IN THE FAIR WORK COMMISSION

Matter No.: AM2014/260 Building and Construction General On-site Award 2010 and AM2016/23 Construction Awards

Submission of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

4 Yearly Review of Modern Awards

COVER SHEET

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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Introduction

1. The Australian Manufacturing Workers' Union **(AMWU)** makes the following submission to the Fair Work Commission in response to the Full Bench Decision in the 4-yearly review of modern awards for AM2015/23 Construction Awards [2018] FWCFB 6019,[1] which includes the Award Stage review matter AM2014/260 Building and Construction General On-site Award 2010.

2. The AMWU has a particular interest in the Building and Construction General On-site Award 2010 **(Building Award).**

3. This submission will address the following proposals:

    a. The Full Bench's provisional proposal to replace 52 allowances with 2;

    b. The Full Bench's provisional proposal to redraft the Forepersons and General Foreperson's minimum wage clause; and

    c. The Full Bench's proposal to vary the classification definitions to accommodate soil and concrete testers.

4. In relation to other issues for which the Full Bench sought further feedback from parties about, the AMWU supports the submissions of the Construction, Forestry, Maritime, Mining and Energy Union **(CFMMEU),** the Australian Workers' Union **(AWU)** and the Communications, Electrical Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia **(CEPU).**

Replacing 52 Allowances with 2 allowances is unfair and disadvantages classes of employees

5. The Full Bench has provisionally proposed that 52 different allowances contained in the Building Award should be replaced with two allowances at 4% and 5% respectively.[2]

6. The two glaring outcomes of the provisional proposal which stand out are as follows:

    a. All residential construction employees will be worse off by at minimum 0.6% of the standard weekly rate per week.

    b. All air-conditioning tradespeople and refrigeration mechanics will be worse off by at minimum of 7.5% of the standard weekly rate per week.

7. The AMWU opposes the Full Bench's provisional view that these allowances should be replace with the two rates of 4% and 5%. The AMWU opposes the Full Bench provisional proposal because:

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[1] [2018] FWCFB 6019.

[2] [2018] FWCFB 6019 at [359] to [372].

a. The Full Bench has not disclosed all the relevant particular information, facts, rationale or thoughts upon which the proposal is based.

b. The Full Bench has not provided an opportunity for parties to consider and respond to the relevant particular information, facts, rationale or thoughts, upon which the provisional proposal is based.

c. Classes of employees will be clearly disadvantaged by the proposal without justification.

8. The AMWU acknowledges that members of the Commission are appointed because of their legal, alternative dispute resolution and industrial relations expertise. The Full Bench is entitled to rely upon the legal, alternative dispute resolution and industrial relations expertise of Commission members in the performance of its functions. The intersection between this expertise and principles of natural justice are relevant to the present proceedings.

9. The following extract discussing this intersection, from the Council of Australasian Tribunals' *Practice Manual for Tribunals 4th Edition*, is of particular relevance to the present proceedings:

> "The use by the tribunal of its own knowledge can raise issues of prejudgment under the bias rule, and disclosure obligations under the hearing rule. The following points are worth noting.
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> • An expert tribunal is entitled to draw upon its general expertise and experience when evaluating the evidence and reaching its conclusions, and does not have to disclose its knowledge.[3] An apprehension of bias will more readily arise where the tribunal relies on particular rather than general information. Where the tribunal proposes to rely upon particular factual information known to it or discovered through its own investigations and the information is prejudicial to the interests of a party, the tribunal should disclose the information to the parties and give them an opportunity to respond to it.[4] For example, if a medical member knows that a diagnostic test relied upon by an expert medical witness for a party is unreliable, the member should put the point to the witness (if opportunity presents) or otherwise to the party. If the tribunal relies on information that is from an identifiable source such as a medical journal, the source as well as the information should be disclosed. That is particularly the case if the source material may contain errors or be open to misinterpretation: *Australian Associated Motor Insurers Ltd v Motor Accidents Authority of NSW* (2010) 56 MVR 108.
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> • Where the tribunal is relying on its own theory to explain events, it must disclose that theory to the parties. For example, in *Keller v Drainage*

[3] *Minister for Health v Thomson* (1985) 8 FCR 213 at 217 (Fox J), 224 (Beaumont J). However, this will not be the case where the knowledge goes beyond professional expertise and amounts to personal knowledge or observation: *Koppen v Commissioner for Community Relations* (1986) 11 FCR 360.
[4] *R v Milk Board; Ex parte Tomkins* [1944] VLR 187.

Tribunal,[5] a civil tribunal decided a claim on the basis that there was a perched water table which had caused the damage in issue. The existence of a perched water table had not been referred to by the parties, and the tribunal had given them no indication that it had this theory in mind.

• In some circumstances, a tribunal may rely on its own observations of the actions or demeanour of a party in reaching its decision. If the tribunal proposes to use the observation in a way that is prejudicial to the party, it should ask itself whether the party could reasonably be expected to anticipate how the tribunal might view the behaviour. If the answer is negative, the tribunal must notify the party and allow them to respond.

For example, suppose that a party gives evidence that the party is incapable of sitting for more than an hour at a time due to back pain, but the tribunal observes the person in the hearing room sitting quite freely for hours at a time. If the tribunal proposes to rely on its observations of the behaviour to reject the party's evidence on that matter, it must first tell the person or their legal representative what it has observed and what conclusion it intends to draw and give the person an opportunity to answer the point.[6]

This is an application of the general principle of procedural fairness that a party must be given an adequate opportunity to present their case. If a tribunal is proposing to rely upon evidence that contradicts the testimony of a party or witness, it must ensure that the substance of that contrary evidence is put to the person so that they have an opportunity to explain the contradiction. In court proceedings, this is known as the rule in Browne v Dunn.[7] Even a tribunal that is not bound by the rules of evidence may nevertheless be required to apply the rule to ensure procedural fairness.[8]

• The following additional points are reproduced from the Workers Compensation Commission (NSW) Arbitrators Manual.[9] A member may have personal knowledge not simply of a particular field, but also of the people who work within it. However, the accuracy of the member's knowledge or information will be untested and might amount to little more than gossip. This kind of information must not be taken into account without the knowledge of the parties.

• Where a member is appointed because the person is known to possess certain knowledge, the member should take care to base their decision in a particular case on the facts of that case and not simply in accordance with preconceived views or knowledge.[10] If a member has personal

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[5] [1980] VR 449.
[6] *Kassem v Crossley* [2000] NSWCA 276 (Unreported, NSW Court of Appeal, Mason P, Heydon JA and Clarke AJA, 13 June 2000).
[7] (1893) 6 R 67 (HL).
[8] *Marelic v Comcare* (1993) 47 FCR 437 at 443 (Beazley J); *A School v Human Rights and Equal Opportunity Commission* (No 2) (1998) 55 ALD 93 at 111–12 (Mansfield J).
[9] Workers Compensation Commission (NSW), Arbitrators Manual (2002) n 37.
[10] *Koppen v Commissioner for Community Relations* (1986) 11 FCR 360.

knowledge of particular people involved or events at issue in a case, apart from knowledge gained from normal professional association, then the member should disclose the nature of this knowledge to the parties."

10. The AMWU respectfully submits that the provisional decision has not provided sufficient detail about the particular information, facts, rationale or theories upon which the Commission has based its decision for parties to be able to properly respond.

Non-disclosure of relevant information, etc

11. The Full Bench has not disclosed all the relevant information, facts, rationale or theories upon which the provisional proposal to abolish 52 allowances is based.[11]

12. The reasoning in the Full Bench's decision included the following statements which relate to abolishing the 52 allowances (highlight added):

> "[354] Clauses 21 and 22 contain a large and miscellaneous collection of allowances, which are undifferentiated in terms of whether they are payable for the exercise of additional skills, compensate for a disability or reimburse for an expense incurred. In a number of cases it is difficult to ascertain whether the allowance is payable on an all-purpose. Some allowances may commonly be paid, such as the multi-storey allowance in clause 21.4. A number of others are obscure or would rarely be paid, such as the laser safety operator allowance (clause 21.6), slushing (clause 22.3(e)), second-hand timber (clause 22.3(h)) and the grindstone allowance (clause 22.3(k)). The last is payable to each carpenter or joiner when a grindstone or wheel is not made available (presumably in circumstances where the employee must provide or source a grindstone or wheel). Some allowances appear to be irrelevant to employees working on construction sites, such as the allowance in clause 22.3(r) for plant operators working in landfill and garbage tips. Some provisions are not concerned with allowances at all, but make provision for other entitlements. For example, clause 22.3(l)(i) requires a painter in brewery cylinders or stout turns to be allowed a paid "15 minute spell in the fresh air at the end of each hour worked", which in substance amounts to a safety requirement. Clause 20.1(c), which specifies equipment to be provided to employees working with toxic substances in areas lacking adequate natural ventilation is another example of a safety requirement not associated with any pay entitlement. Some provisions appear to compensate for the disabilities associated with at-risk working environments; these include fumes (of sulphur or other acid – clause 22.3(j)), asbestos eradication (clause 22.3(l)), and acid work (clause 22.3(n)).

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[11] See further, the Administrative Review Council publication, "A Guide to Standards of Conduct for Tribunal Members" August 2009, indicates the need for proactive disclosure of relevant information at page 54 under the heading "Transparency." And the Council of Australasian Tribunals, "Practice Manual for Tribunals," 4th Edition March 2017 at pages 68 – 69 under heading 3.5.2 Tribunal Relying on its own knowledge.

[355] In an overall sense, the scheme of allowances in clauses 20-22 does not constitute a fair relevant safety net, having regard in particular to their impact on the regulatory burden (s 134(1)(f)) and the need to ensure a simple, easy to understand, stable and sustainable modern award system (s 134(1)(g))."

"[359] The CFMMEU's proposal for a facilitative provision allowing a number of disability allowances to be rolled up into a single consolidated special rate has some conceptual attraction. It reflects the approach commonly taken in enterprise agreements in the industry, where a single site allowance is usually payable to employees instead of the range of award disability allowances. However the actual proposal suffers from a number of defects. First, the proposed amount of the allowance, 7.9% of the weekly standard rate, is clearly excessive. Secondly, the consolidated allowance would only be payable by agreement between the employer and the employee. This would not achieve simplicity nor reduce the administrative burden associated with the assessment and payment of the various allowances. Thirdly, the limited list of disability allowances proposed to be encompassed by the consolidated allowance appears to us to be inadequate. Accordingly we do not consider that the CFMMEU proposal would meet the modern awards objective, and it is rejected. However the concept of rolling some or all of the disability allowances into a single payment has merit, and is one which we propose to pursue as discussed below."

"[368] As to the consolidation of allowances in clauses 21 and 22, we intend to proceed with the general approach foreshadowed in the December 2017 Statement. For the reasons already explained, we consider the array of disability allowances for which provision is made in the Building Award is not consistent with the modern awards objective. The multistorey allowance, which is commonly paid and is relevant to a specific category of work, will be retained, but all other disability allowances will be abolished and replaced by an enhanced industry allowance, variable in quantum having regard to the particular industry sector in which an employee is engaged. However we no longer consider that the four industry sectors proposed in the December 2017 Statement are necessary, and our provisional view is that it is sufficient for there to be two sectors only: residential building and construction (defined by reference to the activities referred to in clause 4.10(a) of the Building Award undertaken in relation to single occupancy residential building which is not a multistorey building), and all other building and construction, including civil construction and metal and engineering construction.

[369] As to the quantum of the allowance, the Commission has not been assisted by reluctance of the industry parties to engage with the reforms proposed in the December 2017 Statement to simplify that which is clearly an overly-complex and outdated system of disability allowances that is no longer appropriate in a modern award. In those circumstances we proposed to state our provisional view concerning the quantum of the

allowance, and then give interested parties one further opportunity to advance any alternative proposals, make any submissions or confer in relation to the quantum of the proposed sectoral industry allowances. It is obviously not possible in undertaking the exercise we propose to ensure that no employee will be worse off in any circumstance. Nor is it possible to ensure that some employees will not be better off than under the current system. Our general objective is to simplify the current system on the basis that it will generally be cost neutral for workforces over the longer term. The amount we propose for the industry allowance for the residential building and construction sector is an all-purpose amount of 4% of the weekly standard rate per week, and 5% for all other building and construction work. The amount for residential construction is lower because many of the disability allowances are either not applicable at all to, or rarely paid in, that sector. These new allowances will be payable in lieu of the following allowances:" (List not included)

13. The basis of the principles, findings of fact and statements highlighted has not been disclosed by the Full Bench.

14. In disposing of the CFMMEU's claim in paragraph [359] it is unclear:

    a. The basis upon which the Full Bench formed a view that 7.9% is "clearly excessive" for parties voluntarily entering into an agreement to roll up allowances.

    b. The basis upon which the Full Bench formed the view that rolling up allowances by agreement would "not achieve simplicity nor reduce the administrative burden associated with the assessment and payment of the various allowances," for parties entering into such a facilitative arrangement.

    c. The exact number of allowances which would overcome the judgment that what was proposed by the CFMMEU was "inadequate."

15. The above issues have relevance to the Commission's own provisional proposal (and beyond the disposal of the CFMMEU's proposal), as they appear to be referenced as supporting rationale for the provisional decision in relation to the Full Bench's proposal set out in [368] – [372].

16. Consistent with the Commission's obligations under s.577 of the *Fair Work Act* 2009 as well as principles of natural justice, an opportunity should be provided to parties to respond to the underlying rationale, asserted facts, special knowledge or thoughts which formed the basis for supporting the provisional decision about the Full Bench's proposal.

17. In particular it is unclear the basis for the challengeable views in paragraph's [354] – [355] and [368]-[369] that:

    a. The "large and miscellaneous collection of allowances" are "undifferentiated in terms of whether they are payable for the exercise of

additional skills, compensate for a disability or reimburse for an expense incurred."

b. "In an overall sense, the scheme of allowances in clauses 20-22 does not constitute a fair relevant safety net, having regard in particular to their impact on the regulatory burden (s 134(1)(f)) and the need to ensure a simple, easy to understand, stable and sustainable modern award system (s 134(1)(g))."

c. "The array of disability allowances for which provision is made in the Building Award is not consistent with the modern awards objective."

d. The award contains clauses, "which is clearly an overly-complex and outdated system of disability allowances that is no longer appropriate in a modern award."

e. "It is obviously not possible in undertaking the exercise we propose to ensure that no employee will be worse off in any circumstance. Nor is it possible to ensure that some employees will not be better off than under the current system."

f. The modern awards objective would be achieved through the Full Bench's stated objective: "Our general objective is to simplify the current system on the basis that it will generally be cost neutral for workforces over the longer term."

g. 4% is appropriate for the residential construction industry fair and relevant safety net of minimum conditions and entitlements.

h. 5% is appropriate for the other construction industry fair and relevant safety net of minimum conditions and entitlements.

i. "The amount for residential construction is lower because many of the disability allowances are either not applicable at all to, or rarely paid in, that sector."

