

**Master Builders Australia**

Submission to the  
Fair Work Commission

*AM2016/23 - 4 Yearly Review of Modern Awards*

*Construction Awards*

2 December 2016



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## CONTENTS

1	Introduction .....	3
2	Overview .....	3
3	Background and Context.....	5
4	Overtime – Time off instead of payment for overtime .....	7
5	Dispute resolution .....	8
6	Industry Specific Redundancy Scheme.....	9
7	Minimum wages – Junior rates.....	13
8	Mobile cranes capacity adjustment formula.....	14
9	Piece rates.....	15
10	Living away from home – Distant work .....	15
11	Living away from home – Distant work – Daily Fares Allowance.....	17
12	Fares and travel patterns allowance – Metropolitan radial areas .....	18
13	Fares and travel patterns allowance – Metropolitan & Country radial areas.....	20
14	Fares and travel patterns allowance – Provision of transport.....	21
15	National training wage .....	22
16	Payment of wages.....	22
17	Ordinary hours of work – Alternate RDOs.....	23
18	Ordinary hours of work – Banking RDOs .....	23
19	Ordinary hours of work – Working a substitute RDO.....	24
20	Shiftwork – General building and construction and metal and engineering construction sectors .....	24
21	Overtime – Trainees and Apprentices .....	25
22	Annual leave – Definition of ‘Continuous Service’ .....	25
23	Joinery and Building Trades Award 2010 - General.....	26
24	Joinery and Building Trades Award 2010 – Overtime - Toil .....	26
25	Joinery and Building Trades Award 2010 – Definitions .....	26

26	Joinery and Building Trades Award 2010 – Living away from home – Board and Lodging 27
27	Joinery and Building Trades Award 2010 – Payment of wages ..... 27
28	Joinery and Building Trades Award 2010 – Alternative working arrangement..... 27

## ATTACHMENTS

- Attachment A:** Table of proposed variations
- Attachment B:** Master Builders Australia - Submission to the Fair Work Commission – 6 September 2013.
- Attachment C:** Statement of Mr Cameron Spence
- Attachment D:** Statement of Mr Peter Glover
- Attachment E:** Statement of Mr Robert Wilson
- Attachment F:** Statement (**Redacted**)

## 1 Introduction

- 1.1 This submission is made by Master Builders Australia (Master Builders).
- 1.2 Master Builders is Australia’s peak building and construction industry association, federated on a national basis in 1890. Master Builders’ members are the nine Master Builder State and Territory associations.
- 1.3 Over the past 120 years the association has grown to represent over 33,000 businesses nationwide. Master Builders is the only industry body that represents all three building and construction sectors: residential, commercial and engineering.
- 1.4 The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter. At the same time, the wellbeing of the building and construction industry is closely linked to the general state of the domestic economy.

## 2 Overview

- 2.1 This submission sets out Master Builders' claims to vary the *Building and Construction General On-Site Award 2010* (On-Site Award) and the *Joinery and Building Trades Award 2010* (Joinery Award) and relevant grounds and reasons in support of those claims.
- 2.2 A table is attached hereto marked **Attachment A** that details the claims sought. That table has a number of columns that reference each claim as follows:
- 2.2.1 FWC Item #: A reference to the table produced by the Fair Work Commission (FWC) during conciliation conferences.
  - 2.2.2 Current Award: Existing wording of clause in question as contained in the current On-Site Award.
  - 2.2.3 MBA Proposed Wording: Proposed wording of clause in question if claim is granted.
- 2.3 This submission is structured with reference to **Attachment A**.

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2.4 There are two substantive categories of Master Builders' claims that are dealt with differently to those set out in the main body of this submission. These categories relate to provisions involving (a) clauses that create inconsistencies with workplace health and safety laws; and (b) allowances. While these are clearly distinct categories, there is a nexus between them insofar as it relates to this proceeding and the relevant position of Master Builders. This nexus was communicated to the Construction Award parties during preliminary conferences and is noted below.

**(a) Clauses that create inconsistencies with workplace health and safety laws**

2.5 There are a number of provisions that fall under this category. While they will be dealt with in a separate submission on this discrete topic, the general proposition to be advanced is to remove provisions in the On-Site Award that create inconsistencies with workplace health and safety laws.

2.6 Only in the event the proposition above is not granted, Master Builders would seek to replace references to specific work health and safety matters with more generic terms that reduce confusion and uncertainty about their operation.

**(b) Allowances**

2.7 Master Builders seek to alter a significant number of allowances in the On-Site Award. These allowances are outmoded or irrelevant, or are fit for rationalisation/consolidation to improve understanding and reduce award complexity.

2.8 However, the vast majority of these allowances also arise in circumstances that create inconsistencies with workplace health and safety laws and are therefore subject the category of claim noted in section (a) above.

2.9 To that end, Master Builders position on allowances that are subject to our claims is dependent upon the outcome of the category of claim noted in (a) above. As a result, the separate submission dealing with provisions that create inconsistencies with workplace health and safety laws will also outline a position on general allowance claims to be advanced only in the event the propositions above are not granted.

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## Other

- 2.10 The claims earlier foreshadowed as contained in the FWC prepared table outlining the claims made by the various parties are either dealt with in this submission or will be addressed in the WHS and allowances submission noted above.

## 3 Background and Context

- 3.1 It is appropriate to note a number of matters that provide background and context to the claims hereunder.
- 3.2 A number of claims sought in this proceeding seek to *correct anomalies and deficiencies* including some arising from the making of the On-Site Modern Award. The predecessor instrument to the On-Site Award was the *National Building and Construction Industry Award 2000 (NBCIA)* and related instruments in effect as at 27 March 2006 when amendments were made to then *Workplace Relations Act 1996*.
- 3.3 In various subsequent proceedings, Master Builders has advanced changes that seek to rectify the anomalies and deficiencies. While some of these changes have been granted, there are a number that remain unresolved. In some circumstances, further anomalies and deficiencies have arisen from earlier attempts at correction.
- 3.4 A number of Master Builders' claims in earlier proceedings were not granted but specifically referred to the 4 Yearly Review for resolution.
- 3.5 Many of Master Builders' claims to vary the On-Site and Joinery Awards in the 4 Yearly Review have either been dealt with by the Commission in separately constituted proceedings dealing with Common issues claims or are the subject of Commission considerations in proceedings that are yet to be finalised. In some circumstances, specific matters arising in common claim proceedings have been referred to the Construction Award stage proceeding for consideration or have been determined in a way that affects them.
- 3.6 Notwithstanding the above, the general proposition with the claims we advance is to ensure that the On-Site Award operates in such a way as to ensure the modern award objectives are better met. Addressing inconsistencies and anomalies that manifest themselves within various On-Site Award provisions will improve interpretation

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amongst its users. Ensuring the Award reflects the contemporary circumstances and conditions that exist within the Building and Construction industry will also achieve this aim, particularly given that a number of current provisions are reflective of practices and conditions that existed in earlier iterations of the Award that have been carried over from each revised version to the next.

