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

**and**

**MC LABOUR SERVICES PTY LTD**

**CONSTRUCTION CONTRACT LABOUR (VIC) PTY LTD**

**WESTGATE TUNNEL PROJECT**

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

**11 DECEMBER 2018**

**029-2018**

**DETERMINATION**

**By Majority (Chairperson Parkinson and Panel Member Cordier, Panel Member Hodges dissenting)**

[1] The CFMEU notified a dispute on 30 November 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 conducted a Conference and Hearing with all the parties on 11 December 2018.

[3] The applicable Enterprise Agreements are:

- *MC Labour Services Pty Ltd and the CFMEU (Victorian Construction and General Division) Labour Hire Industry Enterprise Agreement 2016-2018*
- *Construction Contract Labour (Vic) Pty Ltd and the CFMEU (Victorian Construction and General Division) Labour Hire Industry Enterprise Agreement 2016-2018*

[4] The parties had been provided with a copy of the Panel's Determinations in Matters 008-2018 dated 20 July 2018 and 023-2018 dated 1 November 2018 that deal with the same Project, together with the Notification of Conference and Hearing.

[5] There is no dispute that the Enterprise Agreements apply to the matters in dispute.

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

[7] The substantive issues in dispute here are no different to the matters in dispute in Matters 008-2018 and 023-2018 which were determined by the Panel by majority. In those matters the presently named employers in this matter were not party to those dispute notifications.

[8] Both employers commenced works with employees on the Project in August of 2018 and have been paying a site allowance of \$5.75 per hour.

[9] The parties confirmed that there had been no resolution to the Dispute and agreed that the Panel should immediately proceed to Determine the matter.

[10] The employers confirmed that they had considered the Determinations in Matters 008-2018 and 023-2018 and submitted that they had nothing contrary to submit in relation to the substantive majority findings of the Panel in those matters.

[11] The CFMEU has submitted that the Determinations of the Panel in Matters 008-2018 and 023-2018 and the circumstances of those Determinations for the purposes of Appendix C of the applicable Enterprise Agreements are equally relevant here and that the site allowances determined by majority in those matters should apply to the parties in this matter.

[12] The Panel has carefully considered all of the submissions that have been made.

[13] In its Determination of 023-2018 the Panel referred to a separate proceeding in the Fair Work Commission concerning Wagstaff which, whilst since decided by the FWC, is now the subject of an appeal application. The Panel notes that there has been no application to the Panel reconsider its Determinations in 008-2018 or in 023-2018.

[14] The Panel is advised that apart from Wagstaff, the other employers bound by the Panel's Determinations in 008-2018 and 023-2018 are fully complying with the Determinations as they apply to them.

[15] We reaffirm what we established in 023-2018 that we do not consider that the FWC matter concerning Wagstaff in any way constrains the Panel from exercising the functions that it is required to exercise pursuant to the applicable Enterprise Agreements and the Panel's Charter, in relation to the parties in the present matter.

[16] Having regard to the terms of the applicable Enterprise Agreements and the Panel's Charter we see no basis upon which we should refrain from dealing with the matters that are properly before us. In fact there are no submissions before us to this effect, rather the parties have agreed that the Panel should immediately proceed to determine the matter.

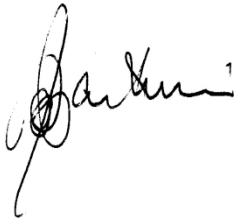
[17] The Panel finds that no party has made any submissions that in any way has identified anything that is substantively different to the findings made by the Panel in 008-2018 and 023-2018 such that it alters the Panel's findings in those matters in respect to the relevant considerations for site allowance in this matter. The Panel finds that the same issues arise for each of the present employers in so far as the application of the applicable Enterprise Agreements, 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 Matters 008-2018 and 023-2018.

[18] The Panel finds that there are no matters of substance that have arisen or been submitted in these proceedings that warrant a different outcome to the majority finding in Matters 008-2018 and 023-2018.

[19] Accordingly the Panel determines that the Project scope, site allowance quantum and operative dates determined by majority in Matters 008-2018 and 023-2108 will apply to the parties in this matter. The Panel requires each of the employer parties, namely MC Labour Services Pty Ltd and Construction Contract Labour (Vic) Pty Ltd to implement the terms of this Determination expeditiously, including the making of retrospective payments where applicable.

[20] 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 each of the named Employers party to this dispute 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 the employers are required to make the necessary payment adjustments retrospectively to the relevant employees from their commencement of works on the Project. The site allowance quantum of \$8.90 shall be indexed with effect from 1 October 2018.



**Peter Parkinson**  
**Chairman**



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