

TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

64919-1

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]]**

Melbourne

10.04AM, WEDNESDAY, 16 NOVEMBER 2011

PN1

MR R. CALVER: I appear for Master Builders Australia.

PN2

MS A. MATHESON: I appear on behalf of the Housing Industry Association.

PN3

MS A. PATISON: I appear for Australian Business Industrial.

PN4

MR S. MAXWELL: I appear on behalf of the Construction, Forestry, Mining and Energy Union.

PN5

MR A. KENTISH: I appear for the CEPU.

PN6

MR G. NOBLE: I appear for the AMWU.

PN7

MR D. BROANDA: I appear for the Australian Workers' Union.

PN8

THE SENIOR DEPUTY PRESIDENT: Very well, that's all. Where shall we start? I was proposing to go through the issues one by one, but there were some issues as to evidence raised in the 14 November submissions of the MBA. So perhaps we may need to deal with that in the first instance, Mr Calver.

PN9

MR CALVER: Yes. Thank you, your Honour. I have today with me MR D. CALLAN, who is prepared to give evidence. He is obviously waiting outside. And I might just deal with a couple of preliminary matters, if it please the tribunal.

PN10

THE SENIOR DEPUTY PRESIDENT: Yes, go ahead.

PN11

MR CALVER: Thank you. On 14 November we lodged a supplementary submission to the tribunal. The intent was to add to the efficiency of today's consultations. Unfortunately the website, the tribunal as you're only too very well aware, your Honour, has been down for some days.

PN12

THE SENIOR DEPUTY PRESIDENT: Yes.

PN13

MR CALVER: Mr Maxwell was emailed that submission at his request on 15 November. The other parties represented here today have been handed a hard copy of that supplementary submission. In that submission we talk about the manner in which we would propose to deal with witness evidence. And that is dealt with in section 5 of the supplementary submission. What I would intend to do, your Honour, if it pleases the tribunal would be to have a discussion with you, your Honour, and my friend from the AMWU about calling Mr Reid and

Mr Thomas at a time convenient, so that their witness evidence might be taken. And we have proposed Sydney, at a time convenient to yourself, your Honour.

PN14

And then I would seek to call Mr Callan to slightly expand evidence in chief by the witness statement that was lodged at the same time as our 26 October 2011 submission, and have him attest to the matters in his witness statement attached to that submission. And then have them cross examined by my friends where they have indicated an intention to do that. That would enable us first of all to get Mr Callan's evidence out of the way, and then to have a clear indication of when your Honour might be available to reconvene to have Mr Thomas's evidence tested, and Mr Reid from the AMWU's evidence tested. I believe that is in accordance with discussions with my friend. He's nodding yes.

PN15

THE SENIOR DEPUTY PRESIDENT: What does that mean in relation to addressing the matters, the variations sought today?

PN16

MR CALVER: We would consider that we would like to proceed, following Mr Callan's evidence, to make our submissions in response to those lodged in opposition. And then for them to counter that so that the evidence of Mr Callan was before you, the explanation of the manner in which we had reached some conclusions, and how we saw the submissions and opposition were dealt with. And then the only matter that would remain, if your Honour considered it necessary at the end of the proceedings, would be to have that witness evidence. We could confer at the end of today's proceedings to see if that matter was then to proceed, or if your Honour would be advantaged by having that evidence tested, or whether or not that evidence would be considered (indistinct).

PN17

THE SENIOR DEPUTY PRESIDENT: What is the issue that arises from the evidence of Mr Thomas and Mr Reid?

PN18

MR CALVER: Well, I am informed that the parties to my right wish to cross-examine Mr Thomas. I'm not exactly sure as to the rationale. And in respect of Mr Reid, it would be testing some of the ways in which the historical interpretation of the MECA Award that is contention have manifested themselves in the current context. I don't believe that either of those matters are vital, but that would depend upon the matters in contention I would submit, your Honour, after the substantive matters are before you today. So there are two choices. We could have perhaps a more informal discussion now about the need to call and cross-examine those witnesses, or that matter could be deferred until you had heard the substance of this matter through submissions.

PN19

And then we could determine between ourselves and with you as to whether or not if that witness evidence plays a role and would assist the tribunal.

PN20

THE SENIOR DEPUTY PRESIDENT: Yes.

PN21

MR CALVER: Which course of action would you prefer, your Honour?

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THE SENIOR DEPUTY PRESIDENT: Well, I'd better hear from the others.

PN23

MR CALVER: Certainly.

PN24

THE SENIOR DEPUTY PRESIDENT: Mr Maxwell.

PN25

MR MAXWELL: Thank you, your Honour. Your Honour, in regard to the course of action this morning, we would support Mr Callan being called to give evidence. We could have the cross examinations today and then dispense with his evidence. I understand that in discussions with the other unions, that there are issues of jurisdiction that they wish to raise. It may be perhaps best that's dealt with at some stage, as soon as possible. Whether that's before or after the witness evidence. I'm in your hands.

PN26

THE SENIOR DEPUTY PRESIDENT: Well I think before given the witnesses being called by - - -

PN27

MR MAXWELL: Well, perhaps I will then defer to Mr Broanda to deal with that issue once I make this brief opening statement. Subject to deal with those jurisdictional matters, we do propose to hear Mr Callan's evidence, and then dealing with the submissions of the parties.

PN28

THE SENIOR DEPUTY PRESIDENT: Yes, very well.

PN29

MR MAXWELL: At the end of that if the MBA still wish to press the evidence of Mr Thomas, and whether the tribunal believes that's necessary, then we have to set a date to deal with that. But if the evidence of Mr Thomas is sought to be used, then we would seek to cross him.

PN30

THE SENIOR DEPUTY PRESIDENT: Yes, very well. Anyone wish to add to that?

PN31

MR KENTISH: The CEPU has no objection to the course proposed by either Mr Calver or Mr Maxwell. If it pleases.

PN32

THE SENIOR DEPUTY PRESIDENT: Thank you. Mr Noble?

PN33

MR NOBLE: Yes, same your Honour.

PN34

THE SENIOR DEPUTY PRESIDENT: Mr Broanda, in relation to that issue? I'll come back to you on jurisdiction.

PN35

MR BROANDA: Certainly, your Honour. I question the ability or the usefulness of a lay practitioner's interpretation of the award. But given there seems to be agreement between the parties, we are comfortable with Mr Callan giving his evidence.

PN36

THE SENIOR DEPUTY PRESIDENT: Very well. Ms Matheson?

PN37

MS MATHESON: No objections from HIA.

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THE SENIOR DEPUTY PRESIDENT: And Ms Patison?

PN39

MS PATISON: No objection.

PN40

THE SENIOR DEPUTY PRESIDENT: Very well. Do we need to deal with the jurisdictional objection in the first instance? Because it is relevant.

PN41

MR BROANDA: Your Honour, the jurisdictional issues arises particularly in relation to the amendment sought to clause 15.2 and 15.5. Your Honour, it arises out of a matter which was raised but not decided by a Full Bench during the award modernisation process. And it goes to the issue of Fair Work Australia's powers with respect to apprenticeship and traineeships, and the extent to which the matters are excluded by sections 26 and 27 of the Act. The issue of wage rates certainly is not in contest. And as I've said in relation to the evidence which I understand is being brought this morning, to goes to the extent of someone's interpretation of the existing provisions. That speaks for itself maybe. So in terms of your Honour's question about whether or not the jurisdictional issue needs to be dealt with, I can't see an impediment to this witness providing evidence and being cross examined today.

PN42

THE SENIOR DEPUTY PRESIDENT: And then you will raise the jurisdictional point in your submissions proper.

PN43

MR BROANDA: Yes, your Honour. If that's acceptable to your Honour.

PN44

THE SENIOR DEPUTY PRESIDENT: Very well. I will proceed in that way. Mr Calvert, I think we will call Mr Callan.

PN45

MR CALVER: Certainly. I would remark though, your Honour, that in discussion with my friends, all of the talk was of Mr Thomas. The availability and the matter of Mr Reid being contemporaneously available and cross examined was not addressed by my friends. And before as we said I would, if it please the

tribunal, seek some indication from my colleagues from the unions that that is also a matter that they agree with, as was only Mr Thomas's evidence that was addressed in response.

PN46

THE SENIOR DEPUTY PRESIDENT: I think the position is, Mr Calver, we will come back and address what needs to be done in relation to Mr Thomas and Mr Calver once we have - - -

PN47

MR CALVER: Mr Reid, sir.

PN48

THE SENIOR DEPUTY PRESIDENT: Mr Reid, sorry. Once we have heard the evidence of Mr Callan and anything anyone wants to put in the consultations.

PN49

MR CALVER: Thank you, your Honour. I did raise it really because Mr Reid was not mentioned in response at all, and from an excess of caution. If it please the tribunal.

PN50

THE SENIOR DEPUTY PRESIDENT: Well, you will be later if we need to.

PN51

MR CALVER: Thank you. Then if it please the tribunal, I call David Milton Callan.

PN52

THE SENIOR DEPUTY PRESIDENT: Yes.

<DAVID MILTON CALLAN, SWORN [10.17AM]

<EXAMINATION-IN-CHIEF BY MR CALVER [10.17AM]

PN53

MR CALVER: Good morning, Mr Callan. Do you have a copy of the witness statement with you that you signed on 20 October 2011 in Adelaide?---Yes I have.

