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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)**

**and**

**FREYSSINET AUSTRALIA PTY LTD (FREYSSINET)**

**RE: ALLEGED INCORRECT PAYMENT OF SITE ALLOWANCE  
WESTGATE TUNNEL PROJECT**

**18 OCTOBER 2019**

**020-2019**

**DETERMINATION**  
**(by majority)**

[1] The CFMEU notified a dispute on 7 October 2019 alleging incorrect payment of Site Allowance for work performed on the Westgate Tunnel Project pursuant to the “*Freyssinet Australia Pty Ltd and the CFMEU (Victorian Construction and General Division) Rigger/Steel Erector Enterprise Agreement 2016-2018*” (the Agreement). The notification advised that the parties had agreed to have the matter determined without the necessity for a Conference.

[2] The Chairman wrote to the parties on 8 October 2019 seeking a reply to the following, and included a copy of the Panel’s Determination in Matter No. 008-2018:

*1. That the Determination made by the Panel in Matter No. 008-2018 has been reviewed by the party (copy attached).*

*2. That the party has no submissions that demonstrate why Freyssinet Australia Pty Ltd should not be subject to the same outcomes found by the Panel in that Determination in relation to scope, quantum of site allowance and operative date, and*

*3. That the party agrees that the Panel proceed to make a Determination in this matter without further Hearing or Conference.*

[3] The CFMEU replied on 8 October 2019 and Freyssinet replied on 17 October 2019, both confirming their concurrence with the above three points in [2]. Freyssinet's confirmation advised that it understood the currently applicable quantum following indexation was \$9.22 per hour and that the site allowance be applied from commencement of Freyssinet on site. [Subsequently the Chairman spoke with the representative of Freyssinet, Mr D. McKay, and confirmed that the present allowance is \$9.25 as is being applied by all other bound employers. Mr McKay confirmed that Freyssinet was satisfied for the matter proceed on this basis].

[4] There is no dispute that the Agreement applies to the matter in dispute.

[5] The substantive issues in dispute here are no different to the matters in dispute in Matter No. 008-2018 which were determined by the Panel. In that matter Freyssinet was not party to the dispute notification.

[6] The Panel finds that no party has made any submissions that in any way has identified anything that is so substantively different to the findings made by the Panel in 008-2018 such that it alters the Panel's findings in that matter in respect to the relevant considerations for site allowance in this matter. The Panel finds that the same issues arise for Freyssinet in so far as the application of the applicable Enterprise Agreement, the scope of the Project, the value of the Project and the quantum of the site allowance and its operative date, as found and determined by the Panel by majority in Matter No. 008-2018.

[7] Accordingly the Panel determines that the Project scope, site allowance quantum and operative dates determined by majority in Matter No. 008-2018 will apply to Freyssinet. The Panel requires Freyssinet to implement the terms of this Determination expeditiously, including the making of retrospective payments where applicable.

[8] To be clear, the Panel has determined that a site allowance of \$8.90 per hour shall be applicable with effect from 1 January 2018 for any works undertaken on the Project on or after this date. The indexation of the site allowance is to be effected on 1 October each year by the CPI (All groups, Melbourne) movement for the preceding period July to June in each year. Accordingly Freyssinet is required to make the necessary payment adjustments retrospectively to the relevant employees from the date of their commencement of works on the Project. The site allowance quantum of \$8.90 shall be indexed with effect from 1 October 2018 and each October thereafter.



**Peter Parkinson**  
**Chairman**



**Tony Cordier**  
**Panel Member**