- 3.7 The importance of ensuring Construction Awards meet modern award objectives is significant given the size of the industry in which they apply. Despite there being over 1 million people currently employed in the sector, industry predicts a future workforce shortfall of 300,000 in the next decade. This arises not only from the need to replace those leaving the existing workforce of around 30,000 per year, but to expand it in a way commensurate to predicted industry size and future growth necessary to meet future infrastructure needs of the community and all levels of government.
- 3.8 There are more businesses operating in the construction sector than any other totalling some 345, 479 entities in 2014-15<sup>1</sup>. Small business is a significant feature of the sector. Most recent data notes that almost 99 per cent of entities in the sector are defined as small businesses.<sup>2</sup> The circumstances and pressures small businesses face in the sector are, in many respects, no different to those faced in other sectors but frequently include additional sector specific issues naturally arising given the nature of the work performed and the operation of the sector as a whole.
- 3.9 Noting the importance of the sector to the economy and national workforce, Master Builders urges the Commission to use the context of this 4 Yearly Review to make substantial progress in improving the operation of the Construction Awards in order to ensure they are at least comprehensible to award users and to resolve some of the minor technical deficiencies that have been the cause of long standing confusion and disputation over time.
- 3.10 The complexity of the Construction Awards, in particular the On-Site Award, is notorious. This complexity is compounded when considered in context of the unique nature of the building and construction industry and the practices peculiar to workplaces within it. This proceeding represents a chance for meaningful progress to

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<sup>1</sup> Australian Bureau of Statistics, Cat No 8165.0

<sup>2</sup> Ibid

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occur to reduce complexity while retaining key elements so that it remains relevant to, and is capable of accommodating, the circumstances of the sector.

- 3.11 The 4 Yearly Review is required by section 156 of the Fair Work Act 2009 (the ‘FW Act’) that enables the Commission to review modern awards. There are principles that apply to the scope of this review that were outlined in the Preliminary Jurisdictional Decision<sup>3</sup> and subsequently affirmed and summarised in the Full Bench Annual Leave case.<sup>4</sup>
- 3.12 Master Builders notes that the statutory provisions underpinning the four yearly review provide the FWC with a wider scope to vary Awards. Sections 138 and 134 are pertinent in this regard.
- 3.13 It is our submission that the Modern Award Objective establish parameters to consider circumstances facing the industry today rather than the circumstances that existed in the past.
- 3.14 The decision *Telum Civil (Qld) Pty Limited v Construction, Forestry, Mining and Energy Union*<sup>5</sup> is also relevant in context of the historical circumstances giving rise to an award provision and the provision as expressed in a modern award.
- 3.15 While Master Builders may refer to the history of various Award provisions in this submission, we do so mainly to provide context as to the background giving rise to the existing confusion.

## 4 Overtime – Time off instead of payment for overtime

- 4.1 This item is contained at Attachment A – FWC Item 2.
- 4.2 Master Builders seek that the On-Site Award be amended to insert the plain language model Time Off In Lieu provision arising in AM2014/300. The provision should be inserted into the overtime section at clause 36.

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<sup>3</sup> [2014] FWCFB 1788

<sup>4</sup> 2016] FWCFB 3177 para 19 to 25

<sup>5</sup> [2013] FWCFB 2434

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- 4.3 There is no need to deviate from the terms of the model term provision as determined and it can be inserted without change.
- 4.4 The Commission in the TOIL decision<sup>6</sup> cited the Joinery and On-Site Awards and did not issue determinations that would incorporate the provisional model TOIL term. In context of the presumption that they should apply to all modern awards, reference was made to this proceeding for consideration.
- 4.5 It is Master Builder's submission that there are no particular features of the industry that would prevent the inclusion of the TOIL provision in the Joinery and On-Site Awards.
- 4.6 Irrespective of any industrial relations practices that uniquely feature within the building and construction industry, the inclusion of the term would add an option for employees to access greater flexibility to suit their circumstances as required.
- 4.7 Master Builders support the notion expressed by the Commission that:
- "The model term is intended to provide employees with a means of trading overtime pay for time off at a time which assists them to balance their work and non-work commitments."<sup>7</sup>*
- 4.8 There are, in our view, no reasons as to why the building and construction industry workforce, totalling over 1 million people and representing the third largest sector of the national economy, should be denied the opportunity to access an option for greater flexibility in their workplaces.
- 4.9 A TOIL provision should therefore be included within the overtime provision of the construction awards.

## 5 Dispute resolution

- 5.1 This item is contained at Attachment A – FWC Item 8.
- 5.2 Master Builders *withdraws* this claim.

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<sup>6</sup> [2015] FWCFB 4466 para 307

<sup>7</sup> Ibid para 273

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## 6 Industry Specific Redundancy Scheme

- 6.1 This item is contained at Attachment A – FWC Item 20.
- 6.2 The claim advanced seeks to vary the amount of redundancy pay, pursuant to s. 141(3) of the Fair Work Act, in the relevant provisions of the On-Site Award for which employers are liable. This is achieved by alterations to three aspects of the existing provision being:
- (a) Definition of redundancy: Adoption of the conventional definition of what constitutes a 'redundancy';
  - (b) Eligibility criteria triggering severance payments: Amending eligibility criteria so that severance payments are only triggered where an employer has more than 5 employees and a redundant employee has completed more than two years' continuous service with an employer; and;
  - (c) Consequential changes arising from changes to definition and eligibility: Alterations of existing consequential provisions that would flow were the claims in items (a) and (b) above granted.
- 6.3 It should be noted that at earlier stages of this proceeding, Master Builders advanced a claim that related to circumstances involving transfer of business. This item is contained at Attachment A – FWC Item 23. As a result of a more recent variation to the On-Site Award, Master Builders *withdraws* this claim
- 6.4 Clause 17 sets out obligations with respect to redundancy that apply to those whom are covered by the On-Site Award. These provisions are in the same terms as clause 16 in the NBCIA which was the predecessor instrument containing an industry specific redundancy scheme. These terms were adopted during the award modernisation process.
- 6.5 The scheme and its operation has been ventilated during earlier proceedings before the Commission and is not a new feature. Clause 17 of the On-Site Award has been found as falling into the definition of an industry specific redundancy scheme as defined at section 12 of the Fair Work Act 2009.

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- 6.6 Section 123(4) of the FW Act also notes that Subdivision B (Redundancy Pay) of Division 11 does not apply to an employee to whom an industry-specific redundancy scheme in a modern award applies.
- 6.7 The scheme so created is unique in a number of ways, with the main features being that all permanent employees are entitled to a severance payment when they leave employment (unless they are terminated for misconduct) regardless of their length of service and all employers are liable to make severance payments regardless of business size. The scale of severance pay is determined with reference to the number of continuous years an employee has completed with the employer.
- 6.8 Clause 17.4(a) notes that an employer may (but is not required to) offset the amount of severance pay set by the scale through contributions to funds operated by third parties. Those funds are known as 'redundancy pay schemes' such as INCOLINK, BERT and ACIRT.
- 6.9 The redundancy pay schemes and the terms under which they operate differ from fund to fund. Employers in the sector can choose to make payments to these pay schemes on behalf of their employees or, more commonly, are obliged to do so pursuant to the term of an enterprise agreement.
- 6.10 The claims advanced by Master Builders do not affect the operation of existing redundancy pay schemes (or any enterprise agreement terms that make reference to them) and is limited to the industry specific scheme otherwise applicable as established by clause 17 of the On-Site Award.
- 6.11 Our claim, however, would require that redundancy entitlements only be payable by employers, with 5 staff or more, to employees whom have been made genuinely redundant (rather than as a result of the employee simply choosing to end their employment).
- 6.12 Such a change will retain the industry-specific character of the scheme and will not extend coverage of the scheme to classes of employees it did not previously cover consistent with s.141 (4) of the Fair Work Act.