18. Paragraph [354] appears to describe a selection of the 52 allowances proposed to be abolished intermixed with findings of fact about the application of some of the allowances. The basis of these findings of fact are not disclosed, although some presumptions are disclosed.

19. In relation to each of the above points "a" through to "i" the AMWU makes the following submissions:

a. The allowances are not miscellaneous and are not undifferentiated. They were originally conceived for particular purposes which should be explored if the Commission is uncertain about their purpose and wishes to discard them. As will be discussed further in this submissions, it appears there are many allowances which have been considered by the Commission in its proposal.

b. The Commission appears to be giving more weight to the modern award objective considerations of the regulatory burden[12], and a simple and easy to understand award system[13] compared with the considerations of the needs of the low paid[14] and the basic principle of fair compensation for the type of work performed.

c. This approach, if followed to its logical conclusion would see the Award shrink to only a set of minimum wages. No specific facts concerning the industry or occupations relating to the allowances has been revealed as being a basis for this conclusion.

d. There has not been disclosed the basis for concluding that the 52 allowances which have been established over a significant industrial history "in an overall sense" is not consistent with the modern awards objective. A fair and relevant minimum safety net of terms and conditions should include fair compensation for work performed. The system of allowances provides for the different circumstances that might exist under the Award, which is the result of the amalgamation of industries.

e. The Commission's conclusion that the 52 clauses were an *"overly complex and outdated system of disability allowances that is no longer appropriate in a modern award,"* [15]makes assumptions about what is *"overly complex,"* what is *"outdated"* and what a *"modern award"* should be, which is not universally held in regard to each of the 52 allowances proposed to be abolished.

f. The AMWU does not say that each allowance on its own is fair and relevant. Only that the Commission has not revealed the basis upon which it has determined that they are not. The general statements which include contestable assumptions does not form a sufficient basis to abolish the allowances. This is so because they do not allow parties to properly advance their case against the undisclosed information which is informing the contestable assumptions.

g. The Commission asserts that it is not possible to ensure no employee is worse off or that no employees will be better off. However, the provisional proposal would ensure that all residential construction employees would be worse off (as discussed further below) and possibly other classes of employees. The obvious reduction in safety net for all residential construction employees is strong evidence that the basis for the conclusions is contestable if they were to be disclosed.

h. The Full Bench's conclusion that the provisional proposal would be "cost neutral for workforces over the longer term" indicates some quantitative analysis. However, no quantitative analysis has been released for comment. Considering that some workplaces for example air-

[12] *Fair Work Act 2009* s.134(1)(f).
[13] Ibid s.134(1)(g).
[14] Ibid s.134(1)(a).
[15] [2018] FWCFB 6019 [369].

conditioning services providers, would employ a majority of air-conditioning and refrigeration mechanics, the proposal would appear to be a windfall for these employers.

i. The Commission's provisional conclusion that 4% is appropriate for residential construction does not appear to be supported by any modelling or analysis about the financial impact on award reliant employees. The simple calculation that the inclusion of the two mandatory allowances, Clause 22.1 Special Rate and Clause 22.2 Industry allowance would result in 4.6% reveals that all employees in the category of residential construction would be worse off by a minimum of 0.6%, not taking into account any of the other 50 allowances they might be eligible for. This reveals at best serious flaws in the Commission's modelling and analysis, which lead to the conclusion that "it was not possible to ensure no employee would be worse off or that no employee would be better off." At worst, it indicates the Commission's provisional proposal is completely arbitrary. The Commission's provisional decision did not state an intention for all residential construction employees to be worse off.

j. The Commission's provisional conclusion that 5% is appropriate for other construction sectors also appears not to be supported by any modelling or analysis about the financial impact on award reliant employees. For example, the simple calculation of including the two mandatory allowances and the air-conditioning tradespersons and refrigeration mechanics allowance (which would be paid for all time worked) results in a 12.5% rate, make it clear that this class of employees would be worse off by at least 7.5% nearly two years worth of Annual Wage Review increases. The decision stated no intention to cause all air-conditioning tradespeople and refrigeration mechanics to be worse off by such a significant amount. There are other classes of employees in a similar circumstance. No basis has been given for causing employees in these sectors to subsidise others in the industry for increases (if any can be found).

k. The conclusion that the "amount for residential construction is lower because many of the disability allowances are either not applicable at all to, or rarely paid in, that sector," given the calculations revealing all employees in this sector will be worse off (as outlined earlier), indicates that the decision is based on information and assumptions which should be disclosed for parties to respond to and challenge.

20. It is not clear from the decision how the Full Bench arrived at the decision to abolish the allowances and it is not clear how the 4% and 5% figure were arrived at. However, it was clear, after the evidence had been tendered and parties were presenting submissions that the Full Bench, following the conclusion of evidence being tendered, the Full Bench was grappling with the process should be for interrogating and dispensing with or updating obsolete allowances and / or changing the way in which they were compensated.

There has been some discussion about the way in which the Commission could gather relevant information to support its provisional proposal

21. The following excerpt from the Transcript on 10 April 2017 includes questions from the Bench which illuminate the thinking of the :

"PN3260

DEPUTY PRESIDENT GOSTENCNIK: Mr Crawshaw the concern I have is that, well, and no doubt you'll say it's not dealt with in the evidence, but reading a lot of these allowances and having some understanding of their provenance, that I tend to think that they're reflecting work practices that aren't contemporary work practices. That is, I'm not sure how – to what extent these allowances are expressly engaged with the current reality of working practices in the industry.

PN3261

MR CRAWSHAW: I don't know that either, your Honour. But the reason I don't know it, is because there wasn't any evidence about the matter. Which is what your Honour predicted I might say.

PN3262

DEPUTY PRESIDENT GOSTENCNIK: I mean, for example, is the boatswain's chair a feature of the modern construction industry?

PN3263

MR CRAWSHAW: I would have to get instructions on these matters, your Honour.

PN3264

UNIDENTIFIED: It is in Hong Kong.

PN3265

MR CRAWSHAW: In Hong Kong.

PN3266

VICE PRESIDENT HATCHER: So is bamboo scaffolding.

PN3267

DEPUTY PRESIDENT HAMILTON: I mean the origins of a lot of these allowances are various disputes and campaigns of past decades and they've stuck around and the language is still the same. There may be similar modern language, but it hasn't been updated – in some cases, perhaps.

PN3268

MR CRAWSHAW: Well, I don't know. With the boatswain's chair, I don't know whether that's till used in the industry or not. It may be, I don't – I'm in a similar position. I can only tell you things that there was evidence about, or things that I've got instructions on. I haven't got instructions on a lot of these matters, because they weren't the subject of submissions.

PN3269

I'll take you to the matters – and I'm not going to be lengthy about it.

PN3270

VICE PRESIDENT HATCHER: The difficulty is that these things stay in the awards decade after decade because no one – this is not a criticism, but no one takes the effort of examining whether they have any reflection of contemporary circumstances. So, they just stay there, and they get more out of date and more out of date.

PN3271

MR CRAWSHAW: That's if they are out of date. But if they are out of date – I haven't done many of these exercises, but I've seen enough of the decision of the Commission, to say that's it up to those that are saying it's out of date, to present a cogent case. If they speak for themselves, maybe you don't need evidence, but these allowances don't speak for themselves in the majority of cases, at least.

PN3272

One would expect probity of evidence by someone in the industry that these matters are out of date. Not some generalised submission to the - - -

PN3273

DEPUTY PRESIDENT HAMILTON: For example, you could take an approach, which is this, which is that the objective is not remove an entitlement, which would be one of your main concerns, I would assume, but simply to use current language and practices.

PN3274

VICE PRESIDENT HATCHER: Say for example the cofferdam worker allowance, that's not to say whether there should or shouldn't be an allowance for work of that description, but whether what's described here is consistent with contemporary

working practices, or whether it's just a bit of verbiage that has no practical use.

PN3275

MR CRAWSHAW: Well, I don't know. If there had been a submission, at least a submission about it, put aside evidence, we would have addressed it. We addressed all the matters, all the allowances, all the subclauses, I should say, that were the subject of submissions. I'll tell you where we did it, that's what I was about to do, without going in detail to what we say about them.

PN3276

Really, or in the end, the MBA's submissions, the written submissions, only specifically deal with a small number of the subclauses. Today, they've dealt with some others orally, and I'll try and deal with them to the extent I can on the way through, but - - -

PN3277

DEPUTY PRESIDENT HAMILTON: Say if we wanted to update the language but retain the entitlement of that clause, presuming there is some form of current work practice. How would we go about that?

PN3278

MR CRAWSHAW: If the Commission is worried about that, I think the best way would be one of the members of the Bench to sit down with the parties, with people who are actually experienced in the industry to go through those matters. I can't see how you can do it as presently – based on the submissions that are presently before you.

PN3279

VICE PRESIDENT HATCHER: A more radical solution might be, for example, with the disability allowances to abolish them all and have some compensatory adjustment to the industry allowance and ditto all the various tool and equipment provisions, abolish them and have some adjustment to the tool allowance.

PN3280

MR CRAWSHAW: If that option is seriously being put forward, we'd like the opportunity to make submissions about it. I can't deal with it on the run."[16]

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[16] Transcript 10 April 2017 PN3260 – PN3280

22. Another exchange between the Full Bench and Ms Adler from the HIA on the same day is also illuminating:

> "PN3577
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> VICE PRESIDENT HATCHER: And again, leaving to one side the quantum issue that is conceptually, is it of any merit if it allowed parties to have the option to roll up allowances into a single amount and simplify the administration of the award?
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> PN3578
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> MS ADLER: I think there's utility in exploring that. I think that there are certain allowances that deal with the same subject matter. For example, there's a number of allowances that deal with working at heights. Yet there are at hand - -
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> PN3579
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> VICE PRESIDENT HATCHER: Isn't that possibility already provided for in the award flexibility provisions?
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> PN3580
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> MS ADLER: It is, your Honour, and we make that point in our written submission as well.
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> PN3581
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> DEPUTY PRESIDENT HAMILTON: Is it ever used?
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> PN3582
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> UNIDENTIFIED: No.
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> PN3583
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> MS ADLER: From our membership, there are some allowances which are rolled in through individual flexibility agreements and I'll come to that at some other point in our oral submissions. A lot of these allowances don't necessarily apply to residential construction work. Multi-rise residential would be a different situation, but for the single dwelling road housing type construction, a lot of these would not apply.
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> PN3584
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> DEPUTY PRESIDENT HAMILTON: If there was to be a roll up of allowances into a single industry allowance, how would we go about setting the number?
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> PN3585
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> MS ADLER: I'd have to take that question on notice, your Honour. And that's I guess, been part of the difficulty in discussions around these allowances, is the quantum. Every

allow – I won't say every allowance, most of the allowances have a different quantum attributed to them and that was also our concern with the 7.9 per cent, is where did that come from and how was it arrived at. The submission just now, doesn't provide me with any greater comfort with how that was arrived at.

PN3586

DEPUTY PRESIDENT HAMILTON: The obvious way is to do a survey or payroll of some kind. That's the sort of ABS style methodology. It would have very limiting, but it would be very rough.

PN3587

MS ADLER: It's not an easy task. I mean the other option would be to do an assessment of the variety of rates that are already in the award and see if there's something that can be gleaned from that or some rationale behind why they are already the way they are and work from that basis. But beyond that, and I think that's probably the sticking point with why discussions around these matters have been so difficult, because the quantum is different depending on which allowance you're talking about.

PN3588

Notwithstanding that, the claim proposed by the CFMEU, I don't actually think solves the issue that a lot of us have talked about for years, about rationalising the allowances. It adds another allowance, from our perspective it doesn't necessarily provide any benefit by using that. A number of the allowances that could be used as part of that 7.9 per cent would not actually be incurred at the same time. So, you're back to sort of square one, but now you've got an additional award provision in the award."[17]

23. Ms Adler asked the following question, *"our concern with the 7.9 per cent, is where did that come from and how was it arrived at."* One would expect her organisation, the HIA, would have asked the same question of the Commission's proposed 4% and 5% figures. However, her organisation distributed a media release praising the Commission's decision, without asking about the 4% and 5% what she asked of the CFMEU's proposed 7.9%. The media release is attached at Attachment B.

24. These exchanges indicate the proposal was a live consideration for the Bench following the closing of each party's evidentiary case. The suggestion by Deputy President Hamilton indicates the Commission was considering its own information gathering process. The AMWU is not aware of the details or the fruits

[17] Transcript 10 April 2017 PN3577 – PN3588

of any information gathering process conducted by the Commission to establish the rate of use of allowances.

25. The AMWU would note that the any such payroll survey as proposed by Deputy President Hamilton is not likely to be illustrative, given two factors. The first is that many employees are paid under enterprise agreements. The second is that there is such a high rate of wage theft currently in existence in the industry presently. The Fair Work Ombudsman's most recent report on its National Building and Construction Industry Campaign July 2015 revealed that underpayments were recovered from 96 businesses of the 610 that were audited. That is a 15.7% rate of underpayment. 250 of the 610 were non-compliant in some form or another, which is an extraordinary rate of 41%.[18] Interesting, the report also found that only 75% of employers were paying their employees correctly, which would mean around 25% were not paying their employees properly.[19] The FWO report is attached at Attachment C.

26. The AMWU submits that Mr Crawshaw was correct in seeking an opportunity to respond to the radical proposal if it was being seriously considered. However, the AMWU respectfully submits that the modelling, analysis, information, etc upon which the proposal is based should also be disclosed for parties to respond to.

27. In the AMWU's submission of 18 September 2017 the AMWU did raise the concern that the proposal as it existed at that time was lacking a figure:

> "38. Without a proposed amount in the proposed rationalisation it is not possible to identify how workers may be impacted."[20]

28. At the hearing (following the round of submissions responding to the August 2017 Statement) the AMWU in oral submissions indicated that the way forward for the Commission in rationalising this significant amount of allowances would be to visit work sites and review each disability allowance individually in the context of the current environment. And the only way for the Commission to get access to the evidence that it needs to support such a proposition would be to do a review of the industry conditions.[21]

29. The AMWU's research into the air-conditioning and refrigeration allowance proceedings provides further support to this AMWU submission that for each allowance, there should be site visits and an opportunity for parties to gather evidence about whether or not the various entitlements underpinning the allowances are or are not obsolete or warrant retention.

