



HOUSING INDUSTRY ASSOCIATION



Housing Australians



Submission to the
Fair Work Commission

**AM2016/23 – 4 Yearly Review of Modern Awards
Construction Awards**

16/03/2017



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1. INTRODUCTION

1.1 THE PROCEEDINGS

- 1.1.1 On 26 October 2016, the Fair Work Commission (**Commission**) issued Directions in relation to this matter requiring the filing of comprehensive written submissions in reply to the submissions of any party filed in or around 2 December 2016 by 10 March 2017.
- 1.1.2 HIA files these submissions in accordance with those Directions and a request made by HIA on Monday 6 March 2017 for an extension of time to file those submissions granted by the Commission on Wednesday 8 March 2017.
- 1.1.3 Of the four Modern Awards that form the 'Construction Awards' HIA's primary interest relates to the *Building and Construction General Onsite Award 2010 (Onsite Award)* and the *Joinery and Building Trades Award 2010 (Joinery Award)*.
- 1.1.4 These submissions respond to the applications made by the CFMEU in their submission dated 9 December 2016 (**CFMEU Submission**). HIA also addresses the claims of the Australian Workers Union (**AWU**) outlined in their submissions (undated) and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (**AMWU**) dated 9 December 2016.
- 1.1.5 HIA generally support the submissions of other employer groups involved in these proceedings.

2. NATURE OF THE REVIEW

- 2.1.1 The Full Bench in the Preliminary Jurisdictional Issues Decision¹ set out the relevant matters for consideration when determining applications during this Four Yearly Review of Modern Awards (**Review**).
- 2.1.2 Of note, both the Modern Awards Objectives under section 134 of the *Fair Work Act 2009 (Act)* and the broader objectives of the Act under section 3 are relevant:
- 'In performing functions and exercising powers under a part of the Act (including Part 2-3—Modern Awards) the Commission must take into account the objects of the Act and any particular objects of the relevant part (see s.578(a)).'*²
- 2.1.3 The Full Bench must balance each of the Modern Awards Objectives weighing the often observed tension between them³ and take a broad approach when considering if an award meets those objectives.⁴
- 2.1.4 Where a significant change is sought it is critical that a substantive case is brought⁵; HIA observes that a number of the changes sought in this case are significant and in such circumstances HIA would highlight the jurisdictional framework established by the Commission, notably that:

¹ [2014] FWCFB 1788
² [2015] FWCFB 3406 at paragraph 24

³ [2015] FWCFB 3406

⁴ *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* known as the *Australian Manufacturing Workers' Union (AMWU)* and *Australian Business Industrial* [2013] FWCFB 580 at paragraph 9

⁵ See [2015] FWCFB 620, [2015]FWCFB 3406, [2015] FWCFB 4466



- The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation.⁶
- The Commission will proceed on the basis that prima facie the modern award being reviewed achieved the Modern Awards Objectives at the time that it was made.⁷
- In the Review the proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective.⁸

2.1.5 HIA submit that the claims of the CFMEU, the AWU and the AMWU fail to satisfy the above established framework for the granting of a variation and as such they must fail.

3. CFMEU CLAIMS

3.1 CLAUSE 4 - COVERAGE

3.1.1 HIA refers to the variation proposed by the CFMEU in their submissions at paragraphs 161 – 172 which seeks to vary Clause 4.2 of the Onsite Award.

3.1.2 HIA opposes the variation.

3.1.3 The CFMEU have provided no evidence:

- To support the proposition that the variation is necessary to meet the Modern Awards Objectives.
- That there is any real issue with the current provision.

3.1.4 The current exclusion clause and overlapping award coverage clause in the Onsite Award are standardised provisions and are found in most Modern Awards and to vary the Onsite Award in the terms suggested goes against the general approach of the Commission during this Review to prefer common provisions across Modern Awards. The current provisions are well understood and decisions of the Commission are further refining and articulating how those provisions are to be applied. The proposed change would not, as asserted by the CFMEU ensure a ‘stable award system’.

3.1.5 Contrary to assertions that the variation will help improve the interpretation and understanding of award coverage, if anything, if granted the variation will disturb settled arrangements causing significant upheaval in the industry and unjustifiably expand the coverage of the Onsite Award.

3.1.6 Additionally the proposed variation may lead to unintended consequences insofar as those provisions interact with the coverage of other Modern Awards.

⁶ [2014] FWCFB 1788 at paragraph 60

⁷ ibid

⁸ ibid



Determining Award Coverage

- 3.1.7 The CFMEU submit that the current provision does not reflect the intent of the Commission and its predecessors in relation to award coverage. The CFMEU also claim that the current drafting prevents Clause 4.8 and similar provisions in the excluded awards from doing their normal work.
- 3.1.8 These assertions are simply wrong, are unsupported by any evidence and misconstrue the operation of the current award coverage provisions.
- 3.1.9 During award modernisation, the AIRC was directed to ‘create modern awards primarily along **industry lines**, but may also create modern awards along operational lines as it considers appropriate⁹. This was the proposition set out by the Award Modernisation Full Bench in 2008¹⁰ that is, that as far as practical, awards should be applicable to all award-covered employees **in the relevant industry**.
- 3.1.10 HIA submit that the proposed variation has the potential to reverse this approach and give priority to the work of an individual employee despite the determination of coverage according to the industry in which the employer operates.
- 3.1.11 As is well understood, rather than being clearly bound to an award as a respondent (or within a class of respondents), employers are now required to determine the appropriate award coverage:

‘Rather than using a concept of parties being ‘bound’ to awards...adopt two new key concepts which better reflect the new modern workplace relations system. These are:

- *That an instrument covers an employer and employee or organisation; (that is they fall within the scope of the instrument); and*
- *The instrument applies to the employer and employee (that is, the instrument that actually regulates rights and obligations)¹¹*

- 3.1.12 This approach is supported by the Explanatory Material accompanying the Act:

‘A modern award or enterprise agreement covers a person if, in effect, the person is within the scope or coverage of the award or agreement, even if the instrument does not actually confer entitlements or impose obligations on that person at a particular time...On the other hand, a modern award or enterprise agreement applies to a person if the relevant instrument is in operation, covers the person and actually confers entitlements or imposes obligations on that person at a particular time. It is only where the award or agreement applies to a person that the person has obligations under the instrument which the person is capable of contravening. Thus, coverage of a modern award or enterprise agreement is a broader concept than application of the award or agreement.’¹²

- 3.1.13 This distinction between ‘covers’ and ‘applies’ is central, yet ignored by the CFMEU and if adopted the proposed variation would create the following situation.

