

**APPLICATION TO VARY A MODERN AWARD - 2012 REVIEW**

Application to vary a modern award (*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, Part 2 of Schedule 5)

**Applicant**

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1. **What is the name of the modern award to which the application relates?**  
Building and Construction General On-site Award 2010 MA000020
2. **What variation(s) are sought?**
  - 2.1 HIA seeks a number of variations to the Award as set out in its accompanying submission dated 8 March 2012 ('Submission'), as set out in Part 4.
  - 2.2 In summary, these variations relate to:



SUBMISSION BY THE  
**Housing Industry Association**

to  
Fair Work Australia  
on  
2 Yearly Review of the Modern Awards  
Application to Vary the Building and Construction  
General On-site Award 2010

8 March 2012

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HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 43,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.





# 1 Introduction

1. HIA represents the residential building sector of the Australian economy. The residential building industry includes both cottage construction and multi-unit apartment buildings. HIA has some 40,000 members including builders, trade contractors, design professionals, kitchen and bathroom specialists, manufacturers and suppliers.
2. The residential building industry relies very strongly on consumer confidence and is particularly susceptible to economic downturn. It must have access to flexible work practices and conditions that promote efficiency and productivity to help sustain employment in such periods of downturn.
3. HIA welcomes the opportunity to review the modern awards post-implementation and acknowledges that Item 6 of the Transitional Act provides Fair Work Australia (FWA) with the discretion to make a determination varying any of the modern awards in any way that FWA considers appropriate to remedy any issues identified in the review. HIA encourages FWA to exercise this discretion in considering the variations proposed for what is one of the most complex awards and which has application within an industry that is overwhelmingly comprised of small business.
4. The provisions of the Building and Construction General On-site Award 2010 must be reviewed, amended and, importantly, simplified for the small businesses that are award reliant.
5. HIA submits that the two yearly review of the modern awards should be utilised as an opportunity to revise the awards so that they are reflective of the modern awards objective and intention of award modernisation. HIA



submits that in doing this, it is important to not only consider individual provisions but to look at the Award holistically.

6. Item 6 of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act) provides that as soon as practicable after the second anniversary of the commencement of the modern awards, Fair Work Australia (FWA) must conduct a review of the modern awards. In the review, FWA must consider whether the modern awards:
  - achieve the modern awards objective; and
  - are operating effectively, without anomalies or technical problems arising from the modernisation process.
  
7. The modern awards objective is set out in section 134 of the Fair Work Act 2009 which provides:
  - (1) *FWA must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:*
    - (a) *relative living standards and the needs of the low paid; and*
    - (b) *the need to encourage collective bargaining; and*
    - (c) *the need to promote social inclusion through increased workforce participation; and*
    - (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
    - (e) *the principle of equal remuneration for work of equal or comparable value; and*
    - (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*



- (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

*This is the **modern awards objective**.*

8. Since the modern awards came into effect on 1 January 2010, HIA notes that a number of award variation applications have been lodged by unions, employers and their representatives who have submitted that a variation is necessary to achieve the modern awards objective. However the case law that has been generated so far with respect to the application of section 157 and its interaction with the modern awards objective, indicates FWA's reluctance to approve variation orders. This is evidenced by the following statement of Watson VP in *Integrated Trolley Management Pty Limited [2010] FWA 3317*:

*[10] The ability to vary modern awards is limited by the terms of the Act. A variation to terms other than wages can only be made if Fair Work Australia (FWA) is satisfied that the variation outside the 4-yearly reviews of modern awards "is necessary to achieve the modern awards objective." In my view this is a significant hurdle that any applicant in a matter under s 158 is required to meet. The clear import of this provision is that award variations outside the 4-yearly reviews will be the exception. Other provisions of the Act deal with variations to resolve ambiguities or errors. Applications to vary awards on other grounds must be shown to be necessary to meet the modern awards objective rather than desirable or justified in a general sense. In my view this means that an applicant must*





*establish that the modern awards objective cannot be achieved unless the variation is made.*

9. The matter of Simpson Personnel,<sup>1</sup> in which HIA appeared, also suggests that section 157(1) of the Act is to be narrowly applied. In particular, SDP Watson afforded regard to the 26 June 2009 comment of the Full Bench of the AIRC that:

*Applications to vary the substantive terms of modern awards will be considered on their merits. It should be noted, however, that the Commission would be unlikely to alter substantive award terms so recently made after a comprehensive review of the relevant facts and circumstances including award and NAPSA provisions applying across the Commonwealth. Normally a significant change in circumstances would be required before the Commission would embark on a reconsideration.<sup>2</sup>*

10. Watson SDP went on to state at paragraph 49 that:

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

11. Such decisions have stood to mitigate against the making of variations to the awards outside the formal review process. It has also meant that

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<sup>1</sup> Simpson Personnel Pty Ltd - re Application to vary or revoke a modern award - Building and Construction General On-Site Award 2010 [\[2010\] FWA 2894](#), Watson SDP.

<sup>2</sup> Award modernisation statement re variations to modern awards.



affected parties have had limited capacity to secure changes to the awards where they are not operating as intended by the Act.

12. However, submits that the proximity of an award variation to the making of the modern awards should not be a relevant consideration for the purposes of the two yearly review. The review has a designated purpose and to apply a narrow construction of the modern awards objective would defeat that purpose.

13. The matters raised in this submission relate to:

- improvements to the Award to ensure that it is reflective of the modern awards objective with a particular emphasis on:
  - *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
  - *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
  - *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards;*
- anomalies or technical problems arising from the modernisation process.

14. However it should be noted that objects such as **flexibility**, and whether the awards are **simple** and **easy to understand** are qualitative elements which may be viewed subjectively and may be difficult to measure. HIA considers that a number of provisions of the Award, when viewed objectively, should provide sufficient evidence on their face that improvement is required to more closely align the Award with the modern awards objective and to provide a simpler and more balanced framework.



15. Further to this, the modern awards objective also requires the **promotion** of ‘**flexible modern work practices**’ and the ‘**likely impact any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden**’.

16. The modern awards objective should also be read and interpreted in conjunction with the overarching objects of the *Fair Work Act 2009*, which is set out as follows in section 3:

*The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:*

- (a) providing workplace relations laws that are **fair** to working Australians, are **flexible for businesses, promote productivity** and economic growth for Australia’s future economic prosperity and take into account Australia’s international labor obligations; and*
- (b) ensuring a guaranteed safety net of **fair, relevant and enforceable minimum terms and conditions** through the National Employment Standards, **modern awards** and national minimum wage orders;*
- (c) ensuring that the guaranteed safety net of **fair, relevant and enforceable minimum wages and conditions** can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and*
- (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and*
- (e) enabling fairness and representation at work and the prevention of discrimination by recognizing the right of freedom of*



- association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and*
- (f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and*
- (g) acknowledging the **special circumstances of small and medium-sized businesses.***

## 2 The making of the modern award

- 17.** The Building and Construction General On-site Award 2010 (Award) commenced operation on 1 January 2010, coinciding with the introduction of a new national workplace relations system.
- 18.** The Award was created via a process of reviewing and rationalising awards in the national workplace relations system to create a system of 'modern awards'. This 'award modernisation' process commenced in March 2008 after the then Minister for Employment and Workplace Relations, Julia Gillard, made a request under Part 10A of the *Workplace Relations Act 1996*.
- 19.** A review of more than 1500 awards was undertaken by the Australian Industrial Relations Commission (AIRC) resulting in the creation of 122 industry and occupational awards, of which the Building and Construction General On-site Award 2010 is one.
- 20.** The Award is largely a consolidation of conditions forming part of the pre-modern awards. In its statement of 3 September 2008, the AIRC published 'a list of federal and state awards operating as NAPSAs which are



potentially relevant to each of the industries included in stage 2' of the award modernisation process. We have attached those instruments that the AIRC considered as potentially relevant to the building, metal and civil construction industries at Annexure 'A'.

**21.** In its statement of 3 September 2008 in relation to stages 2, 3 and 4 of the award modernisation process, the AIRC stated:

*While we accept that there may be limitations on the extent to which classifications and provisions previously found in a number of awards can be rationalised within a single modern award, there is still a great deal of scope to simplify and rationalise the award system.<sup>3</sup>*

**22.** However the final product largely represents a consolidation of the pre-modern award provisions, with a particular emphasis on the terms and conditions of the National Building and Construction Industry Award 2000 [AP 790741]. HIA submits that there remains significant scope to improve on the content of the Award.

**23.** A process of award modernisation and rationalisation that is true to its policy objectives should result in the creation of a simple, streamlined set of minimum conditions that encourages the creation of employment opportunities as well as bargaining for customised terms and conditions to supplement the minimum safety net and to meet the needs of individual employers and employees.

**24.** When the Labor party released its 'Forward with Fairness - Policy Implementation Plan' in August 2007, Labor's new system promised to

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<sup>3</sup> [2008] AIRCFB 708 at para [4].



‘modernise the award system based on 10 basic award conditions...’.<sup>4</sup>

The policy document stated:

*The 10 matters that will only be dealt with under Labor’s new modern, simple awards are:*

- 1. Minimum wages – This will include skill based classifications and career structures, incentive based payments and bonuses, wage rates and other arrangements for apprentices and trainees;*
- 2. The type of work performed – for example whether an employee is permanent or casual, and the facilitation of flexible working arrangements, particularly for employees with family responsibilities, including quality part-time employment and job sharing;*
- 3. Arrangements for when work is performed – including hours of work, rostering, rest breaks and meal breaks;*
- 4. Overtime rates for employees working long hours;*
- 5. Penalty rates for employees working unsocial, irregular or unpredictable hours, on weekends or public holidays, and as shift workers;*
- 6. Provisions for minimum annualised wage or salary arrangements that have regard to the patterns of work in an occupation, industry or enterprise as an alternative to the payment of penalty rates, with appropriate safeguards to ensure individual employees are not disadvantaged;*
- 7. Allowances including reimbursement of expenses, higher duties and disability based payments;*
- 8. Leave, leave loadings and the arrangements for taking leave;*
- 9. Superannuation; and*
- 10. Consultation, representation and dispute settling procedures.<sup>5</sup>*

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<sup>4</sup> Labor’s ‘Forward with Fairness Policy Implementation Plan’, August 2007, page 1.

<sup>5</sup> Labor’s ‘Forward with Fairness Policy Implementation Plan’, August 2007, page 16.



25. The need to truly simplify the awards system is reflected in the following statement:

*...over time, awards have grown in number and size. Some have moved from a statement of minimum terms and conditions to lengthy and prescriptive documents which have been amended and reviewed again and again...*

*To be part of Australia's future awards must be modernised and simplified...*

*The High Court has confirmed that the Federal Government has expanded powers to make laws about terms and conditions of employment. It is no longer necessary to use the practices of the last century to make awards and Labor does not intend to do so.<sup>6</sup>*

26. This document also stated:

*...Common law agreements can also offer flexibility provided that the award safety net is simple, modern and enables fair and flexible arrangements. Labor will genuinely modernise and simplify awards and ensure they are suited to the efficient performance of work. This means that for those employers and employees who want flexible individual arrangements, under Labor's new system common law agreements will meet their needs.<sup>7</sup>*

27. There is scope to improve the content and relationship between the modern awards and NES to provide a regulatory environment that is simple, streamlined, fair to both employers and employees and more conducive to direct employment. However this need not await an amendment to the Act. It is within the power of FWA to make such

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<sup>6</sup> Labor's 'Forward with Fairness Policy Implementation Plan', August 2007, page 17.

<sup>7</sup> Labor's 'Forward with Fairness Policy Implementation Plan', August 2007, page 6.



variations to the Award as it sees necessary and HIA submits that the variations sought within this submission will better align the Award with the original intent of award modernisation.

- 28.** HIA submits that, as promised by Labor's 'Forward with Fairness' policy, it is necessary for the Award to be amended to limit content to simple, fair and flexible minimum terms as distinct from matters properly belonging in an agreement.

### 3 The variations sought

#### 3.1 Confusion as to capacity for coverage by another award

- 29.** Modern awards are generally 'occupational' awards, applying to specified occupations or 'industry' awards applying to a particular industry. Industry awards appear to base their application on 'employer coverage' as opposed to 'employee coverage'. The coverage clause of the Modern Award states:

*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.*

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

**30.** Applying this clause literally has the implication that an employer bound to the Award is not capable of being covered by those modern awards identified above. This has generated confusion for members working in a combination of on-site and off-site environments.

**31.** This interpretation would mean that if an employer had employees both in a manufacturing/fabrication environment and employees carrying out construction work on site, they would need to select one award and could not apply two different awards to the varying work carried out by the two groups of employees.

**32.** By way of example, a manufacturer of pre-fabricated building products may carry out a combination of joinery works in an off-site environment yet may also carry out on-site installation. The employer would presumably need to consider whether it is more appropriate to classify their building workers under the Joinery and Building Trades Award 2010 or the Building and Construction General On-site Award 2010 and may only be bound to one award.

**33.** Clause 4.8 contemplates that an employer could be covered by more than one award, stating:



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.*

34. However the above clause appears to require the employer to conduct an assessment of the 'employee's' work and work environment, as opposed to the employer's circumstances. This is inconsistent with an industry award, which would require an assessment of the employer's circumstances. Furthermore, there is no guidance available to an employer to assist them in determining which award is 'most appropriate'.
35. HIA notes that award modernisation had a number of objectives including 'reducing the regulatory burden on business', creating awards that were 'simple to understand and easy to apply' and avoiding the overlap of awards that may apply to a particular employee.
36. Whilst the number of awards applying in a particular workplace has reduced, there still is confusion and a lack of guidance available to assist employers in determining the industry award with the most appropriate coverage. Due to the current potential for cross coverage, employers will run the risk of making the wrong selection and having to make pay adjustments at a later date.
37. Clarification as to the intention of this coverage clause is required. Some of the confusion may be resolved by the deletion of the current clause 4.8 and its replacement with a clause providing that award coverage is to be determined by the employer's predominant activities. This could assist in clarifying coverage for employers who may be bound by other awards,



particularly within the following modern awards where overlap is considerable:

- Building and Construction General On-site Award 2010;
- Joinery and Building Trades Award 2010;
- Manufacturing and Associated Industries and Occupations Award 2010;
- Timber Industry Award 2010.

**38.** HIA had made the following submissions during the award modernization deliberations:

*We do not think there is a meaningful off site construction industry as contemplated by the scope of the proposed off-site award...*

*We think it makes more sense to treat all off-site work as manufacturing. This would be more consistent with the Award Modernisation Request than creating an award for an 'industry' that is essentially an artificial construct.*

**39.** HIA continues to consider employers who are predominantly manufacturing 'building products' to be a part of the manufacturing industry and questions the application of multiple awards to cover what is essentially one industry. The prospect of having to apply multiple awards for similar activities within the one workplace creates unnecessary confusion and complexity.

**40.** However to assist in alleviating the confusion for overlap between these awards, the Timber Industry Award 2010 should also be identified as an express exclusion within clause 4.2. The Award should also be varied to expressly clarify that it does not apply to employers whose predominant



activities are the manufacture or fabrication of building products in an off-site or factory environment.

**41.** Accordingly, HIA seeks the following variations to the coverage provision of the award:

Vary clause 4.2 to read:

**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;*
- (g) *the Quarrying Award 2010; or*
- (h) *the Timber Industry Award 2010.*

Replace the current clause 4.8 with:

**4.8 Coverage by more than one award**

- (a) *Where an employer is covered by more than one award, an employee of that employer is covered by the award which is most appropriate considering the employer's predominant work activities and environment in which the work is predominantly performed.*
- (b) *This award does not apply to employers whose predominant activities are the manufacture or fabrication of building products in an off-site or factory environment*



## 3.2 Residential building work

42. In clarifying coverage, HIA also submits that greater recognition of the unique nature of the home building industry is required within the Award. Currently, clause 4.10 of the Award identifies the following industries (as defined in the Award) as falling within its coverage:

- (a) *general building and construction*
- (b) *civil construction*
- (c) *metal and engineering construction*

43. The insertion of a category of residential building work within the Award will have the following benefits:

- clarifying coverage for employers in the on-site home building industry;
- giving greater recognition to the unique characteristics of the residential building industry;
- limiting the application of provisions within the award that are irrelevant or inappropriate for small business employers and their employees in the residential building industry.

'Residential building' could be defined in a new clause 4.10(d) as:

- (i) *Work involved in the construction, alteration, extension, restoration, repair, demolition or dismantling of **residential buildings**, with the exception of multi-storey buildings as defined in clause 3.1;*
- (ii) *maintenance undertaken by employees of employers covered by clause 4.1 on such buildings or works described in clause 4.10(d)(i), provided such work is carried out in an on-site environment;*
- (iii) *site clearance, earth-moving, excavation, site restoration, landscaping and the provision of access works associated with the*



- activities within clause 4.10(d)(i); and*
- (iv) *the installation of fittings and services in any building or works described in clause 4.10(d)(i).*

**44.** A number of allowances that should be excluded from applying to the residential building industry are identified at Annexure 'B'.

A variation of the nature specified above would also require a consequential amendment to clause 4.9 of the award so that it states:

*For the purpose of clause 4.1, **on-site building, engineering and civil construction industry** means the industry of general building and construction, residential building, civil construction and metal and engineering construction, in all cases undertaken on-site.*

*The following variation to clause 4.10 would also be necessary:*

**4.10** *For the purposes of clause **Error! Reference source not found.**:*

- (a) **general building and construction** means, with the exception of work falling within the meaning of residential building within sub-clause (d) of this clause:

....