Specific classes of employees are proposed to be disadvantaged

30. It is clear from the AMWU's early and limited assessment of the allowances proposed to be abolished that there are specific categories of employees who would receive their allowances all of the time and who would clearly be

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[18] Fair Work Ombudsman Campaign Report National Building and Construction Industry July 2015 at page 5.
[19] Fair Work Ombudsman Campaign Report National Building and Construction Industry July 2015 at page 7.
[20] Submission of the AMWU 18 September 2017 [38].
[21] Transcript 17 November 2017 PN476.

disadvantaged by the proposal to replace their allowances with 4% or 5%. Those two classes as identified above are:

a. All residential construction employees.

b. All air-conditioning tradespeople and refrigeration mechanics.

Air-conditioning Tradespersons and Refrigeration Mechanics

31. Air-conditioning Tradespersons and Refrigeration Mechanics receive an allowance which arose out of a decision of Commissioner Cox 27 August 1987 in relation to the Metal Industry Award 1984 – Part I.[22] The decision and associated order is attached to this submission at Attachment D and E.

32. The decision which was published 31 years ago included the following conclusions after consideration of submissions and evidence:

> (1) Employees working on the installation of air-conditioning and refrigeration plant work in connection with the construction industry and it is therefore appropriate for such work to be covered by Appendix A – On-site Construction Work, of the Metal Industry Award.
>
> (2) Inspections and evidence have demonstrated that there has been significant change in the nature of the work, and the conditions under which the work is carried out by employees engaged on air-conditioning and refrigeration work and it is appropriate to adjust and provide a new allowance to recognise such work.
>
> (3) It is appropriate for Refrigeration Mechanics and Service persons, engaged on construction on-site work in Queensland to be given proper award recognition.
>
> (4) The award variations necessary to give effect to these conclusions are permissible under Principles 9 and 11 of the National Wage Case Principles of 26 June 1986.[23]

33. It is also relevant to note that according to the decision, the then Australian Conciliation and Arbitration Commission conducted workplace visits in Brisbane, Adelaide and Sydney at 7 locations.

34. The site visits along with witness evidence were taken into account by the Commission in supporting its decision.

35. The air-conditioning allowance granted at that time at paragraph 15 of the Order (Attachment B) was set at the rate of $28.30, which was 9.79% of $289.10, which

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[22] M039 Dec 400/87 S Print G8724 Air conditioning and refrigeration employees Metal Industry Award 1984 – Part I Commissioner Cox

[23] M039 Dec 400/87 S Print G8724 Air conditioning and refrigeration employees Metal Industry Award 1984 – Part I per Commissioner Cox the concluding four points are at page 5

was the NSW base trade rate (equivalent to the modern award standard rate). Considering the industry allowance $13.50 and the special allowance $7.70 (equivalent to the modern award clause 22.1 special allowance) at the time, this amounted to the 17.1% of the NSW base trade rate.

36. This process undertaken by the Commission presents the answer to several questions explored in the extract above from the Transcript of 10 April 2017 in the present proceeding.

CFMMEU Proposal for a new industry allowance

37. The AMWU submits that the CFMMEU proposal for a new all-purpose industry allowance represents the minimum of what a rolled-up rate should be.

38. The AMWU attaches the witness statement of Mr Steven Isberg, which is marked Attachment F. The evidence of Mr Isberg is that the work of air conditioning tradespeople and refrigeration mechanics working on site is unique, and still involves various disabilities, including work at heights, in confined spaces with insulation and dirty work among others.

39. Given the continuing subsistence of such disabilities the AMWU submits that there is no basis for the pay of such tradespeople to be cut by a minimum of 7.5%.

40. Instead the AMWU submits that the CFMMEU proposal should be retained as it will ensure that there is no pay cut for these tradespeople.

The Manufacturing Award contains a formula for setting the minimum wage for Foreperson's and Supervisors

41. The Full Bench has sought views about an appropriate clause for setting the minimum wage for forepersons and general forepersons.

42. The AMWU proposes that the Full Bench adopt a mechanism such as that which currently exists at clause 24.1(g) of the Manufacturing and Associated Industries and Occupations Award 2010 (**Manufacturing Award)** which relevantly provides:

> ***"(f) Supervisor/Trainer/Coordinator—Levels I and II***
>
> *(i) The minimum hourly wage for a Supervisor/Trainer/Coordinator—Level I is 122% of the minimum hourly wage paid to the highest technically qualified employee supervised or trained or 104.3% of the standard rate per hour, whichever is the higher.*
>
> *(ii) The minimum hourly wage for a Supervisor/Trainer/Coordinator—Level II is 115% of the minimum hourly wage paid to the highest paid employee supervised or trained or 113.1% of the standard rate per hour, whichever is the higher."*

43. This clause has been applicable in the industry since before the creation of the Metal, Engineering and Associated Industries Award 1998.[24] It is simple and easy to understand and provides for a properly fixed minimum rate.

Including a "Technical Field" classification at ECW2 level is appropriate

44. The AMWU submits that the work of testers of soil, concrete and aggregate is part of the "Technical Field" of work which is defined in the Award at B.1.13.

> "B.1.13 Work in a technical field includes:
>
> - Production planning, including scheduling, work study, and estimating materials, handling systems and like work;
>
> - Technical, including inspection, quality control, supplier evaluation, laboratory, non-destructive testing, technical purchasing, and design and development work (prototypes, models, specifications) in both product and process areas and like work; and
>
> - Design and draughting and like work."

45. The work of laboratory, scientific and engineering testing work has always been understood to be included in the "technical field" of work. The classification of laboratory tester within the definition at clause B.3.6 of the Manufacturing and Associated Industries and Occupations Award 2010 which currently covers the work of the soil testers is within the "technical field" of work within the Manufacturing Award.

46. In order to ensure that the Building Award clearly covers the work type under the Technical Field of work, the AMWU proposes a variation to the Award in the form of the Technical Field of work, which currently begins at CW/ECW4 level. The AMWU proposed variations will extend the Technical Field of work to CW/ECW2.

47. The AMWU proposes that the following paragraph be added to the definitions of CW/ECW2.

> *"(e) General Technician*
>
> *A General Technician is an employee who has the equivalent level of training and/or experience to a CW/ECW 2 worker but who performs work in the technical fields as defined in B.1.13, such as testing (Tester – Soil, Concrete and Aggregate)."*

48. This will create a new classification of General Technician.

49. A draft determination is attached at Attachment A.

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[24] http://www.airc.gov.au/consolidated_Awards/AP/AP789529/asframe.html

End

14 November 2018

Attachment A - Proposed Draft Directions

DRAFT DETERMINATION

Fair Work Act 2009
Part 2-3 Division 4 – 4 Yearly Review of Modern Awards
s.156(2)(b)(i)

Building and Construction General On-site Award 2010
(MA000020)

Building and Construction Industries

AM2014/260 Building and Construction General On-site Award 2010

VICE PRESIDENT HATCHER SYDNEY, X XXX 2018

4 yearly review of modern awards – soil testers.

[1] Further to the decision and reasons for decision <<decision reference>> in AM2016/23, it is determined pursuant to section 156(2)(b)(i) of the Fair Work Act 2009, that the Building and Construction General On-site Award 2010 be varied as follows.

B.2.2 Construction worker level 2/Engineering construction worker level 2 (CW/ECW 2)

[2] Delete B.2.2 heading and replace with the following heading:

"**B.2.2 Construction worker level 2 /Engineering construction worker level 2 (General Technician) (CW/ECW 2)**"

Schedule B.2.2(e)

[3] Delete B.2.2(e) and replace with the following (e) and (f):

"(e) General Technician

A General Technician is an employee who has the equivalent level of training and/or experience to a CW/ECW 2 worker but who performs work in the technical fields as defined in B.1.13, such as testing (Tester – Soil, Concrete and Aggregate).

(f) An employee at this level may be undergoing training so as to qualify as a CW/ECW 3."

VICE PRESIDENT

Attachment B

HIA

the voice of the industry

MEDIA RELEASE

4 October 2018

Improvements to the Building Award

"The $130 billion residential building industry is an efficient and productive industry that needs easy to understand and flexible employment conditions," stated Melissa Adler, HIA's Executive Director – Industrial Relations.

The Full Bench of the Fair Work Commission handed down a decision relating to the Building and Construction General Onsite Award, last week. This decision is part of a four yearly review of the modern awards.

"In an unprecedented decision, the Fair Work Commission overturned numerous outdated and burdensome provisions in the Building and Construction Award," said Ms Adler.

"In doing so, the Commission addressed the need to simplify the Award and reduce the numerous (over 100) industry, disability and expense related allowances into just one allowance, making the calculation of an employee's rate of pay clearer.

"By allowing employees to set aside the 'Rostered Day Off Calendar' that required them to take every fourth Monday as a RDO, the Fair Work Commission has also empowered employers and employees to agree to accrue RDO's and overtime to be taken as an additional form of leave.

"The building industry has driven employment and economic growth across the economy over recent years and has been constrained by a persistent shortage of skilled trades. Enabling greater flexibility will enable the industry to lift its contribution to the national economy," concluded Ms Adler.

For further information:

Melissa Adler	Executive Director – Industrial Relations	0414 665 871
Joe Shanahan	National Media Manager	0410 449 556

Attachment C

National Building and Construction Industry Campaign 2014/15

Report – July 2015

A report prepared by the Fair Work Ombudsman under the Fair Work Act 2009

Australian Government
Fair Work OMBUDSMAN

Contents

Australian Government

Fair Work OMBUDSMAN

BUILDING & CONSTRUCTION INDUSTRY CAMPAIGN REPORT

700 AUDITS CONDUCTED 2014-2015

FINDINGS

75% OF EMPLOYERS WERE FOUND TO BE PAYING THEIR EMPLOYEES CORRECTLY

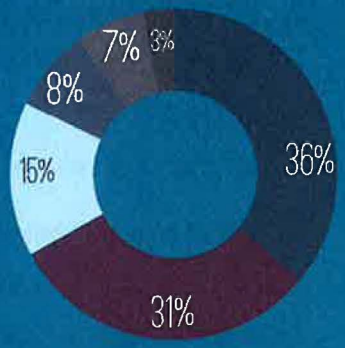
77% OF EMPLOYERS WERE MEETING THEIR RECORD KEEPING AND PAY SLIP OBLIGATIONS

59% OF EMPLOYERS WERE COMPLIANT WITH ALL REQUIREMENTS

A TOTAL OF **$259,155** WAS RECOVERED FOR 201 EMPLOYEES FROM 96 EMPLOYERS

$69,000 RECOVERED FOR APPRENTICES

INDIVIDUAL CONTRAVENTIONS IDENTIFIED



FWO STATISTICS

2013/14: **11%** OF ALL INFOLINE ENQUIRES - 2ND MOST CALLED ABOUT INDUSTRY

2083 REQUESTS FOR ASSISTANCE

IN 2013: 1027 SUSTAINED AGAINST 971 EMPLOYERS

INDUSTRY STATISTICS

9% OF AUSTRALIA'S WORKFORCE: OVER **1 MILLION WORKERS**

LARGEST EMPLOYER OF FULL TIME 15 -25 YEAR OLDS: 154,000 OR 17%

APPRENTICES

73% OF EMPLOYERS WERE FOUND TO BE PAYING THEIR APPRENTICES CORRECTLY

32% OF AUDITED BUSINESSES EMPLOYED APPRENTICES

LARGEST EMPLOYER OF APPRENTICES: 44,900 IN MARCH 2014

MEDIA AND COMMUNICATION

4.2 MILLION PEOPLE REACHED THROUGH CAMPAIGN COMMUNICATIONS

495,000 IMPRESSIONS ON 4 FACEBOOK POSTS

1.5 MILLION IMPRESSIONS ON TWITTER

2.2 MILLION IMPRESSIONS ON 'REAL FOOTY' AND 'GOAL' WEBSITES

About the Campaign

The National Building and Construction Industry Campaign 2014/15 (the Campaign) was developed in response to a number of factors in the building and construction industry (the industry), including;

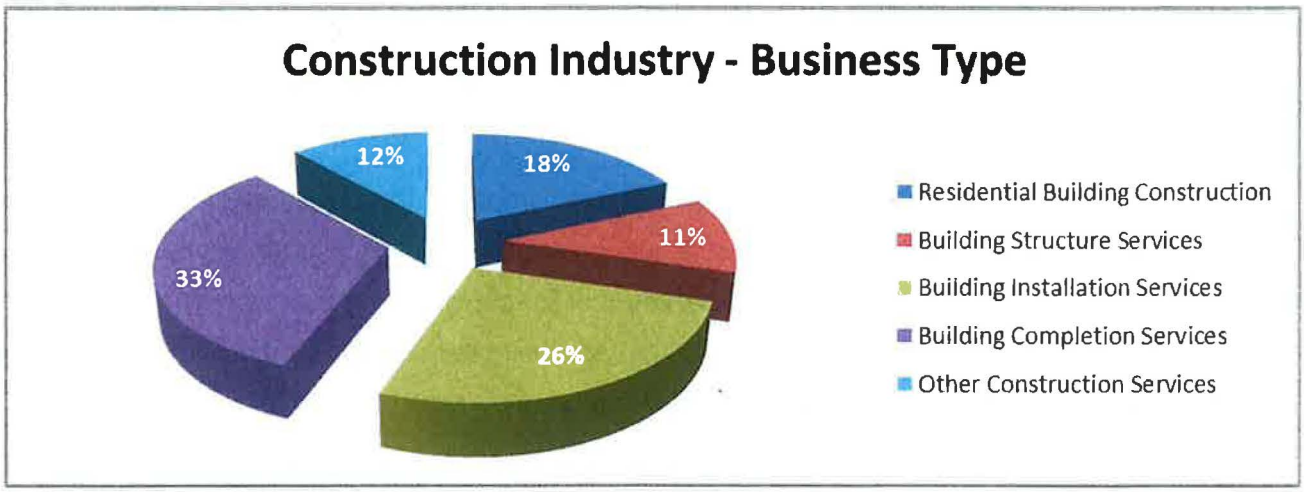
- high contravention rates within the industry (through both complaints received and previous audit campaigns);
- large size of the industry and predicted high growth of this industry over the coming years; and
- the high volume of calls through the Fair Work Infoline

As part of this campaign, the Fair Work Ombudsman (FWO) audited the compliance of 700 businesses nationally with the *Building & Construction General On-Site 2010*, *Electrical, Electronic & Communications Contracting Award 2010, Plumbing & Fire Sprinklers Award 2010*, the *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations). This included auditing 610 businesses for compliance with wages, penalty rates, allowances, overtime, pay slip and record-keeping obligations. Where a business was found to employ apprentices an assessment of their entitlements was also conducted. In addition, contracting arrangements were audited for a further 90 businesses.

