

# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

**Matter Numbers:** AM2016/23, AM2014/260, 274 and 278

*Fair Work Act 2009*

Part 2-3, Div 4 –s.156 - 4 yearly review of modern awards

### Construction Awards

#### **Building and Construction General On-Site Award 2010**

[MA000020]

#### **Joinery and Building Trades Award 2010**

[MA000029]

#### **Mobile Crane Hiring Award 2010**

[MA000032]

*4 yearly review of modern awards – award stage –Group 4C awards*

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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CONSTRUCTION & GENERAL DIVISION) RESPONSE TO ISSUES RAISED DURING THE HEARINGS ON  
10<sup>TH</sup> -12<sup>TH</sup> APRIL 2017**

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22<sup>nd</sup> June, 2017

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## Introduction

1. During the Full Bench hearings of the review of the construction awards (AM2016/23) held on 10<sup>th</sup>-12<sup>th</sup> April 2017, there were a number of issues raised for which the CFMEU C&G requested further time to consider its position on them before replying. This written submission is the CFMEU C&G's response on those issues.
2. In addition, the CFMEU C&G has picked up an error in the transcript that is identified in paragraph 19 below.

## Issues Raised on 10<sup>th</sup> April 2017

3. At PN3119 of transcript, Vice President Hatcher asked what a cofferdam was, and at PN3121 asked a question about the relationship between air pressure and a cofferdam. The issue was again raised at PN3463.

4. According to Wikipedia,

*“A cofferdam (also called a coffer) is a temporary enclosure built within, or in pairs across, a body of water and constructed to allow the enclosed area to be pumped out. This pumping creates a dry work environment for the major work to proceed. Enclosed cofferdams are commonly used for construction and repair of oil platforms, bridge piers and other support structures built within or over water. These cofferdams are usually welded steel structures, with components consisting of sheet piles, wales, and cross braces. Such structures are typically dismantled after the ultimate work is completed.”*<sup>1</sup>

5. The allowances in clause 21.9 – Cofferdam worker, of the *Building and Construction General On-site Award 2010* are payable to an employee working within the confines of the cofferdam. The reference to a cofferdam worker engaged on work not under air pressure (as in 21.9(a)), or under air pressure (as in 21.9(b)), is to differentiate between those workers required to work in normal air from workers required to work in a compressed air environment (i.e. in a caisson<sup>2</sup>) or who wear breathing apparatus (i.e. divers). Employees working in a caisson or a “wet” cofferdam are not a common occurrence. During the replacement of Melbourne's 100-year-old main sewer under the Yarra River in 2009 divers were required to work underwater within the confines of the cofferdam in the installation of pipe supports, steel pipe, sealing and protection works.<sup>3</sup>
6. At PN3215, PN 3329, PN3379 and PN3380 of transcript, reference is made to what became Exhibit #44 –Extract from Safe Work Australia publication, Hazardous Chemicals Requiring Health Monitoring. This document was provided by the MBA in support of its argument that clause 20.1(d)(iii) of the *Building and Construction General On-site Award 2010* should be deleted.
7. Having further considered this document (and other relevant material) the CFMEU C&G accepts that the frequency of chest x-rays may affect the level of exposure to radiation, and

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1 <https://en.wikipedia.org/wiki/Cofferdam>

2 [https://en.wikipedia.org/wiki/Caisson\\_\(engineering\)](https://en.wikipedia.org/wiki/Caisson_(engineering))

3 <http://www.docklandsnews.com.au/editions/article/the-cofferdam-is-coming-to-a-river-near-you-123/>

therefore may be detrimental to the health of a worker. The CFMEU C&G also accepts that there has been a change in medical opinions on frequency of x-rays since the introduction of this provision in pre-modern awards. The CFMEU C&G therefore submits that it would now be inappropriate to include a set frequency of x-rays in the award, and that the issue of whether or not an x-ray examination is required should be a matter determined by a worker in consultation with their medical advisor.

8. Clause 20.1(d)(iii) however deals with more than the issue of frequency of x-rays. It also deals with payment for the costs of the x-rays and the payment of the time taken to have the x-ray examination. The CFMEU C&G submits that these aspects of the clause should be retained, i.e. the reimbursement of the cost and payment of the time taken. It is therefore suggested that the wording be changed to the following:

*“Where an employee engaged on construction or repair of refractory brickwork makes a request to have an x-ray examination, the employee shall be reimbursed the cost of such x-ray. Such x-ray examination may be taken during working hours and be paid for as time worked.”*

9. At PN3262 of transcript, DP Gostencnik asked if the boatswains’ chair was a feature of the modern construction industry. The boatswains’ chair (or bosun’s chair as it is also referred to in clause 22.2(q) of the award) is a type of swing scaffold<sup>4</sup>, and is still, but rarely, used in the construction industry. It is used in areas where access is difficult and other forms of swing scaffolding cannot be used e.g. accessing the outside of irregular buildings, lift shafts, light wells etc. .
10. At PN3291 to PN3327 there was a discussion over clause 20.1(c) of the *Building and Construction General On-site Award 2010* and the way that it is currently drafted. The CFMEU C&G submits that clause 20.1(c) of the current award is incorrectly drafted and not a proper reflection of the pre-modern award, the *National Building and Construction Industry Award 2000* (the NBCIA 2000). The corresponding clause in the NBCIA 2000 (to clause 20.1) was clause 24.3, which in clause 24.3.3 provided as follows:

