



**Australian Government**  
**Australian Building and  
Construction Commission**



12 October 2020

Mr Paul James Coffey  
Industrial Officer  
CEPU Plumbing Division  
52 Victoria Street  
CARLTON VIC 3053

**ABCC EA reference code: EA12317**

Dear Mr Coffey

Pursuant to section 16(1)(d) of *Building and Construction Industry (Improving Productivity) Act 2016* (the Act), one of the Australian Building and Construction Commissioner's functions is to provide building industry participants with advice regarding their rights and obligations under, among other things, the *Code for the Tendering and Performance of Building Work 2016* (the Code).

**A table is attached (Table A) that identifies any particular clause(s) in Company Name Pty Ltd and CEPU - Plumbing Division (Vic) Fire Protection Agreement Victoria 2020–2023 that, while compliant with the Code, could breach the Code if implemented in a certain way.**

The ABCC regularly conducts audits at building sites to ensure that building industry participants are complying with their obligations under the Code, the *Building and Construction Industry (Improving Productivity) Act 2016* and designated building laws. As part of these audits, the ABCC may consider whether the identified clause(s) are being implemented in a way that is compliant with the obligations of the Code.

If you have any questions, please contact the ABCC on 1800 003 338. You can also find more information on our website at [www.abcc.gov.au](http://www.abcc.gov.au).

Yours sincerely

**Janine Drennan**, National Manager, Building Code  
**Australian Building and Construction Commission**





**Attachment A – EA12317 – Implementation of particular clauses contained in a proposed enterprise agreement**

Proposed Clause No.	Proposed Clause Title	Proposed Clause Wording	Code Reference	Comments
3.3.1	Variation of the Agreement	Should the employer intend to make an application under the FW Act, seeking to vary the Agreement, the employer shall advise the union (in writing), of the proposed variation and the union shall be given an opportunity of meeting with the employees concerned about the variation.	11(1)(a) 11(3)(p) 11(4) 14	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way as to allow entry to building sites by officials of a building association other than for a purpose for which a right of entry could be exercised under Part 3-4 of the FW Act or a relevant work health and safety law. Further the entity must ensure that where an officer of a building association seeks to enter premises, the officer must strictly comply with all applicable legislative requirements in Part 3-4 of the FW Act or a work health and safety law, including permit and notice requirements.</p> <p>This clause does not relieve the code covered entity’s obligation to comply with section 14 of the Building Code.</p>
3.4.1	Termination of the Agreement	Should the employer intend to make an application under the FW Act, seeking to terminate the Agreement, the employer shall advise the union (in writing), of the proposed application to terminate the Agreement and the union shall be given an opportunity of meeting with the employees concerned about the proposed application for termination.	11(1)(a) 11(3)(p) 11(4) 14	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way as to allow entry to building sites by officials of a building association other than for a purpose for which a right of entry could be exercised under Part 3-4 of the FW Act or a relevant work health and safety law. Further the entity must ensure that where an officer of a building association seeks to enter premises, the officer must strictly comply with all applicable legislative requirements in Part 3-4 of the FW Act or a work health and safety law, including permit and notice requirements.</p> <p>This clause does not relieve the code covered entity’s obligation to comply with section 14 of the Building Code.</p>



