



4 Byfield Street  
Macquarie Park NSW 2113  
PO Box 884  
North Ryde BC NSW 1670  
t (02) 9978 3333  
f (02) 9978 3375  
hia.com.au

22 March 2017

Fair Work Commission  
80 William Street  
East Sydney

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Vice President Hatcher

## **4 Yearly Review of Modern Awards - Construction Awards - AM2016/23**

HIA refers to the Directions issued by the Commission dated 17 March 2017 and provides this correspondence in response to items 2 and 3 of those Directions.

### **Issues Document**

#### **Substantive Common Claims**

##### *Item 1: Industry Specific Redundancy Scheme*

The statement of Kirsten Lewis and the results of the HIA member survey do not contain evidence pertaining to HIA's claim in relation to the Industry Specific Redundancy Scheme.

##### *Item 3: TOIL*

The provision proposed to be inserted into the *Joinery and Building Trades Award 2010* is clause 30.9.

HIA notes that the Draft Determination at Attachment C to the HIA submission dated 2 December 2016 contains incorrect cross-references. Attached to this correspondence is an amended version of Attachment C.

For the sake of clarity the only change made is to amend the current references to '36.17' to '30.9'.

*Item 4: Payment of Wages*

On 29 August 2016, HIA filed correspondence with the Commission highlighting the omission of HIA's claim in relation to the payment of wages from the Memorandum dated 22 August.<sup>1</sup>

In accordance with the Issues Document, HIA understands that our claim is to be dealt with in AM2016/8, this is our preferred approach.

We note that AM2016/8 is to be heard on Thursday 23 March.

**Industry Specific Claims**

*Item 2: Allowances*

HIA notes that the statement of CFMEU witness Brendan Holl specifically responds to the claim of the MBA.

*Item 5: Other*

The statement of Kirsten Lewis and the results of the HIA member survey do not contain evidence pertaining to HIA's claim in relation to the calculation of annual leave loading under the *Building and Construction General Onsite Award 2010*.

**Witness List**

HIA does not require any witness for cross-examination.

Yours sincerely  
HOUSING INDUSTRY ASSOCIATION LIMITED



Melissa Adler  
Executive Director - Workplace Relations

---

<sup>1</sup> [AM2016/23 - correspondence - memorandum](#)

MA000029 PRxxxxxx



**FAIR WORK COMMISSION**  
**DETERMINATION**

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

**4 yearly review of modern awards—Construction Award**  
(AM2016/23)

**JOINERY AND BUILDING TRADES AWARD 2010**  
[MA000029]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT HAMILTON  
DEPUTY PRESIDENT GOSTENCNIK  
COMMISSIONER GREGORY  
COMMISSIONER HARPER-GREENWELL

[XXX 2017]

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

A. Further to the Full Bench decision issued by the Fair Work Commission on [xxx] the above award is varied as follows:

1. Insert new clause 30.9:

**30.9 Time off instead of payment for overtime**

**(a)** An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

**(b)** Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 30.9.

**(c)** An agreement must state each of the following:

**(i)** the number of overtime hours to which it applies and when those hours were worked;

**(ii)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;

**(iii)** that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;

**(iv)** that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 30.9 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

**(d)** The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 30.9 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

**(e)** Time off must be taken:

**(i)** within the period of 6 months after the overtime is worked; and

**(ii)** at a time or times within that period of 6 months agreed by the employee and employer.

**(f)** If the employee requests at any time, to be paid for overtime covered by an agreement under clause 30.9 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.

**(g)** If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

**(h)** The employer must keep a copy of any agreement under clause 30.9 as an employee record.

**(i)** An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

**(j)** An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 30.9 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

**(k)** If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 30.9 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.6.

2. By inserting Schedule H as follows:

Schedule H—Agreement for time off instead of payment for overtime

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:**

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

**The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.**

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer  
representative: \_\_\_\_\_

Signature of employer  
representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

3. By updating the table of contents and cross-references accordingly.

- B. This determination comes into operation from [xxx]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [xxx].

PRESIDENT