

SUBMISSIONS

1. In accordance with the directions issued by the Fair Work Commission (**Commission**) on 21 March 2018:-

- the Master Plumbers ACT;
- the Master Plumbers and Mechanical Services Association of Australia;
- the Master Plumbers & Gasfitters Association of Western Australia;
- the Master Plumbers Association of Queensland;
- the Master Plumbers of South Australia; and
- the Master Plumbers Association of Tasmania

(collectively referred to as the **Master Plumbers Group**)

hereby make the following submissions with respect to the questions posed in the Commission's *4 Yearly Review of Modern Awards – Award Stage – Group 4 Awards* ([2018] FWCFB 1548) Decision (**Group 4 Decision**) on the *Plumbing and Fire Sprinklers Award 2010 (PFS Award 2010)/ Plumbing and Fire Sprinklers Award 2016 (PFS Award 2016)*.

2. These submissions are separated into two (2) separate parts. The first part deals with the matters raised by the Commission in the Group 4 Decision, which are:-

- Clause 11.3(b) – Part Time Employment; and
- Clause 13.14(d) – Adult Apprentices

The second part deals with the matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018, which are:-

- Clause 7.1 – Facilitative Provisions; and
- Clause 12.2 – Casual Employment; and
- Clause 16.5 and 16.6 (or 21.7 and 21.8) – Overtime Rest Breaks and Overtime Meal Breaks; and
- Clause 20.1(f) – Industry Disability Allowance and Space, Height and Dirt Money Allowance – Fire Sprinkler Fitter Employees and
- Clause 22.2(a) – Shiftwork; and
- Schedule B – All Purpose Rates of Pay; and
- Schedule C – Summary of Hourly Rates of Pay – Plumbing and Mechanical Services Employees and irrigation Installer Employees; and
- Schedule D – Summary of Hourly rates of Pay – Sprinkler Fitting Employees

Part 1 – Matters raised by the Commission in the Group 4 Decision - Clause 11.3(b) - Part Time Employment

3. The Master Plumbers Group have with respect to Clause 11.3(b) of PFS Award 2016, previously made the following comments:-
- “3. The AWU are seeking to include the word “finishing” in Clause 11.3(b). This would then require an employer, when employing a part – time employee, to advise them of their “commencing” time/s and “finishing” time/s.
4. The Master Plumbers Group has reviewed the AWU’s proposition.
5. During this review, the Master Plumbers Group has considered the part time clauses in the:-
- Building and Construction General On – Site Award 2010 (**BCGO Award**)
 - Clerks – Private Sector Award 2010 (**CPS Award**),
 - Joinery and Building Trades Award 2010 (**JBT Award**)
 - Manufacturing and Associated Industries and Occupations Award 2010(**MAIO Award**).
6. Based on the provisions provided in the CPS Award, the JBT Award and the MAIO Award, the Master Plumbers Group would not oppose the AWU’s application to insert “finishing” in Clause 11.3(b).”
4. The Master Plumbers Group does not oppose the AWU’s application to vary Clause 11.3(b) of PFS Award 2016.

Part 1 – Matters raised by the Commission in the Group 4 Decision - Clause 11.3(b) Clause 13.14(d) – Adult Apprentice

5. The Master Plumbers Group have previously made the following comments:-
- “18. The Commission has asked that the parties consider whether Clause 13.14(d) – Employment as an Adult Apprentice of PFS Award 2016 is “permitted” in an award, or not.
19. As the Clauses in question are existing clauses (refer to Clause 16.4(a) and Clause 16.4(b) of the PFS Award 2010), the Master Plumbers Group has presumed that in making the PFS Award 2010, the AIRC considered that Clause 16.4(a) and Clause 16.4(b) of PFS Award 2010, satisfied the obligations in Section 139 – Terms that may be included in modern awards – general of the FW Act. On that basis, it is the Master Plumbers Groups view that the clauses satisfy the obligations in Section 139 of the FW Act and on that basis are *allowable*.

20. It is the Master Plumbers Group view that an award should only contain *enforceable entitlements*. In addition, it is the Master Plumbers Groups view that the provisions of an award should not be *aspirational*.
 21. Given this position, it is the Master Plumbers Groups view that neither Clause 13.14(d)(i), nor Clause 13.14(d)(ii), of PFS Award 2016 should be included in the final draft of PFS Award 2016.
 22. It is the Master Plumbers Groups view that Clause 13.14(d)(i) of PFS Award 2016, does not establish an *enforceable entitlement*. It is the Master Plumbers Groups view that the *enforceable entitlement* in Clause 13.14(d)(i) is clearly offset (if not negated) by the words at the start of the Clause – “(w)here possible”. If it was suggested that the words “(w)here possible” be deleted, the Master Plumbers Group would oppose such a proposition – such an alteration would completely change the intent and the purpose of the clause.
 23. It is the Master Plumbers Group view that Clause 13.14(d)(ii) is either *aspirational* or a statement of intent and purpose. In either sense, it is the view of the Master Plumbers Group that Clause 13.14(d)(ii) of PFS Award 2016 should not be included in the final draft of PFS Award 2016.
 24. Neither Clause 13.14(d)(i), nor Clause 13.14(d)(ii), of PFS Award 2016 should be included in the final draft of PFS Award 2016”.
6. The Master Plumbers Group maintains the position that neither Clause 13.14(d)(i) nor Clause 13.14(d)(ii) should be included in PFS Award 2016.