PN54

Do you have any changes you wish to make to that witness statement?---No, it's fine.

PN55

Is that witness statement true and correct in every particular?---Yes. To my knowledge it's all true and correct.

**EXHIBIT #MBA1 WITNESS STATEMENT OF DAVID
CALLAN DATED 20/10/2011**

PN56

MR CALVER: Mr Callan, have you read the CFMEU's submissions in this matter?--- I haven't read them in detail, but I have seen them, yes. I've read some paragraphs is probably the best way of saying it.

PN57

Thank you. And you have read, have you, 7.15 of the witness statement which I can remind you about by reading it?---Yes.

PN58

It is not surprising that the witness statements of Mr Thomas and Mr Callan support the MBA's position (they are employees of the Master Builders Association's after haul), but this is hardly overwhelming evidence of differences of opinion over the calculation of adult apprentice rates of pay.

PN59

?---Yes I have read that, Mr Callan.

PN60

Yes. What's your response to that?---I suppose I should establish our bona fides in myself and the board in saying what our position is. The Master Builders Group Training Scheme is a separately incorporated body to the Master Builders. Myself and the eight board members govern the scheme that has been in place for 30 years, and across the six trades is the largest group training scheme in South Australia. Myself as the chair take my responsibilities very, very seriously. My professional qualifications are in education and training. I am aware of all my responsibilities. For that includes I am a ministerial appointment to the Adelaide Tafe Counsel. I also have been a ministerial appointment to the Construction Industry Training Board. I have been again a ministerial appointment to the State Housing Plan. I am on the board of the Centre for Housing Urban Planning at Adelaide University. And a fellow of University of South Australia in one of their groups as well that looks at housing, et cetera. So I take my position as chair very seriously. It is something quite separate to my employment at the Master Builders. Myself and the eight other board members hold the honorary positions. One of those positions, of course, is the acting secretary of the CFMEU in South Australia.

PN61

Thank you. Similarly I would draw your attention to paragraph 7.2.4 of the CFMEU's submission, and I remind you that by reading it:

PN62

In regard to the witness statement from Mr Callan regard the cost pressures being experienced by the MBA SAGTS, we submit that there will always be some employers facing cost pressures in any one point in time. That these pressures will vary between companies. But this is no justification for reducing award wages, nor a finding that there is an ambiguity or uncertainty.

PN63

What's your response to that, Mr Callan?---Well, certainly there is a price point in the charge out rate of apprentices. It's something that we face daily. We have 32 adult apprentices. Carpenters primarily, but in four trades. The host that we have of adult apprentices far exceeds that charge out rate. And if I have an adult apprentice in first year, our figures show that it costs the Master Builders Group Training Scheme around \$400 when I add all the on costs and the differential of what we can charge, what the market will tolerate, to what we pay the apprentice. Going down as they progress through second year, it is pretty close to \$300. In third year it's slightly under \$200, but in fourth year it reverts to over \$200 again

when what we pay them and with the allowances, travel allowances, meal allowances, et cetera if they apply. That puts a great deal of difficulty on the group training scheme. However, we think it is very important that we don't present any barriers of age to apprentices, adult apprentices, we are seeking to enter the industry. So we have this issue that in the market place we'll find that it is our adult apprentices and particularly our fourth year apprentices when we have a market downturn will be the first to be handed back because of that price sensitivity, that price point sensitivity. Our adult apprentices we look to try and accelerate their apprenticeship, because many of them with already substantial skills basis. So that between a third and fourth year we can actually get them signed off. But they're a particularly interesting category of apprentices, adult apprentices with what they bring.

PN64

Thank you. Now, if I might just turn to paragraph 8 of your witness statement. You say there:

PN65

It has always proven more difficult to place adult apprentices than junior apprentices due to the differential in wages and therefore charge out rate.

PN66

Could you expand on that proposition, what the difficulties are?---Our 192 apprentices that are our employees, four of those are placed with large commercial builders. The rest, 188, are placed with subcontractors. Those subcontractors, 70 percent of them reside in the residential, and 30 percent actually commercial contractors. So our apprentices are generally with smaller and of those, say 70 that are with the residential industry, the majority of those are with sole trading subcontractors. The prices, South Australia is in a depressed state. Housing industry is suffering a down turn of some 26 percent in commencements. The commercial industrial after the flurry of BER workers again suffering a downturn. The positioning of those adult apprentices, it becomes very, very difficult. If there isn't something that absolutely binds this group to the employer, and sometimes it's an emotional attachment, it's a son, or a daughter, or a nephew, or a niece, or someone's best mate's son. And quite often these adult apprentices do bring their host trainers with them. And so whilst we maintain that level, the market place makes it very difficult to keep them in training for the full four years. Unless there is some specific, that emotional attachment maybe, or whatever. So currently with the downturn that we're suffering in South Australia where four years ago we were building close to 12,000 commencements in residential and 70 percent of our apprentices are there, we are down now to under 9000 and possibly in the coming financial year we could be under 8000. So that's a substantial downturn within the industry.

PN67

That concludes our evidence in chief, your Honour.

PN68

THE SENIOR DEPUTY PRESIDENT: Yes. Any examination? Anyone else? Mr Maxwell?

<CROSS-EXAMINATION BY MR MAXWELL

[10.27AM]

PN69

MR MAXWELL: Mr Callan, I just wanted to get the relationship between the MBA Group Scheme and the MBA clear. Is the MBA Group Scheme a member of the MBA?---No.

PN70

No?---It's a separately incorporated body.

PN71

A separately incorporated body? And the MBA Group Scheme was therefore not a respondent to the federal award?---Well, I am not an industrial relations expert. I manage a group scheme. So I'd have to be advised on that. I'd have to consult. Many of our, as I said, our apprentices, a lot of our apprentices are in commercial, 30 percent of them in the commercial industrial.

PN72

Well, in terms of the – and I understand that you said that you were not an industrial expert, which I suppose creates a bit of a problem for some of the questions I was going to ask you – so what award have you applied - prior to the introduction of the modern award what award did you apply to your apprentices?--The Construction Industry Award.

PN73

The federal one?---Yes.

PN74

Mr Callan - - -?---Apprentices can move and some of them move every two to three weeks. There are some apprentices that stay with their host trainer for their full four years. We have other apprentices that – to explain, we have some apprentices that may be doing residential, for instance carpentry. However there may be no opportunity for them to do form work carpentry. So part of their training would then transfer into a commercial situation so they could do some form work carpentry. So there is no specific to say this apprentice will be a residential in the residential industry. That is just every day. So they could be working under in a commercial setting.

PN75

I understand that. But the issue I was raising with you is that as an employer you will be obligated to follow, prior to the Work Choices legislation you would have been obliged to either follow a federal award or a state award. But then once the Work Choices came in you would still follow the state award, that then became the NAPSA, and there were certain conditions that applied under the conditions under the federal award. So I was just trying to clarify what award your scheme had followed?---We followed the federal, but there are some – because there's a transitional situation with some of the apprentices rates are calculated. I think in talking to our accountant, he said to me that we have at the moment four different rates across our one year in our apprentices, whether it be the first, second, third, fourth year that are applied. But I am no expert in that. I am expert in running a training scheme.

PN76

Well, if I can just briefly deal with the group training scheme. In paragraph 3 you mentioned there was an order of MBA with training scheme. Has this application been discussed at the board level?---This application?

PN77

Yes?---It has been mentioned. Certainly I saw no reason to make it a particular point in our – I think four weeks ago we had our last board meeting. There was no, at that stage there was no reason for that to be on the agenda. Perhaps I didn't even know that that was going to be the case, that I was going to be requested to make this statement. But several of the board members do know that. I have also informed the assistance secretary of the CFMEU that I will be doing this. So I have let as many people know as possible. One of the board members is overseas, of course I can't.

PN78

Well, has the board given or made a decision to approve you making the statement in these proceedings?---I don't believe the board has to do that. I don't believe that's within our constitution that the board would have to do that, as the chair.

PN79

So in regard to paragraph 4 where you say you are authorised to make this statement, you do this on the basis that you are the chairman of the board?---I am the chairman of it, and I have consulted with other board members.

PN80

But there is no formal decision of the board?---No, there's no formal decision. We haven't had a board meeting as such to make that formal decision. And whether I would even present that as a formal decision to the board, I don't know that that is entirely necessary.

PN81

In paragraph 12 you refer to being informed by the Master Builder's legal advisors that the current apprentice rates are as correct as possible using the award conditions. Who were those legal advisors?---The legal and workplace services manager of the Master Builders in South Australia.

PN82

Is that Mr Thomas?---Yes. And I have to seek his because I do find it confusing, complex, and fairly turgidly written. I can't - - -

PN83

As you say, you're not an IR expert?---I am not an IR expert. Then again, that comment I would have to say that whilst 50 percent of the apprentices in South Australia belong to group training schemes who may have expert IR people surrounding them. Fifty percent are privately indentured. God forbid a 60 year old brick layer with English as a second language attempted to read those clauses and make head to tail of them. So I sympathise with the practitioners out there, with the tradesman out there, that have got privately indentured apprentices and are trying to interpret that off their own bat. Certainly I have difficulty understanding it.

