

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

65082-1

SENIOR DEPUTY PRESIDENT WATSON

AM2011/51

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

**Application by Master Builders Australia Limited
(AM2011/51)
Building and Construction General On-site Award 2010**

**(ODN AM2008/15)
[MA000020 Print PR986361]]**

Sydney

10.04AM, WEDNESDAY, 7 DECEMBER 2011

Continued from 16/11/2011

PN210

THE SENIOR DEPUTY PRESIDENT: Yes, good morning. There's no changes in appearance? There are a few less bodies. Is there any reason we shouldn't start with Mr Thomas?

PN211

MR CALVER: No, your Honour. Perhaps, if I might just shortly outline the manner in which we've asked, if the tribunal pleases, we might proceed today?

PN212

THE SENIOR DEPUTY PRESIDENT: Yes, go ahead.

PN213

MR CALVER: If it's convenient for the tribunal, as you indicated, sir, if we can get Mr Thomas's evidence up next and then Mr Reid's?

PN214

THE SENIOR DEPUTY PRESIDENT: Yes.

PN215

MR CALVER: And then we would ask, given that the results of our conciliation have been fruitful in respect of lost time issue, we would ask that we then with you, your Honour, shortly break into conciliation to deal with that matter and discuss the non-wages component of the variations sought to clause 19.8. If we can talk to you about the conciliation that we've reached in respect of loss time - -
-

PN216

THE SENIOR DEPUTY PRESIDENT: And that's – that's, sorry - - -

PN217

MR CALVER: Sorry to interrupt.

PN218

THE SENIOR DEPUTY PRESIDENT: If I can just identify that's the issue of indentured?

PN219

MR CALVER: Yes.

PN220

THE SENIOR DEPUTY PRESIDENT: And - - -

PN221

MR CALVER: And the other form – formal changes that we've sought to - - -

PN222

THE SENIOR DEPUTY PRESIDENT: And that's the headings - - -

PN223

MR CALVER: - - - (indistinct) with the headings.

PN224

THE SENIOR DEPUTY PRESIDENT: - - - dealing with the – the old MECA – MECA, sorry, and - - -

PN225

MR CALVER: Yes.

PN226

THE SENIOR DEPUTY PRESIDENT: Yes.

PN227

MR CALVER: Those two issues which – which we believe would be better the subject of conciliation than determination by the tribunal at this point, and then perhaps to be dealt with in an agreed manner, and if no agreement can be reached then perhaps – we're certainly not completely at ad idem at this point about the end results, but perhaps pushed to the 2012 review given those two matters are not as critical. And then, after that conciliation, going on to deal with the substantive submissions and the matter of the adult apprentice wage rates.

PN228

Now I believe that I've summarised that accurately from what the discussions were this morning before your Honour came to the Bench but - - -

PN229

THE SENIOR DEPUTY PRESIDENT: Well, no one's standing up to contest the proposition.

PN230

MR CALVER: No, so is that convenient for your Honour?

PN231

THE SENIOR DEPUTY PRESIDENT: Yes, very well.

PN232

MR CALVER: Thank you. Then if we could start Mr Thomas please, and I call Geoffrey Charles Thomas.

<GEOFFREY CHARLES THOMAS, AFFIRMED

[10.07AM]

<EXAMINATION-IN-CHIEF BY MR CALVER

[10.07AM]

PN233

THE SENIOR DEPUTY PRESIDENT: Please take a seat, Mr Thomas. Welcome back. We've got a special chair for you today?---Thank you, your Honour.

PN234

Go ahead, Mr Calvert.

PN235

MR CALVER: Thank you, your Honour. Good morning, Mr Thomas. Do you have a copy of your witness statement dated 24 October 2011 in front of you? ---Yes.

PN236

Do you have any corrections to make to that witness statement?---No.

PN237

Is the statement true and correct in every particular?---Yes, it is.

PN238

THE SENIOR DEPUTY PRESIDENT: Yes, I'll mark the statement of Mr Thomas Exhibit MBA7.

**EXHIBIT #MBA7 STATEMENT OF MR THOMAS DATED
24/10/2011**

PN239

MR CALVER: Thank you, your Honour. Mr Thomas, have you read the CFMEU submissions in this case?---I have scanned the submissions.

PN240

Have you read the criticism of the CFMEU that you've reached your views somehow biased by your status as a Master Builder's employee?---Yes, I have read that part.

PN241

How do you react to that criticism?---It is absolutely incorrect. In performing my task of assessing these rates I have had regard for the fact that we were talking and dealing with settled entitlements. Now, of course on the other side of it, they are also settled liabilities for MBA members who must observe those award provisions. It would be absolutely irresponsible of me to take a partisan approach in assessing what was the true nature of my members' liabilities and their employees' entitlements.

PN242

So you've issued advice on the basis of the interpretation you've reached as set out in your witness statement?---Yes, yes, I – I examined the award carefully. I structured a spreadsheet that I believed was a true and accurate reflection of the entitlements described in the award and used that as a basis to determine the rates.

PN243

Has the CFMEU or any other union challenged that advice in the field?---Not to date.

PN244

No further questions as this time.

PN245

THE SENIOR DEPUTY PRESIDENT: Very well. Any questions of Mr Thomas? Yes, Mr Maxwell.

<CROSS-EXAMINATION BY MR MAXWELL

[10.10AM]

PN246

MR MAXWELL: Thank you, your Honour. Mr Thomas, if I can take you to paragraph 4 of your statement. You first – the National Building and Construction Industry Award 2000?---Yes.

PN247

Did that award cover apprentices in New South Wales?---That award didn't cover apprentices in New South Wales, no.

PN248

Did that award provide the specific exclusion in regard to apprentices in New South Wales and Queensland?---Yes, it did.

PN249

And prior to March 2006 what award covered apprentices in New South Wales, the constructing - - - ?---The Building and Construction Industry State Award.

PN250

Did that award provide for different rates for adult apprentices?---Yes, it did.

PN251

And were the adult apprentices paid a special allowance as part of their all purpose rate?---There was a – there was a special allowance in that award, as I recall, but that was a – a different allowance to the allowance that's – was contained as a – described as special allowance in the National Building and Construction Industry Award 2000 and a different allowance to the one that's now forms part of the Building and Construction General On-site Award.

PN252

Well, were adult apprentices paid at all allowances as part of their all purpose rights?---Yes.

PN253

Now after March 2006 and prior to the operation of the modern award, apprentices in New South Wales were covered by what arrangements?---What do you mean by that?

PN254

Well, prior – from March after the introduction of the Work Choices legislation in March 2006, and prior to the introduction of the modern award from 1 January 2010, what industrial arrangement were put in place?---They – they were covered by instruments described as Notional Agreements Preserving State Awards.

PN255

And for employees that were not constitutional corporations?---Well, they – they were covered by the award.

PN256

By the state award?---By the state award, yes.

PN257

Do you have any idea of how many apprentices in New South Wales were covered by the NAPSA compared to those covered by the state award?---No.

PN258

Now in regard to the apprentices covered by the Building and Construction Industry State Award, did the MBA consent to a variation to that award in October 2006?---Yes.

PN259

Yes, and is it the case that the parties agreed to phase in new wage rates?---Yes.

PN260

Your Honour, can I seek that the witness be shown a copy of this document? ---Yes, certainly.

PN261

MR CALVER: This is surprise. Can I look at it before it's given to the witness please?

PN262

MR MAXWELL: Sure.

PN263

MR CALVER: We have no objections to it being shown to the witness.

PN264

THE SENIOR DEPUTY PRESIDENT: Very well.

PN265

MR MAXWELL: Your Honour, perhaps to explain this document, this is a – an extract from the industrial possessor of the New South Wales Industrial Relations Commission and it deals with a variation to the Building and Construction Industry State Award for state wage case of 2010.

PN266

THE SENIOR DEPUTY PRESIDENT: Yes.

PN267

MR MAXWELL: If I can just refer you to the back page, item 15 shows that the variation took effect from the first full pay period to commence on or after 16 December 2010. And, your Honour, for these proceedings pages 3 to 5 set out the apprentice wage rates that applied to employees covered by the state award at that time.

PN268

MR CALVER: Your Honour, that – that's a matter for submissions. If Mr Maxwell has questions in the area of expertise on this document relating to the witness we have no objection, but if he is going to seek to interpret this document we think that that should be better reserved to submissions.

PN269

MR MAXWELL: I just wish to ask Mr Thomas a number of questions in regards to this document.

PN270

THE SENIOR DEPUTY PRESIDENT: Well, let's – let's hear the questions. Do you want this marked, Mr Maxwell?

PN271

MR MAXWELL: Yes, your Honour.

PN272

THE SENIOR DEPUTY PRESIDENT: I'll mark it CFMEU1, it's an extract from the Building and Construction Industry State Award in respect to a variation taking effect in December 2010.

**EXHIBIT #CFMEU1 EXTRACT FROM THE BUILDING AND
CONSTRUCTION INDUSTRY STATE AWARD IN RESPECT
TO A VARIATION TAKING EFFECT IN /12/2010**

PN273

MR MAXWELL: Mr Thomas, can you turn to page 3 of the gazette extract. The – and if we can deal with the wage rates for the indenture of apprentices. Now that total per week does not include the tool rates, does it?---No, it doesn't.

PN274

So in regard to wage rates that would apply for apprentices in New South Wales that were covered by this instrument, you would then have to add the respective tool allowance for those rates set out?---Yes.

PN275

Your Honour, I just want to have the witness shown another document and it's mainly for comparison purposes.

PN276

MR CALVER: This is not a document of the witness, this is a document of the CFMEU's and the relevance of it escapes me, your Honour. We would object to it being shown to the witness and used in cross-examination unless Mr Maxwell could demonstrate its relevance and context.

PN277

THE SENIOR DEPUTY PRESIDENT: Yes.

PN278

MR CALVER: Perhaps even in the absence of the witness.

PN279

THE SENIOR DEPUTY PRESIDENT: Yes, if I may be shown the document? Yes, Mr Thomas, I wonder if you could leave us for a moment?

<THE WITNESS WITHDREW

[10.17AM]

PN280

THE SENIOR DEPUTY PRESIDENT: Yes, Mr Maxwell, what is the document and what do you say its relevance is?

PN281

MR MAXWELL: Thank you, your Honour. Your Honour, this is the wage sheet produced by the union for employees covered by the modern Building and Construction General On-Site Award. The purpose of using this document is to compare the adult apprentice rates that are contained on the back page which have been calculated in accordance with the union's interpretation of the award to show that the adult apprentices are paid the base rate of the CW1A, plus the industry allowance, plus a special allowance, plus the respective tool allowances for the different trades. And the purpose of the documents is to compare those wage rates with the wage rates that applied under the state award as at December 2010.

PN282

THE SENIOR DEPUTY PRESIDENT: On the basis that this is how the union says the award operates, yes. Mr Calver?

PN283

MR CALVER: It's not a document that the witness has advanced knowledge of. It seems a matter for submissions, particularly as Mr Thomas has no knowledge of this document, I would imagine, and what his evidence will say about it is nothing

that can be advanced other than through – otherwise than through submissions. It doesn't have any cogency. It doesn't go to any of the matters that have been raised in evidence-in-chief on their face and we would object to it being shown to him and being cross-examined on it.

PN284

THE SENIOR DEPUTY PRESIDENT: Mr Maxwell.

PN285

MR MAXWELL: Well, your Honour, perhaps I can deal with it by questions to – to Mr Thomas without tabling the document as my learned - - -

PN286

THE SENIOR DEPUTY PRESIDENT: Yes, very well.

PN287

MR MAXWELL: - - - Mr Calver has objections, although I doubt whether it's the point - - -

PN288

THE SENIOR DEPUTY PRESIDENT: Why don't we proceed in that and we'll recover Mr Thomas and proceed in that way. Thank you, Mr Thomas. You may resume your seat.

**<GEOFFREY CHARLES THOMAS, ON FORMER
AFFIRMATION**

[10.19AM]

<CROSS-EXAMINATION BY MR MAXWELL

[10.20AM]

PN289

MR MAXWELL: Mr Thomas, you're aware that the union has calculated the total weekly rate for adult apprentices differently to the MBA?---I – I was in – I had it – yes, I was aware of that.

PN290

Yes, and the union has calculated on the basis of adding the CW1A weekly rate to the industry allowance, the tool allowance and the special allowance?---This is for purposes of the Building and Construction General On-Site Award?

PN291

Yes, the modern award?---Yes.

PN292

If we compare to – sorry, if you look at Exhibit CFMEU1?---This is the - - -

PN293

The extract from the industrial - - -?---Yes.

PN294

Yes, and if I can take you to page 3, that's – if we look at clause 18.1.2.1 that sets out the rates for the indentured apprentices for carpenters, joiners, et cetera. Now if we take the four tier rate you see there there's a total of \$671.30?---Yes.

PN295

Do you know if that is higher or lower than the rate calculated by the union?---I haven't made that comparison.

PN296

In regard to those wage rates contained within that variation to the state award, those wage rates were a result of the consent arrangement reached between the MBA and state wage case increases, is that correct?---That's correct, yes.

PN297

Now, is it the case that apprentices that were covered by the state award are now covered by the modern award?---Yes.

PN298

Yes. Now in paragraph 10 of your statement you refer to the method of calculating apprentice rates?---Yes.

PN299

And that the apprentices received the industry allowance, the tool allowance and a percentage of the special allowance?---Yes.

PN300

Now is that the same formula that's applied to the calculation of school-based apprentice wage rates?

PN301

MR CALVER: I just understand the relevance of bringing in school-based apprentices when they're not at issue in this matter and the line of questioning seems to be irrelevant to the matters at hand, your Honour.

PN302

THE SENIOR DEPUTY PRESIDENT: Well, Mr Maxwell, what do you say about that?

PN303

MR MAXWELL: Well, your Honour, I think, as subsequent questions will demonstrate, it is relevant to these matters today.

PN304

THE SENIOR DEPUTY PRESIDENT: Yes, very well?---The process described there is purely and simply a process for determining a rate of pay for an apprentice under the Building and Construction General On-Site Award. That is a mainstream apprentice and of course it continues to describe the arrangements relating to adult apprentices that hang off that. The process I'm describing there has got nothing to do with a determination of any entitlements which are specifically for school-based apprentices.

PN305

MR MAXWELL: But isn't it the case that the school-based apprentices are paid the same rate as a first year junior apprentice?---Yes, it is.

PN306

Now do trainees covered by the modern award receive the special allowance and industry allowance?---Trainees covered by the modern award?

PN307

Yes?---Yes, they do.

PN308

And to new entrants who are not trainees or apprentices that are covered by the modern award receive a special allowance and industry allowance?---New entrants?

PN309

Yes?---Are you talking now about the adult new entrant rate?

PN310

Well, a new entrant to the industry who is not an apprentice or a trainee?---Yes.

PN311

Do they receive the special allowance and the industry allowance?---Yes, they do.

PN312

Now given your knowledge of the predecessor building and construction industry awards, particularly the MBCIA 2000 and the Building and Construction Industry State Award New South Wales, can you identify any classification or occupation from those awards that did not receive the industry allowance or special allowance?---Look, I would have to have a look at the instruments you refer to. But the award provisions in both cases provided for the calculation of daily hire and weekly hire entitlements for employees, and those arrangements included instructions to the reader as to how all purpose rates were to be treated.

PN313

And was it the common practice for them to receive the industry allowance and special allowance?---Yes, it was.

PN314

I've no further questions of the witness, your Honour.

PN315

THE SENIOR DEPUTY PRESIDENT: Anyone else? No. Mr Calver?

PN316

MR CALVER: I have no re-examination, your Honour.

PN317

THE SENIOR DEPUTY PRESIDENT: Thank you for your evidence, Mr Thomas, you're excused and you can leave or remain in the court as you wish.

<THE WITNESS WITHDREW

[10.26AM]

PN318

THE SENIOR DEPUTY PRESIDENT: Mr Noble, is Mr Reid available?

PN319

MR NOBLE: He's available, your Honour.

PN320

THE SENIOR DEPUTY PRESIDENT: Yes, very well. We can go to him.

PN321

MR NOBLE: Your Honour, would you like the signed original affidavit or - - -

PN322

THE SENIOR DEPUTY PRESIDENT: Yes, that would be handy, if that's – as my associate passes you can hand it to her.

<PHILLIP REID, AFFIRMED [10.27AM]

<EXAMINATION-IN-CHIEF BY MR NOBLE [10.28AM]

PN323

MR NOBLE: Mr Reid, do you have a copy of the witness statement that you signed on 8 November - - -?---Yes.

PN324

Are there any changes that you wish to make to that statement?---Yes, there's – just where it says – if you'll let me go through it. I think it's reference to clause 8 where it talks about the reference to clause 16.1 and clause (indistinct) in MECA's (indistinct) clause pay classification, not sure – not the actual rate of pay is noted. Allowances were payable at the rate prescribed for the lowest classification under clause 16 were generally a few dollars lower than paid to a fourth year apprentice who received 88 per cent of the fitter's rate. Basically, it's just to say that with regard to that, it may not be a few dollars less than what the 88 per cent rate depending on people's classifications in a practical sense they were, because they were – the best example I can give. For a start I can't think of anybody who worked under the award in the mechanical construction or building construction that I was dealing with or worked in as a tradesman. So if you got somebody who was say a rigger and earned 97 per cent of what a fitter's rate due at the relativities, he would not go back to getting what an apprentice would at 88 per cent, you know what I mean? Their rate would actually be a lot closer to what the trades was. Right, okay?

PN325

THE SENIOR DEPUTY PRESIDENT: Yes?---And in – and in practice, along with allowances, again, if you got somebody who'd be working as a tradesman or a highly skilled TA and he received the industry allowance at the full rate, then – or the disability rate as in Port Kembla. They've got a general AIS rate there. They would not go backwards. They wouldn't. It's very – I can't remember once instance where the employer, if they engaged him as an adult apprentice would then say, right, you're only going to get a percentage increase or a percentage based on what the award says. So in a practical sense, there's a – there's a difference with the awards.

PN326

Yes.

PN327

MR NOBLE: Okay, so you're saying in those instances that the employer, once they took on the adult apprentice – took them on in an adult apprenticeship role, in your experience they absorbed the extra cost that it otherwise - - -

PN328

MR CALVER: Leading the witness.

PN329

THE WITNESS: Well, um, - - -

PN330

MR NOBLE: I'm just summarising what you're saying?---In a practical sense, you got some – and there's two categories. You've got guys who work casually in the industry but they move from job to job that they're doing. They're always picked up either by the same employer on a new project or a different employer, because people's – word of their ability gets around. In the sense it's impractical from an employer then to turn around and say, well, we want this guy because of his skills but we're not willing to pay – pay the full allowance. Because most of the blokes just wouldn't – they wouldn't put up with it, you know.

PN331

Just one last question. To the best of your knowledge have there been any disputes in relation to the payment of allowances for adult apprentices - - -?---I haven't, um, dealt with any. It was always resolved either before the job started through agreement but I can't recall one.

PN332

And anything under the modern award?---I've had nothing under the modern award, no.

PN333

I have no further questions.

PN334

THE SENIOR DEPUTY PRESIDENT: Yes, I'll mark the statement of Mr Reid AMWU1.

EXHIBIT #AMWU1 WITNESS STATEMENT OF PHILLIP REID

PN335

THE SENIOR DEPUTY PRESIDENT: Yes, anything from the union side before I go to the other side? No. Mr Calvert?

<CROSS-EXAMINATION BY MR CALVER

[10.32AM]

PN336

MR CALVER: Good morning?---Good morning.

PN337

I'm Richard Calver from Master Builders Australia. Can I just refer to your statement where you say at paragraph 5 that given our application your members or apprentices will lose a significant entitlement in respect of their allowances. What do you base that proposition on?---It's my understanding, and correct me if I'm wrong, but your application – and I can't – I mean I haven't seen it for a couple of weeks now because I've been busy working, but my understanding is that it's your intention to either keep the adult apprentices at a percentage of rates of – percentages of allowances it is rather than paying them the full allowance.

PN338

How – how would our application – how would our application in your simple words mean that your member will, "Lose some significant entitlements in respect of their allowances". What are those entitlements and what loss will occur from our application? Those are your sworn words?---Yes, they're my sworn my words and they are - - -

PN339

Yes, what do they mean?---Well, in a practical sense, if you get some employer who then decides to run a hard line and say we're going to apply the award provisions as you're trying to have put in, all right, put in there, then it becomes an argument, and it does, and people may lose entitlements.

PN340

So – so, I put it to you, you cannot identify the significant entitlements or the allowances that purportedly will be lost, is that right, you can't identify them? ---Well, give me, um, an application so I can through it again and I may be able to do it but I can't off the top of me head here, no.

PN341

Well, it's not off the top of your head here, I put it to you, Mr Reid, those are your sworn words, that you came here prepared to give – to assist this tribunal?---I believe that there will be significant loss to apprentices and to employees if they're applied. I still believe that.

PN342

Do you – are you familiar with the provision which has sought to be amended, clause 19.8 of the modern award, the Building and Construction General On-Site Award?---I couldn't say off the top of my head, no.

PN343

MR KENTISH: Your Honour, perhaps if – if the witness is – if documents are going to be referred to, if the witness could be shown a copy of those documents, including the application of the MBA on that basis?

PN344

MR MAXWELL: And the draft.

PN345

THE SENIOR DEPUTY PRESIDENT: I'm sorry?

PN346

MR CALVER: I'm not intending to put any documents to the witness. I'm relying on his statement, your Honour. It's not encumbered on me to show the witness any documents other than those which are referred to in the application.

PN347

THE SENIOR DEPUTY PRESIDENT: Well, if you're – if you're going to ask him questions about the award - - -?---I don't like the implication, your Honour, that I'm trying to pull somebody's leg here or have a go, and I don't like the implication that I'm not telling the truth.

PN348

Well, we'll - - -?---Now, I may be – I may be mistaken right off.

PN349

Mr Reid, don't worry. I'll deal with those matters. If a document's going to be – if you're going to put questions about the award then I think in fairness it should be put in front of the witness.

PN350

MR CALVER: Certainly, your Honour.

PN351

THE SENIOR DEPUTY PRESIDENT: Does anyone have a copy of the - - -

PN352

MR CALVER: I have a – I have a copy of the award here. I was really going to
- - -

PN353

THE SENIOR DEPUTY PRESIDENT: Yes.

PN354

MR CALVER: - - - read out of a provision of the award and ask - - -

PN355

THE SENIOR DEPUTY PRESIDENT: Yes, well – well, I think it's - - -

PN356

MR CALVER: - - - Mr Reid if he still agrees with it.

PN357

THE SENIOR DEPUTY PRESIDENT: - - - I think it's fair if Mr Reid has it in
front of him. Mr Noble's got a copy.

PN358

MR CALVER: Sure.

PN359

THE SENIOR DEPUTY PRESIDENT: If you can provide - - -

PN360

MR CALVER: Could you please show Mr Reid a copy of clause 19.8 of the
award? Do you have that in front of you, Mr Reid?---I do.

PN361

Yes. What does 19.8(b) mean?---Well, let me read it - - -

PN362

I put it to you – yes, well, I - - -?---If you let me read – if you let me read it.

PN363

Yes, yes?---Give me a couple of minutes please.

PN364

Of course?---Thank you. It says, "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 the contract of indenture".

PN365

Yes, so isn't that provision designed to protect your – your members from losing
their entitlements for - - -?---If, - - -

PN366

- - - for - - -?--- - - - if - - -

PN367

- - - their allowances in the manner that you've suggested?---Yes, but the rate of
pay – all right, if you're talking about the hourly rate of pay that's all it applies to,

and I can't remember where – and I don't know and I haven't gone through all of this, but allowances are on top of the hourly rate of pay. They are not included into it. So therefore, if this is a rate of pay, and he gets his allowances on top, then he won't suffer a disadvantage. But if this rate of pay that you're talking about here and the way this is worded has allowances rolled up into it, then he is going to suffer a disadvantage.

