



MASTER PLUMBERS ASSOCIATION OF NSW[®]

“Serving the nation for over 100 years”

The Master Plumbers and Mechanical Contractors Association of NSW

*Fair Work Act 2009
s.156—4 yearly review of modern awards*

4 Yearly Review of Modern Awards - AM2014/280

Plumbing and Fire Sprinklers Award 2016

Clause 18 Industry Specific Redundancy Scheme

**The Fair Work Commission
17 March 2017**

THE MASTER PLUMBERS & MECHANICAL CONTRACTORS ASSOCIATION OF NEW SOUTH WALES

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1 Introduction

- 1.1 The Master Plumbers & Mechanical Contractors Association of New South Wales (MPMCA) is a registered employer association representing the interest of plumbing contractors in New South Wales and ACT.
- 1.2 On 30 June 2016 the Master Plumbers & Mechanical Contractors Association of New South Wales (MPMCA) lodged submissions in relation to the current four yearly review of the Plumbing and Fire Sprinklers Award 2010 (Award), and, in particular, in relation to the Industry Specific Redundancy Scheme (ISRS) set out in clause 18 of the Award.
- 1.3 In these submissions MPMCA supported a modification of the ISRS to more closely align with the meaning of the term 'redundancy' under the Fair Work Act 2009 (Cth) (FW Act), rather than the current clause 18 of the Award where an employee is entitled to redundancy pay in all circumstances where that employee's employment with an employer ceases except for reasons of misconduct or refusal of duty.
- 1.4 These submissions still represent MPMCA's substantive view on the matter.

2 Submissions

- 2.1 It is acknowledged that the relevant pre-modern awards industrial instruments in the building and construction industry, including the plumbing industry, contained the ISRS clause. This set the precedent which made it consequently appropriate to include an ISRS in the construction modern awards, nevertheless, the submissions contended that it is appropriate for the ISRS to be varied.
- 2.2 MPMCA's claim in relation to the ISRS is as follows:
 - I. The definition of redundancy and the failure to exclude small business employers from the operation of the ISRS reflected an error on the part of the FWC and its predecessor in that the pre-modern award industrial instruments did not accurately reflect the way in which workers were engaged in the plumbing industry specifically, as opposed to the broader collection of construction-related industries;
 - II. References were made to the historical practices when plumbing workers were engaged under the pre-modern award instruments as 'daily hire' employees and were only entitled to one day's notice and as a provision of compensation to the redundancy pay to reflect the high labour mobility of "daily hire" employees. However, the Modern Award provisions extend beyond what the predecessor instruments provided and create anomalies



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within the operation of the Award itself by creating new category of weekly hire employees who will be entitled to both notice in accordance with the FW Act and also the redundancy pay that is received by the daily hire employee.

- III. MPMCA also submitted that another inconsistency under the current form of the ISRS is that small business employers have no option to apply to the Commission to have the entitlement reduced or removed based on the individual circumstances.

3 Conclusion

- 3.1 A modern award may relevantly include a term ‘only to the extent necessary to achieve the modern award objective’. By reason of the matters identified above, it is submitted that the ISRS goes beyond what is necessary to achieve the modern award objectives.
- 3.2 MPMCA respectfully proposes that the modern award should be varied by:
 - I. limiting the ISRS's application to daily hire employees only, thus deferring to the FW Act with regard to redundancy pay for weekly hire employees; and/or
 - II. limiting the ISRS's application to the employers with more than 5 employees; and/or
 - III. limiting the ISRS's application to circumstances in which employees have been made genuinely redundant and not have resigned at their own accord.

Olya Valaire

Master Plumbers & Mechanical Contractors Association of New South Wales

16 March 2017