weekly allowance and top this up to meet the actual costs incurred by employees, there would be no increase.

201. For employers who only pay the award rate of living away from home allowances or the camping allowance there would be an increase, but we submit that the increase is justified as the award amounts are too low and are nowhere near the current levels of expenses incurred in 2016, as demonstrated by our evidence.

202. For employers who engage workers on a FIFO arrangement and who require employees to work away from home for more than 2 months, the improved R and R provisions that we propose would increase costs. But these increased costs have to be assessed against the existing unfairness to employees and their families of the current award provisions and industry practices. We submit that addressing this unfairness far outweighs the impact of additional costs incurred by employers.

## The legislative Provisions

### The Modern Awards Objective

203. Subsection 134(1) of the FW Act requires the Commission to take into account a number of matters as part of ensuring that a modern award provides a fair and relevant minimum safety net of terms and conditions. The concept of a “*fair and relevant safety net of terms and conditions*” does not mean the lowest common denominator amongst all awards or even a group of awards. As a matter of statutory construction, applying the natural meaning of the term “fair and relevant” to a consideration of an appropriate award safety net will necessarily include consideration of existing legal entitlements applicable to an employee or class of employees, or else the word “relevant” appearing in s.134 would have no work to do. This interpretation is consistent with the Preliminary Jurisdictional Issues decision<sup>130</sup>, where the Full Bench stated,

“*Summary*

*[60] On the basis of the foregoing we would make the following general observations about the Review:*

.....

*There may be no one set of provisions in a particular modern award which can be said to provide a fair and relevant minimum safety net of terms and conditions. There may be a number of permutations of a particular modern award, each of which may be said to achieve the modern awards objective.*

*The characteristics of the employees and employers covered by modern awards varies between modern awards. To some extent the determination of a fair and relevant minimum safety net will be influenced by these contextual considerations. It follows that the application of the modern awards objective may result in different outcomes between different awards.”*

204. It is also clear from the Preliminary Jurisdictional Issues decision that:

- the modern awards objective is very broadly expressed;
- each of the matters set out in paragraphs 134(1)(a) to (h) must be treated as a matter of significance in the decision making process;

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<sup>130</sup> [2014] FWCFB 1788

- 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;
- there is a degree of tension between some of the s.134(1) considerations; and
- the Commission’s task is to balance the various s.134(1) considerations and ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions.<sup>131</sup>

205. S.134(1)(a) of the FW Act refers to the “*relevant living standards and the needs of the low paid*”. Guidance as to what needs to be considered here can be found in the Annual Wage Review 201-14 decision<sup>132</sup> which stated that,

*“Relative living standards requires a comparison of the living standards of award-reliant workers with those of other groups that are deemed to be relevant. The needs of the low paid requires an examination of the extent to which low-paid workers are able to purchase the essentials for a “decent standard of living” and to engage in community life. The assessment of what constitutes a decent standard of living and the requirements to engage in community life are in turn influenced by contemporary community norms.”*

206. The changes that we propose in our living away from home claim are clearly consistent with this approach to the relevant living standards and the needs of the low paid. Increasing the allowances will ensure that workers will be able to purchase accommodation and meals of a decent standard and that meet the expectations of contemporary community norms. Accommodation of not less than 3 star standard would we submit be the minimum standard acceptable for accommodation provided by an employer when an employee is required to live away from home for work purposes. The changes we propose for R and R would go some way to ensure that FIFO and other workers who work away from home for long periods can engage not only in in community life, but of equal if not greater importance a regular family life.

207. As for our other claims for the *Building and Construction General On-site Award 2010*, we submit that they are neutral on this consideration, although the new communication equipment allowance that we propose would obviously assist the low paid and ensure that they are not lumbered with what should clearly be an employer expense.

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<sup>131</sup> Ibid., at [31] to [32]

<sup>132</sup> [2014] FWCFB 3500



208. S.134(1)(b) of the FW Act refers to “*the need to encourage collective bargaining*”. We submit that the changes we propose as outlined in this submission will be neutral on this issue. The changes we propose will not reduce collective bargaining although they may affect what employees and employers bargain over (e.g. whether accommodation and meals are provided, accommodation and allowances for meals are provided, or only an allowance for accommodation and meals is provided).
209. S.134(1)(c) of the FW Act refers to “*the need to promote social inclusion through increased workforce participation*”. The Minimum Wages Panel considered the statutory framework relevant to “social inclusion” in both the 2012-13 and 2013-14 Annual Wage Reviews<sup>133</sup> (albeit in the context of s.284(1)) and referred to one of the objects of the FW Act being to promote inclusion for all Australians by ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions. We submit that the changes to the living away from home provisions that we propose can only promote social inclusion and increased workforce participation in the building and construction industry. Ensuring that employees receive proper compensation, decent R and R, and single accommodation for the life of a project will be beneficial to workers especially those with family responsibilities. The changes will make working in the building and construction industry, and working away from home, more attractive to those in our society that are currently under-represented in the construction workforce, for example women workers. In regard to our other claims we submit that they are neutral on this consideration.
210. S.134(1)(d) of the FW Act refers to “*the need to promote flexible modern work practices and the efficient and productive performance of work*”. The living away from home claim will bring the award into line with modern work practices particularly in regard to more regular and longer R and R, and better and more appropriate accommodation. Our claim if granted will also improve fatigue management<sup>134</sup> through shorter roster cycles and better commuting arrangements, which must have a positive impact on the productive performance of work. The competency based wage progression for civil construction trainees would be positive for this consideration<sup>135</sup> and be an incentive for trainees to increase their skills more rapidly, increasing their productivity. Also the proposed communications equipment allowance has the potential to improve the introduction of new technology which would also increase productivity.<sup>136</sup> In regard to our other claims we submit that they are generally neutral on this consideration.

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<sup>133</sup> [2014] FWCFB 3500 at [403] to [405]

<sup>134</sup> See paragraphs 77, 135, 142 and 145

<sup>135</sup> See paragraph 189

<sup>136</sup> See paragraph 179

211. S.134(1)(da) of the FW Act refers to the “need to provide additional remuneration” for working overtime, etc. The only variation that we propose that is relevant to this consideration is our proposed clause 33.1(f) which is intended to clarify the ordinary hours of work for casuals. The variation we propose is consistent with this consideration as it will ensure that casuals are paid overtime rates after working 8 ordinary hours per day Monday to Friday, and be paid penalty rates for working on weekends and public holidays.
212. S.134(1)(e) of the FW Act refers to “*the principle of equal remuneration for work of equal or comparable value*”. The variations that we propose are neutral on this principle.
213. S.134(1)(f) of the FW Act refers to “*the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden*”. In paragraphs 197 to 202 above, we have addressed the extent to which our claims would have a financial impact on employers, and in paragraph 210 we have identified how our claims will have a positive impact on productivity. We would add that our living away from home claim would potentially reduce the accident and injury rates<sup>137</sup> as it would reduce fatigue and increase the mental well-being of FIFO workers which can only have a positive effect on productivity.
214. S.134(1)(g) of the FW Act refers to “*the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards*”. The variations to the awards that we propose are consistent with this consideration. The living away from home claim will assist employers and employees to understand the entitlements and provide a clause that is sustainable and reflects modern arrangements. The variations to the hours of work clause, special rates clause, civil operations trainees clause and minimum wages clause will also assist in understanding the award entitlements. The variation to the coverage clause will also improve the interpretation and understanding as to what work is covered by the award and ensure that the intent of the AIRC Full Bench, as to how the overlap of modern awards should be dealt with, is followed. This will also ensure a stable award system.
215. S.134(1)(h) of the FW Act refers to “*the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy*”. We submit that the variations we propose would be neutral in their impact on the expressed features of the national economy.

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<sup>137</sup> See paragraph 140

216. On the above analysis the variations that we propose are consistent overall with the modern awards objective and would ensure that the requirement for the modern awards to provide a fair and relevant minimum safety net of terms and conditions is met.

#### Sections 136 and 138 of the FW Act

217. For completeness we make the following brief submissions on these parts of the FW Act.

218. In regard to s.136, which is concerned with terms that may or must be included in modern awards, we submit that as our proposed variations deal with provisions already included in the modern awards they do not offend this section of the FW Act.

219. In regard to s.138 – Achieving the modern awards objective, a Full Bench in dealing with the *Pastoral Industry Award 2010*, said the following:

*“To comply with s.138 the terms included in the modern awards must be ‘necessary to achieve the modern awards objective’. What is ‘necessary’ in a particular case is a value judgement taking into account the s.134 considerations, to the extent that they are relevant having regard to the submissions and evidence directed at those considerations.”*<sup>138</sup>

220. We submit that the variations we propose are necessary to achieve the modern awards objective. We rely on paragraphs 203 to 216 above which demonstrate that the variations we propose are necessary to achieve the modern award objective, and rely on the evidence and merit arguments contained in this submission.

#### **Conclusion**

221. There is substantial merit to the CFMEU C&G’s proposed variations to the Construction awards (i.e. the *Building and Construction General On-site Award 2010*, *Joinery and Building Trades Award 2010* and *Mobile Crane Hiring Award 2010*). We have provided probative evidence and advanced cogent reasons in support of the variations, and addressed the legislative provisions relevant to the Review. Without the variations, particularly those included in our living away from home claim, the awards will not meet the modern awards objective. We therefore submit that the Commission should vary the three awards in accordance with the draft determinations set out in Appendix 1 of this submission.

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<sup>138</sup> [2016] FWCFB 4393 at [64]

## **Appendices**

Appendix 1 – Draft Determinations

Appendix 2 – Major Changes to Distant Work Provisions in Building and Construction Industry Awards

Appendix 3 – Calculation of Average Accommodation and Meal Expenses Using TD2016/13

Appendix 4 – Cost of 3 Star Accommodation Available on 1<sup>st</sup> December 2016 for 1 Night

Appendix 5 – Median Rental for Private Rentals – Selected Locations

Appendix 6 – Witness Statement of Frank O’Grady

Appendix 7 – Witness Statement of Dave Kelly

Appendix 8 – Witness Statement of Graham Pallot

Appendix 9 – Witness Statement of Paul Ferreira

Appendix 10 – Witness Statement of Dean Reilly

Appendix 11 – Witness Statement of Kris Woodward

Appendix 12 – Witness Statement of Danny Callaghan

Appendix 13 – Witness Statement of Michael Buchan

Appendix 14 – Witness Statement of Josh Burling

Appendix 15 – Witness Statement of Roland Cummins

Appendix 16 – Witness Statement of Dave Kirner

## **Appendix 1 – Draft Determinations**

MA000020 PR

### **DRAFT DETERMINATION**

*Fair Work Act 2009*

s.156 – 4 yearly review of modern awards

#### **4 yearly review of modern awards – Construction Awards**

(AM2016/23)

#### **Application by the CFMEU to vary an award**

(AM2014/260)

#### **BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010**

[\[MA000020\]](#)

Building, metal and civil construction industries

VICE PRESIDENT HATCHER

DEPUTY PRESIDENT HAMILTON

DEPUTY PRESIDENT GOSTENCNIK

COMMISSIONER GREGORY

COMMISSIONER HARPER-GREENWELL

SYDNEY, XX APRIL 2017

*4 yearly review of modern awards – construction awards*

A. Further to the decision issued by the Fair Work Commission on XX April 2017 ([2017] FWCFB XXXX), the above award is varied as follows:

1. By replacing clause 4.2 with the following:

“4.2 Without limiting the generality of the exclusion in clause 4.1 and except for employers of employees engaged on-site performing work in the classifications contained in this award, this award does not cover employers covered by:

- (a) the Manufacturing and Associated Industries and Occupations Award 2010;
- (b) the Joinery and Building Trades Award 2010;
- (c) the Electrical, Electronic and Communications Contracting Award 2010;
- (d) the Plumbing and Fire Sprinklers Award 2010;
- (e) the Black Coal Mining Industry Award 2010;
- (f) the Mining Industry Award 2010; or
- (g) the Quarrying Award 2010; or
- (h) the Pre-Mixed Concrete Award 2010.”

2. By replacing clauses 19.3(a) and (b) with the following:

“19.3 Hourly rate calculation

- (a) Daily hire employees—follow the job loading
  - (i) The calculation of the hourly rate will take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.
  - (ii) For this purpose the hourly rate, calculated to the nearest cent (less than half a cent to be disregarded), will be calculated by multiplying the sum of the appropriate amounts prescribed in:
    - clause 19.1—Minimum wages;
    - clause 21.2—Industry allowance;

and where applicable,

- clause 20.1—Tool and employee protection allowance;

- clause 21.3—Underground allowance;

by 52 over 50.4 (52/50.4) rounded to the nearest cent, adding to that subtotal the amount prescribed in clause 21.1—Special allowance, and dividing the total by 38.

(iii) Provided that in the case of a carpenter-diver, the divisor will be 31.

(iv) Where appropriate the following allowances will be added to the hourly rate after the calculation in (ii) above:

- For refractory bricklayers and their assistants the allowance contained in clause 21.8—Refractory bricklaying allowance;
- For air conditioning workers  $1/38^{\text{th}}$  of the allowance contained in clause 21.11—Air-conditioning industry and refrigeration industry allowances;
- For electrical workers  $1/38^{\text{th}}$  of the allowance contained in clause 21.12—Electrician’s licence allowance.

(b) Weekly hire employees

The hourly rate will be calculated by adding the amounts prescribed in:

- clause 19.1—Minimum wages;
- clause 21.1—Special allowance;
- clause 21.2—Industry allowance;

and, where applicable:

- clauses 20.1—Tool and employee protection allowance;
- clause 21.3—Underground allowance;
- clause 21.11—Air-conditioning industry and refrigeration industry allowances;
- clause 21.12—Electrician’s licence allowance; and
- clause 21.13—In charge of plant allowance;

and dividing the total by 38.

Provided that:

- in the case of a carpenter-diver, the divisor will be 31; and
- for refractory bricklayers and their assistants the allowance contained in clause 21.8—Refractory bricklaying allowance will be added to the hourly rate.”

3. By inserting the following new clause 20.5 – Communications Equipment Allowance:

**“20.5 – Communications Equipment Allowance**

Where an employee is required to use two- way radios, walkie talkies, mobile phones, tablets, or other communication devices, during the hours of work, such equipment will be provided by the employer (including payment for any service or other charges incurred). Where such equipment is provided by the employee and required to be used during working hours, then the employee must be reimbursed the cost of providing the equipment and any service or other charges incurred.”

4. By inserting the following new clause 22.1(f):

“(f) Subject to the following conditions an employer and an employee may agree to the employee being paid a consolidated special rates allowance of 7.9% of the weekly standard rate:

(i) The consolidated special rates allowance is in compensation of all special rates except the following:

- Hot work
- Cold work
- Confined space
- Swing scaffold
- Asbestos
- Asbestos eradication
- Suspended perimeter work platform
- Towers allowance
- Compressed air work



- (ii) The consolidated special rates allowance will be paid as a flat allowance for each hour worked (including time worked for the accrual of RDO's).
- (iii) The agreement for the payment of the consolidated special rates allowance shall be recorded in the time and wages records.
- (iv) This consolidated special rates allowance will not apply where an employee is receiving the air-conditioning industry and refrigeration industry allowances contained in clause 21.11.”

5. By replacing clause 24- Living away from home –distant work, with the following:

**24. Living away from home—distant work**

24.1 Qualification

- (a) This clause operates when an employee is employed on construction work at such a distance from the employee's usual place of residence or any separately maintained residence that the employee cannot reasonably return to that place each night, provided that:
  - (i) the employee is not in receipt of relocation benefits; and
  - (ii) the employee has provided the details of their usual place of residence, or any separately maintained address to the employer.
- (b) The employee is not entitled to payment under this clause if the employee has knowingly made a false statement regarding the details required in clause 24.2.

24.2 Employee's address

- (a) On engagement, an employee must provide the employer with their address at the time of application, the address of any separately maintained residence and, if requested, reasonable documentary proof of those details.
- (b) No subsequent change of address will entitle an employee to the provisions of this clause unless the employer agrees. Provided that

the employer will not unreasonably refuse any request by an employee to change their address.

- (c) An employer must not exercise undue influence for the purpose of avoiding the obligations under this clause, in persuading an existing employee to give a false address.