The subdivisions focussed on were (see figure 1):

- **Residential building Construction -** House Construction & Other Residential Building Construction;
- **Building Structure Services** - Concreting Services, Bricklaying Services, Roofing Services and Structural Steel Erection Services;
- **Building Installation Services** - Plumbing Services, Electrical Services, Air-Conditioning and Heating Services, Fire and Security Alarm Installation Services and Other Building Installation Services;
- **Building Completion Services** - Plastering and Ceiling Services, Carpentry Services, Tiling and Carpeting Services, Painting and Decorating Services and Glazing Services; and
- **Other Construction Services-** Landscape Construction Services and other construction services

Figure 1: Construction industry - business type



Outcomes at a Glance

To maximise awareness of the campaign and encourage greater compliance within the industry the Campaign was undertaken in two stages:

- communication and public awareness; and
- an audit of pay and conditions.

Of 610[1] businesses audited for wage and record-keeping obligations, 360 (59%) were compliant and 250 (41%) of businesses had not met their workplace relations obligations. The main errors related to payslips not including required information and wage related entitlements.

Of these 610 businesses, 194 (32%) employed apprentices. Of these, 129 (66%) were compliant with apprentice obligations and 65 (34%) of the businesses had not met all of their workplace relations obligations.

The outcomes of the Campaign were:

- $259,155 in underpayments recovered from 96 businesses on behalf of 201 employees, including:
- $69,785 recovered for 194 apprentices (over one quarter of all monies recovered)
- 4 formal Letters of Caution issued.

[1] This figure excludes the 90 businesses where contractual arrangements were audited

Industry Profile

The industry sectors within scope of this campaign[2] comprised 278,429 businesses (as at June 2013), of which 75.4% were concentrated in Queensland, New South Wales, and Victoria.[3]

In February 2014, prior to the commencement of this campaign, the Construction Industry Division was the third largest employing industry in Australia, employing over 1 million workers (or nearly 9% of total workers in Australia).[4] The Department of Employment expects employment growth across the Industry Division to increase by 8.0% (approximately 83,500 workers) over the 5 years to February 2018 (compared with a 7.2% of general employment).

In addition to the high number of workers and expected increase, the Construction Industry Division was also the largest employer of young full time workers in Australia, employing over 154,000 (approximately 17%) of all full time workers aged 15-25 (in the year to February 2014).

During the 2013 calendar year, FWO completed 2,083 complaints in the construction industry. Of these, 1,027 were sustained against 971 individual employers resulting in a 49% contravention rate. These results are also consistent with the results of previous regional campaign activity in the industry (six campaigns since 2009) – in which FWO has audited over 500 businesses, with an overall contravention rate of 65%.

Industry Stakeholders

The FWO engaged with industry stakeholders on the design, development and delivery of the campaign, and to gather insight into any industry specific issues. This provided the chance to explore future opportunities to work collaboratively to assist the industry.

The stakeholders included:

- Housing Industry Association (HIA)
- Master Builders Association
- Construction, Forestry, Mining and Energy Union (CFMEU)
- Australian Industry Group (AIG); and
- Australian Chamber of Commerce and Industry (ACCI).

A full list of stakeholders is available in **Appendix A**.

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[2] Specified in 'About the Campaign'

[3] Australian Bureau of Statistics (2014), Counts of Australian Businesses, including Entries and Exits, Jun 2009 to Jun 2013, data cube: cat. no. 81650, viewed 26 June 2014.

[4] Department of Employment, Industry Outlook Construction, June 2014, ISSN 2201-3660

Communication and Public Awareness

The communication and public awareness phase of the campaign aimed to promote the campaign and educate employers on their obligations prior to the audits. The campaign was advertised through the theme of *"Work Hard, Pay Fair"* between 30 October 2014 and 5 December 2014. During this time it reached 4.2 million people through a range of digital platforms including, Facebook, Twitter and email.

The FWO also advertised on websites such as Real Footy and Goal, which reached more than 2.2 million people over a four week period.

A full description of the results of FWO's communication activities are detailed in **Appendix B**.

Wages Audit

National Findings

Of the 610 businesses audited;

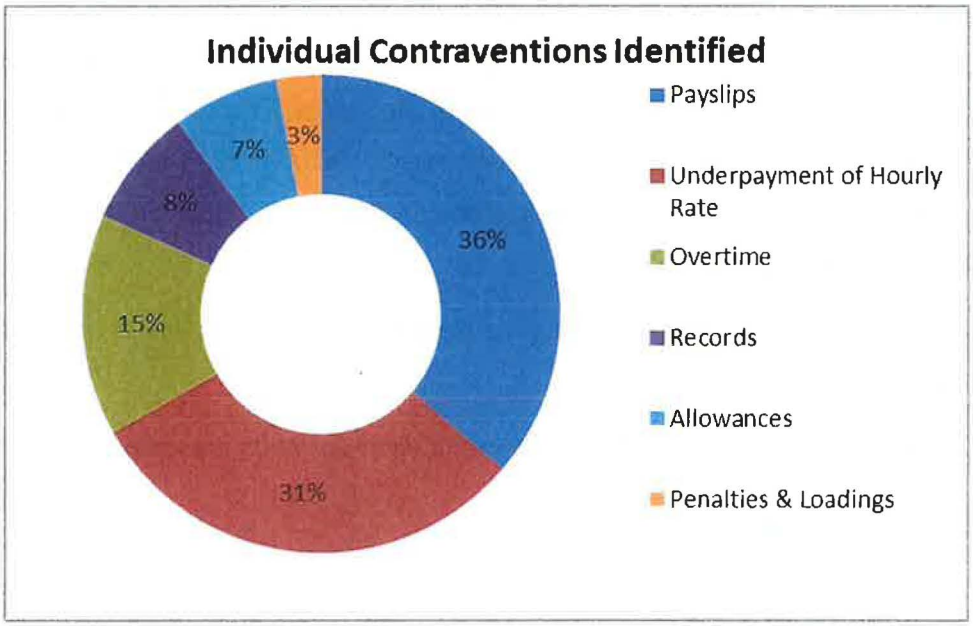
- 460 (75%) employers were paying their employee's correctly;
- 468 (77%) employers were compliant with their record-keeping and payslip obligations.
- 360 (59%) employers were compliant with all requirements; and
- 250 (41%) employer had at least one error; of which;
    - 108 (18%) had monetary errors;
    - 100 (16%) had pay-slip and/or record-keeping errors; and
    - 42 (7%) had both monetary and pay-slip/record-keeping errors.

Of the 250 businesses with errors, there were a total of 334 individual errors (see Figure 2). A total of $259,155 was recovered for 201 employees from 96 employers. The individual recoveries from businesses ranged from less than $50 to over $58,000, with a median recovery per business of $1,345.

The errors most commonly identified related to payslips, which accounted for more than one third of all individual errors with 36% (121), and underpayment of hourly rate with 31% (102).

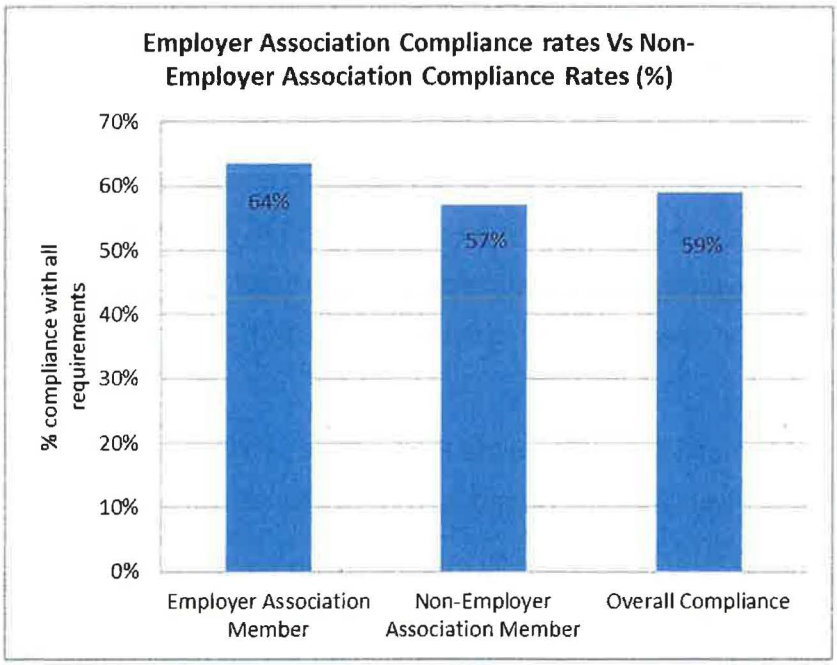
Fair Work Inspectors found that generally trade qualified employees were receiving at least (and generally well above) their minimum monetary entitlements, with most contraventions relating to lower-skilled workers such as labourers who are more reliant on award conditions.

Figure 2: Contravention Breakdown



FWO identified that 30% (184) of businesses audited held membership with one or more employer associations within the industry (see figure 3). Of these businesses with membership, 64% (117) were compliant with all requirements (compared to a 57% compliance rate of non-employer association members) – suggesting a positive effect employer associations may have on compliance rates within this industry through ongoing engagement with their members.

Figure 3: Employer Association Compliance Vs Non-Employer Association Compliance



FWO also identified 84% (512) of the 610 businesses had 14 or fewer employees (including

302 businesses with less than 4 employees) and the remaining 16% (98) had 15 or more employees. Businesses with 14 or fewer employees had a 57% compliance rate (4 or less employees 54%, 5-14 employees 62%), while those with 15 or more employees had a 68% compliance rate (15-49 employees 65%, 50 or more employees 77%).

These results show that in this sample, smaller sized businesses tended to have a higher contravention rate (see figure 4)[5]. This highlights the importance of focusing educational tools and resources on small businesses, which often do not have dedicated in-house workplace relations expertise such as Payroll or Human Resources staff to manage their obligations.

FWO understands the unique challenges that small businesses face in meeting their workplace relations obligations, therefore have information and resources available on fairwork.gov.au/smallbusiness to help them get it right. Such as the free online courses, the Fair Work Handbook, employer checklists and other pay and conditions tools.

Figure 4: Compliance rates by business size

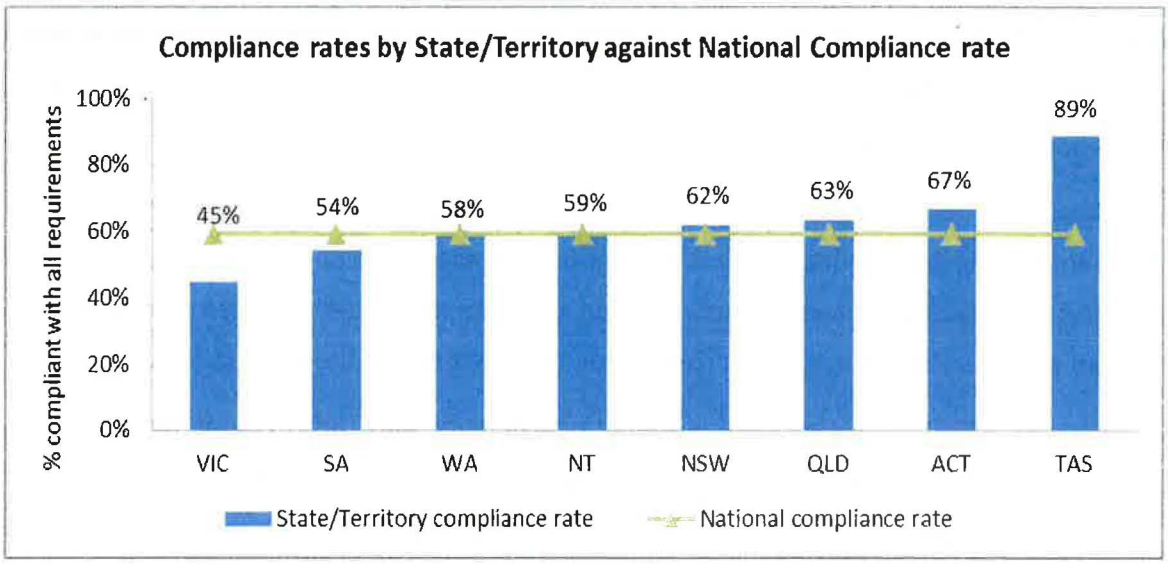
Compliance Rates by Business Size				
Number of Employees engaged by a business	Number of businesses	Outcome of Audit		Compliance rate (%)
		Compliant	Contravention	
4 or less	302	162	140	53.6%
5 - 14	210	131	79	62.4%
15 - 49	72	47	25	65.3%
50 or more	26	20	6	76.9%
Total	**610**	**360**	**250**	**59.0%**

State Findings

As detailed in Figure 5, the state compliance results were relatively consistent across Australia, with only Victoria (45%) significantly below the national compliance rate. While NSW, Qld and the ACT were all slightly above the national compliance rate, it was Tasmania that demonstrated a significantly high level of overall compliance.

Figure 5: State compliance rates against national compliance rate

[5] For this campaign, it was found that the relationship between employment numbers and contravention rate was significant ($\chi 2$ (3) = 9.203, p = .027).



Queensland

In Queensland (QLD) a total of 191 businesses were audited;

- 121 (63%) were compliant with all requirements; and
- 70 (37%) had at least one error; and of these;
    - 32 (17%) had monetary errors;
    - 28 (15%) had pay-slip and/or record-keeping errors; and
    - 10 (5%) had both monetary and pay-slip/record-keeping errors.

This means that;

- 149 (78%) were paying their employees correctly; and
- 153 (80%) were compliant with payslip and record-keeping obligations.

The 70 businesses with errors identified had a combined total of 88 individual errors, with the most commonly identified relating to: payslips 38% (33), underpayment of hourly rate 32% (28) allowances 11% (10), and overtime 10% (9).

