



MASTER BUILDERS
A U S T R A L I A

26 June 2020

Justice IJK Ross AO
President
Fair Work Commission
Level 4, 11 Exhibition Street
MELBOURNE VIC 3000
By email: Chambers.Ross.j@fwc.gov.au

Dear President,

RE: AM2020/12 – VARIATION OF AWARDS ON THE INITIATIVE OF THE COMMISSION

Master Builders Australia ('Master Builders') maintains an interest in the *Building and Construction General On-Site Award 2010*, *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*, together ('the Construction Awards') and files this correspondence with respect to those awards.

We refer to paragraph [4] of the Statement dated 23 June 2020,¹ wherein the Commission directed that any party wishing to extend the operation of "Schedule X", which provides a temporary entitlement to unpaid 'pandemic leave' and the flexibility to take twice as much annual leave at half pay, should make such an application by noon on Friday 26 June 2020.

While initially the Commission identified that the above changes would be made to Awards grouped into various phases, with the Construction Awards proposed for exclusion from the list of Phase One Awards, those parties with an interest in Awards excluded from the Phase One list were encouraged to have discussions to explore the prospect of variations by consent, in the event these were not already taking place.²

On 6 April 2020, Master Builders filed a submission supporting the provisionally expressed clauses, subject to drafting alterations advanced by the Australian Chamber of Commerce and Industry, while urging the Commission to include the Construction Awards amongst those to be varied in Phase One. In the alternative, Master Builders proposed that the parties maintaining an interest in the Construction Awards be given a timeframe within which discussions could be held so as to facilitate a productive and efficient process.³

The Decision of 8 April 2020⁴ confirmed the Commission would proceed as first proposed and the Construction Awards were not varied. However, the parties to the Construction Awards were directed to hold discussions, with

¹ [\[2020\] FWCFB 3281](#)

² [\[2020\] FWCFB 1760](#) at para [111]

³ [Master Builders Australia Submission - AM2020/12 - Variation on the initiative of the Commission - 6 April 2020](#) at para [6]

⁴ [\[2020\] FWCFB 1837](#)

Master Builders being directed to facilitate discussions and provide the Commission with regular progress reports [at paras 30-33].

Pursuant to this directive, Master Builders engaged with relevant employer groups who maintained an interest in the Construction Awards and settled a proposal for variations which subsequently formed the basis of discussions with relevant union parties. The proposal for variations included the standard clauses for unpaid pandemic leave and double leave, half-pay as provisionally proposed by the Commission.

Despite the efforts of all parties, agreement was not reached, and Master Builders therefore sought assistance from the Commission. Two conciliation conferences took place convened by Commissioner Lee during which the proposed variations were discussed in detail. The parties were regrettably unable to reach agreement in respect of any variation, including those standard clauses proposed by the Commission which the employers supported without amendment.

On 27 May 2020, Master Builders, the Housing Industry Association and Ai Group ('the Applicants') filed a joint application to temporarily vary the Construction Awards to provide additional measures during the COVID-19 pandemic.⁵

Annexed to the originating application was a Draft Determination, in the form of Schedule H, which contained a number of proposed variations including the Commission's unpaid pandemic leave and double leave at half pay provisions.⁶ The Applicants sought that Schedule H operate until 31 December 2020, with the potential for the period of operation to be extended on application.

The application is currently before the Full Bench in AM2020/28, with the Applicants having already filed submissions and evidence and a two-day hearing set down for 14th and 15th July 2020.

While the Construction Awards are not one of the 99 Awards listed at **Attachment A** of the 23 June 2020 Statement,⁷ we seek to bring to Your Honour's attention the matters on foot in AM2020/28 and the Applicant's claim for the Commission's unpaid 'pandemic' leave and double leave at half pay provisions to be in operation, with respect to the Construction Awards, until at least 31 December 2020.

Yours sincerely,



MASTER BUILDERS AUSTRALIA

Rebecca Sostarko

Senior Adviser - Safety, Contracts, Workplace Relations

Cc – *Ms Vasuki Paul – AiGroup*

Ms Melissa Adler – Housing Industry Association

⁵ [Application by Master Builders Australia & Housing Industry Association and Another - AM2020/28 - 27 May 2020](#)

⁶ Ibid at Annexure A.

⁷ [\[2020\] FWCFB 3281](#)