⁹ Award Modernisation Request 2 April 2008

¹⁰ [2008] AIRCFB 550 at paragraph 11

¹¹ [2008] AIRCFB 1000 at paragraph 12

¹² Explanatory Memorandum to the Act at paragraphs 99-201



- 3.1.14 An employer is covered by the Joinery Award and there is a classification for their employee under the Joinery Award. In those circumstances, the Onsite Award becomes irrelevant. However, under the CFMEU proposal, if an employer has an employee who performs work onsite and there is a classification under the Onsite Award that applies to the employee, then, despite industry coverage by the Joinery Award, the Onsite Award can cover the employer (and HIA assumes apply to the employee, although this is not clear), thus expressly permitting more than one award to both cover and apply to employers and employees. This is clearly at odds with intent of the AIRC.
- 3.1.15 If we take this example one step further, then an employer covered by the Joinery Award will be bound by the following provision:

4.1 This award covers employers throughout Australia of employees in the joinery and building trades industries and occupations who are covered by the classifications in this award and those employees. However, this award does not cover:

...

d) employers or employees covered by the Building and Construction General On-site Award 2010;

- 3.1.16 It is unclear how the proposed variation would operate in light of this provision.
- 3.1.17 Also overlooked is that the provision must also be read as a whole.
- 3.1.18 Clause 4.2 is one aspect of determining coverage under the Modern Award. The entire process outlined under Clause 4 may need to be considered in order to determine award coverage.
- 3.1.19 Clause 4.2 is intimately linked to Clause 4.1.
- 3.1.20 Clause 4.1 makes it clear that the Onsite Award is an industry award, the Onsite Award being intended to cover employers in the *'on-site building, engineering and civil construction industry and their employees in the classifications within Schedule B—Classification Definitions to the exclusion of any other modern award'*.
- 3.1.21 Clause 4.2 prevents more than one *industry based award* from covering an employer already covered by the Onsite Award. This is in line with the intent of the AIRC during award modernisation.
- 3.1.22 However, if more than one award does in fact cover an employer, Clause 4.8 provides a mechanism to deal with this scenario.
- 3.1.23 In those instances Clause 4.8 provides for consideration of the award classification *'most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work'*.
- 3.1.24 The Note to Clause 4.8 deals with a further scenario in which the Onsite Award does not contain an appropriate classification, directing the employer to consider that *'it is possible that the employer and that employee are covered by an award with occupational coverage'*.
- 3.1.25 The AIRC made clear that this approach was directed at addressing the requirement that *'where there is any overlap or potential overlap in the coverage of modern awards, the Commission will as far as possible include clear rules that identify which award applies.'*¹³

¹³ Award Modernisation Request 2 April 2008



- 3.1.26 Notably, this principle, to avoid overlapping award coverage or coverage by multiple awards, continues to be reflected in the Modern Awards Objectives.¹⁴
- 3.1.27 It is also unclear how current Clause 4.8 would operate should the variation be adopted.
- 3.1.28 HIA submit that if the proposed variation were adopted it would upset the current process for the determination of award coverage. The variation would cause uncertainty, confusion and potentially unjustifiably expand coverage of the Onsite Award.
- 3.1.29 The CFMEU rely on the case of *CFMEU v B J Jarrad Pty Ltd*¹⁵ to support the proposed variation. However, HIA submit that this decision actually confirms the current approach and the validity of the current provisions.
- 3.1.30 In that decision, the Commission appropriately applied the award provisions and, based on the evidence before it, determined that the employer in that case was in the plumbing industry and that there was an appropriate classification within that award to cover the employees. In holding that the decision at first instance was open to SDP O’Callaghan the Full Bench on appeal noted:

‘Although the On-site Award may have more specific descriptors than the Plumbing Award for some of the tasks performed by the Company’s employees, this does not mean that it should to be concluded that the relevant employees do not fall within the more general classification definitions in the Plumbing Award. It may be that the work performed by plant operators and general labourers employed by the Company may be covered by both awards. This is not an uncommon position in relation to civil construction works and, in this regard, we note that clause 4.2 of the On-site Award makes specific provision to avoid overlapping coverage (see also clause 4.8).

Clause 4.2 of the On-site Award provides that “[w]ithout limiting the generality of the exclusion, this award does not cover employers covered by: ... the Plumbing and Fire Sprinklers Award 2010”. Given the finding that the Company is covered by the Plumbing Award, it follows that the On-site Award does not cover the Company. In these circumstances, it is not necessary to consider the operation of clause 4.6 of the Plumbing Award and clause 4.8 of the On-site Award and, in particular, which award contains the classifications “most appropriate to the work performed by the employee[s] and to the environment in which the employee[s] normally [perform] the work”. However we note that on the evidence in the present matter the plant operators and general labourers are employed by a plumbing contractor and that their work is generally performed in teams under the direction and control of a qualified plumber and as part of plumbing works or works associated with plumbing works. These considerations would tend to support a conclusion that the Plumbing Award is

¹⁴ Section 134(1)(g)
¹⁵ [2013] FWCFB 8740



*the most appropriate award to cover the relevant workers employed by the Company.*¹⁶

- 3.1.31 The issue the CFMEU point to in support of their variation did not arise in this case so to assert that this decision gives weight to the proposition that Clause 4.8 of the Onsite Award is otiose is incorrect.
- 3.1.32 The CFMEU also point to the matter of *The Australian Workers Union v Coffey Information Pty Ltd*¹⁷ (**Coffey Information**), as an example of the consideration of another ‘award excluded by virtue of Clause 4.2 of the Onsite Award’.¹⁸
- 3.1.33 In that matter, the Full Bench considered the relevant award for the purposes of the BOOT.¹⁹ However the central finding of that case was that the specific provisions within the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)* be given primacy over the more general provisions of the Onsite Award, Clause 4.8 of the Onsite Award was not referred to by the Full Bench as such considerations were unnecessary given that the Manufacturing Award applied and therefore, in accordance with the interaction rules, it was unnecessary to consider the application of the Onsite Award. Relevantly the Full Bench noted:

‘Does the On-site Award apply?’