*“24.3.3 The above allowance does not include the provision of the following tools or protective equipment. Where the following tools or protective equipment are provided by the employee then the employee shall be reimbursed for the cost of such tools or protective equipment by the employer, or alternatively the employer may elect to provide such tools or protective equipment:*

**24.3.3(a) Bricklayers**

- *Scutch comb;*
- *Hammers (excepting mash and brick hammers);*
- *Rubber mallets;*
- *T squares.*

**24.3.3(b) Carpenters and Joiners**

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<sup>4</sup> [https://www.worksafe.vic.gov.au/\\_data/assets/pdf\\_file/0020/13079/suspendedscaffolds.pdf](https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0020/13079/suspendedscaffolds.pdf) at page 4

- *Dogs and cramps of all descriptions;*
- *Bars of all descriptions;*
- *Augers of all sizes;*
- *Star bits and bits not ordinarily used in a brace;*
- *Hammers, except claw hammers;*
- *Glue pots and glue brushes, Dowell plates;*
- *Trammels;*
- *Hand and thumb screws;*
- *Spanners;*
- *Soldering irons.*

#### **24.3.3(c) Stonemasons**

- *All cutting tools, except mash hammers, squares, pitching tools and straight edges up to four feet (1.2 metres) in length. On completion of engagement the cost of having all cutting tools sharpened.*
- *Jet sprays or some other suitable device for keeping the stone wet when using pneumatic surfacing machines and lathes.*

#### **24.3.3(d) Plasterers**

- *All floating rules, trammels, centres, buckets and sieves. Stands for plasterers' mortar boards not less than two feet six inches (76 centimeters) from the ground or where practicable and safe from a scaffold level.*
- *Overalls and the approved brush and roller to perform the work when required to brush on to walls and ceilings, bondcrete, plasterweld or similar substances.*

#### **24.3.3(e) All employees**

- *All power tools and steel tapes over six metres.*
- *Gloves and hand protective paste for employees engaged in handling hot bitumen, creosote, oiled formwork, refractory repair work and in washing down brickwork.*
- *Protective clothing for employees required to use muriatic acid.*
- *Suitable material and/or coloured glass for the protection of employees working at oxyacetylene or electric arc welding.*
- *Suitable screens to protect employees from flash where electric arc operators are working.*
- *Gas masks for employees engaged upon work where gas is present.*
- *Hand protective paste for any painter, signwriter, plasterer or glazier who requires its use.*
- *For an employee required to use toxic substances covered by 25.1.9 of this award, in surroundings where there is an absence of adequate natural ventilation:*
- *An approved type of respirator and/or an approved type of hood with airline attached;*
- *Protective clothing as approved by the relevant authority; and*
- *Soap and washing materials.*
- *Pneumatic rubber tyred wheelbarrow for loads of bricks and materials.*

- *Overalls where necessary, when bricklayers are engaged on work covered by 25.1.13 and 25.1.14 of this award.*<sup>5</sup>

11. If the modern award is to properly reflect the entitlement contained in the NBCIA 2000 then the contents of clause 20.1(c) should in fact be part of clause 20.1(b)(vii). This would reflect the intent of the pre-modern award that these items (contained in 20.1(c)) are to be reimbursed for if provided by the employee, or alternatively they can be provided by the employer.
12. Clause 24.3.3(e) of the NBCIA 2000 as set out above (taken from the web version of the NBCIA 2000), however also contained an error in the formatting of the clause (i.e. it did not identify that dot points 9, 10 and 11 (dealing with respirators, protective clothing, and soap and washing materials) were in fact sub-points of dot point 8). The correct version can be found in Print S0643<sup>6</sup> and provided as follows:

“24.3.3(e)      *All employees*

- *All power tools and steel tapes over six metres.*
- *Gloves and hand protective paste for employees engaged in handling hot bitumen, creosote, oiled formwork, refractory repair work and in washing down brickwork.*
- *Protective clothing for employees required to use muriatic acid.*
- *Suitable material and/or coloured glass for the protection of employees working at oxyacetylene or electric arc welding.*
- *Suitable screens to protect employees from flash where electric arc operators are working.*
- *Gas masks for employees engaged upon work where gas is present.*
- *Hand protective paste for any painter, signwriter, plasterer or glazier who requires its use.*
- *For an employee required to use toxic substances covered by 25.1.9 of this award, in surroundings where there is an absence of adequate natural ventilation:*
  - An approved type of respirator and/or an approved type of hood with airline attached;*
  - Protective clothing as approved by the relevant authority; and*
  - Soap and washing materials.*

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<sup>5</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap790741/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap790741/asframe.html)