PN368

Aren't junior rates of pay under this award calculated on the basis of allowances being paid accordingly?---Junior rates of pay?

PN369

Yes?---But in practice even under MECA, junior rates of pay although the allowances were given as a percentage of what an apprentice may earn in practical – in a practical sense that didn't happen. In a practical sense most apprentices who are working on site got the full disability allowance – they get the full tool allowance because they suffered the same disabilities as the tradesmen who are working there, and I'd say the same would probably apply in this.

PN370

So you're making a distinction, are you, between the market rate that these people received in your experience compared with the award rate?---In a practical sense, yes.

PN371

Yes, so you're – you're evidence goes to the market rate and the market conditions that they – that they encounter, is that right?---My evidence goes to what practically happens in most employee places.

PN372

Yes, yes, so the market rate?---Well, that's your definition.

PN373

Well, now I put it to you that under the MECA award the allowances that adult apprentices were entitled to were proportional, they weren't the full allowances, is that what you're saying?---Yes, that's what the award states. I – I understand that.

PN374

Yes, so that you agree that under the MECA a lot of apprentices received only a proportion of the allowances?---I'd agree under MECA that's – that's what the award says.

PN375

Yes?---In a practical sense it's not what actually happened.

PN376

So the difference between what you're talking about and what is in the award is the on-site or market practice, is that right?---Well, I suppose it – I suppose it could be the on-site or market practice.

PN377

Yes?---But I've never seen it – I've never seen it practiced in any other manner.

PN378

So, what – when I give my interpretation of the award requirement about the proportional allowances to the tribunal, that is different from your evidence – the experience of the manner in which a number of the people about whom you give evidence were paid in practice on-site?---Well, I'd say it's different in that sense.

PN379

Yes?---What's got written down I've never seen applied before in practical terms.

PN380

No, but the – we're differentiating are we not between what the award said, the minimum conditions and your evidence?---I suppose you are, yes.

PN381

Yes, thank you, no more questions.

PN382

THE SENIOR DEPUTY PRESIDENT: Any other questions? No. Anything from you, Mr Noble?

PN383

MR NOBLE: No, your Honour, I don't think - - -

PN384

THE SENIOR DEPUTY PRESIDENT: Yes, very well. Thank you, Mr Reid. You've attended today under an order of the commission. That order has been complied with. You are now excused from further attendance?---Thank you, your Honour.

PN385

Thank you, Mr Reid.

<THE WITNESS WITHDREW

[10.41AM]

PN386

THE SENIOR DEPUTY PRESIDENT: That's all, so the proposal was to go into conference, was it? Well, I'll adjourn hopefully briefly in conference.

OFF THE RECORD

[10.41AM]

ON THE RECORD

[10.58AM]

PN387

THE SENIOR DEPUTY PRESIDENT: We'll resume on the record now. And I'd recorded in the conference, which has just occurred, there was discussion of the MBA variation application in respect of clause 15.5(a), and that was a matter dealt with on the last occasion at paragraph 187 of the transcript. It's recorded there was agreement between the parties as to uncertainty requiring immediate resolution, notwithstanding jurisdictional issues raised by the AWU and the parties would discuss an agreed variation. In the course of the conference those have confirmed agreement to a new clause 15.5(a) in these terms.

PN388

Apprentices are required to serve an additional day for each day of absence during each year of their apprenticeship, except in respect of absences due to

either paid leave or leave without pay (taken in accordance with clause 38.3(a). The following year of their apprenticeship does not commence until the additional days have been worked. The clause 15.5(b) remains.

PN389

In addition, the MBA has indicated that it is prepared to defer the issue of delays in respect of clause 19.(indistinct) concerning the term indentured until the 2012 review and/or apprentice trainee's review. Otherwise the issues in relation to 19.8 remain and will be subject to submission. Is there any disagreement with the record of that outcome? No, very well, we'll move then directly to the outstanding issues in relation to 19.8 on the basis that I've received extensive written materials which I've read and considered and are the purpose today for any additional – any additional submissions to be made or brief submissions drawing upon those written submissions to be made, so I'll go to you, Mr Calver, first in respect to that.

PN390

MR CALVER: Thank you, your Honour. The starting point is their intention of bringing this application in relation to clause 19.8. We seek to ensure that the manner in which we interpret adult apprentice wage provisions, their calculation is correct at law, and Mr Thomas's evidence went in part to the matter of a contingent reliability that I referred to in the previous proceedings and which has been quantified in our second supplementary submission.

PN391

Your Honour, a large amount of the material before the tribunal goes to that point and clarity in providing adult apprentices with appropriate wage rates is motivated by the fact that there are more demand issues at play in the current week trade apprenticeship commencements than supply issues. Not only must we find people who are will to be trained as apprentices, but importantly we must convince employers to engage those apprentices.

PN392

It's an unfortunate fact that apprentices are less likely to be engaged during hard times. It is also an unfortunate fact, that is indicated in attachment E to our submission of 26 October 2011 entitled, "Apprentices and Traineeships and the Downturn". In particular page 9 of that attachment, "That the provision of an apprenticeship by an employer is a substantial undertaking with considerable costs borne by the employer". The matter outlined in detail in Mr Callan's evidence in respect of MBA SA GST – Group Training Scheme, GTS. Evidence set out in the paper at attachment E by Carmel and Liscoe, shows that the costs of supervision of apprentices in particular is high and is not offset by comparatively low wage costs – comparatively low. The findings summarised there show that wages and productive output balance:

PN393

For apprentices low initial wages are balanced out by the future career and financial prospects that a trade qualification unquestionably provides.

PN394

Less convincingly, a study summarised by Carmel and Liscoe states:

PN395

That the high cost of an apprenticeship to an employer is balanced out by intangible benefits, such as loyalty and knowing the quality of the training.

PN396

However, we submit that, as stated in the paper, these intangibles are less likely to be attractive and apprenticeship numbers go down in hard times. Selling intangibles is no easy task. The proposition about apprenticeship numbers declining at hard times is borne out by attachment F to our main submission. And if I can draw your attention to attachment F, your Honour, of that submission, it's a table that shows commencements and apprenticeship numbers in detail. You will see, your Honour, that in comparison with 2008 there's no percentages attached by we've calculated that calendar 2009 showed a marked fall in apprentice numbers, not only in absolute number terms, as you've got there, your Honour, but in apprenticeship – in percentage terms. Junior apprenticeship commencements fell by 21.4 per cent. Overall apprenticeship commencements fell by 22.3 per cent. This is in the wake of the GFC. And substantiating our proposition that adult apprentices are harder hit, commencements of adult apprentices fell by 25.4 per cent over a quarter less.

PN397

Master Builders' contention in part in these proceedings is that clarity is needed and all clauses addressed, but in particular in relation to the principal matter before the tribunal today, that is clarification of adult apprentice wage rates. We submit that Master Builders' interpretation should be preferred so that there is no further large amount of money payable to adult apprentices. The liability in respect of which is set out in our second supplementary submission, as I've stated, and if the interpretation favoured by the CFMEU were determined that would exacerbate the trend that adult apprentices are less likely to be engaged but especially less likely to be engaged during a period of economic downturn when their vulnerability is already high.

PN398

In this context we believe that the outlook for apprentices in 2012 is flat and that the financial burden on employers should not be increased by interpreting the on-site award to provide that the rate for the lowest classification in the award should have allowances added. These allowances are included, that is the tool industry and special allowance are included in the calculation at clause 19.8(c) of the award, then adult apprentices would be paid about \$60 per week more than through the interpretation which favours the alternative. We haven't hidden that fact. Indeed, we produced our calculations in detail for the tribunal to assist it. These additional allowances amount to about \$3000 per year, a figure set out at paragraph 9.19 of our main submission, and then we give detailed explanation of a range of figures and a second supplementary submission.

PN399

Before the introduction of the on-site award adult apprentices were in large part only entitled to so-called junior apprentice wages; that is the percentages of qualified tradesperson's rates set out in the pre-modern instruments. It reflects the fact that this is a wage payable whilst the employee is being trained. The point about limited pre-modern award coverage is substantiated and clarified in attachment A about first supplementary submission which we say meets the

criticisms of the CFMEU about our first attempt to chart these particular matters, and we thank them for the feedback in that regard.

PN400

In the absence of realistic government incentive payments, Master Builders experiences that small to medium sized employers will simply not take on adult apprentices due to their much higher price. The matter substantiated by Mr Callum's evidence. Even though they are adults, the lower wages recognise that they are in training. They are not engaged because the training wage is too high. Adult workers will then miss out on the future income that results from being trade qualified. A rise in apprenticeship wages results in fewer training opportunities, especially in hard times, especially for adults.

PN401

Apprenticeship wages in the early years reflect minimum productive input. Any additional productive value is therefore best dealt with in the market place. And speaking of the market place, we say that the basis upon which Mr Reid's evidence should be examined is about market rates, about payment in the market not about interpretation of the award, and that was brought out in cross-examination.

PN402

THE SENIOR DEPUTY PRESIDENT: Well, that does raise a question, Mr Calver, of how far the issue you're raising as to costs is an issue in practice. And given the relatively high incidence of certified agreements in the industry, and the significant divergence generally, putting aside apprentices specifically for the moment, between actual and minimum award entitlements, how far is that in respect to adult apprentices a practical – how far is the award provision a practical issue as distinct from a theoretical one given the exigencies of the market?

PN403

MR CALVER: Well, we rely on Mr Callan's evidence to explain that, your Honour. That in respect of adult apprentices they need to subsidise those persons to meet the rate which is acceptable to employers. Particularly in respect of group training companies, the minimum rate payable is very much a matter that relates to the engagement of those adult apprentices. Mr Callan's evidence we believe is quite cogent in that regard.

PN404

THE SENIOR DEPUTY PRESIDENT: Is there any difference in the industry as between group training providers of apprentices and directly employed apprentices under certified agreements?

PN405

MR CALVER: Well, most of the group training companies have certified agreements, your Honour, and the experience that we have is that there are more apprentices who rely on the award for their minimum wage calculations than are paid a higher market rate. We believe that in respect of apprentices the award, because of the inelasticities of demand in relation to apprentices the award minimum rate is quite a telling minimum and is applied in practice markedly, and Mr Callan's evidence in that regard was not in any way controverted.

PN406

The matters to which I speak about price favours an interpretation of minimum wage rates which do not increase the value of adult apprentices without a clear productive benefit, including where an ambiguity exists. That's the proposition that we make in response, your Honour, and that's an proposition where we would say that any element of our case which relies on work value, we say it relies (indistinct) on ambiguity. But any element of our case which might be constricted on a work value should take the considerations about which I've been speaking into account. I will touch on the work value issue again after I examine the notion of ambiguity.

PN407

THE SENIOR DEPUTY PRESIDENT: Didn't Mr Callan give evidence that he was paying – his organisation was paying in excess of those required by - - -

PN408

MR CALVER: Pardon me?

PN409

THE SENIOR DEPUTY PRESIDENT: Didn't Mr Callan give evidence that his group was paying more than was required by law?

PN410

MR CALVER: Yes, because of the addition on costs principally. They have an all up rate that they – a charge out rate as opposed to the minimum wage rate.

PN411

So if I can start with ambiguity to explain how we conceive of the operation of clause 19.8(c). We say that it requires a comparison of clause 19.7 rates, that is for junior apprentices, and then, "The rate for the lowest pay classification in clause 19.1". That is, we say a CWEC1 level A worker, a higher rate is payable. This is the yardstick measure referred to by Mr Thomas. We say then that the question before the tribunal is whether the ambiguous phrase rate for the lowest paid classification is to be calculated under clause 19.3 or is the base rate of clause 19.1(a). The examples we've provided to the tribunal show that clause 19.3 weekly higher rates for CWEC1 level A worker will always be higher than clause 19.7 rates for junior apprentices, indicating that clause 19.1(a) base rates should be compared, a position we urge on the tribunal in a position advised to members as the appropriate yardstick, again a matter referred to by Mr Thomas. In particular, we note the additional argument by HIA in section 5 of its submission based on error, and we endorse the argument.

PN412

Whilst it appears to offer support to Master Builders' position, ABI contends there is no ambiguity. I refer in particular to paragraph 46 of its submission where it endorses our interpretation perhaps either as I have outlined and as set out in paragraph 9.11 of the main submission submitted on 26 October 2011. ABI states that it is clear that 19.1(a) rates are payable, no ambiguity. This is in stark contrast to the argument of the unions that also there is no ambiguity but to the opposite effect.

PN413

Our interpretation is opposed by the AMWU, AWU, CFMEU and the CPU on the basis of a number of arguments. The first is that there is no ambiguity. Second

that the National Metal and Engineering On-site Construction Industry Award 2002 did provide for allowances albeit on a proportional basis, a matter not translated we would say to the on-site award. Thirdly, that the tool special and industry allowances are all purpose and payable to all employees relying on your Honour's judgment in 2010 FWA 4679, shortly known as the special allowance case. Fourthly, that the claim that clause 19.8(c) has no work to do if allowances are included would be untrue if junior apprentice relativities were increased. And the CFMEU and the CPU particularly press that argument. Finally there is no evidence to support a claim made on work value reasons, particularly the AWU and the CFMEU.

PN414

So first to ambiguity. The Master Builders has brought this application to clarify an ambiguity under the on-site award. That is obviously a matter for determination by the tribunal, that is whether there was an arguable case, more than one interpretation where the presumption in favour of finding an ambiguity where rival contentions are advanced. And that proposition is usefully summarised and articulated in *Re Deltana No.1 Salaried Staff Set Up By Agreement 2001*, unreported judgment of SDP Marsh. In particular, which has been relied upon by other commission members, in particular at paragraph 24 of her judgment where she says:

PN415

In summary, the task is to make an objective judgment as to whether the wording of a provision is susceptible to more than one meaning. If that judgment is in the affirmative then the commission may exercise its discretion to decide whether or not the agreement (indistinct 11.18.18) Just place award there. Should be varied to remove the ambiguity or uncertainty. In exercising such a discretion the commission is to have regard to the mutual intention of the parties at the time the agreement. In this case substitute the intention of the full bench at the time that the award was made.

PN416

To further argument about ambiguity, it's useful to have regard to the oral evidence of Mr Callan on this point, offered in cross-examination during the consultations before your Honour on 16 December 2011. An attempt was made to diminish his evidence on the basis that he was not an industrial relations expert. At PN71 to 72, PN81 to 83 and PN103 to 106. Mr Callan's response was that one should not have to be an industrial relations expert in order to determine adult apprentice wage rates, because on his common sense arguments, "God forbid a 60 year old bricklayer with English as a second language attempted to read these clauses and make head to tail of them". Later, when Mr Callan was asked about whether a satisfactory interpretation had been offered by IR experts, his response was that he, and quote from PN106, received about three interpretations and said which do you think actually and we then referred it again and we got another interpretation. Master Builders submits that Mr Callan's evidence speaks strongly to the modern award's objective, that is a modern award should be simple and easy to understand, per section 134(1)(g). Basic modern award terms and conditions should not require highly specialised IR expertise to be properly understood. They should be able to be read by industry participants. And that's a test that we think section 19.8 fails.

PN417

Master Builders became aware of the ambiguities regarding adult apprentice wage rates under the on-site award during negotiations with unions and other employer associations about a proposed application to insert transitional wage rates into the on-site award, a matter that was at the time supervised by your Honour. While that application did ultimately not proceed because of the unexpected release of transitional wage rates by the Fair Work Ombudsman in its base rate calculator, a matter which they had purported would not occur, hence the reason for us coming to you for assistance. Negotiations had by that time reached a very advanced state. However, one of the sticking points was wages for adult apprentices which were agreed to be omitted from the application due to the rival contentions being advanced at that time. Rival contentions which later have manifested themselves as different interpretations of the award. For the same reason we submit that adult apprentice rates are still not contained in the Fair Work Ombudsman's base rate calculator. That's a matter of fact. The Fair Work Ombudsman has not published adult apprentice wage rates for this award and certainly not transitional wage rates.

PN418

Master Builders is aware of the number of interpretations which can be brought to bear which we say points to ambiguity, including the one that can construe clause 19.8(c) as being confined in its entirety to the national levels award coverage which is an interpretation bolstered by the fact that clause 19.8(c) is interpreted to be subject to clause 19.8(a) and (b) which deals solely with the metal sector.

PN419

Master Builders' submission and supplementary submissions in this matter carefully set out both sides of the argument, both interpretations. The application essentially concerns that comparative exercise described in clause 19.8(c) which I've already gone through in detail which is overworked perhaps in our written submissions. It indicates that the rate prescribed for an adult CW1A in clause 19.1 is to be compared to the junior apprentice rate in clause 19.7(e) for the relevant year of apprenticeship, with the higher being payable. If this balancing exercise did not exist, say for example at clause 18.C simply indicated that adult apprentices were entitled to the rate prescribed to the lowest classification in clause 19.1 but did not require any comparison to clause 19.7 junior apprentice rates, then it would be reasonably clear that adult apprentice wages were to be calculated under clause 19.3. Although there might still be some doubt about whether a CWECW1 level A rate should include a tool allowance, these occupations at that level are not tradespersons. However, it would be clear that the industry and special allowance would be payable because apprentices, including adult apprentices, are entitled to all of the terms of the on-site award and because clause 19.1(b) indicates that hourly rate calculations are in fact made under clause 19.3. However, and it's a very big however, given that clause 19.8(c) does require a comparison with junior apprentice rates, the matter is confused. Those performing payroll duties would discover, as we have proven with our calculations, that junior apprentice rates can never, never be higher than clause 19.3 rates. That implies that the comparative exercise has been misapplied or misconstrued by the full bench because it performs no function. Other interpretations result in - - -

PN420

THE SENIOR DEPUTY PRESIDENT: Mr Calver?

PN421

MR CALVER: Yes.

PN422

THE SENIOR DEPUTY PRESIDENT: Isn't it more correctly stated as the junior apprentice rates are currently not at a level higher than the lowest classification?

PN423

MR CALVER: Well, we've looked at that argument, your Honour, and, you know, the long and the short of it is that that would make it a hypothetical exercise and it would be in our submission that it would not be intended by a full bench, and that the scenario painted to reach that point is not one of common sense. It would mean that if the on-site award were varied, an argument I was coming to, so that junior apprentice relativities were increased as the CFMEU does say in its submission, that would bring the comparator into operation. Obviously, the way that we look at it is an admission that the comparative exercise doesn't currently work, doesn't currently work, and would need a complete change of those relativities. Certainly not at all a matter - - -

PN424

THE SENIOR DEPUTY PRESIDENT: Well, this is in a context where it has been on the agenda for some time, the possibility of a major review of junior and trainee arrangements across awards. It's an issue that the modernisation bench commented on itself on several occasions, that there is a mishmash across the broad range of modern awards and that may need to be looked at, and there's been some momentum for that gather separately from the bench's observations.

PN425

MR CALVER: Yes, with the greatest respect, sir, that is speculative just like the CFMEU argument. The objective criteria here are what the full bench said in handing down the award in its decision referred to in the HIA submissions where they extract the intent of the full bench in dealing with the NMECA provisions, and in the fact that the clause in legal terms has no work to do. That interpretation must be looked at in the context of current conditions. One can't speculate about these matters in looking at the objective basis upon which intention can be imputed.

PN426

THE SENIOR DEPUTY PRESIDENT: Well, I think awards are made on the basis they'll operate until and unless varied forever basically.

PN427

MR CALVER: But to make the clause that is currently in that award would require a variation of some substance, one that is not apprehended by the full bench at the time of the making of the award and one which, your Honour, rests on a great deal of I would say – I would put it as highly as say speculation. And that speculation does not add to its objective interpretation on the face of the award, and that would be the manner in which the award should be interpreted we say, your Honour.

PN428

THE SENIOR DEPUTY PRESIDENT: I hear you, Mr Calver.

PN429

MR CALVER: Thank you, sir. Other interpretations as I said result in a fourth year adult apprentice receiving a reduction in pay which would again be not the way in which we believe the clause should be interpreted. As set out in our first supplementary submission of clause 19.8(c), is taken to compare base rates under clause 19.1(a) with junior apprentice rates under clause 19.7(e) but with allowances then added separately on their own terms this would mean that junior apprentice rates would be triggered in a fourth year instead of 19.1(a) base rates plus allowances which leads to a reduction in pay.

PN430

These are anomalies. We would, with respect, your Honour, say that it would be anomalies for a provision to be inserted on a forecast of the future. It would need to operate on its own terms at the time that it was inserted in the award. The anomalies we've pointed to suggest that rates other than those in clause 19.3 should be used. We also submit that the argument which relies on your Honour's judgment in the special allowance case, where I've referred to before, is misplaced. Just as clause 19.7 is a complete calculation on junior apprentice wage rates, clause 19.8 is intended as a first time provision about adult apprentices to have the same effect. This proposition is reinforced by the full bench's statement that it intended to apply the payment arrangements in the National Metal and Engineering On-site Construction Industry Award 2002. Sorry, your Honour, it's at - - -

PN431

THE SENIOR DEPUTY PRESIDENT: Yes.

PN432

MR CALVER: A matter found at paragraph 4.3 of HIA's submission, a matter not extracted in our written submissions but certainly a focus of our attention in relation to the matters that have been put to the tribunal. Certainly we submit that these problems establish an ambiguity within the terms of section 160 of the Fair Work Act as an arguable case that has been made out for more than one interpretation of adult apprentice wages, and that if the CFMEU is to be regarded as those being placed there on speculation of a change of some fundamental nature that we believe was not in the mind of the full bench, particularly having regard to the specific statement it made about its intention at the time of the making of this particular clause.

PN433

Importantly, under the pre-modern award from which clause 19.8(c) derives, it is clear that allowance inclusive junior apprentice rates were compared to adult base rates, and that allowances were then payable on top of those base rates where they were higher on proportional basis. A matter conceded to in cross-examination by Mr Reid. Our understanding is that the proportional nature of the allowance meant that the predecessor provision to clause 19.8(c) worked without confusion. And that takes us to the part about the full bench intention that I made earlier. A restriction of allowances to adult apprentices, or a proportioning of them is under other modern awards of the kind already in evidence before the tribunal and the exhibits that I placed before the tribunal on the previous occasion resound with

that proposition. Certainly all purpose allowances are either not payable or are payable on a proportional basis under on-site awards – Electrical, Electronic and Communications Contracting Award 2010, the electricians licence allowance, travel time allowance and industry allowance are proportional per clause 16.4(b)(ii) and I refer your Honour to exhibit MBA3.

PN434

Under the Plumbing and Fire Sprinklers Award 2010 we say that offers are a perfectly simple and excellent way to resolve the ambiguity currently before the tribunal and one which reflects another on-site occupation. Only the industry allowance is payable at clause 20.3 and that's able to be ascertained from Master Builders' Exhibit MBA4.

PN435

Under the Timber Industry Award 2010, an award that covers many occupations in the building and construction industry, a matter that has been drawn to our attention of late with the way in which it works. With the joinery award allowances are not payable for clause 17.6 and that's Exhibit MBA5. The Master Builders submits that allowances should be similarly restricted under the on-site award. As set out in our written submissions we consider that adult apprentices should only be paid the base of the rate. It can be summed up thus, if it was - - -

PN436

THE SENIOR DEPUTY PRESIDENT: Adult apprentices – adult apprentices should only be paid base rates.

PN437

MR CALVER: Yes, where they were higher than – where they were higher than the otherwise junior apprentice rate that they would have been entitled to previously, Your Honour. So that in fact it is a recognition of the reflection of an adult wage rate.

PN438

THE SENIOR DEPUTY PRESIDENT: Yes, but every adult in the industry is paid an industry allowance and a special allowance, Mr Calver. Why would adult apprentices be distinguished as the only group not receiving such allowances?

PN439

MR CALVER: They would be getting a wage rate higher than the proportional junior rate where those allowances are taken into account. So it's a recognition of their adult status and the fact that they're paid more than the junior apprentice wage rate. And that would – that would mesh in with the proportional payment of allowances that came from the predecessor award to the provision we talk about, and it would resonate with the Electrical, Electronic Communications Contracting Award. It would resonate with the Plumbing and Fire Sprinklers Award 2010. It's actually an increased wage rate from that which – that was previously enjoyed by adult apprentices.

