



Chairman: Peter Parkinson  
UNIT 1, 233 CARDIGAN STREET  
CARLTON SOUTH VIC 3053  
A.C.N. 110 263 182  
TEL: 03 9348 2613 FAX: 03 9348 2714  
[dboard@vbidb.org.au](mailto:dboard@vbidb.org.au)  
[www.vbidb.org.au](http://www.vbidb.org.au)

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

**and**

**KASALO STEEL FIXING PTY LTD**  
**FITZGERALD CONSTRUCTIONS AUSTRALIA PTY LTD**  
**CYCON CIVIL PTY LTD**  
**TOOHEYS FORM CRETE UNIT TRUST T/AS TOOHEYS FORM CRETE**  
**R AND K UNIT TRUST (THE TRUSTEE FOR) T/AS DB FARRELLS**  
**PTY LTD**  
**IDIG DEVELOPMENTS PTY LTD**  
  
**WEST GATE TUNNEL PROJECT**

**RE : ALLEGED INCORRECT APPLICATION OF SITE**  
**ALLOWANCE CLAUSE**

**18 OCTOBER 2018**

**023-2018**

**STATEMENT**

[1] The CFMEU notified a dispute on 9 October 2018 alleging the payment of the incorrect Site Allowance by the above named Employers in relation to works on the West Gate Tunnel Project (the Project).

[2] The Panel convened a conference of the parties on 18 October 2018. In attendance were the CFMEU, Fitzgerald Construction and Cycon Civil.

[3] The parties had been provided with a copy of the Determination in Matter No. 008-2018 dated 20 July 2018 with the Notification of the Conference.

[4] The following Enterprise Agreements apply to the matters in dispute:

- *Kasalo Steel Fixing Pty ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018.*
- *Fitzgerald Constructions Australia Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*
- *Cycon Civil Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*
- *Tooheys Form Crete Unit T/As Tooheys Form Crete and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*
- *R and K Unit Trust (The Trustee for) T/AS DB Farrells Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*
- *Idig Developments Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*

[5] The Panel noted correspondence dated 17 October 2018 received from the CPBJH Joint Venture and the CFMEU dated 18 October 2018, copies of which have been made available to all the parties.

[6] Each of the relevant Enterprise Agreements at Appendix C provide for identical provisions with respect to the Panel's powers in determining disputes over site allowances.

[7] 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 by majority decision. In that matter the presently named employers in this matter were not party to the dispute notification. Also of note is that one of the employers in that matter, Cycon, was party to an Enterprise Agreement with identical provisions at Appendix C to the Enterprise Agreements in this matter. The other two employers, Wagstaff and Carey, in 008-2018 were parties to Enterprise Agreements, each with different provisions.


[8] The Chairman provided a summary of the outcomes in Matter No. 008-2018.

[9] The Panel also notes that Wagstaff has made an application to the Fair Work Commission seeking a review of the Panel's Determination in Matter No. 008-2018. The Panel understands that a decision regarding the jurisdiction of the Fair Work Commission to deal with that application is pending. It is this matter that is the subject of the correspondence referenced in paragraph [5].

[10] To ensure all parties have an opportunity to be heard in this matter the Panel has set the matter down for Hearing on 1<sup>st</sup> November 2018 at 11.00 am at the Panel's premises.

[11] In particular the Panel seeks submissions at the Hearing (written and/or oral) from each of the parties and, should it wish to participate, the CPBJH Joint Venture, on the following matters:

1. Having regard to the provisions of the applicable Enterprise Agreements, the Charter of the Panel and the fact that the Panel's Determination in Matter No. 008-2018 is currently the subject of a review application to the Fair Work Commission, whether or not the Panel should proceed to make a Determination in this matter and the reasons why; and
2. For each of the employers in this matter, is there anything that is so substantively different to the findings made by the Panel in 008-2018 that the Panel should reach a different conclusion as to scope and quantum of site allowance, should it proceed to a Determination in this matter; and
3. Any other relevant matter.



**Peter Parkinson**  
**Chairman**



**Daniel Hodges**  
**Panel Member**