### 24.3 Entitlement

- (a) Where an employee qualifies under clause 24.1 the employer will:
  - (i) pay a living away from home allowance of \$913.88 per complete week. In the case of broken parts of the week the living away from home allowance will be \$130.55 per day. This allowance will be increased if the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed; or
  - (ii) provide the employee with reasonable board and lodging in a well kept establishment with three adequate meals each day; or
  - (iii) provide the employee with accommodation and pay the following allowances for meals each day:
    - Breakfast \$15.00
    - Lunch \$15.00
    - Dinner \$30.00;or
  - (iv) where employees are required to live in camp, provide all board and accommodation free of charge.
- (b) The accommodation provided will be of a reasonable standard having regard to the location in which work is performed, including the provision of:
  - (i) a single room (not shared) which is quiet with air conditioning/heating, suitable ventilation, comfortable and clean bedding, appropriate lighting and furnishings, an

ensuite with a toilet, shower and basin both with running hot and cold water, a television and tea and coffee making facilities;

(ii) reasonable ablution/laundry, recreational and kitchen facilities, as well as reasonable external lighting and fire protection;

(iii) communication facilities including email and internet access, and mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable.

(c) Where the accommodation provided is in a camp type arrangement at a remote location for a specific construction project, an employee shall retain their own specific room for the duration of the time spent living away from home.

#### 24.4 Messing system where employees are required to live in camp at any one site

(a) Where 10 or more employees are engaged, the employer will provide a cook. If there are less than 10 employees, the employer must reimburse employees for food reasonably purchased by them for their own use or must reimburse the reasonable cost of meals consumed in the nearest recognised centre, provided this subclause will not apply where the employee is provided with three meals per day in accordance with clause 24.3(a)(ii).

(b) In camps over 30 people the employer must employ a camp attendant.

**Camp attendant** means an employee engaged for the purpose of maintaining a camp in a clean and hygienic condition.

(c) In all camps the employer must provide labour for the purpose of maintaining the camp in a clean and hygienic condition.

(d) Where an employer has established a camp site and provides facilities for employees living in their own caravan, the employer must provide reasonable space for the caravans.

#### 24.5 Camping allowance

An employee accommodated at a camping site or caravan park where free messing is not provided must receive a camping allowance of \$ 420.00 for every complete week the employee is available for work. In the case of broken weeks, the camping allowance will be \$60.00 per day including any Saturday or Sunday if the employee is in camp and available for work on the working days immediately preceding and succeeding each Saturday and Sunday. If an employee is absent without the employer's approval on any day, the allowance will not be payable for that day and if such unauthorised absence occurs on the working day immediately preceding or succeeding a Saturday or Sunday, the allowance will not be payable for the Saturday and Sunday.

#### 24.6 Camp meal charges

Where a charge is made for meals in a construction camp, the charge will be fixed by agreement between the employer and the majority of affected employees.

#### 24.7 Travelling expenses

An employee who is sent by an employer to a job which qualifies the employee for the provisions of this clause will not be entitled to any of the allowances prescribed by clause 25 – Fares and travel patterns allowance, for the period occupied in travelling from the employee's usual place of residence to the distant job, but instead will be entitled to the following benefits:

##### (a) Forward journey

##### (i) An employee must:

- be provided with appropriate transport from the employee's usual place of residence to the job, or be paid the amount of a fare on the most appropriate method of public transport (including bus, economy air, taxi, and rail with sleeping berths if necessary), and any excess payment due to transporting tools if such is incurred; and
- be paid for the time spent in travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel; and

- be paid the allowances set out in clause 23.3(a)(iii) for any meals incurred while traveling.
- (ii) The employer may deduct the cost of the forward journey fare from an employee who terminates or discontinues employment within two weeks of commencing on the job and who does not immediately return to the employee's place of engagement.
- (b) Return journey
- (i) An employee will, for the return journey, receive the same payments provided for the forward journey (see clause 24.7(a)). In addition, daily hire employees will receive an amount of \$20.81 to cover the cost of transport and transporting tools from the main public transport terminal to the employee's usual place of residence.
- (ii) The return journey payments will not be paid if the employee terminates or discontinues employment within two months of commencing on the job or is dismissed for incompetence within one working week of commencing on the job, or is dismissed for misconduct at any time.
- (c) Travelling time calculations
- For the purpose of this clause, travelling time will be calculated as the time taken for the journey from the main bus or rail terminal nearest the employee's usual place of residence to the locality of the work (or the return journey, as the case may be).
- (d) Daily fares allowance
- An employee engaged on a job who qualifies under the provisions of this clause and who is required to reside elsewhere than on the site (or adjacent to the site and supplied with transport) must be paid the allowance prescribed by clause 25 – Fares and travel patterns allowance.
- (e) Weekend return home

- (i) An employee who notifies the employer, no later than Tuesday of each week, of their intention to return to their usual place of residence at the weekend and who returns to such usual place of residence for the weekend, must be paid an allowance of \$35.28 for each occasion provided that the employee does not miss any ordinary hours of work.
- (ii) An employee who is receiving the living away from home allowance pursuant to clause 24.3(a)(i) or camping allowance pursuant to clause 24.5 is not entitled to payment under clause 24.7(e)(i).
- (iii) When an employee returns to their usual place of residence for a weekend or part of a weekend and is not absent from the job for any of the ordinary working hours, no reduction of the allowance in clause 24.3 will be made.

(f) Rest and recreation

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

- (i) After each continuous 3 week period of work away from home the employee will be entitled to a period of 7 days unpaid rest and recreation leave at the employee's usual place of residence. The 7 day period will be exclusive of any days of travel from the job to the employee's usual place of residence and return to the job. On each occasion that the employee returns to their usual place of residence they will be paid for travel expenses in accordance with clause 24.7(a), (b) and (c) above.
- (ii) After 12 weeks continuous service (inclusive of periods of rest and recreation) the employee will be entitled to 2 days paid rest and recreation leave and an additional paid day of rest and recreational leave for each subsequent 12 weeks of continuous service.

- (iii) Payment for leave and travel expenses will be made at the completion of the first pay period commencing after date of return to the job.
- (iv) The provisions of clause 24.7(f)(i) do not continue to apply where the work the employee is engaged upon will terminate in the ordinary course within a further 28 days after the last period of rest and recreation leave.
- (v) Service will be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause.
- (vi) Variable return home

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

- (vii) No payment instead

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

- (viii) Alternative paid day off procedure

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

- (ix) Termination of employment

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

6. By deleting clause 28.2 and replacing it with the following:

**“28.2 Civil construction traineeships**

- (i) The minimum weekly rate payable to civil construction trainees undertaking a Certificate III level qualification will be as follows:

<b>Item</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Base rate	606.26	648.06	698.16
Industry allowance	28.98	28.98	28.98
Special allowance	7.70	7.70	7.70
<b>Total weekly rate</b>	<b>642.94</b>	<b>684.74</b>	<b>734.84</b>

- (ii) Progression through the wage levels will be in accordance with the following table:

<b>Stage of traineeship</b>	<b>Minimum training requirements on entry</b>
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2
Stage 2	<ul style="list-style-type: none"> <li>• On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or</li> <li>• 12 months after commencing the traineeship,</li> </ul> <p style="text-align: center;">whichever is the earlier.</p>
Stage 3	<ul style="list-style-type: none"> <li>• On attainment of 75% of the total</li> </ul>



competencies specified in the training plan for the relevant AQF Certificate III qualification; or

- 12 months after commencing Stage 2, whichever is the earlier.
- 

7. Insert a new clause 33.1(f) as follows:

“33.1(f) Hours of work – casual employees

- (i) The maximum ordinary hours of work of a casual employee shall be eight hours per day and 38 hours per week worked between 7am and 6pm Monday to Friday. All hours worked in excess of ordinary hours (per day and/or per week) and on weekends and public holidays will be paid at the appropriate penalty rates.
- (ii) If a casual employee works under an RDO system of hours of work, 0.4 of an hour of the ordinary hours worked each day, Monday to Friday, shall accrue towards a paid rostered day off.
- (iii) All other provisions of clause 33 shall apply.”

B. This determination comes into operation from xx April 2017.

VICE 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)

### **Application by the CFMEU to vary an award**

(AM2014/272)

### **JOINERY AND BUILDING TRADES AWARD 2010**

[\[MA000029\]](#)

Building, metal and civil construction industries

VICE PRESIDENT HATCHER

DEPUTY PRESIDENT HAMILTON

DEPUTY PRESIDENT GOSTENCNIK

COMMISSIONER GREGORY

COMMISSIONER HARPER-GREENWELL

SYDNEY, XX APRIL 2017

*4 yearly review of modern awards – Construction Awards*

A. Further to the decision issued by the Fair Work Commission on xx April 2017 ([2017] FWCFB xxxx), the above award is varied as follows:

1. By deleting clause 24.5(a) and inserting in lieu thereof the following:

**24.5 Transfers, travelling and working away from usual place of work**

**(a) Living away from home for a distant job**

**(i) Qualification**

This clause operates when an employee is employed on work at such a distance from the employee's usual place of residence or any separately maintained residence that the employee cannot reasonably return to that place each night, provided that:

- the employee is not in receipt of relocation benefits;  
and
- the employee has provided the details of their usual place of residence, or any separately maintained address to the employer.

(ii) The employee is not entitled to payment under this clause if the employee has knowingly made a false statement regarding the details required in clause 24.5(a)(iii).

(iii) Employee's address

(1) On engagement, an employee must provide the employer with their address at the time of application, the address of any separately maintained residence and, if requested, reasonable documentary proof of those details.

(2) No subsequent change of address will entitle an employee to the provisions of this clause unless the employer agrees. Provided that the employer will not unreasonably refuse any request by an employee to change their address.

(3) An employer must not exercise undue influence for the purpose of avoiding the obligations under this clause, in persuading an existing employee to give a false address.

(iv) Entitlement

(1) Where an employee qualifies under clause 24.5(a)(i) the employer will:

(A) pay a living away from home allowance of \$913.88 per complete week. In the case of broken parts of the week the living away from home allowance will be \$130.55 per day. This allowance will be increased if the employee satisfies the employer that the

employee reasonably incurred a greater outlay than that prescribed; or

- (B) provide the employee with reasonable board and lodging in a well kept establishment with three adequate meals each day; or
- (C) provide the employee with accommodation and pay the following allowances for meals each day:

- Breakfast      \$15.00
- Lunch            \$15.00
- Dinner           \$30.00

- (2) The accommodation provided will be of a reasonable standard having regard to the location in which work is performed, including the provision of:

- (A) a single room (not shared) which is quiet with air conditioning/heating, suitable ventilation, comfortable and clean bedding, appropriate lighting and furnishings, an ensuite with a toilet, shower and basin both with running hot and cold water, a television and tea and coffee making facilities;
- (B) reasonable ablution/laundry, recreational and kitchen facilities, as well as reasonable external lighting and fire protection;
- (C) communication facilities including email and internet access, and mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable.

(v) Travelling expenses

- (1) Forward journey

- (A) An employee must:

- be provided with appropriate transport from the employee's usual place of residence to the job, or be paid the amount of a fare on the most appropriate method of public transport (including bus, economy air, taxi, and rail with sleeping berths if necessary), and any excess payment due to transporting tools if such is incurred; and
- be paid for the time spent in travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel; and
- be paid the allowances set out in clause 24.5(a)(iv)(1)(C) for any meals incurred while traveling.

(B) The employer may deduct the cost of the forward journey fare from an employee who terminates or discontinues employment within two weeks of commencing on the job and who does not immediately return to the employee's place of engagement.

(2) Return journey

(A) An employee will, for the return journey, receive the same payments provided for the forward journey (see clause 24.5(a)(v)(1)). In addition employees will receive an amount of \$20.81 to cover the cost of transport and transporting tools from the main public transport terminal to the employee's usual place of residence.

(B) The return journey payments will not be paid if the employee terminates or discontinues employment within one month of commencing on the job or is dismissed for incompetence within one working

week of commencing on the job, or is dismissed for misconduct at any time.

(3) Travelling time calculations

For the purpose of this clause, travelling time will be calculated as the time taken for the journey from the main bus or rail terminal nearest the employee's usual place of residence to the locality of the work (or the return journey, as the case may be).

(4) Weekend return home

(A) An employee who notifies the employer, no later than Tuesday of each week, of their intention to return to their usual place of residence at the weekend and who returns to such usual place of residence for the weekend, must be paid an allowance of \$35.28 for each occasion provided that the employee does not miss any ordinary hours of work.

(B) An employee who is receiving the living away from home allowance pursuant to clause 24.5(a)(iv)(1) is not entitled to payment under clause 24.5(a)(v)(4)(A).

(C) When an employee returns to their usual place of residence for a weekend or part of a weekend and is not absent from the job for any of the ordinary working hours, no reduction of the allowance in clause 24.5(a)(iv) will be made.

(5) Rest and recreation

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

- (A) After each continuous 3 week period of work away from home the employee will be entitled to a period of 7 days unpaid rest and recreation leave at the employee's usual place of residence. The 7 day period will be exclusive of any days of travel from the job to the employee's usual place of residence and return to the job. On each occasion that the employee returns to their usual place of residence they will be paid for travel expenses in accordance with clause 24.5(a)(v) (1), (2) and (3) above.
- (B) After 12 weeks continuous service (inclusive of periods of rest and recreation) the employee will be entitled to 2 days paid rest and recreation leave and an addition paid day of rest and recreational leave for each subsequent 12 weeks of continuous service.
- (C) Payment for leave and travel expenses will be made at the completion of the first pay period commencing after date of return to the job.
- (D) The provisions of clause 24.5(a)(v)(5)(A) do not continue to apply where the work the employee is engaged upon will terminate in the ordinary course within a further 28 days after the last period of rest and recreation leave.
- (E) Service will be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause.
- (F) Variable return home  
  
In special circumstances, and by agreement with the employer, the return to the usual place of residence entitlements may be granted earlier or taken later than the prescribed date of accrual without alteration to the employee's accrual entitlement.
- (G) No payment instead

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

(H) Alternative paid day off procedure

If the employer and the employee so agree, any accrued rostered days off (RDO) as prescribed in clause 28 – Ordinary hours of work and rostering, may be taken, and paid for, in conjunction with and additional to rest and recreation leave.

(I) Termination of employment

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

B. This determination comes into operation from xx April 2017.

VICE PRESIDENT



## **DRAFT DETERMINATION**

*Fair Work Act 2009*

s.156 – 4 yearly review of modern awards

### **4 yearly review of modern awards – Construction Awards**

(AM2014/190)

### **Application by the CFMEU to vary an award**

(AM2014/294)

### **MOBILE CRANE HIRING AWARD 2010**

[\[MA000032\]](#)

Building, metal and civil construction industries

VICE PRESIDENT HATCHER

DEPUTY PRESIDENT HAMILTON

DEPUTY PRESIDENT GOSTENCNIK

COMMISSIONER GREGORY

COMMISSIONER HARPER-GREENWELL

SYDNEY, XX APRIL 2017

*4 yearly review of modern awards – construction awards*

A. Further to the decision issued by the Fair Work Commission on XX April 2017 ([2017] FWCFB XXXX), the above award is varied as follows:

1. By deleting clause 14.3(e).
2. By inserting a new clause 14.4 as follows:

#### **14.4 Living away from home—distant work**

(a) Qualification

This clause operates when an employee is employed on work at such a distance from the employee's usual place of residence or any separately maintained residence that the employee cannot reasonably return to that place each night, provided that:

- (i) the employee is not in receipt of relocation benefits; and
- (ii) the employee has provided the details of their usual place of residence, or any separately maintained address to the employer.

(b) The employee is not entitled to payment under this clause if the employee has knowingly made a false statement regarding the details required in clause 24.2.

(c) Employee's address

- (i) On engagement, an employee must provide the employer with their address at the time of application, the address of any separately maintained residence and, if requested, reasonable documentary proof of those details.
- (ii) No subsequent change of address will entitle an employee to the provisions of this clause unless the employer agrees. Provided that the employer will not unreasonably refuse any request by an employee to change their address.
- (iii) An employer must not exercise undue influence for the purpose of avoiding the obligations under this clause, in persuading an existing employee to give a false address.

(d) Entitlement

- (i) Where an employee qualifies under clause 24.1 the employer will:
  - (1) pay a living away from home allowance of \$913.88 per complete week. In the case of broken parts of the week the living away from home allowance will be \$130.55 per day. This allowance will be increased if

the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed; or

(2) provide the employee with first class accommodation including board and lodging in a well kept establishment with three adequate meals each day; or

(3) provide the employee with first class accommodation and pay the following allowances for meals each day:

- Breakfast       \$15.00
- Lunch           \$15.00
- Dinner          \$30.00

;or

(4) where employees are required to live in camp, provide all board and accommodation free of charge.