It is strictly unnecessary that we consider the basis that the Commissioner found that the On-site Award did not apply or indeed whether the On-site Award would apply if the interaction provisions did not render it inapplicable. Whether Coffey is an employer in the building and construction industry depends on an analysis of the services it provides, the relationship between those services and the construction activity and the application of the definitions in the On-site Award.

*Given the specialist nature of its services and the significant proportion of those services provided at a laboratory location some distance from the construction activities we doubt that the employer’s business can be legitimately described as the construction of civil or mechanical engineering projects. Other aspects of the award coverage provisions are broader. Notwithstanding its primary activities at base laboratories we tend to the view that a part of its business can be described as testing at a construction site or testing in connection with construction work. However the On-site Award does not cover the technicians in any event because of the interaction provisions of the awards.*²⁰

- 3.1.34 These decisions support the intent of the AIRC in developing an award system that is determined primarily along industry lines and one that reduces the overlapping coverage of modern awards.

¹⁶[2013] FWCFB 8740 at paragraph 37-38

¹⁷ [2013] FWCFB 2894

¹⁸ CFMEU Submission at paragraph 168

¹⁹ 2013] FWCFB 2894 at paragraphs 19 – 26

²⁰ [2013] FWCFB 2894 at paragraphs 27-28



The drafting of the proposed variation

- 3.1.35 If the Commission is minded to adopt the variation, HIA is concerned with its current formulation.
- 3.1.36 The current drafting of the proposed variations provides for an exception within an exception. This is at odds with the Commission plain language redrafting exercise and the *Guidelines for plain language drafting of modern awards*.²¹

3.2 CLAUSE 19 – MINIMUM WAGES

- 3.2.1 At paragraphs 173-175 of their submission the CFMEU propose to vary Clause 19 to insert a reference to a number of allowances.
- 3.2.2 The allowances in question include the:
- Refractory bricklayers allowance (Clause 21.8).
 - Air-conditioning industry and refrigeration industry allowance (clause 21.11).
 - Electricians allowance (Clause 21.12).
- 3.2.3 HIA agrees that where appropriate, referencing allowances payable for all-purposes of the award within the minimum wages clause of the Onsite Award would assist in meeting the Modern Awards Objectives by making the Onsite Award simpler and easier to understand.
- 3.2.4 However, in doing so care must be taken to ensure any such change is reflective of the purpose and intent of the allowances in questions.
- 3.2.5 The CFMEU have provided no evidence or material in support of the necessity of the variation, in fact HIA submit that the application of the allowances in question for all-purposes of the Onsite Award is not as clear as suggested by the CFMEU.
- 3.2.6 The brief assertion of the CFMEU that the proposed variation would not result in a cost increase to employers as those allowances *'are already payable...and should be included in the hourly rate calculation'* is devoid of any proper analysis of the allowances in question or the appropriateness of those allowances being payable for all purposes of the Onsite Award. We make this submission in light of the historical application of those allowances and the current drafting of the Onsite Award.

Nature of Daily Hire Engagement

- 3.2.7 Traditionally, daily hire arrangements only applied to tradespersons and labourers. This is clear from the provisions of the *National Building and Construction Industry Award 2000 (NBCIA)* and the CFMEU's own submissions during the 2012 Review of Modern Awards.²² The NBCIA did not provide an air-conditioning and refrigeration industry allowance or an electricians allowance as these trades were not traditionally covered by pre-reform building and construction awards.
- 3.2.8 By way of example, under the NBCIA the hourly rate calculation for daily hire employees was as follows:

²¹ Dated January 2017
²² A point made by the CFMEU in their submissions in support of a variation in relation to daily hire employment as part of the 2012 Modern Award Review at paragraph 4.3 of submissions dated 9/12/2012



18.3.1 Tradesperson and labourer employees - follow the job loading

18.3.1(a) The calculation of the hourly rate shall take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.

18.3.1(b) For this purpose the hourly rate, calculated to the nearest cent, (less than half a cent to be disregarded) shall be calculated by multiplying the sum of the appropriate amounts prescribed in 18.1.1, 24.1, 24.2, 24.3 and 24.5.2 of this award, by fifty-two over fifty point four (52/50.4) rounded to the nearest cent, adding to that subtotal the amount prescribed in 18.2 hereof and dividing the total by 38. Provided that in the case of a carpenter-diver, the divisor shall be 31, and for refractory bricklayers and their assistants the allowance contained in 18.10 hereof shall be added to the hourly rate.

3.2.9 As such, for labourers and tradespersons engaged as daily hire employees under the NBCIA, the following allowances were payable for all-purposes:

- Industry Allowance (24.1);
- Underground allowance (24.2);
- Tools and Employee Protection allowance (24.3);
- Refractory bricklaying allowances where appropriate (clause 18.10); and
- A number of Queensland district allowances (24.5.2).

3.2.10 It would therefore seem appropriate for the refractory bricklaying allowance to be referenced in clauses 19.1(a) and 19.1(b) of the Onsite Award.

3.2.11 The situation is less clear in relation to the air conditioning and refrigeration allowance and the electricians allowance.

3.2.12 Of note, the air conditioning and refrigeration allowance prescribes that:

21.11 Air-conditioning industry and refrigeration industry allowances

(a) In addition to the appropriate minimum wage prescribed in clause 19.1, an air-conditioning tradesperson and a refrigeration mechanic must be paid a weekly allowance of 7.9% of the weekly standard rate as compensation for the various disabilities and peculiarities associated with on-site air-conditioning work or on-site refrigeration work.

3.2.13 The CFMEU have provided no evidence in support of the proposition that this allowance or the electricians allowance is payable to daily hire employees for all-purposes of the Onsite Award.

Drafting of the proposed variation

3.2.14 If the Commission is minded to adopt the variation, there are a number of concerns in relation to the drafting of the proposed variation.