**(a) Redundancy Pay – definition – cl 17.2**

- 6.13 This item is contained at Attachment A – FWC Item 20.

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- 6.14 Master Builders' claim is to alter the amount of redundancy pay for which employers are liable by replacing the existing definition of redundancy at clause 17.2 with one that is more reflective of the conventional definition of redundancy and consistent with practices in the building and construction industry.
- 6.15 The existing definition of circumstances that constitute when an employee is redundant is extremely broad. It captures all circumstances in which an employment relationship could end save for reasons of misconduct or refusal of duty.
- 6.16 The practical effect of this definition is that a severance amount becomes payable when an employment relationship ends. An employer is then obliged to make a severance payment in accordance with the relevant scale (unless they have made contributions to a redundancy fund on behalf of the affected worker which offset the liability of the amount prescribed by the scale) in which case the employee is free to access payments from the relevant redundancy fund.
- 6.17 It cannot be said that the existing definition is an accurate reflection of circumstances conventionally accepted as representing a redundancy nor is the practical effect of the definition akin to those conventionally arising under other instruments outside of the building and construction industry. It is out of step with other Modern Awards.
- 6.18 The definition of redundancy should be altered so that it becomes:

*For the purpose of this clause, **redundancy** means a situation where an employee is dismissed, other than for reasons of misconduct or refusal of duty:*

*(a) At the initiative of the employer because they no longer require the work performed by the employee to be done by anyone;*

*(b) At the initiative of the employer because operational or similar circumstances at the project or site on which the employee is working are such that the employer no longer requires the employee to perform work and there is not an agreement between the employer and the employee for future employment on an alternative or site or project; or*

*(c) The employer ceases to exist and/or no longer requires the engagement of employees.*

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***Redundant*** has a corresponding meaning.

6.19 This definition, while not the same as that conventionally adopted elsewhere, is more akin to it. It better represents the circumstances and practices of the industry in a manner consistent with the need to preserve the industry-specific character of the scheme.

**(b) Redundancy Pay – eligibility - 17.3(a)**

6.20 This item is contained at Attachment A – FWC Item 21.

6.21 This item involves an alteration to the amount of redundancy pay for which employers are liable by varying eligibility requirements so that redundancy pay is only required when:

(a) an employer has less than 5 employees; and

(b) the affected employee has completed 2 or more years of continuous service.

6.22 This will change the amount of redundancy pay for which very small employers (or micro-business employers) are liable to pay. The application of such a change in practice is easy to accommodate as it reflects concepts that are applied in other industries and sectors of the economy.

6.23 There are a number of reasons to support the variation as sought.

6.24 The building and construction industry comprises substantially micro businesses that engage less than 5 employees with ABS data indicating these micro businesses make up about 90% of the industry on a national scale.

**(c) Redundancy Pay – 17.3(b)**

6.25 This item is contained at Attachment A – FWC Item 22.

6.26 The claim in this item involves the deletion of clause 17.3(b) within clause 17. The deletion of this provision is consequential upon earlier claims advanced above in relation to redundancy more broadly.

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- 6.27 Those claims have involved the requirement that severance payments will only be made to employees where an employer has five employees or more and only for employees who have completed two or more years of continuous service.
- 6.28 The current clause requires that an employee who has completed less than 12 months of continuous service shall receive a pro-rata redundancy entitlement calculated on the basis of 1.75 hours for each week they have completed. This provision is rendered inoperative and should be deleted as a consequence of the changes sought in items (a) and (b) above.

## 7 Minimum wages – Junior rates

- 7.1 This item is contained at Attachment A – FWC Item 24.
- 7.2 This item seeks the insertion of a new clause to provide for minimum rates of pay for junior employees who are not otherwise undertaking training (apprenticeship or traineeship).
- 7.3 The current structure of the On-Site Award requires adult rates to be payable to all employees irrespective of age, except in circumstances where persons aged under 21 are undertaking an apprenticeship or traineeship. This means that a young person who wishes to work for an employer covered by the On-Site Award must either:
- (a) become a trainee or apprentice in the industry, or
  - (b) be engaged and paid an adult rate of pay.
- 7.4 These circumstances represent a disincentive to both employees and employers. It requires employees to be engaged under a formal training arrangement of some type and for them to be enrolled in an educational institution. It requires employers to pay an adult rate of pay to a young person who is likely to be new to the industry.
- 7.5 To overcome these disincentives, a schedule is proposed for insertion at clause 19 involving a series of percentages aligned to age categories which provide a quantum of payment as a percentage of the minimum adult rate.
- 7.6 This schedule is aligned to that contained within the *Manufacturing and Associated Industries and Occupations Award 2010* and other like awards.

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- 7.7 A provision of this type will allow for circumstances that are not currently accommodated by the On-Site Award. It would create an alternative pathway for young people to enter the building and construction industry workforce.
- 7.8 In particular, it would allow for young people to gain actual workplace experience in the building and construction sector. This will enable them to understand how sector workplaces operate and the conditions therein without the requirement to also enrol in a formal training arrangement. In other circumstances, young people seeking short term or similar work will be provided greater employment opportunities that will, by default, increase the chances of those individuals deciding to stay in the sector and pursue a formal trade qualification.
- 7.9 As noted earlier herein, the building and construction sector anticipates a workforce shortfall of some 300,000 workers by 2024. It is therefore necessary that the industry consider ways in which it can increase the number of persons entering the sector and decrease the number of people who do not complete a traineeship and/or apprenticeship.

## 8 Mobile cranes capacity adjustment formula

- 8.1 This item is contained at Attachment A – FWC Item 30.
- 8.2 This item seeks to clarify the way in which the mobile crane capacity adjustment formula (CI 19.5) is calculated and applies. It is a technical change to improve understanding of this formula amongst award users and does not cause a material change to its operation.
- 8.3 This matter has been the subject of earlier proceedings before the Commission in [2013] FWC 4576. In that earlier decision, Senior Deputy President Watson noted at paragraph [45] that:
- "The weekly rate for the purposes of the mobile crane capacity adjustment formula should be calculated as an hourly rate in accordance with clause 13.2."*
- 8.4 The claim we advance simply reflects the statement of the Commission by including words that directs users to the provisions of clause 13.2.

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- 8.5 This is a technical improvement to increase understanding and to provide clarity to On-Site Award users consistent with earlier Commission commentary.