13.1(b)	Procedure For Dealing With Safety Issues or Incidents	At any stage in the resolution of an issue, any party may call in the employee/employer representative or advisor to assist the parties to resolve the issue. If the person invited to assist the parties is a building association official that building association official must personally hold a valid right of entry permit under the FW Act to enter premises where construction work is performed".	11(1)(a) 11(3)(p) 11(4) 14	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way as to allow entry to building sites by officials of a building association other than for a purpose for which a right of entry could be exercised under Part 3-4 of the FW Act or a relevant work health and safety law. Further the entity must ensure that where an officer of a building association seeks to enter premises, the officer must strictly comply with all applicable legislative requirements in Part 3-4 of the FW Act or a work health and safety law, including permit and notice requirements.</p> <p>This clause does not relieve the code covered entity's obligation to comply with section 14 of the Building Code.</p>
22.8	Retrenchment Criteria	<p>If, during the life of this agreement, the employer is required to reduce the number of required Sprinkler Fitter / Fire Protection Workers, then after voluntary redundancies have occurred the criteria for selection includes all of the following: (Each of these headings will be rated out of 10 and an assessment of all employees must be completed prior to any retrenchment).</p> <ul style="list-style-type: none"> <li>• Special skills and experience</li> <li>• Self-motivation and ability to work without supervision</li> <li>• Attendance and punctuality</li> <li>• Length of service with the company</li> <li>• Reliability</li> </ul>	11(1)(a) 11(3)(h) 11(4)	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way as to limit the right of the employer to make decisions about retrenchment based on operational requirements (for example, by selecting employees for retrenchment based on length of service alone).</p>
30	Application of Site Agreements	<p>30.1 Where a Project Agreement is entered into by the company and is compliant with the Building Code and has been certified by the Fair Work Commission, registered, lodged or otherwise approved under a designated building law (as defined by the Building and Construction Industry Improving Productivity Act 2016) the following shall apply:</p> <p>30.2 Where a Project Agreement prescribes rates of pay that are higher than contained in this Agreement then the higher rates will apply. Where the Project Agreement prescribes a condition that is superior to that contained in this Agreement then the superior condition will apply.</p>	10(1) 11(1)(a) 11(3)(f) 11(4) 11A(1)(b)	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way:</p> <ul style="list-style-type: none"> <li>• As to provide for terms, conditions or benefits of employment of employees of the employer;</li> <li>• That are not contained in an agreement that is registered, and applies to the employer and its employees; or</li> <li>• As to provide for such terms in an agreement that is not a common law agreement made between an employer and an individual employee.</li> </ul>



		30.3 Where the Project Agreement prescribes a Site allowance, the greater of such allowance shall apply in addition to the rates of pay prescribed by this Agreement, and the terms of this agreement shall continue to apply.		
33.6	Overtime	Overtime will be paid at double time. Where overtime is necessary employee/s will not be disadvantaged regarding the amount of overtime employee/s may work. This will be reflected in the work roster. Every employee will be entitled to work reasonable overtime on a fair and equitable basis.	11(1)(a) 11(3)(j) 11(4)	Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.  The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way that an employee will be prevented from working overtime unless other employees are also afforded a similar amount of overtime. The employer should be able to determine whether overtime is required and should be able to determine with the relevant employee/s who will undertake the available overtime.
38.7 and 38.9	Family picnic day	38.7 Family picnic day All employees covered by this agreement shall be entitled to Family Picnic Day without loss of pay and allowances on the first Monday in December (or other nominated day in Mildura). An employee required to work on family picnic day shall be paid at the rate of double time and one half and paid for not less than four (4) hours work. ... 38.9 Proof of Ticket purchase is required for payment.	11(1)(c) 11(4) 13(1)(a)(iv) 13(2)(g)	Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.  In order not to be inconsistent with the Building Code 2016, the picnic day must be open to all employees on terms which are identical irrespective of whether the employee is a member of a building association, or not.  The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way that the employer requires employees to produce evidence of attendance at the picnic where only members of a building association are permitted to purchase such tickets. Such a practice would discriminate against employees who are not members of a building association and indirectly require a person to disclose whether or not they are a member of a building association.
47.1(a)	Representation	... An employee representative shall, upon notification to the Enterprise, be recognised as the accredited representative of the employees and be allowed all necessary time during working hours to submit to the Enterprise matters affecting the employees he/she represents. At all other times the employee representative will perform productive work within his/her range of qualifications and competence. Further, the employee representative shall be allowed reasonable time during working hours to attend to job matters affecting the employees	11(1)(c) 11(4) 13(2)(m)	Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.  The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way as to result in the employment of a non-working shop steward or job delegate.