PN440

We say, sir, that if it was the full bench's intention under Nomenca that allowances would be payable to adult apprentices on a proportional basis, similar to the other modern awards that I've spoken about, such that certain allowances would not be payable, then Master Builders' interpretation must be favoured. This

is because adult apprentices under the interpretation and get the allowances in the same way that junior apprentices do unless the higher wage is payable. I reinforce that, sir. That's because adult apprentices under the interpretation we place before you get the allowances in the same way that junior apprentices do unless a higher wage is payable to the benefit of adult apprentices. So any characterisation of our application for clarification that says we're trying to take away something from adult apprentices is mischaracterised, because they get the allowances in the same way that junior apprentices do unless the higher adult wage rate is payable, and that makes perfect sense if you're going to do a comparison.

PN441

A restriction of allowances via proportionality would also be more consistent with pre-modern regulation in keeping with the award modernisation request. The AIRC, as it was then known, repeatedly indicated during award modernisation that it had sought to adopt terms and conditions which had wide application in the existing awards and relevant industry or occupation in order to address the potentially competing parameters of the award modernisation request which stated that the making of the on-site award was not intended to disadvantage employees nor increase costs for employers. In that regard we note that Master Builders has not attempted in our construction of clause 19.8 to press the matter of the application of adult apprentice rates to the metal and engineering on-site construction sectors. An interpretation, we believe, is open and one that has been pushed out as being presented to the tribunal by my colleague from the Housing Industry Association. On the strength of that proposition, why would that be so? Well, that interpretation could be advanced because that is the only sector which can be truly said to have had a prevalence of adult apprentice rates prior to award modernisation that is under Nomenca.

PN442

Notwithstanding the bulk of pre-modern awards relevant to the construction sector did not contain adult apprentice wage rates, as shown in attachment A to our first supplementary submission, they now have industry wide application. That's a factor, sir, that we would believe the tribunal should take into consideration when dealing with this matter. That is, that with the comparison wage yardstick that Mr Thomas spoke about, there are now new higher rates for adult apprentices than existed before the creation of the modern award. That is, if you were to favour the interpretation of Master Builders, adult apprentices across the board are paid more than they were before the creation of the modern award.

PN443

I also need to be clear about the argument based on your Honour's judgment. It's not enough to say that the tool special industry allowances under clause 20.1, 21.1 and 21.2 as the CFMEU do are all purpose. Clearly, junior apprentices receive only a proportion of the special allowance under clause 19.7(e) which is not mentioned in clause 21.1. Your Honour's comments in 2010 FWA 4679 are overture in this regard and the union argument begs the question why amend clause 19.7(e) if the allowances are obviously payable under clause 21.1? That's not the question that is before the tribunal we submit. I reiterate that we argue that clause 19.8(c) is an exhaustive clause when it comes to adult apprentice wage rates. It goes to clause 19.7(e) is when calculating junior apprentice wages.

PN444

I was going to traverse the argument about the comparison but I believe, your Honour, in the exchange that we had I can save the tribunal time by indicating that those were the arguments I was going to place before you.

PN445

Our preferred interpretation is one that is not only the less costs increase for employers in keeping with the parameters of award modernisation, but also one that would give adult apprentices a better chance of being started by an employer who are often discouraged from doing so due to the comparative expense about adult apprentice wage rates. A matter that clearly resonates throughout Mr Callan's evidence.

PN446

That deals with the arguments raised in opposition. It deals with the points that I earlier summarised. As I indicated, and as it's quite categoric from our written submissions, your Honour, this application is primarily brought under section 160 on the basis of ambiguity which does not require a consideration of work value reasons, some of which I articulated in the opening to my remarks. Clause – sorry, section 31 – 135(1)(b). I'll say that again. Section 135(1)(b) of the Fair Work Act deals with work value reasons. It is only in the alternative that the case is brought under section 157 in reliance on the modern awards achieved at section 134 which necessitates the consideration of work value reasons under section 156(3).

PN447

Now, your Honour, obviously work value reasons are usually brought in relation to wage increases, which is what much of the jurisprudence concerning changes in the nature of work and skill required is directed towards. That jurisprudence is inappropriate to the current case in which adult apprentice wage rates are sought to be clarified. In this case it is enough to refer to the factors we say in clause – section 156(3), i.e. the nature of the work – apprentice work, training work, the skill required and the conditions under which the work is performed. These are all matters that I contextualised in my opening remarks in respect of this being a wage reflected – reflective of the training. The evidence of Mr Callan is compelling on this point. The policy he explained of hiring out adult apprentices at junior rates we believe doubly compelling. Every ASA GST meets the cost difference. Why would MBA SA GST do this? Because employers are unwilling to take on adult apprentices at higher rates in early years due to poor productivity, poor productivity. The fact is that apprentices spend less time on the job, due to offsite training, and while on the job they are learning and therefore less productive than a general labourer. That factor militates in favour of Master Builders' interpretation that the general labourer lowest classification has a higher wage rate than the junior apprentice wage rate is the appropriate comparer tool.

PN448

If it please the tribunal those are the submissions of the applicant.

PN449

THE SENIOR DEPUTY PRESIDENT: Thank you for that, Mr Calver. Ms Matheson.

PN450

MS MATHESON: Thank you, your Honour. If it pleases the tribunal. The Housing Industry Association appears in support of this application made by the Master Builders Association on behalf of its member associations and supports the submissions advanced by Master Builders Australia today and in its written submissions. HIA relies on its written submissions filed on 9 November and also wishes to speak to those submissions. This is a matter of great significance to the Housing Industry Association. In particular, it is our submission that the outcome of this application will have a significant impact on the ongoing employment of those who have already commenced or who may wish to commence an apprentice later on in life. We submit that the outcome of this application will have an impact on the delivery of much needed skills to the housing industry. We note that the application has been brought in advance of the 2012 modern award review to be undertaken by Fair Work Australia, and agrees with the applicant's submission that there is a necessity in doing so.

PN451

Of particular concern to HIA is the existence of these varying interpretations with respect to the rate of pay that would apply to an adult apprentice engaged under the Building and Construction General On-site Award. The inclusion of clause 19.8(c) has never – the minimum rates for adult apprentices in our industry have increased significantly. The precise quantum of this increase is unknown while the correct interpretation of the clause remains unsettled. While the intended application of this clause is not clear, one interpretation of this provision and the interpretation advanced by those opposing the application, may mean that all adult apprentices are entitled to receive a rate of pay that would exceed the minimum wage for an entry level labourer in the industry. This would jeopardise the competitiveness of available apprentices in the labour market. An adverse finding may have the effect of resulting in a large contingent liability for employers who in good faith have also interpreted the award in a manner that is consistent with the interpretation advanced by Master Builders Australia.

PN452

The award calculations under the Building and Construction General On-Site Award are complex. Small businesses have become accustomed to relying on pay scales distributed by or published by Fair Work Australia and the Fair Work Ombudsman I should say. These do not exist, partially, as we understand, because of the ambiguity surrounding the calculation of available apprentice wages.

PN453

We represent over 40,000 members in the residential building industry and we're acutely aware that in our industry it is a very competitive market and a cost sensitive one, and we estimate that over 90 per cent of businesses in our industry are small businesses, many of them home-based and with limited resources. Our industry is not typically characterised by organised labour and they are award reliant, the employers in our industry. On a general scale it's not characterised by a high incidence of certified agreements.

PN454

Before the modern awards came into effect there were a number of awards to which business in the on-site residential building industry were commonly bound.

For convenience I'll identify those. Employees who are – were of members of associations named as respondents to the national award were generally bound for the National Building and Construction Industry Award. This award also applied to employers in Victoria as a common rule award. Details of the award can be found at item 43 of the comparative table at attachment D of the Master Builders Australia submission, dated 26 October. This award did not contain provision for adult apprentices.

PN455

Employees in the Australian Capital Territory were generally bound to the Building and Construction Industry ACT Award 2002. Details of that award can be found at item 17 of the comparative table that I've referred to.

PN456

Employees in the Northern Territory were bound to the Building and Construction Industry Northern Territory Award, which can be found at item 18.

PN457

Employees of New South Wales were generally bound to the Building and Construction Industry State Award. Details of that award can be found at item 19 of comparative table. As noted by Mr Maxwell, this did set out adult apprentice rates, however there was a differential relativity between the junior apprentice rates and the adult rates. The rates payable to an apprentice for first and second years in particular were not in the scale of what is anticipated by the interpretation advanced to the – by the apprentice to this submission today.

PN458

Employees in Queensland were generally bound to the Building and Construction Industry State Award, along with a preserved 2003 order of the Queensland Industrial Relations Commission applying to apprentices and trainees' wages and conditions. Details of that award can be found at item 22 of the comparative table. What we will say in relation to that award is that it set out a minimum safety net whereby apprentices would be paid the minimum rate of pay. The base rate was not the rate for an entry labourer in the industry.

PN459

Employees in Western Australia were generally bound to the Building Trades Construction Award, and details can be found at item 25 of the comparative table.

PN460

Employees in South Australia were generally bound to the Building and Trades Essay Construction Award. Once again, details of the award can be found at item 27 of the comparative table.

PN461

Employees in Tasmania were generally bound to the Building and Construction Industry Award which can be found at item 20 of the comparative table at attachment D of the Master Builders Australia submission.

PN462

What you will note from these instruments is that they would all set up their own approaches to the setting of adult apprentice wages ranging from drawing no distinction between adult and junior apprentices, with apprentices being paid a percentage of the adult trade rate across the board. The National Building and

Construction Industry Award being an example of that. Other approaches include paying out old apprentices a percentage of the adult trade wage which was slightly higher than the relativity prescribed for a junior employee, as was the case in New South Wales. Mr Maxwell's provided some details in a supplementary submission today.

PN463

Prescribing the minimum wage as a safety net for adult apprentices, such as the Queensland example, was also an option. However, importantly none of these instruments provided a rate of pay for an adult apprentice that was equal to or higher than the rate prescribed for a labourer in the industry. The intent of the inclusion of this provision in question, clause 19.8 of the modern award, could not have been to include a provision that went beyond the highest common denominator approach. As evidenced by the MBA at attachment D of its submission, the vast majority of pre-modern instruments had not previously contained separate rates of pay for adult apprentices, and other apprentices were generally entitled to be paid the same rate of pay as junior apprentices.

PN464

If the minimum wage for an adult apprentice is taken to be the base rate labourer rate alone, as noted by the MBA supplementary submission, the employers face cost increases of over 13,500 for a first year apprentice, 10,000 for a second year apprentice and 2,800 for a third year apprentice, plus on costs will be in addition to that. If allowances are included, this adds up to an additional \$3,161.60 per year for each – for these amounts.

PN465

Page (indistinct) notes that apprentice wages have traditionally been set having at least some regard to work value principles. I've provided some examples of – an enunciation of those values within HIA's submission, but things that were generally considered were the qualifications necessary for the job, the training periods required, attributes required for the performance of work, conditions under which the work was performed, versatility, adaptability and a range of other factors that evolved over time, particularly during the introduction of a centralised wage fixing system between 1975 and 1981. However, consistent to these approaches was the assessment of, I guess, an adult – sorry an apprentice as a relativity of the trade base classification when it came to the setting of pay rates. However, unfortunately when the modern awards were made there was a significant departure from this approach during the consolidation process. Despite this, guiding parameters or principles for the award modernisation process were set in place. The Workplace Relations Act required the modern award – sorry, the award modernisation process to be carried in accordance with section 576A(2) which set out a range of considerations including the regulatory burden on business, setting of rates that would provide a minimum fair safety net or conditions, employment standards that would provide a minimum fair safety net of enforceable terms and conditions. There was a consideration as to whether or not those conditions were economically sustainable. They needed to be certain, stable and sustainable.

PN466

The commission was also required to observe their objectives in section 576B(2). Of note, one of those objectives was that the creation of modern awards was not

intended to disadvantage employees, or conversely increase costs for employers. Despite these objectives, the inclusion of 19.8(c) of the modern award has resulted in increased costs for employers of a potentially considerable scale. These rates do not represent a fair minimum safety net and are reflective of an amount that exceeds the highest common denominator approach that was existent within the pre-modern instruments.

PN467

The inclusion of this clause in our submission is contrary to award modernisation request, signed by the Minister for Employment and Workplace Relations. We submit that applying clause 19.8(c) of the Building and Construction General On-Site Award to adult apprentices outside the metal and engineering industries does not create jobs or encourage high levels of employment, labour force participation and skills development, but rather will result in adult apprentices no longer being competitive in the labour market, either before or at the conclusion of the transitional period.

PN468

However, an interpretation of the clause that would result in an adult apprentice being paid a full adult wage, inclusive of all purpose allowances will further exacerbate these concerns. The scale of the increase is such that provision, particularly interpreted in a manner that would see an adult apprentice paid a base labourer rate, plus allowances, including allowances that aren't currently extended to a labourer, is such that it is – is such that it cannot be consistent with the modern award's objective. And I'll refer to the Master Builders Australia supplementary submissions so that we can see the quantum of that increase or that potential increase.

PN469

In the September, in the 2 September 2009 decision regarding transitional provisions, the AIRC made the following comment in relation to concerns raised by industry associations with respect to the Horticulture Award. The comment is referred to in my submission but I'll traverse it quickly. Given the scale for the cost increase – cost increases referred to in the employer's submission, which at this stage have not been contradicted, we have concluded that a number of the modern award provisions may require re-examination. You mention in particular the piece work provisions and provisions relating to hours of work overtime and penalties. Despite that conclusion it would not be appropriate to simply postpone the operation of the provisions for two years. The appropriate course is for one or more of the employer groups to lodge an application to vary the modern award. If that is done we'll establish a program to determine the application before or at the end of the year. This statement at the time did acknowledge that award provisions resulting in cost increases of a considerable scale may require re-examination. Now the appropriate avenue for such re-examination was by the making of an application to vary the modern award. It also acknowledges that it was not intended that large scale cost increases were to the result from the modern award for the award modernisation process.

PN470

Also relevant to this application is the following statement of the full bench during the AIRC during the award modernisation process. Effectively, and I've referred to this within my submission, where employees or parties were

dissatisfied with the outcome there are statutory provisions in place for variation. There are also opportunities to raise matters in the context of a review of the operation of the modern award. These are submissions that there are a number of reasons why variation applications could not have been made and determined prior to 21 December 2009. The most pertinent of these was the fact that the intended application of the new provisions had not been tested and as such conflicting interpretations of particular provisions emerged over time. Furthermore, the cost implications associated with the modern award rates of pay did not become apparent until employers undertook the task of calculating transitional rates of pay for the first pay period after 1 July 2010. As I have noted, rate summaries for adult apprentices covered by the modern award have still not been made available by the Fair Work Ombudsman. Until for calculating transitional rates does exist, in the form of pay check plus, but it should be noted that at the time of this application the tool does not provide transitional rates for adult apprentices or endorsed transitional rates for adult apprentices.

PN471

Furthermore, there was a spreadsheet that the Fair Work Ombudsman had previously made available for specific transitional arrangements for the building industry. This tool actually transitioned adult apprentices to the junior rate of pay minimum award and did not apply clause 19.8(c) at all to apprentices in general construction. In light of this we acknowledge the need for certainty in the operation of the modern award provisions, particularly in relation to the large contingent liability being generated over adult apprentice wages which have not been published by the Fair Work Ombudsman due to the lack of clarity as identified by the Master Builders Australia at paragraph 2.2 of its submission. We submit that as a matter of public interest industrial instruments and the legislative framework must try to support the availability of as many employment opportunities as possible. The persons to seeking to – sorry, the persons seeking to develop their skill set, particularly considering that in our industry skill shortages are already an issue, and considering the ageing workforce, are expected to continue. Uncertainty in the application of award provisions, the potential for large scale increases and the significant contingent liabilities that are hanging over employers' heads do not create a regulatory environment that supports employment. Accordingly, we strongly support the application made by the Master Builders Australia to vary the modern award. Given the exceptional circumstances relating to this application, we would seek an operative date of 1 January 2010 in relation to the proposed variations that are advanced in the Master Builders Australia submission. The effect of this would be to provide all adult apprentices engaged under the Building and Construction General On-Site Award of the safety net payment that is the equivalent to the minimum wage referred to in clause 19.1(a). As this rate would be a minimum safety net the adult apprentice would not be entitled to receive the industry tool and employee protection allowance and underground allowance referred to at 19.7(a).

PN472

We submit that the variation of the nature sought by the applicant is necessary pursuant to section 160 of the Fair Work Act to correct an apparent error. If the tribunal is not satisfied that an error has been made, then HIA submits the variation of the nature sought by the applicant is necessary on the basis that the terms of the award are ambiguous or uncertain. As noted, the ombudsman has not

yet provided access to endorse adult apprentice rates and its pay check plus tool. In particular, it's uncertain as to whether there's minimum classification rates are to contain the all purpose allowances inclusive – in accordance with – sorry, I'll correct that. In particular, it's uncertain whether the minimum classification rates contained in clause 19.1(a), or the all purpose allowance inclusive wage rates calculated in accordance with 19.3, should be compared to the junior apprentice rates in clause 19.7. HIA supports the submissions made by the Master Builders Australia that there are good reasons to indicate that clause 19.8(c) was intending to make reference to minimum classifications rates, otherwise obviously the clause would have no utility if the comparison was between the junior apprentice rate and the rate calculated in accordance with clause 19.3. We support the MBA's submission that the wording of clause 19.8(c) must be construed so as to have effect, and that the interpretation producing a more functional result should be favoured as per the well established legal principles of legislative interpretation. As noted by the Master Builders Australia at paragraphs 9.14 and 9.15 of its submission, the comparative exercise required by clause 12.5(c) will have no utility if the interpretation advanced by those opposed to this application is supported.

PN473

I will quickly traverse the possibility of error. It is possible, in our submission, that clause 19.8(b) was only intended to have effect in respect to adult apprentices employed by an employer in the metal and engineering on-site construction industry. As we note, this provision has been pulled from the National Metal and Engineering On-site Award out of a range of possible provisions that could have been utilised that are existent in other awards. The majority of the commonly applied pre-modern instruments do not provide for adult apprenticeships rates as noted by Master Builders Australia in its submission. So we need to consider what the possible intent of this provision may have been.

PN474

When the provision was first inserted, or when there was an arrangement inserted for adult apprentices under the draft or the exposure drafts of the modern awards, there were two headings. And this goes to the point that is raised in the application. One of the headings was the, "General Building Construction and Civil Construction", heading, and the other was, "Metal and Engineering Construction". Under that first heading the words "to be inserted" appeared. The MBA did make comment in relation to that exposure draft saying that the draft award appears to suggest that adult apprentice rates of pay should apply to the general construction and civil sectors, although there is no indication as to what form this would take. While we have some sympathy for the notion that adult apprentices should be paid the adult minimum wage, it would be inconsistent with the request for the commission to introduce high rates of pay for adult apprentices as it would increase costs for employers, and discourage employers from taking on mature aged apprentices. Where adult apprentice rates currently exist they could be transitioned to a uniform rate during a period of five years. That rate could be the adult minimum wage.

PN475

So it would seem that an option advanced by Master Builders Australia was to include a minimum safety net that would exist as the adult minimum wage.

However, when the final modern award was released the provision as it currently stands was introduced with the comments that:

PN476

We have added additional content to the apprentice clause drawing on a current award prescription and applied the payments' arrangements from the Metal and Engineering On-site Award in respect of adult apprentices.

PN477

There is no further explanation within the decision as what was intended this statement, however considering that the Metal and Engineering On-site Award was only one instrument out of multiple awards that were consolidated within the modern award, and that this was not the award with predominant application in the building industry. It could have been reasonably anticipated – sorry, it could not have been reasonably anticipated that such a provision was to have general application. Accordingly, we submit that clause 19.8 may not have been intended to have general application, but rather may have been intended to be limited in application to employees within the metal and engineering industry. And the reference to the metal and engineering employees in subclause 19.8(a) may support that argument. However, in the event that it is found that clause 19.8(c) was intended to have general application we also submit that it is possible that that provision may have been inserted on the basis of an error within the AIRC comparative schedules that were developed in the making of the modern awards. I've provided a link to the comparative schedule which is in an Excel spreadsheet that's still publicly available, but at the time there was a suggestion that the modern – that the National Building and Construction Industry Award had provided by adult apprentices but that was an incorrect reference, and you'll see those submissions advanced in our submission – written submissions.

PN478

Fair Work Australia has acknowledged the possibility for such errors in the setting of modern award wages during the modernisation process in other proceedings, and you will see at paragraph 50 of our submission we refer to a statement that was made by Fair Work Australia in the context of the Social Community Homecare and Disability Services Industry Award. In particular, the comment is made that if error occurred in the fixation of rates and relativities in the modern award, or if the existing relativities were departed from for no good reason, the situation should be rectified. We submit that it is likely that errors of this kind may exist in the modern award in the context of 19.8(c).

PN479

The submissions of the CFMEU employer groups did not seek a diversion from the National Building and Construction Industry Award as provided for in the manner set out in clause 19.8(c) of the modern award. No reasons were provided for the inclusion of the provision even though the provision was not prevalent in the majority of pre-modern instruments. We therefore submit that this provision may have been included in error and if that is the case that the provision should be reconsidered and the modern award varied, at least to the extent sought by the applicant to clarify the application of clause 19.8(c).

PN480

In the event that the award is found not to contain an error, there is no doubt that the award does contain error, ambiguity and/or uncertainty. As at the date of the submission the industry is still uncertain as to what it should be paying adult apprentice employees due to the lack of available guidance material by the Fair Work Ombudsman. However, we note that apprentice wages have traditionally been set with at least having some regard to work value principles. Section 156(4) defines work value principles within the Act.

PN481

THE SENIOR DEPUTY PRESIDENT: How do I get to work value principles in terms of the scheme of the Act, Ms Matheson?

PN482

MS MATHESON: Yes, your Honour. So section 157(2) of the Fair Work Act provides that Fair Work Australia may make a determination varying modern award minimum wages if it's satisfied that the variation of modern award minimum wages is justified by work value reasons and the making of a determination outside the system of the annual wage reviews is necessary to achieve the modern award objective. So in the event that that provision is read not to contain ambiguity, uncertainty or error, and we're relying on the fall back provision, being 157 of the Act, it may be a consideration that we need to consider.

PN483

THE SENIOR DEPUTY PRESIDENT: Yes, very well. Well, I've read your submissions in relation to the work value issue. If you want to say something further, briefly?

PN484

MS MATHESON: Yes, I might just quickly recap. Apprentices aren't employees in the typical sense. They carry out training in an on-site context and an off-site context. The employer is required to dedicate significant amount of time to the supervision, and this does detract from the productivity of apprentices. For this reason we need to consider that persons undertaking structured training do warrant special consideration in the setting of their wages. They do need to be seen as an attractive investment option for employers who are wanting to make the investment in the development of skilled people within our industry, and for these reasons the prescription of minimum wages for persons subject to training arrangements needs to be distinguished from fully productive adult employees. A failure to do so will result in them, in our submission, being non-competitive in the labour market. This needs to be a key consideration.

PN485

Just one further point. It's important to consider the context in which the modern award – modern awards and minimum wages objectives are to be considered. As I've already noted, nearly all businesses within the residential building industry are in fact small business. This creates a very competitive market. The effects of employment regulation and wage increases are strongly felt by these small businesses. They have a much more limited capacity to absorb wage increases and the subsequent effects on employment on costs, particularly when the economy is slow. We have heard evidence that apprentices are the first people to be laid off in terms of - in terms of economic downturn and that our witness

evidence would indicate that adult apprentices are particularly vulnerable due to their higher wages. In our industry our economic forecasts have indicated a continuing deterioration in new home building conditions with a risk or with a growing risk of return to GFC, global financial crisis like (indistinct). A discounted rate for the engagement of apprentices provides them with a greater opportunity to develop their workforce skills, an experience required for them to secure and maintain ongoing employment to support their future. For this reason adult apprentices need to be distinguished from fully productive adult labourers.