## 9 Piece rates

- 9.1 This item is contained at Attachment A – FWC Item 31.
- 9.2 The claim advanced by Master Builders in this area involves the deletion of the words *"be made without coercion or duress"* from clause 19.6(b) from the On-Site Award.
- 9.3 Clause 19.6(b) provides that any agreement entered into regarding an arrangement involving piece rates must *"be made without coercion or duress"*.
- 9.4 The purposes of deleting this provision are numerous.
- 9.5 First, the general law provides that agreements must only be made that are enforceable if they are made without coercion or duress. The specific requirement to include this requirement in the On-Site Award does not assist the user and in fact, re-states what is a widely understood and otherwise applicable general principle of law.
- 9.6 Second, the clause should be considered superfluous and unnecessary given that it stands alone in the Award in circumstances involving arrangements to be agreed between employers and employees. No other provision allowing for such arrangements to be agreed is accompanied by such a requirement notwithstanding that those other arrangements must also be agreed without coercion or duress.
- 9.7 In no other circumstance is the requirement that those agreements be entered into *"without coercion or duress"* as it is generally accepted that an arrangement entered into must be voluntary and cannot be made or enforced were it to be entered into in those circumstances.
- 9.8 The claim we therefore advance will ensure that the clause is consistent with other provisions within the On-Site Award in that it does not necessarily require the naming of a particular condition under which an arrangement must not be entered into.

## 10 Living away from home – Distant work

### (a) Entitlement

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- 10.1 This item is contained at Attachment A – FWC Item 124.
- 10.2 The claim will clarify the definition of “board and lodging” in order to overcome circumstances causing confusion in the sector.
- 10.3 The confusion arises where an employee has reasonably read the award and believes that it provides them with an entitlement to board and lodging as well as payment for meals or an allowance/reimbursement for meals that they consume whilst living in those circumstances.
- 10.4 The claim that we make would remove this ambiguity by clarifying that lodging is reasonable in a well-kept establishment and that reasonable board includes three adequate meals per day.
- 10.5 Clause 24 of the On-Site Award prescribes entitlements for employees living away from home to undertake distant work. Clause 24.3(a)(ii) requires that an employer “*provide the worker with reasonable board and lodging in a well kept establishment with three adequate meals each day*”.
- 10.6 The current provision is derived from clause 37.3.1(b) of the National Building and Construction Industry Award 2000 (NBCIA). This earlier clause expressed the notion of board and lodging differently as being “reasonable board and lodging shall mean lodging in a well kept establishment with three adequate meals each day,…”
- 10.7 Clause 24.3(a)(ii) of the On-Site Award was redrafted omitting the words ‘shall mean’, which could have the inference that employees are entitled to the living away from home allowance in addition to the provision of three adequate meals a day.
- 10.8 This variation we seek clarifies the meaning and is consistent with the Macquarie Dictionary definition of ‘board’ as ‘daily meals, especially as provided for pay, often as part of accommodation.’
- 10.9 This is a technical clarification claim which seeks to alleviate confusion arising from the existing wording of the On-Site Award.
- 10.10 The claim we advance will not materially change the entitlements currently provided for in this clause, it would simply alleviate any confusion and ensure that the On-Site Award remains clear to users.

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## 11 Living away from home – Distant work – Daily Fares Allowance

- 11.1 This item is contained at Attachment A – FWC Item 129.
- 11.2 This claim seeks to clarify circumstances that entitle an employee to the daily fares allowance set in clause 25 when they are engaged on distant work.
- 11.3 The distant work provisions are contained at clause 24 and set special conditions that apply to the exclusion of the fares and travel patterns allowance set a clause 25.
- 11.4 The existing clause 24.7(d) is one exception to the exclusion of clause 25. It provides that employees will receive the fares and travel patterns allowance in circumstances where:
- They are required to reside elsewhere than on site; or
  - Elsewhere other than adjacent to the site and provided with transport.
- 11.5 The confusion in clause 24.7(d) arises due to the use of the word “and” emphasised in the above dot point.
- 11.6 It is illogical that the fares and travel allowance should be payable when an employee is required to reside adjacent to their place of work simply because they are not provided transport. The conventional meaning of the word 'adjacent' is 'next to, or adjoining'. Applied in this context, the place where a worker is residing would be next to or adjoining the site where they are working.
- 11.7 In these circumstances, there would be no need to provide transport to reach a site if the residence where employees stayed was next to or adjoining it.
- 11.8 It is appropriate that clause 24.7(d) exclude the normal operation of clause 25 in circumstances where distant work was being undertaken and employees were residing:
- On site; or
  - Adjacent to the site; or

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- Provided with transport.
- 11.9 As currently expressed, the clause operates only in two situations - where employees are residing somewhere other than on-site OR residing adjacent to the site without transport provided.
- 11.10 This has caused confusion in the sector as to when clause 25 does apply in circumstances involving distant work. This is particularly the case where employees reside next to the site and the distance to travel to reach the work site could only be a few metres
- 11.11 To eliminate confusion, we seek to delete the word “and” and replace with the word “or” so that the clause 25 would only have application to those residing somewhere other than on site or adjacent to the site or who are not provided with transport.
- 11.12 In other words, if an employee was accommodated at a location that is, for example, two kilometres distance from the actual work site, then in the absence of receiving transport or being provided transport by the employer, they would be entitled to receive the allowance.

## 12 Fares and travel patterns allowance – Metropolitan radial areas

- 12.1 This item is contained at Attachment A – FWC Items 133.
- 12.2 This is a technical wording change to clarify confusion about the type of employee to whom it applies and does not apply. This issue has been the subject of earlier ventilation before the Commission and the proposed alteration is intended to provide absolute clarity to settle any ambiguity.
- 12.3 When the On-Site Modern Award was made a number of grammatical and wording changes occurred including some which had a material impact on the interpretation of particular provisions. One such change affected the provisions in clause 25.2 which has unintentionally affected its interpretation.
- 12.4 Clause 25.2 is derived from clause 20.3.4 of *the National Metal and Engineering On-Site Construction Award 2002*. Clause 20 of that award (within which clause 20.3.4 sat) provided for the payment of a fare and travelling allowance for employees in the

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metal and engineering sector who were required to start and cease work on a construction site. There were exceptions to that requirement being:

- The employee was absent;
- The employer provided, or offered to provide, transport to and from the site;
- The employer provided, or offered to provide, accommodation on the site; or
- *For any day that the employee started and ceased work at the employers workshop, yard or depot.*

12.5 It is the last exception, with *our emphasis*, that is relevant.

12.6 The *National Metal and Engineering On-Site Construction Award 2002* applied to persons employed on on-site construction work who were in the Metal and Engineering Construction Industry. These employees would generally travel to a construction site to perform work and would receive a fare and travel allowance to do so. The exception applied to people covered by the Award who were not required to travel to a construction site to perform work, but would instead begin and cease their day at their employer's workshop, yard or depot. In other words, they would not receive the allowance as they were working at their employer's main place of business.

12.7 The NBCIA applied to persons other than those covered by the Metals On-Site Award. Both the NBCIA and the current award noted that it requires employees to start and finish work at the construction site. It provides for an allowance that recognises that the travel patterns for workers covered by the On-Site award are peculiar to the sector. The patterns take account of the fact that the location of a construction site will change from project to project and therefore employees receive an allowance to travel to the site based on distance (using metropolitan radial areas to determine the amount).

12.8 Clause 25.2 of the On-Site Award has variously tried to accommodate the National Metal and Engineering On-Site Construction Award 2002 exception with little success. The wording of the clause, and grammatical variations to it, have altered the application of the clause and (despite best intentions) has not been able to replicate the historical application and basis. There is a long history of attempts to fix the issue.