In total $48,327 was recovered for 44 employees from 28 employers, with the median recovery per business being $1,345. One formal letter of caution was issued.

New South Wales

In New South Wales (NSW) a total of 100 businesses were audited, finding;

- 62 (62%) were compliant with all requirements; and
- 38 (38%) had at least one error; of which;

- 15 (15%) had monetary errors;
- 20 (20%) had pay-slip and/or record-keeping errors; and
- 3 (3%) had both monetary and pay-slip/record-keeping errors.

This means that of the 100 businesses audited;

- 82 (82%) were paying their employees correctly; and
- 77 (77%) were compliant with payslip and record-keeping obligations.

The 38 businesses with errors identified had a total of 45 individual errors, with the most commonly identified relating to: payslips 42% (19); and underpayment of hourly rate 33% (15).

In total, $49,433 was recovered from 11 businesses for 34 employees, with a median recovery per business of $5,260.

Australian Capital Territory

In the Australian Capital Territory (ACT) a total of 21 businesses were audited, finding;

- 14 (67%) were compliant with all requirements; and
- 7 (33%) had at least one error; of which;
  - 2 (9%) had monetary errors;
  - 4 (19%) had pay-slip and/or record-keeping errors; and
  - 1 (5%) had both monetary and pay-slip/record-keeping errors.

This means that of the 21 businesses audited;

- 18 (86%) were paying their employees correctly; and
- 16 (76%) were compliant with payslip and record-keeping obligations.

The 7 businesses with errors identified had a total of 9 individual errors. Errors relating to records accounted for 3 of the contraventions (33%) with the remaining errors equally divided between allowances, underpayments, and payslips.

In total, $994 was recovered for 3 employees from 2 employers.

Victoria

In Victoria a total of 109 businesses were audited, finding;

- 49 (45%) were compliant with all requirements; and
- 60 (55%) had at least one error; of which;
  - 23 (21%) had monetary errors;

- 23 (21%) had pay-slip and/or record-keeping errors; and
- 14 (13%) had both monetary and pay-slip/record-keeping errors.

This means that of the 109 businesses audited;

- 72 (66%) were paying their employees correctly; and
- 72 (66%) were compliant with payslip and record-keeping obligations.

The 60 businesses with errors identified had a total of 89 individual errors, with the most commonly identified relating to: payslips 35% (31); underpayment of hourly rate 27% (24); and overtime 17% (15).

In total, $53,976 was recovered for 54 employees from 29 employers, with a median recovery per business of $1,159.

Tasmania

In Tasmania, a total of 18 businesses were audited, finding;

- 16 (89%) were compliant with all requirements; and
- 2 (11%) had at least one error; of which;
  - 1 (5.5%) had monetary errors; and
  - 1 (5.5%) had both monetary and pay-slip/record-keeping errors.

This means that of the 18 businesses audited;

- 16 (89%) were paying their employees correctly; and
- 17 (94%) were compliant with payslip and record-keeping obligations.

The 2 businesses with errors identified had 3 individual errors between, them relating to overtime, underpayment of wages, and pay slips.

South Australia

In South Australia (SA) a total of 57 businesses were audited, finding;

- 31 (54%) were compliant with all requirements; and
- 26 (46%) had at least one error; of which;
  - 11 (19%) were for monetary errors;
  - 10 (18%) were due to pay-slip and/or record-keeping errors; and
  - 5 (9%) due to both monetary and pay-slip/record-keeping errors.

This means that of the 57 businesses audited;

- 41 (72%) were paying their employees correctly; and
- 42 (74%) were compliant with payslip and record-keeping obligations.

The 26 businesses with errors identified had a total of 34 individual errors, with the most commonly identified relating to: payslips 41% (14); and underpayment of hourly rate 38% (13).

In total, $26,837 was recovered from 9 businesses for 14 employees. The median recovery per business was $1,260.

Western Australia

In Western Australia (WA) a total of 77 businesses were audited, finding;

- 45 (58%) were compliant with all requirements; and
- 32 (42%) identified with at least one error; of which;
    - 17 (22%) had monetary errors;
    - 11 (15%) had pay-slip and/or record-keeping errors; and
    - 4 (5%) had both monetary and pay-slip/record-keeping errors.

This means that from the 77 businesses we audited;

- 56 (73%) were paying their employees correctly; and
- 62 (81%) were compliant with payslip and record-keeping obligations.

The 32 businesses with errors identified had a total of 45 individual errors, with the most commonly identified relating to: underpayment of hourly rate 36% (16); payslips 31% (14); and overtime 24% (11).

In total, $76,802 was recovered for 48 employees from 16 employers. Western Australia had the lowest median recovery per business of $649 of all the states. However the highest recovery from an individual business in the campaign was also in Western Australia where a total of $58,453 was recovered for 22 employees. Two formal letters of caution were issued, including one to the business where the $58,453 underpayment was identified.

Northern Territory

In the Northern Territory (NT) a total of 37 businesses were audited, finding;

- 22 (59%) were compliant with all requirements; and
- 15 (41%) had at least one error; of which;
    - 7 (19%) were for monetary errors;

- 4 (11%) were due to pay-slip and/or record-keeping errors; and
- 4 (11%) due to both monetary and pay-slip/record-keeping errors.

This means that of the 37 businesses audited;

- 26 (70%) were paying their employees correctly; and
- 29 (78%) were compliant with payslip and record-keeping obligations.

The 15 businesses with errors identified had a total of 21 individual errors, with the most commonly identified relating to: payslips 33% (7); and overtime 24% (5).

In total, $2,785 was recovered from 1 business for 4 employees. In addition a formal letter of caution was issued.

Apprentices

The building and construction industry is one of the largest industry employers of apprentices in Australia. As at March 2014, prior to the commencement of this campaign, 44,900 apprentices and trainees were employed - including 6,700 who had commenced employment during that quarter.[6] The construction industry historically is also a high complaint sector for apprentices– in the 6 months immediately prior to the commencement of the campaign (January 2014 to June 2014) 38% (295) of the 770 complaints received from apprentices, were from the building and construction industry.

Apprentices are generally considered a vulnerable employee group, therefore as part of this campaign FWO audited the compliance of businesses engaging apprentices to ensure they were receiving their correct employment entitlements. Of the 610 businesses audited during the campaign, 194 (32%) businesses (who engaged approximately 340 apprentices) had apprentice records audited. Of these (as shown in figure 6):

- 122 (63%) were compliant with all requirements;
- 7 (3%) had errors not related to apprentices;
- 65 (34%) had errors relating to apprentices, and of these;
  - 52 (27%) related to pay rates
  - 13 (7%) related to record keeping and payslip requirements

In total, $69,785 was recovered for 194 apprentices with a median recovery of $1318 (recoveries from individual employers ranging from less than $50 to over $7,500).

---

[6] Australian Bureau of Statistics (2014), Microdata: Education and Work, May 2014, data cube: Excel spreadsheet, cat no.6277.0.30.001.

From the total of 69 errors identified, 55 related to monetary errors (i.e. underpayment of hourly rate, overtime, and penalty rates etc.) and 14 were due to pay slip and record-keeping errors.

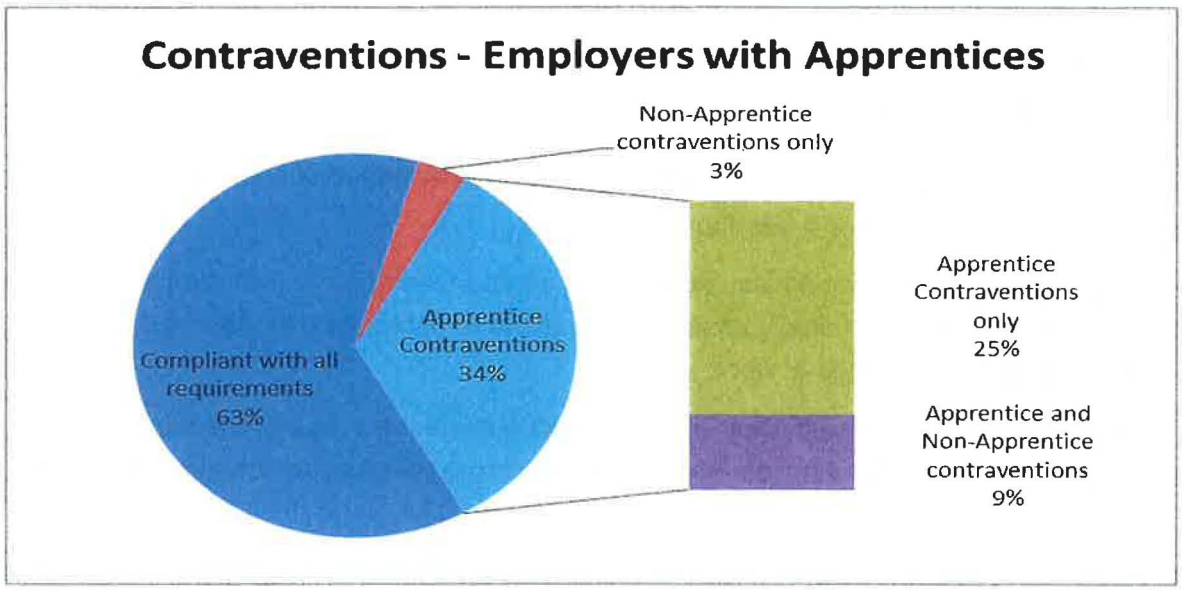
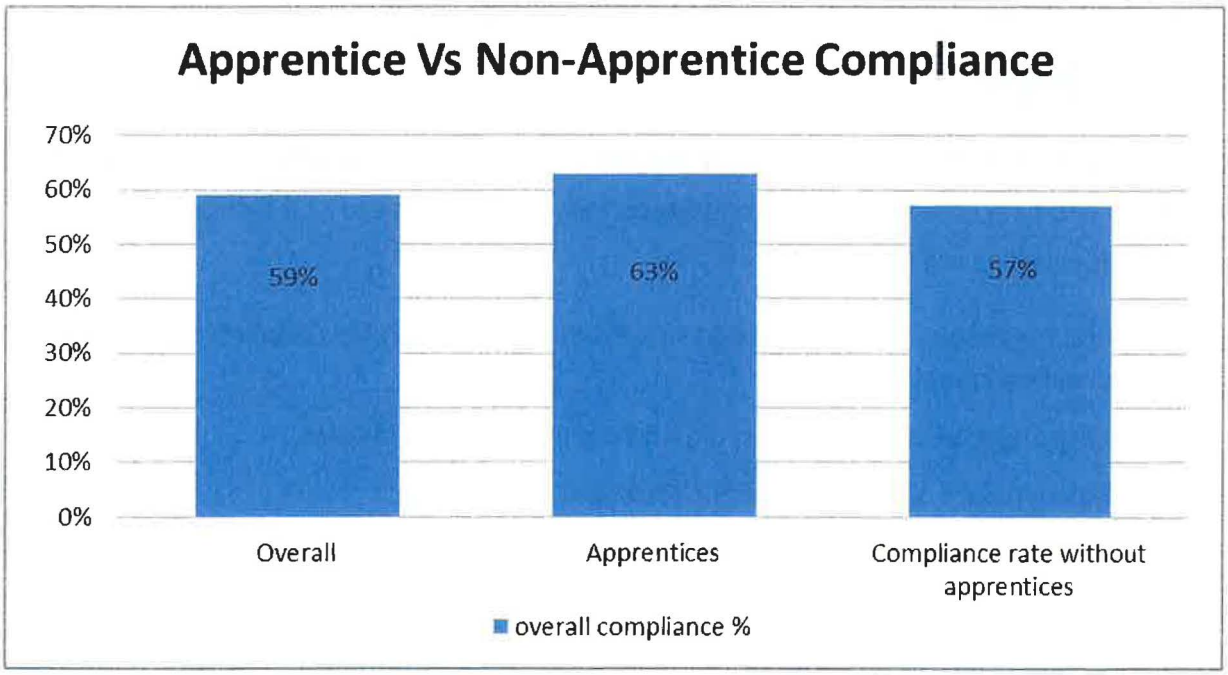


Figure 6: Contraventions for employers with apprentices

Interestingly, as per Figure 7, businesses in this sample who engaged apprentices had a 6% higher compliance rate compared to those businesses who did not engage apprentices. Fair Work Inspectors observed this may be as a result of active participation with their workplace relations obligations through the process of hiring an apprentice. This highlights the opportunity for FWO to continue to actively engage these employers through the ongoing development of accessible and practical tools and resources for and regarding apprentices.

Figure 7: Apprentice Vs Non-Apprentice Compliance



Contractor Assessment

Given the historically high reliance on contracting arrangements and concerns of sham-contracting and misclassification within the industry, the contracting arrangements for 90 businesses within the sample of 700 employers were assessed.

Of the 90 contracting arrangements assessed, no prima-facie evidence of sham-contracting arrangements was found. Rather it was found that:

- Genuine invoices were being issued from one company to another (not from a company to an individual) and were usually based upon a quote to complete a job/task, with no reference to hours or days of work; and
- Where invoices were issued, they were for tasks outside the scope of the principal contractors skill-set (i.e. a builder invoices an electrical company to complete electrical work).

The assessment of paper based invoices is only one element of considering whether contracting arrangements are bona fide. The results of this initial assessment warrant further examination. Given the complexities associated with these arrangements, it is expected that this will be a substantial body of work and FWO will undertake this activity through a more in-depth investigative methodology & a broader sample size.

Sham-contracting remains an important issue for a number of agencies including FWO, FWBC, Department of Immigration and Citizenship (DIAC) the Australian Securities and Investment Commission (ASIC) and the Australian Tax Office (ATO). Employers, employees and contractors are encouraged to seek clarification and/or information on any contracting arrangements they may have concerns about by contacting the above-mentioned agencies.

Next Steps

The FWO will work collaboratively with key stakeholders within the industry to educate and support businesses and help ensure ongoing compliance following the release of this report. Re-engagement activities will include;

- sharing the results of this campaign with employers through My Account, social media or email subscriptions;
- ongoing engagement through media and communication activities;
- the development of industry specific tools and resources;
- presentations and information sessions to and with key external stakeholder bodies

Conclusion

The findings of this campaign show an overall compliance rate of 59%, and a slightly higher compliance rate for businesses with apprentices of 65%. This is an improvement on previous campaigns that were conducted since 2009 which identified an aggregated compliance rate of 35%.