<sup>6</sup> <http://www.fwa.gov.au/awardsandorders/S0643.doc>

- *Pneumatic rubber tyred wheelbarrow for loads of bricks and materials.*
- *Overalls where necessary, when bricklayers are engaged on work covered by 25.1.13 and 25.1.14 of this award.”*

13. Seen in the context of the original NBCIA 2000, as contained in Print S0643, it is clear that the creation of a separate clause 20.1(c) was an error made by the AIRC Award Modernisation Full Bench. The CFMEU C&G submits that the error should now be corrected and clause 20.1(c) be deleted as a separate clause and the contents transferred to 20.1(b)(vii) so that it reads as follows:

“(vii) *All employees*

- *All power tools and steel tapes over six metres.*
- *Gloves and hand protective paste for employees engaged in handling hot bitumen, creosote, oiled formwork, refractory repair work and in washing down brickwork.*
- *Protective clothing for employees required to use muriatic acid.*
- *Suitable material and/or coloured glass for the protection of employees working at oxyacetylene or electric arc welding.*
- *Suitable screens to protect employees from flash where electric arc operators are working.*
- *Gas masks for employees engaged upon work where gas is present.*
- *Hand protective paste for any painter, signwriter, plasterer or glazier who requires its use.*
- *For an employee required to use toxic substances covered by clause 22.2(i), in surroundings where there is an absence of adequate natural ventilation:*
  - An approved type of respirator and/or an approved type of hood with airline attached;*
  - Protective clothing as approved by the relevant authority; and*
  - Soap and washing materials.*
- *Pneumatic rubber tyred wheelbarrow for loads of bricks and materials.*
- *Overalls where necessary, when bricklayers are engaged on work covered by clauses 22.2(m) and 22.2(n).”*

14. At PN3358 to PN3367 of transcript, a series of questions were asked regarding safety boots and what was different about refractory bricklayers boots. Following further investigation the

CFMEU C&G can advise that there is nothing different with the safety boots worn by refractory workers. The retention of the different award clause is a result of keeping the different provision as was contained in the NBCIA 2000. The CFMEU C&G submits that there is no good reason for keeping a separate provision and that if the heading of clause 20.1(b)(vii) is changed to “All employees” then the provisions relating to safety boots in 20.1(d) could be deleted.

15. At PN3383 to PN 3384 of transcript, there was a discussion on clause 22.2(q) - height work. This clause originally came from clause 25.1.26 of the NBCIA 2000 (which was limited to the painting trades). The MBA claim that the provision condones an unsafe practice. This is incorrect. All the allowance clause does is say what extra amount is paid to employees performing work at a height of 9m or more without the use of a swing stage or a bosun’s chair (for which other allowances are payable). It does not say that the payment of the allowance removes the obligation on the employer to provide alternative fall arrest or other safety equipment.
16. This clause includes a reference to say that it is not paid in addition to the towers allowance in clause 22.3(a), which applies to workers where construction exceeds 15m in height. Seen in this context the allowance in clause 22.2(q) applies to employees working on towers at heights between 9m and 15m. It would also apply to employees working for example on flagpoles, a chimney on the top of a house, or other structures where access for using scaffolding, elevated work platforms, swing stages or a bosun’s chair is restricted.
17. At PN3391 of transcript, the issue of the identification of the separate disability allowances contained within the award was raised. As mentioned during the hearing, the identification of different types of allowances was a matter discussed between the union and employer parties during the conciliation before SDP Watson on the exposure draft. Attached at Appendix 1 is the CFMEU C&G position on the identification of allowances by type, i.e. disability, skill or expense.
18. At PN3159 of transcript the MBA suggested that clause 22.3(i)(ii) be deleted on the basis that there was no greater disability for working on a roof with a greater pitch. The MBA are incorrect, Worksafe Victoria say the following in regard to the pitch of a roof:

*“Where work is required on a steep roof where the slope exceeds 35 degrees, do not stand on the roof. A steep pitched roof is an inappropriate surface to stand on due to the likelihood of sliding. Perimeter guard rails and catch platforms are also insufficient measures to protect workers on such roofs. In these circumstances, roof workers need a system to prevent sliding and to prevent falls from the perimeter.*

*Use one or more of the following systems in such circumstances:*

- *aerial access equipment, such as a cherry picker;*
- *a work positioning system, such as a travel restraint or industrial rope access system; and*
- *a scaffold platform, located at the roof edge and a roof ladder.”<sup>7</sup>*

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<sup>7</sup> [https://www.worksafe.vic.gov.au/\\_data/assets/pdf\\_file/0004/27364/prevention\\_falls\\_roofs.pdf](https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0004/27364/prevention_falls_roofs.pdf) at p.3

19. At PN3466 and PN3469 of transcript, there is an error in the identification of the speaker. The speaker was Mr. Crawford of the AWU (not Mr. Maxwell).
20. At PN3556 and PN3558 of transcript, there was discussion on the site allowance provisions in enterprise agreements that are paid in lieu of special rates. The CFMEU C&G undertook to provide examples. Appendix 2 to this submission provides examples taken from enterprise agreements that cover the CFMEU from NSW, QLD and Victoria.
21. At PN4102 to PN4106 of transcript, mention is made of the HILDA data and whether or not it breaks down into industry sectors. The CFMEU C&G has made some preliminary inquiries through the ACTU and has been advised that the HILDA data does breakdown into industry sectors on two levels (i.e. a first division level e.g. construction industry, and a second division e.g. construction services). The information however is not broken down on an award-by-award basis.