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12.9 To provide certainty, we seek that the clause be amended to read as follows:

**25.2 Metropolitan radial areas**

25.2.1 *An employee must be paid an allowance of \$xx.xx per day for each day worked when employed in construction work at a construction site located away from the employers establishment and:*

*(a) within a radius of XX kilometres of the GPO in a capital city of a State or Territory; or*

*(b) within a radius of XX kilometres of the principal post office in a regional city or town in a State or Territory.*

25.2.2 *Clause 25.2.1 does not apply to employees in the metal and engineering sector who begin and cease work at the employer's workshop, yard or depot.*

12.10 This will return the clause to the historical position by setting out the entitlement to the allowance and then separately noting the specific circumstances in which it does not apply.

12.11 This would, in our submission, clarify the operation and intended entitlement in a manner to that as it was historically.

**13 Fares and travel patterns allowance – Metropolitan & Country radial areas**

13.1 These items are contained at Attachment A – FWC Item 135 to 141.

13.2 The variation sought in this claim is to change the operation of the radial areas provisions in the Awards from 50 kilometres to 75 kilometres.

13.3 The basis for this variation is, in summary, that improvements have been made to infrastructure and transport technology such that time taken to travel within or between radial areas has changed from that which was relevant when the provision was first applied.

13.4 As a result, the time and distance taken to move within and between radial areas has caused the Award provisions to fall behind those that the sector experience on a day to day basis.

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## 14 Fares and travel patterns allowance – Provision of transport

- 14.1 This item is contained at Attachment A – FWC Item 142.
- 14.2 The claim we make in respect of this provision clarifies that the provision of a vehicle by the employer to the employee does not entitle them to use that vehicle for any other private use.
- 14.3 The claim is made in the context of the existing clause which provides that a fare and travel allowance is not payable when the employer provides a vehicle free of charge to the employee for a purpose related to their contract of employment and the employee is required by the employer to drive this vehicle from the employee’s home to their place of work and return.
- 14.4 In other words, where an employee is required to use a company vehicle in order to undertake work arising from their contract of employment and they are provided a company vehicle, then the allowance in clause 25 is not payable in circumstances where the employer allows the employee to utilise the vehicle provided to them for the purposes of travelling to and from their workplace.
- 14.5 The current provision does not then place any limitation on situations or circumstances where the company provided vehicle can be used other than for driving to and from work. In this circumstance it is open for an employee to utilise the company vehicle for purposes other than those related to their contract of employment and to transport themselves to and from a workplace.
- 14.6 The change we seek involves the insertion of the words “and for no other private use” at the end of clause 25.8(b). This will clarify the circumstances in which this particular clause applies and ensure that there is an express limitation on the use of a vehicle as provided in the circumstances outlined above.
- 14.7 This is consistent with the existing provision that provides for the use of a company vehicle in order to undertake work arising from their contract of employment (in other words, a vehicle is necessary to do the employees job) and clarifies that this provision applies in all circumstances for which the employee has the vehicle (with the exception of driving to and from work).

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- 14.8 The claim we make would therefore limit circumstances where this could occur and reduce potential confusion and disagreements in the sector more broadly.

## 15 National training wage

- 15.1 This item is contained at Attachment A – FWC Item 148.
- 15.2 This aspect of our claim is the subject of proceedings before a separate bench in a common claim matter (AM2016/17).
- 15.3 Master Builders supports the proposal to delete the relevant schedule from the Awards and incorporate the terms of Schedule E to the Miscellaneous Award 2010.

## 16 Payment of wages

- 16.1 This item is contained at Attachment A – FWC Items 153 and 154.
- 16.2 These aspects of our claim are largely the subject of proceedings before a separate bench in a common claim matter (AM2016/8) in which Master Builders have made submissions.
- 16.3 Subject to the outcome in the above proceeding, we would seek the adoption of the provisional model draft term (with amendments per our submissions in the above matter) for payment of wages be incorporated into both Awards and that the remaining substantive provision in the On-Site Award be deleted.
- 16.4 This remaining provision provides for employees to be provided time off during working hours to attend their nearest bank branch to cash a cheque, if they are paid in this manner.
- 16.5 Master Builders submits that this provision is outdated and we have not been able to identify any member who pays employees by cheque. It reflects a historical practice that is therefore rarely used (if ever) and is not necessary to remain in a Modern Award of any time.
- 16.6 The Award already provides a penalty for employers in circumstances where an employee is kept waiting for their wages if they are paid by cheque and, further, the

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provision as expressed is too broad and is open to be interpreted creatively so as to cause confusion and uncertainty amongst award readers.

- 16.7 The deletion of this provision will ensure that the Award matches the circumstances that actually exist in building and construction industry workplaces.

## 17 Ordinary hours of work – Alternate RDOs

- 17.1 This item is contained at Attachment A – FWC Item 156.
- 17.2 The variation sought is to delete the words "nominated industry rostered day off" and replace them with a reference to "rostered days of as prescribed in clause 33.1 (a)(i)."
- 17.3 The basis for this variation is that the practice of determining a "nominated industry rostered day off" was abandoned when the modern award was made. Rostered days off as "nominated" by the "industry" no longer exist and rostered days off are instead determined with reference to clause 33.1 (a)(i).
- 17.4 This claim is a change to wording only to delete an outdated provision and has no material effect on the operation of the clause or the entitlement it provides for employees.

## 18 Ordinary hours of work – Banking RDOs

- 18.1 This item is contained at Attachment A – FWC Item 157.
- 18.2 The variation sought by this claim is intended to allow an employer and a majority of employees at a site or particular enterprise an option to agree to accrue bank rostered days off into a bank that can then be drawn upon at a future time with the agreement of the employer. It would see the current clause 33.1 (a) (iii) deleted and replaced with the words at attachment A.
- 18.3 The current provision is outdated and is limited only to circumstances where (a) employees are engaged in distant work and (b) limits the number of days to be banked to not more than 5.
- 18.4 The variation we seek retains the existing concept of agreement by a majority of employees but removes other limitations thereby extending this option to achieve

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greater flexibility to a far larger proportion of the building and construction industry workforce.

## 19 Ordinary hours of work – Working a substitute RDO

- 19.1 This item is contained at Attachment A – FWC Item 158.
- 19.2 The variation we seek will clarify the existing provisions applicable in circumstances where employees work, for reasons set out in the existing provision, on a day that is normally an RDO or on a day that is the substitute RDO. This clarification will also be highly relevant in the event that the claims to expand the capacity to bank and substitute RDOs noted above are granted.
- 19.3 The existing clause is a source of confusion within the sector. As currently worded, clause 33.1(a)(iv) could be interpreted as compensating employees who work in these circumstances in various differing ways including some that involve the incorrect application of penalty rates and others that represent a 'double dip' where employees are compensated twice for one event.
- 19.4 The variation sought provides clarity to make it clear that employees required to work in defined circumstances on an RDO or a substitute RDO will receive:
- (a) the ordinary applicable rate of pay with a penalty as prescribed in the existing provision, or
  - (b) the ordinary applicable rate of pay and the option of either cashing out the value of the RDO or substituted day or retaining the RDO or substitute day in a bank to be taken at a future point as agreed.
- 19.5 This will ensure that the clause contains the necessary clarity and will eliminate confusion that currently exists. It will also provide an additional option for employees and employers to achieve greater flexibility that suit their needs at the workplace level.