- 3.2.15 The first relates to the use of the 1/38th calculation method for those entitled to the allowance who are engaged as daily hire. This approach is at odds with the *Guidelines for plain language drafting of modern awards*²³ is confusing and unnecessary in relation to allowances that may already be prescribed as being paid hourly (as opposed to weekly).
- 3.2.16 The second relates to how the *follow the job loading* is addressed. It is HIA's view that the follow the job loading should not apply to the refractory bricklayers allowance, the air-conditioning and refrigeration allowance and the electricians license allowance and this is reflected in the CFMEU's proposed variation. However, HIA submit that further clarity within the propose variation is warranted to ensure that that position is clearly reflected in the drafting of the provision.
- 3.2.17 The third relates to the drafting of the description of the allowances.
- 3.2.18 HIA suggest the following approach be taken, noting that the refractory bricklaying allowance is already expressed as an hourly allowance in the Onsite Award:

iv) Where appropriate the following allowances will be added to the hourly rate after the calculation in (ii) above:

Clause 21.8 – Refractory bricklaying allowance

- 3.2.19 This approach is consistent with clause 19.1(b) of the Onsite Award.
- 3.2.20 If the Commission is minded to adopt the variation proposed by the CFMEU in relation to the air conditioning and refrigeration allowance and/or the electricians allowance, then as these are expressed as weekly allowances under the Onsite Award, a similar approach to that taken under clause 19.3(b) could be adopted, for example:

(iv) Where appropriate the following allowances will be added to the hourly rate after the calculation in (ii) above:

- *Clause 21.12 – electricians allowance*

and divide the total by 38

3.3 CLAUSE 20 – EXPENSE RELATED ALLOWANCE

- 3.3.1 The CFMEU propose the insertion of a new expense related allowance, being a *Communications Equipment Allowance*.
- 3.3.2 HIA opposes the variation.
- 3.3.3 The CFMEU have provided no evidence or materials in support of the proposed variation. HIA submit that the proposed allowance is not a necessary part of the minimum safety net, in fact this position is

²³ January 2017



reflected in the material advanced by the CFMEU which states that *'the majority of employers ...already provide the required communication equipment.'*²⁴

- 3.3.4 The assertion by the CFMEU that *'this is not always followed'*, is a wildly insufficient basis on which to grant the significant change proposed. HIA submit that in contrast to the position of the CFMEU the matter dealt with through this allowance is not in fact a *'grey area'*, the CFMEU conceding that it is common practice across all workplaces for employers to compensate their employees for these type of costs incurred during the course of employment.
- 3.3.5 Statements as to the increasing use of technology on construction sites and references to self-interested promotional materials from telecommunication companies can be given no weight and are irrelevant to the consideration of the Modern Awards Objectives.
- 3.3.6 The suggested approach may also have unintended consequences, including interfering with existing company policies or other contractual arrangements or adversely affecting an employee's own approach to tax deductions.
- 3.3.7 The CFMEU's proposed variation would simply add cost and regulatory burden to businesses and be particularly burdensome for small businesses. As will be elaborated on below the scope of the coverage of the proposed clause is unclear and without that specificity the cost involved in order to comply with the provision is entirely uncertain. Further, the insertion of such a provision means non-compliance results in a breach of the award and this most certainly represents a cost to business.
- 3.3.8 Further the Onsite Award currently contains over 100 allowances, and HIA sees no merit in further increasing that number. Such moves simply add to the complexity of the Onsite Award.

Inconsistency with other expense related allowances

- 3.3.9 The proposed allowance takes an approach that is inconsistent with existing expense related allowances under the Onsite Award.
- 3.3.10 Under Clause 20 of the Onsite Award expense related allowances fall broadly within 2 categories.
- 3.3.11 The first set specific amounts of compensation for example, the Tool and Employee Protection Allowance (Clause 20.1) sets an amount of \$30.45 payable to *'Artificial stoneworker, carpenter and/or joiner, carpenter-diver, carver, bridge and wharf carpenter, floor sander, letter cutter, marble and slate worker, stonemason or tilelayer'* and the Meal Allowance (Clause 20.2) sets an amount of \$14.54 to meet the cost of a meal payable in circumstances in which *'An employee required to work overtime for at least one and a half hours after working ordinary hours'*.
- 3.3.12 The second allows for agreement to be reached in circumstances in which a loss has occurred. For example under Clause 20.3(a) *'An employee whose clothes, spectacles, hearing aids or tools have been accidentally spoilt by acid, sulphur or other deleterious substances, fire, molten metal or corrosive substances, must be paid such amount to cover the loss suffered by the employee as may be agreed upon between the employee and the employer.'*
- 3.3.13 The proposed allowance falls into neither of those two categories. If adopted, an employer would have no indication as to *'what compliance looks like'* in relation to the provision. In contrast to other

²⁴ CFMEU Submission at paragraph 198



expense related allowances within the Onsite Award the proposal is uncertain and unable to be predicted or costed reliably.

Fair Work Act

- 3.3.14 The lack of specificity in relation to the proposed provision necessitates a finding that to insert the provision would be at odds Section 139 of the Act.
- 3.3.15 On its face, the title of the allowance as the *Communications Equipment Allowance* supports a view that it complies with both Section 139(1)(g) and Section 139(2), the latter requiring that an allowance be *separately and clearly* identified.
- 3.3.16 However, HIA submit that the inconsistency in approach compared to other expense related allowances under the Onsite Award and the lack of an identified amount of the expense to be incurred raises questions as to the permissibility of the provision.

3.4 CLAUSE 22 - SPECIAL RATES

- 3.4.1 The CFMEU propose to vary the Onsite Award to insert a consolidated special rates allowance. The CFMEU submit that the variation would allow an employer to pay a consolidated special rate in lieu of the majority of individual special rates that might otherwise apply.
- 3.4.2 HIA opposes the variation.
- 3.4.3 Rather than rationalising allowances, as directed by the AIRC, the proposed variation creates an additional allowance and an additional award provision.
- 3.4.4 While the proposed variation is not mandatory, HIA submit that it is of little practical utility. Table A, attached to these submissions, lists the relevant allowances under the Onsite Award. Those shaded in grey represent the allowances that **would not** form part of the proposed provision. The remainder are those allowances that could be compensated by the special rates allowance. The Table demonstrates that there would rarely be a real situation in which multiple allowance, capable of consolidation, would be payable and the CFMEU have provided no evidence of any real situations in which more than one of those allowances, able to form part of that special rate, would be payable.
- 3.4.5 Table A also demonstrates that lack of any rational for the inclusion and exclusion of certain allowances.
- 3.4.6 The CFMEU assert that the *'allowances not included in the consolidated special rates allowances are those allowances which would have limited application and/or apply to employees of companies that specialise in certain areas of work'*. However, the dirty work allowance may form part of the consolidated special rate, yet the allowance for hot work does not. There is no sense in the approach taken.
- 3.4.7 There is also no material provided explaining or justifying the use of 7.9% as the amount of the consolidated special rate.