### **3.3 Variation to include an annualised salary provision**

**45.** Some modern awards provide an annual salary option for full-time and part-time employees.

**46.** By way of example, the Clerks Private Sector Award 2010 allows an employer to pay an employee an annual salary to satisfy a number of award conditions including minimum wages, allowances, overtime and penalty rates and annual leave loading. Under this provision the annual



salary that is paid must not be any less than the amount the employee would have received if the entitlements had been provided separately and the arrangement must be reviewed annually to ensure that this is the case.

- 47.** Such clauses simplify and clarify the employment agreement for the benefit of both the employee and employer and the employee is at no disadvantage. Considering that the building industry is predominantly comprised of small businesses that benefit from simple, streamlined arrangements, the inclusion of an annualised salary provision within the Award makes sense and would better align the award with the modern awards objective.

HIA submits, consistent with the objects of flexibility contained within the modern awards objective, that the Award be varied to include the following provision:

**19.9 Annual salary instead of award provisions**

- (a) *An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:*
- (i) *clause 19 - Minimum weekly wages;*
  - (ii) *allowances;*
  - (iii) *overtime and penalty rates; and*
  - (iv) *annual leave loading.*
- (b) *Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.*
- (c) *The annual salary must be no less than the amount the employee would have received under this award for the work performed over*



*the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).*

- (d) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.*
- (e) For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 19.3, 19.7 or 19.8 and excludes any incentive-based payments, bonuses, loadings, monetary allowances, other than those included within the minimum wage calculation specified within clauses 19.3, 19.7 or 19.8, overtime and penalties.*

### **3.4 Variation to extend the scope of an individual flexibility arrangement**

**48.** The Modern Award currently contains the model flexibility provision which is set out below:

*7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:*

- (a) arrangements for when work is performed;*
- (b) overtime rates;*
- (c) penalty rates;*





(d) *allowances; and*

(e) *leave loading.*

**49.** There are a number of provisions that members have sought to vary but are unable to do on the basis that these provisions fall outside of the scope of the terms capable of variation under an IFA. Many of these terms are also identified within this submission as provisions requiring variation. Formal variation would be the preferred option as IFAs must be voluntarily entered into and once entered into can be capable of termination on the provision of four weeks' notice.

**50.** However in the event that a variation to the award is not provided, terms requiring greater flexibility include:

- frequency of payment;
- the industry specific redundancy provisions (with the ability to revert to the National Employment Standard by agreement in the event that HIA's recommendation to remove the industry specific redundancy scheme is not adopted).

To achieve flexibility as reflected by the modern awards objective and objects of the Act, HIA recommends the following variation to the model flexibility provision.

*7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:*

(a) *arrangements for when work is performed;*

(b) *overtime rates;*

- (c) *penalty rates;*
- (d) *allowances;*
- (e) *leave loading;*
- (f) *frequency of payment;*
- (g) *industry specific redundancy provisions; and*
- (h) *any other matter within this award*

*provided that the terms of the agreement are not inconsistent with the National Employment Standards within the Fair Work Act 2009.*

**51.** HIA notes that there is no legislative limit on what can be subject to an IFA. Accordingly, the variation would assist in achieving the objects of flexibility as reflected in the modern awards objective and general objects of the Act.

### **3.5 Variation to dispute resolution training leave provisions**

**52.** Clause 9.7 of the Award provides up to five days additional paid leave for an employee representative elected or appointed by employees to undertake training to assist them in their settlement of disputes role.

**53.** Such a provision is impractical for a small business proprietor given that the small percentage of directly employed labour may mean that all employees have a critical role within the business and an additional five days paid leave impacts upon productivity and employment costs.

**54.** To ensure this provision of the Award is consistent with the modern awards objective it is appropriate for this provision to be excluded from application with respect to employers with fewer than 20 employees.



HIA submits that clause 9.7 should be amended to read:

**9.7** *Dispute resolution procedure training leave*

- (a) *For the purpose of this clause, an eligible employee representative is an employee who:*
  - (i) *is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in an enterprise or workplace or part of an enterprise or workplace for the purpose of representing those employees in the dispute resolution procedure; and*
  - (ii) *who is employed by an employer with 20 or more employees.*
- (b) *An eligible employee representative will be entitled to up to five days' paid leave per year to undertake training that will assist them in their settlement of disputes role. The time of taking such leave will be agreed between them and their employer so as to minimise any adverse effect on the employer's operations.*

### **3.6 Confusion stemming from new types of employment**

87. Clause 10.1 of the Modern Award states:

*Employees under this award will be employed in one of the following categories:*

- (a) *daily hire employees;*
- (b) *full-time weekly hire employees;*
- (c) *part-time weekly hire employees; or*



(d) *casual employees.*

**55.** Under the Modern Award, it is now possible to engage a person in any of the specified classifications as a weekly hire employee without limitation, with the award merely stating at clause 10.2:

*At the time of engagement an employer will inform each employee, in writing, of the terms of their engagement and, in particular, whether they are to be daily hire, full-time, part-time or casual employees.*

**56.** This has resulted in some confusion in relation to employees who were employed on a daily hire basis before the commencement of the new awards. The fact that the Award has come into operation would not change the status of a daily hire employee if the pre-modern award had not required that the employee be informed of the terms of their engagement in writing, however employers and employees would benefit from clarity on this issue.

HIA submits that for the purposes of clarity, the Award should be amended to state that:

*10.3 The category of employment in which an existing employee was employed prior to becoming covered by the modern award will not change as a result of the employee becoming covered by the modern award, except by the written agreement of the employer and employee.*

### **3.7 Variation to provide greater flexibility in part-time work agreements**

**57.** An employee **'who works an average of fewer than 38 ordinary hours per week and has reasonably predictable hours of work'** will fall within



the definition of a “part-time employee” which means that clause 13.3 applies.

91. Clause 13.3 provides that before commencing a period of part-time employment, the employer and employee need to agree in writing:

- that the employee may work part-time;
- upon the hours to be worked by the employee, the days upon which the hours will be worked and the commencing times for the work;
- upon the classification applying to the work to be performed; and
- upon the period of part-time employment.

**58.** The terms of this agreement may be varied, in writing, by consent.

**59.** While work hours for a part-time employee may be reasonably predictable, employees and employers may wish to work within a set number of hours but vary the starting and finishing times to meet the needs of the individual and the business. It is impractical for the business and the employee to review the part time agreement and reduce the terms of their agreement to writing every time an agreement to modify the hours of work is reached.

To provide for greater flexibility in part-time arrangements, clause 13.3 of the award should be modified as follows:

**13.3** *Before commencing a period of part-time employment, the employer and employee will agree in writing:*

*(a) that the employee may work part-time;*

*(b) upon the average number of hours to be worked by the*



*employee and the range of hours and days between which those hours will be worked;*

*(c) upon the classification applying to the work to be performed;  
and*

*(d) upon the period of part-time employment.*

### **3.8 Confusion surrounding application of casual loading**

**60.** As noted above, clause 10.1 of the Modern Award states:

*Employees under this award will be employed in one of the following categories:*

- (a) daily hire employees;*
- (b) full-time weekly hire employees;*
- (c) part-time weekly hire employees; or*
- (d) casual employees.*

**61.** While clause 19.3 sets out the method for calculating rates of pay for both weekly hire and daily hire employees, the Award does not include a method for calculating rates of pay for casual employees.

**62.** Instead, clause 14.5 of the award simply states:

*A casual employee must be paid a loading of 25% for ordinary hours as provided for in this award. The casual loading is paid as compensation for annual leave, personal/carer's leave, community service leave, notice of termination and redundancy benefits and public holidays not worked.*



63. Clause 14.6 is also problematic in that it is not clear as to what base rate should be used in applying penalty rates. Clause 14.6 states:

*A casual employee required to work overtime or weekend work will be entitled to the relevant penalty rates prescribed by clauses 38 – Overtime, and 37 – Penalty rates, provided that:*

- (a) where the relevant penalty rate is time and a half, the employee must be paid 175% of the hourly rate prescribed for the employee's classification; and*
- (b) where the relevant penalty rate is double time, the employee must be paid 225% of the hourly rate prescribed for the employee's classification.*

64. Clause 14.7 also provides that:

*A casual employee required to work on a public holiday prescribed by the NSW must be paid 275% of the hourly rate prescribed for the employee's classification.*

65. In the National Building and Construction Industry Award (NBCI) the base rate applied for the purposes of applying these penalty rates was clearer as specific reference was made to the clause containing the rates for calculation purposes. In contrast, the Modern Award merely refers to the term 'hourly rate prescribed for the employee's classification'.

66. The likely intention is that rates will be calculated on the basis of the minimum rates prescribed in Clause 19.3(b) of the Modern Award (weekly hire). However this could be clarified in the context of the award.

HIA submits that the Award should be varied as follows to clarify the rate of pay



for a casual employee:

- 14.5 *A casual employee must be paid 125% of the hourly rate prescribed in **Clause 19.3(b)** for ordinary hours as provided for in this award. The casual loading is paid as compensation for annual leave, personal/carer's leave, community service leave, notice of termination and redundancy benefits and public holidays not worked.*
- 14.6 *A casual employee required to work overtime or weekend work will be entitled to the relevant penalty rates prescribed by clauses 38 – Overtime, and 37 – Penalty rates, provided that:*
- (a) where the relevant penalty rate is time and a half, the employee must be paid 175% of the hourly rate prescribed in **Clause 19.3(b)** for the employee's classification; and*
- (b) where the relevant penalty rate is double time, the employee must be paid 225% of the hourly rate prescribed in **Clause 19.3(b)** for the employee's classification.*
- 14.7 *A casual employee required to work on a public holiday prescribed by the NSW must be paid 275% of the hourly rate prescribed in **Clause 19.3(b)** for the employee's classification.*

**67.** It is appropriate that the casual loading should be applied to the weekly hire hourly rate. This is on the basis that clause 19.1(b) states:

*The rates in clause 19.1(a) prescribe minimum classification rates only. The payment of additional allowances is required by other clauses of this award in respect of both weekly and hourly payments. For the hourly rate calculations, see clause 19.3.*





68. It would be inappropriate to calculate the casual loading on top of the daily hire rate which includes follow the job loading as clause 14.5 states that:

*...The casual loading is paid as compensation for annual leave, personal/carer's leave, community service leave, **notice of termination** and redundancy benefits and public holidays not worked.*

69. The follow the job loading is to compensate a daily hire employee for loss of period of unemployment between jobs as they do not receive the full amount of the notice. A casual employee is compensated for not receiving notice of termination so to allow them to receive follow the job loading would appear to be double dipping. However clarification confirming this interpretation would end any suggestions to the contrary.

70. The Fair Work Ombudsman has also consulted with industry in an attempt to arrive at an enforcement position in relation to the way in which the casual loading is applied to the weekly rate of pay and has circulated a draft guidance note, attached at Annexure 'C', to various interested parties. HIA submits that the approach reflected in the attached guidance note is flawed in the way in which the tool allowance is being applied for the purpose of calculating transitional rates. During Fair Work Ombudsman facilitated discussions with industry parties at least three possible interpretations regarding the way in which the casual rate of pay is to be calculated were put forward. It is therefore important that the current ambiguity is addressed so that employers may have certainty as to what they are required to pay employees.

### 3.9 Clarification regarding casual employment and rostered days off

71. Clause 14.2 of the Modern Award provides that:



*A casual employee is entitled to all of the applicable rates and conditions of employment prescribed by this award except annual leave, paid personal/carer's leave, paid community service leave, notice of termination and redundancy benefits.*

**72.** This creates some confusion as to whether a casual employee is entitled to accrue rostered days off as there is no specific exclusion for casuals within clause 33.

**73.** A casual employee will not typically work a pattern of hours that is reflective of the hours or work pattern referred to in clause 33.1(a). While the rostered day off system would not have been intended to operate in relation to casuals, clause 14.2 could be amended to provide further clarification on this issue.

HIA submits that clause 14.2 of the Award should be amended as follows:

*A casual employee is entitled to all of the applicable rates and conditions of employment prescribed by this award except annual leave, paid personal/carer's leave, paid community service leave, rostered day off accrual, notice of termination and redundancy benefits.*

### **3.10 Confusion surrounding casual conversion clause**

**74.** The terminology applied in clause 14.8 of the Modern Award provision could be improved to make it clear that it provides a right to request to have employment converted to full-time or part-time and that the conversion is not automatic.

Suggested improvements to wording are provided below:

***Casual conversion to full-time or part-time employment***



- (a) A casual employee, other than an **irregular casual employee**, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to ~~elect~~ request to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond ~~the conversion process~~ the six month period.
- (b) For the purposes of clause 14.8(a), an **irregular casual employee** is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.
- (c) Every employer of such an employee must give the employee notice in writing of the ~~provisions of clause 14.8~~ right set out in clause 14.8(a) ~~within four weeks of~~ no later than four weeks after the employee has ~~having~~ attained such period of six months. The employee retains their right of ~~election~~ request under clause 14.8(a) if the employer fails to comply with the clause.
- (d) Any such casual employee who does not within four weeks of receiving written notice ~~elect~~ request to convert their contract of employment to full-time or part-time employment is deemed to have elected against any such conversion.
- (e) Any casual employee who has a right to ~~elect~~ under clause 14.8(a), on receiving notice under clause 14.8(c) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that they ~~seek to elect~~ wish to convert their contract of employment to full-time or part-time employment, and within four weeks of receiving such notice the employer must consent to or refuse the ~~election~~ request but must not unreasonably refuse.
- (f) ~~Once~~ If a casual employee has ~~electe~~d requested to ~~become and~~



~~has been~~ have their employment converted to a full-time or part-time ~~employee~~ employment, the employee may only revert to casual employment by written agreement with the employer.

**(g)** If a casual employee has ~~elected~~ requested to have their contract of employment converted to full-time or part-time employment in accordance with clause 14.8(e), the employer and employee must, subject to clause 14.8(e), discuss and agree on:

**(i)** which form of employment the employee will convert to, being full-time or part-time; and

**(ii)** if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 13 - Part-time weekly hire employment.

**(h)** An employee who has worked on a full-time basis throughout the period of casual employment has the right to ~~elect~~ request to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to ~~elect~~ request to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed on between the employer and employee.

**(i)** Following such agreement being reached, the employee converts to full-time or part-time employment.

**(j)** Where, in accordance with clause 14.8(e) an employer refuses an ~~election~~ a request to convert, the reasons for doing so must be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.

*(k) By agreement between the employer and the majority of the employees in the relevant workplace or a section or sections of it, or with the casual employee concerned, the employer may apply clause 14.8(a) as if the reference to six months is a reference to 12 months, but only in respect of a currently engaged individual employee or group of employees. Any such agreement reached must be kept by the employer as a time and wages record. Any such agreement reached with an individual employee may only be reached within the two months prior to the period of six months referred to in clause 14.8(a).*

### 3.11 Confusion surrounding notice of termination for apprentices

**75.** Clause 15.2(c) provides that notice of termination and redundancy provisions do not apply to apprentices.

**76.** At face value, this clause would appear inconsistent with the NES, which does not have any specific exclusion from the notice period for apprentices (although section 123 of the Act clearly exempts apprentices from the redundancy provisions). However Clause 1.13 of the *Fair Work Regulation 2000* states (in relation to apprentices and trainees):

***State and Territory laws that are not excluded by section 26 of the Act -- prescribed laws***

*For paragraph 27 (1) (b) of the Act, each of the following laws of a State or Territory is a law to which section 26 of the Act does not apply:*

*(a) a law dealing with the suspension, cancellation or termination of a training contract;*



- (aa) *a law dealing with the suspension, cancellation or termination of a contract of employment that is:*
  - (i) *associated with a training contract; and*
  - (ii) *entered into as part of a training arrangement;*
- (b) *a law dealing with a period of probation of an employee that:*
  - (i) *is part of a training arrangement; but*
  - (ii) *is not a period of probationary employment...*

**77.** This evidences an intention that apprentices will not be subject to the notice provisions in the Act (despite there being no express exclusion) but will be terminated in accordance with state laws.

**78.** Section 118 of the Act provides that ‘a modern award or enterprise agreement may include terms specifying the period of notice an employee must give in order to terminate his or her employment’

**79.** Accordingly, section 16.1 should also be amended to the following effect to achieve greater certainty and clarity regarding an employer’s obligations.

**80.** If it is the intention that the termination of an apprentice’s employment is not subject to the NES and is instead subject to any notice of termination requirements as prescribed by state law in relation to termination of an apprenticeship, this should be clearly stated within the award to minimise confusion.

Accordingly, HIA submits that the Award should be amended to include the following clause 15.2(d):

*Requirements in relation to the suspension, cancellation or termination of:*

- (i) *a training contract; or*
- (ii) *a contract of employment that is associated with a training contract*



*and entered into as a part of a training arrangement, including any relevant notice requirements, are derived from the relevant state and territory law.*

### **3.12 Variation regarding apprentice fees for technical colleges or schools**

**81.** The current wording of clause 15.6 of the award presents a number of impracticalities. The clause states:

*Apprentices attending technical colleges or schools and presenting reports of satisfactory progress must be reimbursed all fees paid by them in respect of their apprentice training.*

**82.** There is some ambiguity as to what constitutes a “report of satisfactory progress” and, in particular, whether this needs to be a formal report from the TAFE. There is also some ambiguity regarding an employer’s liability for TAFE fees in the event that an apprentices’ employment is terminated before a full term is completed.