PN84

If I can refer you to paragraph 9 of your statement. Now, you say that prior to the instruction of the award, and I assume you mean the modern award, MBA GTS made a decision to pay adult apprentices at least the state minimum wage. Do you know what that rate of pay was?---\$15.60, I think. But again I would have to refer that to...

PN85

Now, in regards to the modern award, you are aware that there are transitional arrangements that apply?---Mm hm.

PN86

And that therefore that the group scheme would not be legally required to pay the full adult apprentice wage rate? Sorry, verbally?---Yes. I'm aware of that, yes.

PN87

And do you know what that rate currently is?---Not off the top of my head, no.

PN88

Would you be surprised if that was less than the amount you are currently paying?---No. We are particularly generous.

PN89

So is it the case that the group scheme has a history of paying over award payments?---No. No, it's not. Except adult apprentices come into a unique category. And as a board - I don't know how long we can sustain this by the way - we certainly are suffering significant financial losses in having adult apprentices indentured to the Master Builders.

PN90

In paragraph 11 of your statement, you refer to hiring out first and second year adult apprentices at junior charge out rates. Do you see that?---Yes.

PN91

Now, junior charge out rates are not the same as junior apprentice wage rates, are they?---No.

PN92

The charge out rate that the group training scheme uses includes an amount to cover the administration costs of the group training scheme. Is that correct?---Unfortunately we are not in a position where we are recovering that, no. Our charge out rate is far less than what we're actually paying our first, second, third and fourth year apprentices.

PN93

Well, if we can deal with junior apprentices first. The charge out rate for junior apprentices is not the same as the junior apprentice wage rates. Is that correct?---It has to be. Otherwise we couldn't run a viable business and secure the employment of 200 apprentices and seven staff members.

PN94

Now, I don't obviously want to you to give what may be commercially sensitive information. But would it be correct that your charge out rate for junior apprentices would be in the vicinity of \$20 an hour?---I'm not sure. I can't verify what you're saying.

PN95

Well, in regard - now you say in your statement that you use the junior charge out rate for the first second year adult apprentices. Is the charge out rate you charge for third and fourth year adult apprentices substantially higher?---Yes.

PN96

Is it 50 percent higher?---Can I consult my little personal notes here, if you don't mind? Our charge out rate for a fourth year is \$23.51, and for a second year it is \$19.33.

PN97

In regard to the group scheme, does it have substantial cash assets?---Yes. We have retained earnings.

PN98

And did the MBA Group Scheme make a surplus in the last financial year?---Yes it did.

PN99

I have no further questions, your Honour.

PN100

THE SENIOR DEPUTY PRESIDENT: Thank you. Mr Kentish, or Mr Noble, or Mr Broanda?

PN101

MR BROANDA: Yes thank you, your Honour.

PN102

THE SENIOR DEPUTY PRESIDENT: Yes, Mr Broanda.

<CROSS-EXAMINATION BY MR BROANDA

[10.40AM]

PN103

MR BROANDA : Mr Callan, my name is Derek Broanda. I'm with the Australian Workers' Union. I've just got just one question for you. You give evidence that you are not an industrial expert. I'll paraphrase it, you're not an industrial relations expert?---No.

PN104

You found the relevant clauses difficult to interpret, I understand?---Yes.

PN105

But you did manage to interpret them with assistance?---Well, there could be two or three interpretations. Which one would we take?

PN106

I'm asking specifically about your circumstances. You sought advice and received an interpretation, didn't you?---No. I received about three interpretations and said which do you think, actually. And we then referred it again and we got another interpretation. So I didn't get one. But inevitably you have to make a decision, don't you. It's a person's wages.

PN107

No further questions, thank you.

PN108

THE SENIOR DEPUTY PRESIDENT: Thank you. Mr Kentish?

PN109

MR KENTISH: I have one question, your Honour, if it pleases.

<CROSS-EXAMINATION BY MR KENTISH

[10.41AM]

PN110

MR KENTISH: Mr Callan, do you employ electrical apprentices?---No we don't.

PN111

Nothing further.

PN112

THE SENIOR DEPUTY PRESIDENT: Very good.

PN113

MR CALVER: Just one question by way of re-examination.

PN114

THE SENIOR DEPUTY PRESIDENT: Yes, Mr Calver.

<RE-EXAMINATION BY MR CALVER

[10.41AM]

PN115

MR CALVER: If the underlying wage rates increase, Mr Callan, does your charge out rate increase?---We review our charge out rate annually. We would have to take into consideration when that occurred, and decide when we were going to do that. That would be a board decision. But we'd have to take that under advisement from our industrial relations.

PN116

I take from that it's not automatic that it would be an increase in your charge out rate if there was an increase in the underlying wage rate?---No. We have not passed that on, at least one occasion that I can remember.

PN117

So you would either pass it on, or it would be absorbed in your margin?---Exactly right. Or through our loss - - -

PN118

THE SENIOR DEPUTY PRESIDENT: I think you're passed the boundaries of leading, Mr Calver.

PN119

MR CALVER: It's slightly leading there, yes. I have no further questions?---Unfortunately we are with the adult process, and that is very much the case.

PN120

THE SENIOR DEPUTY PRESIDENT: My issue isn't with your evidence?---I'm sorry.

PN121

MR CALVER: It's my leading question, yes.

PN122

THE SENIOR DEPUTY PRESIDENT: It's the questions being asked.

PN123

MR CALVER: No further questions, your Honour.

PN124

THE SENIOR DEPUTY PRESIDENT: Thank you for your evidence, Mr Callan.

PN125

MR NOBLE: Your Honour, if I may can I just ask a quick couple of questions? Mr Calver jumped in so quickly just then.

PN126

THE SENIOR DEPUTY PRESIDENT: Yes. Subject to Mr Calver's right to
- - -

PN127

MR NOBLE: I won't go on about the financial areas which Mr Calver has - - -

PN128

THE SENIOR DEPUTY PRESIDENT: Subject to Mr Calver's right to re-examination without leading questions.

PN129

MR CALVER: I apologise to my friend for not letting him have a say.

PN130

THE SENIOR DEPUTY PRESIDENT: Yes, Mr Noble.

<FURTHER CROSS-EXAMINATION BY MR NOBLE [10.43AM]

PN131

MR NOBLE: You have just responded to Mr Kentish here that you don't employ apprentices in the electrical streams. What about the mechanical and engineering streams?---No we don't.

PN132

You don't either? Can I just ask your articles of association or your business, you are not set up as a not for profit organisation are you, or are you?---The Master Builders Group Training Scheme?

PN133

Yes?---It has its own constitution.

PN134

And as part of that is it derived with what, the shareholders?---No. There's no profits distributed to anybody. What earnings are retained to secure the employment of the apprentices and those people who work at the group training scheme.

PN135

Okay. Do you receive any other sort of government funding at all?---We make applications for whatever government funding we can get, particularly for adult apprentices. I think in 2006/2007 when I took over the group training scheme we made a loss of \$170,000 odd. That can't be sustained. And we are looking at a diminished surplus again this year. But there are certain requirements in running a group training scheme on how much is recommended that you keep as retained surplus to ensure that you can pay wages, subject to a downturn, and not being able to place apprentices. So we are regulated as a - - -

PN136

Both with the regulations?---Yes.

PN137

Turning again to paragraph 9 as a couple of my colleagues have done previously. You talk about the policy decision that you have made in relation to adult apprentices being paid the minimum wage. How different do you think it is as it currently exists under the federal award that adult apprentices receive either the minimum wage, or if they happen to be fourth year, whichever is the higher?---To qualify that? In dollar terms?

PN138

What do you see as in - - -?---I can't qualify it because I have not got that knowledge at hand.

PN139

Okay. And just one last thing. What is your view of the use of the word 'indentured' in clause 19.8? What service do you think by having that word in there does it use? What does it imply to you?---Well, I understand the history of the word 'indenture' and the tearing of that piece of paper when someone signs a contract, and where it comes from. And that indenture is that contract of training.

PN140

And so it is a word for the meaning - - -?---It's a word that goes back in legal terms, back to notaries, you know, I don't know what century, the fourteenth, the thirteenth century.

PN141

Yes, a long way?---A long way, when they used to tear that and it became the indent. Put the two together and you were parties to that agreement. My understanding of the indenture is that we hold the contract of training of those apprentices.

PN142

Yes. It's just that a bit earlier you talked about privately indentured?---Privately indentured, yes. That contract of training is held by a private person.

PN143

And so there is a difference there, isn't there, between what other apprentices, say 20 apprentices, or indentured apprentices' terms and conditions?---No. They are still indentured apprentices. Our group training scheme indentures – we sign a contract of training with those. Perhaps to differentiate, we have 56 other apprentices, many of them are adults, which we don't indenture that are privately indentured and we supervise their training under the Master Builders Group Training Scheme, and under the Master Builders as an RTO. We call that are on track scheme, where those apprentices who we supervise their training don't leave the site. And it's an accelerated apprenticeship over two years, and a lot of them are adults. So the indenture is still the same. Those persons are indentured to a brick layer, a painter, a tiler, a carpenter who signs their contract of training. We sign a contract of training to our employees who are our apprentices. So we've got two separate groups. Is that fine?