Individual Flexibility Agreements

- 3.4.8 HIA submit that what is sought to be achieved by the CFMEU's variation could arguably be done through Individual Flexibility Arrangements, which expressly permit the consideration of allowances as part of any such agreement.
- 3.4.9 Whilst such arrangements would be subject to the BOOT, under those circumstances, employers and employees have clarity as to the benefits and amounts being considered in contrast to the current



situation in which there is no explanation or justification for how the figure of 7.9% was reached nor any cogent position as to why some allowances are considered to fall within the special rate and some are not.

How the allowance is to be paid

3.4.10 Allowances under the Onsite Award are payable via a number of mechanism:

- Some are paid as a percentage of the hourly standard rate per day.
- Some are paid as a percentage of the weekly standard rate per week.
- Some are payable for all-purposes however most are not.

3.4.11 This allowance is proposed to be a percentage of the standard weekly rate *'paid as a flat allowance for each hour worked (including time worked for accrual purposes)*.

3.4.12 This approach is confusing and at odds with the approach taken in relation to other consolidated rates, for example the asbestos eradication allowance states that:

*'Employees engaged in the process of asbestos eradication (defined as work on or about buildings involving the removal or any other method of neutralisation of any materials which consist of or contain asbestos) on the performance of work within the scope of this award, **must receive an additional 10.8% of the hourly standard rate per hour worked...**'*

3.4.13 The air conditioning and refrigeration allowance provides:

*In addition to the appropriate minimum wage prescribed in clause 19.1, an air-conditioning tradesperson and a refrigeration mechanic must **be paid a weekly allowance of 7.9% of the weekly standard rate** as compensation for the various disabilities and peculiarities associated with on-site air-conditioning work or on-site refrigeration work.*

Time and wages record

3.4.14 If the Commission is minded to adopt the variation proposed by the CFMEU, HIA strongly oppose the additional requirement that the arrangement *'be recorded in the time and wages record'*.

3.4.15 The recording of matters in relation to allowances is already prescribed by the *Fair Work Regulations 2009*.

3.4.16 Under Regulation 3.46(1) an employer is required to include the following information in a payslip:

- the employer's name; and
- the employee's name; and
- the period to which the pay slip relates; and
- the date on which the payment to which the pay slip relates was made; and
- the gross amount of the payment; and
- the net amount of the payment; and



- **any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement;** and
- on and after 1 January 2010--the Australian Business Number (if any) of the employer.

3.4.17 To include the additional requirement as outlined in proposed clause 22.1(f)(iii) simply adds unnecessary additional regulatory burden at odds with the Modern Awards Objectives.

3.5 CLAUSE 28 – NATIONAL TRAINING WAGE

3.5.1 The CFMEU seek to vary Clause 28.2 of the Onsite Award to insert time served and competency based wage progression.

3.5.2 HIA oppose the variation.

3.5.3 No evidence has been brought to support such moves in the civil sector. While relying of the *Modern Award Review 2012 - Apprentice, Trainee and Juniors*²⁵ is informative, that decision did not deal with the matters before this Full Bench, nor is this Full Bench bound by the decisions of a previous Full Bench.

3.5.4 While HIA do not oppose the principle that wages progress correspondingly with training progression, the CFMEU do not address the relative complexity involved in introducing this concept into civil construction traineeships. Critically, the CFMEU identify that in the past there were ‘*specific competencies attached to each stage so that a trainee did not progress to the next wage level until all of the specified competencies have been achieved*’²⁶ however the structure of the traineeship has changed and this approach is no longer available to assist in determining progression through wage levels based on the attainment of competencies. HIA submit that in order for genuine competency based progression to work there must be an effective match between the training progression and wage rates, something lacking from the CFMEU’s proposal.

3.6 CLAUSE 33 – HOURS OF WORK – CASUAL EMPLOYEES

3.6.1 The CFMEU propose to insert a new provision that purports to provide clarity in relation to overtime payments for casual employees.

3.6.2 HIA opposes the variation on the following grounds:

- The proposed variation would actually create ambiguity and uncertainty instead of remediating it at odds with the Modern Awards Objectives.
- The proposed variation would add cost and regulatory burden.

²⁶ CFMEU Submission at paragraph 185



Calculation of Overtime for Casual Employees

3.6.3 The proposed variation would require the payment of overtime for casual employees who work more than 8 hours in a day **and/or** more than 38 hours in a week. Such an arrangement is impractical.

3.6.4 For example, how would an employer calculate the overtime payable to a casual employee who works the following hours between 7am and 6pm:

- 10 hours Monday,
- 10 hours Tuesday,
- 10 hours Wednesday,
- 5 hours Thursday, and
- 5 hours Friday.

3.6.5 The above equals a total of 40 hours in the week. Under the CFMEU proposal it is unclear whether the casual employee would be entitled to:

- 2 hours of overtime (based on working more than 38 hours in the week); or
- 6 hours of overtime (based on working 3 days of more than 8 hours each day).

3.6.6 As noted in the CFMEU submission this issue was raised by the Fair Work Ombudsman, yet they have published the following position:

Overtime - Casual employees

Casual employees get overtime rates if they work:

- *more than the maximum number of ordinary hours of work per week only (not per day)*
- *outside the spread of ordinary hours.*²⁷

3.6.7 HIA agrees with this approach.

3.6.8 The CFMEU proposal would significantly alter this settled view and impose significant cost and unnecessary regulatory burden on employers.

Clause 33 and the application of the RDO system to casual employees

3.6.9 Clause 14.2 of the Onsite Award provides that:

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

²⁷ <http://www.fairwork.gov.au/employee-entitlements/hours-of-work-breaks-and-rosters/hours-of-work/when-overtime-applies#2169-2174> <accessed 210217>



- 3.6.10 It is generally understood that due to the operation of Clause 14.2, Clause 33 will apply to casual employees.
- 3.6.11 Therefore, and in lieu of any evidence to the contrary, HIA submit that the current operation of Clause 14 and Clause 33 is understood and as such the variation is unnecessary.

