

# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

**Matter Number:** AM2019/17

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards—*Construction Awards***  
**(AM2019/17)**

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**SUBMISSION OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND  
ENERGY UNION (CONSTRUCTION & GENERAL DIVISION) ON DRAFT  
VARIATION DETERMINATIONS**

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22<sup>nd</sup> October 2020

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## **Introduction**

1. On 7<sup>th</sup> October 2020 the Full Bench issued a Statement ([2020] FWCFB 5353) concerning the finalisation of the exposure drafts and variation determinations for the group of awards collectively referred to as the Construction Awards. In the Statement the Full Bench directed parties to comment on the contents of the draft variation determinations by 4pm Thursday, 22 October 2020.
2. Draft determinations for the Construction Awards were issued on 8<sup>th</sup> October 2020, The CFMMEU (Construction and General Division) (CFMMEU C&G) makes this brief submission in response to the Full Bench directions.
3. Before detailing specific comments on the clauses in the draft determinations for the awards that the CFMMEU C&G has an interest in, there are a few general comments that the CFMMEU C&G wishes to make.
4. Firstly, there are a number of clauses that have been re-arranged to try and improve the flow of the entitlements contained in the clauses. In most cases this is not a concern however in some cases there has been an artificial division/separation of clauses or subclauses that are unnecessary and/or confusing, particularly in regard to clauses dealing with ordinary hours of work.
5. Secondly there are instances where the specific wording of clauses have changed which do not add to the plain language of the clause and are likely to cause more confusion.
6. Thirdly the presentation of hourly wage rates in the schedules are cumbersome and overly prescriptive, The same information can in most cases be presented in a more condensed form based on the penalty rate applying rather than trying to cater for each and every circumstance in which the penalty applies (i.e. if the penalty rate is 200% why does it have to be repeated 5 or 6 times in a schedule?).
7. Fourthly, as the wage rates contained in the draft determinations will more than likely be out of date by the time the determinations are made, given the wage and expense related allowance increases to apply from 1<sup>st</sup> November 2020, the CFMMEU C&G makes no comment on the dollar amounts used.

## **Comments on the Draft Determination for the Building and Construction General On-site Award 2010**

8. The CFMMEU C&G makes the following comments on specific clauses:

- **Clause 14 - Apprentices** – In clause 14.8(a) and 14.9(a)(iii)(a) the brackets around RTO should be removed.
- **Clause 17 - Shiftwork** – in clause 17.1(e) the words “early morning” should be added.
- **Clause 18 - Meal Breaks** – in 18.1(a) it should be either “no less than 30 minutes” or “at least 30 minutes”.
- **Clause 19 - Minimum Wages** –the use of “full-time employee” in the table in clause 19.1(a) is confusing as it is not defined in the award. The minimum weekly rate is also applicable for the calculation of daily hire ordinary rates. Also clause 19.1(c) is not needed as the definitions are already included in Clause 2 – Definitions.
- **Clause 20 - Payment of Wages** – in clause 20.3 “20.5” should be 20.4”.
- **Clause 21.2 - Meal Allowance** – in clause 21.2(a) “or 31-Annual Leave” should be “or 16 - Ordinary hours of work and rostering arrangements”. The time worked for accrual purposes refers to the RDO accrual.
- **Clause 21.3 - Compensation for clothes and tools** – in clause 21.3(e)(i), “21.3(e)” should be “21.3”.
- **Clause 23.9 - In charge of plant** – clause 23.9(a) is not needed as it is included in clause 2 – Definitions.
- **Clause 28 - Superannuation** – in clause 28.5, “28.1” should be “28.2”.
- **Clause 29 - Overtime** – in clause 29.8(a)(i), “work day or shift” should be “ ordinary work day or shift” wherever it appears.
- **Clause 31 - Annual Leave** – in clause 31.2(b), “receive” should be “be paid”.
- **Schedule A - Classification Definitions** – in A.1.7 the organisations mentioned are out of date. It is suggested that they be updated when the award goes through the next stage of plain language re-drafting. In A.2.7(d), in the 4<sup>th</sup> dot point, the “)” after “220 ton” can be deleted.
- **Schedule B—Summary of Monetary Allowances** – In the table in B.1.1 all of the industry allowances should have an \* by them as they are all purpose allowances. The

Mobile cranes capacity adjustment formula should refer to the weekly payment being for each 40 ton.

- **Schedule D—National Training Wage** – in D.3.3(a) the words” or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997” are missing. In D.7.2, in the table, the transport and logistics row should refer to AQF certificate level “ I, II”.

### **Comments on the Draft Determination for the Joinery and Building Trades Award 2010**

9. The CFMMEU C&G makes the following comments on specific clauses:

- **Clause 13 – Apprentices** – in clause 13.5(c) the “Construction and Property Services Industry Skills Council” should be “Construction, Plumbing and Services Industry Reference Committee”. In clause 13.11(c), “Clause 13” should be “Clause 13.11(b)”
- **Clause 16 – Ordinary hours of work and Clause 17 – Rostering arrangements – day workers** – Clause 17.2 should be part of clause 16.2, as they both deal with the RDO arrangements.
- **Clause 22 – Accident Pay** – in clause 22.7, “clause 2 – Definitions” should be “clause 22.2(a)”
- **Clause 25 –Shiftworkers** – in clause 25.4(c), “25.4(a)” should be “25.4(b)”. In clause 25.4(e), “25.4(a)” should be “25.4(a) and 25.4(b)”.
- **Clause 32 – Public holidays** – in 32.3 the “Error...” should be Schedule J.
- **Clause 37 – Redundancy** – the additional words “Clause 37.4 supplements the NES by providing redundancy pay for employees of a small business employer” are missing from the first Note.
- **Schedule B—Summary of Hourly Rates of Pay** – see the comment in paragraph 6 above. In B.3.1 the first footnote is confusing as the rates would appear to include the industry allowance but not the tool allowance or other all purpose allowances.

### **Comments on the Draft Determination for the Mobile Crane Hiring Award 2010**

10. The CFMMEU C&G makes the following comments on specific clauses:

- **Clause 2 – Definitions** – the definition of “ordinary hourly rate” is ambiguous as the industry allowance is a weekly payment.
- **Clause 16 – Minimum rates** – the headers of the columns should be “minimum base weekly rate” and “minimum base hourly rate” to be consistent with the wording in the paragraph above them.
- **Clause 19 – Accident pay** – in clause 19.3(a), “clause 16.1” should be “clause 16.1 and clause 16.2”.
- **Clause 22.7 – 10 hour break** – in clause 22.7(a)(i), “work” should be “ordinary work”.
- **Clause 29 – Public holidays** – in clause 29.2 the “Error!....” should be “Schedule I – Part-day Public Holidays”
- **Clause 34 - Industry specific redundancy scheme** – in clause 34.6(a), “new employee” should be “new employer”.
- **Schedule B—Summary of Hourly Rates of Pay** – in B.2.2 and B.3.2 “Non-successive afternoon or night shifts” should be “less than 5 consecutive shifts”.