PN144

Yes. No further questions, thank you.

PN145

THE SENIOR DEPUTY PRESIDENT: Mr Calver?

PN146

MR CALVER: No, I have nothing further in re-examination.

PN147

THE SENIOR DEPUTY PRESIDENT: Very well. Thank you for your evidence, Mr Callan. You're excused.

<THE WITNESS WITHDREW

[10.48AM]

PN148

THE SENIOR DEPUTY PRESIDENT: Alright. We'll deal with the matters in the manner I indicated, starting first with the proposed variation of clause 15.2. Mr Calver.

PN149

MR CALVER: Yes, your Honour. I have had intended to approach this matter slightly differently, and I don't want to get off on the wrong foot with you, your Honour. what I was going to do, your Honour, was first of all recognise the written material that was before the tribunal, the submission of 26 October and the second one of 14 November. I think I've done that. And before I took the tribunal to the five particular matters, including the first one, I was going to seek for variation four, which is the apprentice wage matter to be considered last if that's acceptable to your Honour. Because there is the most material about that. So if we take the variations in the order that they are mentioned in the application of 7 October, if we could deal with the one that's itemised fourth there lastly, because I do believe that there is the most material about that matter.

PN150

THE SENIOR DEPUTY PRESIDENT: Yes.

PN151

MR CALVER: Would that be acceptable to your Honour?

PN152

THE SENIOR DEPUTY PRESIDENT: Yes, that's fine. I think I can cope with that.

PN153

MR CALVER: And the other point I was going to make, your Honour, is that the CFMEU in their submissions have indicated that the policy material that we have introduced into our submission is irrelevant, and does have no bearing on the questions for the tribunal, particularly in regard to the fourth variation which I just sought for you to treat last. So I was going to take as an introduction the tribunal to the policy terms and conditions behind this matter in order to contextualise the application, particularly in relation to the increased wages that might result in a different interpretation from clause 19.8(c).

PN154

THE SENIOR DEPUTY PRESIDENT: Yes.

PN155

MR CALVER: So the essence of what I'm saying is that before the individual variations are addressed, I would just take the tribunal to the policy matters. In this sense it's because apprentices are the life blood of the building and construction industry that this application has been brought. Without apprentices, without people in training coming through, the industry is nought. The application is not an attempt, as has been painted in some media, by Master Builders to oppress apprentices. It's an intent to clarify their terms and conditions of engagement, and there will be further clarifications sought during the 2012 review.

PN156

Indeed we would be open to conciliating matters today instead of treating this consultation like an arbitration in respect of the particular use of the term indenture that my friend from the AMWU obviously in cross-examination has foreshadowed as an issue, and my friend from ABI also has as an issue. So we'd be happy to have a more open and less adversarial discussion about that particular matter. And when I reach those variations, perhaps we could, if it please the tribunal, have some less formal method of presentation to deal with that issue. And then we might make a decision to defer it off to the 2012 review if nothing comes out of that. Rather than having adversarial based submissions, your Honour, if that is an approach that you might endorse.

PN157

THE SENIOR DEPUTY PRESIDENT: Can you just make it absolutely clear. What issues are you talking about?

PN158

MR CALVER: Well, I was going to do that. Certainly clause 15.2(a) the interaction with state and territory laws. We are quite happy for that matter to be treated in a conciliatory fashion and bring it forward as part of the 2012 review if there is too much antipathy in relation to that. We don't want that to be an adversarial matter.

PN159

THE SENIOR DEPUTY PRESIDENT: I think an issue in relation to 15.2 is whether what you are proposing to achieve, achieves what you - - -

PN160

MR CALVER: Your Honour, what we are proposing to achieve is clarity in where that boundary can be drawn. And we are quite open to hear from other parties as to that. I mean, the CEPU's solution may well be the one that the tribunal proposes, that there is simply a reference to part 13 of the Fair Work Act and the matters that my friend from the AWU raised.

PN161

THE SENIOR DEPUTY PRESIDENT: And if you want clarity, you'd take that to the minister's review of the Act, rather than the - - -

PN162

MR CALVER: Yes. Look, in all senses that certainly can be a matter that we're happy to conciliate. We believe that in relation to - - -

PN163

THE SENIOR DEPUTY PRESIDENT: I am not being frivolous. There have been other occasions when the tribunal has simply referred to the relevant provisions of the Act because they are somewhat complex and difficult to reproduce without running the risk of reproducing them incorrectly.

PN164

MR CALVER: Certainly. And in that space we are here not to oppress apprentices, not to (indistinct), if you like. And we'd rather have this issue before you, than at the subject of a fight over the body.

PN165

THE SENIOR DEPUTY PRESIDENT: So that's 15.2.

PN166

MR CALVER: Yes. And we believe we have support of all parties in respect of 15.3(a). So that we would ask the tribunal to consider that as an issue. The lost time issue - - -

PN167

THE SENIOR DEPUTY PRESIDENT: Sorry.

PN168

MR CALVER: Sorry, sir, I'm going quickly.

PN169

THE SENIOR DEPUTY PRESIDENT: In 15.3(a)?

PN170

MR CALVER: It's the overtime loading issue.

PN171

THE SENIOR DEPUTY PRESIDENT: Does anyone disagree with Mr Calver that there is no disagreement as to the necessity or the means of making that variation?

PN172

MR CALVER: I'll let my friends catch up while they're gone taking (indistinct).

PN173

MR MAXWELL: Your Honour, in regards to that matter we agree with the course deposed by the MBA in regards to 15.3(a).

PN174

THE SENIOR DEPUTY PRESIDENT: Yes. Everyone is suggesting you have accurately put the position of everyone else in 15.3.

PN175

MR CALVER: Thank you, your Honour. The matter of variation 3, that is in respect of clause 15.5(a) concerning lost time, I would like to address the tribunal on that, but would be open to a more informal discussion to seek resolution. I think all parties have identified it as a problem, the solution as a matter that is perhaps differently put. So I would like to address the tribunal further on that point. Variation 5, rather than the variation 4 which is the wages matter, is in relation to clause 25.12(b). And under the rather odd situation of having my friends from my left from the employer associations opposing that, and the unions

supporting that matter, so I would like us to sit back and watch in that matter and see what my friends have to say.

PN176

I would not want to truncate their right to oppose that. And then obviously in relation to clause 19.8, particularly clause 19.8(c) which is in three parts, I'd like to address you in detail. Does that help, your Honour?

PN177

THE SENIOR DEPUTY PRESIDENT: Sorry?

PN178

MR CALVER: That's number 4, which I would like to leave until last if I can. But given the quantity of the material that I anticipate that you might be - - -

PN179

THE SENIOR DEPUTY PRESIDENT: But you say that's a matter which you suggest there should be some informal discussion about?

PN180

MR CALVER: Variation 4? No, I think we've gone beyond that. I think variation 4, that is clause 19.8(c), we would urge the tribunal to provide clarity about it, particularly given the contingent viability that we calculate we I've got some more figures about which take into account the CFMEU's issue about transitional rates, which I would intend to provide to my friends and the tribunal later on. I'd just ask HIA to look at that to verify that the method of calculation is acceptable to them, and I would intend to go through some numbers there. It's a three page document with detail.

PN181

So that yes, we would say that we are – look, we're always open to conciliation. And in fact we withdrew our initial application in that regard trying to conciliate, but I can't see that the changes we want to clause 19.8 are other than in a situation where we're needing a decision from the tribunal, your Honour, to put it quite bluntly. Does that assist?

PN182

THE SENIOR DEPUTY PRESIDENT: Yes, okay. Look, I'll proceed on this basis. I've got all the parties' positions on 15.3(a), and I don't think there is any necessity for that to be canvassed, whether or not someone should pop their head up. So I'll determine that matter having regard to that material. Is there any objection if we go off the record to see whether there is any means of resolving between the parties, subject to my satisfaction, to the statutory matters or any of those other matters?

PN183

MR CALVER: No objection at all.

PN184

THE SENIOR DEPUTY PRESIDENT: No, very well. I will do that and I will resume in five minutes to do that.

PN185

MR CALVER: Thank you very much.

<SHORT ADJOURNMENT

[10.59AM]

<RESUMED

[12.20PM]

PN186

THE SENIOR DEPUTY PRESIDENT: In discussions between those in attendance in conference, the outcome of all of that is as follows. Firstly this matter will be relisted at 10 am on Wednesday 7 December in Sydney, at which time we will first take the evidence of Mr Thomas, Mr Reid, and then hear submissions in relation to outstanding matters. The outstanding matters are the second variation proposed by the MBA in respect of clause 15.3 and the fourth variation proposed in respect of clause 19.8. The other matters having been dealt with in this manner. Firstly in respect to the fifth variation, clause 25.12, the MBA has withdrawn that part of its application and the application to make the variation to clause 25.12, subject to reserving its position to re-agitate that variation in the two year review in 2012.

PN187

In respect to the other two variations to propose, variation one clause 15.2, and variation three in respect of clause 15.5. The AWU in conference raised jurisdictional issues going to the clauses and the variations proposed arising out of the operation of part 1-3 of the Act, and section 139 of the Act. The MBA has withdrawn the application in respect of variation one clause 15.2, a subject to reserving its right to re-agitate that variation, or some variant of it, in the two year review commencing 2012. In respect of clause 15.5 there is agreement between the parties as to an uncertainty which will require immediate resolution, notwithstanding the issues raised by the AWU.