3.7 CLAUSE 24 - LIVING AWAY FROM HOME CLAIM

- 3.7.1 HIA notes that the CFMEU proposes substantive variations to the provisions of the Onsite Award and Joinery Award that deal with living away from home allowances.
- 3.7.2 HIA notes that those operating in the residential construction industry are largely unaffected by the existing living away from home provisions of the Onsite Award and Joinery Award. The evidence relied on by the CFMEU reflect this in that it does not deal with the residential construction industry. As such HIA generally supports the submissions of other employer groups.
- 3.7.3 While HIA makes the following brief submission in response to the CFMEU's proposed variation in circumstances in which HIA has not sought to address the specific details of the claim, this is to be regarded in no way as lending support for the variation.

Employees address

- 3.7.4 The variations proposed by the CFMEU to Clause 24.2 of the Onsite Award represent a significant change. The CFMEU is proposing to:
- Insert additional words to existing clause 24.2(b) such that an employer 'will not unreasonably refuse any request by an employee to change their address'; and
 - Insert new provision 24.2(c) requiring that an employer not exercise undue influence for the purpose of avoiding the obligations under the provision in persuading an existing employee to give a false address.
- 3.7.5 In HIA's view, the proposed provisions not only introduce a significant degree of uncertainty, they afford employees an unsubstantiated level of discretion in relation to entitlements. They are also likely to provoke additional disputes.
- 3.7.6 Further, the materials relied on by the CFMEU relates only to the civil construction sector. In fact at paragraph 22 of their submissions they expressly concede that point.
- 3.7.7 However, if the Commission is minded to adopt the variation, then varied provisions should only apply to the civil construction sector. Such an approach may be effected through the current coverage clauses that distinguish between works considered to be:
- general building and construction;
 - civil construction; and
 - metal and engineering construction.

Increase in Allowances

- 3.7.8 The CFMEU propose to increase the living away from home allowance from \$478.44 per complete week to \$913.88 per week. That equates to an increase of \$435.44 per week, nearly double the current amount.



- 3.7.9 The CFMEU also propose to increase the living away from home allowance from \$68.45 per day to \$130.55 per day. That equates to an increase of \$62.10, also nearly double the current amount.
- 3.7.10 HIA submit that the proposed increases would have a significant effect of businesses yet the materials relied on to justify the proposed increase are insufficient in light of the significant nature of the change sought.
- 3.7.11 In fact the CFMEU concede that the use of the Australian Taxation Office determination (TD2016/16) on reasonable travel expenses are not amounts recommended to be paid but are amounts solely used by the ATO in relation to amounts permitted to be deducted without a requirement that they be substantiated. The misappropriation of those amounts by the CFMEU for the purposes of determining a minimum safety net entitlement under a modern award is inappropriate and should be given little weight.
- 3.7.12 In addition the 'survey' of meal costs and hotel/motel and other accommodation lacks rigor and represents a self-selected assessment of an assortment of restaurants and accommodation website. Such limited materials cannot be relied on to justify almost a doubling of the current allowances.

Minimum Accommodation Standard

- 3.7.13 The variation proposed by the CFMEU would introduce a significant number of additional requirements in relation to what would be considered *accommodation of a reasonable standard*. HIA submits that some of these are impractical, particularly for remote locations, and go beyond an appropriate part of the minimum modern award safety net.
- 3.7.14 Outlined below is a side-by-side comparison of that provided under the current provision, with what is proposed by the CFMEU:

Current provision	Proposed Provision
Reasonable ablution/laundry	Single room
Recreational and kitchen facilities	Quiet
Reasonable external lighting	Air conditioning/heating
Mail facilities	Comfortable and clean bedding
Radio or telephone contact	Appropriate lighting and furnishings
Fire protection	Ensuite with a toilet
	Shower and basin both with running hot and cold water
	Television
	Tea and coffee making facilities
	Reasonable ablution/laundry
	Recreational and kitchen facilities
	Reasonable external lighting
	Fire protection
	Communication facilities including email, internet access, mobile phone coverage or other radio or telephone contact where mobile coverage is unavailable.



- 3.7.15 This comparison not only highlights the significant expansion of the obligations that would be imposed on an employer but also the subjective nature of a number of those requirements.
- 3.7.16 The materials relied on to substantiate the claim which includes ILO conventions and various State based Government inquiries, are insufficient in light of the significant changes sought.
- 3.7.17 In relation to the former given that Australia has not ratified either ILO R115 - Workers' Housing Recommendation, 1961 (No. 115) or ILO R175 - Safety and Health in Construction Recommendation, 1988 (No. 175), there relevance to the current proceedings can be afforded limited weight.
- 3.7.18 In relation to the latter HIA would observe that the two inquiries relied on were directed towards specific terms of reference.
- 3.7.19 The Qld Inquiry was tasked with considering:

- *The health impacts on workers and their families from long-distance commuting, particularly mental health impacts, and the provision of health services in mining communities.*
- *The effects on families of rostering practices in mines using FIFO workforces.*
- *The extent and projected growth in FIFO work practices by region and industry.*
- *The costs and/or benefits and structural incentives and disincentives, including tax settings, for companies choosing a FIFO workforce.*
- *The effect of a 100% non-resident FIFO workforce on established communities including community wellbeing, the price of housing and availability, and access to services and infrastructure.*
- *The quality of housing provided in accommodation villages for FIFO workforces.*
- *Strategies to optimise the FIFO experience for employees and their families, communities and industry.*
- *The commuting practices for FIFO workforces, including the amount of time spent travelling, the methods of transportation, and adequacy of compensation paid for commuting travel times.*
- *The effectiveness of current responses to impacts of FIFO workforces of the Commonwealth, State and Local Governments.*
- *Any other related matter*

- 3.7.20 Of note, the Final Report of the Qld Inquiry:

'...acknowledge(s) that matters relating to taxation and industrial relations rest within the jurisdiction of the Australian Government and was therefore limited in making recommendations for change.'