### **Issues Raised on 11th April 2017**

22. At PN5508 to PN5511 of transcript (also at PN5672 on 12<sup>th</sup> April 2017) the MBA's proposal on shift work definitions was discussed. The CFMEU C&G has further considered the issue and wishes to advise that it now consents to the variations proposed by the MBA to introduce an early morning shift, for work commencing at 11pm and before 4.30 am, for which a 50% shift loading is payable..
23. At PN5542 to PN5547 of transcript, mention is made of the 60% majority required for changes to hours of work under the *Joinery and Building Trades Award 2010* and whether the clause in the predecessor awards was a result of agreement or arbitration. The CFMEU C&G has looked into the history of the predecessor awards and identified that Commissioner Grimshaw made an arbitrated decision on the hours of work clause when he made the original *National Joinery and Building Trades Award 1993*<sup>8</sup>. In his decision Commissioner Grimshaw decided that,

*“CLAUSE 17 HOURS*

*The submissions of the parties, particularly Mr Hope for the employers, went to obtaining the ability or discretion to introduce variation to hours of work and the taking of rostered days off to suit the needs of the company which it was submitted may alter from time to time; such as during seasonal peaks, or other customer requirements. On the other hand the union presented a number of witnesses who evidenced the flexibility sought by the employer already existed. Another contentious issue raised by the employer was the objection to the existing requirements for the taking of RDO's and the method of working -the 38 hour week prevailing in the industry which requires notification and/or consultation with the appropriate union in order to introduce changes. The employer seeks the ability to introduce changes to hours in consultation with its employees without the necessity of the union involvement.*

*The first matter to be addressed seems to me to be the number of options available to the employer, currently the options are rather restricted or limited and after*

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8 Print K6181 <https://www.fwc.gov.au/documents/decisionssigned/html/k6181.htm>



*considering what has been presented by the parties I have decided that the options contained in Exhibit HOPE 1 clause 17(1)(a) should be adopted in the new award together with any other option being available to the employer and employees by mutual agreement, in other words the employer should be free to consult and/or negotiate any alternate method of the 38 hour week.*

*On the contentious issue of the union involvement I find this may be an issue which cannot be altered in that on the one hand I can well understand an employer expressing a desire to be able to consult employees and introduce changes and on the other hand there exists the question of a legally binding award which is the current system in force. There is in place an award which amongst other things protects/the individual and the employer.*

*The method of taking hours of work is prescribed for in the award unless otherwise decided by the Act. For an award provision to be enforceable in law it must be identifiable. It is therefore necessary for someone bound legally to an award to be aware of any alteration to the award. The situation is at this stage that parties legally bound to an award are entitled to be aware of its contents particularly as the award contents are enforceable in law, no provision is yet in place which allows individual contracts or awards between an individual employee and employer until that time arrives (if it does) the union is not only entitled to be consulted or advised but it is essential that occurs. As a consequence I have decided that it is appropriate for clause 17 Hours of Work contained in Exhibit CFMEU 10 to be in the consolidated award together with all the options plus more if considered appropriate by the employers from Exhibit Hope 1: (17)(1)(a) with an additional proviso that the words:*

*"(vi) or any other method mutually agreed between the employer, employees and branch secretary of the union." "*

24. Clause 17.2 – Alternative Working Arrangement, of the *National Joinery and Building Trades Products Award 1993*<sup>9</sup>, contained the same 60% majority requirement as the current clause 31 of the *Joinery and Building Trades Award 2010*.
25. At PN5574 of transcript. a question was asked as to whether or not the dirty work allowance was included in the CFMEU C&G's proposed consolidated special rates allowance. The CFMEU C&G can confirm that the allowance paid for dirty work was included in the consolidated special rates allowance that it has put forward.<sup>10</sup>

#### **Issues Raised on 12th April 2017**

26. At PN6309 to PN6312 of transcript, the CFMEU C&G undertook to check if it had provided evidence of employees being required to go out and buy their own accommodation. The witness statements of Graham Pallot (Exhibit 35 at paragraph 13), David Kelly (Exhibit 30 at paragraphs 8 to 11) and Frank O'Grady (Exhibit 11 at paragraph 16) contain such evidence.