(5) In addition \$14.77 will be paid for each night the employee is required to be away from home.

(ii) The accommodation provided will be of a reasonable standard having regard to the location in which work is performed, including the provision of:

(1) a single room (not shared) which is quiet with air conditioning/heating, suitable ventilation, comfortable and clean bedding, appropriate lighting and furnishings, an ensuite with a toilet, shower and basin both with running hot and cold water, a television and tea and coffee making facilities;

(2) reasonable ablution/laundry, recreational and kitchen facilities, as well as reasonable external lighting and fire protection;

- (3) communication facilities including email and internet access, and mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable.
  - (iii) Where the accommodation provided is in a camp type arrangement at a remote location for a specific project, an employee shall retain their own specific room for the duration of the time spent living away from home.
- (e) Messing system where employees are required to live in camp at any one site
- (i) Where 10 or more employees are engaged, the employer will provide a cook. If there are less than 10 employees, the employer must reimburse employees for food reasonably purchased by them for their own use or must reimburse the reasonable cost of meals consumed in the nearest recognised centre, provided this subclause will not apply where the employee is provided with three meals per day in accordance with clause 24.3(a)(ii).
  - (ii) In camps over 30 people the employer must employ a camp attendant.  
  
**Camp attendant** means an employee engaged for the purpose of maintaining a camp in a clean and hygienic condition.
  - (iii) In all camps the employer must provide labour for the purpose of maintaining the camp in a clean and hygienic condition.
  - (iv) Where an employer has established a camp site and provides facilities for employees living in their own caravan, the employer must provide reasonable space for the caravans.

#### 24.5 Camping allowance

An employee accommodated in a camping site or caravan park where free messing is not provided must receive a camping allowance of \$420.00 for

every complete week the employee is available for work. In the case of broken weeks, the camping allowance will be \$60.00 per day including any Saturday or Sunday if the employee is in camp and available for work on the working days immediately preceding and succeeding each Saturday and Sunday. If an employee is absent without the employer's approval on any day, the allowance will not be payable for that day and if such unauthorised absence occurs on the working day immediately preceding or succeeding a Saturday or Sunday, the allowance will not be payable for the Saturday and Sunday.

#### 24.6 Camp meal charges

Where a charge is made for meals in a construction camp, the charge will be fixed by agreement between the employer and the majority of affected employees.

#### 24.7 Travelling expenses

An employee who is sent by an employer to a job which qualifies the employee for the provisions of this clause will not be entitled to the allowance prescribed by clause 14.3(c) – Fares and travel allowance, for the period occupied in travelling from the employee's usual place of residence to the distant job, but instead will be entitled to the following benefits:

- (a) Forward journey
  - (i) An employee must:
    - be provided with appropriate transport from the employee's usual place of residence to the job, or be paid the amount of a fare on the most appropriate method of public transport (including bus, economy air, taxi, and rail with sleeping berths if necessary), and any excess payment due to transporting tools if such is incurred; and
    - be paid for the time spent in travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel; and
    - be paid the allowances set out in clause 23.3(a)(iii) for any meals incurred while traveling.

(ii) The employer may deduct the cost of the forward journey fare from an employee who terminates or discontinues employment within two weeks of commencing on the job and who does not immediately return to the employee's place of engagement.

(b) Return journey

(i) An employee will, for the return journey, receive the same payments provided for the forward journey (see clause 24.7(a)).

(ii) The return journey payments will not be paid if the employee terminates or discontinues employment within two months of commencing on the job or is dismissed for incompetence within one working week of commencing on the job, or is dismissed for misconduct at any time.

(c) Travelling time calculations

For the purpose of this clause, travelling time will be calculated as the time taken for the journey from the main bus or rail terminal nearest the employee's usual place of residence to the locality of the work (or the return journey, as the case may be).

(d) Daily fares allowance

An employee engaged on a job who qualifies under the provisions of this clause and who is required to reside elsewhere than on the site (or adjacent to the site and supplied with transport) must be paid the allowance prescribed by clause 14.3(c) – Fares and travel allowance.

(e) Weekend return home

(i) An employee who notifies the employer, no later than Tuesday of each week, of their intention to return to their usual place of residence at the weekend and who returns to such usual place of residence for the weekend, must be paid an allowance of \$35.28 for each occasion provided that the employee does not miss any ordinary hours of work.

- (ii) An employee who is receiving the living away from home allowance pursuant to clause 24.3(a)(i) or camping allowance pursuant to clause 24.5 is not entitled to payment under clause 24.7(e)(i).
- (iii) When an employee returns to their usual place of residence for a weekend or part of a weekend and is not absent from the job for any of the ordinary working hours, no reduction of the allowance in clause 24.3 will be made.

(f) Rest and recreation

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

- (i) After each continuous 3 week period of work away from home the employee will be entitled to a period of 7 days unpaid rest and recreation leave at the employee's usual place of residence. The 7 day period will be exclusive of any days of travel from the job to the employee's usual place of residence and return to the job. On each occasion that the employee returns to their usual place of residence they will be paid for travel expenses in accordance with clause 24.7(a), (b) and (c) above.
- (ii) After 12 weeks continuous service (inclusive of periods of rest and recreation) the employee will be entitled to 2 days paid rest and recreation leave and an additional paid day of rest and recreational leave for each subsequent 12 weeks of continuous service.
- (iii) Payment for leave and travel expenses will be made at the completion of the first pay period commencing after date of return to the job.
- (iv) The provisions of clause 24.7(f)(i) do not continue to apply where the work the employee is engaged upon will terminate

in the ordinary course within a further 28 days after the last period of rest and recreation leave.

(v) Service will be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause.

(vi) Variable return home

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

(vii) No payment instead

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

(viii) Alternative paid day off procedure

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

(ix) Termination of employment

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

B. This determination comes into operation on xx April 2017.

VICE PRESIDENT



**Appendix 2 - Major Changes to Distant Work Provisions in Building and Construction Industry**

**Awards**

Name of Award	CAR/Print No.	Date of Operation	Award Provision/significant change
Archer Award – Builders Labourers Award 1914	<i>Australian Builders’ Labourer’s Federation and Archer and 569 Others (7 CAR 210)</i>	Midnight of 1 <sup>st</sup> January 1914	“2. In country work each such employee shall be entitled to an additional payment of 2 ¼ d. per hour, and to fares necessarily incurred in travelling from and to his centre (not exceeding 8 hours per day) treated as time on duty”
Anthony Award – Carpenters and Joiners Award 1923	<i>The Amalgamated Society of Carpenters and Joiners of Australasia and Thomas William Anthony (trading as T. Anthony and Company) and Others (16 CAR 1136)</i>	1 <sup>st</sup> February 1923	“Distant Jobs 14. Where an employee is sent a distance to work for an employer, which necessitates his being away from home for the night, he shall be paid 6s. per day for the first seven days and 30s. a week thereafter in addition to his regular wages. The employer shall also provide free transport for the employee’s tools.”
<i>Building Trades of Victoria Award (1945)</i>	55 CAR 459	22 <sup>nd</sup> October 1945	“ALLOWANCES IN RESPECT OF DISTANT JOBS  11.(a) When distance and/or travelling facilities reasonably prevent an employee going from and returning each day to his usual place of residence, suitable board and sleeping accommodation including stretcher and mattress for each employee shall be provided. When work is situated away from suitable accommodation, the employer shall supply tents or huts with sleeping accommodation therein, including stretcher and mattress for each employee in addition to

		<p>any allowance provided for in this clause; the allowance to be made shall be –</p> <p>For less than a full week – 10s. per day.</p> <p>For a full working week at the rate of – 42s. per week.</p> <p>(b) In lieu of the payments prescribed in sub-clause (a) of clause 10 of this award an employee to whom sub-clause (a) hereof applies shall be paid travelling time (not exceeding ordinary working hours per day) at ordinary rates of pay, and, where incurred, second class return fare, and 5s. to cover expense of reaching his home railway station and transport of tools if any cost necessary: Provided that the return fare shall not be payable if the employee is dismissed for misconduct or is held incompetent within one week of starting work or leaves within one month of engagement. Travelling time shall be calculated as from Spencer-street and Flinders-street Railway Stations or the home Central Railway Station (if residing in the country) to destination by rail or usual travelling facilities.</p> <p>(c) If an employee elects to return to his home at the week-end after three months of continuous service and thereafter at three-monthly periods he shall be paid a second class return fare (Victorian Railways only) on the pay day which immediately follows the date on which he returns to the job.</p> <p>If the work upon which the employee is engaged will terminate in the ordinary course</p>
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			within a further 28 days after the expiration of three months this sub-clause shall not apply.”
<i>Carpenters and Joiners Award 1946 (the Ackland Award)</i>	56 CAR 238	15 <sup>th</sup> April 1946	<p>Award applied to South Australia, Tasmania and Victoria. Similar clause to that contained in the Building Trades of Victoria Award, with additional locations inserted for the calculation of travelling time. Definition of distant job:</p> <p>“25. (a) For the purposes of this clause a “distant job” is one in respect of which the distance of which or the travelling facilities available to and from which make it reasonably necessary that the employee should live and sleep at some other place than his usual place of residence.”</p>
<i>The Carpenters and Joiners (NSW) Award 1961</i>	98 CAR 77		<p>“For the purpose of this clause distant work is that in respect of which the distance or the travelling facilities to and from such places of work make it reasonably necessary that the employee should live and sleep at some place other than his usual place of residence at the time of commencing such work:</p> <p>Provided that if the employee whilst employees on distant work changes his usual place of residence such new place of residence or any further change thereof (if made whilst employed on distant work) shall be the usual place of residence for determining whether the work is distant work within the meaning of this clause:</p> <p>Provided further that after the expiration of</p>

		<p>four weeks this clause shall not apply to an employee who is appointed to work as a regular employee at a permanent workshop of a Department of the State Government of New South Wales whilst working at such workshop.</p> <p>(ii) An employee engaged on distant work shall be conveyed with tools to and fro at his employer's expense. Such conveyance shall be made once only unless the employee is recalled and sent again to the place of work, when it shall be made each time that this happens:</p> <p>Provided that return fares and travelling time need not be paid to an employee who –</p> <ul style="list-style-type: none"> <li>(a) Leave his employment of his own free will; or</li> <li>(b) Is discharged for misconduct;</li> </ul> <p>Before the completion of the job or before being three months in such employment, whichever first happens, or is discharged for incompetence within one week of engagement.</p> <p>(iii) Time occupied in travelling to and from distant work shall be paid for at ordinary rates: Provided that no employee shall be paid more than an ordinary day's wages for any day spent in travelling unless he is on the same day occupied in working for his employer. He shall also be paid an amount of 10s. to cover the expenses, if any, of reaching his home and of transporting his tools.</p>
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		<p>(iv) On distant work the employer shall provide reasonable board and lodging or pay an allowance of £12 12. Per week of seven days but such allowance shall not be wages. In the case of broken parts of a week occurring at the beginning or end of a period of distant work the allowance shall be all living expenses actually and reasonably incurred but not exceeding £12 12s.</p> <p>This sub clause shall not apply to employees by the Water Conservation and Irrigation Commission, the Department of Public Works, the Department of Main Roads or the Maritime Services Board on work in connection with the construction and/or maintenance of water supply and sewerage works, roads, bridges, water conservation and irrigation works or harbour and reclamation works where the employee is required to camp either by direction of the employer or because no reasonable transport facilities are available to him to proceed to and from his home each day, such an employee shall be paid the camping allowance and as far as practicable, be provided with the same camping facilities as are prescribed by the Labourers, General (State) Award published 13<sup>th</sup> February, 1959, as varied from time to time, or by any award replacing the said award.</p> <p>(v) The provisions of this clause shall apply wherever the employee is engaged.</p> <p>(vi) On all jobs carried out as distant jobs</p>
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		<p>where lost time has occurred, overtime at ordinary rates may by agreement be worked so as to make up the time to equal forty hours per week, and by agreement employees may work at ordinary rates on holidays other than Christmas Day, Good Friday and Sunday.</p> <p>(vii) Where an employee is engaged upon distant jobs, and is required to reside elsewhere than on the site of the job, he shall be paid the fares and travelling time allowance prescribed by clause 16 of this award.</p> <p>(viii) An employee on distant work may, after three months' continuous service and thereafter at three monthly intervals, return to his home at a weekend and shall be paid the fares reasonably incurred in so travelling to his home and to the place of work:</p> <p>Provided, however, that if the work upon which the employee is engaged will be completed within twenty eight days after the expiration of any such period of three months, as hereinbefore mentioned, then the provisions of this sub-clause shall not be applicable.</p> <p>(ix) The employer shall obtain and the applicant shall provide the employer with a statement in writing of his usual place of residence.</p> <p>(x) The employee shall inform his employer in writing of any of any subsequent change in</p>
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			his usual place of residence.”
<i>National Building Trades Construction Award 1975</i>	Print C6006	1 <sup>st</sup> March 1975	<ol style="list-style-type: none"> <li>1. For the purpose of this clause a distant job is workmen in respect of which distance of which or the travelling facilities available to and from which make it reasonably necessary that the employee should live and sleep at some place other than his usual place of residence.</li> <li>2. <ol style="list-style-type: none"> <li>a. an employee on a distant job shall be provided by the employer with suitable board and lodging or be paid an allowance of \$56.00 per week of seven days but such allowance shall not be wages. In the case of broken parts of the week the allowance shall be \$8.00 per day. Provided that the foregoing allowances shall be increased if the employee satisfies the employer that he reasonably incurred a greater outlay than that prescribed.</li> <li>b. Reasonable board and lodging for the purpose of this clause shall mean lodging in a well kept establishment with adequate furnishings, good floor coverings, good lighting and heating in either a single room or a twin room if a single room is not available, with hot and cold running water.</li> <li>c. Where an employee is engaged on the construction of projects which are located in areas where reasonable board and lodging as defined in paragraph (b) of this sub-clause is not available, or where the size of the workforce is in</li> </ol> </li> </ol>