PN188

In respect to that variation the parties propose to discuss an agreed variation to remove that uncertainty, which they will address on 7 December or earlier in writing. The variation proposed in that respect will be dealt with without prejudice to the position of the AWU in respect to the jurisdictional issues raised and its right to ventilate them in the two year review in relation to this award, or more generally, and in respect to the MBA's right to further agitate this issue in the two year review. Now, unless I have misrepresented anything or anyone's position, I would propose at this stage to adjourn until 7 December. Yes, Mr Calver?

PN189

MR CALVER: I do raise, your Honour, the matter of the document which we did not seek to have put on the website given that it was down and which I have handed to my colleagues this morning, and to yourself, headed cost increases flowing from the introduction of adult apprentice wages. We will undertake to email that to your chambers, and to the award mod sight as a second supplement submission, and indicate that we would be interested in feedback and we will seek to rely on that document on 7 December, subject to any comments that might be made in respect of it.

PN190

I also note that as I indicated to your Honour in the conference, we will be relying on the terms of other modern awards relating to adult apprentices and the way that they're structured in comparison with the on-site award. And to save time on the

7th, your Honour, I would seek to just run through those provisions now and hand the clauses to my friends so that the proceedings on the 7th are expedited. Unless your Honour or my friends have an objection to that?

PN191

THE SENIOR DEPUTY PRESIDENT: No, I am content with that course.

PN192

MR CALVER: Thank you very much. So if I can just go through each one and indicate. The first is Joinery and Building Trades Award 2010. The relevant clause is clause 21. It stipulates there is no reduction in pay for those formerly employed. Not limited to a particular sector, as is clause 19.8(c). Other adult apprentices are paid relative to the standard rate, which under that award is level 5 classification set out in clause 20.2. And allowances are not specifically stated to be payable to adult apprentices, but are for all purposes pursuant to clause 24.1 of that award. So that is the provision there. The second award that is relevant because people are on site at the same time as those engaged on the offsite award, is the Electrical, Electronic and Communications Contracting Award 2010, which I'm sure my friend from the CEPU is more familiar with than I am.

PN193

However, it is in relation to clause 16.4(b) which appears to apply only in Queensland. Relatively of the rate is to the adult standard rate, so the grade 5 classification under clause 16.4(b)(i). The full tools allowance and fares allowance, but the junior apprentice proportion of the electrician's licence allowance, travel time allowance, and industry allowance, are stipulated. That's pursuant to clause 16.4(b)(ii). Now, sorry your Honour, I should have handed up the provision from the Joinery Award to your associate. No wonder I have two copies left. And two for the Electrical. So I'll hand these ones to my colleagues.

PN194

THE SENIOR DEPUTY PRESIDENT: You've given me two copies, have you?

PN195

MR CALVER: Yes. I thought one for the transcript, or for your associate as well, your Honour. But if one is only needed, then I apologise if you've got too many.

PN196

THE SENIOR DEPUTY PRESIDENT: If you've given me two, what I will do is I'll mark the extract from the Joinery Award MBA2, the Electrical Award MBA3 and whatever else you are providing.

EXHIBIT #MBA2 EXTRACT FROM JOINERY AWARD

EXHIBIT #MBA3 EXTRACT FROM ELECTRICAL AWARD

PN197

THE SENIOR DEPUTY PRESIDENT: And they will be uplifted along with what is not MBA1 out of your submission, the statement of Mr Callan, onto the website together with what we'll treat as for the document file in relation to the cost increases flowing, which will be uplifted as a separate document on the website.

PN198

MR CALVER: And perhaps treated as a supplementary submission, as opposed to an exhibit, your Honour.

PN199

THE SENIOR DEPUTY PRESIDENT: Okay. We will title that Supplementary Submission.

PN200

MR CALVER: Second Supplementary Submission, if it please the tribunal.

PN201

THE SENIOR DEPUTY PRESIDENT: Of today's date.

PN202

MR CALVER: Thank you very much. So that if I might move on to what will become MBA4, that is the extract from the Plumber and Fire Sprinklers Award 2010, which is clause 20.3. And I will hand that out this time before I shortly explain its terms. If I might just hand that up, your Honour, and note that it will be marked MBA4.

PN203

THE SENIOR DEPUTY PRESIDENT: Yes.

PN204

MR CALVER: Essentially clause 20.3 sets out the minimum federal wage plus industry allowance only, but for sprinkler fitters there is no reduction in pay for those formerly employed. Clause 20.3(a)(i) other adult apprentices receive wages under a comparative exercise, which is the comparison between the federal minimum wage, plus full industry allowance, or the junior apprentice rate, whichever is higher. And that's clause 20.3(a)(iii). To the extent that that seeks to emulate the intention of 19.8(c), we like the structure of that provision. In respect of Plumbing and Mechanical, there is no reduction in pay for those formerly employed. That's for clause 20.3(b)(i).

**EXHIBIT #MBA4 EXTRACT FROM PLUMBER AND FIRE
SPRINKLERS AWARD**

PN205

The other adult apprentices receive wage under a comparative exercise. Again, the federal minimum wage, industry allowance, or the junior apprentice rate, whichever is higher, in accordance with clause 20.3(b)(iii). So we are attracted to the way in which that particular award sets out the comparison when compared with the wording of the onsite award, your Honour. The next is the Timber Industry Award, which is clause 17.6 of the Timber Industry Award which I shall hand up if I may. On this occasion I might only hand up one copy. I note that I don't have sufficient for two. I apologise for that.

**EXHIBIT #MBA5 EXTRACT FROM TIMBER INDUSTRY
AWARD**

PN206

MR CALVER: Now, this clause is clause 17.6, and it's for the wood and timber furniture stream, and it's a percentage of the minimum weekly wage rate for adult

classifications of level 5 in clause 17.2. It therefore is a relative component of the standard rate articulated at level 5, and it appears relevantly to exclude allowances when you take into account the provisions of clause 17.9. And the final award which we are using as an indication of the different method of handling adult apprentice wage rates so that your Honour has a comprehensive reference as to how clarity is achieved in other awards, is the Manufacturing and Associated Industries and Occupations Award 2010, clause 26.1 which I will be able to hand two copies to your associate.

EXHIBIT #MBA6 EXTRACT OF MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010

PN207

MR CALVER: Again, 26.1 there is no reduction in pay for those formerly employed. Other apprentices receive the national training wage in the first year, the lowest adult rate in the second year, the C14 rate, then the C13 rate the third year, and the C12 rate the fourth year in clause 25.1. Tool allowances are not specifically stated to be payable to adult apprentices, but are for all purposes now payable to junior apprentices pursuant to clause 32.1(c) of the award. So your Honour, with that exercise, I can indicate that we will also be relying on the MECA award, one of the predecessor awards to the onsite award, given the culpable intention of the Full Bench in making the onsite award to draw on the pay arrangements from the MECA award.

PN208

I think Mr Reid's evidence, Mr Reid to be called by the AMWU in that regard, will be quite useful. For today, your Honour, I have no further submissions.

PN209

THE SENIOR DEPUTY PRESIDENT: Thank you. Anyone else wish to bring anything at this stage? Very well, I will adjourn until 7 December.

<ADJOURNED UNTIL 7 DECEMBER 2011

[12.37PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

DAVID MILTON CALLAN, SWORN.....	PN53
EXAMINATION-IN-CHIEF BY MR CALVER.....	PN53
EXHIBIT #MBA1 WITNESS STATEMENT OF DAVID CALLAN DATED 20/10/2011	PN56
CROSS-EXAMINATION BY MR MAXWELL	PN69
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EXHIBIT #MBA6 EXTRACT OF MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010	PN207

Attachment B - Witness Statement of Mr David Milton Callan

IN FAIR WORK AUSTRALIA

Matter No: AM2011/51
Re Application by: Master Builders Australia for and on behalf of various Master Builders' Associations

Witness Statement of Dave Callan

On 20 October 2011, I, David Milton Callan of Level 1, 47 South Terrace, Adelaide in the State of South Australia make the following witness statement.

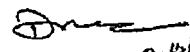
1. I am the Chairman of the Board of Directors of the Master Builders Group Training Scheme, Inc (MBA GTS). I have been in this role for approximately five years. I am also employed by the Master Builders Association of South Australia Inc (Master Builders) as the Director of Operations. I have been employed by Master Builders since 1996. During my time with Master Builders I also had a close involvement with the operations of MBA GTS, including periods where I acted as a manager of MBA GTS due to the death of a manager and difficulty in finding an appropriate person to staff that position.
2. In my understanding, we are the largest group training scheme for building and construction in South Australia.
3. The Board of MBA GTS is comprised of myself as chair and eight others, including a representative of the Construction, Forestry, Mining & Energy Union.
4. I am authorised to make this witness statement on behalf of MBA GTS and I do so from my own knowledge. I make this witness statement in relation to the application to clarify adult apprentice wages under the *Building and Construction General On-Site Award* (the Award) in proceedings AM2011/51.
5. I am involved in the day to day operations of MBA GTS and I am its responsible officer. A primary focus is the financial viability of MBA GTS, which includes budgeting, setting apprentice rates and charge-out rates for host trainers. I am also involved in the systems and procedures for the training and placement of apprentices.