In order to address some of this ambiguity, HIA submits that the Award should be amended to read:

15.6

- (a) *Apprentices attending technical colleges or schools and presenting written reports of satisfactory progress from the training provider must be reimbursed all course fees paid by them in respect of their apprentice training with the employer following completion of the term and presentation of the written report and evidence of payment.*
- (b) *If an apprentice’s employment is terminated before the end of the term, the employer will only be liable to pay the course fees for the term on a pro-rata basis and on the presentation of a written report of satisfactory*



*progress from the training provider and evidence of payment.*

### 3.13 Variations to industry specific redundancy scheme

- 83.** The industry specific redundancy scheme provided for in clause 17.3 presents a number of problems for small businesses in the residential building industry. The extended meaning of redundancy provide a monetary incentive for employees to resign. The provision as it stands does not represent a fair minimum safety net. It negatively impacts staff retention and requires employers should to budget for resignation payments over which they have no control. The redundancy provision in the National Employment Standards would be more appropriate to meet the circumstances of the home building industry.
- 84.** The industry specific redundancy provision is set out in clause 17 of the Modern Award which:
- clarifies that the clause is an industry specific redundancy scheme as defined in section 12 of the *Fair Work Act 2009* (the FW Act), having the effect that the provisions of Subdivision B – Redundancy pay of Division 11 of the NES do not apply to employers and employees covered by the Modern Award (pursuant to section 123(4) of the Act);
  - defines redundancy as “a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty” (see clause 17.2);
  - sets out a table of redundancy/severance payments in clause 17.3 which a redundant employee will receive, calculated “in respect of all continuous service”.
- 85.** It is significant to note that immediately prior to 1 January 2010, employees who were covered by a federal award and are now covered by the Modern Award were not entitled to the benefit of a payment of the nature provided for in the industry–specific redundancy scheme now





contained within the Modern Award, with the Full Court of the Federal Court of Australia finding that this was not an allowable award matter in the context of the pre-modern National Building and Construction Industry Award 2001. Accordingly, for many employers the requirement to pay redundancy outside the context of a genuine redundancy is a new one and one that creates a significant cost burden for an employer who is unable to predict when the liability will arise as the payment may be triggered at the employee's initiative.

**86.** An HIA member surveyed in February 2012 commented:

*The redundancy provisions in the modern award are very heavily favoured to the employee and make us think twice about employing new staff as they are very onerous.*

**87.** HIA submits that it would be fairer and more appropriate for the redundancy provisions to be limited to cases of "genuine redundancy" only.

HIA submits that clause 17.2 of the Award should be deleted and replaced with:

**17.2**            **Definition**

*For the purposes of this clause, **redundancy** means a situation where the employer no longer requires a person's job to be performed by anyone. **Redundant** has a corresponding meaning.*

HIA submits that the following clause is necessary, considering the special circumstances of small business consistent with the Act's objects:

**17.3** (a)    *This clause shall apply to employers who employ 20 or more employees (including employees not covered by this award) immediately prior to the termination of employment of employees in the terms of sub-*



*clause 17.2.*

HIA submits that the following clause is also necessary to provide that the industry specific redundancy scheme can be varied via an individual flexibility arrangement:

*17.3 (g) The terms of this industry specific scheme are capable of variation in accordance with clause 7.*

These variations will result in a consequential renumbering of the sub-clauses within clause 17.3.

### 3.14 Confusion surrounding leading hand payment calculation

**88.** Clause 19.2 of the Modern Award does not clearly express how the leading hand payment is to be paid for an employee, other than a daily hire employee, who is not supervising employees for a whole week. In particular, clause 19.2 states:

#### **19.2 Leading hands**

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

<b><i>In charge of:</i></b>	<b><i>% of the appropriate weekly rate per week</i></b>
<i>1 person</i>	<i>2.4</i>
<i>2 to 5 persons</i>	<i>5.3</i>



6 to 10 persons 6.7

More than 10 persons 9.0

- (b) For daily hire employees, the hourly rate payable is calculated by multiplying amount prescribed in clause 19.2(a) by 52 over 50.4 (52/50.4) and dividing by 38 and the said amount will apply for all purposes of this award (provided that in the case of a carpenter-diver the divisor will be 31).

89. Regardless as to whether a person is engaged as weekly or daily hire, there should be ability to pro rata this amount for actual hours supervised. The leading hand allowance would therefore be better expressed as a percentage of the appropriate hourly rate per hour.

HIA submits that appropriate variation would read as follows:

**19.2 Leading hands**

- (a) A person specifically appointed to be a leading hand must be paid at the rate of the undermentioned percentages of the above hourly rates of the highest classification supervised, or the employee's own rate, whichever is the higher in accordance with the number of persons in the employee's charge.

<b>In charge of:</b>	<b>% of the appropriate hourly rate per hour</b>
1 person	2.4
2 to 5 persons	5.3
6 to 10 persons	6.7
More than 10 persons	9.0



(b) *The allowance in clause 19.2 (a) will be payable for the actual hours during which a person is specifically appointed to be a leading hand.*

**90.** Furthermore, the leading hand allowance, while stated to be payable for all purposes for a daily hire employee (see clause 19.2(b)), is not stated to be payable for all purposes for weekly hire employees and is not included in the hourly rate calculation for a weekly hire employee. If the allowance is to be payable as an allowance for actual hours supervised, it would not be appropriate for the allowance to be an “all purpose” allowance and should therefore appear as a separately identifiable amount that does not form part of the minimum wage calculation. Including it in the calculation would result in unnecessary complexity in wage calculations.

HIA submits that clause 19.2(b) should be deleted.

### **3.15 Simplification of allowances**

**91.** So complex are the allowances under the Award that the Fair Work Ombudsman has been unable to produce a pay summary to accompany it. As noted earlier on in our submissions, the Award largely reflects a consolidation of the terms and conditions of the pre-modern instruments. When the Workplace Authority set about publishing ‘Pay Scale Summaries’ to reflect the preserved wage rates in these pre-modern instruments, the complexity of this exercise became paramount, resulting in summaries that, in some cases, exceed 20 pages in length. If these documents were ‘summaries’, the hardship imposed by the small business employer in attempting calculations in the absence of such a document must be considered as a part of this review.



92. There is a clear need to simplify the allowances within the award. Ways that this could be achieved include:

- rolling the special and industry allowances into the minimum wage considering that these amounts are paid to all employees for all purposes and form part of the minimum wage calculation. This results in an upward movement in the minimum weekly wage set out in clause 19.1(a) by \$33.09 per week (\$7.70 per week special allowance and \$25.39 industry allowance as reflected in the variations to clause 19.1 proposed at Annexure 'B'). This will also require the deletion of the current clauses 21.1 and 21.2 and consequential amendments where these allowances are referred to elsewhere in the Award as reflected in Annexure 'B';

In rolling industry and special allowance into the minimum wage, HIA submits that clause 19.1(a) should be amended to read as follows:

### 19.1 General

- (a) An adult employee within a level specified in the following table will be paid not less than the rate per week assigned to the appropriate classification, as defined in Schedule B – Classification Definitions, in which such an employee is working:

<b>Level</b>	<b>Minimum weekly wage</b>	<b>Minimum hourly wage</b>
	<b>\$</b>	<b>\$</b>
Level 9 (ECW 9)	835.89	22.00
Level 8 (CW/ECW 8)	821.99	21.63
Level 7 (CW/ECW 7)	803.49	21.14
Level 6 (CW/ECW 6)	781.99	20.58
Level 5 (CW/ECW 5)	762.49	20.07
Level 4 (CW/ECW 4)	740.99	19.50
Level 3 (CW/ECW 3)	719.29	18.93



Level 2 (CW/ECW 2)	699.99	18.42
Level 1 (CW/ECW 1):		
CW/ECW 1 (level d)	686.19	18.06
CW/ECW 1 (level c)	674.19	17.74
CW/ECW 1 (level b)	665.39	17.51
CW/ECW1 (level a)	652.49	17.17

Consequential amendments associated with the above variation include:

- Deletion of references to industry allowance and special allowance where appearing in clause 19.3;
- Deletion of first and third bullet points appearing under clause 19.7(e);
- Deletion of clauses 21.1 and 21.2;
- Deletion of the text ‘in addition to the allowance prescribed in clause 21.2’ and ‘and in addition to the allowance prescribed in clause 21.2’ as set out in clauses 21.2(a) and 21.3(b);
- Consequential renumbering of clause 21 as set out in Annexure ‘B’;
- Deletion of the rows of the tables at clauses 28.3 and 28.3 which itemise base rate, industry and special allowances;
- Deletion of second bullet point within clause 38.2(b).

- identifying the “all purpose” allowances within a schedule so that employers are able to clearly identify which allowances are to be counted for purposes such as overtime, annual leave etc. “All purpose” allowances currently include:
  - tool and employee protection allowance at clause 20.1;
  - underground allowance at clause 21.3;
  - carpenter diver allowance at clause 21.7;
  - refractory bricklaying allowance at clause 21.8 (as this allowance is stated to form part of the wage);
  - electrician’s licence allowance at clause 21.12;
  - furnace work at clause 22.2(m);



- acid work at clause 22.2 (n);
- hydraulic hammer at clause 22.3(q);
- lift industry allowances at clause 42.2.
- clearly identifying what allowances are “disability allowances” within a schedule. This would also assist for the purposes of clause 28.2(b) which relates to civil construction traineeships and provides:

*All other disability and expense related allowances provided for in this award will be payable to trainees from time to time, if applicable, but no other allowances will apply.*
- clearly identifying those remaining allowances that are not “all purpose” allowances and are payable on an hourly basis while the employee is working in the conditions for which the allowance is paid;
- clearly identifying which allowances do not apply to residential building work;
- including a summarised schedule of allowances at the back of the award as a reference point for employers. Such a schedule would have the amount of the allowance included for certainty and clarity.

**93.** The variation sought by HIA in relation to inclusion of a schedule of allowances within the Award is set out at Annexure ‘B’.

### **3.16 Variation to tool and employee protection allowance clause**

**94.** Payment of the tool and employee protection allowance has been a continuing source of frustration for employers who are required to pay the amount of the allowance to employees who do not actually bring any tools to work and for employers who have concern that employees are not applying the tool allowance to appropriately maintain their tools.



95. Clause 20.1 of the Modern Award provides that a tool allowance must be payable for all purposes of the award with the amount of the tool allowances varying depending on the trade. The clause also clarifies that the allowance does not include the provision of certain tools and protective equipment that are identified within the Modern Award and provides that where the employee provides these tools they are required to be reimbursed.

96. This implies that there is an obligation on the part of an employee to provide tools other than those supplied as a condition of the allowance. However the award does not actually specify this.

97. The award clause should clarify the purpose of the clause and place a positive obligation upon the employee to provide and maintain tools and protective boots if they are to have an entitlement to the allowance. The award should also expressly state that the allowance will not be paid to an employee if the employer provides all tools and protective boots.

HIA recommends the following variation to clause 21.(a):

*(a) A tool allowance must be paid for all purposes of the award in accordance with the following table, except where the employer provides the employee with all tools and protective boots necessary to carry out the work or if the employee fails to bring tools to work or to maintain tools so that they are safe and suitable for use:*

### 3.17 Variation to in charge of plant payment

98. Clause 21.13(b) of the Modern Award does not clearly express how the employee in charge of plant payment is to be paid for a person who does not hold these responsibilities for a whole week. The award should be





amended to allow for the weekly amount to be paid on a pro-rata basis for actual days or hours during which the responsibility is held.

(b) HIA recommends the following variation to clause 21.13(b):

(a) *An employee who is in charge of plant:*

- (i) *for 5 or more full days or shifts in a week must be paid an additional 4.7% of the weekly [standard rate](#) per week;*
- (ii) *for less than 5 full days or shifts in a week must be paid an additional 4.7% of the hourly standard week per hour.*

### 3.18 Clarification of inclement weather clause

**99.** Clause 23 of the Modern Award provides an entitlement to payment for time lost during periods of inclement weather. Clause 23.8 provides:

*If an employee commences employment during a four week period the employee will be credited with:*

- *32 hours where the employee commences on any working day within the first week;*
- *24 hours where the employee commences on any working day within the second week;*
- *16 hours where the employee commences on any working day within the third week; and*
- *eight hours where the employee commences on any working day within the fourth week in any four week period.*

**100.** There is a lack of clarity as to when the 'four week period' is to commence and conclude for the purposes of the inclement weather clause.

- 101.** The National Building and Construction Industry Award specifically stated at clause 21.7.1 that:

*The first period shall be deemed to commence on 11 January 1999 and subsequent periods shall commence at four weekly periods thereafter.*

- 102.** The Modern Award is silent on this issue which creates confusion. Clarification is required in relation to the commencement of the four week period. FWA should also consider whether it was intended that there would be a continuation of the wet weather calendar that had existed under the National Building and Construction Industry Award.

To minimise confusion, HIA recommends the following inclusion:

*23.9 The first four week period shall be deemed to have commenced on 11 January 1999 and subsequent periods shall commence at four weekly periods thereafter.*

This will result in the need for consequential amendments to the numbering of the subsequent clauses within clause 23.

### **3.19 Clarifying living away from home arrangements**

- 103.** Clause 24.4(a) of the Award provides that:

*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.*



104. To better reflect the intent of the award and avoid a situation where the employees are being provided with meals or an allowance as required by clauses 24.3(a)(i) and 24.3(a)(ii) as well as being reimbursed for expenses, it should be clarified that clause 24.4(a) was only intended to employees required to live in a camp who have not otherwise been provided with three meals per day by the employer.

For the purposes of clarification, HIA recommends the following amendment:

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

### 3.20 Clarification of daily fares allowance for travel within metropolitan radial areas

105. The intended operation of the fares and travel patterns allowance is a source of much confusion for employers and employees. The wording of the clause has changed significantly from the wording within the pre-modern instruments and unfortunately the AIRC decisions and transcripts resulting from the award modernisation proceedings do not provide any context regarding the intended operation of the provision.
106. To demonstrate the difficulties with the application of the clause, we have used a practical example.



107. The home office of a building company is located within the north-west metropolitan region of Sydney. The employee lives in the west of Sydney. However the construction sites on which the employee works are located the outer suburbs of Sydney, in and around Camden, where growth zones and greenfields developments are located.

108. The relevant provisions of the clause are as follows:

**25.2 Metropolitan radial areas**

*An employee, other than an employee in the metal and engineering construction sector who is required to commence or cease work at the employer's workshop, yard or depot other than on a construction site, must be paid an allowance of \$16.50 per day for each day worked when employed on construction work, at a construction site located:*

- (a) within a radius of 50 kilometres of the GPO in a capital city of a State or Territory; or*
- (b) within a radius of 50 kilometres of the principal post office in a regional city or town in a State or Territory.*

109. This clause would suggest that the radial area is calculated by reference to the 'construction site' with the consequence that varying radial areas have been generated:

- 50km from the Sydney GPO;
- 50km from the principal post office nearest to the regional city or town.

110. It is unclear as to which radial area should be used for the purposes of calculating the excess entitlement under clause 25.5.

111. Clause 25.5 provides:



### **25.5 Travelling outside radial areas**

- (a) *Where an employer requires an employee to travel daily **from inside one radial area** mentioned in clauses 25.2, 25.3 and 25.4 to work on a construction site outside that area, the employee will be entitled to:*
- (i) *the allowance prescribed in clause 25.2 for each day worked; and*
  - (ii) *payment for the time reasonably spent in travelling from the designated radial boundary to the job and return to the radial boundary; and*
  - (iii) *any expenses necessarily and reasonably incurred in such travel, which will be \$0.44 per kilometre where the employee uses their own vehicle.*
- (b) *The time outside ordinary working hours reasonably spent in such travel will be calculated at the ordinary hourly on-site rates to the next quarter of an hour, with a minimum payment of one half hour per day for each return journey.*

**112.** The clause as it is currently drafted provides no guiding parameters regarding which radial area should apply for the purposes of the calculations. This issue is further confused by the following clauses:

### **25.4 Country radial areas**

- (a) *An employer with a business or branch or section thereof (for the purpose of engagement) that is established in any place (other than on a construction site) outside the areas mentioned in clause 25.2, must pay their employees the allowances prescribed in clause 25.2 for work located within*



*a radius of 50 kilometres from the post office nearest the employer's establishment.*

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

### **25.6 Residing outside radial areas**

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

- 113.** It is not clear which radial area these clauses are referring to and whether the employer or employee are at liberty as to choose the radial area that they desire.
- 114.** Clause 25.7 also creates confusion.