PN486

In closing, your Honour, we would submit that considering potential scale of the increases and the significant variance in wages applying the differing interpretations, this application must be considered on its merits and that exceptional circumstances have arisen. For that reason, there can be no delay in making a variation in the manner sought - - -

PN487

THE SENIOR DEPUTY PRESIDENT: What's the exceptional circumstance?

PN488

MS MATHESON: So the exceptional circumstances here are that there are emerging interpretations that would see a differing in wage rates.

PN489

THE SENIOR DEPUTY PRESIDENT: Well, that's the basis of every award variation application, Ms Matheson, that's hardly an exceptional circumstance.

PN490

MS MATHESON: A diff - your Honour, a differing on wage rates of up to 3,160 something dollars, I think, if I refer – if I recalled correctly, it's the continuing contingent liability that is creating, I guess, an urgent need to reconsider this provision. The other issue that we have is we are seeing apprentices staying at school for longer – for a longer period of time, and that is line with current government policy. If, at the end of these transitional arrangements, an adult apprentice is to be paid a rate that is in fact higher than an entry level labourer in our industry, they will not have the opportunity to enter into our labour market. The exceptional circumstances that will arise from that is that they will have diminished employment opportunities.

PN491

THE SENIOR DEPUTY PRESIDENT: Aren't these broader arguments in relation to apprentices and their employability better addressed in the context of foreshadowed broad review of apprentice and training arrangements within modern awards?

PN492

MS MATHESON: Your Honour, the difficulty - - -

PN493

THE SENIOR DEPUTY PRESIDENT: I know, I would hate to create a provision operating in this award which then turns out to have to be amended to reflect a position arrived at more generally in a broader review.

PN494

MS MATHESON: I appreciate your comments in that regard but the liability or the potential contingent liability is continuing. As I said, in our industry the majority of businesses are small businesses, mum and dad businesses who are very cost sensitive. An adverse interpretation, depending on the provision that they've adopted – the interpretation that they've adopted, could create some financial hardship if not addressed now. Carrying this over into the Tearly review would certainly add to that confusion and that confusion and that potential contingent liability.

PN495

THE SENIOR DEPUTY PRESIDENT: Why was no application made, and you can only speak on behalf of HIA, in the middle of 2010 when as you and the MBA submit a disagreement as to interpretation was uncovered in the context of trying to develop transitional provisions.

PN496

MS MATHESON: Yes, Your Honour. We – we, at the beginning of – and I can speak probably for most of the parties around the table, when the awards were introduced we did in good faith sit down to try and negotiate or arrive at a common understanding of this interpretation. This was, if you like, the hurdle for us. We weren't able to reach consensus. We – HIA had been dealing with the ombudsman to try and understand or better understand what their interpretation of this provision was and to see if they would commit to the publication of pay rates that would be available for general distribution. That didn't occur and as time progressed I do understand that other parties around the table may have been trying to arrive at an outcome but without success. So, as time went on I guess the parity through the transitional provision between the two rates was becoming less and less. The liability was opening up to a significant extent for those who have adopted a different interpretation to the interpretation favoured by those opposing this submission. So the urgency in bringing it now became more and more apparent. But before - - -

PN497

THE SENIOR DEPUTY PRESIDENT: And that wasn't apparent six months ago, 12 months ago, despite the contingent liability in the making?

PN498

MS MATHESON: Yes, I understand that there was a possibility of some conciliation and then we've seen through the course of this application that some other employer parties would perhaps suggest that, you know, there is no ambiguity or uncertainty at all.

PN499

THE SENIOR DEPUTY PRESIDENT: Yes.

PN500

MS MATHESON: And in fact, you know, we were perhaps misguided in our understanding that there were competing interpretations. So, yes, that - - -

PN501

THE SENIOR DEPUTY PRESIDENT: Okay.

PN502

MS MATHESON: It is regrettable that there has been a delay but we feel it is one that needs to be – a matter that needs to be addressed.

PN503

THE SENIOR DEPUTY PRESIDENT: Very well.

PN504

MS MATHESON: If it please the tribunal I have no further - - -

PN505

THE SENIOR DEPUTY PRESIDENT: Thank you, Ms Matheson. Ms Patison.

PN506

MS PATISON: If it pleases the tribunal, ABI supports the application and submissions of my friend from the Master Builders. ABI submits that the correct interpretation of the rate prescribed by clause 19.8(c) of the award is that the rate per week is ascertained from clause 19.1(a) and only 19.1(a) which is then comparable to the rate – junior rates prescribed in clause 19.7. Whatever arises from clause 19.3 is simply irrelevant for the purposes of the comparison for the adult rates. ABI relies, in particular, on paragraphs 45 and 46 of its written submissions and clause 9.11 of the MBA submissions dated 26 October. Thank you.

PN507

THE SENIOR DEPUTY PRESIDENT: Thank you very much for that, Ms Patison. Mr Maxwell. It's getting briefer as we go down the table, Mr Maxwell, so – so I believe.

PN508

MR MAXWELL: Unfortunately, your Honour, I don't think I will be as brief as – as Ms Patison.

PN509

THE SENIOR DEPUTY PRESIDENT: Your good example hasn't been followed, Ms Patison.

PN510

MS PATISON: You can only try.

PN511

MR MAXWELL: Your Honour, the CFMEU supports the written submissions of the CPU, the AMWU and the AWU. The CFMEU has provided a written submission in response to the MBA's initial written submission and I just wanted to briefly refer to our written submission and I will be brief in that respect.

PN512

In our written submission, your Honour, we deal with the issue in section through jurisdiction. We submit that for an application to succeed under section 160 of the Fair Work Act it requires a finding of an ambiguity or error as a matter of jurisdictional fact. This is more than a requirement for the tribunal to find that there are rival contentions advanced and an arguable case being made out for more than one contention. We say that for a number – and, your Honour, in our decision we refer to the decision in Tahmoor Collieries and particularly the

decision referred to in that of SDP Williams in S.J. Higgins, which deals with this issue of jurisdictional fact.

PN513

THE SENIOR DEPUTY PRESIDENT: The self-serving issue.

PN514

MR MAXWELL: The self-serving, yes, and we submit that in regard to this application the extent to which the MBA and HIA purported rival contentions is really self-serving. It fits into the self-serving argument.

PN515

To the extent that the MBA seeks to rely on section 157 of the Act, particularly in regard to work value based on the relevant authorities identified in our submission and the requirements of the strict test principle, we submit that the MBA have clearly failed to present a substantial evidentiary requirements to vary the award on this basis. And in our submission, at paragraph 3.6, we deal with the factors relevant to the assessment of value that were dealt with in the Childcare Industry ACT Award 1998, and they go through the qualifications necessary for a job, the training period required, attributes required for the performance of work and the factors go on. Now we say there is no evidence before the tribunal in regard to all of those factors, in regard to any apprentice, so we submit that any consideration of this matter on the value grounds should be immediately dismissed.

PN516

In regards to the specific variation to clause 19.8(c) which we submits seeks to reduce the adult apprentice minimum wage by the removal of the payment of additional allowances, this variation is strongly opposed by the union. We submit that there is no ambiguity under the award and that, secondly, the change is not warranted on work value grounds.

PN517

Now in paragraph 7.4 to 7.8 of our written submission we set out how the adult apprentice wage rates was calculated, which is then compared with the apprentice rate calculated in accordance with clause 19.7 of the award to determine the higher rate to apply.

PN518

We point out in paragraph 7.10 that these calculations are consistent with the provisions of clause 15.2(a) of the award which provides that the terms of the award apply to apprentices except where otherwise stated.

PN519

Now we have the evidence of Mr Thomas today who has agreed that it has been a practice of award regulation in the building and construction industry in New South Wales, that all employees are paid a special allowance and the industry allowance, and as apprentices are generally paid the tool allowance. Now this is particularly the case for apprentices, both junior and adult, previously covered by the state awards in New South Wales. Indeed, Mr Thomas could not identify one classification which has not paid these allowances.

PN520

Now, in paragraph 7.11 we refer to a recent decision of your Honour dealing with the issue of the payment of a special allowance for apprentices in which it was

recognised that a payment to all employees included payments to apprentices. In regard to that decision we would also refer your Honour to paragraph 10 of that decision which refers to the comments received on the exposure draft of the award and the existing practice of paying full allowances to apprentices. So that matter was canvassed during the award modernisation proceedings, a factor recognised in your decision in AM 2010 55.

PN521

In paragraph 7.12 of our submission, we characterise the MBA's application as nothing more than a self-serving claim of the type referred to by SDP Williams and SJ Higgins.

PN522

The union deals with the MBA's claims regarding uncertainty in paragraphs 7.13 to 7.14, and point out that back in June and July of 2010 the HIA documents for calculating adult apprentices used the same method as the CFMEU. And that's shown in attachment A to our written submission which sets out the – from the HIA calculation's sheet that the transitional amounts created on 5 July 2010, that if we look for a carpenter and – a carpenter, joiner, tile layer, floor sander, that a first year adult rate under the modern award was 16.58. We know that for a castor it is \$16.46 and then over the page that for a painter it is \$16.07. So that is from the HIA's own calculation schedule that was presented to the parties during the conference on transitional amounts back in June and July of 2010.

PN523

Now in regard to the claim that the comparative exercise would have no work to do, we deal with this in 7.17 to 7.19 of our written submission. We would also submit that whilst the modern award rates at this current time would be higher, this would not be true for transitional rates.

PN524

Now, your Honour, there was an issue that I was seeking to deal with by Mr Thomas but perhaps it's best that if I now deal with it here. Your Honour, I'd seek to tender the copy of the union's wage sheet calculation.

EXHIBIT #CFMEU2 COPY OF THE UNION'S WAGE SHEET CALCULATION

PN525

Now, your Honour, if I can take you to the last page of CFMEU2, you'll see under "Adult Apprentices" - - -

PN526

THE SENIOR DEPUTY PRESIDENT: Yes.

PN527

MR MAXWELL: - - - we set out the method of calculation for adult apprentices. So we include the CW1A base rate, the industry allowance of 24.55, the special allowance of 7.70 and then we add the respective tool allowances. Now, your Honour, this wage sheet was – reflects the wages applicable from 1 July 2010, so that was following the annual wage case of 2010.

PN528

No, your Honour, if I can then refer to you to Exhibit CFMEU1, which is the wage rates that were applicable under the Building and Construction Industry State Award of New South Wales. And these were the wage rates that were applicable on or after 16 December 2010, so these were the wage rates that applied before the employees covered by the state award then became (indistinct) by the federal award.

PN529

Now, your Honour, if I can take you to page 3, you will see that under the variation that in – under clause 18.1.2.1 which applies to carpenters, joiners, bricklayers, painters, et cetera, the indented apprentice rates, and this is the junior indentured apprentice rates, are set out in the table under Roman numeral I. And we find that the total rate per week for a fourth year junior apprentice in New South Wales was \$671.30. Now – now as deduced in the evidence of Mr Thomas, those rates did not include the tool allowance, so you would then have to add on the tool allowance to that rate to find the all purpose rate that was applicable to junior apprentices in New South Wales.

PN530

Now, your Honour, just on the bare figure of 671.30, if you then compare that to the rate under our wage sheets, in CFMEU2, that if we take the weekly amount with the tool allowance of 26.80, which is the carpenter, the all purpose weekly rate is \$658.05. So we have a situation where in New South Wales prior to the apprentices in New South Wales that were employed by a non-constitutional corporation, which you would submit that in regard to the HIA's membership, which they referred to the mums and dads out there who would have been covered by that award, they would have had a higher obligation in regard to junior fourth year apprentice than the adult minimum rate under the modern award. But if you look down, if you go down to the lowest tool allowance, which is \$6.44, which is the painter, that they would have – that they would have been entitled to \$637.69 under the modern award compared to 671.30 without the tool allowance under the state award.

PN531

If we then look at the Civil Engineering and Construction Carpenters under clause 18.1.2.2, you'll see there that the fourth year rates, and this again is for a junior apprentice, is \$736.10 and that is without the tool allowance, which is a significant increase from the rates contained that would apply under the modern award.

PN532

Your Honour, if I can then just take you briefly to the top of page 5, and just to explain if you go back to page 4 you'll see that the table, that starts at the bottom of page 4 and goes onto page 5, deals with adult apprentices. Under that table the adult apprentices in New South Wales, a fourth year was paid a rate of \$671.30, again that is without the tool allowance which is significant – which is more than the rate in the modern award. If we then go down to the Civil Engineering and Construction Carpenters, again the rate for a fourth year adult apprentice was \$736.10 compared to \$658.05 under the modern award, and if you look at the third year rate of 647.30 under the state award, if you then added on a carpenter's tool allowance of \$25 a week, again you'll see that the third year adult apprentice

rates in New South Wales was higher than the rates that applies under the modern award.

PN533

Now we recognise that from 1 February 2011 when the apprentices from New South Wales came under the modern award, the transitional rates – the transitional provisions contained in schedule A of the award would apply but that then demonstrates that there were higher wage rates that applied to apprentices in New South Wales than applied to adult apprentices under the modern award, and therefore the provision in clause 19.8(c) or the comparison exercise will come into play. So this spurious allegation by Mr Calver, that the court will have no work to do, is incorrect.

PN534

Your Honour, there is one other factor that I'd like to refer you to, and I know that the employers have sought to place great emphasis on the calculations done by the Fair Work Ombudsman and its predecessors. Your Honour, I'd just seek to hand up a copy of the pay scale summary for the Building and Construction Industry State 2003 Queensland Award published on 15 July 2008.

**EXHIBIT #CFMEU3 COPY OF THE PAY SCALE SUMMARY
DERIVED FROM THE BUILDING AND CONSTRUCTION
INDUSTRY STATE 2003 QUEENSLAND AWARD PUBLISHED
15/07/2008**

PN535

Now, your Honour, I just wish to refer you to page 4 of that document. Page 4 sets out the apprentices rates that were payable under that pay scale summary and this was a brick wall for 15 July 2008. And, your Honour, just to compare the wage rates for the wage level 4 to the wage rates in attachment A of the MBA's submission which was the HIA's calculation on the adult apprentice rates that applied from 1 January 2010. Now, you will see there, your Honour, that for a bricklayer under the pay scale published by the workplace authority, the rate for a bricklayer was \$16.65 an hour, whereas under the calculations of HIA the bricklayer was \$16.38. If we look at the carpenter the rates under the pay scale was 16.82 compared to the calculation for a bricklayer – sorry, for a carpenter of 16.82 compared to a rate of 16.58 under the modern award. And then for a painter and decorator it is 16.37 compared to 16.07. So, your Honour, we submit that at the time that the modern award came into operation there were higher junior rates that applied in Queensland, and therefore given the transitional arrangements that applied then the clause 16.8(c) – sorry, clause 19.8(c) would have work to do.

PN536

Now, your Honour, in paragraph 7.19 of our submission we deal with the issue of the FDC Construction's agreement and that clearly demonstrates that the rates aren't – we're not blessed with the adult apprentice rates under the modern award.

PN537

In 7.20 of our written submission we deal with the provisions of the MECA award and we note the evidence of Mr Reid as sustained – that that award included the various allowances in the calculation of apprentice rates. And in 7.21 we point

out that the prevalence of adult apprentice rates was much greater than the MBA claimed.

PN538

Now, your Honour, I'd just seek to correct one point here. I think that there was an assertion that the Northern Territory Award did not contain adult apprentice rates. The Northern Territory Award had a provision that the children apprentice reached the age of 21, they would then carry the lowest classification rates under that award, and that was irrespective of the time that they entered into the apprenticeship. So if they started at 19, as soon as they hit 21 they would have still been entitled to the lowest classification rates under the award.

PN539

Your Honour, in regards to this whole issue of apprentices, it was obviously a mixed bag in that you have some apprentices that were covered by the old MB – sorry, the National Building and Construction Industry Award 2000, but as the evidence of Mr Thomas, apprentices in New South Wales and – in New South Wales and Queensland were not covered by the old factory award. They were covered by state instruments and there have been a number of state instruments that provided for adult apprentice wage rates.

PN540

Your Honour, in paragraph 7.24 to 7.27 we deal with what we submit is the MBA's flimsy work value claim, and in section 8 we deal – we set out our position to the variations of clauses 19.8(a) and (b).

PN541

In regard to the witness evidence of Mr Callum, we say that the fact that he received four different interpretations on the award clause, and this is referred to in PN106 of transcript, is perhaps more an indication of bad advice rather than a problem with the award. We also note that the MBA group scheme has made over award payments to adult apprentices in the past and has still made an operating surplus, and that's referred to in PN88 to 89 and PN97 to 98. We also note that they review their charge out rates annually, which is in PN115.

PN542

The exhibits that have been put forward by the MBA in regard to the practices under other awards demonstrate nothing more than the different provisions applied in different industries. None however appear to generally exclude the payment of all purpose allowances to adult apprentices unless an allowance is specified not to apply.

PN543

Now in regard to the issue of the cost increases, that issue was firmly before the AIRC when it made the transitional arrangements to apply in modern awards.

PN544

Now, your Honour, there's one point that I wish to make fairly strongly, and that is that we've heard all these claims from the employers, in their written submissions and today, about the contingent liability of employers. Yet we have not had one employer come here to this tribunal to set out what that contingent liability is. We have no – apart from a calculation that compares wage rates that applied under the previous award compared to the modern award, but that doesn't

reflect the actual payment arrangements in a specific company or a company in a specific state – or companies – specific companies in a specific state. Noting there are variances between states as to what rates applied one would have thought that if there is this huge contingent liability out there we would have been flooded by statements from employers in the industry from both the MBA and the HIA or the IAG, who I note are absent from these proceedings, or the South Australian Chamber, who again are absent from these proceedings, or the QCCI or some of the other employer organisations that are out there, but not one has come here with any specific evidence from a specific employer about their contingent liability. We say that given that there's no evidence as to that that the tribunal should give little weight to the claims by the employers in that regard.

PN545

I would also point out that it is our understanding that when the predecessor to the Fair Work Ombudsman was conducting the annual wage reviews. It is our understanding that they came to the conclusion that it was no more than ten per cent of employers in the building and construction industry that were covered by minimum rates adjustments in the building and construction industry.

PN546

THE SENIOR DEPUTY PRESIDENT: That was the Fair Pay Commission.

PN547

MR MAXWELL: It was the Fair Pay Commission. I will try and track down the actual reference to that, your Honour, but - - -

PN548

THE SENIOR DEPUTY PRESIDENT: Well, I think there's contemp – more contemporary data within the Fair Work Australia publications. A statistical summary found on the annual – get the name right, the annual wage review site contains a table as I understand it which indicates award reliance by industry.

PN549

MR MAXWELL: Now, your Honour, perhaps - - -

PN550

THE SENIOR DEPUTY PRESIDENT: We do keep up to date, Mr Maxwell.

PN551

MR MAXWELL: I'll try, your Honour. Your Honour, just in regard to the – before I go onto the submissions of the HIA, the – in regard to the additional submissions made by Mr Calver this morning, I note he referred to appendix F of his written submission and he sought to show that there had been a downturn between 2008 and 2009 of the employment for apprentices, both junior and adult. He referred to the global financial crisis. Now I note that from Appendix F that the number of junior apprentices employed in 2010 jumped from 13,641 to 18,720, an increase of approximately 37 per cent. In regard to adult apprentices, they jumped from 3,676 in 2009 to 5,595 in 2010. So since the introduction of the modern award and adult apprentices across the board, we have seen an increase in adult apprentices. Now - - -

PN552

THE SENIOR DEPUTY PRESIDENT: Well, Mr Calver will say that's on the basis of the employers acting on advice of MBA as to how the provision operates.

PN553

MR MAXWELL: Well, your Honour, we don't intend to try and mislead the tribunal. It is our suggestion that the actual increase in the apprentice numbers had nothing to do with the actual wage rates to apply. It had more to do with the economic stimulus provided by the government under the BER program. All that demonstrates is that the employment of apprentices is a factor of the activity in the industry. It is not a factor that's historically related to – or the wage rates are not the only factor that affects their employment.

PN554

THE SENIOR DEPUTY PRESIDENT: Well, we might get further confirmation of that thesis. I think there's a similar program. There's a centre of the President Obama's American Employment Act.

PN555

MR MAXWELL: Your Honour, in regard to the MBA's claim that most group training companies have EBAs, we dispute that. We would like to see evidence to that extent. On our research, which we have done research on, on the prevalence of agreements with group training companies, there are very few if any group training companies that have enterprise agreements. And similarly, we would dispute the claim by the MBA that employers in this industry use the award rates to pay apprentices. As you'll know from your own experience dealing with the thousands, and I think it's close to 7,000 enterprise agreements that apply in the building and construction industry, a significant number of those agreements provide apprentice rates and they do not rely on the rates contained within the award.

PN556

THE SENIOR DEPUTY PRESIDENT: I don't personally deal with them all but I'm sometimes getting a feeling I'm dealing with that level.

PN557

MR MAXWELL: Your Honour, if I can briefly deal with the submissions of the ABI.

PN558

THE SENIOR DEPUTY PRESIDENT: Yes.

PN559

MR MAXWELL: Now most of their submission appears to be their interpretation of the Fair Work Act. We agree with paragraph 10 of their submission that section 157 does not operate as a form of quasi appeal or review, allowing the party to reargue a matter, and we agree with paragraph 17 that FWA must first make a finding that an ambiguity, uncertainty or error exists before section 160 can be applied.

PN560

We disagree, however, that clause 19.8(c) applies to trainee apprentices, as outlined in our submission. We agree with our submission in paragraph 41 that it is difficult to discern how clause 19.8 could be said to give rise to an ambiguity or uncertainty, however we disagree with paragraph 44 that the rate for the lowest paid classification, a CW1 rate is a rate set out in 19.1(a). We say this interpretation ignores the other provisions of the award which require the payment of allowances. No new entrant is paid this rate and I refer to the evidence of

Mr Thomas. We agreed that new entrants to the industry were also paid the industry allowance and the special allowance. And clause 19.1(b) requires the minimum rates to take into account those allowances that apply.

PN561

Your Honour, if I can then to the submission of the HIA. In regard to paragraph 6, we say there is no emergence of varying interpretations of the adult apprentice rates under the award. The only party who had a difference back in July 2010 was the MBA. The HIA clearly agreed with the position of the CFMEU as the extract from the spreadsheet contains attachment A that the CFMEU submission clearly demonstrates.

PN562

Now, your Honour, the provisions of the modern award were known back in April 2009 and the parties made various submissions as to how the transitional arrangements should operate to reduce the cost impacts on employers. These cost impacts were well known when the transitional rates came into effect on 1 July 2010. Indeed the tribunal chaired a number of conferences of the parties to try and simplify the transitional arrangements. Indeed, it was the MBA who walked away from the attempt to get an agreed set of transitional rates, preferring to rely on the calculations of the Fair Work Ombudsman.

PN563

Now, we submit there has been ample opportunity for the MBA or the HIA to seek to vary the award since 1 January 2010 if they had any real concern about the large contingent liability. And we would have thought that if there was that concern they would have sought an expedition of – or seek that these proceedings be expedited to try and resolve that matter as soon as possible.

PN564

Your Honour, the HIA appear to place great emphasis on the fact that the Fair Work Ombudsman has not produced a calculator for adult apprentices. We say this is not a factor in determining wage rates under the modern award. The Fair Work Ombudsman does not set wage rates. That is a matter for Fair Work Australia and the courts to decide, and we say this is an effect recognised by the Fair Work Ombudsman in the disclaimers on the pages of its various calculators.