Lodged by
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20 October 2011

both on and off site and have intimate knowledge of the supply and demand of apprentices, which is reviewed regularly.

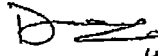
6. As at 18 October 2011, MBA GTS employed 192 apprentices, and trains 60 other apprentices who are privately indentured. Of the 192 apprentices employed by MBA GTS, 32 are adult apprentices. These are apprentices who commence their apprenticeship at 21 years of age or older. Of the adult apprentices, 27 are carpenters, 3 are bricklayers, one is a painter and one is a wall and ceiling fixer.
7. The Award provisions relating to adult apprentices are confusing and complex. Adult apprentice wages are calculated under clause 19.8 of the Award. This is a confusing provision. In particular, under clause 19.8(c), it not clear whether allowances are supposed to be included in the CW/ECW 1 (level a) wage which is then compared against the junior apprentice rate. MBA GTS has taken the view that the the reference in clause 19.8(c) is a reference to the CW/ECW1 rate without any allowance being loaded into the rate.
8. In the fifteen years that I have been involved with MBA GTS, it has always proven more difficult to place adult apprentices than junior apprentices due to this differential in wages and therefore charge-out rates.
9. Prior to the introduction of the Award, MBA GTS made a policy decision to pay adult apprentices at least the State Minimum Wage. This decision was taken as a balance between the need to pay the employee a higher rate, particularly those with families, and the difficulty of placing the apprentice at the higher rate of pay.
10. Currently, with the downturn in the industry, it is increasingly difficult to place apprentices. At the end of 2009, MBA GTS had 235 apprentices. It now has 192. This reduction is solely driven by demand for apprentices. Over this period the number of prospective apprentice applicants has increased. The pool of "out of trade" apprentice applicants, apprentices who have had their contract of training terminated due to shortage of work, has increased dramatically.

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20 October 2011

11. Fourth year and adult apprentices are the first to be returned by host trainers as they are too expensive. MBA GTS is presently hiring out first and second year adult apprentices at junior charge-out rates in order to secure placements. If MBA GTS operated with this margin across the board, it would threaten its financial viability and employment of apprentices.
12. I have been informed by Master Builders' legal advisors that the current apprentice rates are as correct as possible using the award conditions.
13. If the minimum adult apprentice rate for a first year adult was the rate of pay for a CW1(a) weekly hire employee, including the all-purpose allowances, this would reduce their placement opportunities.

Signed on 20 October 2011 at Adelaide.



David Milton Callan

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(b) Three year apprenticeship:

Stage of apprenticeship	Per week
	%
First year	50
Second year	75
Third year	90

19.2 Where an apprenticeship is shortened in accordance with clause 13.4, the apprentice is to be paid the minimum wage corresponding to the stage of the apprenticeship being undertaken.

19.3 An employee who is under 21 years of age on the expiration of their apprenticeship and thereafter works as a minor in the occupation to which the employee was apprenticed must be paid at not less than the minimum wage prescribed for the classification.

20. Adult apprentice minimum wages

20.1 A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 18.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

20.2 Subject to clause 20.1, the minimum wages for an adult apprentice are to be calculated in accordance with the percentages set out below (calculated to the nearest \$0.10, less than \$0.05 to be disregarded) applied to the Level 5 classification minimum weekly wage in clause 18.1:

(a) Four year apprenticeship:

Stage of apprenticeship	Per week
	%
First year	81
Second year	85
Third year	88
Fourth year	94

(b) Three year apprenticeship:

Stage of apprenticeship	Per week
	%
First year	83
Second year	88
Third year	94

20.3 Subject to clause 20.1, where an adult apprenticeship is shortened in accordance with clause 13.4, the adult apprentice is to be paid the minimum wage corresponding to the stage of the apprenticeship being undertaken.

21. Trainee minimum wages

[Varied by PR988412]

21.1 National training wage trainee minimum wages

The minimum wages for a trainee covered by the national training wage provisions are set out in Schedule D—National Training Wage.

22. Supported wage system

[Varied by PR988412]

See Schedule E—Supported Wage System.

23. Employer and employee duties

23.1 An employee may be directed to carry out such duties, and use such tools as may be required, which are within the limits of the employee's skill, competence and training including, but not limited by, duties which are incidental and peripheral to the employee's main task or function.

23.2 An employee may be directed to transfer to another job or location, or onto or off a building site at the discretion of the employer.

23.3 An instruction issued by an employer under clauses 23.1 and 23.2 must be consistent with the employer's responsibility to provide a safe and healthy working environment.

24. Allowances and special rates

[Varied by PR992150, PR994529, PR998131, PR503636, PR509182]

24.1 All-purpose allowances

The following allowances apply for all purposes of this award:

(a) Leading hands

A leading hand in charge of one or more people must be paid the following, in addition to the minimum wage for the highest classification supervised or their own minimum wage, whichever is higher:

In charge of	Amount of the <u>standard rate</u>
1 employee	91.2% per week extra
2–5 employees	200.2% per week extra
6–10 employees	256.3% per week extra
11 or more employees	340.9% per week extra

(b) Industry allowance

(i) An employee engaged on joinery work, shopfitting, stonemasonry or outside work must be paid 142.4% of the standard rate per week extra to compensate for the disabilities associated with the industry.

(ii) A glazier or an apprentice glazier, engaged other than on factory glazing, must be paid 3.8% of the standard rate per hour extra while engaged other than on factory glazing to compensate for the disabilities associated with the industry, provided that:

- in respect of public holidays not worked (where payment is otherwise due), paid leave and attendance by apprentices at prescribed technical training, the disability allowance must also be paid for each hour the employee would have been engaged other than on factory glazing during such period; and
- in the case of an employee proceeding on paid leave or receiving payment instead of leave on termination where it cannot be established to what extent they would have been engaged on other than factory glazing during the period, the disability allowance paid is to be pro rata of the disability allowance they were paid in the preceding 12 weeks.

(c) Tool allowance

[24.1(c)(i) varied by PR998131, PR509182 ppc 01Jul11]

(i) An employee must be paid the following allowance per week extra for supplying and maintaining tools:

Classification	\$
Carpenter and/or joiner	27.69
Carver	27.69

Classification	\$
Joiner special class	27.69
Joiner-setter out	27.69
Letter cutter	27.69
Prefab setter	27.69
Prefab tradesperson	27.69
Shopfitter	27.69
Stonemason	27.69
Plasterer	22.87
Glazier	9.71
Assembler A	8.27
Glass worker	6.71
Painter	6.65

(ii) Where an employer provides an employee with all the tools reasonably required to perform all the functions of the employee's employment then no tool allowance is payable. In such cases:

- the employer must convey the decision to the employee in writing;
- an employee provided with tools of trade by the employer is not responsible for the loss of such tools where the loss is outside the control of the employee; and
- an employee provided with tools of trade by the employer must replace all or any tools of trade lost due to the negligence of the employee, provided that where the tools of trade are locked in a secure location provided by the employer, or at the employer's premises, the employee must not be held responsible for the loss.

(iii) Clause 24.1(c)(ii) does not apply to an employee employed as at 14 January 1993 or an apprentice unless otherwise agreed between the parties.

(d) Stonemasonry tools and equipment

(i) The tool allowance prescribed in clause 24.1(c)(i) does not include the provision of stonemasonry cutting tools, except mash hammers, squares, pitching tools and straight-edges up to one metre in length. The employer may elect to provide such tools. Where the tools are provided by an employee, the employer must reimburse the employee for the cost of the tools and must pay the employee \$0.05 per hour extra.

(ii) The employer must reimburse an employee for the cost of sharpening all necessary stonemasonry cutting tools. On completion of engagements, all stonemasonry cutting tools provided by the employee must be sharpened by the employer or the employer must pay the employee an allowance equal to the cost of sharpening.

- (c) The all-purpose hourly wage rate means the all-purpose weekly wage rate divided by 38.

16.4 Apprentice minimum wages

(a) Junior apprentice minimum wages

- (i) Junior apprentices will be paid the percentages of the minimum wage rate for the Electrical worker grade 5 classification in clause 16.2 as set out in the following table:

Year of apprenticeship	%
1st year	40
2nd year	52
3rd year	70
4th year	82

[16.4(a)(ii) varied by [PR994523](#), [PR998376](#) from 30June10]

- (ii) In addition to the minimum wage payments arising from clause 16.4(a), apprentices will be paid the full amount of the tool allowance in clause 17.2(b) and the fares allowances in clause 17.5(d) and the percentages shown in clause 16.4(a) of the electrician's licence allowance in clause 17.2(c), the travel time allowance in clause 17.5(c) and the industry allowance in clause 17.2(a). Any other special allowances in clauses 17.3 and 17.4 and allowances for travel and expenses in clauses 17.5 and 17.6 will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause 17.1(b).

[16.4(a)(iii) inserted by [PR994523](#) from 01Jan10]

- (iii) The all-purpose rate to be paid to an apprentice will be the sum of the minimum wage rate arising from clause 16.4(a), the full amount of the tool allowance in clause 17.2(b) and the percentages shown in clause 16.4(a) of the electrician's licence allowance in clause 17.2(c) and the industry allowance in clause 17.2(a). The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime, all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination.