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Clause 7.2 – Facilitative Provisions

7. The Commission has asked for comments on Clause 7.2 – Facilitative Provisions. The Master Plumbers Group has previously made the following submissions:-
 11. The Master Plumbers Group submit that the reference to Clause 15.3 in Clause 7.2 should read “the majority of the affected employees”.
 12. The Master Plumbers Group believe that it is appropriate that these words be inserted in to that particular provision, as they accurately reflect the nature of the industry.

13. There are numerous instances of employers having multiple sites operating at the same time. It is submitted that the inclusion of the words “a majority of employees” (or words similar) may lead to confusion with the employer – in that the question becomes whether the employer is obligated to get the agreement of all employees, or only those employees at the affected job site? By including the words “the majority of the affected employees” the confusion has been resolved in that it overcomes the confusion; as the (now, new) obligation to consult remains with the “affected employees”, not the entirety of the employers’ workforce.
 14. The Master Plumbers Group suggest that the same words be inserted into Clause 7.2 of PFS Award 2016, for Clause 15.3, 15.4, 16.2 and 26.2.
 15. As previously submitted the insertion of the words “the majority of the affected employees” in Clause 15.3, 15.4, 16.2 and 26.2 would require the employer to obtain the approval of the majority of their employees at that one particular site, rather than the majority of all employees employed by the employer.”
8. Prior to those comments, The Master Plumbers Group made the following comments:-
- “A reference to “the employees” or “a majority of employees” should be clarified by inserting the word “affected” before the word “employees”. On this basis, the decision as to whether a facilitative provision will, or will not be utilised, would be made by the majority of affected employees. On this basis, it would be the employees who are directly affected by the decision and only the employees who are directly affected by the decision to utilise a facilitative provision, or not, making the decision to use, or not use, the facilitative provision; not employees who are at another site and not subject to the facilitative provision, imposing their will on such a decision.”

9. The Master Plumbers Group submit that Clause 7.2 of PFS Award 2016 should read:-

Clause	Provision	Agreement between an employer and:
15.3	Early start	a <u>majority</u> of <u>affected</u> employees
15.4	Alternative methods of arranging ordinary hours and rostered days off	a majority of <u>affected</u> employees
15.5(c)	General exception for employers of fewer than 15 (not working alongside other building and construction workers)	an individual employee
15.5(e)(ii)	Rostered days off for employees not working alongside other building and construction workers	the employees
15.5(f)(ii)	Rostered days off for employee working alongside other building and construction workers	the employees
16.2	Variation of meal breaks	a majority of <u>affected</u> employees
21.3	Working during meal break	an individual employee
26.2	Public holidays – substitution	a majority of <u>affected</u> employees

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Clause 12.2 – Casual Employment

10. The Master Plumbers Group make no additional submissions.

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Clause 16.5 and 16.6 (or 21.7 and 21.8) – Overtime Rest Breaks and Overtime Meal Breaks

11. The Master Plumbers Group support the relocation of the *Overtime Rest Breaks* and *Overtime Meal Breaks* from Clause 16.5 and 16.6 to Clause 21.7 and 21.8 of PFS Award 2018.

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Clause 20.3(f) – Industry Disability Allowance and Space, Height and Dirt Money Allowance – Fire Sprinkler Fitter Employees

12. The Master Plumbers Group have previously made the following comments on the application and operation of Clause 20.3(f) of PFS Award 2016:-

“During the Fair Work Commission Conference on 6 February 2017, the Master Plumbers Group, NFIA and Plumbers Union undertook to review Clause 20.3(f). Unfortunately, only the Master Plumbers Group and NFIA met. The Plumbers Union were unavailable due to important other matters that arose on the day.

It was originally suggested that the insertion of the words “fire sprinkler fitter tradesperson” may well have overcome the definitional / interpretational issues in the clause. It is our view that they do not.

The Master Plumbers Group and NFIA would propose that the words “Adult fire sprinkler fitter employees” be deleted and “A fire sprinkler fitter tradesperson and a sprinkler fitting worker” inserted in lieu thereof.

We had considered inserting words that cross – referenced apprentices (Clauses 18.2(b)(iii), 18.2(c)(iii) and 18.3(a)(iii)) - however, felt that that made the clause too messy and confusing.

The proposed clause would read:-

(f) Industry disability allowance and space, height and dirt money allowance
— fire sprinkler fitter employees

(i) A fire sprinkler fitter tradesperson and a sprinkler fitting worker will receive the following additional weekly allowances for all purposes.