			<p>excess of the available accommodation or where continuous concrete pour requirements of the project or the working of shifts necessitate camp accommodation and where, because of these circumstances, it is necessary to house the employees in a camp, such camp shall be constructed and maintained in accordance with this paragraph. The camp shall provide for accommodation in single rooms, or twin rooms where single rooms are not available, of dimensions not less than 14 cubic metres per man, and shall have a timber, aluminium or similar floor with floor covering provided.</p> <p>Each room shall be furnished with suitable sleeping accommodation including a mattress, pillow and blankets together with a table or suitable substitute therefor a seat and a wardrobe for each person.</p> <p>Each room shall be fitted with a door, and movable window of reasonable dimensions fitted with a gauze screen. Each room shall be ceiled and lined. Good artificial lighting shall be provided in each room.</p> <p>Except where corridor type barracks are provided a verandah shall be constructed in front of each room. Where reasonably required provisions shall be made for the heating of rooms, or cooling by fan.</p>
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			<p>Provision shall be made in the camp for suitable washing facilities including hot and cold showers. Suitable provision shall be made for the washing of clothes. Toilets shall be adequate and sewered where possible, situated within reasonable distance from the living quarters, access to which shall be by properly lighted paths. Provision shall be made for the effluent from the kitchen, laundry and showers to be carried away in closed pipes and dispersed in such a way as to avoid any risk to health. In any such camp messing shall be made available by the employer with provisions for a choice of meals.</p> <p>Where camping or other accommodation is not provided and the employer provides caravan accommodation the parties shall confer as to suitable standards for such accommodation.</p> <p>In the absence of agreement being reached the matter being reached the matter shall be referred to the Commission.</p> <p>d. An employee whether living away from his usual place of resident or not who is residing in such a camp shall receive a camping allowances of \$2.10 per day for each day he remains in camp; provided that he shall not be entitled to this allowance for any working day on which</p>
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			<p>he is absent from duty except when such absence is due to sickness or any reason beyond his own control.</p> <p>Provided further that where a charge is made for meals in such a camp, such charge shall be fixed by agreement between the parties; provided further that where free messing is provided, camping allowance shall not be payable.</p> <p>3. An employee who is sent by his employer or selected or engaged by an employer or agent to go to a distant job shall not entitles to any of the allowances prescribed by clause 15, Fares, of this award for the period occupied in travelling from his home to the distant job, but in lieu thereof shall be paid at ordinary rates of payment (not exceeding ordinary working hours for and on each day of travelling) in travelling thereto he shall also be paid the amount of a second class return fare and any excess payment due to transporting his tools if such is incurred, (Providing that sleeping berths shall be provided if necessary notwithstanding that this may require a first class fare).</p> <p>He shall also be paid at ordinary rates of payment for the time actually incurred (not exceeding ordinary working hours for and on each day of travelling) in travelling back upon the completion of his job to the place of his residence; he shall also be paid an amount of \$3.50 to</p>
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			<p>cover the expenses (if any incurred) of reaching his home railway station and of transporting his tools.</p> <p>Provided nevertheless:</p> <ol style="list-style-type: none"> <li>a. That neither the amount of the return fare nor payment for return travelling time nor the amount of \$3.50 aforesaid shall be payable if the employee is dismissed for misconduct or is dismissed for incompetency within one working week of his commencing work on the job, or if the employee terminates or discontinues his work on the job within two months of his commencing it;</li> <li>b. That travelling time shall, for the purposes of this clause, be calculated as the time taken by rail or usual travelling facilities –</li> </ol> <p>In New South Wales – Between Central Railway Station, or the railway station nearest to the employee’s place of residence outside the Sydney Metropolitan area, and the locality of the work.</p> <p>In Queensland – Between Central or South Brisbane Railway Station, or the railway station nearest the employee’s place of residence if he resides outside the Brisbane Metropolitan area, and the locality of the work.</p> <p>In South Australia – Between Adelaide Railway Station , or the railway station nearest to the employee’s place of residence if</p>
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			<p>he resides outside the metropolitan area as defined in the industrial Code 1920-1966 of the State of South Australia, and the locality of the work.</p> <p>In Victoria – Between Spencer Street or Flinders Street Railway Station, or the railway station nearest to the employee’s place of residence if he resides outside the Melbourne metropolitan area and the locality of the work.</p> <p>In Tasmania – Between the principal railway station in the home town of the employee and the locality of the work.</p> <p>4. An employee who proceeds to a distant job may, after two months’ continuous service thereon and thereafter at three monthly periods of continuous service thereon, return to his home at the weekend, if he does so, he shall be paid the amount of second class return railway fare on the pay day which immediately follows the date on which he returns to the job; Provided no delay not agreed to by the employer takes place in connection with the employee’s commencement of work on the morning of the working day following the weekend.</p> <p>Provided however, that if the work upon which the employee is engaged will terminate in the ordinary course within a further 28 days after the expiration of any such period of two</p>
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			<p>or three months as is herein-before mentioned, then the provisions of this subclause shall not be applicable.</p> <p>5.</p> <p>a) an employee who works as required during the ordinary hours of work on the working day before and the working day after a weekend and who notifies the employer or his representative, no later than Tuesday of each week of his intention to return home at the weekend and who return home for the weekend, shall be paid an allowance of \$6 for each such occasion.</p> <p>b) This subclause shall not apply to an employee who is receiving the payment prescribed in 25.2 (a) in lieu of board and lodging being provided by the employer.</p> <p>c) An employee shall be deemed to have returned home at the weekend only if this involves him in being absent from his accommodation for not less than half the hours between ceasing work in the one week and commencing work in the next week.</p> <p>6. When an employee returns home for a weekend or part of a weekend and does not absent himself from the job for any of the ordinary hours, no reduction of the allowances prescribed in 25.2 (a) shall be made.</p> <p>7. The provisions of this clause shall apply</p>
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			<p>whenever the employee is engaged.</p> <p>8. Where an employee is engaged upon distant jobs and is required to reside elsewhere than on the site (or adjacent to the site and supplied with transport) he shall be paid the fares allowance prescribed by clause 15, Fares, of the award.</p> <p>9. The employer shall obtain and the applicant shall provide the employer with a statement in writing of his usual place of residence at the time the employee is engaged and no subsequent change of address shall entitle an employee to the provisions of this clause unless the employer agrees.</p> <p>10. The employee shall inform his employer, in writing, of any subsequent change in his usual place of residence.</p> <p>11. An employee, while so employed on a distant job, shall be entitled to notice of termination in sufficient time to arrange suitable transport at termination or shall be paid as if employed until transport is available.</p>
<i>National Building Trades Construction Award 1975</i>	Print D5375	2 <sup>nd</sup> December 1977	<p>Clause 25.4(b) varied to provide the following:</p> <p>“(b) Notwithstanding the provisions of paragraph (a) of this sub-clause, where the location of a distant job is in that area of the State of Western Australia north of latitude</p>

			<p>26°S, or in any other area to which air transport is the only practicable means of travel, an employee may return home after 4 months continuous service and shall in such circumstances be entitled to 2 days leave with pay in addition to the weekend. Thereafter the employee may return home after each further period of 4 months continuous service, and in each case he shall be entitled to 2 days leave of which 1 day shall be paid leave. Payment for leave and reimbursement for any economy air fare paid by the employee shall be made at the completion of the first pay period commencing after the date of the return to the job.”</p>

### Appendix 3 -

#### Calculation of Average Accommodation and Meal Expenses Using TD2016/13

<b>Place</b>	<b>Accommodation</b>	<b>Food and Drink</b>	<b>Total</b>
<b><u>Capital Cities</u></b>			
Adelaide	\$157.00	\$106.90	\$263.90
Brisbane	\$205.00	\$106.90	\$311.90
Canberra	\$168.00	\$106.90	\$274.90
Darwin	\$216.00	\$106.90	\$322.90
Hobart	\$132.00	\$106.90	\$238.90
Melbourne	\$173.00	\$106.90	\$279.90
Perth	\$203.00	\$106.90	\$309.90
Sydney	\$185.00	\$106.90	\$291.90
<b>Average</b>	<b>\$179.88</b>	<b>\$106.90</b>	<b>\$286.78</b>
<b>Tier 2 country centres (see Table 5)</b>			
	<b>\$132.00</b>	<b>\$97.40</b>	<b>\$229.40</b>
<b>Other country centres</b>			
	<b>\$110.00</b>	<b>\$97.40</b>	<b>\$207.40</b>
<b><u>High cost centres (table 4)</u></b>			
Albany (WA)	\$179.00	\$106.90	\$285.90
Alice Springs (NT)	\$150.00	\$106.90	\$256.90
Bordertown (SA)	\$135.00	\$106.90	\$241.90
Bourke (NSW)	\$165.00	\$106.90	\$271.90
Bright (VIC)	\$152.00	\$106.90	\$258.90
Broome (WA)	\$260.00	\$106.90	\$366.90
Bunbury (WA)	\$155.00	\$106.90	\$261.90
Burnie (TAS)	\$160.00	\$106.90	\$266.90
Cairns (QLD)	\$153.00	\$106.90	\$259.90
Carnarvon (WA)	\$151.00	\$106.90	\$257.90
Castlemaine (VIC)	\$146.00	\$106.90	\$252.90
Chinchilla (QLD)	\$143.00	\$106.90	\$249.90
Christmas Island (WA)	\$180.00	\$106.90	\$286.90



Cocos (Keeling)			
Islands (WA)	\$285.00	\$106.90	\$391.90
Colac (VIC)	\$138.00	\$106.90	\$244.90
Dalby (QLD)	\$150.00	\$106.90	\$256.90
Dampier (WA)	\$175.00	\$106.90	\$281.90
Derby (WA)	\$190.00	\$106.90	\$296.90
Devonport (TAS)	\$145.00	\$106.90	\$251.90
Emerald (QLD)	\$156.00	\$106.90	\$262.90
Esperance (WA)	\$141.00	\$106.90	\$247.90
Exmouth (WA)	\$255.00	\$106.90	\$361.90
Geraldton (WA)	\$175.00	\$106.90	\$281.90
Gladstone (QLD)	\$187.00	\$106.90	\$293.90
Gold Coast (QLD)	\$200.00	\$106.90	\$306.90
Gosford (NSW)	\$140.00	\$106.90	\$246.90
Halls Creek (WA)	\$199.00	\$106.90	\$305.90
Hervey Bay (QLD)	\$157.00	\$106.90	\$263.90
Horn Island	\$200.00	\$106.90	\$306.90
Jabiru(NT)	\$200.00	\$106.90	\$306.90
Kalgoolie (WA)	\$159.00	\$106.90	\$265.90
Karratha (WA)	\$300.00	\$106.90	\$406.90
Katherine (NT)	\$134.00	\$106.90	\$240.90
Kingaroy (QLD)	\$134.00	\$106.90	\$240.90
Kununurra (WA)	\$202.00	\$106.90	\$308.90
Mackay (QLD)	\$161.00	\$106.90	\$267.90
Maitland (NSW)	\$152.00	\$106.90	\$258.90
Mount Isa (QLD)	\$160.00	\$106.90	\$266.90
Mudgee (NSW)	\$135.00	\$106.90	\$241.90
Newcastle (NSW)	\$165.00	\$106.90	\$271.90
Newman (WA)	\$195.00	\$106.90	\$301.90
Norfolk Island			
(NSW)	\$329.00	\$106.90	\$435.90
Northam (WA)	\$163.00	\$106.90	\$269.90
Orange (NSW)	\$155.00	\$106.90	\$261.90
Port Headland (WA)	\$260.00	\$106.90	\$366.90
Port Lincoln (SA)	\$170.00	\$106.90	\$276.90
Port Macquarie	\$140.00	\$106.90	\$246.90

(NSW)			
Port Pirie (SA)	\$150.00	\$106.90	\$256.90
Roma (QLD)	\$139.00	\$106.90	\$245.90
Thursday Island			
(QLD)	\$200.00	\$106.90	\$306.90
Townsville (QLD)	\$143.00	\$106.90	\$249.90
Wagga Wagga			
(NSW)	\$144.00	\$106.90	\$250.90
Weipa (QLD)	\$138.00	\$106.90	\$244.90
Whyalla (SA)	\$163.00	\$106.90	\$269.90
Wilpena-Pound (SA)	\$167.00	\$106.90	\$273.90
Wollongong (NSW)	\$136.00	\$106.90	\$242.90
Wonthaggi (VIC)	\$138.00	\$106.90	\$244.90
Yulara (NT)	\$300.00	\$106.90	\$406.90
<b>Average</b>	<b>\$175.07</b>	<b>\$106.90</b>	<b>\$281.97</b>

**Average of 4 cost centres (i.e. capital cities, tier 2 country centres, other country centres and high cost country centres)**

<b>Per Day</b>	<b>\$149.24</b>	<b>\$102.15</b>	<b>\$251.39</b>
<b>Per week (7 days)</b>	<b>\$1,044.65</b>	<b>\$715.05</b>	<b>\$1,759.70</b>

**Appendix 4 -**

**Cost of 3 Star Accommodation Available on 1st December 2016 for 1 night**

*(Information sourced from booking.com website on 11th November 2016 - filters: 3 stars; double bed; motel, apartment, hotel; free parking and laundry)*

<b><u>Capital City</u></b>	<b><u>Name of Establishment</u></b>	<b><u>Location</u></b>	<b><u>\$ per night</u></b>
<b>Adelaide</b>	Ibis Styles Adelaide Grosvenor	Adelaide CBD	\$117.00
	Country Comfort Motel Adelaide	Adelaide CBD	\$75.00
	Ambassadors Hotel	Adelaide CBD	\$100.00
	Adelaide's City Park Hotel	Adelaide CBD	\$88.00
	Hotel Metropolitan	Adelaide CBD	\$88.00
	Aparthotel Mansions on Pulteney	Adelaide CBD	\$172.00
	Aparthotel BreakFree Directors Studios	Adelaide CBD	\$89.00
	Adelaide Paringa	Adelaide CBD	\$94.00
	<b>Average</b>		<b>\$102.88</b>
<b>Brisbane</b>	Airport Hacienda Motel	Hamilton, Brisbane Spring Hill,	\$116.00
	Metropolitan Motor Inn	Brisbane Auchenflower,	\$89.00
	Aparthotel Chasely Apartment Hotel	Brisbane	\$155.00
	Aparthotel Kangaroo Point Holiday Apartments	Kangaroo Point, Brisbane	\$109.00
	Toowong Central Motel Apartments	Toowong, Brisbane Spring Hill,	\$133.00
	The Astor Apartments	Brisbane	\$185.00
	Airport Clayfield Motel	Clayfield, Brisbane	\$126.00
	Aparthotel Aabon Holiday Apartments and Hotel	Brisbane	\$114.00
	Hamilton Motor Inn	Hamilton, Brisbane	\$114.00
	Aparthotel Forest Lodge Apartments	Brisbane Wolloongabba,	\$125.00
	Tottenham Court Motel	Brisbane	\$99.00
	Aparthotel Toowong Inn and Suites	Toowong, Brisbane	\$138.00
	Annerley Motor Inn	Annerley, Brisbane	\$105.00
	Airport Motel	Hamilton, Brisbane	\$125.00

		<b>Average</b>	<b>\$123.79</b>
<b>Canberra</b>	University House - ANU	Canberra	\$240.00
	Aparthotel Forrest Hotel and Apartments	Canberra	\$149.00
	Aparthotel Ocly Court Serviced Apartments	Canberra	\$230.00
	Aparthotel Medina Serviced Apartments	Canberra	\$179.00
	Aparthotel Parklands Hotel and Apartments	Canberra	\$172.00
	Belconnen Way Hotel/Motel and Serviced Apartments	Canberra	\$138.00
	Canberra Carotel Motel	Canberra	\$125.00
	Sundown Motel Resort	Canberra	\$145.00
	Statesman Hotel	Canberra	\$119.00
	Aparthotel Canberra Short Term and Holiday Accommodation	Canberra	\$142.00
	Red Cedars Motel	Canberra	\$110.00
	Wallaby Motel	Queanbeyan	\$99.00
	Parkway Motel	Queanbeyan	\$99.00
	Mid City Motor Inn	Queanbeyan	\$130.00
	Hamiltons Townhouse Motel	Queanbeyan	\$110.00
		<b>Average</b>	<b>\$145.80</b>
	<b>Darwin</b>	Palms City Resort	Darwin CBD
The Leprechaun Resort		Winnellie, Darwin	\$75.00
Aparthotel Alatai Holiday Apartments		Darwin CBD	\$94.00
Aparthotel Coconut Grove Holiday Apartments		Coconut Grove, Darwin	\$69.00
Darwin City Edge Motel and Suites		Darwin CBD	\$69.00
Aparthotel Luma, Luma Holiday Apartments		Darwin CBD	\$80.00
Aparthotel City Gardens Apartments		Darwin CBD	\$140.00
Poinciana Inn		Darwin CBD	\$79.00
Paravista Motel		Parap, Darwin	\$79.00
Palms Motel		Darwin CBD	\$88.00
HiWay Inn Motel		Winnellie, Darwin	\$65.00
		<b>Average</b>	<b>\$85.18</b>

<b>Hobart</b>	Rydges Hobart	Hobart	\$129.00
	Aparthotel Riverfront Motel and Villas	Hobart	\$95.00
	Hobart Tower Motel	Hobart	\$105.00
	Apartments at Woolmers	Hobart	\$135.00
	Aparthotel Graham Apartments	Hobart	\$163.00
	Best Western Balmoral Motor Inn	Hobart	\$129.00
	Marquis Hotel Motel	Hobart	\$150.00
	Aparthotel Quest Trinity House	Hobart	\$149.00
	Martin Cash Motel	Hobart	\$99.00
	Apartments Hobart	Hobart	\$145.00
	Blue Hills Motel	Hobart	\$115.00
	Motel Mayfair on Cavell	Hobart	\$110.00
	City View Motel	Hobart	\$121.00
	Waterfront Lodge Motel	Hobart	\$87.00
	<b>Average</b>		<b>\$123.71</b>
<b>Melbourne</b>	Park Squire Motor Inn and Serviced Apartments	North Melbourne	\$130.00
	Parkville Place Apartments	Melbourne	\$120.00
	Aparthotel Moonee Valley Views Apartments	Melbourne	\$139.00
	Aparthotel Carlton Lygon Lodge Studio Apartments	Carlton, Melbourne	\$135.00
	Magnolia Court Boutique Hotel	East Melbourne	\$109.00
	Apartments Crest on Barkly Serviced Apartments	Melbourne	\$137.00
	Aparthotel George Powlett Apartments	East Melbourne	\$110.00
	Aparthotel City Edge East Melbourne Apartment Hotel	East Melbourne	\$114.00
	Aparthotel Knightsbridge Apartments	East Melbourne	\$109.00
	Pathfinder Motel Kew	Melbourne	\$110.00
	Aparthotel Barkly Apartments	Melbourne	\$145.00
	City Park Hotel	South Melbourne	\$135.00
	St George Motor Inn	Melbourne	\$128.00
	Best Western Alexander Motor Inn	Melbourne	\$129.00