PN565

In paragraph 18 the HIA is incorrect in their assertion that if the award was varied as per the MBA's clause that adult apprentices would not be entitled to the industry allowance, tool allowance or special rates. Further variations will be required to bring this about. As recognised in your Honour's decision in AM2010/55, if a clause provides for a payment to all employees then all employees includes apprentices, and that's found in paragraph 10 of the decision. Your Honour, we submit as perhaps ironic that in this application the MBA and HIA are taking an opposing point of view as that expressed in AM2010/55.

PN566

Now, your Honour, in that matter at PN77 of transcript, the MBA, Mr Calvert, said the following:

PN567

We say that the calculation of the appropriate minimum wage is both simple and certain. The proportions set out in clause 19.7(b) apply to level three standard rates and with the allowances in clause 19.7(e) then added.

PN568

So it's clearly recognised by the MBA that when the award refers to clause 19.7 it refers to the totality of clause 19.7.

PN569

Similarly, the HIA at PN137 said the following:

PN570

The majority of awards in the building and construction industry have historically contained a clause describing the basis for calculating minimum wages. Such clauses would ordinarily state which allowances are to be included in the minimum wage calculation by reference to other clauses within the award that expressly set out the amounts and purposes of the allowances.

PN571

Then in PN141 Ms Matheson went on to say:

PN572

Within the written submission we submit that the intention is discoverable based on the methods of calculations specified for the adult wages, and particularly you will see that special allowance has been specifically referred to in both the daily hire, hourly rate calculation and the weekly hire calculation.

PN573

So clearly, your Honour, in that proceeding both the MBA and the HIA recognised that if there was a reference to the clause you take the whole clause, you don't just go to one part of the clause.

PN574

Your Honour, in paragraph 26 they referred to the MBA's list of pre-modern awards and claiming the vast majority did not contain separate rates for adult apprentices. Now we submit this claim is misleading as 34 of the awards listed either did not apply to apprentices or were not awards replaced by the Building and Construction General On-Site Award.

PN575

The HIA make the extraordinary claim in part 5 of their submission that the inclusion of adult apprentice rates for the non-metal and engineering on-site construction industry was somehow an error and not what was intended by the Australian Industrial Relations Commission. They refer to the submissions of the MBA, and that's referred to in paragraph 41 of their submission – sorry, the submissions of the MBA join the award modernisation but conveniently ignore the submissions of the other parties, including their own. The facts are that, yes, following the release of the exposure draft the MBA made a submission about adult apprentice rates in their post-exposure draft submission and suggested that the rates, where they currently exist, should be transitioned to a uniform rate during a period of five years. This is in effect the situation that we now have,

although our standard across the country, but the uniform rates is not what the MBA wanted.

PN576

Now as one would expect the CFMEU also addressed the issue of adult apprentices in our post-exposure to that submission 13 February 2009. Your Honour, I'd just like to hand up an extract from that submission.

PN577

THE SENIOR DEPUTY PRESIDENT: I'll mark this CFMEU4, extract of fees – I'm finding it. It's an extract from the CFMEU post exposure draft submission.

EXHIBIT #CFMEU4 EXTRACT FROM THE CFMEU POST EXPOSURE DRAFT SUBMISSION

PN578

MR MAXWELL: And, your Honour, you'll see that from page 18 we deal with what was 15 of the exposure draft which deal with apprentices clause, and in 4.22 of that submission, half way down that paragraph we said the following:

PN579

The direction of the adult apprentices are new as normally included in the NBCIA, although they're included in some NAPSAs.

PN580

We have adopted the approach using the Manufacturing Award where the rates for adult apprentices are based on the classification structure, so the CW1 rate would apply in the first year and the CW2 rate would apply in the second and subsequent years. So the submission of the CFMEU on the exposure draft was that adult apprentices rates should be the CW1 rate for the first year and the CW2 for the second and subsequent years.

PN581

We then dealt with the issue of the payment of allowances paid to apprentices, and particularly the industry and tool allowance and that those allowances should be paid in full.

PN582

Now, your Honour, there was one other submission that dealt with adult apprentices drawing the – following the release of the exposure draft. Just prior to it was the submission of the HIA and, your Honour, I'd seek to tender an extract from the HIA's submission.

PN583

THE SENIOR DEPUTY PRESIDENT: CFMEU5.

EXHIBIT #CFMEU5 EXTRACT FROM THE SUBMISSION OF THE HIA TO THE AIRC

PN584

MR MAXWELL: Now, your Honour, this is the extract of the submission of the HIA to the Australian Industrial Relations Commission, their second submission of February 2009, and this is what, on page 19 of their submission, this is what the HIA said to the full bench what should be included in the modern award for apprentices, and that is set out in the box area. To quote it says in 1.1:

PN585

An apprentice is an employee engaged under a structured training arrangement. It is registered as an apprenticeship with a relevant state, territory or federal authority.

PN586

In 1.2:

PN587

Employers must pay each apprentice the following minimum rates of pay:

PN588

(a) if the apprentice is under 18 years of age the minimum rates of pay are set out in table 2 of schedule A.

PN589

Now if you go the next page – sorry, the last page of the extract that includes schedule A from the HIA's submission and you'll see that the table 2 refer to the clause 20.8 from the exposure draft, so they are saying the appropriate percentages that applied to junior apprentices.

PN590

But their 1.2(b) provided that:

PN591

In any other case the highest of the lowest rate described for an adult employee in table 1 of schedule A, and the rate prescribed in table 2 of schedule A for the relevant year of the apprentice.

PN592

And if we look at table 1 of schedule A, table 1 refers to the adult apprentices classifications, and under the definition of examples it says:

PN593

Insert table from 20.1 of exposure draft. Including leading hand loadings. Include details of calculating hourly rates.

PN594

So, your Honour, the HIA in our submission on the exposure draft of the modern award perhaps – well, they went further than the union in that the union was saying that – it was conceded that adult apprentice rates kicked in at 21 during those proceedings. Well, the HIA suggested that the adult apprentice rates would kick in at 18 and that was irrespective of when the apprentice actually started the apprenticeship.

PN595

Now, your Honour – so clearly the HIA was saying that the lowest base rate of pay for an adult apprentice – sorry, for an adult apprentice would be that from an adult employee and that would be based on the hourly rate calculations which would include the payment of the allowances. Now we submit there can be no doubt therefore that the matter of adult apprentice wage rates was agitated during the award modernisation proceedings and that led to the decision of the full bench in paragraph 83 in the April 2009 decision as set out in paragraph 43 of the HIA submission.

PN596

Your Honour, there was a further paragraph in the April 2009 decision that has a major bearing on this case and which dispels this spurious employer argument that the AIRC full bench was only referring to the minimum rates in 9.1(a). It explains the purpose of the minimum classification rates in 19.1(a).

Your Honour, the paragraph in question is paragraph 43. I have a copy of that paragraph which I'll just hand up for your reference.

PN597

THE SENIOR DEPUTY PRESIDENT: Yes, I won't mark it.

PN598

MR MAXWELL: Now, your Honour, this paragraph provides as follows. Some parties, particularly in the building, metal and civil construction group of industries propose the inclusion in modern awards of rolled up wage rates, i.e. rates comprised of minimum wages and all purpose allowances, such as industry allowances. In our statement to 23 January 2009 we decided against such an approach in relation to the draft Electrical, Electronic and Communications Contracting Award 2010, despite the submissions of the National Electrical and Communications Association (NECA) and the Communications, Electrical, Electronic, Energy Information, Postal, Plumbing and Allied Services Union Australia (CEPU). It remains our view that minimum classification rates should be shown separately from all purpose allowances in modern awards. The combination of minimum classification rates and industry allowances would confuse minimum award payments of two different types. Sorry, I lost my spot.

PN599

THE SENIOR DEPUTY PRESIDENT: Prescribed - - -

PN600

MR MAXWELL: Prescribed for different purposes. It is essentially that the properly fixed minimum classification rates are retained and shown separately in modern awards in order to maintain consistent properly fixed minimum classification rates. The development and maintenance of properly fixed minimum rates have been important underpinning elements of the commission's award since August 1988. A stable system of minimum wage relativities has developed throughout much of the award system over the last 20 years. A departure from those relativities would have the potential to destabilise minimum wage fixation and generate unsustainable claims. Because of that potential we are not prepared, given the limited debate that has occurred so far, to move away from the principle that minimum wage is to be kept separate from allowances.

PN601

Now, your Honour, the purpose of that (indistinct) is to demonstrate that the full bench recognise that to determine the actual rate of pay you had to look at the minimum rate and the all purpose allowances. And the reason that they had not married the two is because of the this concern about relativities. So we submit that it is appropriate that when you look at the minimum rates to apply to the minimum classification level under the modern awards, you would have to take into account the allowances that also apply.

PN602

Your Honour, to the extent that the HIA seek to rely on work value, we submit that there is no evidence before the tribunal that would justify a variation of the minimum wages of adult apprentices. Your Honour, in paragraph HIA referred to a recent NCVER study as though that provided some evidence about the impacts of wages and the likelihood of employment on the probability of completing an apprenticeship or traineeship. Your Honour, I think it is perhaps worth this tribunal being aware of the basis of that study. I just seek to hand up an extract from it.

PN603

THE SENIOR DEPUTY PRESIDENT: Yes, I'll mark the extract from the NCVER occasional paper CFMEU6.

**EXHIBIT #CFMEU6 EXTRACT FROM THE NCVER
OCCASIONAL PAPER**

PN604

MR MAXWELL: No, your Honour, I'll just be brief, your Honour. All this demonstrates is that that study by the NCVER wasn't based on any empirical evidence. It was actually based on a mathematical calculation.

PN605

THE SENIOR DEPUTY PRESIDENT: A pretty simple one that.

PN606

MR MAXWELL: And you see at appendix C how they estimated the average wages to apply to an apprenticeship involved a fairly complex and (indistinct) mathematical formula. As I say, the extent to which I think the tribunal should take into account statistical analysis based on mathematical formula, if you were to go down that track I think we'd all be leaving this room and leaving it up to the mathematicians to argue the point.

PN607

THE SENIOR DEPUTY PRESIDENT: Or econometricians, Mr Maxwell, don't be unkind.

PN608

MR MAXWELL: Your Honour, I could attempt an explanation but I won't. I think if the HIA seek to rely on this they should perhaps explain how that – that those formulas are intended to work.

PN609

THE SENIOR DEPUTY PRESIDENT: Yes, very well.

PN610

MR MAXWELL: Your Honour, the final point we'd make that is that in regard to the HIA submission is that there have been no significant changes in circumstances since the making of the modern award to warrant a reconsideration of the award provisions. Your Honour, they are the submissions of the CFMEU.

PN611

THE SENIOR DEPUTY PRESIDENT: Thank you, Mr Maxwell. Mr Kentish.

PN612

MR KENTISH: Thank you, your Honour. Your Honour, the CEPU generally supports these submissions if there are other union members here, MEU in particular, and we continue to rely on our written submissions in these proceedings.

PN613

Your Honour, before going to the submissions of the employer associations, we would also ask the tribunal to consider the Australian Industry Group has put in no material in support of the application, and we say that this is particularly relevant as the AIG was a respondent to the MECA award, and indeed none of the employers respondent to MECA have put in material. The AI Group is particularly active in award matters and its decision not to put in material in support of the MBA's application we say is indicative of the weakness of the MBA's application.

PN614

Your Honour, with respect to the ABI submissions, many the issues traversed by the ABI submission were also dealt with in our submissions and we largely contend to rely upon those. There's the handful of matters that we do wish to comment on.

PN615

THE SENIOR DEPUTY PRESIDENT: Sure.

PN616

MR KENTISH: In particular, we disagree with the submissions analysis of clause 19.8 in terms of which class of – which class of employees are covered by 19.8(b), and we say that clause 19.8(b) is not at large an – restricted to metal and engineering apprentices. We say that this is clear on the face of the award, although diluting clause 19.8 backwards it would appear that the ABI has managed to confuse the issue.

PN617

We also say that the close relationship between paragraphs 19.8(a) and 19.8(b) is evident when the history of the clause is considered. And in this respect, we note that when the clause was first introduced into the Metal and Engineering On-site Federal Award the clauses that had become paragraph 18.A – sorry, have become 19.8(a) and 19.8(b) were all part of the same provision, which at that time was clause 25A(d)(i) of the National Metal and Engineering On-site Construction Industry Award of 1989, and that clause can be found in attachment of the AMWU's submissions as filed.

PN618

Your Honour, if I can now turn to the HIA's material. The HIA submission talks a lot about costs – about costs impacts, but we also note that the HIA has called not one employer to back his claims despite apparently having members somewhere north of 40,000. Not one of those members, and indeed only employee for the MBA has been called in these proceedings, and we say an inference should be drawn in relation to that.

PN619

In terms of the effect on the industry, the HIA footnotes one of its own media releases on page 22, and we say that that's clearly not enough. And there is no

material going to work value and we say that an inference can and should be drawn from the general absence of any evidentiary material whatsoever.

PN620

Like the MBA, the HIA attempts to rely on the alleged position of the Fair Work Ombudsman, but the Fair Work Ombudsman has not been called and has apparently not prepared any material for any party in these proceedings. And in such circumstances we submit that it would be inappropriate for any inferences to be drawn about the position of the Fair Work Ombudsman, and in any respect we agree with the CFMEU that the FWO's views would obviously not be determined in any respect.

PN621

Your Honour, under heading four of its submissions, the HIA, on pages 9 to 11, refer to the modern award request under section 576A of the Act and then the HIA go on to focus entirely on the known additional costs employer or employer's aspect of the award modernisation process as it relates to what we would say is one very narrow aspect of the award, and that is of course the payment to adult apprentices. This ignores entirely the balancing exercise that the AIRC conducted when making the award, and we say that it is not to the point to pick out a single aspect of the award and consider it in isolation. And in any case, we submit that HIA is attempting to reargue an issue settled by its seven member full bench without any evidence.

PN622

Your Honour, the CEPU also urges the tribunal to reject the suggested possibility of error in part 5 of the HIA's submissions which are covered over pages 11 to 14. We say that there is nothing on the face of the award or in the decision that made the award to suggest error, and the fact that the full bench in a passage extracted by the HIA, at paragraph 43 of their submissions, say that they have applied the payment arrangements from the Metal and Engineering On-site Award in respect of adult apprentices does not mean either that it was intended only to rely to metal and engineering apprentices, nor that it was inappropriate to do so.

PN623

Your Honour, the HIA's suggestion that the AIRC had a misguided belief concerning how adult apprentices were dealt with in the National Building and Construction Award 2000 is speculative and without substance and the exposure draft clearly shows the full bench were considering the issue and the decision as extracted by the HIA indicates that current award prescriptions were considered and that the metal and engineering arrangements were applied.

PN624

Your Honour, in terms of what the MBA had to say today, most of it was consistent with what has already been put in writing. We would in addition say however that Mr Calver was not – or the MBA has not met the evidentiary hurdle. They've got no evidence as to how many adult apprentices are actually on the award and how many are covered by agreements, and we say that's not good enough. There's very little evidence of the economic downturn which keeps being referred to, and we say that it's not credible to say that 19.8(c) applies only to the metal and engineering apprentices, as was flirted with this morning. That would be totally against the plain words of 19.8(c).

PN625

Your Honour, finally we were interested that Mr Calver continues to agitate the argument in relation to 19.8(c) having no work to do because the formula must always give a particular result, and given the exchange between Mr Calver and the Bench, we did want to make it clear that it's not necessarily that the relativities as expressed as applying to juniors might change, it's that future annual wage cases could very well disturb the balance between the trade rate and the rate paid to the CW1.

PN626

If it pleases, unless there are any questions I have nothing further.

PN627

THE SENIOR DEPUTY PRESIDENT: Thank you very much, Mr Kentish. Mr Noble.

PN628

MR NOBLE: Your Honour, I will (indistinct) in relation to this. I think my colleagues have done a very thorough job of covering up all the arguments that I was going to make anyhow. I just have one – just one or two quick things to say. In relation to the Australia Industry Group, we were involved in negotiations with them at the conferences that yourself was heading.

PN629

THE SENIOR DEPUTY PRESIDENT: Yes.

PN630

MR NOBLE: And we had an agreed position in relation to apprentices. And it's my recollection, from the positions that we both had, adult apprentices just was not an issue between us. But I'd like to say that given – I mean your Honour's already remarked on it, given the long delay in relisting this matter from when it was initially set down in December of last year, it's now 12 months later, and I think that itself speaks to the fact that there isn't really any issue on the ground. There's no urgency to this matter and if it was going to be raised at all it probably would have been better to do so at a later time when a review was underway.

PN631

The references that Mr Calver's made to other awards we would submit are irrelevant and that these are simply something that the MBA would probably wish applies in this case.

PN632

We also think it's irrelevant that the evidence that the MBA's witnesses have given to their members, about how they calculate the adult apprentice rates is of no real wealth. There is no evidence before us about any disputes in relation to the means and methods of those calculations and in the real world, as Mr Reid spoke about, he too is not aware of any disputes in relation – under this award and there were very few under MECA previously as well.

PN633

Mr Reid said in his evidence that one of the reasons we have a problem – I can't remember his exact words, I didn't write them down, but he talked about the desirability of maintaining a decent apprentice wage rate was because a lot of

employees could actually earn more under casual rates than what they otherwise would under apprentice rates. Words to something along those lines.

PN634

Just yesterday the Minister for Tertiary Education, Skills, Jobs and Workplace Relations made the same point. He said one of the reasons we can't retain, attract young – or attract young people in some of these areas is because they earn much more better money doing casual work that doesn't require training. That was an endorsed interview he gave on Tuesday 6 December.

PN635

He also stated in that same interview that we do have serious issues about completion rates, young people starting and not completing their apprenticeships. And we've got a range of measures – mentoring systems to try and encourage and support young people. The – I think it was the apprenticeship report, which came out earlier this year, talked about only 48 per cent completion rate in relation to apprentices and more than three out of ten drop out in the first year. Now Mr Callan's evidence attests to the reality of high adult apprentices' wages damaging employments, that was Mr Calver's summary at paragraph 5.7 of his statement. One, I would challenge or question the use of the word "high" in relation to adult apprentice wages. I think Fair Work Australia should be mindful of the fact that we should not lose sight that we're talking about the minimum safety net wages and apprentices are, as we would all recognise that, at the very lower end of that. There may be a difference between the real world and what happens in (indistinct), they do have influence, and if effect is given to Mr Calver's application there could be – I'm not saying that there will in the real world, so to speak, but even if there are attempts to (indistinct) or so apprentices who take their rates from these awards then that will have a detrimental effect on retaining apprentices in industries which we should hope to train up as many as we can and get skilled workers to go through. And that would be contrary to government policy, I suppose, but also the practical future of maintain skilled apprentices in this area and future skilled workforce.

PN636

THE SENIOR DEPUTY PRESIDENT: Yes, I thank you for that, Mr Noble. Mr Calver.

PN637

MR CALVER: Sir, given my age and propensities I wonder if we might have a short break?

PN638

THE SENIOR DEPUTY PRESIDENT: Well, I'm going to have to depart shortly. How long have you got - - -

PN639

MR CALVER: It will only take me a minute or so, your Honour.

PN640

THE SENIOR DEPUTY PRESIDENT: Sorry, how long do you intend - - -

PN641

MR CALVER: Ten, 15 minutes.

PN642

THE SENIOR DEPUTY PRESIDENT: Could you put that in writing that might be an easier course.

PN643

MR CALVER: A rebuttal submission in writing?

PN644

THE SENIOR DEPUTY PRESIDENT: Yes, but entirely rebuttal not – you obviously understand the rules?

PN645

MR CALVER: Yes, sir.

PN646

THE SENIOR DEPUTY PRESIDENT: Yes.

PN647

MR CALVER: You want me to make a rebuttal submission in writing?

PN648

THE SENIOR DEPUTY PRESIDENT: Yes.

PN649

MR CALVER: By what date, sir?

PN650

THE SENIOR DEPUTY PRESIDENT: Well, just quickly as you can. How quickly can you do it?

PN651

MR CALVER: I have no idea off the top of my head, your Honour.

PN652

THE SENIOR DEPUTY PRESIDENT: Well, you're about - - -

PN653

MR CALVER: But not for at least a fortnight, I don't think.

PN654

THE SENIOR DEPUTY PRESIDENT: Well, you're about to do it now, Mr Calver.

PN655

MR CALVER: There's a – there's a real difference in that regard. I'm going on annual leave on Friday morning, that's all.

PN656

THE SENIOR DEPUTY PRESIDENT: Well, you've got your notes there.

PN657

MR CALVER: If I can have a 30 second break I can do it now in five minutes. I'll truncate it, but I – there is a - - -

PN658

THE SENIOR DEPUTY PRESIDENT: Yes, very well. We'll have a short break.

PN659

MR CALVER: Thank you, very much.

PN660

THE SENIOR DEPUTY PRESIDENT: But I do have to say it's 25 past - - -

<SHORT ADJOURNMENT

[1.18PM]

<RESUMED

[1.21PM]

PN661

THE SENIOR DEPUTY PRESIDENT: Yes, Mr Calver.

PN662

MR CALVER: Thank you for that short break, your Honour.

PN663

THE SENIOR DEPUTY PRESIDENT: Sorry, we don't have a report - - -

PN664

MR CALVER: No.

PN665

THE SENIOR DEPUTY PRESIDENT: All right. Off the record obviously, Mr Calver, I didn't want to disadvantage you by compressing you to five minutes, if you prefer to deal with it after annual leave. I frankly – I made other commitments on the premise of parties wouldn't rehearse today what was in their written submissions.

PN666

MR CALVER: No.

PN667

THE SENIOR DEPUTY PRESIDENT: And that's what didn't occur unfortunately.

PN668

MR CALVER: No. Well, I'm afraid, sir, we needed to reinforce certain points from the evidence, but I also am confronted with a number of arguments that are new. I can – I can do it in five minutes, your Honour. That's - - -

PN669

THE SENIOR DEPUTY PRESIDENT: Well, if you're content with that, I don't want to - - -

PN670

MR CALVER: Yes – no, no, that would be fine, that would be fine.

PN671

THE SENIOR DEPUTY PRESIDENT: Yes, very well, go ahead.

PN672

MR CALVER: Certainly. Your Honour, I take to you to the arguments of my friend from the CFMEU and rebut them. To begin with though, however, I need to put on record that we are not seeking a retrospective order and that we don't agree with our friends from the HIA that they're exceptional circumstances.

PN673

As to the jurisdictional matter, trying to characterise Master Builders' submissions as self-serving we think fails on a number of grounds. We didn't influence or compel the ABI to say that there was no ambiguity in clause 19.8. We did not compel the CFMEU or the other unions to argue that there was no ambiguity on the complete opposite side of the coin. They're not self-serving arguments whatsoever. These are arguments that are derived from the other parties' submissions. ABI, which Mr Maxwell disagreed with, say that it's plain on its face to support the Master Builders' interpretation. The union say it's plain on its face to support theirs. That cannot be characterised as self-serving. The application reflects the realities of different interpretations. The interpretation that the award is confined to the metal and engineering industry is not spurious, it's open on the words which are not plain, as characterised by Mr Kentish in clause 19.8(c). If you begin an obligation with characterising as subject to another obligation you must look at that prior obligation. Clause 19.A is introduced with the words confining it to the metal and engineering on-site industry. But B goes on to confine it categorically in the same terms to that industry. They're making the third provision subject to both of those other provisions would on the face of one construction confine it to the metal and engineering on-site industry. Particularly with the use of the indefinite article and adult apprentice subject to 19.8(a) and (b) the rate of pay of an adult apprentice. What adult apprentice? The ones mentioned in the provisions which are following. In that sense the interpretation was open but has not been adopted. It is a third companion to the matters that have been put and is not a spurious interpretation but one particularly that would resonate with the rational that the full bench itself indicated was going to be the basis for adult apprentice wages, that is the payment provision from the NECA award.

PN674

So far as the comparisons that Mr Maxwell did, the wages rate, going through a range of pre-modern instruments to find a higher rate, they are not compelling arguments in the sense of trying to make sense of itself the comparison in clause 19.8(c). They do not give life to that comparison within its own terms. And they are completely irrelevant for the purpose, the internal purposes of making the comparison which we say is the subject of ambiguity.