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<sup>9</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/10.pdf> at p.23

<sup>10</sup> See CFMEU C&G Submission in Support , 9th December 2016 at p.103

## Appendix 1

### Identification of Allowances By Type

(NB the following table is an amended version of a table prepared by the HIA during the conciliation proceedings before SDP Watson on a “without prejudice” basis)

Item	Allowance	Clause setting out entitlement	Type of allowance	Payable for all purposes
1	Leading hand -1 person	19.2	Skill	Yes
2	Leading hand – 2-5 persons	19.2	Skill	Yes
3	Leading hand – 6-10 persons	19.2	Skill	Yes
4	Leading hand – more than 10 persons	19.2	Skill	Yes
5	Mobile cranes adjustment formula	19.5	Skill	Yes
6	Tool allowance – artificial stoneworker, carpenter and/or joiner, carpenter diver, carver, bridge and wharf carpenter, floor sander, letter cutter, marble and slate worker, stonemason or tilelayer	20.1(a)	Expense related	Yes
7	Tool allowance – caster, fixer, floorlayer special or plasterer	20.1(a)	Expense related	Yes
8	Tool allowance – refractory bricklayer or bricklayer	20.1(a)	Expense related	Yes
9	Tool allowance – roof tiler, slate-ridger or roof fixer, tradespersons in the metals and engineering construction sector	20.1(a)	Expense related	Yes
10	Tool allowance – signwriter, painter or glazier	20.1(a)	Expense related	Yes
11	Refractory bricklayers boot allowance	20.1(d)	Expense related	Yes
12	Meal allowance	20.2(a)	Expense related	No
13	Meal allowance - operators	20.2(c)	Expense related	No
14	Compensation for clothes and	20.3(a)	Expense related	No

	tools - to cover loss if employee's clothes, spectacles, hearing aids or tools have been accidentally spoilt by acid, sulphur or other deleterious substances, fire, molten, metal or corrosive substances			
15	Compensation for clothes and tools –fire or breaking and entering whilst securely stored at employer's direction in a room or building on the employer's premises, job or workshop	20.3(b)	Expense related	No
16	Special allowance	21.1	Skill/Expense related	Yes
17	Industry allowance	21.2	Disability	Yes
18	Underground allowance	21.3(a)	Disability	Yes
19	Underground allowance	21.3(b)	Disability	Yes
20	Multi-storey allowance – commencement to 15 <sup>th</sup> floor	21.4	Disability	No
21	Multi-storey allowance – 16 <sup>th</sup> to 30 <sup>th</sup> floor	21.4	Disability	No
22	Multi-storey allowance -31 <sup>st</sup> to 45 <sup>th</sup> floor	21.4	Disability	No
23	Multi-storey allowance – 46 <sup>th</sup> to 60 <sup>th</sup> floor	21.4	Disability	No
24	Multi-storey allowance – 61 <sup>st</sup> floor onwards	21.4	Disability	No
25	Irregular structure height allowance – above 15m	21.4(d), 22.3(a)	Disability	No
26	Service core allowance – more than 15, above multi-storey building	21.4(g), 22.3(a)	Disability	No
27	Laser safety allowance	21.6	Skill	No
28	Carpenter-diver allowance	21.7	Skill	Yes

29	Refractory bricklaying allowance	21.8	Skill	Yes
30	Refractory bricklaying assistant allowance	21.8	Skill	Yes
31	Coffer dam worker – not under air pressure	21.9(a)	Disability	No
32	Coffer dam worker – under air pressure	21.9(b)	Disability	No
33	First aid allowance – minimum qualification	21.10(a)(vi)	Skill	No
34	First aid allowance – higher qualification	21.10(a)(vi)	Skill	No
35	Air-conditioning industry allowance	21.11	Skill	Yes
36	Electrician’s licence allowance	21.12	Skill	Yes
37	In charge of plant allowance	21.13	Skill	Yes
38	Insulation	22.2(a)	Disability	No
39	Hot work –artificially between 46 degrees and 54 degrees	22.2(b)	Disability	No
40	Hot work – artificially above 54 degrees	22.2(b)	Disability	No
41	Cold work- artificially lower than 0 degrees	22.2(c)	Disability	No
42	Confined spaces	22.2(d)	Disability	No
43	Swing scaffold: 0-15 storeys, first 4 hours	22.2(e)	Disability	No
44	Swing scaffold: 0-15 storeys, each subsequent hour	22.2(e)	Disability	No
45	Swing scaffold: 16-30 storeys, first 4 hours	22.2(e)	Disability	No
46	Swing scaffold: 16-30 storeys, each subsequent hour	22.2(e) 22.2(e)	Disability	No
47	Swing scaffold: 31-45 storeys, first 4 hours	22.2(e)	Disability	No