In addition the results show that business size has a significant impact on compliance rates. This highlights the importance of continuing to support small businesses by providing them with easily accessible and tailored service offerings to help them better meet their workplace relations obligations.

While the results of the campaign are encouraging, the industry will remain a high priority given the high complaint rate, size and projected growth in the industry along with the high number of apprentices engaged within the industry. Therefore the FWO will continue to work collaboratively with stakeholders within the industry to help ensure ongoing compliance. In addition, to gauge the levels of change in behaviour by the employer in this industry, many of the businesses that were found to have contraventions will be reaudited as part of the National Compliance Monitoring program 2015-16.

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the Fair Work Act 2009 on 1 July 2009. Our main role is to promote harmonious, productive and cooperative workplace relations.

Each year the Fair Work Ombudsman (FWO) runs proactive campaigns to assist employers and employees understand their rights and obligations under Commonwealth workplace relations laws. These campaigns can focus on particular industries, regions and/or labour market issues and are conducted on a national and state level.

This report covers the background, method and findings of the National Building and Construction Industry Campaign 2014/15. For further information please contact the media team at media@fwo.gov.au

If you would like further information about the Fair Work Ombudsman's campaigns please contact Lynda McAlary-Smith, Executive Director – Proactive Compliance and Education at Lynda.McAlary-Smith@fwo.gov.au

Appendix A

Industry Stakeholders

National Stakeholders	Regional Stakeholders
Master Builders Association Australia (MBAA)	Northern Territory - Department of Employment;
Housing Industry Association (HIA)	Western Australia – Department of Training
Australian Tax Office (ATO);	Skills South Australia (SA)
Australian Chamber of Commerce and Industry (ACCI)	Queensland Department of Justice & Attorney General - Fair and Safe Work Queensland
Australian Industry Group (AIG)	NSW Industrial Relations
Communications, Electrical and Plumbing Union of Australia (CEPU)	Tasmanian Department of Justice
Fair Work Building & Construction (FWBC)	Victoria Registration and Qualifications Authority
Federal Department of Employment	SafeWork South Australia (SA)
Australian Manufacturing Workers Union (AMWU)	
Construction, Forestry, Mining and Energy Union (CFMEU)	
Electrical Trades Union (ETU)	
Plumbing Trades Employee Union (PTEU)	
Master Plumbers and Mechanical Services Association of Australia (MPMSAA)	
Master Electricians Australia (MEA)	
Australian Institute of Building (AIB)	
Australian Constructors Association	

Appendix B

FWO Communication Activities

As part of the communication strategy, the campaign targeted males between the ages of 20 and 65 and FWO reached more than 4.2 million people to create greater awareness of the compliance campaign conducted on the Building and Construction Industry. The theme of the advertising was *"Work Hard, Pay Fair"* and through the following communication activities;

- Four week Facebook content plan
- Email sent to employers from FWO's subscriber list
- Four week Twitter plan with a combination of Image, Website Card and standard promoted tweets going out every second day
- Digital display advertising on the Goal (A-League) and Real Footy (Fairfax news) websites running for four weeks.

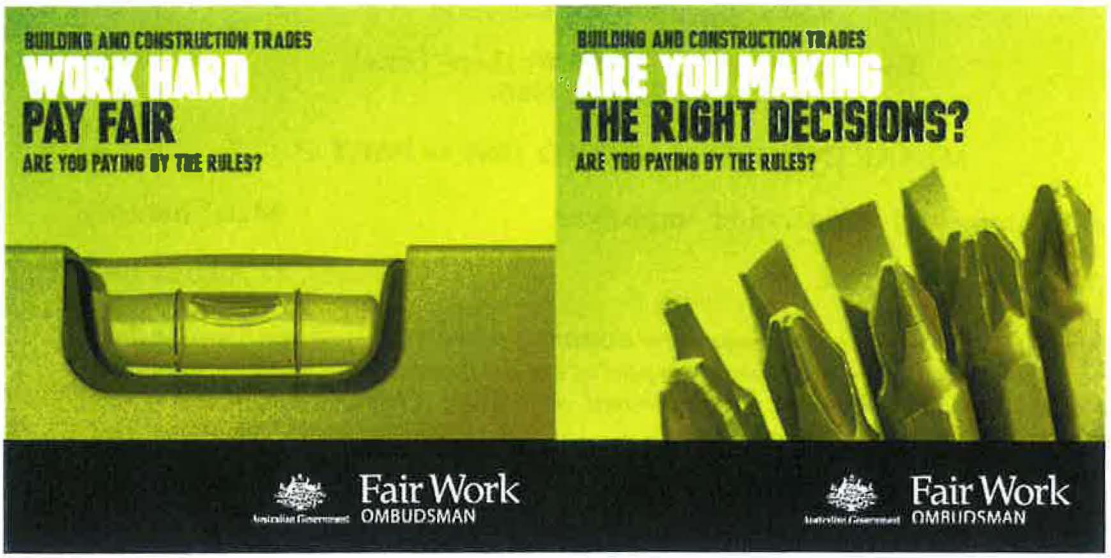
FWO achieved the following results;

- 494,709 people reached through Facebook advertising (including 27,000 people who like our page (58% female, 42% male), accounting for 60% (16,538) of 27,473 click throughs across our communication activities. Facebook advertising also achieved high levels of engagement, with 479 comments, 1660 likes and 464 shares across our 4 promoted posts.
- 1.5 million impressions and 3,532 new followers through twitter advertising – with 88% of these engagements achieved on mobile devices;
- 2.2 million digital display advertising impressions across Fairfax (Real Footy website) and Perform (Goal Website) networks – providing high campaign exposure; and
- 3,427 employers notified of the campaign through our email updates;

The campaign was also covered through traditional media channels including TV (WIN Network), radio (including ABC & 3CR Melbourne), print and electronic media coverage (both local and national publications), advertising through a number of websites, including the Australian Chinese Community Forum, XKB.com.au and ABC Online along with advertising through key stakeholders including the Master Builders Association website.

Appendix C

FWO Communication Collateral



Attachment D

M039 Dec 400/87 S Print G8724

AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

Conciliation and Arbitration Act 1904
s.59 application for variation

The Amalgamated Metal Workers' Union
(C No. 5203 of 1986)

METAL INDUSTRY AWARD 1984 — PART 1[1]

Air conditioning and refrigeration employees — Metal industry

MR COMMISSIONER COX — Sydney, 27 August 1987

Conditions of employment — allowance — disability allowance — Wage Fixation June 1986 Principles 9 and 11 — work properly part of on-site construction work — significant change in the nature of the work demonstrated — existing allowances adjusted — new allowance provided — award varied.

DECISION

e On 7 November 1986 The Amalgamated Metal Workers' Union (AMWU) lodged an application to vary the Metal Industry Award 1984 — Part 1 to provide a follow-the-job allowance for employees engaged in on-site air-conditioning work in the States of New South Wales, South Australia and Queensland. Following conferences on the subject matter of the application, an amendment was made by
f the AMWU at a hearing in Brisbane on 15 January 1987.

The amended application sought several variations to the Award to provide:

- an allowance to compensate for the general disabilities associated with the
g construction and building industry;
- an allowance to compensate for disabilities associated with work practices of the air-conditioning industry;
- payment of fares and travelling allowances as structured in Appendix A —
h On-Site Construction Work of the Award;
- the provision of a follow-the-job allowance to compensate for the intermittent patterns of employment and unemployment in the air-conditioning industry;
- the provision of appropriate rates of pay, allowances, and definition of, a
i Refrigeration Mechanic/Serviceperson undertaking on-site refrigeration work in Queensland.

At the hearing of 15 January it was submitted that the amended application could be heard and determined under the National Wage Case Principles then in
j force, in particular Principle 9 — Allowances and Principle 4 — Work Value Changes. Inspections of air-conditioning work, and refrigeration work where applicable, were carried out in Brisbane, Adelaide and Sydney at the following sites:

k
- Toowong Village Shopping Centre, Coronation Drive, Toowong, Brisbane;

[1] Print F8925 [M039]
Recommended retail price $0.70

G

- Wintergarden Hilton Hotel, Queen Street, Brisbane;
- Whites construction site, cnr. Wharf and Adelaide Streets, Brisbane;
- Aser Project, Hyatt Hotel, North Terrace, Adelaide;
- Commonwealth Centre Site, Currie Street, Adelaide;
- Commonwealth Bank Computer Centre site, Railway Crescent, Burwood, Sydney;
- Darling Harbour site, Sydney.

The parties were at pains during inspections to demonstrate that metal trades employees engaged in the installation of air-conditioning and refrigeration plant and equipment worked alongside, and experienced the same disabilities as other employees recognised as being employed in the building and construction industry. It was also demonstrated that plant and duct work had increased in size whereas lifting equipment has remained the same.

Evidence was led from Mr Sullivan an AMWU organiser who had worked as a First Class Sheet Metal Worker in the air-conditioning industry. In respect of the size of ductwork he said:

> "I find now in a lot of buildings they are for some reason or other — they seem to be making the duct much bigger, and when they do that the . . . lines has to be changed, and they have to become much bigger in order to handle it. However, the lift equipment they have got is still the same because they are confined to an area of ceiling; they cannot use lifting materials or hoist things to that effect to get the duct up due to the height of the ceiling."[2]

In respect of some of the disabilities associated with a new type of ducting known as trilock, Mr Sullivan stated:

> ". . . The sealing of the duct means they have to get inside the duct with the sealing compound in a cartridge gun and they have to get in and seal it in the ceiling and to do that they have to lie on their stomach to do it and get in there . . . but when they are in there they have to seal off the top and also where it joins at the bottom they seal all the joins and sometimes a person would be in that duct doing the sealing anywhere up to an hour or an hour and a half at one time to do that, and a lot of the time they have to get out because the fumes and the smell of the compound does affect some of the people in that area."[3]

Mr Sullivan also gave evidence relating to the nature of employment of employees in the air-conditioning industry, specifically on the travel patterns found in the industry he said:

> ". . . I would say the travel pattern now is by the spread of the city you find — going back years ago mostly the main buildings were in the inner city area where they got the train to work, but what has happened now they are getting further out, the shopping centres in different isolated areas where there are no means of public transport and they have to use their own and that is becoming the situation now where people are travelling much further and there is no public transport available. They are putting in a lot of these shopping centres where they have got to go to which have been built, and one that comes to mind is at the Crossroads at Liverpool and Kurrajong Street there, and another one at Smithfield where there is no public transport and now you have got the Fairfield Hospital which is in the middle of nowhere."[4]

A Statutory Declaration of Mr W. Gurdler an organiser of the Queensland Branch of the AMWU was tendered as an exhibit, set out were the following recent changes in the air-conditioning industry as perceived by Mr Gurdler.

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[2] Transcript, p.44
[3] Transcript, p.47
[4] Transcript, p.47

"1. *Project Size*

a Projects being undertaken are generally in a much larger scale than previously experienced. This larger project size brings on its own unique requirement for skills and experience.

2. *Project Time*

b The time pressure imposed because of the large sums of money involved in the projects are increasing. These projects have to be completed in the shortest time available in order to begin to produce a return.

3. *Plant Space*

c There would appear to be a general reduction in available plantroom and equipment space. This requirement is brought about in order to minimise the non-income earning space of the building. This increases the problem encountered during the installation period.

4. *Current Technology*

d Current technology is having an effect on the complexity of the equipment being installed and therefore additional skills are required for some phases of the installation."

Several unsworn statements made by employees in the industry, about the nature of their work and employment in the air-conditioning industry, were tendered as exhibits. One such statement was from Mr Alones a Foreman with e Haden Engineering who participated in inspections at the Hyatt Hotel site in Adelaide, the statement reads in part:

"*Nature of A.C. Tradesperson's work*

f
- Set out air-conditioning duct
- Align with consultants requirements
- Installation of plinths
- Installation air-conditioning plant
- Handling of heavy equipment
- Working in confined space

g
- General disabilities associated with construction industry
- Working with other building trades
- Working without supervision

Changes in nature of A.C. Tradesperson's work

h
- Fitting and installation of flexible ducting
- Associated with the installation of this ducting are disabilities from the insulwool/material
- Installation of air diffusers and ceiling registers requiring application of skills from experience in building trade

i
- Installation of high pressure air conditioning system
- Larger sized air-conditioning components/ducting and plant
- Employment structure changing from permanent to what is known 'Job on the Job Finish'

j
- Whereas in the past companies manufactured their own equipment and duct work the situation is that the industry is clearly divided into the manufacturing side and installation work
- Full-time employment as was known in the industry is a thing of the past."

k After hearing submissions from the parties on 29 May 1987 on the question of the appropriate National Wage Case Principles to apply to this application, the Commission ruled that this was a substantially part heard matter and accordingly

the Principles to be observed were those prescribed in the National Wage Case decision of 26 June 1986.[5]

In addition to the general wages and conditions set out in Part 1 of the Metal Industry Award, specific provisions are contained in the Award, in respect of air-conditioning work namely, subclause 8(o) relating to New South Wales and section 37D relating to South Australia and Queensland. As well as the Award provisions there is also an unregistered agreement known as the "Sydney Air-Conditioning Agreement" which provides fares and travelling allowances. This Agreement which was made in 1969 is now generally applied throughout New South Wales.

It was put to the Commission that the lack of uniformity in the provision of allowances in the industry created industrial relations problems, did not reflect the changes in the nature of the work that have taken place and in respect of installation work did not properly reflect the position that the installation of air-conditioning equipment is part of the building and construction industry.

Following conciliation conferences and private discussion between the parties general consensus was reached as to a solution to the issues. Areas of general agreement being that air-conditioning installation work would be more appropriately covered by Appendix A of the Award, which covers on-site construction work, that the wage and allowance structure decided by Mr Commissioner Heffernan for the air-conditioning industry in Queensland[6] formed an appropriate basis for a new structure for the industry, and that existing award and overaward allowances and provisions can be adjusted or eliminated to accommodate a new structure.

It was submitted that in respect to New South Wales a new structure could be implemented by an adjustment of existing allowances with the end result of no extra cost increase, accordingly such an approach was permissible under Principle 11 — Conditions of Employment. It was put that the Queensland position was one where changes in the nature of the work had taken place and as such adjustments could be made to the composite special rate allowances consistent with Principle 9(a)(iii). Other restructuring of allowances applicable to employees in Queensland would result in no additional cost, consequently it was submitted that such adjustments were permissible under the Principles. In respect of South Australia it was put that particular disabilities related to the air-conditioning industry had never been considered, it was put that inspections and evidence established the specific disabilities and peculiarities associated with air-conditioning work and that such work is similar to that carried out in New South Wales and Queensland. Accordingly it was submitted that it would be appropriate and consistent with Principle 9 to insert an allowance into the Award to recognise the particular disabilities associated with air-conditioning work.

