

CFMEU

CONSTRUCTION

IN THE FAIR WORK COMMISSION
Matter Number: AM2016/23

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Construction awards
(AM2016/23)

CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION
(CONSTRUCTION & GENERAL DIVISION) COMMENT ON DRAFT
DETERMINATION ISSUED 31ST OCTOBER 2019

11th November 2019

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Introduction

1. On the 31st October 2019 the Full Bench issued a Decision ([2019] FWCFB 6860) (the October 2019 Decision) dealing with the substantive matter of the industry allowance and other allowances to be included in the *Building and Construction General On-site Award 2010* (Building Award).
2. In conjunction with the October 2019 Decision the Full Bench issued a draft determination¹ to give effect to the variations that the Full Bench had determined were necessary to be made to the Building Award. The Full Bench gave interested parties a period of 14 days to comment on the form of the draft determination. The CFMMEU (construction & General Division) (CFMMEU C&G) makes the following comments in accordance with that timetable.

Item 2

3. In item 2 of the draft determination the words “clause 21.1 – special allowance” are to be deleted from clause 19.3(b). The CFMMEU C&G submits that more changes are needed to clause 19.3(b) (due to other clause number changes) and that the whole clause should be replaced with the following:

“(b) Weekly hire employees

The hourly rate will be calculated by adding the amounts prescribed in:

clause 19.1—Minimum wages;

clause 21.1—Industry allowance;

and, where applicable:

clauses 20.1—Tool and employee protection allowance;

clause 22.2—Underground allowance;

clause 22.8—Air-conditioning industry and refrigeration industry allowance;

clause 22.9—Electrician’s licence allowance; and

clause 22.10—In charge of plant;

and dividing the total by 38.”

¹ See pages 10-15 of [2019] FWCFB 6860

Item 3

4. In item 3 of the draft determination the allowances to be included in the new clause 19.7(e) follow the same order as they appear in the current clause. The change in numbering of the allowances however makes this sequence not in numerical order. It is therefore suggested that the first two dot points be switched so that “clause 20.1-Tool and employee protection allowance” appears before “clause 21.1 –Industry allowance”.

Item 4

5. In item 4 of the draft determination the existing clause 21 is to be replaced by the new clause 21 Industry allowances. The CFMMEU (C&G) submits that as the industry allowances are part of the ordinary time hourly rates and therefore payable for all-purposes, it would be preferable for the award to clearly state this. This could be achieved by adding a new clause 21.3 as follows:

“21.3 The industry allowances payable under this cause are to be paid for all-purposes of the award.”

Item 5

6. In item 5 of the draft determination the existing clause 22 – Special rates is to be replaced by the new clause 22 Other allowances. The proposed clause 22.3(c) contains the definitions of the key terms used in clause 22.3 Multistorey allowance. The CFMMEU C&G submits that it is illogical not to include the wording from the current clause 21.4(e) –Plant room, within the definition of storey level in the proposed 22.3(c). Clause 21.4(e) of the current award is not an allowance, it is an additional definition that assists the parties in determining the number of storeys in a building. The inclusion of the plant room as a storey level (using the wording from 21.4(e)) has been well settled in the industry for many years (see for example the decision of C. Simmonds of the AIRC in Baulderstone Hornibrook Pty Ltd and The Amalgamated Society of Carpenters and Joiners of Australia and others (C No. 31638 of 1991))² and to not include it in part of the definition will lead to industrial disputation in the industry. The CFMMEU C&G therefore submits that the proposed clause 22.3(c) be changed to the following:

² <https://www.fwc.gov.au/documents/decisionssigned/html/j8845.htm>

“(c) In this clause:

multistorey building means a building which will, when complete, consist of five or more storey levels

complete means the building is fully functional and all work which was part of the principal contract is complete

storey level means structurally completed floor, walls, pillars or columns, and ceiling (not being false ceilings) of a building and will include basement levels and mezzanine or similar levels (but excluding half floors such as toilet blocks or store rooms located between floors), and a plant room situated on the top of a building if the plant room occupies 25% of the total roof or an area of 100 square metres whichever is the lesser

floor level means that stage of construction which in the completed building would constitute the walking surface of the particular floor level referred to in the table of payments.”

7. In the proposed clause 22.3(f)(i) the wording in the brackets can be deleted as the new clause no longer refers to the towers allowance clause.

November 2018 Draft Determinations

8. The CFMMEU (C&G) notes that the draft determinations issued by the Full Bench in November 2018³ relating to other matters (decided on by the Full Bench in the September Decision) have still not been finalised. As the parties have already made submissions in regard to those draft determinations it would be preferable, once the Full Bench has determined the matters, to make the operative date of those determinations the same as the draft determination the subject of this submission, particularly as the name of clause 20.1 may change and impact on these variations.

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201623-260-draftdet-231118.pdf>