48	Swing scaffold: 31-45 storeys, each subsequent hour	22.2(e)	Disability	No
49	Swing scaffold: 46-60 storeys, first 4 hours	22.2(e) 22.2(e)	Disability	No
50	Swing scaffold: 46-60 storeys, each subsequent hour	22.2(e)	Disability	No
51	Swing scaffold: more than 60 storeys, first 4 hours	22.2(e)	Disability	No
52	Swing scaffold: more than 60 storeys, each subsequent hour	22.2(e) 22.2(e)	Disability	No
53	Explosive power tools	22.2(f)	Skill	No
54	Wet work	22.2(g)	Disability	No
55	Dirty work	22.2(h)	Disability	No
56	Toxic substances – directly engaged	22.2(i)	Disability	No
57	Toxic substances – engaged	22.2(i)	Disability	No
58	Fumes	22.2(j)	Disability	No
59	Asbestos – where required to wear protective clothing	22.2(k)	Disability	No
60	Asbestos eradication	22.2(l)	Disability	No
61	Furnace work	22.2(m)	Disability	No
62	Acid work	22.2(n)	Disability	No
63	Heavy block (other than bricks) – over 5.5kg and under 9kg	22.2(o)	Disability	No
64	Heavy block (other than bricks) – 9kg to 18kg	22.2(o)	Disability	No
65	Heavy block (other than bricks) – over 18kg	22.2(o)	Disability	No
66	Bitumen work	22.2(p)	Disability	No
67	Height work	22.2(q)	Disability	No
68	Suspended perimeter work platform	22.2(r)	Disability	No

69	Carrying fuels, oils and grease in employee vehicle	22.2(s)	Disability	No
70	Pile driving	22.2(t)	Skill	No
71	Dual lift allowance	22.2(u)	Skill	No
72	Stonemasons – cutting tools not provided	22.2(v)	Disability	No
73	Towers allowance (general building and construction sector only) – work more than 15m high	22.3(a)(i)	Disability	No
74	Towers allowance (general building and construction sector only) –each additional 15m	22.3(a)(i)	Disability	No
75	Cleaning brickwork using acids (general building and construction sector only)	22.3(b)	Disability	No
76	Bagging (general building and construction sector only)	22.3(c)	Disability	No
77	Plaster or composition spray (general building and construction sector only)	22.3(d)	Disability	No
78	Slushing (general building and construction sector only)	22.3(e)	Disability	No
79	Dry polishing of tiles (general building and construction sector only)	22.3(f)	Skill	No
80	Cutting tiles with electric saw	22.3(g)	Skill	No
81	Second-hand timber damaging tools (general building and construction sector only)	22.3(h)	Disability	No
82	Roof repairs – employees generally (general building and construction sector only)	22.3(i)(i)	Disability	No
83	Roof repairs –roof slaters and tilers only, over 15 m high (general building and	22.3(i)(i)	Disability	No

	construction sector only)			
84	Roof repairs – roof slaters and tilers only, more than 15m high and pitch over 35 degrees (general building and construction sector only)	22.3(i)(ii)	Disability	No
85	Roof repairs – roof slaters and tilers only, more than 15m high and pitch over 40 degrees (general building and construction sector only)	22.3(i)(ii)	Disability	No
86	Computing quantities (general building and construction sector only)	22.3(j)	Skill	No
87	Grindstone allowance – grindstone or wheel not available (general building and construction sector only)	22.3(k)	Disability	No
88	Brewery cylinders painters - (general building and construction sector only)	22.3(l)	Disability	No
89	Certificate allowance - (general building and construction sector only)	22.3(m)	Skill	No
90	Spray application – painters without booth (general building and construction sector only)	22.3(n)	Skill	No
91	Pneumatic tool operation – tool 2.75kgs or more (general building and construction sector only)	22.3(o)	Disability	No
92	Bricklayer operating cutting machine (general building and construction sector only)	22.3(p)	Skill	No
93	Hydraulic hammer (general building and construction sector only)	22.3(q)	Skill	Yes
94	Waste disposal (general building and construction	22.3(r)	Disability	No

	sector only)			
95	Pipe enameling (civil construction sector only)	22.4(a)	Disability	No
96	Powdered lime dust (civil construction sector only)	22.4(b)	Disability	No
97	Sand blasting (civil construction sector only)	22.4(c)	Disability	No
98	Live sewer work (civil construction sector only)	22.4(d)	Disability	No
99	Timbering (civil construction sector only)	22.4(e)	Disability	No
100	Special work (civil construction sector only)	22.4(f)	Skill	No
101	Compressed air work: 0 -35 kPa (civil construction sector only)	22.4(g)	Disability	No
102	Compressed air work: 35 -65 kPa (civil construction sector only)	22.4(g)	Disability	No
103	Compressed air work: 65 - 100 kPa (civil construction sector only)	22.4(g)	Disability	No
104	Compressed air work: 100-170 kPa (civil construction sector only)	22.4(g)	Disability	No
105	Compressed air work: 170 - 225 kPa (civil construction sector only)	22.4(g)	Disability	No
106	Compressed air work: 225 - 275 kPa (civil construction sector only)	22.4(g)	Disability	No
107	Cutting stone (civil construction sector only)	22.4(h)	Skill	No
108	Distant work allowance	24.3	Expense	No
109	Camping allowance	24.5	Expense	No



110	Travelling expenses – meal allowance	24.7(a), 24.7(b)	Expense	No
111	Travelling expenses – return journey transportation allowance	24.7(b)	Expense	No
112	Weekend return home - travelling	24.7(e)	Expense	No
113	Fares and travel patterns allowance	25.2-25.4	Expense	No
114	Fares and travel patterns – outside radial areas	25.5, 25.7	Expense	No
115	Fares or travel patterns – between work sites during working hours	25.9	Expense	No