On the question of the inclusion of a refrigeration classification into the Award for the State of Queensland it was submitted that the fact that such employees had no award recognition for working on construction sites resulted in employers providing the same allowances and conditions as were applicable to air-conditioning employees on a de facto basis. It was said that the Award should recognise that Refrigeration Mechanics are engaged in the construction industry and this was permissible under the same Principles as applied to adjust the allowances for air-conditioning employees in Queensland.

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[5] Print G3600; (1986) 301 CAR 611

[6] Print E5888; (1981) 254 CAR 206

I have considered the submissions and evidence before me and have concluded that:

(1) Employees working on the installation of air-conditioning and refrigeration plant work in connection with the construction industry and it is therefore appropriate for such work to be covered by Appendix A — On-Site Construction Work, of the Metal Industry Award.

(2) Inspections and evidence have demonstrated that there has been significant change in the nature of the work, and the conditions under which the work is carried out by employees engaged on air-conditioning and refrigeration work and it is appropriate to adjust, and provide a new allowance to recognise such work.

(3) It is appropriate for Refrigeration Mechanics and Service persons, engaged on construction on-site work in Queensland to be given proper award recognition.

(4) The award variations necessary to give effect to these conclusions are permissible under Principles 9 and 11 of the National Wage Case Principles of 26 June 1986.

Accordingly the Metal Industry Award 1984 will be varied in the terms of the draft order identified as Exhibit L18.

Order:

The order giving effect to this decision is found in M039 V048 S Print G8725.

Appearances:

P. Lelli, *B. Girdler* and *B. Fraser* for The Amalgamated Metal Workers' Union.

M. Scott and *K. Taylor* for the Metal Trades Industry Association and Engineering Employers Association, South Australia.

R. Taylor for The Australian Chamber of Manufactures and Metal Industries Association of Tasmania.

Dates and places of hearing:

1987.
Brisbane:
January 15.
Adelaide:
January 20.
Burwood and Darling Harbour:
April 2.
Sydney:
May 29;
June 3, 18.

Attachment E

M039 V048 S Print G8725

IN THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

Conciliation and Arbitration Act 1904

In the matter of an application by The Amalgamated Metal Workers' Union to vary the

Metal Industry Award 1984 - Part 1[1]

[ODN C No. 2568 of 1984]

in relation to wage rates and conditions in the air-conditioning and refrigeration industries

(C No. 5203 of 1986)

MR COMMISSIONER COX SYDNEY, 27 AUGUST 1987

ORDER

A. The above Award is varied as follows:

1. By deleting the words "and installation" appearing in paragraph 8(o)(i).

2. By deleting the words "and installation" appearing in paragraph 27(h)(i).

3. By deleting the section lettered D. appearing in clause 37 and inserting the following:

D. South Australia and Queensland - Air-Conditioning Industry Allowance

(1) South Australia

Wage rates

In lieu of the weekly wage rates prescribed by subclauses 8(a) and (r) of this Award, metal trades employees employed by members of the Engineering Employers Association, South Australia who are also members of the Air-Conditioning and Mechanical Contractors Association of South Australia when performing air-conditioning work (as defined) in the State of South Australia shall be paid the following:

Workshop tradesperson

		$
(a)	Weekly award rate	312.40
	Air-conditioning industry allowance	29.80
	Tool allowance	8.10
	All purpose wage rate	350.30
	*Composite special rates allowance (as defined)	5.80
	Total weekly award wage rate (All purpose)	356.10

[1] Print F8925 [M039]
Recommended retail price $1.00

37 - Special provisions - various districts, industries, plants, etc.
D. - contd

*Although the Composite special rates allowance shall be deemed to be part of the total weekly award wage rate it shall not be payable for all purposes of the Award. Workshop employees and apprentices shall be paid a proportionate amount of this allowance calculated in accordance with the percentage set out in subclause (b) and (c) hereof.

Other adult classifications

(b) Other adult employees shall be paid the undermentioned percentages of the total weekly award wage payable to the tradesperson classification concerned:

In workshop	Percentage of total weekly award wage rate for a workshop tradesperson
Workshop employee 1	97.5
Workshop employee 2	87.0

(c) Apprentices shall be paid a weekly award wage rate calculated as follows:

Workshop - the sum obtained by applying the undermentioned percentages to the all purpose wage rate payable to a workshop tradesperson (less the amount of the supplementary payment applicable from time to time for a tradesperson in Wage Group G10 in subclause 8(a) of this Award) and adding thereto the same percentage of the Composite Special Rates Allowance.

(d) An employee in receipt of the rates prescribed for employees in this subclause shall not be entitled to the special rates prescribed in clause 17 of this Award.

(e) An employee who is ordinarily engaged in the employer's workshop and who from time to time, is required to perform work on site shall, in respect of such work, be entitled to a rate of wage calculated in accordance with the provisions of clause 11 of this Award.

(2) Queensland

(1) In lieu of the weekly wage rates prescribed by subclauses 8(a) and (r) of this Award, metal trades employees employed by members of the Metal Trades Industry Association of Australia when performing air-conditioning work (as defined) in the State of Queensland shall be paid the following:

37 - Special provisions - various districts, industries, plants, etc.
D. - contd

Workshop tradesperson

		$
(a)	Weekly award rate	313.50
	Air-conditioning industry allowance	36.70
	Tool allowance	8.10
	Total weekly award wage rate	358.30

Other adult classifications

(b) Other adult employees shall be paid the undermentioned percentages of the total weekly award wage payable to the tradesperson classification concerned:

In workshop	Percentage of total weekly award wage rate for a workshop tradesperson
Workshop employee 1	97.5
Workshop employee 2	87.0

Apprentices

(c) Apprentices shall be paid a weekly award wage rate calculated by applying the undermentioned percentages to the total weekly award rate (less the amount of supplementary payment applicable from time to time for a tradesperson in Wage Group G10 in subclause 8(a) of this Award) for a tradesperson in the area where employed.

	Percentage
During the first year of apprenticeship	42
During the second year of apprenticeship	55
During the third year of apprenticeship	75
During the fourth year of apprenticeship	88

(d) An employee in receipt of the above shall not be entitled to the special rates prescribed in clause 17 of this Award.

(e) An employee who is ordinarily engaged in the employer's workshop and who, from time to time, is required to perform work on site, shall, in respect of such work, be entitled to payment of portion of the appropriate on-site air-conditioning allowance prescribed by paragraph 7(a)(i) of Appendix A in accordance with the provisions of clause 11 of this Award.

37 - Special provisions - various districts, industries, plants etc.
D. - contd

Definitions

(f) "Composite special rates allowance" is an amount payable as compensation for peculiarities and disabilities associated with work in the air-conditioning industry.

"Air condition work" means the manufacture and fabrication of air conditioning and/or ventilation systems, but excludes the manufacture of packaged air-conditioning units, thermostatic controls, water recirculation equipment, air volume regulator, diffusers, fans, heat exchange equipment and the like by means of mass production methods.

"Workshop tradesperson" means a tradesperson who may be engaged on the fabrication of straight duct work, and who in addition can fabricate such items as reducing pieces, lobster backs and other items, the fabrication of which requires general trade skill and knowledge.

"Workshop employee 1" means an adult employee engaged on the fabrication of straight duct work where such work requires an employee to work from scaled prints of drawings, measure his own work, and exercise a degree of trade skill and knowledge. Included in the category are employees who are engaged in the operation of brake presses and guillotines.

"Workshop employee 2" means an adult employee engaged on the fabrication of duct work where the performance of such work does not require the exercise of trade skill and knowledge of the use of prints, drawing or measurements.

4. By renumbering subclause 42(k) as paragraph 42(k)(i).

5. By inserting a new paragraph 42(k)(ii) as follows:

(ii) This clause shall not apply to employees in New South Wales, Queensland and South Australia who are in receipt of the wage rates prescribed for metal trades employees engaged in on-site air conditioning work (as defined) and on-site refrigeration work (as defined).

6. By inserting in subclause 2(a) of Appendix A the words "Queensland (Air-conditioning and refrigeration work only)" after the words "South Australia".

7. By inserting a new subparagraph 2(b)(i)(6) in Appendix A as follows:

(6) Air-conditioning work (as defined) and refrigeration work (Queensland only) (as defined).

8. By deleting paragraph 2(c)(ii) appearing in Appendix A.

9. By renumbering paragraphs 2(c)(iii), (iv), (v) and (vi) of Appendix A to paragraphs 2(c)(ii), (iii), (iv) and (v).

10. By inserting in subclause 3(a) of Appendix A the words "Queensland (air-conditioning and refrigeration industry only)" after the words "South Australia".

11. By inserting in subclause 3(b) of Appendix A the words "Queensland (Air Conditioning and Refrigeration Industry only)" after the words "South Australia".

12. By inserting a new paragraph 4(a)(iii) in Appendix A as follows:

(iii) Air-conditioning industry - New South Wales, Queensland and South Australia - within a 50 kilometre radius of the Strathfield GPO (NSW), the GPO Brisbane, the GPO Adelaide or where appropriate the GPO from the nearest regional/ provincial centre $7.60 per day

13. By inserting a new paragraph 4(a)(iv) in Appendix A as follows:

(iv) Refrigeration industry (Queensland only) - within a 50 kilometre radius of the GPO Brisbane, or where appropriate the GPO from the nearest regional/provincial centre $7.60 per day

14. By renumbering clause 7 in Appendix A as clause 8.

15. By inserting a new clause 7 in Appendix A as follows:

7 - RATES OF PAY FOR ON-SITE AIR-CONDITIONING WORK AND REFRIGERATION WORK

(a) A building site tradesperson (as defined) when employed on site on air-conditioning work (as defined) shall be paid as follows:

On-site air-conditioning industry

(i) Wage structure	NSW $	SA $	Qld $
Base rate	289.10	286.70	287.50
Air-conditioning industry allowance	28.30	28.30	28.30
Tool allowance	8.10	8.10	8.10
Industry allowance	13.50	13.50	13.50
Additional allowance	47.40	47.40	47.40
Special allowance	7.70	7.70	7.70
All purpose rate	394.10	391.70	392.50

(b) A Refrigeration Mechanic and/or Serviceperson (as defined) when employed on on-site refrigeration work (Queensland only) (as defined) shall be paid as follows:

Appx A:7 - Rates of pay for on-site air conditioning work, etc. (b) - contd

On-site refrigeration industry (Queensland only)

(i) Wage structure	$
Base rate	287.50
Refrigeration industry allowance	28.30
Tool allowance	8.10
Industry allowance	13.50
Additional allowance	47.40
Special allowance	7.70
All purpose rate	392.50

Other adult classifications

(c) Other building site employees (as defined) shall be paid the undermentioned percentage of the total weekly wage rate for a building site tradesperson set out in paragraph 7(a)(i) of Appendix A.

	Percentage
Building site employee 1	97.5
Building site employee 2	88.5
Building site employee 3	87.0

Apprentices

(d) Apprentices shall be paid a weekly wage rate calculated as follows:

By applying the undermentioned percentages to the total weekly Award wage rate for an on-site tradesperson, (less an amount equal to the supplementary payment applicable from time to time for a tradesperson in wage Group C10 in clause 8 of the Metal Industry Award - Part 1) for a tradesperson in the area where employed.

	Percentage
During first year of apprenticeship	42
During second year of apprenticeship	55
During third year of apprenticeship	75
During fourth year of apprenticeship	88

(e) An air-conditioning industry allowance is an amount paid to compensate for the various disabilities and peculiarities associated with the installation of air-conditioning equipment.

(f) A refrigeration industry allowance is an amount paid to compensate for the various disabilities and peculiarities associated with on-site refrigeration work (as defined).

(g) Payment of allowances in paragraphs 7(a)(i) or 7(b)(i) of Appendix A hereof shall not affect the employees rights with respect to payment of a multi-storey buildings allowance (as defined) in subclause 8(r) with respect to New South Wales and South Australia and paragraph 37(a)(b)(ii) with respect to Queensland.

Appx A:7 - Rates of pay for on-site air-conditioning work, etc. (g) - contd

The allowance shall be payable for all purposes of the Award.

Apprentices when engaged on new construction work in multi-storey buildings shall receive proportionate amounts of such allowance in accordance with the percentages set out in paragraph 7(a)(iii) of Appendix A.

(h) Employees in receipt of the wage rates prescribed in clause 7 of Appendix A shall not be entitled to any of the special rates prescribed in clause 17 of this Award.

(i) An employee who is ordinarily engaged in the employer's workshop and who, from time to time is required to perform work on site, shall, in respect of such work, be entitled to payment of the appropriate on-site rates prescribed by this clause in accordance with the provision of clause 11 of this Award.

(j) With the exception of fares and travelling allowances the allowances payable under this Appendix to metal trade's employees employed on site on air-conditioning work (as defined) or refrigeration work (as defined) shall be paid for all purposes of the Award.

Definitions

(k) "Air-conditioning work" means the manufacture and/or fabrication and/or installation of air-conditioning and/or ventilation systems and all work ancilliary thereto, when carried out on a construction site but excludes the manufacture of packaged air-conditioning units, thermostatic controls, water recirculation equipment, air volume regulators, diffusers, fans, heat exchange equipment and the like by means of mass production methods.

"Refrigeration work" means the manufacture, supply, installation, servicing or repairing of refrigeration equipment and/or ancillary components when carried out on a construction site.

"Refrigeration Mechanic and Serviceperson" is a tradesperson who has served an apprenticeship, or is a holder of a tradesperson's certificate issued by the appropriate authority as a Refrigeration Mechanic who is required to apply general trade experience on refrigeration work (as defined).

"Building site tradesperson" means a tradesperson who may be engaged on the fabrication and/or installation of duct work and who, in addition, can fabricate and/or install such items as reducing pieces, lobster backs and other items, the fabrication and/or installation of which requires general trade skill and knowledge.

"Building site employee 1" means an adult employee who has had twelve months' experience in the industry and has attained sufficient skill and experience to enable him to perform all the duties on the installation of air-conditioning equipment.

"Building site employee 2" means an employee who has had three months' experience in the industry as a worker engaged on the installation of air-conditioning equipment.

