



HOUSING INDUSTRY ASSOCIATION



# Housing Australians



Submission to the  
Fair Work Commission

**4 Yearly Review of Modern Awards - Construction Awards  
Living Away from Home Allowance - Rest and Recreation**

11 March 2019



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## 1. INTRODUCTION

- 1.1.1 On 25 February 2019 the Fair Work Commission (Commission) issued Directions (Directions) as part of the 4 yearly review of modern awards - Construction Awards, inviting parties to respond to paragraphs 6 - 8 of the CFMMEU submissions dated 7 December 2018 (CFMMEU Submissions).
- 1.1.2 The CFMMEU Submissions were provided in response to draft determinations issued by the Commission on 23 November 2018 for the *Building and Construction General Onsite Award 2010* (Onsite Award), *Joinery Building Trades Award 2010* (Joinery Award), and *Mobile Crane Hiring Award 2010* (Mobile Crane Award).
- 1.1.3 HIA provides this submission in response to the Commissions Directions, specifically in relation to the Joinery Award for which HIA maintains an interest.
- 1.1.4 The CFMMEU Submission raises concern that the decision in *4 yearly review of modern awards - Construction Awards* (the Decision)<sup>1</sup> to vary the rest and recreation leave provisions of the Onsite Award have not been adopted into the Joinery Award and Mobile Crane Award on the basis that draft determinations incorporating that variation were not issued.
- 1.1.5 The CFMMEU Submission seeks a variation to the Joinery Award and the Mobile Crane Award in equivalent terms to that set out at item 9 of the Onsite Award draft determination issued on 23 November 2018.
- 1.1.6 HIA acknowledges that the CFMMEU sought to vary the living away from home provisions of the Onsite Award, Joinery Award, and Mobile Crane Award. However, it is HIAs position that the CFMMEU was unsuccessful in some aspects of their claim in relation to the Joinery Award and Mobile Crane Award.
- 1.1.7 As such HIA submits that the proposition outlined in the CFMMEU Submission be rejected by the Commission.

## 2. CFMMEU SUBMISSIONS

- 2.1.1 At paragraph 6 of the CFMMEU Submission, the CFMMEU submit that their claim in relation to living away from home provisions was made across the Onsite Award, the Joinery Award and the Mobile Crane Hiring Award.
- 2.1.2 This position echo's that outlined in submissions from the CFMMEU dated 9 December 2016 (CFMMEU December Submission) which made a number of claims were made in relation to award related living award from home provisions (the 'Living Away from Home Claim').
- 2.1.3 The CFMMEU December Submission included draft determinations varying the Onsite Award, Joinery Award, and Mobile Crane Award in accordance with the Living Away from Home Claim.

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<sup>1</sup> [2018] FWCFB 6019, 26 September 2018



2.1.4 Paragraph 13 of the CFMMEU December Submission specifically notes:

*'The Living Away From Home claim is the most substantive of the variations sought by the CFMEU C&G and, as previously mentioned, is a common claim across the 3 awards.'*

2.1.5 HIA accordingly acknowledges that the Living Away from Home Claim was common claim across all three awards.

### **The Evidence**

2.1.6 Paragraphs 13 to 160 of the CFMMEU December Submission drew upon a range of information, and detail to support their claim, including historical information, witness statements, an online petition, and detail from several inquiries.

2.1.7 Specifically, in relation to the rest and recreation claim in the Onsite Award, paragraphs 110 to 150 of the CFMMEU December Submission drew upon the following evidence to support the claim:

- Rest and recreation leave was historically included in Construction Awards, for example, the *National Building Trades Construction Award 1975*, *National Building and Construction Industry Award 1990*, *National Building and Construction Industry Award 2000*, and Onsite Award;
- Recent inquiries into fly in/fly out (FIFO), and drive in/drive out (DIDO) arrangements, drawing upon commentary and findings generally relating to the resources sector;
- Evidence from 10 witnesses relating to the impacts on workers and their families of rostering arrangements whilst on distant work, generally on civil construction projects; and
- Responses from an online petition of workers about the impacts of distant work and the need for rest and recreation.

2.1.8 Paragraphs 155 to 160 of the CFMMEU December Submission generally relied on all evidence with respect to the Onsite Award to substantiate their Living Away from Home Claim in relation to the Joinery Award. Only one witness, David Kirner provided evidence in relation to the Joinery Award and that evidence did not pertain to the rest and recreation claim.

2.1.9 Further, whilst similarities between the provisions of the Onsite Award and the Joinery Award were argued, it is clear that the current provisions of the modern awards differ in a number of respects. No evidence was brought to address the specific rest and recreation provisions of the Joinery Award and no case was made in relation to why the Joinery Award should be varied in that way.