PN675

There has been a lot of talk of why this application was not made earlier. It's simple. As we have tried to do in all of the rest of the matters before your Honour we sought to conciliate. We had a meeting with all the unions in February 2011 where issues of this kind were discussed. Up to that time we'd sought to reach resolution of this matter through people agreeing about the way that apprentices should be regulated. We do not believe that apprentice regulations should be a battleground or unclear and we believe that the best outcomes are conciliated outcomes in this space, and it's unfortunate that we had to bring this application, but conciliation first when it comes to apprentices.

PN676

All the criticisms of the CFMEU in relation to our analysis of pre-modern award instruments we believe has been subsumed into our supplementary submission. Mr Maxwell made a point about the Northern Territory. However, if you look at the complexion of pre-modern award instruments there, it is undeniable that the

preponderance of those instruments did not contain adult apprentice rates. For whatever reason that is the obvious fact.

PN677

Why isn't the tribunal flooded with statements of employers and the IAG and the rest of them? Well, for the same reason the ABI think there are no ambiguities in the award because, as Mr Thomas attested, they are happily applying the advice that Master Builders, that ABI, that we believe IAG are giving, that the way to interpret the award is in the manner put to your Honour in this application.

PN678

The speculative material about the amount of award reliance, these are minimum wages rates, they go to the better off overall test and therefore we do not believe there's any evidentiary burden or requirement on us in seeking to have an ambiguity clarified to provide evidence of the matters that Mr Kentish took you to. We do not believe that it's incumbent on us to do that if there is an ambiguity which is clearly on its face getting in the way of properly interpreting minimum wages.

PN679

The arguments about whether or not there was – there is now a requirement to move away from the principle that minimum wages should be kept separate from allowances is all well and good except that clause 19.7 of the Building and Construction General On-Site Award is an exhaustive means of calculating both the way that wages apply to junior apprentices and the way that allowances apply to them. We believe that that should also be the case in relation to adult apprentices. The Nomenca award categorically had proportional allowances in relation to the application of adult apprentice wages. And I refer the commission specifically to clauses 12.4.9 and 12.4.10 of that Nomenca award, which I won't take your Honour to but which is categorical when read in the context of that clause that the wage rates were proportional. It seems it was the full bench's intention in having that particular provision that adult apprentices would be entitled to proportional allowances. Clause 12.5.2 indicates that the provisions of 12.4 should apply to adult apprentices unless specifically provided otherwise by this clause, and clauses 12.4.9 and 12.4.10 provides the proportional allowances.

PN680

Your Honour, that is a quick summary of our submissions in reply.

PN681

THE SENIOR DEPUTY PRESIDENT: Yes, thank you for that. I'll now adjourn.

<ADJOURNED INDEFINITELY

[1.29PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

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EXHIBIT #CFMEU6 EXTRACT FROM THE NCVER OCCASIONAL PAPER	PN604

Attachment A - Witness Statement of Mr Geoffrey Charles Thomas**IN FAIR WORK AUSTRALIA**

Matter No: AM2011/51
Re Application by: Master Builders Association of New South Wales and Others

Witness Statement of Geoffrey Charles Thomas.

On Monday 12 October 2011, I, Geoffrey Charles Thomas of 200 Montpelier Drive THE OAKS NSW 2570 make the following witness statement.

1. I am employed as Senior Industrial Relations Officer by the Master Builders Association of New South Wales, and have been so employed since March 1998.
2. I am authorised to make this witness statement on behalf of the The Master Builders Association of New South Wales (the Association) and I do so from my own knowledge.
3. My role involves making a high level contribution to the development of industrial relations policy within the Association, the provision of advice and representation to Association members, and the management of the Association's Industrial Relations Department.
4. In the period between 2001 and March 2006 I was involved in evaluating draft applications to vary the National Building and Construction Industry Award 2000 and other awards covering the onsite construction industry in New South Wales for Safety Net Reviews, Expense Related Allowance adjustments, State Wages Cases and other variations. This work required detailed consultations with national officials of the Construction, Forestry, Mining and Energy Union, Construction and General Division, and in particular Mr Stuart Maxwell the Union's National Industrial Officer.
5. This work involved detailed understanding of the manner in which complex wage rates incorporating "all purpose" allowances" were calculated.
6. More recently I have been involved in the calculation of Modern Award and transitional wage rates for the Building and Construction General On Site Award 2010, and other modern awards covering companies involved in the construction industry.
7. A part of this work has involved determining wage rates applicable to adult apprentices covered by the Building and Construction General On Site Award 2010 and other awards.
8. My examination of the relevant provisions of the Building and Construction General On Site Award 2010 (MA000020), the Electrical, Electronic and Communications Contracting Award (MA000025) and the Plumbing and Fire Sprinklers Award 2010 (MA000036) revealed that each award adopted a different approach.
9. In dealing with each Award I calculated adult apprentice rates using Microsoft Excel spread sheets. In each case the spread sheet was based on the provisions of the relevant Award describing the method by which hourly rates and transitional rates should be calculated. At all times I attempted to ensure that the calculations made were completely transparent.

Lodged by
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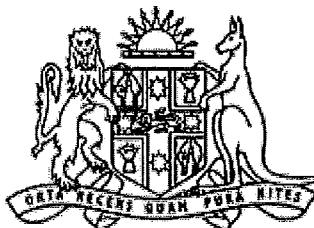
10. As far as the Building and Construction General On Site Award 2010 is concerned the method adopted for apprentices in general was as follows:
 - a. The CW/ECW 3 weekly reference rate for the Award (clause 19.1(a)) is multiplied by the relevant percentage for the year of apprenticeship (clause 19.7(b)) for a four or three year term.
 - b. To this amount is added the full weekly rate for Industry Allowance (clause 21.2) and the applicable full Tool and Employee Protection Allowance (clause 20.1(a)).
 - c. The Special Allowance (clause 21.1(a)) is multiplied by the relevant percentage for the year of apprenticeship (clause 19.7(b)) for a four or three year term.
 - d. The sum of the amounts calculated in sub paragraphs a, b, and c is calculated (clause 19.7(e)) to produce a weekly rate. This is then divided by 38 to produce an hourly rate. No rounding is required or applied. In the spreadsheet cells are formatted to display money amounts to the nearest cent.
11. The rate so produced is the Modern Award rate for junior apprentices. The transitional rate is then calculated under Schedule A.
12. The rates calculated as described in paragraphs 10 and 11 apply generally to apprentices, subject to special provisions of the Building and Construction General On-site Award 2010 that relate to apprentices that are 21 years of age or over at the time of entering into their contract of training in a specified trade (clause 19.8). This provision provides minimum hourly rates for adult apprentices.
13. There are two categories of adult apprentice dealt with in clause 19.8.
 - a. Where a person was employed by their employer in the metal and engineering on-site construction industry immediately prior to becoming an adult apprentice with that employer, the person "will not suffer a reduction in the rate of pay by virtue of becoming indentured (clause 19.8(a)); and
 - b. For other adult apprentices the rate of pay is "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" (clause 19.8(c)).
14. Although clause 19.8(c) is ambiguous, we have interpreted the provision as providing for a 'yardstick comparison'. The junior apprentice rate is tested against "the rate prescribed for the lowest paid classification in clause 19.1". We have interpreted this yardstick as the lowest adult rate provided under the award, exclusive of any all-purpose allowances. We have taken this view because there is no suggestion in clause 19.7(c) that the yardstick used should be augmented by the addition of an Industry Allowance, a Tool Allowance or a Special Allowance and because the comparative exercise would not work if those allowances were included.
15. I have followed the method set out above in preparing advices for members of the Master Builders Association of New South Wales.

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**New South Wales Industrial Relations Commission
(Industrial Gazette)**

**Building and Construction Industry (State)
Award**

Date	09/02/2011
Volume	371
Part	4
Page No.	
Description	VSW - Variation following State Wage Case
Publication No.	C7597
Category	Award
Award Code	001
Date Posted	09/02/2011

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(001)

SERIAL C7597

BUILDING AND CONSTRUCTION INDUSTRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

STATE WAGE CASE 2010

(No. IRC 471 of 2010)

PURSUANT to the orders of the Industrial Relations Commission of New South Wales made 16 December 2010, and pursuant to section 52 of the *Industrial Relations Act, 1996* and consistent with Principle 8 of the Commission's Wage Fixing Principles the following variation is made.

G. M. GRIMSON *Industrial Registrar.*

VARIATION

- Delete paragraph (a) of subclause 18.1 of 18, Classifications and Wage Rates, of the award published 31 August 2001 (327 I.G. 279), and insert in lieu thereof the following:

- Wage Rates - New Classification Structure

Subject to subclause (c) of this clause, the following amounts shall be applied where appropriate

for the purposes of the calculation of the hourly rate under 18.3 of this award.

Classification	Weekly Rate SWC 2010 (4.25%) \$	Relativity %
Construction Worker Level 8 (CW8)	805.30	125
Construction Worker Level 7 (CW7)	779.90	120
Construction Worker Level 6 (CW6)	756.80	115
Construction Worker Level 5 (CW5)	735.60	110
Construction Worker Level 4 (CW4)	712.40	105
Construction Worker Level 3 (CW3)	689.10	100
Construction Worker Level 2 (CW2)	668.30	96
Construction Worker Level 1 (CW1(d))	653.30	92.4
Construction Worker Level 1 (CW1(c))	640.40	90
Construction Worker Level 1 (CW1(b))	631.00	88
Construction Worker Level 1 (CW1(a))	617.10	85

Old Wage Group	New Wage Group	Hourly Rate SWC 2010 (4.25%) \$
Carpenter Diver	CW8	29.68
Foreperson (as defined)	CW8	26.05
Sub Foreperson	CW7	24.66
Carver	CW5	21.63
Special Class Tradesperson (Carpenter and/or Joiner, Stonemason)	CW5	21.63
Special Class Tradesperson (Plasterer)	CW5	21.51
Special Class Tradesperson (Bricklayer)	CW5	21.42

Marker or Setter Out (Artificial Stoneworker, Stonemason, Bridge and Wharf Carpenter, Carpenter and/or Joiner, Marble and Slateworker)	CW4	21.01
Marker or Setter Out (Caster, Fixer, Floorlayer Specialist, Plasterer)	CW4	20.88
Marker or Setter Out (Bricklayer, Tilelayer, Hard Floor Coverer)	CW4	20.79
Marker or Setter Out (Roof Tiler, Slate Ridger or Roof Fixer)	CW4	20.65
Marker or Setter Out (Painter)	CW4	20.44
Letter Cutter	CW4	21.01
Signwriter	CW4	20.44
Artificial Stoneworker, Carpenter and/or Joiner, Bridge and Wharf Carpenter, Marble and Slate Worker, Stonemason,	CW3	20.37
Caster, Fixer, Floorlayer Specialist, Plasterer	CW3	20.25
Bricklayer, Tilelayer	CW3	20.16
Roof Tiler, Slate Ridger, Roof Fixer	CW3	20.02
Painter	CW3	19.81
Shophand	CW3	19.63
Quarryworker	CW3	19.63
Labourer (1) - Rigger, Dogger	CW3	19.63
Machinist	CW3	19.63
Labourer (2) - Scaffolder (as defined), Powder Monkey, Hoist or Winch Driver, Foundation Shaftworker (as defined), Steel Fixer including Tack Welder, Concrete Finisher (as defined)	CW2	19.07
Labourer (3) - Trades labourer, Jack Hammerman, Mixer Driver (concrete), Gantry Hand or Crane Hand, Crane Chaser, Cement Gun Operator, Concrete Cutting or Drilling Machine Operator, Concrete Gang including Concrete Floater (as	CW1(d)	18.66

defined), Roof Layer (malthoid or similar material), Dump Cart Operator, Concrete Formwork stripper, Mobile Concrete Pump Hoseman or Line Hand		
Plasterer's Assistant	CW1(d)	18.66
Terrazzo Assistant	CW1(d)	18.66
Labourer (4) - Builders Labourer other than as specified herein)	CW1(c)	18.31

2. Delete paragraph (f) of subclause 18.1 of the said clause 18, and insert in lieu thereof the following:

(f) The rates of pay in this award include the adjustments payable under State Wage Case 2010. These adjustments may be offset against:

- (i) any equivalent overaward payments and/or
- (ii) award wage increases since 29 May, 1991 other than Safety Net, State Wage Case and minimum rates adjustments.

3. Delete subparagraphs 18.1.2.1, 18.1.2.2 and 18.1.2.3 of paragraph 18.1.2 Wage Rates - Apprentices, of the said clause 18, and insert in lieu thereof the following:

18.1.2.1 Carpenters, Joiners, Bricklayers, Painters, etc., Plasterers, etc., Roof Tilers, Fibrous Plasterer, Plasterboard Fixer, Stonemasons, Tilelayers, Floorlaying.

(i) Indentured Apprentice - The minimum rates of wages for four-year apprentices shall be as follows:

Year	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st year	282.50	41	26.20	17.10	325.80
2 nd year	392.80	57	26.20	25.30	444.30
3 rd year	530.60	77	26.20	32.50	589.30
4 th year	606.40	88	26.20	38.70	671.30

(ii) Trainee Apprentice

Year	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st year	317.00	46	26.20	18.40	361.60
2 nd year	434.10	63	26.20	27.80	488.10
3 rd year	571.90	83	26.20	35.30	633.40
4 th year	633.90	92	26.20	40.10	700.20

18.1.2.2 Civil Engineering Construction Carpenters:

Year	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st year	337.70	49	26.20	20.00	383.90
2 nd year	454.80	66	26.20	28.10	509.10
3 rd year	578.80	84	26.20	35.30	640.30
4 th year	668.50	97	26.20	41.40	736.10

18.1.2.3 Pilot Three Stage Bricklayers' Course

- (a) These rates apply to apprentices who are engaged through the Master Builders' Association of New South Wales and the Housing Industry Group Apprenticeship Schemes and who are enrolled or to be enrolled in the three stage Technical and Further Education course.
- (b) These rates shall also apply whilst the apprentice is attending college in the following fashion:
- Stage I - First 8 weeks - full time at 35 hours per week 28 weeks - 1 day per week
- Stage II - 36 weeks 1 day per week
- (c) The above provisions relating to the pilot bricklayers course, the course itself, and the rates herein prescribed shall only apply to employed apprentices.
- (d) Leave is reserved in relation to the payment applicable during attendance at college for the advanced modules (30 weeks - 1 day per week, i.e. 6 x 40 hour modules) for those apprentices who have successfully completed the requirements of stage II.

(i) Indentured Apprentices:

The minimum rate of wages for apprentice bricklayers shall be as follows:

Stage	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st six months	282.50	41	26.20	16.80	325.50
2 nd six months	392.80	57	26.20	24.80	443.80
2 nd year	496.10	72	26.20	31.90	554.20
3 rd year	599.50	87	26.20	37.90	663.60

(ii) Trainee Apprentices:

The minimum rate of wages for trainee apprentice bricklayers shall be as follows:

Stage	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st six months	303.20	44	26.20	18.00	347.40
2 nd six months	420.30	61	26.20	27.30	473.80
2 nd year	530.60	77	26.20	34.60	591.40
3 rd year	606.40	88	26.20	39.30	671.90

4. Delete paragraph 18.1.3 Adult Apprentices, of the said clause 18, and insert in lieu thereof the following:

18.1.3 Adult Apprentices

Definition - An adult apprentice means an employee engaged as an apprentice who at the time of apprenticeship is of or above the age of 21 years.

18.1.3.1 Carpenters, Joiners, Bricklayers, Painters, etc., Plasterers, etc., Roof Tilers, Fibrous Plasterer, Plasterboard Fixer, Stonemasons, Tilers, Floorlaying

(i) Indentured Apprentices:

Year	Base Rate	Percentage	Industry	Special	Total Per
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	Per Week SWC 2010 (4.25%) \$	relative to CW3 Trade Rate %	Allowance Per Week SWC 2010 (4.25%) \$	Allowance Per Week \$	Week \$
1 st year	461.70	67	26.20	17.10	505.00
2 nd year	461.70	67	26.20	25.30	513.20
3 rd year	530.60	77	26.20	32.50	589.30
4 th year	606.40	88	26.20	38.70	671.30

(ii) Trainee Apprentices:

Year	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st year	461.70	67	26.20	18.40	506.30
2 nd year	468.60	68	26.20	27.80	522.60
3 rd year	578.80	84	26.20	35.30	640.30
4 th year	640.80	93	26.20	40.10	707.10

18.1.3.2 Civil Engineering Construction Carpenters - for adult apprentices the minimum rates shall be as follows:

Year	Base Rate Per Week SWC 2010 (4.25%) \$	Percentage relative to CW3 Trade Rate %	Industry Allowance Per Week SWC 2010 (4.25%) \$	Special Allowance Per Week \$	Total Per Week \$
1 st year	461.70	67	26.20	20.00	507.90
2 nd year	488.20	71	26.20	28.10	542.50
3 rd year	585.80	85	26.20	35.30	647.30
4 th year	668.50	97	26.20	41.40	736.10

5. Delete the table appearing in subclause 18.4 Leading hands, of the said clause 18, and insert in lieu thereof the following:

Item No.	Description	Weekly Base SWC 2010 (4.25%) \$	Amount per hour SWC 2010 (4.25%) \$
(i)	In charge of not more than 1 person	16.80	0.46
(ii)	In charge of 2 and not more than 5 persons	36.90	1.00
(iii)	In charge of 6 and not more than 10 persons	47.00	1.27
(iv)	In charge of more than 10 persons	62.80	1.70

6. Delete the amount "78 cents" appearing in subclause 18.5 Carpenter - Diver allowance, of the said clause 18, and insert in lieu thereof the following:

80 cents

7. Delete the table in subclause 18.7 Foreperson and Sub Foreperson Allowances, of the said clause 18, and insert in lieu thereof the following:

Classification	Per Week
----------------	----------

	SWC 2010 (4.25%) \$
Foreperson (as defined)	92.90
Sub-Foreperson	66.80

8. Delete the table in paragraph 18.8.2 Refractory bricklaying allowance, of the said clause 18, and insert in lieu thereof the following:

Classification	Per hour SWC 2010 (4.25%) \$
Refractory Bricklayer	1.82
Refractory Bricklayer's Assistant	1.56

9. Delete the amount of "\$25.10" appearing in subclause 24.1, Industry Allowance, of clause 24, Allowances, and insert in lieu thereof the following:

\$26.20

10. Delete the amounts of "\$12.29" and "\$2.45" appearing in subclause 24.2, Underground Allowance, of the said clause 24, and insert in lieu thereof the following amounts "\$12.81" and "\$2.55" respectively.
11. Delete the table appearing in paragraph 24.5.3 of subclause 24.5 Multi-story allowance, of the said clause 24, and insert in lieu thereof the following:

Floor Levels	Amount per hour extra SWC 2010 (4.25%) \$
	\$
From commencement of building to fifteenth floor level	0.48
From sixteenth floor level to thirtieth floor level	0.56
From thirty-first floor level to forty-fifth floor level	0.88
From forty-sixth floor level to sixtieth floor level	1.14
From sixty-first floor level onwards	1.42

12. By deleting the table appearing in subclause 25.5 Swing Scaffold, of clause 25 Special Rates, and inserting:

Height of Bracing	First Four Hours SWC 2010 (4.25%) \$	Each additional Hour SWC 2010 (4.25%) \$
0 - 15 storeys	4.27	0.88
16 - 30 storeys	5.51	1.15
31 - 45 storeys	6.53	1.32
46 - 60 storeys	10.69	2.21
greater than 60 storeys	13.64	2.81
solid plasterers when working off a swing scaffold	0.11 per hour	

13. Delete the table appearing in subclause 25.15 Heavy Blocks, of the said clause 25, and insert in lieu thereof the following:

	Amount per hour SWC 2010 (4.25%) \$
	\$
Where the blocks weigh over 5.5 kg and under 9 kg	0.59
Where the blocks weigh 9 kg or over up to 18 kg	1.08

Where the blocks weigh over 18 kg	1.50
-----------------------------------	------

14. Delete the table appearing in subclause 25.41 Table of Special Rates, of the said clause 25, and insert in lieu thereof the following:

Item No.	Clause No.	Description	Amount
			SWC 2010 (4.25%)
			\$
1	25.1	Insulation Work	0.74 p/h
2	25.2	Hot Work Between 46° and 54° Beyond 54°	0.59 p/h 0.74 p/h
3	25.3	Cold Work	0.59 p/h
4	25.4	Confined Space	0.74 p/h
5	25.6	Explosive Powered tools	1.41 p/d
6	25.7	Wet Work	0.59 p/h
7	25.8	Dirty Work	0.59 p/h
8	25.9	Towers Allowance Work above 15 metres Each further 15 metres	0.59 p/h 0.59 p/h
9	25.10	Toxic Substances Using toxic substances In close proximity	0.74 p/h 0.59 p/h
10	25.12	Materials containing asbestos	0.74 p/h
11	25.13	Furnace Work	1.56 p/h
12	25.14	Acid Work	1.56 p/h
13	25.16	Cleaning down brickwork	0.53 p/h
14	25.17	Bagging	0.53 p/h
15	25.18	Bitumen Work	0.74 p/h
16	25.19	Plaster or composition spray	0.59 p/h
17	25.20	Slushing	0.59 p/h
18	25.21	Dry polishing of tiles	0.74 p/h
19	25.22	Cutting tiles	0.74 p/h
20	25.23	Second hand timber	2.32 p/d
21	25.24	Roof repairs -Employees other than slaters and roof tilers	0.74 p/h
22	25.24(i) 25.24(ii)	Roof Repairs - Slaters and roof tilers Height over 15 metres 35° pitch 40° pitch	0.53 p/h 0.74 p/h 1.08 p/h
23	25.25	Computing quantities	4.27 p/d
24	25.26	Height work - painting tradespersons	0.53 p/h
25	25.27	Height work - bridge and wharf carpenters 8 metres from ground, deck, etc. Each additional 3 metres	0.59 p/h 0.10 p/h
26	25.28	Grindstone Allowance	6.30 p/w
27	25.31	Certificate Allowance	0.59 p/h
28	25.32	Spray Application - painters	0.59 p/h
29	25.33	Cutting bricks	0.74 p/h
30	25.34(a)	District Allowances Districts west and north Western Division	0.87 p/d 1.43 p/d
31	25.34(b)	District Allowances NSW border to Dalgety	1.43 p/d
32	25.34(c)	District Allowances Road and bridge construction and repair	0.46 p/d
33	25.35	Pneumatic tools - stonemason	3.22 p/d
34	25.36	Asbestos Eradication	1.98 p/h
35	25.37	Laser safety officer	2.44 p/d

36	25.38	Illawarra road and general construction	0.59 p/h
37	25.39	Suspended Perimeter Work Platform	0.90 p/h
38	25.40	Labourers on refractory brickwork	4.42 per call back
39	25.41	First Aid Allowances	
		Minimum qualification	2.52 p/d
		Higher qualification	3.96 p/d

15. This variation shall take effect from the first full pay period to commence on or after 16 December 2010.

G. M. GRIMSON *Industrial Registrar.*

Printed by the authority of the Industrial Registrar.