## 20 Shiftwork – General building and construction and metal and engineering construction sectors

- 20.1 This item is contained at Attachment A – FWC Items 162 to 164.

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- 20.2 The variations sought will provide clarity and overcome a deficiency in the On-Site Award. The deficiency arises in the context where a change was made to re-define shifts using the time at which they commenced rather than the time at which they finished as was historically the case.
- 20.3 As a result, the shifts which previously could end during the period 11 pm to 4.30 am and be encompassed by a shift definition are not accommodated in the current provision. To address this situation, a new definition of "early morning shift" is proposed that covers work commencing between these times that brings a shift loading commensurate with that which previously existed prior to that change noted above.
- 20.4 The basis for the alteration is as set out in submissions earlier filed, and set out in **Attachment B**

## 21 Overtime – Trainees and Apprentices

- 21.1 This item is contained at Attachment A – FWC Item 168.
- 21.2 The claim made in this item seeks to delete what is essentially a replication of provisions which are identical and consolidate them into one simple clause.
- 21.3 The existing clause 36.7 refers to trainees in the industry not being required to work overtime or shiftwork at a time that would prevent them from attending their training except in an emergency. Clause 15.3(b) currently provides the same provision for persons under 18 who are undertaking an apprenticeship. The claim we advance would delete clause 15.3(b) and amend clause 36. By adding the words "or apprentice" after the words "trainee" and before the word "will" in the first line of clause 36.7.
- 21.4 This deals with the matters currently covered by two clauses 15.3(b) and 15.3(c) and consolidates them into one clause in the relevant section dealing with overtime. This is a technical change to reduce complexity and improve award understanding.

## 22 Annual leave – Definition of 'Continuous Service'

- 22.1 This item is contained at Attachment A – FWC Item 170.

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- 22.2 The claim Master Builders advances in this item involves the definition of continuous service. The current provision simply refers to annual leave as provided for by the NES. This is set out at clause 38.1(a).
- 22.3 The claim we make would add words to point the user to the definition of continuous services as defined in clause 3.1 of the award.
- 22.4 The reference to the definition of continuous service as provided elsewhere in the award at clause 3.1 is necessary given the sector’s broad and common understanding of a definitional construct of the phrase continuous service being that as set in the On-Site Award.
- 22.5 The definition of continuous service in the On-Site Award is consistent with and no different in material effect to the definition that exists in the NES (although it is expressed differently). The benefit of including the change sought is to point users of the On-Site Award to the definition of continuous service in the award with which they are currently familiar as opposed to referring them to the NES.

## 23 Joinery and Building Trades Award 2010 - General

- 23.1 The claims affecting the Joinery and Building Trades Award 2010 are also noted in Attachment A.
- 23.2 Given the congruency between the nature of these claims and those noted above as they relate to the On-Site Award, the grounds and reasons in support of the variations sought should be considered the same as described earlier herein (except where explicitly noted below).

## 24 Joinery and Building Trades Award 2010 – Overtime - Toil

- 24.1 This item is contained at Attachment A – FWC Item 2.
- 24.2 The variation sought is to adopt into the overtime clause a provision providing for time off in lieu of overtime arising in AM2014/300.

## 25 Joinery and Building Trades Award 2010 – Definitions

- 25.1 This item is contained at Attachment A – FWC Item 4.

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- 25.2 The variation sought creates a new definition of joinery work that allows the award to remain applicable to those employees who do off-site joinery work but sometimes perform work on construction sites to install the materials they have prepared off-site.
- 25.3 This change will clarify that workers normally engaged under the Joinery Award who subsequently attend construction sites to install materials they have made off-site. This will reduce complexity and address confusion as to the applicable award in such circumstances.

## **26 Joinery and Building Trades Award 2010 – Living away from home – Board and Lodging**

- 26.1 This item is contained at Attachment A – FWC Item 9.
- 26.2 The variation sought seeks to clarify the meaning of board and lodging in the same manner as noted above with respect to the On-Site Award to overcome confusion and ensure clarity.

## **27 Joinery and Building Trades Award 2010 – Payment of wages**

- 27.1 This item is contained at Attachment A – FWC Item 10.
- 27.2 These aspects of our claim are largely the subject of proceedings before a separate bench in a common claim matter (AM2016/8) in which Master Builders have made submissions.
- 27.3 Subject to the outcome in the above proceeding, we would seek the adoption of the provisional model draft term (with amendments per our submissions in the above matter) for payment of wages be incorporated into both the On-Site and Joinery Award.

## **28 Joinery and Building Trades Award 2010 – Alternative working arrangement**

- 28.1 This item is contained at Attachment A – FWC Item 15.

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- 28.2 The variation sought removes the requirement that alternative working arrangements can only be implemented with the agreement of only 60% of affected employees and replaces it with the requirement to reach agreement with the majority of affected employees.

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## **ATTACHMENT A**

### *TABLE OF PROPOSED VARIATIONS*

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**ATTACHMENT A**

<b>BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010</b>		
<b>FWC ITEM</b>	<b>CURRENT AWARD</b>	<b>MBA PROPOSED WORDING</b>
<b>2</b>	<p><b>36. Overtime</b></p> <p>(No existing provision, insert new subclause)</p>	<p><b>36. Overtime</b></p> <p><b>36.17 Time off instead of payment for overtime</b></p> <p><i>(Insert new subclause reflecting model TOIL provision)</i></p>
<b>8</b>	<p><b>9. Dispute resolution</b></p> <p>Claim withdrawn</p>	<p><b>9. Dispute resolution</b></p> <p>Claim withdrawn</p>
<b>20</b>	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.2 Definition</b></p> <p><i>For the purposes of this clause, <b>redundancy</b> means a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty. <b>Redundant</b> has a corresponding meaning.</i></p>	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.2 Definition</b></p> <p><i>For the purpose of this clause, <b>redundancy</b> means a situation where an employee is dismissed, other than for reasons of misconduct or refusal of duty:</i></p> <ul style="list-style-type: none"> <li><i>(d) At the initiative of the employer because they no longer require the work performed by the employee to be done by anyone;</i></li> <li><i>(e) At the initiative of the employer because operational or similar circumstances at the project or site on which the employee is working are such that the employer no longer requires the employee to perform work and there is not an agreement between the employer and the employee for future employment on an alternative or site or project; or</i></li> <li><i>(f) The employer ceases to exist and/or no longer requires the engagement of employees.</i></li> </ul> <p><b>Redundant</b> has a corresponding meaning.</p>