## **3. THE DECISION**

3.1.1 The Decision dealt with each aspect of the Living Away from Home Claim and, in relation to each aspect, noted the awards to be varied as a result of the Full Benches Decision.



3.1.2 These claims were described in the Decision as follows:

- The *'false address issue'*<sup>2</sup>
- The *'living away from home allowance entitlement'*<sup>3</sup>
- The *'standard of accommodation'*<sup>4</sup>
- The *'camping allowance'*<sup>5</sup>
- The *'travelling expenses – modes of travel'*<sup>6</sup>
- *'Rest and recreation'*<sup>7</sup>

3.1.3 At paragraph 137 of the Decision, in relation to the false address issue, the Commission determined that:

*'Accordingly we consider that clause 24.2 of the Building Award (and the equivalent provisions in the Joinery Award and the Mobile Crane Award) should be modified in accordance with the draft provisions contained in the August 2017 Statement.'*

3.1.4 At paragraph 143 of the Decision, in relation to the living away from home allowance entitlement the Commission determined that:

*'The Building Award will therefore be varied in terms of the proposed clause 24.3(a) contained in the August 2017 Statement, and equivalent variations will be made to the Joinery Award and the Mobile Crane Award.'*

3.1.5 At paragraph 146 of the Decision, in relation to the standard of accommodation claim, the Commission determined that:

*'Corresponding variations will be made to the Joinery Award and the Mobile Crane Award.'*

3.1.6 At paragraph 152 of the Decision, in relation to the camping allowance claim the Commission put forward a provisional view and sought further submissions.

3.1.7 At paragraph 153 of the Decision, in relation to the travelling expenses – modes of travel claim, the Commission determined that:

*'Clause 24.7(a) of the Building Award will be varied accordingly, and an equivalent variation will be made to the Joinery Award.'*

3.1.8 However in relation to the rest and recreation claim, unlike in response to the claims outlined above, the Decision did not determine that equivalent variations be made in the Joinery Award and the Mobile Crane Hiring Award. The Decision specified that only clause 24.7(f) of the Onsite Award be varied.<sup>8</sup>

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<sup>2</sup> [2018] FWCFB 6019 at paragraph 135 - 139

<sup>3</sup> Ibid at paragraph 140-143

<sup>4</sup> Ibid at paragraph 144-146

<sup>5</sup> Ibid at paragraph 147-152

<sup>6</sup> Ibid at paragraph 153

<sup>7</sup> Ibid at paragraph 154-156

<sup>8</sup> See paragraph 156



3.1.9 To that end, and under those circumstances, to simply adopt a variation to the Joinery Award based on successfully arguing the case for a variation to the Onsite Award would be at odds with the approach generally taken by the Commission. For example, in the matter of *4 yearly review of modern awards – Part – time employment and Casual employment*<sup>9</sup> the Commission rejected arguments in support of a variation to the Joinery Award to reduce the casual minimum engagement from 7.6 hours to 4 hours despite the fact that:

*[863] ...The current provision established an excessive minimum engagement period which was anomalous having regard to other awards in the building and construction industry and modern awards generally.*

*[864] ... the higher minimum engagement period in the Joinery Award was out of step with other construction based awards, and was not considered during award modernisation. It was also inconsistent with the 3 hour minimum engagement that currently applied to part-time employees covered by the Joinery Award.*

*[865] ... In the construction and manufacturing industries it was more common to have 3 or 4 hour minimum engagement periods...'*

3.1.10 In that decision the Commission concluded that:

*[868] There was no evidence before us about the extent of casual employment in the joinery industry or the purposes for which casual employees are used (if at all) or which identified any particular difficulty with the operation of clause 12.3. We therefore cannot be satisfied that clause 12.3 as it currently stands is not meeting the modern awards objective. That the minimum engagement period is higher than that in many other awards is not by itself demonstrative of the proposition that clause 12.3 cannot legitimately form part of a fair and relevant safety net of terms and conditions. The claim is therefore rejected.'*

3.1.11 Clearly, the terms and conditions adopted in the Onsite Award will not lead to an automatic adoption of those same provisions in other construction related modern awards.

## 4. CONCLUSION

4.1.1 The lack of evidence proffered by the CFMMEU in relation to the adoption of the rest and recreation variation in the Joinery Award, in addition to the clear determination in the Decision that the rest and recreation claim would only be adopted in the Onsite Award, it is HIA's view that the proposition in paragraphs 6-8 of the CFMMEU Submission should be rejected.

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<sup>9</sup> [2017] FWCFB 3541