- 3.7.21 While the WA Inquiry considered

- (a) the contributing factors that may lead to mental illness and suicide amongst FIFO workers;*
- (b) the current legislation, regulations, policies and practices for workplace mental health in Western Australia; and*
- (c) current initiatives by government, industry and community, and recommend improvements.*

- 3.7.22 Both inquiries focused specifically on the circumstances of FIFO workers. This is also the case in relation to the witness evidence relied on by the CFMEU.
- 3.7.23 Significantly, the CFMEU's proposed provision impacts more than just employers of FIFO workers, yet there is limited evidence in support of variations that would affect all covered by the Onsite Award.
- 3.7.24 In regard to the specific variation to insert requirements in relation to email and internet access and mobile phone coverage, the ability to do so may not be within the employers' control. These circumstances have not been contemplated by the proposed provision.

Camping allowance

- 3.7.25 The CFMEU propose to increase the camping allowance from \$191.96 for every complete week to \$420 this equates to an increase of \$228.04.
- 3.7.26 The CFMEU propose to increase the camping allowance from \$27.40 per day to \$60 per day this equates to an increase of \$32.60.
- 3.7.27 The CFMEU have however provided no evidence to justify such a significant increase.

Rest and recreation

- 3.7.28 HIA note that the variation proposed by the CFMEU represents a significant change to the awards in which it is sought.
- 3.7.29 HIA supports the submissions of other employer groups in opposition to the claim.

4. AMWU CLAIM

- 4.1.1 HIA note that the AMWU seeks to vary clause 43.2(b) of the Onsite Award so that Forepersons and Sub forepersons would be entitled to overtime payments, shift work premiums, special rates, meal allowances, allowances for travelling and board, motor allowances, first aid allowances and other additional amounts specified in clause 24 – Fares and travel patterns allowances, 24 – Living away from home – distant work or 22 – special rates.
- 4.1.2 The current clause within the Onsite Award states that employees in receipt of wages in accordance with clause 43.2(a) do not receive these additional entitlements.
- 4.1.3 HIA opposes the variation.
- 4.1.4 HIA submits that the proposed variation represents a significant change to the Onsite Award.
- 4.1.5 HIA submit that whilst the AMWU assert that it is not their intentions to '*establish any new entitlement*' the effect of the variation is that it would. In those circumstances substantive evidence in support of the change must be brought which the AMWU has failed to do.
- 4.1.6 Further, the AMWU have failed to provide any evidence in support of the interpretation of the relevant provision of Appendix B of the MECA 2002 that would outweigh the current interpretation and operation of clause 43.2(b).

5. AWU CLAIM

- 5.1.1 HIA note that the AWU seek to vary the Onsite Award to insert an additional classification at CW/ECW2 for *tester – soil, concrete and aggregate*.
- 5.1.2 HIA opposes the variation.
- 5.1.3 This variation would not only expand the coverage of the Onsite Award but also seeks to ascribe a rate of pay to those engaged in that type of work and the AWU have provided no evidence in support of



the proposed change. Specifically, HIA submit that pointing to the historical evolution of the Onsite Award is simply not enough to justify the significant change sought.

- 5.1.4 The AWU rely on the decision of Coffey Information²⁸ to highlight the issue sought to be rectified by the proposed variation.
- 5.1.5 In HIA's view the decision of Coffey Information simply reflects the process of determining award coverage; the Onsite Award is an industry based award, the Manufacturing Award is both an industry and occupational based award. The Commission determined that the occupational coverage of the Manufacturing Award was more appropriate than the industry based coverage of the Onsite Award.
- 5.1.6 Further, there is nothing to suggest that the decision of the Commission in that case would have been any different had the classification sought in these proceedings been included within the classifications of the Onsite Award.

²⁸ [2013] FWCFB 2894



TABLE A

Item	Allowance	Clause setting out entitlement	Type of allowance	Payable for all purposes	Amount
38	Insulation	22.2(a)	Disability	No	4% of the standard hourly rate per hour
39	Hot work –artificially between 46 degrees and 54 degrees	22.2(b)	Disability	No	3.2% of the standard hourly rate per hour
40	Hot work – artificially above 54 degrees	22.2(b)	Disability	No	4% of the standard hourly rate per hour
41	Cold work- artificially lower than 0 degrees	22.2(c)	Disability	No	3.2% of the standard hourly rate per hour
42	Confined spaces	22.2(d)	Disability	No	4% of the standard hourly rate per hour
43	Swing scaffold: 0-15 storeys, first 4 hours	22.2(e)	Disability	No	23.3% of hourly standard rate per hour
44	Swing scaffold: 0-15 storeys, each subsequent hour	22.2(e)	Disability	No	4.8% of hourly standard rate per hour
45	Swing scaffold: 16-30 storeys, first 4 hours	22.2(e)	Disability	No	30.1% of hourly standard rate per hour
46	Swing scaffold: 16-30 storeys, each subsequent hour	22.2(e) 22.2(e)	Disability	No	6.3% of hourly standard rate per hour
47	Swing scaffold: 31-45 storeys, first 4 hours	22.2(e)	Disability	No	35.6% of hourly standard rate per hour
48	Swing scaffold: 31-45 storeys, each subsequent hour	22.2(e)	Disability	No	7.2% of hourly standard rate per hour
49	Swing scaffold: 46-60 storeys, first 4 hours	22.2(e) 22.2(e)	Disability	No	58.3% of hourly standard rate per hour
50	Swing scaffold: 46-60 storeys, each subsequent hour	22.2(e)	Disability	No	12% of hourly standard rate per hour
51	Swing scaffold: more than 60 storeys, first 4 hours	22.2(e)	Disability	No	74.3% of hourly standard rate per hour
52	Swing scaffold: more than 60 storeys, each subsequent hour	22.2(e) 22.2(e)	Disability	No	15.4% of hourly standard rate per hour
53	Explosive power tools	22.2(f)	Skill	No	7.6% of hourly standard rate per day
54	Wet work	22.2(g)	Disability	No	3.2% of hourly standard rate per hour
55	Dirty work	22.2(h)	Disability	No	3.2% of hourly standard rate per hour
56	Toxic substances – directly engaged	22.2(i)	Disability	No	4% of hourly standard rate per hour
57	Toxic substances – engaged	22.2(i)	Disability	No	3.2% of hourly standard rate per hour
58	Fumes	22.2(j)	Disability	No	As agreed
59	Asbestos – where required to wear protective clothing	22.2(k)	Disability	No	4% of hourly standard rate per hour
60	Asbestos eradication	22.2(l)	Disability	No	10.8% of hourly standard rate per hour (applies instead of other special rates apart from hot, cold, swing scaffold, plaster spray, second hand timber and acid work rates)
61	Furnace work	22.2(m)	Disability	Yes	8.5% of hourly standard rate per hour
62	Acid work	22.2(n)	Disability	Yes	8.5% of hourly standard rate per hour
63	Heavy block (other than bricks) – over 5.5kg and under 9kg	22.2(o)	Disability	No	3.2% of hourly standard rate per hour