*** to download attachment**

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Netscape Users Right click the attachment - Select 'Save Link As' - Select a location - Click 'Save'

Attachment 'A' Witness Statement of Phil Reid

In Fair Work Australia

Matter Number: AM2011/51
Re Application by Master Builders Association of New South Wales and Others

Witness Statement of Phil Reid

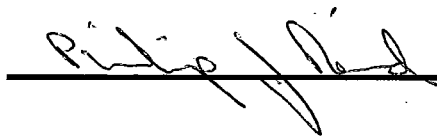
On Tuesday, 8 November 2011 I, Phil Reid, of Unit 5, 52-58 Woniora Road, Hurstville NSW 2220, make the following statement:

1. I am employed as an Industrial Officer in the New South Wales Branch of the AMWU. I have been employed as a union official for 15 years.
2. I am authorised to make this statement on behalf of the AMWU (NSW) and I do so from my own knowledge and experience.
3. As part of my role I assist and represent our members who work in the metal and engineering sector of the construction industry.
4. Prior to the commencement of the Building and Construction General On-site Award 2010 – MA20 ('the Construction Award') the relevant award governing the terms and conditions of our members was the National Metal and Engineering On-site Construction Industry Award 2002 - AP816828CRV ('MECA').
5. I have seen the MBA's application and have some real concerns that if effect is given to their application our members who are apprentices will lose some significant entitlements in respect of their allowances. The allowances that they are currently entitled to in the Construction Award were allowances that they were also previously entitled to under MECA.
6. Under MECA all employees were entitled to the all purpose allowances in clauses 18.2 (tool allowance), 18.3 (industry allowance), and 18.7 (special allowance). Apprentices were paid a percentage of the fitter rate, although adult apprentices were paid the amount of lowest classification in clause 16.1 if it was higher. Apprentices, including adult apprentices, also got a percentage of the allowances in accordance with clause 12.4.9.
7. MECA clause 12.5.2 held that 'The provisions of 12.4 [the provisions dealing with apprentices] shall apply to adult apprentices unless specifically provided otherwise by this clause.'
8. The reference to clause 16.1 in clause 12.5.4(c) in MECA is to identify the lowest paid classification, not the actual rate of pay. As noted above

allowances were also payable. The rate prescribed for the lowest classification under clause 16.1 was generally a few dollars lower than that paid to fourth year apprentices who received 88% of the fitter rate.

9. The use of the term 'indentured' in the Construction Award is used in the same way as it was under MECA. It reflects the historical and continuing nature of the relationship between an adult apprentice and their employer.
10. Under clause 12.5.3 of MECA a contract of indenture was entered into between the parties and was, among other things, a 'covenant by the employer to teach and instruct the adult apprentice in the trade to which the adult apprentice is bound.'
11. The term indentured still accurately reflects that relationship and covenant and distinguishes those apprentices from trainee apprentices who do not have a similar relationship with those providing their training. It should not be changed so lightly.

Signed on the eighth day November 2011 at Granville.





CFMEU 2

1 July 2010

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010 NATIONAL WAGE SHEET

Operative Date: 1st Pay Period Commencing on or after the 1st July 2010

Daily Hire Employees

Classification level	Broadbanded award classifications	Wage Rates			Weekly Pro rata Annual Leave	SAT Work 8 Hours Incl. 20 Min Crib	Leading Hand Rates per hour			
		Per Hour	Per 38 Hours	Accrual 4 of hr			1 person	2-5 persons	6-10 persons	More than 10 persons
CW8	Carpenter Diver	\$28.14	\$1,069.32	\$11.26	\$97.77	\$431.48	\$0.61	\$1.35	\$1.70	\$2.29
	Foreperson	\$22.31	\$847.78	\$8.92	\$77.73	\$342.09	\$0.50	\$1.10	\$1.39	\$1.86
CW7	Sub-Foreperson	\$21.83	\$829.54	\$8.73	\$76.09	\$334.73	\$0.49	\$1.07	\$1.36	\$1.82
	Dogger/Crane Hand (fixed cranes)	\$21.10	\$801.80	\$8.44	\$73.58	\$323.53	\$0.49	\$1.07	\$1.36	\$1.82
CW6							\$0.47	\$1.04	\$1.32	\$1.77
CW5	Refractory Bricklayer (incl refractory allowance)	\$22.29	\$847.02	\$8.92	\$77.67	\$341.78	\$0.46	\$1.02	\$1.28	\$1.72
	Special Class Tradesperson, Carver	\$20.75	\$788.50	\$8.30	\$72.38	\$318.17	\$0.46	\$1.02	\$1.28	\$1.72
	Trainee Dogger/crane Hand (fixed cranes)	\$20.02	\$760.76	\$8.01	\$69.87	\$306.97				
CW4	Joiner-Setter Out, Letter Cutter, Marker-Setter out, Prefab Setter, Specialist Landscaper Tradesperson	\$20.18	\$766.84	\$8.07	\$70.42	\$309.43	\$0.45	\$0.99	\$1.25	\$1.67
	Signwriter	\$19.63	\$745.94	\$7.85	\$68.53	\$300.99	\$0.45	\$0.99	\$1.25	\$1.67
CW3	Artificial Stoneworker, Bridge & Wharf Carpenter, Carpenter, Floorsander, Form Setter, Joiner, Marble and Slateworker, Marker off, Paviour, Prefab Tradesperson, Stonemason, Tilelayer, Tradesperson (precast concrete manufacture)	\$19.61	\$745.18	\$7.84	\$68.46	\$300.69	\$0.43	\$0.95	\$1.21	\$1.62
	Caster, Fixer, Floor layer Specialist, Plasterer	\$19.49	\$740.62	\$7.80	\$68.05	\$298.85	\$0.43	\$0.95	\$1.21	\$1.62
	Bricklayer	\$19.40	\$737.20	\$7.76	\$67.74	\$297.47	\$0.43	\$0.95	\$1.21	\$1.62
	Roof Tiler, Slate-ridger, Roof Fixer	\$19.27	\$732.26	\$7.71	\$67.30	\$295.47	\$0.43	\$0.95	\$1.21	\$1.62
	Glazier, Painter	\$19.06	\$724.28	\$7.62	\$69.44	\$292.25	\$0.43	\$0.95	\$1.21	\$1.62
	Machinist, Quarryworker, Rigger, Dogger, Shophand	\$18.89	\$717.82	\$7.56	\$65.99	\$289.65	\$0.43	\$0.95	\$1.21	\$1.62
CW2	Concrete Finisher, Foundation Shaftworker, Hoist or Winch driver, Powder Monkey, Scaffolder, Steelfixer, Tack Welder	\$18.38	\$698.44	\$7.35	\$64.24	\$281.83	\$0.42	\$0.93	\$1.17	\$1.58
CW1(d)	Refractory Bricklayers Assistant (incl. refractory allowance)	\$19.50	\$741.00	\$7.80	\$68.09	\$299.00				
	Trades Labourer; Jack Hammerman; Mixer Driver (concrete); Gantry Hand or Crane Hand, Crane Chaser; Cement Gun Operator; Concrete Cutting or Drilling Machine operator; concrete Gang including concrete Floater; Roof Layer (malthead or similar material); Dump Cart Operator; concrete Formwork Stripper; Mobile Concrete Pump Hoseman or Line Hand; Plasterer, Terrazzo or Stonemasons Assistant; Builders labourer Group 4	\$18.02	\$684.76	\$7.21	\$63.00	\$276.31				
CW1 (c)	After 12 months	\$17.70	\$672.60	\$7.08	\$61.90	\$271.40				
CW1 (b)	After 3 months	\$17.47	\$663.86	\$6.99	\$61.12	\$267.87				
CW1 (a)	New Entrant	\$17.13	\$650.94	\$6.85	\$59.94	\$262.66				

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010
NATIONAL WAGE SHEET

Operative Date: 1st Pay Period Commencing on or after the 1st July 2010

Weekly Hire Employees

Classification level	Broadbanded award classifications	Wage Rates			Weekly Pro rata Annual Leave	SAT Work - 8 Hours incl. 20 Min Crib	Leading Hand Rates per hour			
		Per Hour	Per 38 Hours	Accrual 4 of hr			1 person	2-5 persons	6-10 persons	More than 10 persons
ECW9	Advanced engineering construction tradesperson level II, Engineering construction	\$21.65	\$822.70	\$8.66	\$75.47	\$331.97	\$0.49	\$1.08	\$1.37	\$1.84
CW8 ECW8	Advanced engineering construction tradesperson level I, Engineering construction technician level IV	\$21.30	\$809.40	\$8.52	\$74.27	\$326.60	\$0.48	\$1.06	\$1.35	\$1.81
CW7	Mobile crane with lifting capacity in excess of 180 ton and not exceeding 220 ton, Operator, mobile crane with lifting capacity in excess of 220 ton, Operator, tower crane driver, operator of tractor—from 450 kW (600 hp)	\$20.46	\$777.48	\$8.18	\$71.39	\$313.72	\$0.47	\$1.04	\$1.31	\$1.76
ECW7	Special class engineering construction tradesperson level III	\$20.83	\$791.54	\$8.33	\$72.66	\$319.39	\$0.47	\$1.04	\$1.31	\$1.76
CW6	Dumper—from 100 ton struck capacity, Loader—front end and overhead, from 370 kW (500 hp) up to but not exceeding 450 kW (600 hp), Mobile crane with lifting capacity in excess of 100 ton and not exceeding 140 ton, Operator (dragline/shovel excavator—from 3 cubic metres, side boom/pipe layer—from 220 kW (295 hp), Operator of mobile crane with lifting capacity in excess of 140 ton and not exceeding 180 ton, Tractor—from 370 kW (500 hp) up to but not exceeding 450 kW (600 hp)	\$19.91	\$756.58	\$7.96	\$75.29	\$305.29	\$0.46	\$1.01	\$1.28	\$1.72
ECW6	Special class engineering construction tradesperson level II and Engineering construction technician level III, Electronics tradesperson, Instrumentation and control tradesperson	\$20.28	\$770.64	\$8.11	\$76.66	\$310.96	\$0.46	\$1.01	\$1.28	\$1.72
CW5	Compactor—from 48 kW (65 hp), Crawler loader (above 15,000 kg mass, up to and including 60,000 kg mass), Crawler tractor using power operated attachments class 7, 8 and 9, Dragline/shovel excavator—up to but not exceeding 3.0 metre capacity, Dumper, rear and bottom (above 30 cubic metres, up to and including 120 cubic metres struck capacity), Dumper—up to but not exceeding 100 ton, Excavator above 0.5 cubic metres, Excavator—hydraulic telescopic boom type, Floating crane—over 10 but not exceeding 100 ton, Forklift—from 48 kW (65 hp) up to but not exceeding 220 kW (295 hp), Geotextile/geomembrane worker level 5, Grader, Grader—from 96 kW (130 hp) up to but not exceeding 148 kW (200 hp), Loader—front end and overhead, from 48 kW (65 hp) up to but not exceeding 370 kW (500 hp), Locomotive (carrying passengers), Mobile crane—over 10 but not exceeding 100 ton, Operator, drilling machine, over 230 mm diameter, Operator, pneumatic tyred loader (over 105 kW, up to and including 500 kW net engine power), Operator, pneumatic tyred tractor using power operated attachments in excess of 110 kW brake power, Operator, tunnel boring machine; operator, tunnel excavating machine, Other cranes—over 15 but not exceeding 100 ton, Scraper, self-powered over 10 cubic metres struck capacity, Side boom/pipe layer—up to but not exceeding 220 kW (295 hp), Skid steer tractor—from 48 kW (65 hp), Tractor—from 48 kW (65 hp) up to but not exceeding 370 kW (500 hp), Trenching machine (greater than 2.4 metres depth and 450 mm width) and bucketwheel trencher with equivalent capacity in cubic metres per hour	\$19.41	\$737.58	\$7.76	\$67.78	\$297.62	\$0.45	\$0.98	\$1.24	\$1.67
ECW5	Special class engineering construction tradesperson level I and Engineering construction technician level II	\$19.78	\$751.64	\$7.91	\$69.05	\$303.29	\$0.45	\$0.98	\$1.24	\$1.67

CW4	Bitumen sprayer (driver), Compactor—up to but not exceeding 48 kW (65 hp), Concrete paver, Crawler loader (up to and including 15,000 kg mass), Crawler tractor not using power operated attachments above class 3, Crawler tractor using power operated attachments class 3, 4, 5 and 6, Dumper, rear and bottom (above 2 cubic metres, up to and including 30 cubic metres struck capacity), Excavator up to and including 0.5 cubic metre capacity, Floating crane—up to and including 10 ton, Forklift—up to but not exceeding 48 kW (65 hp), Geotextile/geomembrane worker level 4, Grader, power operated below 35 kW brake power, Loader, front end or overhead, up to and including 2.25 cubic metres, Locomotive (not carrying passengers), Mobile concrete boom pump operator, Mobile crane—up to and including 10 ton, Operator, tractor—up to but not exceeding 48 kW (65 hp), Operator, pneumatic tyred tractor—with power operated attachments (above 15 kW, up to and including 150 kW net engine power), Operator of mobile crane with lifting capacity in excess of 8 ton and not exceeding 15 ton, Operator, drilling machine—over 155 mm to 230 mm diameter, Other cranes—over 5 ton and not exceeding 15 ton road roller, Shaft or trench sinker, Pile driver, Roadmarker operator, Road roller (8 ton and above), Road roller, vibrating (4 ton and above), Scraper (up to and including 10 cubic metres struck capacity), Scraper, self-powered under 10 cubic metres struck capacity, Skid steer tractor—up to but not exceeding 48 kW (65 hp), Track laying, fixing or levelling machine (railway construction), Trench machine (depth up to 2.4 metres, and width up to 450 mm) and bucket wheel trencher with equivalent capacity in cubic metres per hour, Tunneller 2, Winding and haulage driver	\$18.86	\$716.68	\$7.54	\$65.89	\$289.19	\$0.43	\$0.95	\$1.21	\$1.62
ECW4	Engineering construction tradesperson level II and Engineering construction technician level I, Electrician special class, Inspector, Instrument tradesperson complex systems, Instrument tradesperson, Mechanical tradesperson special class	\$19.23	\$730.74	\$7.69	\$67.16	\$294.86	\$0.43	\$0.95	\$1.21	\$1.62
CW3	Air compressor operator, All winch driver, Bitumen sprayer, Concrete spreader, powered, Crawler tractor with power operated attachments (up to and including 2000kg shipping mass), Crusher operator aggregate (dimension stone quarries), Drainer, Dumper, rear and bottom (up to and including 2 cubic metres struck capacity), Electric motor attendant, Forklift driver, Gardener, Geotextile/geomembrane worker level 3, Hand sprayer, lance type, Mobile concrete line pump operator, Mobile hydraulic platform operator, Operator, drilling machine, up to and including 155 mm diameter, Operator, pneumatic tyred tractor with power operated attachments (up to and including 15 kW net engine power), Operators of other cranes up to and including 5 ton, Paviour (including segmental paving), Pipe layer (any kind of pipes), Qualified/trade cook, Renderer in pipes, tunnels or covered drains, Roller, vibrating (under 4 ton), Second driver—Navy and dragline or dredge-type excavator, Timberperson, Tradesperson landscaper, Trenching machine (small Ditch-Witch type)	\$18.31	\$695.78	\$7.32	\$64.00	\$280.75	\$0.42	\$0.93	\$1.17	\$1.57
ECW3	Engineering construction tradesperson level 1, Air-conditioning tradesperson, Battery fitter, Boilermaker and/or structural steel tradesperson, Electrical fitter, Electrical mechanic, Fitter, Locksmith, Motor mechanic, Plant mechanic, Refrigeration mechanic, Serviceperson Sheetmetal worker 1st class Tradesperson (radio), Welder 1st class, Welder special class	\$18.68	\$709.84	\$7.47	\$65.27	\$286.43	\$0.42	\$0.93	\$1.17	\$1.57
ECW2	Aircon group 1, Concrete batching plant operator, Employee operating power driven portable saw, Forklift over 4500kg, Geotextile/geomembrane worker level 2, Landscaper, Manhole builder, Pitcher or beacher, Spotter, Storeman, Tack welder, Tool sharpener, Traffic controller, Wall builder	\$17.82	\$677.16	\$7.13	\$62.32	\$273.24	\$0.41	\$0.90	\$1.14	\$1.53
ECW1(d)	Aircon group 2, Aircon group 3, Aluminium alloy structural worker, Bar bending machine operator, Bitumen worker, Cable jointer, Chainperson, Cook's offsider, work boat driver, Dresser and grinder, Dump cart operator, Employee directly assisting a tradesperson, Erector (wire mesh), Fencer, General hand, Geotextile/geomembrane worker level 1, Insulator, Ironworker on construction, Kerb and gutter layer, Lagger 1st assembler B, Lagger 2nd six months, Landscape labourer, Linesperson, Mess attendant, camp attendant, Painter brush hand, Pick or shovelman, Sheetmetal worker 2nd class, Steel erector, Tool/material storeman, Welder 2nd class	\$17.47	\$663.86	\$6.99	\$61.12	\$267.87				
ECW1(c)	After 12 months	\$17.16	\$652.08	\$6.86	\$60.05	\$263.12				
ECW1(b)	After 3 months	\$16.94	\$643.72	\$6.78	\$59.30	\$259.75				
ECW1(a)	New Entrant	\$16.61	\$631.18	\$6.64	\$58.16	\$254.69				

N.B. The above hourly rates include Industry Allowance, Tool Allowance and the respective Special Allowance

The hourly rates do not include the following:

Mobile Crane Capacity Adjustment		
Add	\$15.93	per week for each additional 40T over 100T added to the CW/ECW5 rate
In Charge of Plant Allowance	\$31.19	per week
Underground Allowance	\$11.94	per week
District Allowances	See clause 26 of the award	

APPRENTICES

ALL STATES & TERRITORIES

<u>4 year Apprenticeship</u>					<u>Total with Tool allowance</u>				
	% of Standard Rate	\$ per week	Industry Allowance	Special Allowance	26.80	22.13	19.01	14.02	6.44
First Year	0.45	\$298.62	\$24.55	\$3.47 per hour	\$353.44	\$348.77	\$345.65	\$340.66	\$333.08
Second Year	0.55	\$364.98	\$24.55	\$4.24 per hour	\$420.57	\$415.90	\$412.78	\$407.79	\$400.21
Third Year	0.75	\$497.70	\$24.55	\$5.78 per hour	\$554.83	\$550.16	\$547.04	\$542.05	\$534.47
4th Year	0.90	\$597.24	\$24.55	\$6.93 per hour	\$655.52	\$650.85	\$647.73	\$642.74	\$635.16

<u>3 year Apprenticeship</u>					<u>Total with Tool allowance</u>				
	% of Standard Rate	\$ per week	Industry Allowance	Special Allowance	26.80	22.13	19.01	14.02	6.44
First Year	0.55	\$364.98	\$24.55	\$4.24 per hour	\$420.57	\$415.90	\$412.78	\$407.79	\$400.21
Second Year	0.75	\$497.70	\$24.55	\$5.78 per hour	\$554.83	\$550.16	\$547.04	\$542.05	\$534.47
Third Year	0.90	\$597.24	\$24.55	\$6.93 per hour	\$655.52	\$650.85	\$647.73	\$642.74	\$635.16

ADULT APPRENTICES

If employed previous to starting the apprenticeship the adult apprentice will continue to receive the rate of pay applicable to their previous classification

A new starter will be paid no less than the CW/ECW1(a) rate (plus industry, tool, and special allowance) or the above apprentice rate whichever is the greater

		\$ per week	Industry Allowance	Special Allowance	<u>Total with Tool allowance</u>				
					26.80	22.13	19.01	14.02	6.44
CW/ECW1(a)		\$599.00	\$24.55	\$7.70 per hour	\$658.05	\$653.38	\$650.26	\$645.27	\$637.69
					\$17.32	\$17.19	\$17.11	\$16.98	\$16.78

NB Refractory Bricklayer apprentices should also be paid the relevant percentage (based on the year of the apprenticeship) of the refractory allowance for all purposes

CIVIL OPERATIONS TRAINEESHIPS (ALL STATES & TERRITORIES)

Stage	<u>STAGE 1</u>	<u>STAGE 2</u>	<u>STAGE 3</u>
Relativity	68%	78%	90%
Total Weekly Rate	\$542.75	\$584.55	\$634.65
HOURLY RATE	\$14.28	\$15.38	\$16.70

1 July 2010

CONSTRUCTION TRAINEES (ALL STATES & TERRITORIES)

	<u>SKILL LEVEL A</u>	<u>SKILL LEVEL B</u>
Total Weekly Rate	\$474.05	\$456.05
HOURLY RATE	\$12.48	\$12.00

N.B. FARES SHOULD BE ADDED TO THE ABOVE AMOUNTS

Pay Scale Summary

PAY SCALE SUMMARY

derived from the

Building Construction Industry Award – State 2003 [AN140043 – Qld]

Published 15Jul08

This pay scale summary was developed by the Workplace Authority and is derived from the above award as it was on 26 March 2006 as adjusted by the Australian Fair Pay Commission. This summary incorporates increases determined by the Australian Fair Pay Commission with effect commencing from the employee's first pay period on or after the 1 October 2008.

Enquiries about the application of the Australian Fair Pay Commission's decision should be referred to the Workplace Infoline on **1300 363 264**.



Australian Government
Workplace Authority

Coverage

This pay scale summary applies in Queensland to all employers engaging persons in the classifications listed on Constructions Work (as defined), and to such employees.

This pay scale summary has a number of exclusions, including:

- employees classified in this pay scale summary who are employed by a Mixed Enterprise (as defined) in a maintenance and/or ancillary capacity (subject to certain conditions);
- employees of the Queensland State Government and Q Rail, Governmental Instrumentalities including Electricity Authorities, Boards, and Local Authorities including the Brisbane City Council;
- employees performing the work of ship carpenters or ship joiners or of seagoing carpenters on articles; (the making of implements of agriculture); and
- employees employed by sugar mills, sugar refineries and distilleries and employees engaged on building construction and/or repair work on or in connection with any bulk sugar terminal.

For detail of the coverage provisions see the 26 March 2006 version of the award.

Wages

The basic periodic rates of pay in this pay scale summary have been adjusted in line with the Supplementary Decision issued on 30 May 2007 by the Full Bench of the Australian Industrial Relations Commission (AIRC) in the Wages and Allowances Review 2006 – [2007] AIRCFB 439.

Classification	Basic hourly rate
Construction Worker Level 8 (CW8)	\$20.62
Construction Worker Level 7 (CW7)	\$19.99
Construction Worker Level 6 (CW6)	\$19.57
Construction Worker Level 5 (CW5)	\$19.19
Refractory Bricklayer	\$20.87
Carver	\$19.69
Special Class Tradesperson <ul style="list-style-type: none"> - Carpenter and/or Joiner - Bricklayer - Stonemason - Plasterer 	\$19.69
Construction Worker Level 4 (CW4)	\$18.62
Marker or Setter Out	\$19.25
Letter Cutter	\$19.25
Signwriter	\$18.77
Construction Worker Level 3 (CW3)	\$18.69
Artificial Stoneworker, Carpenter and/or Joiner, Marble and Slate Worker, Stonemason, Plumber	\$18.69
Caster, Fixer, Floorlayer Specialist, Plasterer	\$18.57
Waterproofer	\$18.30
Bricklayer	\$18.50
Roof Tiler, Slate Ridger, Roof Fixer	\$18.38
Painter, Glazier, Licensed Drainer	\$18.21
Labourer (1) – Rigger, Dogger, Drainer, Concrete Pump Operator	\$18.05
Construction Worker Level 2 (CW2)	\$17.55
Labourer (2) - Scaffolder, Powder Monkey, Hoist or WinchDriver, Foundation Shaftworker (as defined), Steel Fixer Including Tack Welder, Concrete Finisher	\$17.55
Construction Worker Level 1(d) (CW1(d))	\$17.18
Refractory Bricklayers Assistant	\$17.18
Labourer (3) – Bricklayer's Labourer, Plasterer's Labourer, Labourer assisting any other tradesperson, Assistant Rigger, Assistant Powder Monkey (as defined), Demolition Worker (after 3 months experience), Gear Hand, Steel Erector, Aluminium Alloy Structural Erectors (whether Prefabricated or otherwise), Steel or Bar Bender to Pattern or Plan, Underpinner, Jackhammer Operator, Mixer Driver (concrete), Gantry Hand or Crane Hand, Crane Chaser, Cement Gun Operator, Concrete Cutting or Drilling Machine Operator, Concrete Gang including Concrete Floater, Roof Layer (malthoid or similar material), Dump Cart Operator, Concrete Formwork Stripper Mobile Concrete Pump Hoseman or Line Hand	\$17.18

Classification	Basic hourly rate
Construction Worker Level 1(c) (CW1(c))	\$16.87
After 12 months in the industry Labourer (4) - Builders Labourer (other than as specified herein)	\$16.87
Construction Worker Level 1(b) (CW1(b))	\$16.17
After 3 months in the industry	\$16.17
Construction Worker Level 1(a) (CW1(a))	\$15.70
New Entrant - Upon commencement in the industry	\$15.70

The hourly rates of pay in the table on the previous page have been calculated in accordance with clause 5.1.5 of the 26 March 2006 version of the award and include the amounts specified for the industry, tool (where applicable) and special allowances.