### **25.7 Travelling between radial areas**

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



115. It is possible for multiple radial areas to overlap. For example, if a 50km radius was drawn around the Camden post office, it would overlap with the radial area drawn around the Sydney GPO.
116. Using the current example, the radial area could either be calculated:
- 50km from the Sydney GPO;
  - 50km from the principal post office nearest to the regional city or town, being 135-137 Argyle St, CAMDEN, NSW, 2570 as this is the area where the employee is ordinarily employed.
117. There is no reference point in the award that would suggest that the radial area should be calculated from the employee's place of residence. To the contrary, there is actually a clause (25.6) that deals with employees that chose to reside outside radial areas and are only entitled to the daily fares allowance and not the excess travel time and cents per km allowance. This would suggest that the radial area is calculated on some other basis. Furthermore, the radial area is intended to be calculated from a "construction site" which would appear to rule out the employer's office.
118. As Camden is more than 50km away from the Sydney GPO, if the Sydney GPO forms the basis of the radial area calculation, clause 25.5 would be triggered. However it would not seem to be fair to compensate the employee for a notional journey between the Sydney GPO to some other site which may be located closer to Camden and when the employee has not actually travelled this distance.
119. However the ambiguity within the award leaves the matter open for interpretation and HIA submits that amendment is necessary to simplify the clause so that the radial area for the purposes of this clause is located within 50km of the post office in the regional town or city where the employee is ordinarily engaged on work as nominated by the employer. Given the cyclical and project based nature of



construction work, the clause should provide flexibility and allow the nominated town or city in which the employee is ordinarily engaged on work to change upon the employer providing two weeks' notice.

In order to simplify the provision, HIA recommends that clauses 25.2 to 25.8 be deleted and replaced with:

**25.2 Fares and excess travelling allowances**

- (a) *The fares and travelling time allowances are daily allowances where the employee is required to:*
- (i) *start or finish work at a job site; and*
  - (ii) *uses his/her own vehicle or uses public transport.*
- (b) *The fares and travelling time allowances are not payable for any day on which the employee:*
- (i) *is absent from work, or*
  - (ii) *is required to start or finish work at the employer's workshop, yard or depot, or*
  - (iii) *is provided with by the employer, or is offered to be provided with by the employer, accommodation that is located at the job site.*
- (c) *The fares allowance is not payable for any day on which the employer provides, or offers to provide, the employee with transport from where the employee is living to the job site and return (including transport provided by the employer when the employee is working at a distant job site).*
- (d) **Fares allowance**
- Subject to clauses 25.2 (a), (b) and (c), employees will be paid a fares allowance of \$16.50 per day.*



**(e) Excess travelling allowance**

- (i) *If an employee travels beyond the defined radius, in addition to the fares allowance in clause 25.5, the employee will be entitled to:*
- A. *payment for time reasonably spent in travelling from the boundary of the defined radius and return to the boundary of the defined radius, calculated at ordinary on-site rates to the next quarter of an hour;*
  - B. *any excess expenses reasonably and necessarily incurred in travelling from the boundary of the defined radius and return to the boundary of the defined radius, which will be \$0.44 per kilometre where the employee uses their own vehicle.*
- (ii) *The defined radius is 50km from the centre of employment as determined by the employer by reference to one of the following options:*
- A. *the employer's normal base establishment or workshop;*
  - B. *the GPO, or Principal Post Office of the capital city or major regional centre for all employers whose base establishment or workshop is within the defined radius from the said Post Office;*
  - C. *the local Post Office closest to the employer's establishment or workshop beyond the defined radius of the Post Offices listed above;*
  - D. *in the case of employees engaged on distant work (as defined) the place at which such employees are domiciled with the approval of their employer, for that*



*distant job;*

- E. in the case of an employer that does not have a fixed base establishment or workshop, the Post Office closest to the town or city nominated by the employer as the place where the employee ordinarily carries out work.*

### 3.21 Clarification regarding travelling outside radial areas

**120.** Clause 25.5 provides:

- (a) *Where an employer requires an employee to travel daily from inside one radial area mentioned in clauses 25.2, 25.3 and 25.4 to work on a construction site outside that area, the employee will be entitled to:*
- (i) *the allowance prescribed in clause 25.2 for each day worked; and*
  - (ii) *payment for the time reasonably spent in travelling from the designated radial boundary to the job and return to the radial boundary; and*
  - (iii) *any expenses necessarily and reasonably incurred in such travel, which will be \$0.44 per kilometre where the employee uses their own vehicle.*
- (b) *The time outside ordinary working hours reasonably spent in such travel will be calculated at the ordinary hourly on-site rates to the next quarter of an hour, with a minimum payment of one half hour per day for each return journey.*

**121.** It is not clear, from Clauses 25.5(a)(iii) and 25.5(b) that the 44c per kilometre rate and time spent in travel is only payable with respect to travelling from the designated radial boundary to the job and return to



the radial boundary. Accordingly, the amendment above reflects this intention and avoids an interpretation that would result in the employee being paid these entitlements for the entire journey.

### **3.22 Variation to provide that employees supplied with a company vehicle are not entitled to the daily fares allowance**

**122.** Clause 25.8 of the Modern Award provides:

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

*(b) The allowance prescribed in this clause will be payable on any day for which the employer provides a vehicle free of charge to the employee for a purpose related to their contract of employment, and the employee is required by the employer to drive this vehicle from the employee's home to their place of work and return.*

**123.** This clause should be varied to provide that where the employer provides a company vehicle to the employee for the employee's benefit, the employer is not required to pay the daily fares allowance for travel within radial areas. The benefit conferred by the provision of the vehicle is far greater than the \$16.50 per day allowance.

### **3.23 Variation regarding ordinary hours of work**

**124.** The prescriptive provisions of clause 33 impinge on managerial prerogative to structure working arrangements and are not conducive to product and modern work practices. Greater flexibility is required.

**125.** Clause 33.1 should be amended to enable employees to commence work at 6am. This would provide the necessary flexibility previously enjoyed by Queensland employers and employees under the National



Building and Construction Industry Award and would also alleviate any confusion in relation to the way this clause interacts with clause 33.1(a)(viii) which suggests that:

*The working day may start at 6.00am or at any other time between that hours and 8.00am....*

- 126.** This would make it clear that if the early starts clause in clause 33.1(a)(viii) is utilised the time worked between 6am and 7am would not attract penalty rates.
- 127.** Further to this, other modern awards provide more flexibility as to how working arrangements may be structured. HIA submits that the following variation would assist in achieving the modern awards objective.

HIA recommends that the current hours of work provisions within clause 33.1(a) be replaced:

**33.1 Ordinary hours of work – day workers**

**(a) Ordinary hours of work rostered days off**

- (i) *The ordinary hours of are to be an average of 38 per week but not exceeding 152 hours in 28 days, or an average of 38 over the period of an agreed roster cycle.*
- (ii) *The ordinary hours of work may be worked from 6.00 am to 6.00 pm Monday to Friday.*
- (iii) *Subject to sub-clause 33.1(d), not more than 10 hours exclusive of meal breaks (except if paid for at overtime rates) are to be worked in any one day.*



- (iv) *By agreement between the employer and the majority of employees concerned, ordinary hours not exceeding 12 on any day may be worked.*

**(b) Working on a roster cycle**

- (i) **Rostered day off** *for the purpose of this award is the weekday, not being a holiday, that an employee has off duty when working in accordance with an average hours system.*

- (ii) **Notice of rostered day off**

*Where an employee, in accordance with clause 33.1, is entitled to a rostered day off during the employee's work cycle, they must be advised by the employer at least a week in advance of the weekday the employee is to take off.*

- (iv) *An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.*

- (v) *Where the working of the 38 hour week is agreed to in accordance with this clause, an employee and the employer may agree to a banking system of up to a maximum of five rostered days off. An employee would therefore work on what would normally have been the employee's rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employee and the employer, provided not less than five days' notice is given before taking the banked rostered day(s) off.*

- (vii) *No payments or penalty payments are to be made to*



*employees working under this substitute banked rostered day off. However the employer will maintain a record of the number of rostered days banked.*

*(viii) Employees who work on a rostered day off basis each 20 day cycle are entitled to 12 rostered days off in a 12 month period.*

### 3.24 Variation regarding calculation of annual leave loading

**128.** The method of calculating annual leave loading is impractical. Clause 38.2(b) states that:

*In addition to the payment prescribed in clause 38.2(a), an employee must receive during a period of annual leave, a loading of 17.5% calculated on the rates, loadings and allowances prescribed by:*

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

**129.** The list of loadings and allowances that are included for the purposes of calculating annual leave loading are problematic in that the payment of some of these amounts are contingent upon a circumstances being triggered and are also to compensate an employee for circumstances that they will not encounter during a period of annual leave. For example:

- clause 21.3 provides that the underground allowance is only payable to an employee who is required to work underground. The clause also specifies that the allowances will not be payable to employees engaged on pot and drive work at a depth of 3.5 metres or less. The amount of the allowance is also dependent upon the number of shifts work so the allowance is not only contingent based on work circumstances but is also contingent on depth but is also contingent on how many shifts and employee is likely to have worked;
- Clause 24.1 also prescribes the payment of a living away from home allowance which is payable in circumstances where the employee is employed on construction work at such a distance from the employee's place of residence that they cannot reasonably return to that place each night. Once again, this allowance is contingent and should not be prescribed for the purposes of the annual leave loading payment unless it would be unreasonable for the employee to return to their place of residence for the duration of the leave. However this is likely to be picked up by clause 38.2(a) as the clause already states that the employee will be paid the amount they would have received for working ordinary time hours if they had not been on leave.
- Clause 25 sets out a fares and travel patterns allowance however this fares allowance will not be payable where the employer picks up and drops home the employee and the purpose of the allowance is to "recognise travel patterns and costs peculiar to the industry, which include mobility in employment and the nature of employment on construction work".



130. It would be more appropriate for the 17.5% annual leave loading to be payable upon the actual amount of the annual leave payment (i.e. amount they would have received for working ordinary time hours if they had not been on leave).

Accordingly, HIA submits that clause 38.2(b) could be amended as follows to alleviate the current confusion:

- (b) In addition to the payment prescribed in clause 38.2(a), an employee must receive during a period of annual leave a loading of 17.5% calculated on the amount of the annual leave payment referred to in clause 38.2(a).*

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

### 3.25 Variation regarding payment of wages

131. The Modern Award should be varied to allow all employers to pay wages on a basis more frequent than the current provision which only permits most employers to pay on a weekly basis.

132. Clause 31 of the Modern Award provides that

- 31.1 *All wages, allowances and other monies must be paid in cash, or by cheque, bank cheque, electronic funds transfer (EFT) or similar transfer or any combination.*
- 31.2 *An employee paid by cheque must be allowed reasonable time, as agreed between the employer and the employee, to attend the branch of the employee's bank nearest the workplace to cash cheques during working hours.*
- 31.3 *Payments must be paid and available to the employee not later than the end of ordinary hours of work on Thursday of*





each working week. Where an employer made payment less frequently in compliance with a relevant award or award-based transitional instrument, prior to the making of this award on 1 January 2010, or where an employer made payment less frequently in compliance with a Division 2B State award, prior to 1 January 2011, the employer may continue to make payment at that frequency, subject to the agreement of employees and/or a majority of employees if required by the relevant award, award-based transitional instrument or Division 2B State award.

31.4 When notice is given, all monies due to the employee must be paid at the time of termination of employment. Where this is not practicable, the employer will have two working days to send monies due to the employee by registered post (or where paid by EFT the monies are transferred into the employee's account).

31.5 If an employee is paid wages by cash or cheque and is kept waiting for their wages more than a quarter of an hour after the usual time of finishing work on pay day (for reasons other than circumstances beyond the control of the employer), the employee is to be paid at overtime rates after that quarter of an hour for the period they are kept waiting, with a minimum payment of a quarter of an hour.

**133.** Requiring employers to pay on a weekly pay cycle is contrary to the objects of the modern award by:

- detracting from the need to promote flexible modern work practices and the efficient and productive performance of work (section 134(d)); and



- having a negative impact on productivity, employment costs and unnecessarily adding to the regulatory burden for employers (section 134(f)).

**134.** HIA notes that this matter has been considered in the matter of Simpson Personnel<sup>8</sup>. In that case, when considering the modern awards objective, Watson SDP stated that:

*I am, however, satisfied that the payment of wages and the frequency thereof will impact upon employment costs and the regulatory burden, a consideration required by s.134(1)(f) of the Act. A greater frequency of payment will increase administrative costs of employing labour and impose a greater regulatory burden, which should be avoided, particularly in circumstances where employees have been subject to less frequent payment under previously applicable award-based transitional instruments.*

**135.** However in relation to this provision, Watson SDP adopting his reasoning from the comments of the 26 June 2009 Full Bench in relation to applications to vary modern awards, soon after their making considered that there was no significant change in circumstances that would warrant a reconsideration of the provision.

**136.** HIA submits that the matter requires reconsideration. Requiring employers to pay on a weekly pay cycle is contrary to the objects of the modern award by:

- detracting from the need to promote flexible modern work practices and the efficient and productive performance of work (section 134(d)); and

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<sup>8</sup> *Simpson Personnel Pty Ltd - re Application to vary or revoke a modern award - Building and Construction General On-Site Award 2010 - [2010] FWA 2894* - 16 April 2010 - Watson SDP: <http://www.fwa.gov.au/decisionssigned/html/2010fwa2894.htm>



- having a negative impact on productivity, employment costs and unnecessarily adding to the regulatory burden for employers (section 134(f)).

**137.** A variation to this provision is required. In particular, cause 31 of the award should be amended to allow for payment to be made on a basis that:

- is reflective of the flexibility that exists within the Act;
- is at the election of the employer (as opposed to by agreement).

HIA submits that the following variation to the existing clause 31.3 of the Award would reflect this request and the modern awards objective:

*31.3 Payments must be paid to the employee at least monthly.*

Or in the alternative:

*31.3 Payments must be paid and, to the extent of the employer's control, be made available to the employee not later than the end of ordinary hours of work on Thursday of each working week or fortnight as determined by the employer, or monthly if mutually agreed.*

**138.** The words “to the extent of the employer’s control” have been included to take into consideration factors beyond the employer’s control, such as circumstances where the bank’s computer host system is unavailable or to cater for bank error. Such circumstances are frequently encountered by employers who use electronic funds transfer as a means of payment and would place.

**139.** The mandatory requirement to pay wages to employees weekly unnecessarily increases the need to dedicate resources to the administration function of the business. Varying the award to allow



fortnightly payments to be made would significantly improve the efficiency of the payroll function. This would allow business to better dedicate resources toward the employment of productive roles, including the employment of apprentices which is to be encouraged in light of the skills shortage confronting the industry and which continues to worsen as a consequence of our ageing workforce.

- 140.** Any benefit that an employee would receive from having wages paid on a weekly basis (as opposed to a fortnightly basis for example), is greatly disproportionate to the administrative hassle that the current provision creates.
- 141.** It is also important to note that it is common for building businesses and organisations to employ clerical staff that fall within the coverage of the Clerks Private Sector Award 2010, clause 23.1 of which states that employees must be paid their wages weekly or fortnightly as determined by the employer or monthly if mutually agreed. A variation such as the one proposed above would help to streamline the payroll function for those who pay clerical workers in accordance with this clause.

### **3.26 Clarifying entitlements to weekend meal breaks**

- 142.** There is currently confusion surrounding the breaks to which an employee is entitled when working on a Saturday or Sunday and the interaction between clause 35 and 37 of the Modern Award.
- 143.** The standard clause in relation to meal breaks is found at clause 35 of the Modern Award and provides:

#### **35.1 Meal break - day workers**

- (a)** *There must be a cessation of work and of working time, for the purpose of a meal on each day, of no less than 30 minutes, to be taken between noon and 1.00 pm, or as otherwise agreed between an employer and a majority of*



employees, provided that an employee must not be required to work more than five hours without a break for a meal.

- (b) *Where, because of the area or location of a project, the majority of on-site employees on the project request, and agreement is reached, the period of the meal break may be extended to not more than 45 minutes with a consequential adjustment to the daily time of finishing of work.*

### **35.2 Meal break - shiftworkers**

*At no later than five hours after the commencement of each shift there must be a cessation of work of 30 minutes duration to allow shiftworkers to take a meal break which will be counted as time worked.*

### **35.3 Rest periods and crib time**

- (a) *There must be allowed, without deduction of pay, a rest period of 10 minutes between 9.00 am and 11.00 am.*
- (b) *When an employee is required to work overtime after the usual finishing time of the day or shift for two hours or more, the employee must be allowed to take, without deduction of pay, a crib time of 20 minutes in duration immediately after such finishing time and thereafter, after each four hours of continuous work (also without deduction of pay), a crib time of 30 minutes in duration. In the event of an employee remaining at work after the usual finishing time without taking the crib time of 20 minutes and continuing at work for a period of two hours or more, the employee will be regarded as having worked 20 minutes more than the time worked and be paid accordingly.*



- (c) For the purposes of this subclause, **usual finishing time** is at the end of ordinary hours inclusive of time worked for accrual purposes as prescribed in clauses 33 - Ordinary hours of work, and 34 - Shiftwork.
- (d) Where shiftwork comprises three continuous and consecutive shifts of eight hours per day inclusive of time worked for accrual purposes as prescribed in clauses 33 - Ordinary hours of work and 34 - Shiftwork, a crib time of 20 minutes in duration must be allowed without deduction of pay in each shift. Such crib time in each shift will be instead of any other rest period or cessation of work elsewhere prescribed by this award.
- (e) The provisions of clauses 35.3(b) and 35.3(d) will not be applicable to the case of an employee who is allowed the rest periods prescribed in clauses 22.2(b) and 22.2(c).

**144.** The relevant text within clause 37 is as follows:

- 37.6** An employee working overtime on Saturday or Sunday must be allowed a paid rest period of 10 minutes between 9.00 am and 11.00 am.
- 37.7** An employee working overtime on a Saturday or working on a Sunday must be allowed a paid crib time of 20 minutes after four hours work, to be paid for at the ordinary rate of pay but this provision will not prevent any arrangements being made for the taking of a 30 minute meal period, the time in addition to the paid 20 minutes being without pay.
- 37.8** In the event of an employee being required to work in excess of a further four hours, the employee must be allowed to take a paid crib time of 30 minutes which will be paid at the ordinary rate of pay.