	Aparthotel Footscray Motor Inn and Serviced Apartments	Melbourne	\$145.00
		<b>Average</b>	<b>\$126.33</b>
<b>Perth</b>	Comfort Inn Bel Eyre	Ascot, Perth	\$180.00
	Comfort Inn and Suits Goodearth Perth	East Perth	\$127.00
	Joondalup City Hotel	Perth	\$199.00
	Apartments West Beach Lagoon	Scarborough, Perth	\$131.00
	Apartments Cottesloe Beach Chalets	Cottesloe, Perth	\$200.00
	Cottesloe Beach Hotel	Cottesloe, Perth	\$205.00
	Great Eastern Motor Lodge	Perth	\$160.00
	Sullivans Hotel	Perth	\$141.00
	Metro Hotel Perth	South Perth	\$162.00
	Comfort Hotel Perth	East Perth	\$122.00
	The Murray Hotel	West Perth	\$195.00
	Flag Motor Lodge	Perth	\$140.00
	Indian Ocean Hotel	Scarborough, Perth	\$90.00
	Apartments Park Vista Executive Townhouses	Perth	\$440.00
	Ocean View Motel	Perth	\$112.00
	Kings Park Motel	Perth	\$180.00
	Quality Hotel Bayswater	Perth	\$104.00
	Rose and Crown Hotel	Perth	\$200.00
	City Waters	Perth	\$129.00
		<b>Average</b>	<b>\$169.32</b>
<b>Sydney</b>	Royal Hotel	Randwick, Sydney Summer Hill,	\$150.00
	Marco Polo Motor Inn	Sydney	\$105.00
	Greenwich Inn Motel	St Leonards, Sydney	\$140.00
	Comfort Inn North Shore	Lane Cove, Sydney	\$179.00
	Garden Lodge Sydney	Sydney	\$149.00
	Sands Hotel Maroubra	Maroubra, Sydney	\$160.00
	Airport Hotel Sydney	Sydney	\$129.00
	Coogee Prime Lodge	Clovelly, Sydney	\$109.00
	Westside Motor Inn	Sydney	\$106.00
	Captain Cook Hotel Botany	Botany, Sydney	\$110.00

Ashfield Manor Sydney	Ashfield, Sydney	\$80.00
Neutral Bay Lodge	Neutral Bay, Sydney	\$105.00
Bridgeview Hotel Willoughby	Willoughby, Sydney	\$109.00
	<b>Average</b>	<b>\$125.46</b>

**Average of Capital Cities** **\$125.31**

### High Cost Country Centre

<b>Alice Springs</b>	Desert Palms Alice Springs	Alice Springs	\$125.00
	Diplomat Motel	Alice Springs	\$129.00
	Desert Rose Inn	Alice Springs	\$75.00
	Elkira Court Motel	Alice Springs	\$99.00
	Aparthotel Alice on Todd Apartments	Alice Springs	\$135.00
	Aparthotel The Swagmans Rest Apartments	Alice Springs	\$115.00
	Alice In The Territory	Alice Springs	\$115.00
	Ibis Styles Alice Springs Oasis	Alice Springs	\$104.00
	Alice Motor Inn	Alice Springs	\$81.00
		<b>Average</b>	<b>\$108.67</b>

<b>Cairns</b>	Apartments Cairns City Palms	Cairns	\$119.00
	Aparthotel Cascade Gardens	Cairns	\$159.00
	Reef Palms	Cairns	\$125.00
	Cairns Queens Court	Cairns	\$92.00
	Cairns City Cheridan	Cairns	\$89.00
	Cairns Rainbow Resort	Cairns	\$75.00
	Cairns Plaza Hotel	Cairns	\$129.00
	Cairns Tropical Gardens Motel	Cairns	\$106.00
	Aparthotel Tradewinds McLeod Holiday Apartments	Cairns	\$202.00
	Aparthotel Cairns Holiday Lodge	Cairns	\$145.00
	Tropical Heritage Cairns	Cairns	\$120.00
	Ibis Styles Cairns	Cairns	\$107.00
	Sunshine Tower Hotel	Cairns	\$139.00
	Aparthotel Oasis Inn Apartments	Cairns	\$105.00
	Tropical Queenslander	Cairns	\$110.00
	Koala Beach Resort	Cairns	\$129.00

	Cannon Park Motel	Cairns	\$115.00
	Apartments lake Central	Cairns	\$129.00
	Comfort Inn	Cairns	\$90.00
	The Balinese	Cairns	\$110.00
		<b>Average</b>	<b>\$119.75</b>
<b>Devonport</b>	Edgewater Hotel	Devonport	\$125.00
	Sunrise Devonport	Devonport	\$135.00
	Barclay Motor Inn	Devonport	\$139.00
	Argosy Motor Inn	Devonport	\$107.00
	Bass and Flinders Motor Inn	Ulverstone	\$120.00
	Sheffield Motor Inn	Sheffield	\$120.00
	Kentish Hills Retreat	Shed	\$134.00
	Penguin Seaside Motel	Penguin	\$154.00
		<b>Average</b>	<b>\$129.25</b>
<b>Karratha</b>	Discovery Parks	Pilbara, Karratha	\$88.00
	Catrrall Park Motel	Karratha	\$139.00
	Ibis Styles	Karratha	\$259.00
	Dampier Mermaid Hotel	Dampier	\$99.00
		<b>Average</b>	<b>\$146.25</b>
<b>Katherine</b>	Knotts Crossing Resort	Katherine	\$120.00
	Beagle Motor Inn	Katherine	\$130.00
	Katherine Motel	Katherine	\$105.00
	Pine Tree Motel	Katherine	\$85.00
	Ibis Styles	Katherine	\$123.00
		<b>Average</b>	<b>\$112.60</b>
<b>Newcastle</b>	Travellers Motor Village	Newcastle	\$120.00
	Ibis Newcastle	Newcastle	\$152.00
	Citigate Motel Newcastle	Newcastle	\$110.00
	Tudor Inn Motel	Newcastle	\$135.00
	Panorama Motor Inn	Newcastle	\$111.00
	Apartments Newcastle Harbourside		
	Terraces	Newcastle	\$145.00
	Sovereign Inn Newcastle	Newcastle	\$112.00



	Newcastle Tighes Hill Accomodation	Newcastle	\$80.00
		<b>Average</b>	<b>\$120.63</b>
<b>Roma</b>	Mandalay Motel	Roma	\$125.00
	Club Hotel Motel	Roma	\$80.00
	Kings Motor Inn	Roma	\$110.00
	Bottle Tree Gardens Motel	Roma	\$95.00
	Bryants Motel	Roma	\$90.00
	Roma Motel	Roma	\$97.00
		<b>Average</b>	<b>\$99.50</b>
<b>Exmouth</b>	Ningaloo Lodge Exmouth	Exmouth	\$135.00
	Potshot Hotel Resort	Exmouth	\$145.00
		<b>Average</b>	<b>\$140.00</b>
<b>Townsville</b>	Aparthotel Yongala Lodge by The Strand	Townsville	\$86.00
	Shoredrive Motel	Townsville	\$102.00
	Billabong Lodge Motel	Townsville	\$110.00
	Cluden Park Motor Inn	Townsville	\$89.00
	Beach House Motel	Townsville	\$110.00
	Spanish Lace Motor Inn	Townsville	\$95.00
	Colonial Rose Motel	Townsville	\$115.00
	Ceder lodge Motel	Townsville	\$110.00
	Summit Motel	Townsville	\$89.00
	Hotel Allen	Townsville	\$60.00
	Strand Motel	Townsville	\$105.00
	Banjo Paterson Motor Inn	Townsville	\$110.00
	Ridgemont Executive Motel	Townsville	\$85.00
	Monte Carlo Motor Inn	Townsville	\$100.00
	Cascade Motel	Townsville	\$124.00
	Tropical Palms Inn Reosrt	Picnic Bay	\$130.00
		<b>Average</b>	<b>\$101.25</b>
<b>Wagga</b>			
<b>Wagga</b>	Heritage Motor Inn	Wagga Wagga	\$140.00
	The Club Motel and Apartments	Wagga Wagga	\$98.00
	Centralpoint	Wagga Wagga	\$108.00

	Allonville Gardens Motel	Wagga Wagga	\$95.00
	Golfview Motor Inn	Wagga Wagga	\$95.00
	City Park Motel and Apartments	Wagga Wagga	\$94.00
	Junction Motor Inn	Wagga Wagga	\$80.00
	Palm and Pawn Tavern Motor Inn Bistro	Wagga Wagga	\$85.00
		<b>Average</b>	<b>\$99.38</b>
<b>Whyalla</b>	Best Western Alexander Motel	Whyalla	\$117.00
	Eyre Hotel	Whyalla	\$85.00
	Mirambeena Motel	Whyalla	\$95.00
		<b>Average</b>	<b>\$99.00</b>
		<b>Average for High cost Country Centres</b>	<b>\$116.02</b>
<b>Country Centres</b>			
<b>Ballarat</b>	Alfred Motor Inn	Ballarat	\$89.00
	Ballarat Colonial Motor Inn	Ballarat	\$110.00
	Best Western Bakery Hill Motel	Ballarat	\$119.00
	Ballarat Central City Motor Inn	Ballarat	\$135.00
	Bell Tower Inn	Ballarat	\$140.00
	Avenue Motel	Ballarat	\$85.00
	Comfort Inn Main Lead	Ballarat	\$113.00
	Ballarat Budget Motel at Woodmans Hill	Ballarat	\$95.00
	Peppinella Motel	Ballarat	\$100.00
	Cardigan Lodge Motel	Ballarat	\$115.00
		<b>Average</b>	<b>\$110.10</b>
<b>Bundaberg</b>	Mas Country Sugar Country Motor Inn	Bundaberg	\$130.00
	Riviera Motel	Bundaberg	\$120.00
	Golden Palms Motor Inn	Bundaberg	\$115.00
	Econo Lodge Park Lane	Bundaberg	\$109.00
	Alexandra Park Motel	Bundaberg	\$105.00
	Chalet Motor Inn	Bundaberg	\$121.00
	Kalua Motel	Bundaberg	\$95.00
	Smart Motels - Bert Hinkler	Bundaberg	\$99.00
	Bundaberg Spanish Motor Inn	Bundaberg	\$120.00

	Matilda Motel	Bundaberg	\$115.00
	Best Western Bundaberg City Motor Inn	Bundaberg	\$140.00
	Acacia Motor Inn	Bundaberg	\$117.00
	Bundaberg Coral Villa Motor Inn	Bundaberg	\$115.00
		<b>Average</b>	<b>\$115.46</b>
<b>Dubbo</b>	Shearing Shed Motel	Dubbo	\$140.00
	Macquarie Inn Hotel Motel	Dubbo	\$142.00
	Comfort Inn Blue Lagoon	Dubbo	\$113.00
	Homestead Motel	Dubbo	\$95.00
	Matilda Motor Inn	Dubbo	\$100.00
	Apartments Goode Times	Dubbo	\$134.00
	All Seasons Motor Lodge	Dubbo	\$105.00
	Dubbo Palms Motel	Dubbo	\$120.00
	Tallarook Motor Inn	Dubbo	\$123.00
	Centrepoint Motel	Dubbo	\$140.00
	Atlas Motel	Dubbo	\$112.00
	Aberdeen Motor Inn	Dubbo	\$108.00
	Comfort Inn	Dubbo	\$110.00
		<b>Average</b>	<b>\$118.62</b>
<b>Launceston</b>	Parklane Motel	Launceston	\$110.00
	TRC Hotel	Launceston	\$80.00
	Apartments Ashcroft Apartment	Launceston	\$150.00
	Aparthotel Leisure Inn Penny Royal Hotel & Apartments	Launceston	\$125.00
	Village Family Motor Inn	Launceston	\$121.00
	Aparthotel Adina Place Motel Apartments	Launceston	\$135.00
	Comfort Inn Coach House	Launceston	\$99.00
	Hotel Launceston	Launceston	\$134.00
	Apartments Tamar River Villas	Launceston	\$105.00
	Aparthotel Launceston City Park Apartments	Launceston	\$95.00
	Olde Tudor Hotel	Launceston	\$113.00
	Abel Tasman Airport Motor Inn	Launceston	\$109.00
	Aparthotel Alanvale Apartments & Motor Inn	Launceston	\$115.00

	Quality Inn Heritage Edenholme Grange	Launceston	\$140.00
		<b>Average</b>	<b>\$116.50</b>
<b>Mount</b>			
<b>Gambier</b>	Red Carpet Motel	Mount Gambier	\$95.00
	Mount Gambier Hotel	Mount Gambier	\$140.00
	Aparthotel Arkana Motor Inn & Terrace		
	Apartments	Mount Gambier	\$140.00
	Golden Chain Tower Motor Inn	Mount Gambier	\$112.00
	Grand Central Motel	Mount Gambier	\$95.00
	Country Comfort Mt Gambier		
	International	Mount Gambier	\$95.00
	Avalon Motel	Mount Gambier	\$105.00
	Mount Gambier Motel	Mount Gambier	\$90.00
	Mid City Motel	Mount Gambier	\$119.00
	Jubilee Motor Inn	Mount Gambier	\$85.00
	Comfort Inn Silver Birch	Mount Gambier	\$125.00
		<b>Average</b>	<b>\$109.18</b>
<b>Shepparton</b>			
	Courtyard Motor Inn	Shepparton	\$115.00
	Pines Country Club Motor Inn	Shepparton	\$120.00
	Comfort Inn Peppermill	Shepparton	\$100.00
	Overlander Hotel Motel	Shepparton	\$115.00
		<b>Average</b>	<b>\$112.50</b>
		<b>Average of</b>	
		<b>Country Centres</b>	<b>\$113.73</b>
	<b>Average of 3 cost centres (Capital Cities. High Cost Country</b>		
	<b>Centres and Country Centres)</b>		<b>\$118.35</b>

## **Appendix 5 - Median Rental for Private Rentals - Selected Locations**

(source : <https://www.realestate.com.au/neighbourhoods/> )

### **Explanation of Median**

The median house price is the midway point of all the houses/units sold at market price (or sold amount) over a set period (monthly, yearly, quarterly, etc.). That is, if there were 101 houses sold during the month, the median house price would be the house price in the middle i.e., that has 50 house prices above it and 50 house prices below it. This differs to the mean price, which equates to the average price—adding the sold prices together and then dividing this by the number of sales.

The reason the median price is used rather than the mean is mainly because it is a more accurate indicator of the market, as it reflects the sample size being used. One of the problems with using the median, however, is that it reflects if there has been a large amount of more expensive or less expensive homes sold in any given period. In these circumstances, you can often notice large differences in the median price of a certain area from month to month. For this reason, it is often better to view median prices over periods of time and monitor the trends, rather than looking at one month's figures in isolation. realestate.com.au has the median house prices for most areas in its suburb profiles. These median prices cover a 10-year period and the graph, as well as table display of results, makes it easy to spot trends.

(source: <http://www.realestate.com.au/advice/median-house-price-what-does-it-mean/> )

<b>Location</b>	<b>Lowest Median Rental Price</b>	
	<b>House</b>	<b>Unit</b>
<b>Capital Cities</b>		
Adelaide	\$400.00	\$350.00
Brisbane	\$495.00	\$460.00
Canberra (Dickson)	\$500.00	\$360.00
Darwin		No data
Hobart	\$405.00	\$265.00
Melbourne	\$580.00	\$415.00
Perth	\$475.00	\$380.00
Sydney	\$640.00	\$620.00
<b>Average</b>	<b>\$499.29</b>	<b>\$407.14</b>
<b>High Cost Country Centres</b>		
Alice Springs	\$415.00	\$365.00
Cairns		No data

Devonport	\$245.00	\$220.00
Exmouth	\$480.00	\$350.00
Karratha	\$500.00	\$360.00
Katherine	\$350.00	\$265.00
Newcastle	\$430.00	\$350.00
Roma	\$200.00	\$200.00
Townsville	\$300.00	\$323.00
Wagga Wagga	\$280.00	\$190.00
Whyalla	\$180.00	\$160.00
<b>Average</b>	<b>\$338.00</b>	<b>\$278.30</b>

**Tier 2 country centres**

Ballarat	\$250.00	\$180.00
Bundaberg	\$268.00	\$253.00
Dubbo	\$265.00	\$170.00
Launceston	\$270.00	\$210.00
Mount Gambier	\$220.00	\$130.00
Shepparton	\$240.00	\$165.00
<b>Average</b>	<b>\$252.17</b>	<b>\$184.67</b>

**Average across the three cost centres**

**\$363.15                      \$290.04**

## **Appendix 6 – Witness Statement of Frank O’Grady**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Frank O’Grady**

I, Frank O’Grady of 500 Swanston Street, Carlton, Victoria, Assistant National Secretary for the CFMEU (Construction and General Division), make the following statement:

1. I have worked in the construction industry for the past 40 years.
2. Prior to becoming an organiser in 1983 with the then Building Workers Industrial Union, one of the originating unions that amalgamated with others to form the CFMEU, I worked on various remote construction projects across Australia. In 1978 I worked on the construction of the Woodlawn Mine in NSW, in 1979 I worked at Gove in the Northern Territory, between 1980 and 1982 I worked on the Woodside LNG project on the Burrup Peninsular in WA, and in 1983 I worked on the construction of the Roebourne Prison Project in the North West of WA.
3. During my employment with the union I have worked in both Western Australia and Victoria. I have had various roles including Organiser, Branch President, and Assistant National Secretary. In my various roles I have been required to visit

members on site, recruit new members, assist members in dispute resolution and negotiate enterprise agreements.