Other information - wages

*The pre-reform award also includes wage rates for translated classifications from an old wage structure. No existing employee's rate of pay shall be reduced as a result of the introduction of the new classification structure.

Additional amounts

In addition to the hourly rate of pay specified in the tables above, an employee may also be entitled to any of the following additional payments (as appropriate) in the tables below.

District allowance

An employee (where applicable) may be entitled to the following location payment in addition to the basic hourly rate of pay in the table above (please refer to clause 5.1.3 of the 26 March 2006 version of the award).

	Hourly payment
Northern Division	
Eastern District	\$0.0299
Western District	\$0.0597
Mackay Division	\$0.0244
Southern Division	
Western District	\$0.0285

Leading hand payment

A person specifically appointed to be a leading hand (as defined) should be paid at the hourly rate for the highest classification supervised — or his/her own rate — whichever is the highest. A leading hand should also be paid an additional amount in accordance with the number of persons in his/her charge as outlined in the table below:

	Hourly payment
In charge of not more than one person	\$0.3745
In charge of two and not more than five persons	\$0.8250
In charge of six and not more than ten persons	\$1.0555
In charge of more than ten persons	\$1.4080

Casual Loading

Loading based on	Loading
Relevant basic hourly rate	25%

Classifications

For detail of classification descriptions see the 26 March 2006 version of the award.

Juniors

Junior rates of pay are not covered by this pay scale summary.

Trainees

Trainees are covered by the rate provisions contained in the Queensland Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) Order 2003.

Apprentices

The percentages used to calculate the hourly rates of pay in the table below have been derived from Schedules 1 and 4 of the Queensland Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) Order 2003.

Wages for Apprentices: General Construction

Wage Level	1	2	3	4	5	6	7
% of Tradesperson's basic hourly rate	40%	55%	75%	90%	100%	105%	110%
Bricklaying (CW3)	\$7.40	\$10.18	\$13.88	\$16.65	\$18.50	\$19.43	\$20.35
Refractory Bricklayer (CW5)	\$8.35	\$11.48	\$15.65	\$18.78	\$20.87	\$21.91	\$22.96
Carpentry (CW3)	\$7.48	\$10.28	\$14.02	\$16.82	\$18.69	\$19.62	\$20.56
Painting and Decorating (CW3)	\$7.28	\$10.02	\$13.66	\$16.39	\$18.21	\$19.12	\$20.03
Plastering (Fibrous and/or Solid) (CW3)	\$7.43	\$10.21	\$13.93	\$16.71	\$18.57	\$19.50	\$20.43
% of Tradesperson's basic hourly rate	45%	60%	75%	90%			
Roof Tiling	\$8.27	\$11.03	\$13.79	\$16.54			
% of Tradesperson's basic hourly rate	68%	78%	90%				
Waterproofing	\$12.44	\$14.27	\$16.47				

Wages for Apprentices: Off-Site Construction

Wage Level	1	2	3	4	5	6	7
% of Tradesperson's basic hourly rate	40%	55%	75%	90%	100%	105%	110%
Joinery (CW3)	\$7.48	\$10.28	\$14.02	\$16.82	\$18.69	\$19.62	\$20.56
Signwriting (CW4)	\$7.51	\$10.32	\$14.08	\$16.89	\$18.77	\$19.71	\$20.65
Stonemasonry (CW3)	\$7.48	\$10.28	\$14.02	\$16.82	\$18.69	\$19.62	\$20.56
% of Tradesperson's basic hourly rate	40%	55%	75%	90%			
Plumbing (CW3)	\$7.48	\$10.28	\$14.02	\$16.82			

Other information – Apprentices

Industry allowance

The rates of pay in the tables above include a proportion of the industry allowance payable to an apprentice, relative to the specified percentage of the relevant tradesperson's rate of pay (please refer to clause 6.2.2 of Schedule 4 of the Queensland Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) Order 2003).

In addition to this proportion, an apprentice may also be entitled to payment of the residual amount of the industry allowance as specified in clause 5.6.24 of the 26 March 2006 version of the award.

Adult Apprentices

For further information regarding the basic periodic rate of pay for adult apprentices, please refer to the Queensland Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) Order 2003.

Frequency of payment

Payments will be paid and available to the employee not later than the cessation of ordinary hours of work on Thursday of each working week.

In any week in which a holiday falls on a Friday wages accrued must be paid on the previous Wednesday and provided further that when a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing will prevent any alternative mutual arrangement between an employer and employee.

Note that the frequency of payment provisions in this pay scale summary do not apply to employees who are covered by a workplace agreement or contract of employment containing frequency of payment provisions that provide for payments in respect of periods of one month or less. Such employees are guaranteed payment in accordance with the frequency of payment provisions in the workplace agreement or contract of employment.

Pay Scale Summary – Background

This summary sets out basic classification wages, and associated provisions, derived from the 26 March 2006 version of the award. Other conditions of employment (including allowances, penalties and loadings) may be contained in an award, workplace agreement, contract of employment, or Notional Agreement Preserving State Awards.

Demonstrated compliance with the details published in this pay scale summary by an employer bound to observe the provisions of the equivalent preserved Australian Pay and Classification Scale (pay scale) will be deemed by the Workplace Ombudsman as satisfying the employer's obligations under the pay scale, provided that the employee is correctly classified and paid for each hour worked in accordance with the pay scale. The keeping of time and wages records and the issuing of payslips is required by law and will be needed to demonstrate to the Workplace Ombudsman compliance with the pay scale.

This pay scale summary provides information about the effect of Australian Fair Pay Commission decisions. Any questions concerning this summary, or the entitlements of employees under the pay scale or the related award should be directed to the Workplace Infoline on 1300 363 264.

Transitional Arrangements

Despite the coverage provisions of the pay scale, an employee or employer may not be covered by the pay scale while the employee or employer is covered by one of the following:

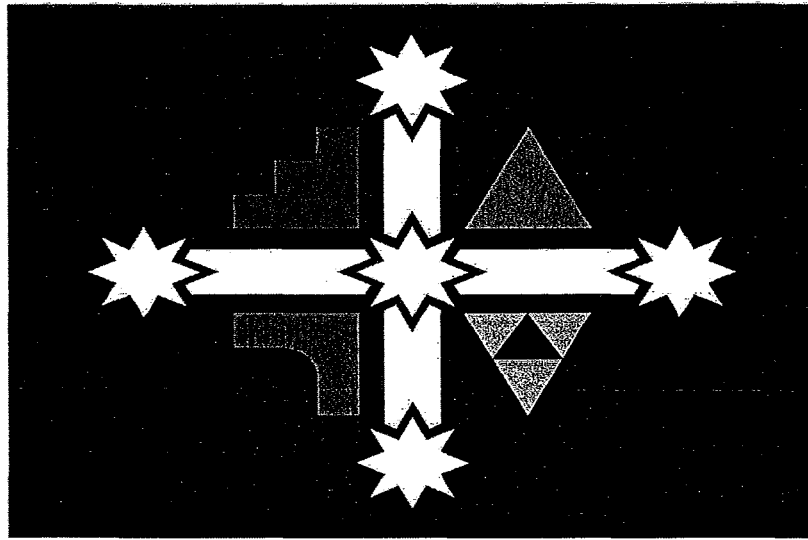
- a pre-reform federal certified agreement
- a pre-reform federal Australian Workplace Agreement
- an individual or collective preserved State agreement
- a transitional award (for employers in the federal system not covered by the 26 March 2006 workplace reforms, these will apply for up to 5 years from 27 March 2006).

If you require assistance with any provisions of this pay scale summary please call the Workplace Infoline on 1300 363 264.

Disclaimer

By agreeing to use this summary of information, the user agrees:

- that the Commonwealth of Australia does not give any guarantee, undertaking or warranty whatsoever in relation to the summary, including in relation to the accuracy, completeness or currency of the summary; and
- to indemnify and hold harmless the Commonwealth from and against any loss or liability suffered by a user or a third party, arising out of the provision of the information, howsoever caused, including due to the negligence of the Commonwealth.



CFMEU CONSTRUCTION AND GENERAL

**Submission of the CFMEU (Construction & General
Division) in Response to the Statement of the Full Bench
on Award Modernisation of 23rd January 2009 ([2009]
AIRCFB 50) and the Stage 2 Exposure Drafts Published
in Matters AM2008/13-24**

13th February 2009

4.19 On the basis of this approach we submit that the limitations on the engagement of casuals should be maintained in the modern *Building and Construction Industry General On-site Award 2010*. The limitation on casual employment in the Federal awards is a longstanding condition and limitations are contained in the following NAPSA's:

- *Building and Construction Industry (State) Award*
- *Building Crane Drivers (State) Award*
- *General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award*
- *Plant, &c., Operators on Construction (State) Award*
- *Building Construction Industry Award - State 2003*
- *Building and Construction Industry (SA) Award*
- *Building and Construction Workers' (State) Award*
- *Building Trades (S.A.) Construction Award*
- *Building Trades (Construction) Award 1987*
- *Earth Moving and Construction Award*
- *Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973*
- *Foremen (Building Trades) Award 1991*
- *Building and Construction Industry Award*

Clause 15 – Apprentices and Clause 16 – Civil Construction Traineeship

4.20 The union is concerned at the way in which apprentices and trainees are dealt with in the exposure draft. It appears that clause 15 only contains those provisions not dealing with wage rates from the MECA Award and does not include relevant provisions from the NBCIA. Wages are dealt with elsewhere in 20.8, 20.9 and 20.10 . We would prefer if all specific matters dealing with apprentices and trainees were located in one part of the award. This was the approach taken in our Version 3.

4.21 In the CFMEU's Version 3 we attempted to group all matters relating to apprenticeships and traineeships together. This is consistent with our position outlined in section 2 above, in regard to the National Training Wage Schedule, that modern awards should contain the specific training arrangements applicable

to the industries covered by the award. In clause 16 of Version 3 we first of all deal with the relevant definitions that apply including clearly identifying what is meant by a construction apprenticeship as this will determine the wage rates applicable, and the employment conditions.

4.22 In 16.1.5 we set out the wage rates that are to apply. The wage rates in 16.1.5 for 4 year and 3 year apprenticeships are based on what we believe are the average existing arrangements. Note that 3 year apprenticeships are currently provided for in the NBCIA and various NAPSA's, particularly for painters, signwriters and bricklayers. The rates we have proposed are the same as those put forward by the MBA in their submission. The rates for the adult apprentices are new as none were included in the NBCIA, although they were included in some NAPSA's. We have adopted the approach used in the manufacturing award where the rates for adult apprentices are based on the classification structure so that the CW1 rate would apply in the first year and the CW2 rate apply in the 2nd and subsequent years.

4.23 In regard to the allowances paid to apprentices, particularly the industry allowance and tool allowance, we have maintained the provisions from the NBCIA and majority of NAPSA's that apprentices receive the full tool and industry allowance. We are concerned at the proposal contained in the exposure draft that apprentices only receive a percentage of allowances (based on their wage percentage) as this will clearly disadvantage apprentices, **by up to \$26 per week for a first year apprentice**. This is inconsistent with the award modernisation request as dealt with in section 2 of our submission above.

4.24 The proposed clause 16.1.6 in our version 3 deals with the subject of competency based wage progression as a transitional matter to enable competency based arrangements that currently apply, as in Queensland, to continue. Hopefully by 2014 the parties involved in the industry will be able to come up with appropriate provisions to apply across the board.

4.25 Clause 16.2 deals with the issue of school based construction apprenticeships which is similar to the schedule proposed by the Commission save for 16.2.2 and 16.2.3 (which identify the trades to which school based apprenticeship provisions.

apply – note that the reference in 16.2.3 to 6.1.5(b) should be 16.1.5(a)), and 16.2.9 (which includes a reference to 3 year apprenticeships).

- 4.26 Clauses 16.3 and 16.4 reflect existing arrangements taken from the *AWU Commercial Landscaping Award 2001* and *National Metal and Engineering on-site Construction Industry Award 2002*.
- 4.27 Clause 17 of Version 3 deals with Construction Traineeships and is an amalgam of clauses 39.2 and 39.3 of the *National Building and Construction Industry Award 2000 [Transitional]*. In 17.1.1(a) we have identified the qualifications that the traineeships provisions are to apply to (to avoid the potential confusion identified in 2.5 and 2.6 above). The certificate III Trainee wage rates are taken from the civil construction trainee rates with the State differentials removed. The certificate I and Certificate II wage rates in 17.1.6, and school based trainee wages rates are based on the existing wage rates in clauses 39.3.3 and 39.3.6(a) of the *National Building and Construction Industry Award 2000 [Transitional]*.

Clause 17 – Termination of Employment

- 4.28 The only comment we make in regard to this clause is that it should identify that it applies to weekly hire employees (the termination provisions of the NES do not apply to daily hire employees).

Clause 18 - Redundancy

- 4.29 The union has major concerns in regard to this clause. The clause in the exposure draft is rejected by the union as it fails to give proper weight to the arbitral history of redundancy arrangements for the building and construction industry and the specific provisions in the NES and *Award Modernisation Request* that allow for an award to include an industry specific redundancy scheme.
- 4.30 For many years the Australian building and construction industry has had award standards for redundancy entitlements that are different to those that have applied in a range of other industries and which flowed from the TCR Test Case



SUBMISSION BY THE
Housing Industry Association

to the
Australian Industrial Relations Commission
on the
**Award Modernisation Consultation- Building Metal
& Civil Construction Group AM2008/15**

Second Submission - February 2009



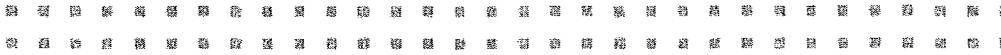
Clause 15 - Apprentices

The existing clause relating to apprentices is oddly drafted. It imposes an obligation to engage the apprentice under the terms of any federal or state award and state legislation. It would be a breach of the award to breach the state legislation. It would be a breach of the award not to also comply with a state award.

We think this clause should instead define what an apprentice is, and set out the additional, special obligations that employers have elsewhere in the document towards apprentices.

1. Apprentices

- 1.1. An Apprentice is an employee engaged under a structured training arrangement that is registered as an Apprenticeship with the relevant State, Territory or Federal authority.
- 1.2. Employers must pay each Apprentice the following minimum rates of pay:
 - a If the apprentice is under 18 years of age – the minimum rates of pay as set out in Table 2 of Schedule A
 - b In any other case – the highest of:
 - the lowest rate prescribed for an adult employee in table 1 of Schedule A; and
 - the rate prescribed in Table 2 of Schedule A for the relevant year of the apprentice.
- 1.3. Apprentices cannot be engaged on piece rates.
- 1.4. An employer must reimburse an Apprentice for all course fees provided the apprentice provides evidence satisfactory academic progress.
- 1.5. When any allowance applies to an apprentice, the employer must pay the apprentice:
 - a During the first year of their apprenticeship - 42% of the allowance;



- b During the first year of their apprenticeship - 55% of the allowance;
- c During the first year of their apprenticeship 75% of the allowance;
and
- d During the first year of their apprenticeship - 88% of the allowance.

Clause 16 - Trainees

We think this clause should define what a trainee is and then refer people who engage trainees to the National Training Wage arrangements that will be attached to the award.

We do not think there is a need for Clause 16.

In any event Clause 16 is poorly drafted. The clause is headed Civil Construction Traineeships, but nothing in the operative provisions of the clause make this a reality.

1. Trainees

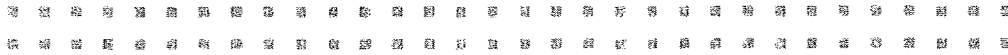
- 1.6. A Trainee is an employee engaged under a structured training arrangement that is registered as a traineeship with the relevant state, territory or federal authority.
- 1.7. The special conditions of engagement applying to trainees are set in Schedule D.

New Clause - School-based Apprentices and Trainees

We think this clause should define what a school-based apprentice is and then refer people who engage such employees to the school-based apprenticeship arrangements that will be attached to the award.

1. School-based Apprentices and Trainees

- 1.1. A School-based Apprentice or Trainee is a person who is undertaking an Apprenticeship or Traineeship while also undertaking a secondary



SCHEDULE A – PRESCRIBED RATES OF ORDINARY PAY

Table 1 Adult Employees

Classification	Definition and Examples	Pay
	Insert table from 20.1 of exposure draft Include leading hand loadings. Include details for calculating hourly rates	

Table 2: Apprentices

Insert 20.8 from exposure drafts

Table 3: School-based Apprentices

Year in School-base Apprenticeship	rate
1 st & 2 nd year	1 st year apprenticeship hourly rate plus 25%*
3 rd & 4 th year	2 nd year apprenticeship hourly rate plus 25%*
<i>*School-based apprentices receive a loading to reflect time spent in structured training for which traditional full-time apprentices are paid</i>	

Table 4: Trainees

Trainees
Insert trainee rates

Table 6: Juniors

Juniors	
Age	minimum rate as % of adult rate
Insert age	Insert rates

SCHEDULE B – CLASSIFICATION DEFINITIONS

SCHEDULE C – SCHOOL BASED APPRENTICES

SCHEDULE D – TRAINING WAGE ARRANGEMENTS

SCHEDULE E – SUPPORTED WAGE ARRANGEMENTS

OCCASIONAL PAPER

The impact of wages and the
likelihood of employment
on the probability of
completing an apprenticeship
or traineeship

TOM KARMEL
PETER MILOTKOWSKI
NCVER



Australian Government
Department of Education, Employment
and Workplace Relations

Methodology

The methodology follows Karmel and Mlotkowski (2010) in calculating the wage differences between the training wage, the wage in alternative employment and the wage on completion. The estimation of the probability of employment is the new element of the analysis.

The method is as follows.

- ✧ Repeat the equations to estimate the annual wage during training, the wage on completion and the wage in alternative employment. These involve ordinary least square (OLS) regressions with $\log(\text{wage})$ as the dependent variable; 2008 and 2010 data are modelled separately.
- ✧ Calculate the difference between wages on completion and wages in alternative employment, and the difference between wages in alternative employment and wages during training. This involves using the wage equations calculated in the previous step. The calculations are performed separately for 2008 and 2010.
- ✧ Estimate the probability of finding alternative employment and the probability of finding employment on completion, using the same set of apprentice and trainee characteristics used in the first step. The probabilities are modelled using logistic regression. The dependent variable will be binary: whether employed approximately nine months after completion or cancellation/withdrawal, or not. Once again 2008 and 2010 data are modelled separately.
- ✧ Model the impact on the likelihood of completion of the wage wedges and the probabilities of finding employment. This is a simple logistic regression. However, at this stage the 2008 and 2010 datasets are combined to increase the sample size. In addition, a dummy variable (which equals one for 2010 and zero for 2008) is included to see whether there is a difference in the probability of completion between survey years over and above that due to the changes in wages and the probability of employment.
- ✧ Finally, the results are decomposed such that we determine the impact of changing labour market conditions on the change in the probability of completion between 2008 and 2010.

Appendix A provides a graphical representation of the method.

Appendix C:

Estimating average wages

Denote $w^A(t)$ as the wage the apprentice or trainee gets at point t in the training contract. At the beginning of the contract $t = 0$, at the end $t = D$ where D is the duration of a completed contract.

Then $\ln(w_i^A(t)) = X_i^1 \beta^A + \alpha^A t$, where i refers to the i^{th} apprentice, X_i^1 is a vector of characteristics, β^A is a vector of coefficients and α^A is the coefficient on t .

So,

$$\begin{aligned} w_i^A(t) &= \exp(X_i^1 \beta^A + \alpha^A t) \\ &= \exp(X_i^1 \beta^A) \exp(\alpha^A t) \end{aligned}$$

Assume t_1 of the contract of training has elapsed.

Then the average wage for the remainder of the contract is given by the integral.

$$\begin{aligned} \overline{w}_i^A(t_1) &= \frac{1}{D-t_1} \int_{t_1}^D \exp(X_i^1 \beta^A) \exp(\alpha^A t) dt \\ &= \frac{\exp(X_i^1 \beta^A)}{D-t_1} \left[\frac{\exp(\alpha^A t)}{\alpha^A} \right]_{t_1}^D \\ &= \frac{\exp(X_i^1 \beta^A)}{(D-t_1)\alpha^A} [\exp(\alpha^A D) - \exp(\alpha^A t_1)] \end{aligned}$$

Similarly,

$$\overline{w}_i^O(t_1) = \frac{\exp(X_i^1 \beta^O)}{(D-t_1)\alpha^O} [\exp(\alpha^O D) - \exp(\alpha^O t_1)]$$

where $w_i^O(t)$ refers to the wage in alternative employment. Hence the wedge between wages in alternative employment and wages during training is given by the following.

$$\text{wage_wedge}_i = \overline{w}_i^O - \overline{w}_i^A$$

This formulation assumes we know the duration of the contract (D). However, there is no standard duration and so we estimate it, using the same characteristics (X_i). Thus when modelling the overall probability of completing we use the average wages implied by $t_1 = 0$.

Appendix D: Decomposition of completion model

We can decompose the difference between the probability of completion for the 2010 cohort and for the 2008 cohort. We decompose the difference into two components: the component which may be explained by changes in the opportunity cost occasioned by the change in labour market conditions; and an unexplained component. For each individual in the sample we estimate:

- ✧ the training wage wedge given 2010 conditions
- ✧ the completion wage wedge given 2010 conditions
- ✧ the probability of employment on completion given 2010 conditions
- ✧ the probability of alternative employment given 2010 conditions.

We estimate an analogous set of predictions given 2008 conditions, again for everyone in the sample. Denote by the vector Z_{10} the predictions based on 2010 conditions and Z_{08} the predictions based on 2008 conditions. In addition, denote by $P_{10}(Z)$ the probability of completion in 2010, given predictions of wage wedges and probabilities of employment Z , and $P_{08}(Z)$ the probability of completion in 2008, given Z (the difference between P_{10} and P_{08} comes from the ‘difference between surveys’ variable in table 8).

Then, $P_{10}(Z_{10})$ gives our prediction of the probability of completion in 2010 and $P_{08}(Z_{08})$ gives the analogous prediction for 2008. Then in the spirit of an Oaxaca decomposition we write:

$$P_{10}(Z_{10}) - P_{08}(Z_{08}) = (P_{10}(Z_{10}) - P_{10}(Z_{08})) + (P_{10}(Z_{08}) - P_{08}(Z_{08})) \quad (1)$$

The first term represents the difference that can be explained by changes in the opportunity cost occasioned by the change in labour market conditions, while the second term is the unexplained component. These calculations are made for each individual and then averaged over the relevant samples (see table 10).

$$\text{We could also calculate } P_{10}(Z_{10}) - P_{08}(Z_{08}) = (P_{10}(Z_{10}) - P_{08}(Z_{10})) + (P_{08}(Z_{10}) - P_{08}(Z_{08})) \quad (2)$$

Thus a symmetrical approach would be:

$$\begin{aligned} P_{10}(Z_{10}) - P_{08}(Z_{08}) = & \frac{1}{2}[(P_{10}(Z_{10}) - P_{10}(Z_{08})) + (P_{08}(Z_{10}) - P_{08}(Z_{08}))] \\ & + \frac{1}{2}[(P_{10}(Z_{08}) - P_{08}(Z_{08})) + (P_{10}(Z_{10}) - P_{08}(Z_{10}))] \end{aligned} \quad (3)$$

However, the results in table 10 are based on (1).

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