## ATTACHMENT A

21	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.3 Redundancy Pay</b></p> <p><b>17.3(a) Redundancy pay</b> A redundant employee will receive redundancy/severance payments, calculated as follows, in respect of all continuous service with the employer:</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Period of continuous service with an employer</th> <th style="text-align: left;">Redundancy/severance pay</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">1 year or more but less than 2 years</td> <td style="vertical-align: top;">2.4 weeks' pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks' pay</td> </tr> <tr> <td style="vertical-align: top;">2 years or more but less than 3 years</td> <td style="vertical-align: top;">4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay</td> </tr> <tr> <td style="vertical-align: top;">3 years or more than but less than 4 years</td> <td style="vertical-align: top;">7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay</td> </tr> <tr> <td style="vertical-align: top;">4 years or more</td> <td style="vertical-align: top;">8 weeks' pay</td> </tr> </tbody> </table> <p>Provided that an employee employed for less than 12 months will be entitled to a redundancy/severance payment of 1.75 hours per week of service if, and only if, redundancy is occasioned otherwise than by the employee.</p>	Period of continuous service with an employer	Redundancy/severance pay	1 year or more but less than 2 years	2.4 weeks' pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks' pay	2 years or more but less than 3 years	4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay	3 years or more than but less than 4 years	7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay	4 years or more	8 weeks' pay	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.3 Redundancy Pay</b></p> <p>17.3(a) A redundant employee will receive redundancy/severance payments, calculated as follows, in respect of all continuous service with the employer:</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Period of continuous service with an employer</th> <th style="text-align: left;">Redundancy/severance pay</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Less than 2 years</td> <td style="vertical-align: top;">Nil</td> </tr> <tr> <td style="vertical-align: top;">2 years or more but less than 3 years</td> <td style="vertical-align: top;">4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay</td> </tr> <tr> <td style="vertical-align: top;">3 years or more than but less than 4 years</td> <td style="vertical-align: top;">7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay</td> </tr> <tr> <td style="vertical-align: top;">4 years or more</td> <td style="vertical-align: top;">8 weeks' pay</td> </tr> </tbody> </table> <p>17.3(b) <b>Week's pay</b> means the ordinary time hourly rate at the time of termination multiplied by 38. <b>Hour's pay</b> means the ordinary time hourly rate at the time of termination.</p> <p>17.3(c) Redundancy/severance entitlements under clause 17.3 do not apply if, immediately before the time of the termination due to redundancy, or at the time when the person was given notice of the termination due to redundancy:</p> <ul style="list-style-type: none"> <li>(a) the employee's period of continuous service with the employer is less than 24 months; or</li> <li>(b) the employer employs fewer than 5 employees.</li> </ul>	Period of continuous service with an employer	Redundancy/severance pay	Less than 2 years	Nil	2 years or more but less than 3 years	4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay	3 years or more than but less than 4 years	7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay	4 years or more	8 weeks' pay
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4 years or more	8 weeks' pay																					

## ATTACHMENT A

<b>22</b>	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.3 Redundancy Pay</b></p> <p>17.3(b) Provided that an employee employed for less than 12 months will be entitled to a redundancy/severance payment of 1.75 hours per week of service if, and only if, redundancy is occasioned otherwise than by the employee.</p>	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.3 Redundancy Pay</b></p> <p>Delete clause 17.3(b)</p>														
<b>23</b>	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.7 Transfer of business</b></p> <p>Claim withdrawn as dealt with by 2016 variation</p>	<p><b>17. Industry specific redundancy scheme</b></p> <p><b>17.7 Transfer of business</b></p> <p>Claim withdrawn as dealt with by 2016 variation</p>														
<b>24</b>	<p><b>19. Minimum Wages</b></p> <p><b>19.1 General</b></p>	<p><b>19. Minimum Wages</b></p> <p>(Insert new clause 19.1A)</p> <p><b>19.1A Junior employees</b>  <i>Where the law permits junior employees to perform work in the construction industry, the junior employee (other than an apprentice or trainee) will be entitled to the percentage of the applicable adult weekly wage (in the case of part-time or casual employees the hourly rate) for their classification as set out in the table below:</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Age</th> <th style="text-align: left;">% of adult rate</th> </tr> </thead> <tbody> <tr> <td>Under 16 years</td> <td>36.8</td> </tr> <tr> <td>At 16 years</td> <td>47.3</td> </tr> <tr> <td>At 17 years</td> <td>57.8</td> </tr> <tr> <td>At 18 years</td> <td>68.3</td> </tr> <tr> <td>At 19 years</td> <td>82.5</td> </tr> <tr> <td>At 20 years</td> <td>97.7</td> </tr> </tbody> </table>	Age	% of adult rate	Under 16 years	36.8	At 16 years	47.3	At 17 years	57.8	At 18 years	68.3	At 19 years	82.5	At 20 years	97.7
Age	% of adult rate															
Under 16 years	36.8															
At 16 years	47.3															
At 17 years	57.8															
At 18 years	68.3															
At 19 years	82.5															
At 20 years	97.7															

## ATTACHMENT A

<b>30</b>	<p><b>19. Minimum Wages</b></p> <p><b>19.5 Mobile cranes capacity adjustment formula</b></p> <p>For each additional 40 tonnes over a maximum lifting capacity of 100 tonnes, an amount of 2.4% of the weekly standard rate must be added to the base rate for Level 5 (CW/EW5) and above.</p>	<p><b>19. Minimum Wages</b></p> <p><b>19.5 Mobile cranes capacity adjustment formula</b></p> <p>19.5.1 For each additional 40 tonnes over a maximum lifting capacity of 100 tonnes, an amount of 2.4% of the weekly standard rate must be added to the base rate for Level 5 (CW/EW5) and above.</p> <p>19.5.2_ The weekly rate, inclusive of the mobile cranes capacity adjustment formula, is calculated as an hourly rate in accordance with clause 13.2.</p>
<b>31</b>	<p><b>19. Minimum Wages</b></p> <p><b>19.6 Piece rates</b></p> <p>19.6(b) The agreement must be made without coercion or duress.</p>	<p><b>19. Minimum Wages</b></p> <p><b>19.6 Piece rates</b></p> <p><i>Delete clause 19.6(b)</i></p>
<b>124</b>	<p><b>24. Living away from home—distant work</b></p> <p><b>24.3 Entitlement</b></p> <p>(a) Where an employee qualifies under clause 24.1 the employer will:</p> <p style="padding-left: 40px;">(ii) provide the worker with reasonable board and lodging in a well kept establishment with three adequate meals each day; or</p>	<p><b>24. Living away from home—distant work</b></p> <p><b>24.3 Entitlement</b></p> <p>(a) Where an employee qualifies under clause 24.1 the employer will:</p> <p style="padding-left: 40px;">(ii) provide the worker with reasonable lodging in a well kept establishment <i>and with reasonable board of three</i> adequate meals each day; or</p>