4. During my career I have gained valuable experience on the way in which employees who are required to live away from home are accommodated on a variety of different projects ranging from commercial building projects to large multi-billion dollar resource construction projects.
5. In the past 5 years I have visited workers on the following projects:
  - BHP Nelson Point Project Port Headland, WA
  - FMG/Laing O'Rourke T155 Expansion Port Headland, WA
  - Sino Steel at Cape Preston, WA
  - Rio Tinto Project at Cape Lambert, WA
  - Various Refractory shutdowns in WA, QLD, and Tasmania
  - Rio Tinto/Alcan in Nhulunbuy, NT
  - Inpex accommodation village, NT
6. I have also been personally involved in the negotiations for the Inpex LNG Project in Darwin, numerous refractory agreements, civil construction agreements for Lendlease and building construction agreements for major builders.
7. Many of these projects involve different rostering arrangements to accommodate periods of work on the job and periods at home on rest and recreation. These rostering arrangements will include paid and unpaid days during the time at the site, and paid and unpaid days during the Rand R period that the worker returns to their home.
8. In my experience we have witnessed a shortening of the time spent working away from home and more frequent visits home for R and R on remote projects.
9. When I worked on distant jobs in the late 1970's and early 1980's the usual working hours were arranged on rosters of up to 12 weeks on the job before you were entitled to R and R and a visit home. Gradually over the years the period away from home has shortened. On the Inpex project the roster is 4 weeks on, 1 week off (4 in 1 or 28/7).
10. In my role as Assistant National Secretary I am aware of the concern of our members of the problems faced by workers living away from home. These problems include



fatigue, problems of communication, and mental issues such as feelings of isolation, missing family and friends, and the lack of decent periods at home to spend with children. Whilst we continuously raise these issues in enterprise bargaining, the outdated award conditions on R and R and lack of an adequate safety net make bargaining on these issues very difficult. This is because it can make companies uncompetitive if they are competing with employers who stick with the existing award standard.

11. For other construction projects it is not unusual for workers to spend long periods of time working away from home. During the construction of wind farms employees of mobile crane hiring companies can spend long periods away from home, and on large commercial building projects specialist subcontractor crews such as air-conditioning installers, tower crane crews, and shopfitters can spend long periods away from home.
12. Refractory workers are another group of workers who regularly spend variable periods away from home depending on the length of the project. This can range from a two week minor shutdown to a 12 month major refurbishment shutdown. In 2014 employees of one company spent up to 4-5 months away from home working on remedial work at the Worsley power station. The lack of regular R and R at home led to grievances on this project, including workers leaving the project due to unsatisfactory R and R rosters.
13. The common way in which the majority of workers are compensated for accommodation and meals, when living away from home, is for the employer to meet these costs, especially where employees live in camp on remote projects.
14. In recent years I have seen a change in the industry where employers want the option of providing the accommodation but paying an allowance for meals. This is common in the refractory agreements that I have negotiated.
15. In setting the rates of the meal allowances the employers that I have dealt with have usually accepted the need to pay a higher allowance for the evening meal.
16. One other issue that constantly arises is the issue of gate starts particularly in the civil construction sector. Gate starts are where employers want employees to give a local address to get a start on the project. It is used by employers so that they do not have to

pay living away from home allowances or provide accommodation. Some recent examples that I am personally aware of are:

- Nagambie Bypass built by AbiGroup in 2010-13
- Bald Hills Windfarm built by Hazel Bros in 2014-15

17. The issue also recently arose in the negotiation of the Lendlease Building/CFMEU (New South Wales, Australian Capital Territory, Victoria and Tasmania) Agreement 2016. To resolve the issue the parties agreed to insert the provision that is missing from the modern award, that is “that the Company shall not exercise undue influence for the purpose of avoiding its obligations under the Appendix, in persuading the existing employee to insert a false address” (clause 1.2(b)) of Appendix 1: Living Away from Home Allowances).

Signed: \_\_\_\_\_

Date: 2<sup>nd</sup> December 2016

## **Appendix 7 – Witness Statement of David Kelly**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of David Kelly**

I David Kelly of 1 Lowden Square Wollongong, state the following:

1. I am an Organiser employed by the New South Wales branch of the Construction, Forestry, Mining and Energy Union, Construction and General Division (CFMEU).
2. I am the holder of a permit issued under s 512 of the Fair Work Act 2009 (Cth) (Act). I am also the holder of a permit issued under s 134 of the Work Health and Safety Act 2011 (NSW) (WHS Act).
3. I have been a union official for 25 years. I have spent 24 of these years working for the CFMEU. I spent 1 year working for the Plumber's Union.
4. Prior to commencing work for the CFMEU, I worked in the building and construction industry as a labourer. For a period of time in around 2008, I left union organising temporarily and worked as a labourer in the civil construction sector.

5. My current roles and responsibilities as an Organiser include organising workers with a focus on the civil construction sector in regional NSW. I am also responsible for the NSW refractory bricklaying sector. This role includes holding discussions with members and potential members, negotiating enterprise agreements on behalf of workers, pursuing wage underpayment claims on behalf of members, resolving disputes and investigating health and safety issues that arise on worksites. My role as union official also involves speaking with members about personal problems affecting them which are often work related, including drug and alcohol problems, family breakdown and health and stress issues
6. During my time with the CFMEU I have attended all manner of road works, civil construction projects, building and construction sites, mine sites, timber mills, steelworks, smelters, refineries, manufacturing facilities, rail sites and other worksites. While I have been primarily based in NSW, I have had experience working as an official in regional and remote sites across the country.
7. On the basis of my experiences on building and construction sites, including civil construction sites, I have gained good understanding of issues surrounding the issue of living away from home entitlements pursuant to the Building Construction and General On-site Award, which underpins entitlements generally in the industry. I have a good understanding of difficulties workers face in accessing this entitlement as well as its adequacy as compensation for their working away from home.
8. Many workers who should be entitled to a living away from home allowance do not receive it. This is because they are encouraged by employers to put down a local address on their application form. This is done even when the employer knows that they maintain a residence at a place too far for them to travel home to.
9. From my experience in talking to workers I am aware that workers are increasingly directed by managers of major civil construction projects to contact regionally based labour hire companies in order to obtain work on regional jobs. In these cases workers begin as new starters with local addresses. They are also vulnerable because if they seek rights to living away from home entitlements they will not be hired for work on the site.
10. A case that illustrates this problem and its consequences to working people and their families involved a concrete labourer, originally from Tasmania, who was working on a road project in Holbrook in southern NSW run by Abigroup (now Lend Lease Engineering). When the Holbrook bypass project was finished, this worker was told by Abigroup management to apply for work with labour hire companies known as Workforce, Telum and Workpac in order to secure work with them on road projects on the NSW north coast. He was

subsequently engaged as a casual for a labour hire firm and did not receive any living away from home allowance. He brought his family to the north coast and then lost his job. His family broke up as a consequence of the pressure, with his wife leaving him and his young son. He returned to Tasmania and was forced to live with his son in a tent until the union was able to get him back-pay for wage underpayments, and was then able to buy a caravan to live in.

11. I have been involved in discussions and arguments between workers over entitlements to living away from home allowances. It is often the case that some workers working for the same company and with the same domestic situation are in receipt of the allowance, while others are not. Sometimes the workers who are receiving the allowance are nominated 'core' employees to explain the difference in treatment. Some highly skilled or highly regarded workers negotiate entitlement to the allowance as a condition of their transfer to the next project. Some workers accept this unequal treatment because it is seen as a reward for loyalty to the company. Some negotiate a "caravan" allowance rather than the living away from home allowance because it is at a lower rate. Most are unhappy about having to turn a blind eye to the entitlement in order to secure work.
12. Smaller companies that subcontract to the major companies often ignore the LAHA provision of the Award and set up a "doss house" arrangement where a house is leased for a number of workers and a discretionary allowance is allotted to them to buy groceries. A current case I am investigating on a major road project on the NSW north coast involves allegations of an employer, known to be trading as McKay's Watercarts, taking illegal deductions from his employees as rent for a house that he was providing for them. It is also alleged that the wife of the company proprietor is a real estate agent.
13. I have had recent dealings with migrant visa holders from China and the Philippines working on regional mechanical engineering projects who were being housed in inadequate accommodation and/or in shipping containers. These workers were being charged rent, and were provided with only a limited allowance for food. The CFMEU initiated a campaign against the employer, which was a Taiwanese registered entity based in Taipei called Chia Tung Development Corporation. This resulted in workers being housed properly and back-paid in accordance with the BGCOA.
14. I estimate that I have recovered over \$500,000 in back-pay for the non-payment of various entitlements associated with the living away from home provision of the BGCOA and its predecessor Awards, including return travel, since I began working for the CFMEU. Most recently I recovered around \$250,000 arising from a LAHA dispute on the AGL Nyngan Solar Farm project. The site was run by the American based First Solar, and an entity known

as WBHO, which has its headquarters in South Africa. This particular dispute related to worker's entitlement to fares, as well as to forward and return home allowances. It affected over 100 workers engaged on site by WBHO, and a number of Australian based body-hire companies.

15. A particular problem with LAHA arises in the refractory bricklaying sector where workers routinely travel around the country to work on shutdowns, which are intense periods of work involving long hours for short to medium lengths of time. I have been involved in a number of disputes and negotiations over the adequacy of the meal allowance entitlement on overtime. I recall the issue of meal allowance being debated in EBA negotiations between the CFMEU and major companies such as Veolia (formerly Andresco Hurl), Beroa and other smaller entities. Workers rightly claimed they should be paid a sufficient amount to buy a decent meal after work, and that the amount prescribed in the award as far from adequate. This is particularly so given some of the places that they are located for work are generally away from major centres. They also believe that if they have to work longer hours or overtime, then they should be paid the overtime meal allowance in addition to the meals prescribed in the award as they would have no chance to prepare food for themselves and would have to buy a meal in a club, pub or restaurant. It is the union's contention that the Award actually provides for them to be paid the additional meal allowance, but employers do not accept that interpretation.
16. Refractory workers working for major companies have also disputed the quality of accommodation and have reacted against employers' push to pressure them to share rooms. A particular issue arose with a company where management said the award allowed them to make shared room arrangements. Workers rightly argued that the situation was totally unsuitable because they were working 12 hour rotating shifts and needed proper rest, without being disturbed by other workers coming and leaving the room, or drinking etc. They argued that they may not necessarily know their fellow workers and roommates and that it was unreasonable for them to be expected to leave their personal things around in the room accordingly.
17. Refractory workers continually argue in EBA negotiations that they should be compensated fully for time spent travelling to and from work as well as for going to and returning home from distant work, rather than be limited to the time set out in the Award. This claim is understandable because these workers do not fly from capital city to capital city, or drive from one location in their state to another. They are required to travel from their homes, often in Wollongong or Newcastle to Sydney, then fly to a capital city, then travel by air or other means to a remote location. This means that a day is lost in travelling to and from the job,

reducing their recreation and fatigue leave, It also means that they are left in transit for long hours to connect flights or other means of transport without being paid.

18. I have also been involved in a number of other disputes outside the refractories sector over living away from home accommodation. This is where workers seek to have their own rooms for the duration of the project, which can be for extended periods. Workers reasonably request that if they travel home on the weekend they should not have to take all their possessions with them and set up again when they return. A recent example involves a company known as Transfield (now Broadspectrum) who guaranteed workers their own permanent accommodation to travel to a quarry development site at Marulan, and then reneged on the deal, taking adverse action against a worker when he sought to exercise his rights in this respect. The CFMEU recently lodged legal action over the matter.
19. On the basis of my experiences I also have gained a very good understanding of pressures workers face living away from home or working at distant locations - whether or not they are receiving an entitlement. Attachments 1 and 2 to this Statement are personal accounts of a worker and his wife as to their experience of the husband working away from home. The names have been deleted as they prefer not to identify themselves. They would however be prepared to attend a confidential hearing if that was necessary.
20. Workers who live away from home often express difficulties associated with the lifestyle, and the pressures that it places on their families. They tell me that they are in a sense forced to live away from home in order to follow the jobs. This situation is particularly so in towns such as Wollongong, where I am based, where the collapse in manufacturing and has resulted in a lack of local work opportunities. Workers also report that once they are in fly in fly out, or drive in drive out arrangements, they become trapped into the lifestyle. This is because working away from home and working for long hours means that they are not in a position to search for more local jobs, closer to where they live.
21. Workers commonly tell me they are divorced and tell me how wives and girlfriends have left them due to long periods of absences. Workers often report they are estranged from their children because of the absences and I believe that such family breakdown is a contributor to the drug and alcohol abuse evident in the civil construction and related workforce.

Signed: \_\_\_\_\_

Date: 1<sup>st</sup> December 2016

## Attachment 1 – The Workers Perspective

### **Effects of FIFO and Distant Work**

I have worked in the Refractory Industry for the past 11 years. Our work involves dirty, dusty and dangerous work and mostly in remote areas of Australia and overseas. The biggest problems we face is being away from family and friends and the repercussions that this has on workers and the people around them.

**Wife/Spouse/Partner:** When I first took on this Job people told me to think about it as it takes a big toll on you and your family. My wife and I discussed it at the time and thought it was a good opportunity to get ahead financially and look after our family. I fast forward 11 years and look back now and can definitely agree with what was said many years prior. Many things have changed between my wife and I during the last 11 years, she has her life and I have mine, every now and then we find times that I am actually at home and able to do stuff with the family but *(deleted)* has already organised other things for her and the kids cause I am not usually there. We don't talk as much as we used to and at times she spends more time talking to her friends than me. Obviously there is resentment towards each other as I am never there for her and I am always at work thinking that I am providing for my family. A lot of the times we are together we argue about these points. We both love each other but at times lose sight of the reason we are doing this and get caught up in our own separate worlds/lives.

*(Deleted)* also has to live her life almost like she is a single mother. Juggling work and kids, ensuring she is there to cover their needs – school, sports, social, personal and upbringing. It is a bonus if I am around to help her, but most times I feel alienated as they have already organised/planned as if I am not there.

All the above has happened over time as was not like this at the start but developed over the 11 years from me not being around. Yes I am supporting my family financially but and losing my family in the meantime.

**Kids:** Our 2 girls are 16 & 12, they were 5 & 1 when I started this work. I have missed most of their early childhood, missed countless birthdays, special events, sports but more importantly have not been around to see them grow up and enjoy them. They have also missed out on having a father and missed out on seeing me. Now that they are older they can understand what and why I do what I do, but when they were younger they couldn't and put a lot of stress on my wife to try and make things ok for them.



**Me:** I have changed from the person I was to who I am now. Over the years I have adapted my nature and personality to cope with my work life. When you are away whether it is camp/motel, you live a lonely life. Work 12hrs, back to your room have a couple of beers then bed, wake up get ready for work back to work, day in day out. During this time I am only responsible for myself, whilst my wife is at home looking after our family. So when I get back home after 3 – 4 weeks and kids want to do this wife wants to do that, I don't want to do anything as I have just been away from home want to relax a bit and have been isolated and alone for 3-4 weeks and uncomfortable to go out and see people and do things. This is not how you should feel around your family. Similar feeling to a person just out of Jail. I have days when I am depressed, I have days when I'm lonely, I have days when I'm angry, I have days when I just think F.. it and want to quit, but I can't because I have responsibilities and others are relying on me to provide for them. Over the period of 11 years things gradually stack up and you just learn to live with things. I have no emotion, no compassion, angry most times, and just live my life around work – slotting a few things in between days off and time home. Same with my family they have learned to live with and accept that that's the way it is – is this the way life is meant to be lived???