## Appendix 2

### Site Allowance Provisions From Enterprise Agreements

#### 1. NSW

(Source: Lendlease Building / CFMEU (New South Wales, Australian Capital Territory, Victoria And Tasmania) Agreement 2016 ([2016] FWCA 7993) at p71-72)

#### 4. Site Allowance Procedure

- 4.1 The total project value (at the time of contract award to the Company) will be applied for the purpose of calculating the Site Allowance payable by the Company to its Employees on that project.
- 4.2 The project value applicable to a project will be fixed for the life of that project.
- 4.3 A Site Allowance shall be paid at the appropriate rate per hour flat for hours worked, to compensate for all special factors and/or disabilities on a project and in lieu of the following Award special rates – confined space, wet work, dirty work, second-hand timber and fumes.
- 4.4 The following table for site allowance will apply:

From Commencement of Agreement	
Project Value – \$million	Site Allowance
2.6m - 6.8m	\$2.10
6.8m - 16.8m	\$2.30
16.8m - 33.7m	\$2.55
33.7m - 67.3m	\$3.00
67.3m - 134.8m	\$3.65
134.8m - 202m	\$3.75
202m - 269.4m	\$3.85
269.4m - 404.2m	\$3.95

For projects above \$404.2 million, there will be an increment of 10 cents per additional \$100m or part thereof.

- 4.5 The above rates will be reviewed no later than 30 September 2016 and thereafter for each subsequent year of the Agreement taking account of the CPI movement and the economic circumstances prevailing in the industry at that time.
- 4.6 The Site Allowance values in this clause will be adjusted by the CPI (All Groups, Sydney), effective from 1 October 2016 and for each year thereafter according to the above CPI movement for the preceding period July to June in each year. The Site Allowance will be adjusted up or down to the nearest 5 cents.

## 2. QLD

(Source: DLP Scaffolding Pty Ltd And The CFMEU Union Collective Agreement 2015 – 2019 ([2017] FWCA 1957) at p.17-18)

### 18.6 Site Allowance

A Site Allowance as detailed below will be paid as a flat amount for each hour worked and will remain unaltered for the duration of each project. At the commencement of any new project by the Employer the Employer will inform the relevant Employees of the value of the project. Where there is a dispute with the value of the project, the Qleave or NTBuild declaration of the "total cost of work" will apply.

Value of project	Site allowance (per hr)
0-\$20m	\$1.70
>\$20-\$100m	\$2.50
>\$100-\$200m	\$3.50
>\$200-\$300m	\$4.50
>\$300-\$400m	\$5.00
>\$400-\$500m	\$5.50
>\$500m-\$600m	\$6.00
>\$600-\$700M	\$7.00
>\$700m	\$8.00

Site Allowance is not subject to any premium or penalty and shall compensate for all disabilities other than:

- (a) Heavy Blocks
- (b) Explosive Powered Tools
- (c) Scaffolder's Licence Allowance
- (d) Unbacked Insulation
- (e) Swing Stage
- (f) Height I Multi Storey

For these items the applicable rate in APPENDIX 2 will apply.

NB: the Living Away from Home Allowance, travel outside radial areas, transfers during working hours and all allowances referred to in clause 18 of this Agreement are not disability allowances for the purposes of this clause.

### 3. VIC

(Source: Plus Produce Formwork Pty Ltd And The CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016 – 2018 ([2017] FWCA 2873) at p.85-88)

#### **APPENDIX C- Site Allowance Procedure**

1. This procedure shall apply to construction work in the commercial/industrial sector of the building industry in the State of Victoria. Further, it is expressly agreed by the parties to this procedure that Site Allowances will not be claimed on any project where the Project Value is below \$3 million.
2. In addition to the wage rates and allowances prescribed, the Employer shall pay to Employees extra rates as set out in the special rates clause of the Award for the period when individual employees incur those disabilities prescribed by the said clauses, except those special rates which are specifically included in the Site Allowance applicable to a Project.
3. The payment of Insulation Allowance shall be paid to individual employees only who are affected (as defined in the Award) by the use of such material.
4. Subject to the foregoing, where the Union on behalf of its members, requests an Employer to consider a claim for payment of a Site Allowance, such Site Allowance shall be determined either by:
  - (a) Geographic location if the project is contained within the City of Melbourne as defined in clause 15 of this appendix; or
  - (b) The amount contained in clause 7 or clause 14 of this appendix.
5. A Site Allowance shall be paid at the appropriate rate per hour flat for hours worked, to compensate for all special factors and/or disabilities on a project and in lieu of the following Award special rates -confined space, wet work, dirty work, second-hand timber and fumes. Award special rates and disability payments (other than mentioned above) shall be applied as and when incurred, in accordance with the Award conditions. Site allowance and Award special rates are part of Ordinary Time Earnings as defined in the Agreement.
6. It is agreed by the parties that all new projects will be covered by the Site Allowance rates contained in this Agreement.
7. Site Allowances as at 1 October 2015:
  - (a) The minimum project value, below which NO Site Allowance is payable, is \$3m as at 1 October 2015 and will remain at this figure for the life of the Agreement.