**145.** It is the likely intention that clause 37 was intended to apply in place of the rest breaks provisions in clause 35, however this would be better clarified if this was expressly stated the manner set out in HIA's proposed amended award at Annexure 'B' and as set out below:

*37.6 An employee working overtime on Saturday or Sunday must be allowed a paid rest period of 10 minutes between 9.00 am and 11.00 am. The provisions of this apply in place of the general provisions relating to breaks as set out in clause 35.*

*37.7 An employee working overtime on a Saturday or working on a Sunday must be allowed a paid crib time of 20 minutes after four hours work, to be paid for at the ordinary rate of pay but this provision will not prevent any arrangements being made for the taking of a 30 minute meal period, the time in addition to the paid 20 minutes being without pay. The provisions of this apply in place of the general provisions relating to breaks as set out in clause 35.*

*37.8 In the event of an employee being required to work in excess of a further four hours, the employee must be allowed to take a paid crib time of 30 minutes which will be paid at the ordinary rate of pay. The provisions of this apply in place of the general provisions relating to breaks as set out in clause 35.*

### **3.27 Variation to provide for daily calculation of overtime**

**146.** Clause 36.2 of the Award is confusing and does not clearly state whether overtime is to be computed on a daily or weekly basis, requiring the clause to be read in conjunction with the complex hours of work clause in relation to which HIA has proposed amendment to provide greater flexibility in line with the Electrical, Electronic and Communications Contracting Award 2010. The provision also



discourages the offering of overtime once 40 hours in a week have been worked as the operation of the clause has the implication that overtime is computed on a weekly, as opposed to daily, basis.

147. Also consistent with the provisions of the Electrical, Electronic and Communications Contracting Award 2010, HIA recommends that clause 36.2 of the Award be amended to provide:

**36.2 Overtime penalty rates and computing overtime**

- (a) *For all time worked outside an employee's ordinary hours, the rates of pay will be time and a half for the first two hours and double time thereafter.*
- (b) *Except as provided for in clause 36.11, in computing overtime each day's work will stand alone.*

### 3.28 Variation to permit cashing out of annual leave

148. Clause 93 of the *Fair Work Act 2009* provides that modern awards may include terms relating to cashing out and taking paid annual leave. In particular, that clause provides:

- (1) *A modern award or enterprise agreement may include terms providing for the cashing out of paid annual leave by an employee.*
- (2) *The terms must require that:*
  - (a) *paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and*
  - (b) *each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and*
  - (c) *the employee must be paid at least the full amount that would have been payable to the employee had the employee taken leave that the employee has forgone.*



149. The modern awards objective includes the promotion of flexible modern work practices. The objective of flexibility is also reflected with the Act's objects. HIA submits that it is in the spirit of the legislation and award modernisation to draw upon whatever flexibility is available within the legislative framework provided a fair minimum safety net is maintained. In this regard, the following variation will assist the award in achieving the modern awards objective.

**38.4 Cashing out of annual leave**

*An employee and employee may agree to the cashing out of paid annual leave by an employee provided:*

- (a) the cashing out would not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and*
- (b) each cashing out of a particular amount of paid annual leave is by a separate agreement in writing between the employer and the employee; and*
- (c) in cashing out the paid annual leave, the employee is paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.*

**3.29 Amendment to clause recognising prior personal leave entitlement on reengagement**

150. It is possible that clause 39.2 of the Modern Award could act as a disincentive to the engagement of persons who have left and re-entered the workforce. This is particularly significant as our population ages, amplifying the need to encourage mature aged workers to remain in or re enter the workforce. Clause 39.2 states:

39.2 *If an employee is terminated by the employer and is re-engaged by the same employer within a period of six months, then the employee's unclaimed balance of sick leave will continue from the date of re-engagement. In such*



*case the employee's next year of service will commence after a total of 12 months has been served with that employer excluding the period of interruption in service from the date of commencement of the previous period of employment or the anniversary of the commencement of the previous period of employment.*

HIA submits that clause 39.2 should be deleted so that when workers wish to re-enter the workforce it does not act as an impediment to them doing so.

### **3.30 Clarification regarding foreperson and sub-foreperson classifications**

- 151.** At Item B.2 of Schedule B the CW/ECW 7 classification incorporates the sub-foreperson classification and the CW/ECW 8 classification states that it incorporates the foreperson classification (as defined). However there are no express definitions of these terms incorporated into the Modern Award.
- 152.** The pre-modern awards did not typically contain classifications for these employees so it is likely that it was intended that these classifications are limited to forepersons and supervisors in the metal and engineering construction sector. However an amendment to the award clarifying that this is the case would achieve greater certainty.

HIA recommends that the following amendments be made to the Award:

- The reference to 'Sub-foreperson' at Item B.2.7(d) of Schedule B be amended to '*Sub-foreperson in the metal and engineering construction sector*';
- The reference to 'Foreperson (as defined)' at Item B.2.8(d) of Schedule B be amended to '*Foreperson in the metal and engineering construction sector*'.

### 3.31 Other issues relating to apprentices

- 153.** Within the context of this submission, HIA has not pursued more substantial amendments relating to apprentices. This is largely on the basis that the Minimum Wage Panel in its decision in the Annual wage Review 2009-2010 foreshadowed a separate review of apprentice wages and conditions.<sup>9</sup> HIA also note that the rates of pay for adult apprentices are currently the subject of an appeal to the Full Bench of Fair Work Australia.<sup>10</sup>
- 154.** One of the issues that remains outstanding is that employers in New South Wales are being restricted as to the manner in which they can register apprentices following the making of the modern award.
- 155.** Section 9(2) of the *Apprenticeship and Traineeship Act 2001* provides that:
- An application for the establishment of a trainee apprenticeship may be dismissed if the Commissioner or Tribunal, as the case may be, is satisfied that a trainee apprenticeship is inappropriate in the circumstances of the case, despite the fact that the relevant industrial award or agreement recognises that the apprenticeship may be undertaken as a trainee apprenticeship.*
- 156.** This means that Commissioner has discretion to decide that registration of a trainee apprenticeship is inappropriate and the absence of provisions in the modern award supporting this distinct type of apprenticeship may impact this decision. This issue may require further consideration during a broad review of apprentice wages and conditions.

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<sup>9</sup> [2010] FWAFB 4000.

<sup>10</sup> [2012] FWA 62 is currently subject of appeal to the Full Bench of Fair Work Australia.



157. The results of award modernisation also appear to have had a number of unintended consequences, including potentially significant cost increases for employers of adult apprentices. The potential scale of the increases under the Modern Award is such that it will act as a disincentive to the engagement of adult apprentices in the future and has also jeopardised the ongoing employment of adult apprentices.
158. This is particularly significant as HIA had expected to see an increased number of adult apprentices enter the industry as people are encouraged to stay at school longer on account of changing social expectations and Government policy. However, new provisions introduced into the modern awards threaten this. Of particular concern to HIA is the potential application of clause 19.8(c) of the Modern Award.
159. Prior to the modern awards coming into effect on 1 January, the pre-modern instruments to which the majority of employers in the residential building industry were bound had varying approaches to the setting of wages for apprentices. The majority of commonly applied pre-modern instruments in the residential building industry had not previously contained separate rates of pay for adult apprentices and adult apprentices were only entitled to be paid at the same rate as a junior apprentice.
160. Adult apprentices who were 21 year of age or over at the time of commencing their apprenticeship were entitled to a separately prescribed rate of pay in NSW, where this rate was still expressed as a percentage of the adult rate (albeit one that was higher than the relativity prescribed for junior apprentices) and in Queensland where the minimum wage existed as a safety net.

161. However when the final Building and Construction General On-site Award was released, the above clause was inserted:

**19.8 Adult apprenticeship**

- (a) *Where a person was employed by an employer in the metal and engineering on-site construction industry immediately prior to becoming an adult apprentice with that employer, such person will not suffer a reduction in the rate of pay by virtue of becoming indentured.*
- (b) *For the purpose of fixing a rate of pay only, the adult apprentice will continue to receive the rate of pay that is applicable to the classification or class of work specified in clause 19.1, and in which the adult apprentice was engaged immediately prior to entering into the contract of indenture.*
- (c) *Subject to clauses 19.8(a) and (b), the rate of pay of an adult apprentice will be the rate prescribed for the lowest paid classification in clause 19.1 or the rate prescribed by clause 19.7 for the relevant year of apprenticeship, whichever is the greater.*

162. The inclusion of the provision would also appear to be inconsistent with section 576A(2) of the *Workplace Relations Act 1996* which provided:

*Modern Awards*

- (a) *must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and*
- (b) *together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees; and*



- (c) *must be economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and*
- (d) *must be in a form that is appropriate for a fair and productive workplace relations system that promotes collective enterprise bargaining but does not provide for statutory individual agreements; and*
- (e) *must result in a **certain, stable and sustainable** modern award system for Australia.*

**163.** The Commission was also required to observe the objects in section 576B(2) of the Act which provided:

*The creation of modern awards is not intended to:*

- (a) *extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free. This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia;*
- (b) *result in high-income employees being covered by modern awards;*
- (c) *disadvantage employees;*
- (d) ***increase costs for employers;***
- (e) *result in the modification of enterprise awards or Notional Agreements Preserving State Awards (NAPSAs) that are derived from state enterprise awards. This does not preclude the creation of a modern award for an industry or occupation in which enterprise awards or NAPSAs that are derived from state enterprise awards*



*operate. However a modern award should be expressed so as not to bind an employer who is bound by an enterprise award or a NAPSA derived from a state enterprise award in respect of an employee to whom the enterprise award or NAPSA applies.*

- 164.** Despite these objectives clause 19.8(c) of the Modern Award has resulted in increased costs for employers of a potentially considerable scale. The provision would also appear to run contrary to the award modernisation request signed by the Minister for Employment and Workplace Relations (the Minister) on 28 March 2008 pursuant to s.576C(1) of the *Workplace Relations Act 1996* (the Act) (varied on 16 June 2008 and 18 December 2008 pursuant to s.576C(4) of the Act). The request sets out the following objects of relevance:

*In accordance with section 576B of the Act, the Commission must have regard to the following factors when performing its functions under Part 10A of the Act and this award modernisation request:*

- (a) *the creation of jobs and the promotion of high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;*
- (b) *protecting the position in the labour market of young people, employees to whom training arrangements apply and employees with a disability...*<sup>11</sup>

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<sup>11</sup> Consolidated version of the Award Modernisation Request made under section 576C(1) of the *Workplace Relations Act 1996*, incorporating the Variation of Award Modernisation Request under section 576C(4), issued by Julia Gillard, Minister for Employment and Workplace Relations on 16 June 2008, !! HYPERLINK "<http://www.workplace.gov.au/NR/rdonlyres/2C83348A-C1C4-45BB-A8B9-2149187DE3D9/0/ConsolidatedAwardModernisationRequest.pdf>"  
<http://www.workplace.gov.au/NR/rdonlyres/2C83348A-C1C4-45BB-A8B9-2149187DE3D9/0/ConsolidatedAwardModernisationRequest.pdf><sup>1</sup> .

165. The application of clause 19.7(c) of the Building and Construction General On-site award 2010 to adult apprentices outside of the metal and engineering industries does not create jobs or encourage high levels of employment, labour force participation and skills development but rather, results in adult apprentices no longer being competitive in the labour market.

166. In its submission to the AIRC during the award modernisation process, Group Training Australia stated at paragraph 26:

*The wage levels of apprentice have always been of concern both for apprentices and employers. The setting of wage levels for apprentices can consistently be seen as a delicate balancing act to ensure that wages are sufficient to attract young workers into taking up an apprenticeship (and so replenish the retiring stock of tradespeople) with the reluctance of employers to pay high wages for several years for relatively unskilled young workers (it is generally accepted that employers only begin to make gains on the employment of apprentices in the 3<sup>rd</sup> year of the apprenticeship).<sup>12</sup>*

167. Modern award provisions resulting in cost increases of considerable scale may require re-examination via a broad review of apprentice wages and conditions in an attempt to strike the appropriate balance.

168. Another issue that may be appropriately addressed via a review of adult apprentice wages and conditions relates to the failure of the award to identify that certain apprentices in Queensland are excluded from the

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<sup>12</sup> Submission by Group Training Australia Ltd in relation to the Australian Industrial Relations Commission Award Modernisation Process, July 2008, p 14.





apprentice wage regime under the Award as intended by the *Fair Work Legislation Amendment Regulations 2009 (No 3)* (Cth). The complexity of this situation is demonstrated via materials developed by Master Builders Association and the Fair Work Ombudsman via the ‘Shared Industry Assistance Program’.<sup>13</sup>

169. The *Fair Work Legislation Amendment Regulations 2009* (the “Regulations”), made on 14 December 2009 have resulted in significant confusion for employers in determining wages and conditions for apprentices employed in Queensland. Fair Work Australia’s National Minimum Wage Order has further exacerbated that confusion and there is pressing need to reconsider the Modern Award in the event the Regulations are not amended.
170. In particular, the Regulations continue coverage of transitional instruments for employees to whom a training arrangement applies where the instrument provides for competency-based wage progression or provides solely for the provision of tools for apprentices. This means that employers of apprentices and trainees subject to those instruments are forced to apply multiple instruments to determine wages for their workers.
171. The confusion created by the continuation of state based instruments for Queensland apprentices has been further compounded by Fair Work Australia’s 2011 National Minimum Wage decision. Confusion has arisen in relation to the updating of the transitional Australian Pay and Conditions Scales (APCS) in light of the fact that a 3.4% increase has been awarded as opposed to a flat dollar amount. As the APCS is formulated to include some allowances, it is both complex and problematic to determine how the 3.4% increase is to be applied.

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<sup>13</sup> See: <http://www.masterbuilders.com.au/Downloads/9723B9F9-B493-4D4E-82D7-15D18107C14A-Apprentices%20in%20Queensland%20.pdf>



172. State based Pay Scale Summaries published by the then federal regulator in 2008 have not been updated to reflect Fair Work Australia's increases to the minimum wage (potentially as a consequence of the complexity in doing so) and as such, there is no clear guidance material available to employers of apprentices in Queensland setting out the current rate of pay.



## ANNEXURE 'A'

### Building, metal and civil construction group

#### Building, metal and civil construction industries

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<b>Pre-reform awards</b>				
Building, metal and civil construction industries	Asphalt and Bitumen Industry (NSW and ACT) Award 1999	<a href="#">AP766022</a>		
Building, metal and civil construction industries	Asphalt and Bitumen Industry (Queensland) Award 2000	<a href="#">AP765981</a>		
Building, metal and civil construction industries	Asphalt and Bitumen Industry (Southern States) Award, 1999	<a href="#">AP766012</a>	CRV	
Building, metal and civil construction industries	Asphalt and Bitumen Industry (WA) Award 2000	<a href="#">AP766093</a>		
Building, metal and civil construction industries	Australian Workers' Union Construction and Maintenance (Western Australia) Award 2003	<a href="#">AP825520</a>		
Building, metal and civil construction industries	Australian Workers' Union Construction and Maintenance Award 2002	<a href="#">AP815828</a>	CRV	
Building, metal and civil construction industries	Australian Workers' Union Construction-on-Site and Civil Engineering (A.C.T.) Award 1999	<a href="#">AP765604</a>	CRA	
Building, metal and civil construction industries	AWU Commercial Landscaping Award 2001	<a href="#">AP806077</a>	CRV	
Building, metal and civil construction industries	AWU Geomembrane and Geotextile Installation Award 2003	<a href="#">AP823562</a>		
Building, metal and civil construction industries	Building and Construction Industry (ACT) Award 2002	<a href="#">AP817145</a>	CRA	
Building, metal and civil construction industries	Building and Construction Industry (Northern Territory) Award 2002	<a href="#">AP812941</a>	CRN	
Building, metal and civil construction industries	Construction Industry Sector - Minimum Wage Order - Victoria 1997	<a href="#">AP774313</a>		
Building, metal and civil construction industries	Mobile Crane Hiring Award 2002.	<a href="#">AP816842</a>	CRV	

### Building, metal and civil construction group

#### Building, metal and civil construction industries

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<b>Pre-reform awards - continued</b>				
Building, metal and civil construction industries	National Building and Construction Industry Award 2000	<a href="#">AP790741</a>	CRV	
Building, metal and civil construction industries	National Joinery and Building Trades Products Award 2002	<a href="#">AP817265</a>	CRV	
Building, metal and civil construction industries	National Metal and Engineering on-site Construction Industry Award 2002	<a href="#">AP816828</a>	CRV	
Building, metal and civil construction industries	Roof Slaters and Tilers (Victoria) Award 2002	<a href="#">AP818507</a>	CRV	
Building, metal and civil construction industries	South Australian Civil Contracting Industry Award 1999	<a href="#">AP798273</a>		
Building, metal and civil construction industries	Western Australian Civil Contracting Award 1998	<a href="#">AP803190</a>		
<b>NAPSAs</b>				
Building, metal and civil construction industries	126 Phillip Street Project Award <sup>1,2</sup>	<a href="#">AN120656</a>		NSW
Building, metal and civil construction industries	30-38 Hickson Road Project Award <sup>1,2</sup>	<a href="#">AN120657</a>		NSW
Building, metal and civil construction industries	A W Edwards Pty Limited Epping to Chatswood Rail Link Stat-East Works Project Award <sup>2</sup>	<a href="#">AN120001</a>		NSW
Building, metal and civil construction industries	Altro City Quarter Camperdown Project Award 2004 <sup>1,2</sup>	<a href="#">AN120017</a>		NSW
Building, metal and civil construction industries	Asphalt and Bitumen Industry (State) Consolidated Award	<a href="#">AN120023</a>		NSW
Building, metal and civil construction industries	Auburn Home Mega Mall Project Award <sup>1,2</sup>	<a href="#">AN120025</a>		NSW
Building, metal and civil construction industries	Australand Holdings Limited Coles Myer Regional Distribution Centre Goulburn Project Award 2005 <sup>2</sup>	<a href="#">AN120026</a>		NSW