[16.4(a)(iv) inserted by [PR994523](#) from 01Jan10]

- (iv) The all-purpose hourly wage rate means the all-purpose weekly wage rate divided by 38.

(b) Adult apprentices minimum wages (Queensland only)

- (i) Adult apprentices will be paid the percentages of the minimum wage rate for the Electrical worker grade 5 classification in clause 16.2 as set out in the following table:

Year of apprenticeship	%
1st year	75
2nd year	80
3rd year	84
4th year	90

[16.4(b)(ii) substituted by [PR994523](#), [PR998376](#) from 30June10]

- (ii) In addition to the minimum wage payments arising from clause 16.4(b)(i), adult apprentices will be paid the full amount of the tool allowance in clause 17.2(b), and the fares allowances in clause 17.5(d), and the percentages shown in clause 16.4(b)(i) of the electrician's licence allowance in clause 17.2(c), the travel time allowance in clause 17.5(c) and the industry allowance in clause 17.2(a). Any other special allowances in clauses 17.3 and 17.4 and allowances for travel and expenses in clauses 17.5 and 17.6 will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause 17.1(b).

[16.4(c) inserted by [PR998376](#) from 30June10]

(c) Trainee apprentices minimum wages (New South Wales only)

- (i) A trainee apprentice in New South Wales will be paid the percentages of the minimum wage rate for the Electrical worker grade 5 classification in clause 16.2 as set out in the following table:

Year of apprenticeship	%
1st year	46
2nd year	59
3rd year	77
4th year	86

- (ii) In addition to the minimum wage payments arising from clause 16.4(c)(i), apprentices will be paid the full amount of the tool allowance in clause 17.2(b) and the fares allowances in clause 17.5(d) and the percentages shown in clause 16.4(c)(i) of the electrician's licence allowance in clause 17.2(c), the travel time allowance in clause 17.5(c) and the industry allowance in clause 17.2(a). Any other special allowances in clause 17.3 and 17.4 and allowances for travel and expenses in clauses 17.5 and 17.6 will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause 17.1(b).

- (iii) The all-purpose rate to be paid to an apprentice will be the sum of the minimum wage rate arising from clause 16.4(c)(i), the full amount of the tool allowance in clause 17.2(b) and the percentages shown in clause 16.4(c)(i) of the electrician's licence allowance in clause 17.2(c) and the industry allowance in clause 17.2(a). The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime, all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination.

[20.2(b)(ii) substituted by PR512383 ppc 01Jan10; corrected by PR512677 ppc 01Jan10]

- (ii) for plumbing apprentices:
- the plumbing trade allowance (clause 21.1(c)); and
 - the tool allowance (clause 21.2(a)), except that in NSW, until 31 December 2014, plumbing apprentices will be paid 100% of the tool allowance rather than the relevant percentages as set out below; or
- (iii) for sprinkler pipe-fitting apprentices: the industry disability allowance and space, height and dirt money allowance (clause 21.1(g)), the sprinkler fitters adjustment (clause 21.1(h)) and, if applicable, the tool allowance (clause 21.2(a)).

Apprentice	Plumbing apprentices % per week	Sprinkler pipe-fitting apprentices % per week
for the first year	37.5	50
for the second year	55	55
for the third year	70	75
for the fourth year	90	90

(c) **Trainee apprentices minimum wages (New South Wales only)**

[20.2(c) substituted by PR512383 ppc 01Jan10; corrected by PR512677 ppc 01Jan10]

- (i) in addition to the minimum wage rate arising out of clause 20.2(b)(i), 20.2(b)(ii) and 20.2(b)(iii), apprentices must be paid the full amount of the tool allowance in clause 21.2(a), the industry allowance in clause 21.1(b), and if applicable the fares allowance in clause 21.8(d) and/or the standard travelling time allowance in clause 21.8(e).
- (ii) a trainee apprentice in New South Wales will be paid the percentages of the minimum wage for the plumbing and mechanical services tradesperson classification in clause 20.1 as set out in the following table:

Trainee apprentice	% per week
1st year	41.5
2nd year	61
3rd year	77
4th year	95.5

- (iii) clauses 20.2(c)(i) and 20.2(c)(ii) will cease to operate on 31 December 2014.

[20.2(d) inserted by PR512383 ppc 01Jan10]

- (d) Apprentices must be paid all wages and allowances as specified by this award for time spent attending a Registered Training Organisation in the course of their apprenticeship. All time spent attending a Registered Training Organisation in the course of the apprenticeship will count as time served for all purposes.

20.3 Wages—adult apprentices

(a) **Sprinkler Fitter**

- (i) Where a person was employed by an employer immediately prior to becoming an adult apprentice with that employer, such person will not suffer a reduction in the rate of pay by virtue of entering into a training agreement.
- (ii) For the purpose only of fixing a rate of pay, the adult apprentice will continue to receive the rate of pay (inclusive of all-purpose allowances) that is, from time to time, applicable to the classification or class of work in which the adult apprentice was engaged immediately prior to entering into the training agreement specified in clause 15.1.

[20.3(a)(iii) substituted by PR512383 ppc 01Jan10]

- (iii) Subject to clauses 20.3(a)(i) and 20.3(a)(ii), the rate of pay of an adult apprentice will be not less than:

- the federal minimum wage plus the full rate of industry disability allowance as prescribed; or
- the amount prescribed for apprentices generally in clause 20.2;

whichever is the greater.

(b) **Plumbing and Mechanical**

- (i) Where a person was employed by an employer immediately prior to becoming an adult apprentice with that employer, such person will not suffer a reduction in the rate of pay by virtue of entering into a training agreement.
- (ii) For the purpose only of fixing a rate of pay, the adult apprentice will continue to receive the rate of pay (inclusive of all-purpose allowances) that is, from time to time, applicable to the classification or class of work in which the adult apprentice was engaged immediately prior to entering into the training agreement specified in clause 15.1.

[20.3(b)(iii) substituted by PR512383 ppc 01Jan10]

- (iii) Subject to clauses 20.3(b)(i) and 20.3(b)(ii) the rate of pay of an adult apprentice will be not less than:

- the federal minimum wage plus the full rate of clause 21.1(b)- Industry allowance; or
- the amount prescribed for apprentices generally in clause 20.2;

whichever is the greater.

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Level 2	606.40	15.96
Level 1	589.30	15.51

17.3 Minimum rates for employees in Schedule D—Classification Definitions for the Pulp and Paper Stream

[17.3 varied by PR997976, PR509102 ppc 01Jul11]

Skill level	Minimum weekly wage	Minimum hourly rate
	\$	\$
Level 9	770.30	20.27
Level 8	748.80	19.71
Level 7	729.30	19.19
Level 6	707.80	18.63
Level 5	686.20	18.06
Level 4	666.80	17.55
Level 3	653.90	17.21
Level 2	641.00	16.87
Level 1	619.40	16.30

17.4 Apprentices (other than saw doctor apprentices)

Year of apprentice	Award rate for Level 5
	%
First	50
Second	60
Third	75
Fourth	90

17.5 Saw doctor apprentices

Year of apprentice	Award rate for Level 6
	%
First	50
Second	60
Third	75
Fourth	90

Where an apprentice is under the age of 21 years on the expiry of the apprenticeship, the apprentice will be paid at not less than the adult rate prescribed for the skill level on which the employee is employed.

Timber Industry Award 2010

17.6 Adult apprentices Wood and Timber Furniture Stream—Percentage of the minimum weekly wage rate for the adult classification of Level 5 in clause 17.2

[17.6 inserted by PR994716 ppc 09Mar10]

Year of Apprentice	% of level 5 minimum weekly wage
First	83.5
Second	88.3
Third	93.4
Fourth	98.5

17.7 Unapprenticed juniors

[17.6 renumbered as 17.7 by PR994716 ppc 09Mar10]

Age	Award rate for Level 2
	%
16	40
17	55
18	70
19	85
20	100

17.8 Adjustment of rates for apprentices and juniors

[17.7 renumbered as 17.8 by PR994716 ppc 09Mar10]

Rates will be calculated in multiples of \$0.05, amounts of \$0.02 cents or less being taken to the lower multiple and amounts in excess of \$0.02 being taken to the higher multiple.

17.9 Actual rate of pay

[17.8 renumbered as 17.9 by PR994716 ppc 09Mar10]

Actual rate of pay means the total amount an employee would normally receive for performing the employee's 38 hours of ordinary work. Such rate will expressly exclude overtime, penalty rates, allowances, shift allowances, special rates, fares and travelling time allowance, and any other ancillary payments of a like nature. This definition will not include production bonuses and other methods of payment by results which by virtue of their basis of calculation already produce the results intended by this clause.

17.10 Piecework and incentive work

[17.9 renumbered as 17.10 by PR994716 ppc 09Mar10]

- (a) The total minimum award rate prescribed by this clause will not apply to employees remunerated under any system or method of payment by results.
- (b) The weekly rates will be the base rate prescribed for the classification in which the employee is engaged.