(b) On sites which do not attract this Site Allowance, Employees are entitled to be paid the relevant disability payments as the disability may arise in accordance with the Award. .

**7.1 City of Melbourne (as defined in Clause 15 of this Appendix):**

(a) New Projects

- \$3m up to \$224m: \$4 .05 per hour worked

- over \$224m: as per subclause 7.2

(b) Renovations, Restoration &/or Refurbishment work \$3.50 per hour worked

The Site Allowance on Projects which are a combination of new and renovation work, shall be governed by the majority of work involved. For example, where the majority of work is new work, then the Site Allowance appropriate to new work shall be paid for all Employees on the Project.

**7.2 New Projects Victoria**

<b>Project Value \$Million</b>	<b>Site Allowance</b>
\$3.0- 7.7 Million	\$2.30
\$7.7- 18.9 Million	\$2.50
\$18.9- 37.9 Million	\$2.80
\$37.9- 75.7 Million	\$3.30
\$75.7- 151.4 Million	\$3.95
\$151.4-227.1 Million	\$4.05
\$227.1 - 302.7 Million	\$4.20
\$302.7-454.2 Million	\$4.35
\$454.2 - 634.2 Million	\$4.45
\$634.2 - 844.2 Million	\$4.55
\$844.2 - 1100.0 Million	\$4.65
\$1100.0 - 1350.0 Million	\$5.00
\$1350.0- 1700.0 Million	\$5.40

(c) All new Docklands projects are to be in accordance with the new scale of Site Allowances. Existing projects at Docklands are to remain unchanged regarding site allowance and working hours.

8. The Rates shall be reviewed no later than 30 September 2016 and thereafter for each subsequent year of the Agreement taking account cit the CPI movement and the economic circumstances prevailing in the industry at that time.

9. The Site Allowance values and project values in this Clause shall be adjusted by the CPI (All Groups, Melbourne), effective from 1 October 2016 and for each year thereafter according to the above CPI movement for the preceding period July to June in each year.

The Site Allowance shall be adjusted up or down to the nearest 5 cents, and Project Value to the nearest \$100,000.

10. It is agreed by the parties that no allowance shall be claimed on any Project, regardless of its location, where the project value is below \$3 million.
11. The appropriate Site Allowance shall be based on the Total Project Value, as defined by Clause 2 of this Agreement.

(d) In all cases where the parties fail to reach agreement on the Project Site Allowance to apply to a particular site or project, then such disagreement shall be referred to the Victorian Building Industry Disputes Panel for determination.

12. In determining the rate, the Panel shall have regard to the Appendix C, and shall not deviate from Appendix C unless there are special and exceptional circumstances.

(e) Special and exceptional circumstances may include working on projects where disabilities not comprehended in the Site Allowance procedure described herein exist. This may include where predominately contract metal trades construction/maintenance work is being carried out. Where the procedures prescribed by this Clause are being followed, work shall continue normally. In the event of employees taking industrial action in pursuance of a claim the date of operation of the Project Site Allowance shall not commence before the date on which the employees cease industrial action.

13. Any site allowance that is determined in accordance with 11 and 12 above shall be incorporated into the Agreement in accordance with the Fair Work Act 2009.

#### 14. **Shopping Centre and Airport Projects**

All new construction and extension/refurbishment work of shopping centres, airports, retail strip shops and stand alone retail facilities having a project value in excess of \$3m will attract the then current City of Melbourne Site Allowance.

Where the project is of a mixed purpose, City of Melbourne site allowance rates will apply only where the retail component is at least \$3m and occupies at least 51% of the area of the project.

#### 15. **City of Melbourne Definition**

For the purposes of determining Site Allowance in accordance with this Agreement, the boundaries of the "City of Melbourne" are defined as follows:

Commencing at the point where Citylink (Tullamarine Freeway) intersects Racecourse Road, proceed east along Racecourse Road, Elliott Avenue, Macarthur Road Cemetery Road West, Cemetery Road East and Princes Street to Nicholson Street. Then south on Nicholson Street to Victoria Parade. In Victoria Parade, proceed east to Punt Road, then south along Punt Road to the St Kilda Junction.

From the St Kilda Junction proceed along Fitzroy Street to Beaconsfield Parade, and then north-west along Beaconsfield Parade, Beach Street and The Boulevarde and following the waterline to Lorimer Street, and then east along Lorimer Street as far as Citylink (Western Link). Follow Citylink north to Racecourse Road to complete the boundary.

The City of Melbourne zone will also include the area bounded by Nicholson Street, Victoria Parade' Hoddle Street, and Alexandra Parade.

Where one boundary of a project fronts at least one of the above streets, then such project is deemed to be within the City of Melbourne.

See attached map below.

*(NB the Map has not been included in this submission)*

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