**Building, metal and civil construction group**

**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i>				
Building, metal and civil construction industries	Australand Holdings Limited Mayne Nickless Warehouse and office Facility Project Award 2004 <sup>1 2</sup>	<a href="#">AN120027</a>		NSW
Building, metal and civil construction industries	B & S Solid Plastering Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120042</a>		NSW
Building, metal and civil construction industries	Barclay Mowlem Construction Limited - Salt Outrigger Resort Project Award 2003 <sup>1 2</sup>	<a href="#">AN120044</a>		NSW
Building, metal and civil construction industries	Baulderstone Hornibrook Pty Ltd Project Award Twin towns - Harbour tower 2005 <sup>2</sup>	<a href="#">AN120047</a>		NSW
Building, metal and civil construction industries	BCMG Re-Processing (State) Award <sup>1</sup>	<a href="#">AN120048</a>		NSW
Building, metal and civil construction industries	Boral GST Protocol (Facilitation and Compliance) Contract Determination	<a href="#">AN120066</a>		NSW
Building, metal and civil construction industries	Boral St Peters and Enfield Terminal (State) Award	<a href="#">AN120072</a>		NSW
Building, metal and civil construction industries	Bovis Lend Lease Australia Square Refurbishment Project Award <sup>1 2</sup>	<a href="#">AN120073</a>		NSW
Building, metal and civil construction industries	Bovis Lend Lease Darling Park Stage 3 Project Award <sup>1 2</sup>	<a href="#">AN120074</a>		NSW
Building, metal and civil construction industries	Bovis Lend Lease Ferguson Centre - Parramatta Project Award <sup>2</sup>	<a href="#">AN120075</a>		NSW
Building, metal and civil construction industries	Bovis Lend Lease Macarthur Square Northern Extension Project Award <sup>1 2</sup>	<a href="#">AN120076</a>		NSW
Building, metal and civil construction industries	Bovis Lend Lease Penrith Plaza Redevelopment Project Award <sup>1 2</sup>	<a href="#">AN120077</a>		NSW
Building, metal and civil construction industries	Bovis Lend Lease Quad 3 Project Award <sup>1 2</sup>	<a href="#">AN120078</a>		NSW
Building, metal and civil construction industries	Building and Construction Industry (State) Award	<a href="#">AN120089</a>		NSW

**Building, metal and civil construction group**

**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i>				
Building, metal and civil construction industries	Building Crane Drivers (State) Award	<a href="#">AN120090</a>		NSW
Building, metal and civil construction industries	Building Employees Mixed Industries (State) Award	<a href="#">AN120091</a>		NSW
Building, metal and civil construction industries	Building Industry - Contract Floor Layer Minimum Rate Order Award	<a href="#">AN120092</a>		NSW
Building, metal and civil construction industries	Cassons Building B Camellia Project Award <sup>1 2</sup>	<a href="#">AN120104</a>		NSW
Building, metal and civil construction industries	Centre Court Project Award 2005 <sup>2</sup>	<a href="#">AN120113</a>		NSW
Building, metal and civil construction industries	CFMEU Enterprise Award Expiring 30 June 2006	<a href="#">AN120114</a>		NSW
Building, metal and civil construction industries	Coachmakers, &c., Rail (State) Award	<a href="#">AN120139</a>		NSW
Building, metal and civil construction industries	Coachmakers, &c., Road Perambulator Manufacturers (State) Award	<a href="#">AN120140</a>		NSW
Building, metal and civil construction industries	Coastcrete Concrete Pumping Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120143</a>		NSW
Building, metal and civil construction industries	Concept Building Services (Qld) Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120153</a>		NSW
Building, metal and civil construction industries	Condong and Broadwater Co-Generation Construction Projects Consent Award 2003 <sup>2</sup>	<a href="#">AN120155</a>		NSW
Building, metal and civil construction industries	Cross City Tunnel Project Civil Consent Award 2003 <sup>1 2</sup>	<a href="#">AN120164</a>		NSW
Building, metal and civil construction industries	Cross City Tunnel Project Mechanical and Electrical Consent Award 2003 <sup>1 2</sup>	<a href="#">AN120165</a>		NSW
Building, metal and civil construction industries	Daracon Engineering Pty Ltd - Newcastle BHP Steelworks Enterprise Consent Award <sup>2</sup>	<a href="#">AN120177</a>		NSW



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**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i>				
Building, metal and civil construction industries	Eastern Creek Municipal Waste Treatment Project Consent Award 2003 <sup>1,2</sup>	<a href="#">AN120188</a>		NSW
Building, metal and civil construction industries	Epping to Chatswood Underground Rail Tunnel Construction Project Award <sup>1,2</sup>	<a href="#">AN120201</a>		NSW
Building, metal and civil construction industries	Ettamogah to Murray River Project Award <sup>2</sup>	<a href="#">AN120203</a>		NSW
Building, metal and civil construction industries	Florida Construction Pty Ltd/ CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120209</a>		NSW
Building, metal and civil construction industries	Form, Lot 302 Victoria Park Zetland Project Award <sup>1,2</sup>	<a href="#">AN120214</a>		NSW
Building, metal and civil construction industries	Gangers (State) Award	<a href="#">AN120225</a>		NSW
Building, metal and civil construction industries	General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award	<a href="#">AN120228</a>		NSW
Building, metal and civil construction industries	Georges River Program Project Consent Award <sup>1,2</sup>	<a href="#">AN120229</a>		NSW
Building, metal and civil construction industries	Gosford Hospital Project Award <sup>1,2</sup>	<a href="#">AN120236</a>		NSW
Building, metal and civil construction industries	Harmony Timber Floors Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120244</a>		NSW
Building, metal and civil construction industries	Homebush Bay Infrastructure Development Work Package 3 Consent Project Award 1997 <sup>2</sup>	AN120703		NSW
Building, metal and civil construction industries	Hot Strip Mill Capacity Increase Project Consent Award <sup>1,2</sup>	<a href="#">AN120248</a>		NSW
Building, metal and civil construction industries	Hunter Group Training (Building Apprentices and Trainees) Consent Award <sup>1</sup>	<a href="#">AN120241</a>		NSW
Building, metal and civil construction industries	Hunter Valley Training Company (Scaffolding Trainees) Training (State) Award	<a href="#">AN120250</a>		NSW

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**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i>				
Building, metal and civil construction industries	Hydro Aluminium Kurri Kurri Smelter Upgrade and Retro-Fit Project Consent Award 2004 <sup>1,2</sup>	<a href="#">AN120253</a>		NSW
Building, metal and civil construction industries	Ian Thorpe Aquatic Centre Project Award 2005 <sup>2</sup>	<a href="#">AN120254</a>		NSW
Building, metal and civil construction industries	Illawarra Wastewater Strategy Project Consent Award <sup>2</sup>	<a href="#">AN120259</a>		NSW
Building, metal and civil construction industries	Inner West Health Centre Project Award <sup>1,2</sup>	<a href="#">AN120263</a>		NSW
Building, metal and civil construction industries	Innovation Campus Development Award 2005 <sup>2</sup>	<a href="#">AN120264</a>		NSW
Building, metal and civil construction industries	Jacksons Landing Development Project Award <sup>1,2</sup>	<a href="#">AN120269</a>		NSW
Building, metal and civil construction industries	Jacksons Landing Project Award <sup>1,2</sup>	<a href="#">AN120270</a>		NSW
Building, metal and civil construction industries	John Holland Pty Ltd – Unions New South Wales No.1 Margaret Street Project Award 2002 <sup>2</sup>	<a href="#">AN120274</a>		NSW
Building, metal and civil construction industries	John Holland Pty Ltd John Hunter Hospital Access Strategy Building Project Award 2004 <sup>1,2</sup>	<a href="#">AN120275</a>		NSW
Building, metal and civil construction industries	John Holland Pty Ltd Unions of New South Wales Woolworths Support Facility Project Award 2004 <sup>1,2</sup>	<a href="#">AN120276</a>		NSW
Building, metal and civil construction industries	John Holland Pty Ltd Woolworths Wyong Regional Distribution Centre Project Award 2004 <sup>2</sup>	<a href="#">AN120273</a>		NSW
Building, metal and civil construction industries	John Holland Pty Ltd/Unions of New South Wales asian Elephant Precinct Project Award 2003 <sup>1,2</sup>	<a href="#">AN120277</a>		NSW
Building, metal and civil construction industries	John Holland/Labor Council of New South Wales Uts Building 4 Project Award 2005 <sup>2</sup>	<a href="#">AN120278</a>		NSW
Building, metal and civil construction industries	John Holland/Lahey Joint Venture – Unions New South Wales Mid North Coast Correctional Centre Project Award 2002 <sup>1,2</sup>	<a href="#">AN120279</a>		NSW



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**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i> Building, metal and civil construction industries	Joiners (State) Award	<a href="#">AN120280</a>		NSW
Building, metal and civil construction industries	K & G Roofing Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120288</a>		NSW
Building, metal and civil construction industries	K6 Upgrade Project Consent Award 2003 <sup>1 2</sup>	<a href="#">AN120290</a>		NSW
Building, metal and civil construction industries	Kilpatrick Green Pty Ltd New South Wales Enterprise Award, 2000-2002 <sup>1</sup>	<a href="#">AN120292</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales & Barclay Mowlem Construction Limited – City Quarter Stage 3: Camperdown, NSW Project Award <sup>1 4</sup>	<a href="#">AN120295</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales & Barclay Mowlem Construction Limited – Stamford Marque Apartments Project Award <sup>1 4</sup>	<a href="#">AN120296</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales & Barclay Mowlem Construction Limited Project Award – Montefiore <sup>1 2</sup>	<a href="#">AN120297</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales and Australand Holdings Limited L.G. Warehouse and office Facility Project Award <sup>1 2</sup>	<a href="#">AN120298</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales and Barclay Mowlem Bellagio Project Award 2004 <sup>1 2</sup>	<a href="#">AN120299</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales and Barclay Mowlem Construction Limited Liverpool Hospital – New Mental Health Centre Project Award 2004 <sup>1 2</sup>	<a href="#">AN120300</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales and Barclay Mowlem Construction Limited Project Award – Bullecourt: Ultimo, New South Wales <sup>1 2</sup>	<a href="#">AN120294</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales and Baulderstone Hornibrook Breakfast Point Development Award 2004 <sup>1 2</sup>	<a href="#">AN120301</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales and Prestige Building Services Pty Ltd Breakfast Point Development Project Award 2004 <sup>1 2</sup>	<a href="#">AN120302</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales La Comiche Project Award <sup>1 2</sup>	<a href="#">AN120303</a>		NSW

**Building, metal and civil construction group**

**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i> Building, metal and civil construction industries	Labor Council of New South Wales Maroubra Central Project Award 2004 <sup>1 2</sup>	<a href="#">AN120304</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales Pfizer Administration Building Extension Stage 3 Project Award <sup>2</sup>	<a href="#">AN120305</a>		NSW
Building, metal and civil construction industries	Labor Council of New South Wales Rhodes Waterside Project Award <sup>1 2</sup>	<a href="#">AN120306</a>		NSW
Building, metal and civil construction industries	Landscape Gardeners, &c., on Building and General Construction and Maintenance, Civil and Mechanical Engineering (State) Award	<a href="#">AN120309</a>		NSW
Building, metal and civil construction industries	Lend Lease Hotel Intercontinental (Stage 1) Project Award <sup>1 2</sup>	<a href="#">AN120311</a>		NSW
Building, metal and civil construction industries	Lend Lease Parramatta Railway Station Project Award <sup>2</sup>	<a href="#">AN120312</a>		NSW
Building, metal and civil construction industries	Lend Lease University of NSW – Nmdz Project Award <sup>2</sup>	<a href="#">AN120313</a>		NSW
Building, metal and civil construction industries	M Central – Pymont Project Award <sup>1 2</sup>	<a href="#">AN120319</a>		NSW
Building, metal and civil construction industries	No. 1 Fire Station Redevelopment Project Award 2002 <sup>2</sup>	<a href="#">AN120370</a>		NSW
Building, metal and civil construction industries	North West Transitway Project Consent Award <sup>2</sup>	<a href="#">AN120372</a>		NSW
Building, metal and civil construction industries	Ozfix Reinforcing Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120400</a>		NSW
Building, metal and civil construction industries	Pacific Square – Maroubra Project Award <sup>1 2</sup>	<a href="#">AN120403</a>		NSW
Building, metal and civil construction industries	Panther Constructions (Qld) Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120405</a>		NSW
Building, metal and civil construction industries	Parramatta Courts Precinct Award <sup>2</sup>	<a href="#">AN120407</a>		NSW



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**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i> Building, metal and civil construction industries	Peppers Resort Project Award 2004 <sup>1 2</sup>	<a href="#">AN120411</a>		NSW
Building, metal and civil construction industries	Plant, &c., Operators on Construction (State) Award	<a href="#">AN120419</a>		NSW
Building, metal and civil construction industries	Port Waratah Coal Services Project 3D Consent Award 2005	<a href="#">AN120423</a>		NSW
Building, metal and civil construction industries	Project Waratah Construction Consent Award 2005 <sup>2</sup>	<a href="#">AN120442</a>		NSW
Building, metal and civil construction industries	Qantas Distribution Centre Project Award 2005 <sup>2</sup>	<a href="#">AN120444</a>		NSW
Building, metal and civil construction industries	Redevelopment of The Sydney Hilton and Capital Centre 255 – 259 Pitt Street Sydney Project Award <sup>1 2</sup>	<a href="#">AN120462</a>		NSW
Building, metal and civil construction industries	Reed Constructions Auburn Site Project Award <sup>2</sup>	<a href="#">AN120662</a>		NSW
Building, metal and civil construction industries	Replacement Research Reactor Project Award 2002 <sup>2</sup>	<a href="#">AN120465</a>		NSW
Building, metal and civil construction industries	Resmed Campus: Norwest Business Park Project Award <sup>1 2</sup>	<a href="#">AN120466</a>		NSW
Building, metal and civil construction industries	Richard Crookes Constructions Unions NSW Wellington Correctional Centre Project Award 2005 <sup>2</sup>	<a href="#">AN120471</a>		NSW
Building, metal and civil construction industries	Sinter Machine Emission Reduction Project Consent Award	AN120707		NSW
Building, metal and civil construction industries	Steelstone Services (Australia) Pty Ltd - Employee Relations Award Newcastle 1996	<a href="#">AN120705</a>		NSW
Building, metal and civil construction industries	Stockland Bay Village Project Award <sup>1 2</sup>	<a href="#">AN120511</a>		NSW
Building, metal and civil construction industries	Superior Walls & Ceilings Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120518</a>		NSW

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**Building, metal and civil construction industries**

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i> Building, metal and civil construction industries	Sydney University Site Building Project Award 2005 <sup>2</sup>	<a href="#">AN120531</a>		NSW
Building, metal and civil construction industries	Taragon Constructions George & Harris Streets Project Award 2005 <sup>2</sup>	<a href="#">AN120536</a>		NSW
Building, metal and civil construction industries	The Beach - Cabarita Beach Project Award 2005 <sup>2</sup>	<a href="#">AN120553</a>		NSW
Building, metal and civil construction industries	The Drift - Casuarina Project Award 2005 <sup>2</sup>	<a href="#">AN120556</a>		NSW
Building, metal and civil construction industries	The Kens Project 259-295 Kent Street Sydney Project Award <sup>1 2</sup>	<a href="#">AN120560</a>		NSW
Building, metal and civil construction industries	Thiess John Holland Project Award <sup>1 2</sup>	<a href="#">AN120575</a>		NSW
Building, metal and civil construction industries	Thiess Pty Limited 100 Pacific Highway Project Award 2004 <sup>1 2</sup>	<a href="#">AN120576</a>		NSW
Building, metal and civil construction industries	Tilecorp Pty Ltd/CFMEU Enterprise Award Expiring 30 March 2008	<a href="#">AN120577</a>		NSW
Building, metal and civil construction industries	Tweed Ultima Project Award 2005 <sup>2</sup>	<a href="#">AN120621</a>		NSW
Building, metal and civil construction industries	Union Street Project Award 2005 <sup>2</sup>	<a href="#">AN120624</a>		NSW
Building, metal and civil construction industries	Unions NSW & A W Edwards Pty Limited Resmed Campus Development Stage 2 Project Award <sup>2</sup>	<a href="#">AN120625</a>		NSW
Building, metal and civil construction industries	Westfield Design & Construction Pty Ltd - Mt Druitt Shoppingtown Project Award <sup>2</sup>	<a href="#">AN120637</a>		NSW
Building, metal and civil construction industries	Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award <sup>2</sup>	<a href="#">AN120638</a>		NSW
Building, metal and civil construction industries	Westfield Design & Construction Pty Ltd Parramatta Shoppingtown Project Award <sup>2</sup>	<a href="#">AN120639</a>		NSW