Allowance	\$ Per week
Industry disability allowance	\$29.77
Space, height and dirt money	\$27.42

The Master Plumbers Group and the NFIA think that the proposed amendment accurately reflects the present circumstances.”

13. The Master Plumbers Group does not believe that the allowance is payable to an Apprentice.
14. The Master Plumbers Group believes that the abovementioned variation settles the possible anomaly and should be adopted by the Commission.

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Clause 22.2(a) – Shiftwork

15. The Master Plumbers Group have previously proposed the simplification of Clause 22.2 – Shiftwork of PFS Award 2016.
16. The Master Plumbers Group maintain that PFS Award 2016 should be varied in the manner previously submitted and reproduced at Attachment 1.

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Schedule B – All Purpose Rates of Pay

17. The Master Plumbers Group refers to the previous comments made with respect to Clause 20.3(f) of PFS Award 2016.

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Schedule C – Summary of Hourly Rates of Pay – Plumbing and Mechanical Services Employees and Irrigation Installer Employees; and

Part 2 – Matters raised by the Commission in the exposure draft of PFS Award 2016 published on 29 March 2018 - Schedule D – Summary of Hourly rates of Pay – Sprinkler Fitting Employees

18. The Master Plumbers Group has read, reviewed and considered the comments made by various Full Benches of the Commission in [2015] FWCFB, [2015] FWCFB 6656 and [2018] FWCFB 1548 regarding the use of *minimum* and *ordinary*. Based on the comments made in each of those decisions, the Master Plumbers Group supports and endorses the use of the words *minimum* and *ordinary* in the manner proposed in PFS Award 2016.

The Master Plumbers Group

- the Master Plumbers ACT;
- the Master Plumbers and Mechanical Services Association of Australia;
- the Master Plumbers & Gasfitters Association of Western Australia;
- the Master Plumbers Association of Queensland;
- the Master Plumbers of South Australia; and
- the Master Plumbers Association of Tasmania

Wednesday 18 April 2018

Attachment 1

22.2 Shiftwork

Between Midnight on Sunday and Midnight on Friday

- (a) Where an employee is directed by the employer to work ordinary hours between midnight on a Sunday and midnight on a Friday, and such employee is:
- (i) given no less than 48 hours' notice prior to the commencement of such work by the employer; and
 - (ii) such work is for five or more consecutive shifts;

the employee will receive a loading of 33% calculated on their ordinary hourly rate of pay for such ordinary hours worked.

- (b) Where an employee is directed by the employer to work ordinary hours between midnight on a Sunday and midnight on a Friday, and such employee is:
- (i) given less than 48 hours' notice prior to the commencement of shiftwork by the employer; or
 - (ii) such work is for less than five consecutive shifts;

the employee will receive a loading of 50% for the first two hours and 100% thereafter calculated on their minimum hourly rate of pay for such ordinary hours worked.

Between midnight on a Friday and midnight on a Saturday

- (c) Where an employee is directed by the employer to work ordinary hours between midnight on a Friday and midnight on a Saturday, such employee will receive:
- (i) a 50% loading calculated on their minimum hourly rate of pay for the first two ordinary hours worked; and
 - (ii) a 100% loading calculated on their minimum hourly rate of pay for the remaining ordinary hours worked thereafter.

Between midnight on a Saturday and midnight on a Sunday

- (d) Where an employee is directed by the employer to work ordinary hours between midnight on a Saturday and midnight on a Sunday, such employee will receive a 100% loading calculated on their minimum hourly rate of pay for such ordinary hours worked.

Public holidays

- (e)(i)** Where an employee is directed to work ordinary hours on a public holiday or substitute days as prescribed in clause 37—Public holidays, such employee will receive a 150% loading calculated on their minimum hourly rate of pay, for such ordinary hours worked.
- (e)(ii)** A plumbing and mechanical services employee required to perform any work on a public holiday will be afforded at least four hours work or paid for four hours at the appropriate rate.

32.2 Travel

- (a)** Where an employee, after having worked a shift, finishes at a time when reasonable means of transport are not available, the employer will provide the employee with a conveyance to their home, or pay the employee their current wage for the time reasonably spent occupied in reaching their home.

32.3 Loadings

- (a)** All loadings will be exclusive of each other (i.e. only one loading will be payable at any given time).
- (b)** Loadings will not apply where overtime is payable.

32.4 Breaks

- (a)** An employee directed to work ordinary hours in accordance with clause 32.1 – Shiftwork will be allowed a meal break in accordance with clause 30.1 – Meal Breaks and a daily rest break in accordance with clause 30.3 – Daily Rest Breaks.

32.5 Overtime

- (a)** An employee directed to work overtime before having worked ordinary hours and / or after having worked ordinary hours in accordance with clause 32.1 – Shiftwork, will be paid in accordance with clause 33 - Overtime.”