47.2	Employee representative facilities	<p>Where the Enterprise is the principal contractor it is agreed the Enterprise shall provide a facility for the use of the employee representative/s to perform their duties and functions as the on-site representative/s of the employees. The provision of the following facilities is to ensure that the employee representative/s is able to effectively perform his/her functions in a professional and timely manner. The facilities shall include:</p> <p>(a) a telephone;</p> <p>(b) a table and chairs;</p> <p>(c) a filing cabinet;</p> <p>(d) air-conditioning/heating;</p> <p>(e) access to stationery and other administrative facilities, including use of facsimile, use of e-mail (if available on site), following consultation between employee representative and Site Management;</p> <p>a private lockable area.</p>	11(1)(a) 11(3)(q) 11(4)	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way as to result in the establishment or maintenance of an area which is intended to be designated to be used by members, officers, delegates or other representatives in that capacity. For example, an obligation to create and maintain a 'shed' or other such area set aside for exclusive use by a building association and its members would be prohibited.</p> <p>Further, the establishment or maintenance of an office to be used by a member, officer, delegate or other representatives is also prohibited.</p> <p>Designating an area or a particular meeting room for a member, officer, delegate or other representative to carry out consultation with employees in accordance with relevant laws would not be prohibited, provided that area or meeting room is used on a temporary basis and not established or maintained as an area to be used by a member, officer, delegate or other representative in that capacity.</p>
Appendix A - A.10.3	Distant Work/Living Away from Home Allowance	<p>Where an employee is requested to work at a distant project where reasonable board and lodging is not available or where the size of the workforce is in excess of the available accommodation, alternative arrangements will be made with the consent of the employee.</p>	10(1) 11(1)(a) 11(3)(f) 11(4) 11A(1)(b)	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way:</p> <ul style="list-style-type: none"> <li>• As to provide for terms, conditions or benefits of employment of employees of the employer;</li> <li>• That are not contained in an agreement that is registered, and applies to the employer and its employees; or</li> <li>• As to provide for such terms in an agreement that is not a common law agreement made between an employer and an individual employee.</li> </ul>
Appendix A - AD16.15	Site Allowance Procedure	<p>...</p> <p>Any project Value and Site Allowance in place at the time of this Agreement being concluded, and in excess of the rates of this Schedule will remain unchanged until such time as they are exceeded by the movement in the rates by the operation of Clause 16.16.</p>	10(1) 11(1)(a) 11(3)(f) 11(4) 11A(1)(b)	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way:</p> <ul style="list-style-type: none"> <li>• As to provide for terms, conditions or benefits of employment of employees of the employer;</li> <li>• That are not contained in an agreement that is registered, and applies to the employer and its employees; or</li> </ul>

				<ul style="list-style-type: none"> <li>• As to provide for such terms in an agreement that is not a common law agreement made between an employer and an individual employee.</li> </ul>
Appendix A - AD16.17	Melbourne Metro Rail Project/ Westgate Tunnel Project/North East Link	... No other allowance (award-derived or otherwise), except those expressly prescribed in the Construction Work Agreement, shall be payable.	10(1) 11(1)(a) 11(3)(f) 11(4) 11A(1)(b)	<p>Whilst this clause, on its face, is not inconsistent with section 11, its implementation may result in conduct that is a breach of the Building Code 2016.</p> <p>The implementation of the clause may result in conduct which is not compliant with the Building Code if the clause is applied in such a way:</p> <ul style="list-style-type: none"> <li>• As to provide for terms, conditions or benefits of employment of employees of the employer;</li> <li>• That are not contained in an agreement that is registered, and applies to the employer and its employees; or</li> <li>• As to provide for such terms in an agreement that is not a common law agreement made between an employer and an individual employee.</li> </ul>