Appx A:7 - Rates of pay for on-site air conditioning work, etc.
(k) - contd

"Building site employee 3" means an employee, who, having no previous experience in the industry, is engaged on the installation of air conditioning equipment.

B. This order shall come into force from the beginning of the first pay period which commenced on or after 18 June 1987 and shall continue in force for six months.

Appearances:

P. Lelli, B. Girdler and B. Fraser for The Amalgamated Metal Workers' Union.

M. Scott, and K. Taylor for Metal Trades Industry Association and Engineering Employers Association, South Australia.

R. Taylor for The Australian Chamber of Manufactures and Metal Industries Association Tasmania.

Dates and places of hearing:

1987.
Brisbane:
January 15.

Adelaide:
January 20.

Burwood and Darling Harbour:
April 2.

Sydney:
May 29;
June 3, 18.

VARIATIONS TO THE AWARD

Note: This brief history of the award indicates the type of order in the first column (A: award, Ag: agreement, C: correction or corrigendum, Con: consolidation, CR: common rule, D: determination, R: revocation, Rep: reprint, S: setting aside or suspension, V: variation); then the print number; the date the order was signed; the Commonwealth Arbitration Reports reference; and the price of the print. The last column indicates the parts of the award varied - a brief description (NW: National Wage decision) - the operative or effective date (ppc: from pay period commencing on or after day shown; otherwise from the date shown) - the Commission case or file number(s) - the member(s) of the Commission making the order. Details of Commission decisions are not given in this summary, but a reference to the decision giving rise to a particular order can usually be found in the footnotes to the print of that order.

No.	Print	Date	CAR vol/page	Price ($)	Clauses varied - Description - Operative date - Case no. - Commission Member(s)
Rep*	F8925	14Feb86		7.20	- s. 195 Reprint - - -
Rep-a*	G7011	09Apr87		0.50	Pt I:8 - correction order - ppc 19Mar87 - C2568/84 - Williams J
V015	F8483				- not signed - - -
V016	F8502				- not signed - - -
V017					- cancelled - - -
V018*	G0337	24Sep85		0.20	4, 37D, 39 - organization name change, allowances - 04Sep85, ppc 06Apr85 - C4114/84 - Bennett C
V018a*	G3203				preamble - corrigendum - - -
V019	G0443	08Oct85		0.20	28 - allowances - ppc 16Sep85 - C4145/85 - Bennett C
V020*	G0909	09Dec85		0.20	13, 14, 15, 17 - wages - ppc 28Oct85 - C4398/85 - Bennett C
V021	G0965	06Dec85		0.80	6A, 8, 9, 14, 17, 21, 22, 27, 35, 37A, 37B, 37D, 37E, 37F, 37H; Appx A:3; Appx B:9, 10; Appx D:5 - NW Nov85 - ppc 04Nov85, ppc 19Nov85 - C4181/85 - Williams J
V022	G1507	19Dec85		0.35	6 - suspension - 19Dec85 - C7759/85 - Williams J
V023	G1733	14Jan86		0.20	17 - wages - ppc 18Jan86 - C7246/85 - Walker C
V024*	G2705	09Apr86		0.20	28 - allowances, motor - ppc 24Feb86 - C3137/86 - Bennett C
V025	G2943	01May86		0.20	22 - holidays - ppc 12Mar86 - C3181/86 - Bennett C
V026	G2943	01May86		0.20	8 - allowances - ppc 12Mar86 - C0156/86 - Bennett C
V027*	G2944	01May86		0.20	37B, 37D, 37E, Appx A:4, 5 - allowances - ppc 15Jan86 - C3032/86 - Bennett C
V028*	G3180	08May86		0.20	42 - wages - 24Mar86 - C8524/86 - Walker C
V029	G3783	17Jul86		0.50	17 - allowances - ppc 29Jun84 - C2685/85 - Bennstt C
V030*	G3843	13Aug86		0.50	17 - NW Apr85 - ppc 23Apr85, ppc 19Nov85 - C3900/86 - Williams J
V031*	G3900	01Aug86		0.50	8 - allowances - 21Jul86 - C4191/86 - Bennett C
V032	G3988				- not signed - - -
V033*	G4250	20Aug86		0.50	22 - holidays - 24Jul86 - C3181/86 - Bennett C
V034*	G4453	29Aug86		1.30	6A, 8, 9, 14, 17, 21, 22, 27, 35, 37A, 37B, 37C, 37D, 37E, 37F, 37H, Appx A:3; Appx B:9, 10; Appx D:5 - NW Jun86 - ppc 01Jul86, ppc 25Jul86 - C3114/86 - Williams J
V035	G5325	25Sep86		0.50	6 - suspension - 25Sep86 - C2069/86 - Donaldson C
V036*	G5373	14Nov86		0.50	2, 45 - special exemptions - ppc 24Sep86 - C4830/86 - Cox C
V037	G5900	21Nov86		0.50	6 - suspension of employees - 25Sep86, 21Nov86 - C2517/86 - Keogh DP
V038*	G6367	22Jan87		0.50	6 - suspension of employees - ppc 25Sep86, ppc 21Nov86, ppc 09Dec86 - C5371/86 - Bain C
V039*	G6528	24Feb87		0.50	45 - special exemptions - ppc 30Jan87 - C5427/86 - Cox C
V040*	G6529	24Feb87		0.50	22 - public holidays - ppc 30Jan87 - C5462/86 - Cox C

*Indicates prints required to make up a current copy of the award.

M0039 Metal Industry Award 1984 - Part I

No.	Print	Date	CAR vol/page	Price ($)	Clauses varied - Description - Operative date - Case no. - Commission Member(s)
V041*	G6875	25Mar87		0.50	22 - holiday,public - 12Feb87 - C5392/86 - Donaldson C
V042*	G6876	24Mar87		0.50	28 - allowances,motor - 02Mar87 - C3161/87 - Donaldson C
V043*	G6891	31Mar87		0.50	37H - allowances,fares,travelling - ppc 09Feb87 - C3082/87 - Cox C
V044*	G7097	01May87		1.00	6A, 8, 9, 37B, 37D, 37E, 37F - NW Mar87 - ppc 10Mar87 - C3462/87 - Keogh DP
V045	G7815				- not signed - - -
V046	G8047				- not signed - - -
V047*	G8148	17Aug87		0.50	14 - apprenticeships - 04May87 - C3591/87 - Cox C
V048*	G8725	27Aug87		1.00	8, 27, 37, 42, Appx A:2, 3, 4, renumbering 7 as 8, new 7 - wages, conditions - ppc 18Jun87 - C5203/86 - Cox C
V049*	G8817	07Aug87		0.50	8, 43 - overaward payment - ppc 07Aug87 - C0210/87 - Donaldson C

*Indicates prints required to make up a current copy of the award.

Printed by Authority by the Commonwealth Government Printer

Attachment F

FAIR WORK COMMISSION
Matter No: AM2016/23
Matter Name: 4 Yearly Review of Modern Awards – Construction Awards

WITNESS STATEMENT OF STEPHEN ISBERG

I, Stephen Isberg, care of [redacted], in the State of New South Wales, solemnly and sincerely affirm and declare:

PERSONAL INFORMATION

1. I make this statement from my own knowledge except where I have indicated otherwise. Where I make a statement based on information provided to me, I believe the information is true and correct.

2. I am employed as a Union organiser by the Australian Manufacturing Workers' Union (AMWU). I have been employed by the AMWU since November 2017.

3. Prior to working for the AMWU, I was self-employed in the construction industry performing sheet metal work and installing air conditioning systems.

4. Prior to that I was employed by various air conditioning companies, including a company called Thermal Mechanical Services. During this period, I was working as 1st class sheet metal worker, installing air conditioning systems.

EMPLOYMENT IN BUILDING AND CONSTRUCTION INDUSTRY

5. My experience in the building and construction industry is as follows:

   a. I commenced work in building and construction industry in approximately 1997 or 1998.

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b. I started off in the industry working for a mate's dad, who was an air conditioning tradesman. We worked on a building sites installing air conditioning units, duct work and industrial fans. The first job that I ever did was for Campsie medical centre.

c. Since then I've worked in the industry for various companies and for myself, always doing air conditioning work.

ROLE AND RESPONSIBILITIES AS AN AMWU ORGANISER

6. I commenced working with the NSW branch of the AMWU in November 2017.

7. Part of my responsibilities in the NSW branch of the AMWU involve organizing our union members that are employed in the building and construction industry.

8. This group of employees includes air conditioning tradespeople working on site, refrigeration mechanics working on site and employees working in the lift industry, among others.

WORK OF A REFRIGERATION MECHANIC

9. The role of a refrigeration mechanic working on a commercial construction site is to connect the power and pipe work between the indoor and rooftop units so that the system can be operational.

10. Refrigeration mechanics also install split system units. A split system unit is where you have one unit (called the head) installed on the wall which is connected to the rooftop condenser via piping and electrical wiring (as opposed to duct work).

11. Refrigeration mechanics require a refrigeration mechanic's ticket. It is a trade qualification, so you need to do an apprenticeship, 3-year TAFE course plus one year on the job.

12. However, in addition to the trade certificate, a refrigeration mechanic is also required to have TAFE qualifications electrical work and plumbing, including in:

    i. "use of oxy/welding."
    ii. Working at heights - because a lot of time the units are on the roof.

AIR CONDITIONING TRADESPEOPLE

13. The job of an air conditioning tradesperson is to install the air conditioning system in order to either supply or exhaust air. For example, in order to supply conditioned air or fresh air, or alternatively, to exhaust forms of exhaust air e.g. car park fumes, kitchen exhaust, smoke exhaust or toilet exhaust.

14. To work as an air conditioning tradesperson on site you need to be a 1st class sheet metal worker. To obtain this qualification you go to TAFE and do an apprenticeship.

15 There is a distinction between the manufacture and installation of HVAC duct. A 1st class sheet metal worker will know how to manufacture duct; however, installation of the duct is a totally different skill which you need to learn by working on the job on a construction site.

16. Many tradespeople come out of TAFE having worked in a factory environment, with the knowledge and skills to make the HVAC duct, but they

don't know how to install it on a construction site, because it requires a totally different set of skills, and an ability to work collaboratively with other tradespeople, e.g. plumbers, electricians, brickies, formworkers etc.

STEPS INVOLVED IN INSTALLING AN AIR CONDITIONING SYSTEM

17. The steps involved in installing an air conditioning system are as follows:

1) Obtain, read and analyse all construction drawings. These will show where the existing duct is. The plan will give an overview of the floor layout and show where the duct needs to be installed so as not to clash with other services. If there is a potential for the duct to clash with other services e.g. plumbing services, cable trays.

2) Next it is necessary to measure the service and modify the duct accordingly. The duct will usually have to be sent back to the factory to be modified.

3) The next step is to get all the relevant material on site (the duct, fans, fire dampers, fixings (these are used to hang the duct), nuts and bolts, etc.

4) Next you start measuring out where all the duct will go, and start installing the hanging systems (used to hang the duct), and then put the duct together like a jigsaw puzzle. Helpfully, the duct comes onto site numbered so you match up the pieces relevant to each part of the drawing. Then you use your mechanical lifting device to raise the duct into the air ready for hanging.

5) The next step is to hang the duct. There are two different methods to hang the duct. The first method is by hanging strap and dyna bolts and

tech screws, and the second method is by using a threaded rod and angles.

6) Once you've hung the ducts, and the unit, the refrigeration mechanic will come and connect it all (i.e. they will do all the wiring and piping work).

7) Once all of that is done, then you connect all the flexible duct, and air grills in the site plan - this is called the fit-out stage.

8) You must install the fans – this is a separate system used to exhaust or supply air.

DISABILITIES ASSOCIATED WITH AIR CONDITIOINING AND REFRIGERATION WORK

18. There are several disabilities associated with the work of an air conditioning tradespersons and refrigeration mechanics. For a start, you are susceptible to being cut, because you are working with sharp sheet metal, and working with heavy industrial fans and units, and heavy duct work depending on size of the piece of duct to be installed.

19. Further disabilities involved in the work of air conditioning tradespeople and refrigeration mechanics include the following:

    a. work in confined spaces;
    b. on rooftops and at heights generally;
    c. in plant rooms;
    d. With insulation;

Insulation

20. Air conditioning tradespeople work with insulwool and rockwool and other insulating material. For example, on a refurbishment job, you would be working with those materials because you have cut it out to get to the duct.

21. It is very unpleasant doing this kind of work – it is uncomfortable, itchy, its fiberglass fibers which you could be breathing in. Depending on how old the material is, it could be sharp as well – you could get bits of fiberglass in your hand which feels like a splinter.

Confined spaces

22. As an air conditioning tradesperson or refrigeration mechanic, you would often be working in a confined space, for example, in the plant room, or in a ceiling space – that is in a commercial context. If you are working on a residential house, then you will be frequently in a confined space.

23. When you are working in confined spaces, you are working in cramped positions, susceptible to muscle strains, back problems etc. It is very uncomfortable in most circumstances – you can't stretch out you – might be working on your knees in a cramped position – if your knees start to hurt, instinct is to stand up – but you can't because you are in the confined space.

24. When working in confined spaces, it often gets very hot and uncomfortable. If it is hot outside, the heat from the windows will cause the building to get very hot. This issue is compounded if you are working in a confined space. Hot air rises and will get caught in the underside of the slab. So often it will 5-10 degrees hotter than at floor level.

25 Depending on what confined space it is, you need to be ticketed to work in that confined space, for example in a sewage treatment plant, or a ship building yard, or on a ship.

Dirty work

26. There is a lot of dust, for example when you are drilling into the slab. You would also get insulation fibres all over you.

27. Normally the sheet metal comes with a film of oil on it. Often the dust sticks to that, and then gets on your hands when you pick it up – so your hands get dirty. You are also working with silicones and sealants.

Height work

28. Refrigeration mechanics and air conditioning tradespeople are often working in heights. For example, when you are working on the units on the roof or installing duct on the roof.

29. Alternatively, you might be working over penetrations. A penetration is a large hole which the duct goes through; they are used to exhaust fumes. So, for example car park exhaust starts from the lowest part of the building and discharges on the roof.

30. Often when installing duct, you will be standing next to a large penetration on each storey while you are installing the duct riser. It is the same as the kitchen exhaust riser – it must be discharged off the roof.

31. There are special skills associated with working at heights, for example you need to know how to use the harness correctly and you need to follow all the

correct procedures. Failure to adhere to procedures can lead to serious injury or death.

[redacted]

14/11/2018

STEPHEN ISBERG