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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i> Building, metal and civil construction industries	Westfield Design & Construction Pty Ltd Tuggerah Shoppingtown Project Award <sup>2</sup>	<a href="#">AN120640</a>		NSW
Building, metal and civil construction industries	Westfield Design and Construction Pty Ltd Bondi Project Award 2002 <sup>1,2</sup>	<a href="#">AN120641</a>		NSW
Building, metal and civil construction industries	Westfield Design and Construction Pty Ltd Kotara Redevelopment Project Award <sup>1,2</sup>	AN120714		NSW
Building, metal and civil construction industries	Westlink M7 Project Award <sup>1,2</sup>	<a href="#">AN120642</a>		NSW
Building, metal and civil construction industries	Westmead Hospital Redevelopment Project Award <sup>2</sup>	<a href="#">AN120643</a>		NSW
Building, metal and civil construction industries	Windsor Road Upgrade Project Consent Award <sup>2</sup>	<a href="#">AN120648</a>		NSW
Building, metal and civil construction industries	Wyong Hospital Project Award <sup>1</sup>	<a href="#">AN120655</a>		NSW
Building, metal and civil construction industries	Blastcoaters offsite Award - State 2002	<a href="#">AN140029</a>		QLD
Building, metal and civil construction industries	Building Construction Industry Award - State 2003	<a href="#">AN140043</a>		QLD
Building, metal and civil construction industries	Building Products, Manufacture and Minor Maintenance Award - State 2003	<a href="#">AN140045</a>		QLD
Building, metal and civil construction industries	Civil Construction, Operations and Maintenance General Award - State 2003	<a href="#">AN140061</a>		QLD
Building, metal and civil construction industries	Queensland Building Services Authority Award - State 2003	<a href="#">AN140236</a>		QLD
Building, metal and civil construction industries	AWU/CFMEU Construction & Maintenance Award (South Australia) 1989	<a href="#">AN150011</a>		SA
Building, metal and civil construction industries	Bricklayers & Tuckpointers (Mixed Industry) (SA) Award	<a href="#">AN150018</a>		SA

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AIRC Industry	Publication Title	Pub ID	Common Rule	State
<i>NAPSAs - continued</i> Building, metal and civil construction industries	Building and Construction Industry (SA) Award	<a href="#">AN150670</a>		SA
Building, metal and civil construction industries	Building & Construction Workers (State) (Mixed Industry) Award	<a href="#">AN150021</a>		SA
Building, metal and civil construction industries	Building and Construction Workers (State) Award	<a href="#">AN150022</a>		SA
Building, metal and civil construction industries	Building Labourers (Mixed Enterprise and Factory) Award	<a href="#">AN150668</a>		SA
Building, metal and civil construction industries	Building Trades (SA) Construction Award	<a href="#">AN150023</a>		SA
Building, metal and civil construction industries	Carpenters & Joiners (General) Award 1993	<a href="#">AN150029</a>		SA
Building, metal and civil construction industries	Construction and Maintenance (South Australia) Award	<a href="#">AN150669</a>		SA
Building, metal and civil construction industries	Asbestos Jointings Industry Award 1967	<a href="#">AN160015</a>		WA
Building, metal and civil construction industries	Australian Workers Union Road Maintenance, Marking and Traffic Management	<a href="#">AN160016</a>		WA
Building, metal and civil construction industries	Bibra Lake Fabrication Workshop Award	<a href="#">AN160025</a>		WA
Building, metal and civil construction industries	Building Materials Manufacture (CSR Limited - Welshpool Works) Award, 1982	<a href="#">AN160033</a>		WA
Building, metal and civil construction industries	Building Trades (Construction) Award 1987	<a href="#">AN160034</a>		WA
Building, metal and civil construction industries	Building Trades (Government) Award 1968	<a href="#">AN160036</a>		WA
Building, metal and civil construction industries	Building Trades Award 1968	<a href="#">AN160037</a>		WA





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<b>AIRC Industry</b>	<b>Publication Title</b>	<b>Pub ID</b>	<b>Common Rule</b>	<b>State</b>
<i>NAPSAs - continued</i>				
Building, metal and civil construction industries	Earth Moving and Construction Award	<a href="#">AN160104</a>		WA
Building, metal and civil construction industries	Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988	<a href="#">AN160110</a>		WA
Engine drivers and firemen	Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973	<a href="#">AN160114</a>		WA
Building, metal and civil construction industries	Foremen (Building Trades) Award 1991	<a href="#">AN160133</a>		WA
Building, metal and civil construction industries	North Rankin Construction Award	<a href="#">AN160228</a>		WA
Building, metal and civil construction industries	Storemen's Rapid Metal Developments (Aust.) Pty. Ltd. Award 1982	<a href="#">AN160302</a>		WA
Building, metal and civil construction industries	Building and Construction Industry Award	<a href="#">AN170010</a>		TAS
Building, metal and civil construction industries	Meander Dam Development Project Enterprise Award <sup>2</sup>	<a href="#">AN170127</a>		TAS
Building, metal and civil construction industries	Building Trades Award	<a href="#">AN170011</a>		TAS
Building, metal and civil construction industries	Metal and Engineering on-Site Construction Industry Award	<a href="#">AN170063</a>		TAS
Building, metal and civil construction industries	Mobile Crane Hire Award	<a href="#">AN170068</a>		TAS
Building, metal and civil construction industries	Risdon Prison Redevelopment Project Enterprise Award	<a href="#">AN170089</a>		TAS

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<b>AIRC Industry</b>	<b>Publication Title</b>	<b>Pub ID</b>	<b>Common Rule</b>	<b>State</b>
<i>Pre-reform enterprise awards</i>				
Building, metal and civil construction industries	Agility/AMWU Award 2003	<a href="#">AP829990</a>		
Building, metal and civil construction industries	AWU Railway Alteration and Maintenance Award 2002	<a href="#">AP818906</a>		
Building, metal and civil construction industries	Bitumen Spraying Services Award 1999	<a href="#">AP769404</a>		
Building, metal and civil construction industries	Pioneer Road Services Pty. Ltd. Integration Stage 1 Award 1999	<a href="#">AP792646</a>		
Building, metal and civil construction industries	Transport Workers Spraypave Pty Ltd Award 1999	<a href="#">AP799628</a>		



## ANNEXURE 'B'

### Schedule of allowances for inclusion at new Schedule E of the Award

\* Indicates that the current content of the table is contingent upon the variations proposed in HIA's submission being made. HIA suggests an alternative to reflect the current provision in the event that such variations are not made.

\*\* Included in the alternative.

\*\*\* Where indicated no, HIA seeks orders exempting the clause from applying to residential building as defined within HIA's submission.

Item	Allowance	Clause setting out entitlement	Type of allowance	Payable for all purposes ?	Payable for residential building? ***	Amount
1	Leading hand -1 person	19.2	Skill	No*	Yes	2.4% of the hourly rate* of the higher of highest classification supervised, or the employee's own rate.  Payable per hour*
2	Leading hand – 2-5 persons	19.2	Skill	No*	Yes	5.3% of the hourly rate* of the higher of highest classification supervised, or the employee's own rate.  Payable per hour*
3	Leading hand – 6-10 persons	19.2	Skill	No*	Yes	6.7% of the hourly rate* of the higher of highest classification supervised, or the employee's own rate.  Payable per hour*
4	Leading hand – more than 10 persons	19.2	Skill	No*	Yes	9% of the hourly rate* of the higher of highest classification supervised, or the employee's own rate.  Payable per



						hour*
5	Mobile cranes adjustment formula	19.5	Disability		No	2.4% of the weekly standard rate per week. Payable to classifications CW5 and above for every 40 tonnes over 100 tonnes.
6	Tool allowance – artificial stoneworker, carpenter and/or joiner, carpenter diver, carver, bridge and wharf carpenter, floor sander, letter cutter, marble and slate worker, stonemason or tilelayer	20.1(a)	Expense related	Yes	Yes	\$27.69 per week
7	Tool allowance – caster, fixer, floorlayer special or plasterer	20.1(a)	Expense related	Yes	Yes	\$22.87 per week
8	Tool allowance – refractory bricklayer or bricklayer	20.1(a)	Expense related	Yes	Yes	\$19.64 per week
9	Tool allowance – roof tiler, slate-ridger or roof fixer, tradespersons in the metals and engineering construction sector	20.1(a)	Expense related	Yes	Yes	\$14.49 per week
10	Tool allowance – signwriter, painter or glazier	20.1(a)	Expense related	Yes	Yes	\$6.65 per week
11	Refractory bricklayers boot allowance	20.1(d)	Expense related	Yes	No	\$78.25 after six weeks employment then no more than once every six months thereafter
12	Meal allowance	20.2(a)	Expense related	No	Yes	\$13.03 if an employee works overtime for at least 1.5 hours after working ordinary hours
13	Meal allowance - operators	20.2(c)	Expense related	No	Yes	\$13.03 for each meal after the completion of each four hours from the commencement of overtime
14	Compensation for	20.3	Expense	No	Yes	Agreed amount



	clothes and tools - to cover loss if employee's clothes, spectacles, hearing aids or tools have been accidentally spoilt by acid, sulphur or other deleterious substances, fire, molten, metal or corrosive substances		related			
15	Compensation for clothes and tools –fire or breaking and entering whilst securely stored at employer's direction in a room or building on the employer's premises, job or workshop e	20.3	Expense related	No	Yes	Maximum \$1,605
16**	Special allowance	21.1	Disability	Yes	Yes	\$7.70 per week
17**	Industry allowance	21.2	Disability	Yes	Yes	3.7% of the weekly standard rate per week
18	Underground allowance	21.3	Disability	Yes	No	1.8% of the weekly standard rate per week
19	Multi-storey allowance – commencement to 15 <sup>th</sup> floor	21.4	Disability	No	No	2.6% of the weekly standard rate per week
20	Multi-storey allowance – 16 <sup>th</sup> to 30 <sup>th</sup> floor	21.4	Disability	No	No	3.1% of the weekly standard rate per week
21	Multi-storey allowance -31 <sup>st</sup> to 45 <sup>th</sup> floor	21.4	Disability	No	No	4.8% of the weekly standard rate per week
22	Multi-storey allowance – 46 <sup>th</sup> to 60 <sup>th</sup> floor	21.4	Disability	No	No	6.2% of the weekly standard rate per week
23	Multi-storey allowance – 61 <sup>st</sup> floor onwards	21.4	Disability	No	No	7.6% of the weekly standard rate per week
24	Irregular structure height allowance – above 15m	21.4(d), 22.3(a)	Disability	No	No	Either multi-storey allowance of towers allowance as agreed. Towers allowance - 3.2% of the hourly standard rate per hour



						for work above 15m, 3.2% for each additional 15m.
25	Service core allowance – more than 15, above multi-storey building	21.4(g), 22.3(a)	Disability	No	No	3.2% of the standard hourly rate per hour for work above 15m, 3.2% for each additional 15m.
26	Laser safety allowance	21.6	Skill	No	No	13.4% of standard hourly rate per day
27	Carpenter-diver allowance	21.7	Skill	Yes	No	4.5% of hourly standard rate per hour
28	Refractory bricklaying allowance	21.8	Skill	Yes	No	10% of the hourly standard rate per hour instead of special rates (except hot and cold work)
29	Refractory bricklaying assistant allowance	21.8	Skill	Yes	No	8.5% of the hourly standard rate per hour instead of special rates (except hot and cold work)
30	Coffer dam worker – not under air pressure	21.9(a)	Disability	No	No	1.7% of weekly standard rate per week
31	Coffer dam worker – under air pressure	21.9(b)	Disability	No	No	As agreed
32	First aid allowance – minimum qualification	21.10(a)(vi)	Skill	No	Yes	0.36% of the weekly standard rate per day
33	First aid allowance – higher qualification	21.10(a)(vi)	Skill	No	Yes	0.57% of the weekly standard rate per day
34	Air-conditioning industry allowance	21.11	Skill	No* (requires a consequential amendment to clause 19.3(b) to remove reference to allowance)	Yes	7.9% of the weekly standard rate per week
35	Electrician's licence allowance	21.12	Skill	No* (requires a consequential amendment to clause	Yes	3.2% of the weekly standard rate per week



				19.3(b) to remove reference to allowance)		
36	In charge of plant allowance	21.13	Skill	No* (requires a consequential amendment to clause 19.3(b) to remove reference to allowance)	Yes	4.7% of the hourly standard rate per hour*
37	Insulation	22.2(a)	Disability	No	Yes	4% of the standard hourly rate per hour
38	Hot work –artificially between 46 degrees and 54 degrees	22.2(b)	Disability	No	No	3.2% of the standard hourly rate per hour
39	Hot work – artificially above 54 degrees	22.2(b)	Disability	No	No	4% of the standard hourly rate per hour
40	Cold work- artificially lower than 0 degrees	22.2(c)	Disability	No	No	3.2% of the standard hourly rate per hour
41	Confined spaces	22.2(d)	Disability	No	Yes	4% of the standard hourly rate per hour
42	Swing scaffold: 0-15 storeys, first 4 hours	22.2(e)	Disability	No	No	23.3% of hourly standard rate per hour
43	Swing scaffold: 0-15 storeys, each subsequent hour	22.2(e)	Disability	No	No	4.8% of hourly standard rate per hour
44	Swing scaffold:16-30 storeys, first 4 hours	22.2(e)	Disability	No	No	30.1% of hourly standard rate per hour
45	Swing scaffold:16-30 storeys, each subsequent hour	22.2(e) 22.2(e)	Disability	No	No	6.3% of hourly standard rate per hour
46	Swing scaffold: 31-45 storeys, first 4 hours	22.2(e)	Disability	No	No	35.6% of hourly standard rate per hour
47	Swing scaffold: 31-45 storeys, each subsequent hour	22.2(e)	Disability	No	No	7.2% of hourly standard rate per hour
48	Swing scaffold: 46-60 storeys, first 4 hours	22.2(e) 22.2(e)	Disability	No	No	58.3% of hourly standard rate per hour
49	Swing scaffold: 46-60 storeys, each subsequent hour	22.2(e)	Disability	No	No	12% of hourly standard rate per hour
50	Swing scaffold: more than 60 storeys, first 4 hours	22.2(e)	Disability	No	No	74.3% of hourly standard rate per hour
51	Swing scaffold: more than 60 storeys, each subsequent hour	22.2(e) 22.2(e)	Disability	No	No	15.4% of hourly standard rate per hour



52	Explosive power tools	22.2(f)	Skill	No	Yes	7.6% of hourly standard rate per day
53	Wet work	22.2(g)	Disability	No	Yes	3.2% of hourly standard rate per hour
54	Dirty work	22.2(h)	Disability	No	Yes	3.2% of hourly standard rate per hour
55	Toxic substances – directly engaged	22.2(i)	Disability	No	Yes	4% of hourly standard rate per hour
56	Toxic substances – engaged	22.2(i)	Disability	No	Yes	3.2% of hourly standard rate per hour
57	Fumes	22.2(j)	Disability	No	Yes	As agreed
58	Asbestos – where required to wear protective clothing	22.2(k)	Disability	No	Yes	4% of hourly standard rate per hour
59	Asbestos eradication	22.2(l)	Disability	No	Yes	10.8% of hourly standard rate per hour (applies instead of other special rates apart from hot, cold, swing scaffold, plaster spray, second hand timber and acid work rates)
60	Furnace work	22.2(m)	Disability	No	No	8.5% of hourly standard rate per hour
61	Acid work	22.2(n)	Disability	No	Yes	8.5% of hourly standard rate per hour
62	Heavy block (other than bricks) – over 5.5kg and under 9kg	22.2(o)	Disability	No	Yes	3.2% of hourly standard rate per hour
63	Heavy block (other than bricks) – 9kg to 18kg	22.2(o)	Disability	No	Yes	5.8% of hourly standard rate per hour
64	Heavy block (other than bricks) – over 18kg	22.2(o)	Disability	No	Yes	8.2% of hourly standard rate per hour
65	Bitumen work	22.2(p)	Disability	No	No	4% of hourly standard rate per hour
66	Height work	22.2(q)	Disability	No	Yes	2.9% of hourly standard rate per hour
67	Suspended perimeter work platform	22.2(r)	Disability	No	No	4.9% of hourly standard rate per hour
68	Carrying fuels, oils and grease in employee vehicle	22.2(s)	Disability	No	Yes	1.4% of hourly standard rate per day
69	Pile driving	22.2(t)	Skill	No	No	2% of weekly standard rate per day or part