(c) Procedure for classifying employees not classified by clause 24.3(b)

[24.3(c) substituted by PR995121 ppc 19Mar10]

Where an employee's level is not determined by the Metal and Engineering competency standards, the classification level is to be determined by the classification structure and definitions at Schedule B.1 to B.3 and by reference to the indicative tasks in Schedule B.4.

25. Apprentice minimum wages

[25 varied by PR986428, PR997890, PR509041]

[25.1 varied by PR997890, PR509041 ppc 01Jul11]

25.1 The minimum wages for an apprentice, except as provided for in clause 26—Adult apprentice minimum wages, are as set out in the following table, provided that progression through the stages set out in this table is in accordance with clause 25.6:

Relevant attribute of the person at the time of entering into a training agreement as an apprentice

Stage of apprenticeship	Column 1		Column 2		Column 3		Column 4	
	Completed Year 10 or less		Completed Year 11		Completed Year 12		Adult (i.e. 21 years of age or over)	
	Minimum weekly wage \$	Minimum hourly wage \$	Minimum weekly wage \$	Minimum hourly wage \$	Minimum weekly wage \$	Minimum hourly wage \$	Minimum weekly wage \$	Minimum hourly wage \$
Stage 1	288.20	7.58	331.34	8.72	347.40	9.14	520.10	13.69
Stage 2	377.41	9.93	377.41	9.93	404.30	10.64	589.30	15.51
Stage 3	514.65	13.54	514.65	13.54	514.65	13.54	606.40	15.96
Stage 4	603.86	15.89	603.86	15.89	629.70	16.57	629.70	16.57

25.2 The table in clause 25.1 applies to a Higher Engineering Tradesperson apprentice and an Advanced Engineering Tradesperson apprentice except that in Stage 4 a Higher Engineering Trade apprentice must receive a minimum wage of 88% of the C7 level and an Advanced Engineering Tradesperson apprentice must receive a minimum wage of 88% of the C5 level.

25.3 An apprentice who completes a Diploma of Engineering qualification must be paid 95% of the C5 level minimum wage in the first year after completion of the apprenticeship and subsequently at the C5 level rate of pay, provided that the qualification is relevant to the employment.

25.4 An employee who is under 21 years of age on the expiration of their apprenticeship and thereafter works as a minor in the occupation to which the employee was apprenticed must be paid at not less than the minimum wage prescribed for the classification.

25.5 The minimum wages in the table in clause 25.1 are established on the following basis:

Relevant attribute of the person at the time of entering into a training agreement as an apprentice

Stage of apprenticeship	Column 1	Column 2	Column 3	Column 4
	Completed Year 10 or less	Completed Year 11	Completed Year 12	Adult (i.e. 21 years of age or over)
Stage 1	42% of the C10 trades rate	80% of the unapprenticed junior rate under this award for an 18 year old	The relevant rate applicable to a trainee commencing after year 12 under National Training Wage Skill Level A.	National Training Wage Traineeship Skill Level B exit rate.
Stage 2	55% of the C10 trades rate	55% of the C10 trades rate	The relevant rate applicable to a trainee commencing at year 12 plus one year under National Training Wage Skill Level A.	C14 rate
Stage 3	75% of the C10 trades rate	75% of the C10 trades rate	75% of the C10 rate	C13 rate
Stage 4	88% of the C10 trades rate	88% of the C10 trades rate	C12 rate	C12 rate

- (c) **Advanced Engineering Tradesperson**—Where the training plan provides for the completion of a relevant AQF V qualification

Stage of apprenticeship	Entry, exit and progression requirements
Stage 1	<p>Entry</p> <p>Nil entry requirements.</p> <p>Exit</p> <p>There is no exit point at this stage.</p>
Stage 2	<p>Entry</p> <p>An apprentice enters Stage 2:</p> <ul style="list-style-type: none"> • on attainment of 25% of the total competency points for the relevant Diploma of Engineering qualification specified in the training plan; or • 12 months after commencing the apprenticeship, subject to clause 15.17; <p>whichever is earlier.</p> <p>Exit</p> <p>There is no exit point at this stage.</p>
Stage 3	<p>Entry</p> <p>An apprentice enters Stage 3:</p> <ul style="list-style-type: none"> • on attainment of 50% of the total competency points for the relevant Diploma of Engineering qualification specified in the training plan; or • 12 months after commencing Stage 2, subject to clause 15.17; <p>whichever is earlier.</p> <p>Exit</p> <p>Upon the attainment of 75% of the total competency points for the relevant AQF Diploma qualification specified in the training plan and subject to clauses 15.6, 15.7, 15.8 and 15.17, an apprentice may exit with the relevant AQF Certificate III and/or AQF Certificate IV qualification.</p>
Stage 4	<p>Entry</p> <p>An apprentice enters Stage 4:</p> <ul style="list-style-type: none"> • on the attainment of 75% of the total competency points for the relevant AQF Diploma specified in the training plan; or • 12 months after commencing Stage 3, subject to clause 15.17; <p>whichever is earlier.</p> <p>Exit</p> <p>Upon the attainment of 100% of the total competency points for the relevant AQF Diploma qualification specified in the training plan and subject to clauses 15.6, 15.7, 15.8 and 15.17, an apprentice will exit with a relevant AQF Diploma qualification.</p>

26. Adult apprentice minimum wages

- 26.1 A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 24.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.
- 26.2 Subject to clause 26.1, the minimum wages for an adult apprentice are set out in Column 4 of the table in clause 25.1.

27. Cadet minimum wages

27.1 Cadet in the technical field

- (a) The minimum wages for a cadet in the technical field are:

Year	% of C3 Level
First year of contract of training	40
Second year of contract of training	55
Third year of contract of training	70

- (b) The cadet is not entitled to be classified at the C3 level and paid 100% of the C3 level minimum wage, notwithstanding the fact that the qualification may have been obtained, until the three year program is completed and the requirements of the C3 level definition are met.

32. Allowances and special rates

[Varied by [PR986428](#), [PR994530](#), [PR998104](#), [PR503612](#), [PR509163](#)]

32.1 All-purpose allowances

The following allowances apply for all purposes of this award:

(a) Leading hands

A leading hand in charge of three or more people must be paid:

In charge of	Amount of the <u>standard rate</u>
3–10 employees	166.3% per week extra
11–20 employees	248.4% per week extra
more than 20 employees	316.2% per week extra

(b) Ship repairing

An employee engaged on ship repairs must be paid:

Classification	Amount of the <u>standard rate</u>
Tradespersons	75.5% per week extra
All other employees	61.1% per week extra

(c) Tool allowance—tradespersons and apprentices

[32.1(c)(i) varied by [PR998104](#) ppc 01Jul10]

- (i) Except as provided elsewhere in clause 32.1(c), a tradesperson must be paid \$14.69 per week extra for supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson.
- (ii) The allowance in clause 32.1(c)(i) does not apply to an employer who had a practice as at 5 November 1979 of providing all tools required by a tradesperson or an apprentice in the performance of their work. Such an employer is entitled to continue this practice.
- (iii) In relation to an employer not referred to in clause 32.1(c)(ii), such an employer may reach agreement with an individual tradesperson or apprentice to provide all of the tools required in the performance of their work. In such circumstances, the tool allowance is not payable.
- (iv) The allowance in clause 32.1(c)(i) applies to an apprentice on the same percentage basis as set out in Column 1 of clause 25.5.
- (v) An employer is to provide for the use of a tradesperson or an apprentice all necessary power tools, special purpose tools, precision measuring instruments and, for a sheet metal worker, snips used in the cutting of stainless steel, monel metal and similar hard metals.

- (vi) A tradesperson or apprentice is to replace or pay for any tools supplied by their employer which are lost as a result of negligence on the part of the employee.
- (vii) The provision of tools under the Federal government **tools for your trade scheme** does not constitute the provision of all tools by the employer for the purposes of clauses 32.1(c)(ii) and (iii).

(d) Tool allowance—carpenter or joiner or shipwright/boatbuilder

[32.1(d) varied by [PR998104](#) ppc 01Jul10]

A carpenter or joiner or shipwright/boatbuilder must be paid a tool allowance of \$27.81 per week extra.

(e) Application of technical computing equipment

- (i) An employee in the technical field who is required to use technical computing equipment to perform work of a complex nature must be paid 196.5% of the standard rate per week extra provided that the allowance is not payable for routine or repetitive functions, or where the system is used merely as an aid.
- (ii) **Technical computing equipment** means computer hardware (including personal computers, micro computers, mini computers or mainframe computers) using software and/or engineering applications (including design, engineering, planning or data base programs) which are used for drafting, planning, quality control, machine programming, NC programming and engineering analysis.

(iii) Work of a complex nature includes:

- the application of new concepts in their field of work, including the use of three dimensional projections; or
- the development of specialised programs for technical computing applications; or
- system development, including the evaluation of existing and alternative systems ancillary software and/or hardware; or
- the provision of training on the system for users, including the development and evaluation of self-learn and/or teaching methods or software packages.

(f) Supervisor/Trainer/Coordinator—Technical

A Supervisor/Trainer/Coordinator—Technical, who is responsible primarily for the exercise of skills in the technical field up to the level of their skill and competence and who is additionally involved in the supervision/training of other technical employees must be paid not less than 107% of the minimum wage applicable to the employee's technical classification.