**Friends:** When I first started this work friends would ring and ask me to do things go places and I would tell them am away working can't make it, after a couple of years of this friends just stopped ringing just presuming that I would be working. I have lost contact with a lot of friends over the years due to my work.

**Expenses:** While I am away from work we support 2 households. Me buying groceries and (*deleted*) looking after the house. As for our Meal allowance of \$57.50 a day covers some of my expenses, but as we all know cost of living in Australia is expensive. Living out of a motel room with no cooking facilities, fridge the size of a letter box. You are forced to go out and buy food. \$57.50 doesn't get you far these days. Personal laptop is a must to keep up with emails, skype, household bills, and entertainment. Associated costs with this is internet, accessories, anti-virus all at our expense.

**Workers:** We're all in the same boat, I say that 50% of the guys are divorced, some divorced 2-3 times, younger guys are forced to leave our industry as they and their families cannot cope with the conditions and effects it takes. Being away from home creates gambling, drinking, drug habits, has lead people to being unfaithful. All driven by time away from life and reality. Suicide Rates are high amongst workers in all associated industries due to work/family pressures.

Fights amongst workers happens regularly. That's what happens when you live in each other's pockets 24/7. Fighting over stupid things that at the time are magnified due to the mind set most guys are in.

Living conditions at times are trying, lack of hygiene, facilities, theft of personal items, food, sharing and hot bedding.

At the end of the day it is not one individual thing, it is the numerous things all put together that make it what it is. All of us are out there trying to get ahead and better our lives and provide for our families.

It's time to help and support working Australians.

Sincerely

*(Deleted)*

## Attachment 2 – The Partners Perspective

### **The life of a wife whose husband works away –**

So my husband works away. He has a good job and is an amazing provider for our family. Saying that, many husbands have good jobs and work long hours and are great providers for their families but, do they do this under the same conditions as ours do?

When my husband first started at this job, we thought this was a great opportunity for us to get ahead in life. We knew that we had a very strong relationship and believed we were strong enough to make it work. The first year was hard, we had 2 young girls, one in primary school and the other in pre-school. The girls didn't understand why dad wasn't home. Why dad didn't pick them up from school or why dad couldn't make it to the special things that were happening in their lives. Being a mum that also worked full time, I struggled to try and compensate for when Dad couldn't be there. I found myself not going out, not attending family functions as to avoid the questions of where's (*deleted*), oh he works too much, he should be here, etc. You can explain the reasons to adults, but children find it very hard to comprehend that Dad is doing this for us, he is working hard so we can have a better future. Kids don't care about the future, they care about the present.

So here we are around 11 years later, and our girls are 16 and 12. I can't even begin to list the many things that their Dad has missed out on. To name a few, countless Fathers Days, Mothers Days, Birthdays, but to be more specific, our daughters first holy communion, also her year 6 graduation. Our older daughters 16<sup>th</sup> birthday and her year 10 formal.

These are the sacrifices our men make for their job and for a better future. It's hard on me as the wife and mother, and our children, but imagine how hard it is on their Dad. I think about my husband, down in a furnace, with no room to move for 12 hours a day, in intense heat, and I mean intense heat like none of us could imagine. He comes home with burns all over his body, thinking about his daughter's special moments that he is missing out on. And working in these conditions for the good of his family. It's a tough job, but only the very tough and resilient can do it!

We made this choice, and he chose to work in these conditions, but slowly and surely his benefits and rights are being taken away from him and us. I remember (*deleted*) worked away for 3 months straight. He was out of state, and we were lucky enough in the 3<sup>rd</sup> month to be flown to see him for a few short days that they gave him off. It was difficult for us, because he was exhausted and the girls just wanted his attention 24/7.

Our men make huge sacrifices to work in this industry, and when I hear that they have cut down for e.g., the meal allowance, well you tell me, how a grown man can work a 12 hour shift with smokos and lunch breaks and only spend something like \$57 a day. They also have to do grocery shopping for the time they are away, they need toiletries and food for breakfast and dinner when they're not at work, and to buy meals to take to work as well. When (*deleted*) is away, our grocery bill doubles. He is basically running 2 households.

It would be nice to think that the industry is doing more to support our workers instead of taking their rights away. The money they earn, does not come easy, and the sacrifices they make effect their children, their marriages and accentually their lives and the lives of those that are at home missing them.

Sincerely,  
**(Deleted)**

## **Appendix 8 – Witness Statement of Graham Pallot**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Graham Pallot**

I Graham Pallot, care of 80 Beaufort Street Perth in Western Australia, state the following:

1. I am an Assistant Secretary with the WA Branch of the CFMEU (Construction and General Division). Before becoming an Organiser in 1988 I worked as a labourer in the building and construction industry for over 12 years. On 02/01/2009 I was elected to hold office as Assistant Secretary of the WA State Branch of the CFMEU (Construction and General Division). On 6/07/2009 I was elected to hold office as an Assistant Secretary of the State registered CFMEUWA.
2. I have spent over 28 years working in the building and construction industry or representing workers. Most of our members outside of the Perth Metro area of Western Australia are employed on a Fly In/Fly Out (FIFO) arrangement.
3. There are four main issues that I regularly have to face with FIFO workers. The first is the roster length. The travel to and from the distant work is quite often, in whole or part, included in the period of the time off. In some situations workers are required, or strongly encouraged,

to falsify their usual place of residence in order to obtain a job. This means that they not only pay their own airfares (normally to and from Perth) but that they also travel in their own time.

4. A majority of FIFO workers struggle with the length of rosters due to being apart from their family for up to 4 weeks or more at a time. Whilst away they have restricted access to their families due to not being able to have their mobile phones with them at work, and generally very poor communications in the camps.
5. Workers who spend long periods away from their families regularly miss out on special occasions, anniversaries and community involvement for some. They find it difficult to cope with the isolation and living conditions especially when they feel like a prisoner due to the tight restrictions when living in camp, and there is limited, if any, mental health support.
6. With many major projects now winding down and reduced activity in the commercial building sector there is downward pressure on wages. With reduced wages and the “encouragement” to pay for their own airfares and travel in their own time, many FIFO workers are increasingly depending on their wife’s and partners to work and help support household expenses. This adds to the pressure on their relationships.
7. The second major issue is that of Motelling and/or Bunking. Because workers are spending long periods of time in their camp accommodation, longer than their stay at home, the camp accommodation is to a greater extent their home. Being able to put up personal family photos and effects to make their accommodation feel less sterile and more like home, helps workers cope with the harsh conditions in the North West.
8. In my opinion based on complaints I have received, being forced to Motel, having to pull down your personal effects & then putting them up in another room when you are back on site, increases the anxiety of FIFO workers. Further it undermines their security and sense of feeling safe, as there is always someone you find to be obnoxious or you feel unsafe to make contact with. When you are allocated a particular room for the life of the project you can avoid contact with individuals you don’t like.
9. With Bunking, members complain of the lack of privacy, especially when making personal calls to family and friends. When workers are required to bunk with another worker on an opposite shift it becomes a problem if one shift has been stood down or cannot work due to inclement weather or cyclones, and they are sent back to camp. With one worker trying to sleep, the other worker either has to tip toe around the room or spend the time wandering around camp.

10. The third major issue with FIFO workers is fatigue management and the issue of fly out days. For example on most Projects employers try and put their workers on the cheapest flights and maximise the day's production. Workers still have to get up at 4 a.m. to start their day and work until 3 p.m., before they can prepare to leave on R and R. Many of the flights don't leave until 6pm or later.
11. If the worker actually lives in Perth then it is usually a 2 hour flight and they can get home within an hour, but even then it's quite often 9.00 pm or later. When I return from visiting members in Karratha I quite often don't get home until closer to 11.00 pm.
12. For other workers it is much worse. Workers living in WA, outside of Perth, sometimes don't get home until well after midnight or later if they need connecting flights, and workers from the eastern States quite often get the midnight horrors with an overnight flight that arrives early in the morning on the next day. They then have to either catch another connecting flight from the capital city or drive home from the airport. This means that some workers are being up for over 24 hours. This also adds pressure on families. How do we expect young children to understand mummy or daddy left yesterday and is still not home for breakfast?
13. The fourth major issue, particularly with shutdown workers or workers doing short times away, is camp accommodation and meals. It's becoming very common for workers being required to supply their own accommodation and meals. Depending on which camp they stay at accommodation and meals range from \$160.00 per night to \$260.00 per night. Occasional meals are charge at \$24 to \$27 per meal. The current shutdown worker quite often will only receive the award amount, equivalent to their costs for 3 days per week. In the last few months I have received calls from workers where the cost of getting the job has actual been more than the money they have earnt. Yes they will never be back again, but how many families will suffer this type of loss before the award protects them?

Signed: \_\_\_\_\_

Date: 7<sup>th</sup> December 2016

## **Appendix 9 – Witness Statement of Paul Ferreira**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Paul Ferreira**

I Paul Ferreira, care of 80 Beaufort Street Perth in Western Australia, state the following:

1. I am a North West Organiser with the WA Branch of the CFMEU (Construction and General Division). Most of our members in this area of Western Australia are employed on a Fly In/Fly Out (FIFO) arrangement.
2. Before becoming an Organiser in the North West of WA I worked as a safety rep. and scaffolder in the building and construction industry for over 5 years.
3. The main issues I face with FIFO workers is the 4/1 roster. A lot of FIFO workers struggle with this roster due to being apart from their family's for 4 weeks at a time. Not being able to have their mobile phones with them whilst at work also compounds this issue.
4. Workers who spend long periods away from their families, and who regularly miss out on special occasions, find it difficult to cope with the arrangement and there is little mental health support for them.
5. With the downward pressure on wages FIFO workers are increasingly depending on their wife's and partners to also work and help support household expenses thus putting further pressure on their relationships.



6. The issue of Motelling and/or Bunking is also a major concern to FIFO workers. Because workers are spending a long period of time away from home their camp accommodation is to a greater extent their home, more so than their actual home address. Being able to put up personal family photos and effects to make their accommodation feel as homily as possible plays a huge role in a FIFO workers ability to handle the harsh conditions in the North West. Being forced to Motel, having to pull down your personal effects & then putting them up in another room when you are back on site, does I believe has an impact on a FIFO workers mental health not to mention hygiene.
7. As for Bunking there is no privacy in calling family or making personal calls. Workers Bunking with another worker on an opposite shift becomes an issue when one shift has been stood down or due to inclement weather they are sent back to camp. What does that worker do? Does he go to his room where the other worker is sleeping thus waking them up or do they have to spend the rest of the shift wandering around camp?
8. Another issue with FIFO & fatigue management is the issue of fly out days. For example at the Wheatstone Project workers get paid 10 hours on fly out day regardless of when their flight is. So it goes without saying employers try and put their workers on the last flights out so as to maximise the day's production. Unfortunately for the worker this means it becomes a very long day - getting up at 4 a.m. to walk to the dry mess and have breakfast & prepare meals for the day; starting work at 5.30 a.m. and working till 3 p.m.; then get taken back to camp to shower & pack for a 6pm flight.
9. For WA Perth Metro workers it's not all that bad as it's only a 2 hour flight and you can get home within an hour. Unfortunately for Regional WA workers or Eastern States workers this has a compounding effect. Regional WA workers sometimes don't get home until midnight and eastern states workers I have been told on occasions don't get home till 8 a.m. the next morning. This is after catching the red eye flight back over to the eastern States and then driving home to regional areas. It's only a matter of time before a worker will be killed falling asleep behind the wheel of a car after being up for over 24 hours.
10. With shutdown workers or workers doing short stints, camp accommodation also becomes an issue. Depending on which camp they stay at accommodation and meals range from \$160.00 per night to \$260.00 per night. Occasional meals are charge at \$24 to \$27 per meal.

Signed: \_\_\_\_\_

Date: 2<sup>nd</sup> December 2016

## **Appendix 10 – Witness Statement of Dean Reilly**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Dean Reilly**

I Dean Reilly of Woolgoolga in NSW, state the following:

1. I am currently employed as an Organiser for the NSW Branch of the CFMEU (Construction and General Division. I started work for the Union in June 2016.
2. Before working for the union I worked as a carpenter. I have worked in the building and construction industry for over 20 years. I started in the cottage sector then moved into civil construction where I specialised in bridge works and large scale structures, which was a combination of formwork and concreting. I have worked on 10 construction projects in NSW, Queensland and the Northern Territory.
3. During my career I have worked on projects/jobs that have required me to live away from home. Recent projects include:
  - Prior to 2013 I worked on the Tarcutta bypass and Sapphire to Woolgoolga road construction projects. I was required to live away from my family for weeks at a time before I was allowed to return home to visit my family.

- In 2013/14 the construction of an LNG compressor station called HUB 2 for Santos in Wallumbilla 1.5 hours from Roma, south western QLD. This was a FIFO job and the main contractors were Flour and McConnell Dowell.
  - In 2014 I in worked FIFO in Darwin for 5 months at the Inpex Ichthys LNG project, prior to my family relocating to Darwin.
4. From my work history and personal experiences interacting with other workers, I have found that workers who work away are far more likely to have mental issues arise from working away like anxiety, depression and aggressive behaviour.
  5. In my experience workers can become institutionalised like people who have been jailed for periods of time, as they are locked away in camp for 3 to 4 weeks at a time with only themselves to worry about, which changes their mentality for when they are back with family.
  6. In my experience you are under a lot more stress as life still goes on at home whilst you are away. It also affects your partner as it means, in my case, my wife does double the work at home and if anything happens to the kids or her while you are away you cannot do anything until you get home.
  7. When I was working in Darwin if we had a family emergency I usually could not leave the project until the next day due to there not being enough allocated flights to Sydney or Brisbane. I would need a second flight or drive to Coffs Harbour where I lived. This would put a massive amount of worry and anxiety on me and my wife until I got home.
  8. FIFO workers exercise and train a lot more while they are away due to trying to stay healthy and fit. This has led to major problems of steroid use in working Camps.
  9. Alcohol and Drugs are a huge problem with FIFO workers. Alcohol especially in hotter climates e.g. Darwin, Barrow Island and western Queensland. If the workers do not keep themselves healthy they are drinking a lot.
  10. I have worked with thousands of workers in the industry and the highest divorce rates are amongst FIFO workers.
  11. The workers get hooked on the big money and their lifestyles reflect that. The problem is the jobs only last 2 years' tops. This makes it twice as hard for them to go back to reality and work a normal job because they are either heavily in debt or blow all their money.

12. Work rosters over 2 weeks away are very stressful on life with a family. After 2 weeks away I and my wife found it very hard to cope with the separation.
13. Workers in regions don't get the right amount of time off. For example, in Darwin we were doing a 28/7 roster. You would fly out on you last day of work to your capital city. But they would not fly me to Coffs Harbour. So you would leave Darwin on a 3pm flight to Brisbane. You would not land until 8.30 pm then I would need to try and get a flight to Coffs Harbour which if there were no delays would land at 10.30pm. After an hour drive from the airport I would not get home until midnight, and all of the travel from Brisbane would be at my own expense. This added more stress to my relationship.
14. Even worse, on 3 times I was flown to Sydney via Melbourne and other workers were flown to Adelaide via Melbourne. For some people on those occasions it was a 14 hour affair, due to flight availability.
15. On one occasion I asked my wife to drive up from where we lived to Brisbane, a 4.5 hour drive only for my flight to be delayed and not get into Brisbane until 1am. I ended up staying overnight and not getting home until 12pm the next day. More stress!! This also meant that I would only get 5.5 days off because the company would book me an early flight on my 7th day so I was not late for work. So, my 7 days off had now been downsized to 5.
16. Living conditions in construction camps are not adequate and the recent push by head contractors for workers sharing rooms and motelling are making things worse. It creates more stress onto workers and if cleaning is not maintained it causes hygiene issues. Theft of personal items out of rooms also becomes a problem. This is especially the case in remote camps.
17. Long periods in camp can also lead to fighting amongst workers. I have seen probably 15 fights in camps between workers. Due to the prison like nature of camps the stress mounts. One worker was hospitalised for weeks.
18. Lack of internet and phone reception in camps in remote areas is also a huge contributor to stress. Not being able to hold a conversation or get onto skype to video call the kids is a huge problem as the kids want to see you and want to know when you are home next and they cannot see you for a month.