64	Heavy block (other than bricks) – 9kg to 18kg	22.2(o)	Disability	No	5.8% of hourly standard rate per hour
65	Heavy block (other than bricks) – over 18kg	22.2(o)	Disability	No	8.2% of hourly standard rate per hour
66	Bitumen work	22.2(p)	Disability	No	4% of hourly standard rate per hour
67	Height work	22.2(q)	Disability	No	2.9% of hourly standard rate per hour
68	Suspended perimeter work platform	22.2(r)	Disability	No	4.9% of hourly standard rate per hour
69	Carrying fuels, oils and grease in employee vehicle	22.2(s)	Disability	No	1.4% of hourly standard rate per day
70	Pile driving	22.2(t)	Skill	No	2% of weekly standard rate per day or part thereof
71	Dual lift allowance	22.2(u)	Skill	No	16.2% of the hourly standard rate per day or part thereof
72	Stonemasons – cutting tools not provided	22.2(v)	Disability	No	0.2% of hourly standard rate per hour
73	Towers allowance (general building and construction sector only) – work more than 15m high	22.3(a)(i)	Disability	No	3.2% of hourly standard rate per hour
74	Towers allowance (general building and construction sector only) –each additional 15m	22.3(a)(i)	Disability	No	3.2% of hourly standard rate per hour
75	Cleaning brickwork using acids (general building and construction sector only)	22.3(b)	Disability	No	2.9% of hourly standard rate per hour
76	Bagging (general building and construction sector only)	22.3(c)	Disability	No	2.9% of hourly standard rate per hour
77	Plaster or composition spray (general building and construction sector only)	22.3(d)	Disability	No	3.2% of hourly standard rate per hour
78	Slushing (general building and construction sector only)	22.3(e)	Disability	No	3.2% of hourly standard rate per hour
79	Dry polishing of tiles (general building and construction sector only)	22.3(f)	Disability	No	3.2% of hourly standard rate per hour
80	Cutting tiles with electric saw	22.3(g)	Disability	No	4% of hourly standard rate per hour
81	Second-hand timber damaging tools (general building and construction sector only)	22.3(h)	Disability	No	12.6% of hourly standard rate per day
82	Roof repairs – employees generally (general building and	22.3(i)(i)	Disability	No	4% of hourly standard rate per hour



	construction sector only)				
83	Roof repairs –roof slaters and tilers only, over 15 m high (general building and construction sector only)	22.3(i)(i)	Disability	No	2.9% of hourly standard rate per hour
84	Roof repairs – roof slaters and tilers only, more than 15m high and pitch over 35 degrees (general building and construction sector only)	22.3(i)(ii)	Disability	No	4% of hourly standard rate per hour
85	Roof repairs – roof slaters and tilers only, more than 15m high and pitch over 40 degrees (general building and construction sector only)	22.3(i)(ii)	Disability	No	5.8% of hourly standard rate per hour
86	Computing quantities (general building and construction sector only)	22.3(j)	Skill	No	23.3% of hourly standard rate per day
87	Grindstone allowance – grindstone or wheel not available (general building and construction sector only)	22.3(k)	Disability	No	0.9% of weekly standard rate per week
88	Brewery cylinders painters - (general building and construction sector only)	22.3(l)	Disability	No	50% of ordinary rates When working overtime -overtime rates plus 50% of ordinary rates rates
89	Certificate allowance - (general building and construction sector only)	22.3(m)	Disability	No	3.2% of hourly standard rate per hour
90	Spray application – painters without booth (general building and construction sector only)	22.3(n)	Skill	No	3.2% of hourly standard rate per hour
91	Pneumatic tool operation – tool 2.75kgs or more (general building and construction sector only)	22.3(o)	Disability	No	17.6% of hourly standard rate per day
92	Bricklayer operating cutting machine (general building and construction sector only)	22.3(p)	Disability	No	4% of hourly standard rate per hour
93	Hydraulic hammer (general building and construction sector only)	22.3(q)	Disability	Yes	5.4% of hourly standard rate per hour

94	Waste disposal (general building and construction sector only)	22.3(r)	Disability	No	6.7% of hourly standard rate per hour. minimum 3 hours payment
95	Pipe enameling (civil construction sector only)	22.4(a)	Disability	No	0.9% of weekly standard rate per day or part thereof
96	Powdered lime dust (civil construction sector only)	22.4(b)	Disability	No	3.5% of hourly standard rate per hour
97	Sand blasting (civil construction sector only)	22.4(c)	Disability	No	0.4% of hourly standard rate per hour
98	Live sewer work (civil construction sector only)	22.4(d)	Disability	No	2.9% of hourly standard rate per hour
99	Timbering (civil construction sector only)	22.4(e)	Disability	No	3.6% of hourly standard rate per hour
100	Special work (civil construction sector only)	22.4(f)	Disability	No	0.4% of hourly standard rate per hour
101	Compressed air work: 0 -35 kPa (civil construction sector only)	22.4(g)	Disability	No	6.9% of hourly standard rate per hour
102	Compressed air work: 35 -65 kPa (civil construction sector only)	22.4(g)	Disability	No	8.7% of hourly standard rate per hour
103	Compressed air work: 65 - 100 kPa (civil construction sector only)	22.4(g)	Disability	No	17.6% of hourly standard rate per hour
104	Compressed air work: 100-170 kPa (civil construction sector only)	22.4(g)	Disability	No	35% of hourly standard rate per hour
105	Compressed air work: 170 - 225 kPa (civil construction sector only)	22.4(g)	Disability	No	58.3% of hourly standard rate per hour
106	Compressed air work: 225 - 275 kPa (civil construction sector only)	22.4(g)	Disability	No	111.7% of hourly standard rate per hour
107	Cutting stone (civil construction sector only)	22.4(h)	Disability	No	4% of hourly standard rate per hour