						thereof
70	Dual lift allowance	22.2(u)	Skill	No	Yes	16.2% of the hourly standard rate per day or part thereof
71	Stonemasons – cutting tools not provided	22.2(v)	Disability	No	Yes	0.2% of hourly standard rate per hour
72	Towers allowance (general building and construction sector only) – work more than 15m high	22.3(a)(i)	Disability	No	No	3.2% of hourly standard rate per hour
73	Towers allowance (general building and construction sector only) –each additional 15m	22.3(a)(i)	Disability	No	No	3.2% of hourly standard rate per hour
74	Cleaning brickwork using acids (general building and construction sector only)	22.3(b)	Disability	No	Yes	2.9% of hourly standard rate per hour
75	Bagging (general building and construction sector only)	22.3(c)	Disability	No	Yes	2.9% of hourly standard rate per hour
76	Plaster or composition spray (general building and construction sector only)	22.3(d)	Disability	No	Yes	3.2% of hourly standard rate per hour
77	Slushing (general building and construction sector only)	22.3(e)	Disability	No	Yes	3.2% of hourly standard rate per hour
78	Dry polishing of tiles (general building and construction sector only)	22.3(f)	Disability	No	Yes	3.2% of hourly standard rate per hour
79	Cutting tiles with electric saw	22.3(g)	Disability	No	Yes	4% of hourly standard rate per hour
80	Second-hand timber damaging tools (general building and construction sector only)	22.3(h)	Disability	No	Yes	12.6% of hourly standard rate per hour
81	Roof repairs – employees generally (general building and construction sector only)	22.3(i)(i)	Disability	No	Yes	4% of hourly standard rate per hour
82	Roof repairs –roof slaters and tilers only, over 15 m high (general building and construction sector only)	22.3(i)(i)	Disability	No	No	2.9% of hourly standard rate per hour
83	Roof repairs – roof	22.3(i)(ii)	Disability	No	No	4% of hourly





	slaters and tilers only, more than 15m high and pitch over 35 degrees (general building and construction sector only)					standard rate per hour
84	Roof repairs – roof slaters and tilers only, more than 15m high and pitch over 40 degrees (general building and construction sector only)	22.3(i)(ii)	Disability	No	No	5.8% of hourly standard rate per hour
85	Computing quantities (general building and construction sector only)	22.3(j)	Skill	No	Yes	23.3% of hourly standard rate per day
86	Grindstone allowance – grindstone or wheel not available (general building and construction sector only)	22.3(k)	Disability	No	Yes	0.9% of weekly standard rate per week
87	Brewery cylinders painters - (general building and construction sector only)	22.3(l)	Disability	No	No	50% of ordinary rates  When working overtime - overtime rates plus 50% of ordinary rates rates
88	Certificate allowance - (general building and construction sector only)	22.3(m)	Disability	No	Yes	3.2% of hourly standard rate per hour
89	Spray application – painters without booth (general building and construction sector only)	22.3(n)	Skill	No	Yes	3.2% of hourly standard rate per hour
90	Pneumatic tool operation – tool 2.75kgs or more (general building and construction sector only)	22.3(o)	Disability	No	Yes	17.5% of hourly standard rate per day
91	Bricklayer operating cutting machine (general building and construction sector only)	22.3(p)	Disability	No	Yes	4% of hourly standard rate per hour
92	Hydraulic hammer (general building and construction sector only)	22.3(q)	Disability	Yes	Yes	5.4% of hourly standard rate per hour
93	Waste disposal (general building and construction sector)	22.3(r)	Disability	No	Yes	6.7% of hourly standard rate per hour.



	only)					minimum 3 hours payment
94	Pipe enameling (civil construction sector only)	22.4(a)	Disability	No	No	0.9% of weekly standard rate per day or part thereof
95	Powdered lime dust (civil construction sector only)	22.4(b)	Disability	No	No	3.5% of hourly standard rate per hour
96	Sand blasting (civil construction sector only)	22.4(c)	Disability	No	No	0.4% of hourly standard rate per hour
97	Live sewer work (civil construction sector only)	22.4(d)	Disability	No	No	2.9% of hourly standard rate per hour
98	Timbering (civil construction sector only)	22.4(e)	Disability	No	No	3.6% of hourly standard rate per hour
99	Special work (civil construction sector only)	22.4(f)	Disability	No	No	0.4% of hourly standard rate per hour
100	Compressed air work: 0 -35 kPa (civil construction sector only)	22.4(g)	Disability	No	No	6.9% of hourly standard rate per hour
101	Compressed air work: 35 -65 kPa (civil construction sector only)	22.4(g)	Disability	No	No	8.7% of hourly standard rate per hour
102	Compressed air work: 65 - 100 kPa (civil construction sector only)	22.4(g)	Disability	No	No	17.6% of hourly standard rate per hour
103	Compressed air work: 100-170 kPa (civil construction sector only)	22.4(g)	Disability	No	No	35% of hourly standard rate per hour
104	Compressed air work: 170 - 225 kPa (civil construction sector only)	22.4(g)	Disability	No	No	58.3% of hourly standard rate per hour
105	Compressed air work: 225 - 275 kPa (civil construction sector only)	22.4(g)	Disability	No	No	111.7% of hourly standard rate per hour
106	Cutting stone (civil construction sector only)	22.4(h)	Disability	No	No	4% of hourly standard rate per hour
107	Distant work allowance	24.3	Expense	No	Yes	\$413.78 per week or \$59.20 per day
108	Camping allowance	24.5	Expense	No	Yes	\$179.16 per week or \$25.57 per day
109	Travelling expenses – meal allowance	24.7(a), 24.7(b)	Expense	No	Yes	\$13.03 per meal
110	Travelling expenses – return journey transportation allowance	24.7(b)	Expense	No	Yes	\$19.70 per occasion



111	Weekend return home - travelling	24.7(e)		No	Yes	\$33.40 per occasion
112	Fares and travel patterns allowance	25.2-25.4**	Expense	No	Yes	\$16.50 per day
113	Fares and travel patterns – outside radial areas (and between radial areas**)	25.5, 25.7**	Expense	No	Yes	\$0.44 per km for use of employee vehicle
114	Fares or travel patterns – between work sites during working hours	25.9**	Expense	No	Yes	\$0.74 per km for use of employee vehicle
115	District allowances – NT	26	Expense	No	Yes	Pre-modern award amount
116	District allowances – WA	26	Expense	No	Yes	Pre-modern award amount
117	District allowances – Christmas Island	26	Expense	No	Yes	Pre-modern award amount



## ANNEXURE 'C'

### Fair Work Ombudsman Draft Position Paper on Calculating Casual Loading

Determining the appropriate rate to which the casual loading is added under the Building and Construction General On-site Award 2010 [MA000020] (the Building MA)

#### Calculating casual rates under the Building MA

Our preliminary view is that the casual rate for an employee under the Building MA is calculated by applying the casual loading to the sum of:

- the minimum hourly rate in clause 19.1(a);
- the industry allowance in clause 21.2; and
- the special allowance in clause 21.1.

In no instance is a casual entitled to payment of follow the job loading.

A casual employee is still entitled to the other allowances specified in the Building MA but they do not form part of the basic periodic rate of pay for the purposes of phasing.

Other applicable allowances, such as the tool and employee protection allowance in clause 20.1, apply in full after the transitional base rate of pay has been calculated.

Importantly for parties in the industry, when phasing between a pre-modern award and the Building MA this approach may result in 'double handling' of some allowances and therefore provide seemingly unusual rates of pay.



To illustrate this we will demonstrate a calculation phasing the National Building and Construction Industry Award [AP790741] (the NBCIA) to the Building MA. While our example uses the NBCIA the same situation arises with other pre-modern awards. In the interests of limiting the length of this document, we have referred to relevant clauses rather than quote them.

Under our preliminary approach, the rate of pay in the Building MA to which the casual loading applies does not include allowances other than the industry allowance and special allowance. However, a casual is still entitled to payment of the other allowances prescribed in the modern award.

The rate of pay in the NBCIA to which the casual loading applies includes other allowances as specified in clause 18.3.1 or 18.3.2 , such as tool allowance and underground allowance, where applicable.

This means that during the transitional period there is somewhat of a duplication of allowances, whereby a casual employee is entitled to:

- a base rate phasing between the pre-modern award (PMA) rate (ie derived from the NBCIA), including certain allowances, and the Building MA rate, including the industry and special allowances only;
- the casual loading calculated on this rate; and
- the other applicable Building MA allowances.

***Let us take, for example, a casual stonemason***

**PMA:**

The PMA rate of pay provided by the pay scale is \$18.69 per hour. This rate has been calculated including the industry, tool and special allowances as well as the follow the job loading.



If we were to add the 25% casual loading to this rate, we would have a rate of \$23.36 immediately prior to 1 January 2010.

**MA:**

At 1 January 2010:

Level 3 (CW/ECW3) hourly wage = \$16.78

Special allowance:  $\$7.70 / 38 = \$0.20$

Industry allowance:  $3.7\% * \$16.78 = \$0.62$

= \$17.60

At 1 July 2010:

Level 3 (CW/ECW3) hourly wage = \$17.46

Special allowance:  $\$7.70 / 38 = \$0.20$

Industry allowance:  $3.7\% * 17.46 = \$0.65$

= \$18.31

Phasing calculation at 1 July 2010:

As the casual loading was 25% under the Building MA and the PMA, it does not phase.

Determine transitional amount:

Difference between the PMA rate and 1 Jan 2010 Building MA rate

$\$18.69 - \$17.60 = \$1.09$  (the transitional amount)

Phased rate:



As the PMA rate was higher, we take the 1 July 2010 Building MA rate and add 80% of the transitional amount.

$$\$18.31 + (\$1.09 * 80\%) = \$19.18$$

A casual employee would be entitled to the 25% casual loading on this rate:

$$\$19.18 * 125\% = \$23.98$$

We now need to add the full tool and employee protection allowance from the Building MA:

For a stonemason, this is \$26.80 per week or \$0.71 per hour.

Thus, when phasing from the NBCIA to the Building MA, a casual stonemason would be entitled to:

$$\$23.98 + \$0.71 = \$24.69 \text{ per hour}$$

### **Discussion**

Under this award, casual rates of pay were calculated by adding the 25% casual loading to the relevant pay scale rate of pay as published in the 2008 pay scale summary for the NBCIA.

The pay scale rates of pay were calculated in accordance with clause 18.3.1 for tradesperson and labourer classifications and 18.3.2 for operator classifications. They included the follow the job loading for daily hire employees, as well as the allowances that were deemed to form part of the basic periodic rate of pay in the *AIRC Supplementary Decision- Wages and Allowances Review 2006 [2007] AIRCFB 439*. For tradesperson classifications, this included the tool allowance.



In clauses 10 to 14, the Building MA provides for the following types of employment:

- Daily hire employees (restricted to tradesperson and labourers classifications)
- Full-time weekly hire (no restriction)
- Part-time weekly hire (no restriction)
- Casual employees (no restriction)

Clause 19.3 Hourly rate calculations specifically applies to daily hire employees (19.3(a)) and weekly hire employees (19.3(b)). While neither calculation method expressly excludes casual employees, our preferred view is that neither hourly rate calculation in clause 19.3 applies to casual employees because clauses 19.3 (a) and 19.3 (b) expressly apply to daily hire and weekly hire employees respectively.

We consider the industry allowance and special allowance to be 'industry allowances' for the purposes of the model transitional provisions and as such, they are included in the base rate calculations.

It is our view that the casual loading should therefore be applied to the sum of minimum wages in clause 19.1, the industry allowance and special allowance.

Hourly rate calculations are prescribed in clause 18.3 of the NBCIA in the following terms.

- 18.3.1 Tradesperson and labourer employees - follow the job loading
- 18.3.2 Operator employees

We note that the difference between the Building MA and the NBCIA is that the NBCIA specifies the different calculation methods apply to employees in certain





classifications, whereas the Building MA specifies that the different calculation methods apply to different employment types.

It must be noted here that under the NBCIA, only tradesperson and labourer classifications could be engaged on a daily hire basis, while only operator classifications could be engaged on a weekly hire basis. There does not appear to be a restriction on the occupational categories that a casual employee could be engaged in.

Clause 13.4.6 provides that a casual employee is entitled to 125% of the rate prescribed by clause 18.1.2. Clause 18.1.2 goes on to provide hourly rates of pay that have been calculated in accordance with clause 18.3.

As the calculation methods apply to certain classifications and not employment types, casuals would be entitled to rates calculated in accordance with the method relevant to their classification, with the casual loading paid on top of this rate. Therefore the casual loading is applied to the rate calculated in accordance with clause 18.3.1 or 18.3.2.

This is consistent with the published pay scale summaries for the NBCIA.

- (a) clarification as to award coverage as set out at part 4.1 of the Submission. In particular the Applicant seeks a variation of:
  - (i) clause 4.2 to expressly exclude employers covered by the Timber Industry Award 2010 from coverage under the Building and Construction General On-site Award 2010 MA000020 (Award);
  - (ii) clause 4.8 to provide that, in the case of employer coverage by more than one award, coverage is to be determined on the basis of the employer's predominant work activities and environment in which the work is predominantly performed;
  - (iii) clause 4.8 to expressly clarify that the Award does not apply to employers whose predominant activities are the manufacture or fabrication of building products in an off-site factory environment.
- (b) the inclusion of a definition of 'residential building' as set out at part 4.2 of the Submission;
- (c) excluding certain allowances from applying to 'residential building' as set out at Annexure 'B' of the Submission;
- (d) the inclusion of an annualised salary provision as set out in part 4.3 of the Submission;
- (e) an extension of the scope of an individual flexibility agreement as set out at part 4.4 of the Submission;
- (f) a variation to exclude the dispute resolution training leave provisions of clause 9.7 from applying to a small business employer as set out at part 4.5 of the submission;
- (g) a variation to clarify that the category of employment in which an existing employee was employed prior to becoming covered by the modern award will not change as a result of the employee becoming covered by the modern award unless by the written agreement of the employer and employee, as set out at part 4.6 of the submission;
- (h) a variation to provide greater flexibility in part-time work agreements as set out at part 4.7 of the submission;
- (i) a variation clarifying the rate of pay payable to casual employees as set out at part 4.8 of the submission;
- (j) a variation clarifying that casual employees do not accrue rostered days off as set out at part 4.9 of the submission;
- (k) terminology changes to clause 14.8 relating to casual conversion to better reflect the intent of the clause and minimise confusion;
- (l) the inclusion of a new clause 15.2(d) which seeks to clarify that notice of termination requirements for apprentices are derived from state and territory legislation;
- (m) a variation to clause 15.6 relating to the presentation of written reports as a condition of an employer paying apprentice fees for technical

colleges or schools as well as a provision allowing the fees to be paid on a pro-rata basis if the employment of the apprentice is terminated before the end of a term;

- (n) amendments to the industry specific redundancy scheme to provide that redundancy pay will only be payable in a situation where the employer no longer requires a person's job to be performed by anyone and to take into account the special circumstances of small business;
- (o) an amendment to clause 19.2 to provide for payment of a leading hand allowance on an hourly basis;
- (p) the simplification of allowances as set out at part 4.15 of the submission and as set out at Annexure 'B'. This includes the consolidation of special allowance and industry allowance within the minimum wage and the inclusion of a schedule of allowances;
- (q) a variation to the tool and employee protection allowance at clause 21.1(a) to provide that a tool allowance must be paid for all purposes, except where the employer provides the employee with all tools and protective boots necessary to carry out the work or if the employee fails to bring tools to work or to maintain tools so that they are safe and suitable for use.
- (r) a variation to the employee in charge of plant allowance at clause 21.12 to allow for an hourly payment of the allowance;
- (s) clarification of the commencement of the four week period for the purposes of inclement weather as set out at part 4.18 of the Submission;
- (t) clarification of living away from home arrangements as set out at part 4.19 of the Submission;
- (u) simplification of the fares and excess travelling allowances as set out at part 4.20 of the Submission;
- (v) a variation to provide that employees supplied with a company vehicle are not entitled to the daily fares allowance, as set out at part 4.22 of the Submission;
- (w) a variation to provide greater flexibility in relation to ordinary hours of work as set out at part 4.23 of the Submission;
- (x) a variation to the annual leave provisions so that annual leave payment is not calculated on the basis of contingent amounts, as set out at part 4.24 of the Submission;
- (y) simplification of the calculation of annual leave loading, as set out at part 4.24 of the Submission;
- (z) a variation to improve the efficiency of payroll procedures by providing for greater flexibility as to the method of payment as set out at part 4.25 of the Submission;

- (aa) a variation to clarify confusion surrounding meal break entitlements on weekends as set out at part 4.26 of the Submission;
- (ab) a variation to provide for the daily calculation of overtime as set out at part 4.27 of the Submission;
- (ac) a variation to provide for the inclusion of a term permitting the cashing out of annual leave which meets the requirements of clause 93 of the *Fair Work Act 2009*, as set out at part 4.28 of the Submission;
- (ad) deletion of clause 39.2 to ensure that when workers wish to re-enter the workforce it does not act as an impediment to them doing so;
- (ae) clarification that the 'foreperson' an 'sub-forepersons' are limited to the metal and engineering sector as set out at part 4.30 of the Submission.

**3. Grounds:**

- 3.1 The Grounds upon which the Applicant relies in seeking such variations and an outline of submission is attached in the Submission.
- 3.2 HIA relies primarily on Item 6 of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act) which provides that as soon as practicable after the second anniversary of the commencement of the modern awards, Fair Work Australia (FWA) must conduct a review of the modern awards. In the review, FWA must consider whether the modern awards achieve the modern awards objective; and are operating effectively, without anomalies or technical problems arising from the modernisation process.
- 3.3 HIA also relies on Item 6(3) of the Transitional Act provides Fair Work Australia (FWA) with the discretion to make a determination varying any of the modern awards in any way that FWA considers appropriate to remedy any issues identified in the review.

<b>Date:</b>	8 March 2012
<b>Signature:</b>	
<b>Name:</b>	David Humphrey
<b>Capacity/Position:</b>	Senior Executive Director – Business, Compliance and Contracting

**The application will be published on the Fair Work Australia website and relevant subscribers notified.**