Signed: \_\_\_\_\_

Date: 2<sup>nd</sup> December 2016

## **Appendix 11 – Witness Statement of Kris Woodward**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Kris Woodward**

I Kris Woodward, care of 80 Beaufort Street, Perth, Western Australia, state the following:

1. I am currently employed as an advanced rigger and am working on the Barrow Island project in Western Australia.
2. I have been employed in the building and construction industry for over 15 years and have worked on a fly in fly out (FIFO) basis for more than 10 years.
3. During my career I have worked on many projects/jobs that have required me to live away from home. These projects include:
  - RGP5 which was a 28/7 roster
  - Pluto which was a 28/7 roster
  - Karara which was a 16/5 roster
4. My current work roster at Barrow Island is 23/10.

5. My working conditions at Barrow Island were fixed before I started working there and were set by the CBI Constructors Pty Ltd - CFMEU - Gorgon Project - Barrow Island Greenfields Agreement 2010. After reaching the expiry date of our 'Greenfields Enterprise Agreement' we (the Barrow island workforce) had a chance to bargain for a new one. For many of us it was a big shock discovering how hard it was to put a case forward for change.
6. Additionally, in the build-up to the agreements expiry date, several workers had committed suicide (on and off the island) making it hard for many workers to focus.
7. After placing a short survey out amongst the workforce it was pleasing to discover an embedded determination for shorter, more family friendly rosters, to be included in our 'log of-claims'.
8. The following is the survey that was taken around to the crib-huts during our lunch hours in order to gauge what rosters the workforce felt suited them as the current roster (at the time) was clearly not working (26/9):

## Barrow Island Workers Survey

What roster do you think we deserve :

19/9	20/10	26 / 9	21/7	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you'd like to see guaranteed hours then please indicate what you think we deserve :

12 hour shifts	11 hour shifts	10 hour shifts	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Finally, do you believe your hard work on this island deserves a say in these matters :

Yes	No	Not Fussed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Do you have any questions concerning the agreement ?  
please write below :

9. The result of the survey of 2300 people, taken during our lunch hours, showed that the overwhelming majority of the workforce wanted shorter rosters. We invited any worker that wanted to assist with counting the surveys along to the count after work, this also aided with scrutiny. The results are set out in a pie chart at Attachment 1.
10. From the start of our workplace negotiations it became obvious (to the vast majority of workers) that Chevron, the operator and owner of the project was calling the shots, however, as they were un-officially not our employer they refused to show their face during negotiations, which it turn made it impossible to get straight answers and quick reply's. Simple requests took months to get feedback on, thus allowing (the projects) main group of employers to use this to their advantage, dragging things out.
11. Finally, after many arduous negotiations sessions, deadlocks, impasses and strict rules, we reached a watershed deal. It was a great moment for us. An EBA that (to this day) has held strong. A successful EBA delivering decent wages for all working in high risk environments, but, more importantly an EBA that put a halt to suicides, and in general made the workers happier. A pay-cut was traded for shorter rosters. In short, we worked hard (years before the agreements expiry) for the chance to have a say and, that's what we got.
12. For our new EBA, a 23/10 roster was agreed upon. We were happy to take this, although it wasn't the 20/10 roster we'd hoped for like the one Chevron workers were on at the time of negotiations.
13. We embraced the new roster. As aforementioned there was a spate of suicides involving Barrow Island workers and a shorter roster seemed the most important thing to all of us. More time out of isolation and at home with our families, time spent re-setting and re-connecting with loved ones.
14. In my experience the new roster has been working reasonably well. My little boy is 20 months old, he tends to forget who I am after about 23 days, but it doesn't take him long to click when I'm home.
15. I have also had some bad experiences. I was friends with a crane driver who committed suicide by hanging himself in the fly camp at Barrow Island. The night before he left us it was reported that he had thrown his phone at the wall of the fly camp after arguing with his wife. Although never proven many of us believed that poor phone reception played a part in his angst.
16. The island is renowned for its poor internet and phone drop outs. Several of us later found out through talking with an on-island telecommunications supervisor that Chevron could have

fixed the severe bandwidth issues and phone dropouts that plagued Barrow Island. They could have purchased (or hired) a C.O.W. (cellular on wheels), basically a portable Optus tower that would allow another telecoms provider on the island. This would fix all the drop outs and the non-existent internet issues. We were told that Chevron had refused this, yet high speed broadband was available for the majority of the project. We were told that Chevron had refused to use the cable as it was for DOM gas only, even though all it required was as simple as flicking a switch. Many workers suffered from poor internet and communications throughout the job. As a matter of fact it's still like it now.

17. When you are working away from home things can get very lonely. You learn to turn to your workmates who become second family, but sometimes, for some people that's not enough, then you have a problem. Corporations don't realise that all the small things they do to please the shareholders aren't necessarily doing the workers any good. Blaming the workers for delay's, making them travel to (and from) R&R in their own time, forcing them to share a small shitty room with other grown men, denying them decent infrastructure and, many other general oppressive site and camp rules, simply forgetting that we are all adults.
18. Some may argue that it's my choice to work away, and that's fine, but I live in an evolved world with added pressures, ultimately I believe that we are entitled to a fair go and that's not what always happens. At the end of the day we are all naked under the shower.

Signed: \_\_\_\_\_

Date: 2<sup>nd</sup> December 2016



## We have a clear winner!

With over 2300 people surveyed the results are in.

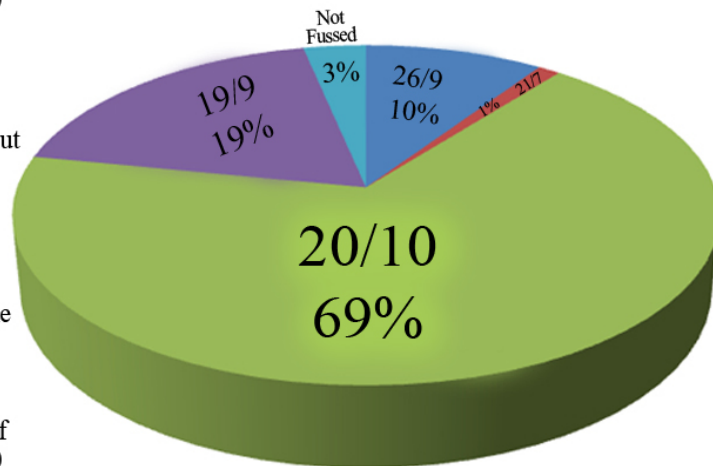
A solid 69 % of the workforce said that their preferred roster would be 20/10 followed closely by 19/9 at 19%

Why 19/9 you ask?

This roster was placed onto the survey out of goodwill towards the employer, it showed flexibility on behalf of the workers allowing the employer to keep thier workers on an even cycle.

Information has now passed down to the workforce that our employer isn't interested in workers flexibility.

As a result of this, all those in favour of 19/9 will now join the masses of 20/10 giving a staggering 88 % swing towards 20/10



This survey was carried out with 100 % credibility, anyone that wanted to know how the surveys were counted were invited along to watch, help count & have a chat. Feel free to message this page with any questions you may have regarding this.

## **Appendix 12 – Witness Statement of Danny Callaghan**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Danny Callaghan**

I Danny Callaghan of 6 Hunter Avenue Matraville NSW, state the following:

1. I am currently employed as a crane operator and am working on the NorthConnex project in Sydney.
2. I have been employed in the building and construction industry for over 25 years.
3. During my career I have worked on projects/jobs that have required me to live away from home. These projects include:
  - Gove G3 in the Northern Territory
  - Wharf construction in Port Headland
  - Tug Pens at Cape Preston
  - Barrow Island
  - Inpex LNG in the Northern Territory

4. The rosters on these projects have varied from 4 in 1 at Gove, Port Headland and Inpex, to 2 and 2 at Cape Preston. I understood that we worked the 2 and 2 because we were working over water.
5. Under the best roster I have been able to return home on rest and recreation every 2 weeks. The second best was Barrow Island which was a 26/9 that gave me 7 clear days at home.
6. Under the worst roster, the 4 in 1 at Inpex, I only had 6 nights home because I flew out on the last day of work then flew back on the last day of R and R.
7. Working on distant projects, with long periods away from home, have been hard on me and my family. It puts greater responsibility and pressure on my wife to handle maintenance problems around the house that I would normally deal with it at home. It also means that I am not there to help deal with the kids when needed.
8. Whilst working away from home I have missed out on christenings, weddings, and birthdays. On some projects I have missed out on spending Xmas with my family.
9. Barrow Island was one of the worst projects for mobile phone and internet connections. There were constant drop outs and just getting a signal was a major problem. These days using mobile phones and the internet are critical for not only contacting and speaking with family and friends, but also for doing regular business such as banking and paying bills.
10. When I started at Gove, I had single room accommodation and I had the same donga for the life of the project. Even then Alcan, the owner of site, tried to encourage workers to give up their donga to allow others to use it (i.e. motelling) by offering hardware store vouchers, etc.
11. When I worked on Barrow Island the accommodation arrangements had deteriorated. Due to the lack of decent accommodation being provided workers were forced to not only suffer motelling arrangements, but in some cases had no choice but to do hotbedding.
12. Workers, myself included, do not like motelling or hotbedding. With motelling you have to pack up all your belongings at the end of each swing and then have them stored whilst you are away. This means that you keep a bare minimum of personal effects with you because of the hassle of packing it up each time and also the fear of items being lost or stolen.
13. I have not experienced hotbedding but it is not something that I would be happy with. I think it is wrong to expect construction workers to sleep in a bed that someone else has just got out of after a hard day at work.

14. Also the push for bunking and the sharing of rooms is not acceptable. Workers are entitled to privacy and their own personal space. We are not in the army.

Signed: \_\_\_\_\_

Date: 1<sup>st</sup> December 2016

**Appendix 13 – Witness Statement of Michael Buchan**

*(To be inserted)*

## **Appendix 14 – Witness Statement of Josh Burling**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Josh Burling**

I Josh Burling, care of 17 Borrella Circuit, Jingili, in the Northern Territory, state the following:

1. I am currently employed as an Organiser with the QLD/NT Branch of the CFMEU (Construction and General Division).
2. I have worked in the building and construction industry for over 20 years, mainly as a plant operator. Before becoming an Organiser I worked on the Inpex LNG Plant project in Darwin, as a plant operator for 3 years and labour for 1 year.
3. Being a local worker with the opportunity to go home and sleep in my own family bed I took on the Inpex job working a 4:1 roster thinking this would be ok. I was mistaken.
4. After experiencing what FIFO workers go through I believe that a 4:1 roster is a killer and a marriage breaker. I was lucky to have 7 full days off on my R&R at home, although the first 2 days were made up of sleep and trying to shake the shift I had just finished.

5. During the "4 weeks on" I would leave home at 4:15 am and return at 6:15 pm each day, be lucky to see my children either finishing tea or showering ready for bed, have tea by myself and a quick talk to my wife then to bed. We did have most Sundays off but after a well-earned sleep in it was hard to achieve much more than a few house chores and then prepare for another week of work. This roster starts to really get to you and your family after a while, and when your children are always saying, "dad have a day off don't go to work", it takes its toll on family relationships.
6. FIFO workers suffer a lot more, being away from family and loved ones for 4 weeks at a time, then having to fly back home then fly back to work some workers only get 5 days at home. I have seen marriages break, depression set in, some "tough workers" at times reduced to tears, and workers needing extra time off to try and repair marriages/relationships and spend time with their children who suffer the most.
7. I found this roster very hard and would not be a FIFO worker with this roster. It is unhealthy for all workers and in some cases deadly. Depression seems to be a way of life for most FIFO workers on these rosters. Sadly I have witnessed this first hand.
8. There have been 7 suicides on this job. One worker took his life in the camp, the others were a mixture of local and FIFO workers who took their lives at home. This is 7 lives too many, and I strongly believe a 4:1 roster is to blame for this. There is the saying "4:1 brings families undone" but there's more to it than that. It also brings families to bury their loved ones, to deal with mental and depression issues. To provide for your family these workers are risking the ultimate sacrifice, and this is not acceptable.
9. 4:1 rosters are no good for workers, I hope my statement helps, but nothing will bring back the workers who have taken their lives, whilst working this killer roster.

Signed: \_\_\_\_\_

Date: 6<sup>th</sup> December 2016

## **Appendix 15 – Witness Statement of Roland Cummins**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of Roland Cummins**

I Roland Cummins, of 18 Kirra Place, Kewarra Beach, Queensland, state the following:

1. I am a CFMEU Organiser for far north QLD and the NT. I have worked in construction for 12 years on and off. I have worked in shutdown work doing labouring and rigging, and also worked in metal fabrication for 3 years. I have never been a FIFO or DIDO (Drive In/Drive Out) worker as I'd rather live where I work, but I have worked beside workers who have for around 5 years. This statement is based on what these workers have told me.
2. Building and construction workers who spend their working days away from home find that it can be very stressful for a lot of the workers. In the NT there are currently workers working 4 weeks straight without R and R periods. I have seen firsthand how this can affect workers stress levels and safety on and off the job.
3. When workers are spending long periods of time away from family and friends it can and in most cases does create some level of stress and depression. There are a number of aspects that can trigger high stress levels and depression. Trying to deal with private issues away from home, not being able to speak to loved ones on a regular basis, missing special events (kids



birthdays, Christmas, Easter, Weddings etc.). Even though you may work with a number of work mates it can become a very lonely time when you are away from your loved ones.

4. Most workers work away because of the financial benefit but in recent years I have seen that there is not much financial benefit anymore. What I'm seeing is that there are a lot of workers coming from regional and remote areas of Australia as there is little work in those areas. Workers feel forced to take these jobs to support their families as there are not many other options, this can be the start of the end for these particular workers.
5. The safety for fly in fly out workers is at a greater risk than it is to those that work locally. The reason being is that FIFO workers work long hours and become fatigued due to the long hours of work. Then with the little R and R time that they have, they can spend that time being busy catching up with the things that they have missed doing when they worked away. Then when they travel long distances to get to work it sometimes feels that they have had no rest at all. When workers become stressed and depressed their minds can drift of the work task ahead creating high risk of injury or fatality to you or others around you. And then there are the obvious reasons on why it's unsafe to be working fatigued.
6. I have seen firsthand injuries due to my above comments. Workers falling asleep while operating plant happens often. I have seen and heard of 7 suicides from the one project over a period of 4 years. Some occurred at their homes and some at the work accommodation.
7. In my opinion even rosters are the best option, but understanding time lines to build projects and the cost to company's I believe there should be rosters not going over 3 week periods, with at least 7 days (a full week) off on R and R. Travel time should be in work time as this can take away a large amount of time off your R and R.
8. Clean and comfortable accommodation should be provided via the PCBU (the person conducting the business or undertaking) with no motelling. Keeping your own room through the time at work is important. Having to share rooms or be moved around during your swing only creates unnecessary frustration to workers working away.

Signed: \_\_\_\_\_

Date: 6<sup>th</sup> December 2016

## **Appendix 16 – Witness Statement of David Kirner**

### **IN THE FAIR WORK COMMISSION**

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

*Fair Work Act 2009*

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

### **Construction Awards**

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

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

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

### **Witness Statement of David Kirner**

I David Kirner, Secretary, care of Level 2, 32 South Terrace, Adelaide in the State of South Australia, state the following:.

1. I am the South Australian District Secretary of the Forestry, Furnishing, Building Products and Manufacturing Division of the Construction, Forestry, Mining and Energy Union (“CFMEU”).
2. I have been working for what is now the CFMEU since 1987. I became Secretary around 2000.
3. In my time with the CFMEU I have observed and assisted CFMEU members who have worked as glaziers and cabinetmakers and joiners who have been required to live away from home in the course of their employment.
4. It is common practice for employees to work away from home, as employers in the glazing, shop-fitting and cabinetmaking industries often win national contracts.

5. From discussions with members, I am aware that members employed by O'Brien Glass, a company that does primarily domestic, residential, and office works, have travelled interstate, from South Australia ("SA") to Queensland ("QLD"), and from SA to New South Wales ("NSW"), to do repairs when there are natural disaster events such as hail damage. I recall last year a group of employees travelled from SA to NSW to work. These stints last about 4 weeks. These employees have their accommodation paid for, and sometimes the meals are paid for. For example, breakfast may be included with accommodation, but then they need to purchase lunch and dinner.
  
6. From discussions with members employed by Wunda Projects Australia Pty Ltd ("Wunda"), I am aware that there are currently employees of Wunda who have travelled from SA to QLD to do refurbishment and upgrading works on Jupiter's Casino. I am aware that they have been there for about 6 months. I am aware that these employees generally are accommodated in apartments with cooking facilities.

Signed: \_\_\_\_\_

Date: 1<sup>st</sup> December 2016

\_\_\_\_\_