

15 September 2017

Fair Work Commission  
Terrace Tower, 80 William Street  
East Sydney NSW 2011  
By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

## Re: Construction Awards (AM2016/23)

### Background

1. On 17 August 2017, the 'Construction Awards Full Bench' which has been constituted as part of the 4-yearly review of modern awards, issued a Statement concerning potential amendments to clauses 20.1, 21-22, 24.1 – 24.3 and 33 of the *Building and Construction General On-site Award 2010* ("**On-site Award**").
2. The Full Bench directed interested parties to file submissions in response to the Statement by 5:00pm on Friday, 15 September 2017.
3. The following submissions are provided on behalf of The Australian Workers' Union ("**AWU**").

### Tool and employee protection allowance

4. Clause 20.1(b)(vi) of the current On-site Award has a paragraph at the end concerning mess personnel. This paragraph contains a requirement for an employer to launder the employee's clothing. This requirement is not reflected in the Commission's draft clause.
5. We suggest the existing provision could be inserted as a new sub-paragraph (f) in the Commission's draft clause.

### Allowances

6. The AWU is not opposed to the concept of simplifying the On-site Award via abolishing some existing allowances and compensating employees with a commensurate increase to the industry allowance.
7. However, the AWU considers this goal of simplification will be compromised if different industry allowances are created for different sectors within the On-site Award.
8. The AWU considers there would be merit in the Commission facilitating some additional conferences with affected parties to discuss the simplification process. This is likely to at least narrow the scope of matters to be determined by the Commission.
9. In terms of the issues identified by the Commission at paragraph [5] of the Statement, the AWU's position is:
  - (a) the most appropriate definition for the civil construction sector is contained in clause 4.10(b) of the current On-site Award. However, as stated above, the AWU does not support differing industry allowance rates across the sectors;
  - (b) the quantum of the industry allowance should be increased by an amount which ensures employees are not disadvantaged overall by the simplification process; and
  - (c) the non-monetary conditions which form part of the current hot work (clause 22.2(b)(ii)) and powdered lime dust (clause 22.4(b)(iii)) clauses should be retained.

### **Living away home – distant work entitlement**

10. The AWU continues its support for the variations identified by the Construction, Forestry, Mining and Energy Union (“**CFMEU**”).
11. In relation to clause 24.3(b) of the Commission's draft clause, the AWU is concerned that “community living standards having regard to the location in which the work is performed” is not an appropriate reference point for accommodation requirements. Distant work is often performed in quite remote locations where communities may endure relatively low living standards.
12. If the Commission is not prepared to adopt the variation proposed by the CFMEU, an alternative form of words for consideration is:

*Any accommodation provided under paragraph (a) must be in accordance with contemporary living standards taking account of limitations arising from the location in which work is performed and must include reasonable washing, laundry, recreational, kitchen, external lighting, communications and fire protection facilities.*

## **Ordinary hours of work**

### Fixed RDOs and banking

13. The Commission's draft clause proposes the deletion of the fourth Monday in each four-week cycle as the default rostered day off ("**RDO**") and a substantial broadening of the ability to bank rostered days off.
14. The AWU remains opposed to changes of this nature.

### Conditions when directed to work on an RDO

15. The proposed wording for clause 33(a)(v)(B) would result in a dramatic reduction to current conditions. The effect of the proposed clause is that an employee can be directed to work on a scheduled RDO and will be paid the Saturday overtime rates in clause 37. However, there is no reference to an employee receiving an alternative RDO or at least being paid for their accrued RDO.
16. Given an employee has worked the hours necessary to accrue an RDO, the employee needs to be compensated for the additional hours they work on their scheduled RDO and for the hours they have previously worked to accrue the RDO.

#### **EXAMPLE** – applying the Commission's proposed wording

Assuming an ordinary hourly rate of \$30 per hour, an employee has worked 7.6 hours to accrue their RDO – they have not been paid for these hours. If an employee is directed to work 7.6 hours on their scheduled RDO, the employee would be paid:

$$2 \text{ hours} \times \$45 + 5.6 \text{ hours} \times \$60 = \$426.$$

This means the employee has worked a total of 15.2 hours and been paid \$426. This equates to \$28.03 per hour which is lower than their ordinary hourly rate.

## Work in compressed air

17. The Commission's proposed wording for clause 33(d)(iii) replicates the wording from the current On-site Award.
18. Various parties have identified that the current reference to *Standards Association of Australia for work in compressed air, Part 1 Airlock Operations* is outdated.
19. The relevant current document is AS 4774.1 – 2003 Australian Standard – *Work in compressed air and hyperbaric facilities – Part 1: Work in tunnels, shafts and caissons*.
20. The AWU provided a draft determination via email on 12 April 2017 which proposed the following wording to resolve the reference issue:

*The employment conditions and associated entitlements set by this award shall apply. Limitations on time spent working in compressed air and the physical conditions under which such work is performed shall be subject to the applicable Australian Standard.*

21. The AWU understood from informal discussions that this variation was acceptable to the other relevant parties.

## Underground work

22. The Commission's proposed wording for clause 33(d)(iv)(C) replicates the wording in clause 33.1(e)(iii) of the current On-site Award.
23. The AWU and CFMEU have previously identified that the current On-site Award contains an error to the effect that employees who are intended to receive the benefit of a 30-hour week are excluded by the provision.
24. The only amendment required is to delete the word "except" so the clause reads:

*A week's work will be 30 hours per week, exclusive of crib time, ~~except~~ in the following cases:*

1. *miners driving tunnels with a superficial area not exceeding 12.2 metres (40 feet);*
2. *miners sinking shafts over 15.2 metres (50 feet) in depth; and*

- 3. persons packing and/or scabbling in dead ends and/or boodler working.*

**Crawford de Carne Lawyers**