## ATTACHMENT A

129	<p><b>24. Living away from home—distant work</b></p> <p><b>24.7 Travelling expenses</b></p> <p>(d) Daily fares allowance An employee engaged on a job who qualifies under the provisions of this clause and who is required to reside elsewhere than on the site (or adjacent to the site and supplied with transport) must be paid the allowance prescribed by clause 25—Fares and travel patterns allowance.</p>	<p><b>24. Living away from home—distant work</b></p> <p><b>24.7 Travelling expenses</b></p> <p>(d) <i>Daily fares allowance</i> <i>An employee engaged on a job who qualifies under the provisions of this clause and who is required to reside elsewhere than on the site (or adjacent to the site or supplied with transport) must be paid the allowance prescribed by clause 25—Fares and travel patterns allowance.</i></p>
133	<p><b>25. Fares and travel patterns allowance</b></p> <p><b>25.2 Metropolitan radial areas</b> An employee, other than an employee in the metal and engineering construction sector who is required to commence or cease work at the employer's workshop, yard or depot other than on a construction site, must be paid an allowance of \$17.43 per day for each day worked when employed on construction work, at a construction site located: (a) within a radius of 50 kilometres of the GPO in a capital city of a State or Territory; or (b) within a radius of 50 kilometres of the principal post office in a regional city or town in a State or Territory.</p>	<p><b>25. Fares and travel patterns allowance</b></p> <p><b>25.2 Metropolitan radial areas</b></p> <p>25.2.1 An employee must be paid an allowance of \$xx.xx per day for each day worked when employed in construction work at a construction site located away from the employers establishment and: (a) within a radius of xx kilometres of the GPO in a capital city of a State or Territory; or (b) within a radius of xx kilometres of the principal post office in a regional city or town in a State or Territory.</p> <p>25.2.2 Clause 25.2.1 does not apply to employees in the metal and engineering sector who begin and cease work at the employer's workshop, yard or depot.</p>
135 136 137 138 139 140 141	<p><b><i>NOTE – the claim for these items alter the radial area from the number 50 to 75 for each relevant clause. An example of this is below and adjacent.</i></b></p> <p><b>25. Fares and travel patterns allowance</b></p> <p><b>25.2 Metropolitan radial areas</b> (a) within a radius of 50 kilometres of the GPO in a capital city of a State or Territory; or</p>	<p><b>25. Fares and travel patterns allowance</b></p> <p><b>25.2 Metropolitan radial areas</b> (a) <i>within a radius of 75 kilometres of the GPO in a capital city of a State or Territory; or</i></p>

## ATTACHMENT A

<p><b>142</b></p>	<p><b>25. Fares and travel patterns allowance</b></p> <p><b>25.8 Provision of transport</b>            (b) The allowance prescribed in this clause will be payable on any day for which the employer provides a vehicle free of charge to the employee for a purpose related to their contract of employment, and the employee is required by the employer to drive this vehicle from the employee's home to their place of work and return.</p>	<p><b>25. Fares and travel patterns allowance</b></p> <p><b>25.8 Provision of transport</b>  <i>(b) The allowance prescribed in this clause will be payable on any day for which the employer provides a vehicle free of charge to the employee for a purpose related to their contract of employment, and the employee is required by the employer to drive this vehicle from the employee's home to their place of work and return and for no other private use.</i></p>
<p><b>148</b></p>	<p><b>28. National training wage</b></p> <p><b>28.1</b> The provisions of Schedule C will apply in respect of traineeships, save that the following minimum wage rates will apply instead of those within clause C.5.1 of Schedule C....</p>	<p><b>(b) 28. National training wage</b></p> <p><i>28.1 Schedule E to the Miscellaneous Award 2010 sets out minimum wage rates and conditions for employees undertaking traineeships.</i></p> <p><i>28.2 This award incorporates the terms of Schedule E to the Miscellaneous Award 2010 as at 1 July 2016.</i></p>

## ATTACHMENT A

<p>153 154</p>	<p><b>31. Payment of wages</b></p> <p>31.1 All wages, allowances and other monies must be paid in cash, or by cheque, bank cheque, electronic funds transfer (EFT) or similar transfer or any combination.</p> <p>31.2 An employee paid by cheque must be allowed reasonable time, as agreed between the employer and the employee, to attend the branch of the employee's bank nearest the workplace to cash cheques during working hours.</p> <p>31.3 Payments must be paid and available to the employee not later than the end of ordinary hours of work on Thursday of each working week. Where an employer made payment less frequently in compliance with a relevant award or award-based transitional instrument, prior to the making of this award on 1 January 2010, or where an employer made payment less frequently in compliance with a Division 2B State award, prior to 1 January 2011, the employer may continue to make payment at that frequency, subject to the agreement of employees and/or a majority of employees if required by the relevant award, award-based transitional instrument or Division 2B State award.</p> <p>31.4 When notice is given, all monies due to the employee must be paid at the time of termination of employment. Where this is not practicable, the employer will have two working days to send monies due to the employee by registered post (or where paid by EFT the monies are transferred into the employee's account).</p> <p>31.5 If an employee is paid wages by cash or cheque and is kept waiting for their wages more than a quarter of an hour after the usual time of finishing work on pay day (for reasons other than circumstances beyond the control of the employer), the employee is to be paid at overtime rates after that quarter of an hour for the period they are kept waiting, with a minimum payment of a quarter of an hour.</p>	<p><b>31. Payment of wages</b></p> <p><i>31.1 All wages, allowances and other monies must be paid in cash, or by cheque, bank cheque, electronic funds transfer (EFT) or similar transfer or any combination.</i></p> <p><i>31.2 Payments must be paid to employees either weekly or fortnightly</i></p> <p><i>31.3 When notice is given in accordance with clause 16 of this Award, the employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:</i></p> <p><i>(i) within 7 days after the employee's last day of employment; or</i> <i>(ii) on the next normal pay day.</i></p> <p><i>31.4 Where there is a delay in payment or a payment is not made in accordance with the usual pay cycle (for reasons other than circumstances beyond the control of the employer), and unless the employee is paid by electronic funds transfer (EFT), the employee is to be paid at overtime rates after that quarter of an hour for the period they are kept waiting, with a minimum payment of half an hour.</i></p>
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## ATTACHMENT A

156	<p><b>33. Ordinary hours of work</b></p> <p><b>(a) Hours of work and rostered days off</b></p> <p><b>(ii) Agreement on alternate RDOs</b> Where an employer and a majority of employees at an enterprise agree, another day may be substituted for the nominated industry rostered day off.</p>	<p><b>33. Ordinary hours of work</b></p> <p><b>(a) Hours of work and rostered days off</b></p> <p><b>(ii) Agreement on alternate RDOs</b> <i>Where an employer and a majority of employees at an enterprise agree, another day may be substituted for the rostered days off as established by clause 33.1(a)(i).</i></p>
157	<p><b>33. Ordinary hours of work</b></p> <p><b>(iii) Agreement on banking of RDOs</b></p> <ul style="list-style-type: none"> <li>• Where employees are employed on distant work covered by clause 24.1, an employer and a majority of those employees on distant work may agree to accrue up to five rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer.</li> <li>• Where the majority of the employees request consultation with their representative(s), that consultation will take place at least five days prior to its introduction.</li> <li>• Any agreed arrangement must provide that 13 rostered days are taken off by an employee for 12 months' continuous service</li> </ul>	<p><b>33. Ordinary hours of work</b></p> <p><b>33.1 (a) (iii) Agreement on banking of RDOs</b> <i>An employer and majority of employees employed at an enterprise or on a particular site may agree to accrue rostered days off for the purpose of creating a bank to be drawn upon by an employee at times agreed with the employer.</i></p>

## ATTACHMENT A

158	<p><b>33. Ordinary hours of work</b></p> <p><b>33.1 (a) Hours of work and rostered days off</b></p> <p>(vi) Except where agreement has been reached in accordance with clauses 33.1(a)(ii) and 33.1(a)(iii), the prescribed rostered day off or any substituted day may be worked where it is required by the employer and such work is necessary:</p> <ul style="list-style-type: none"><li>• to allow other employees to be employed productively; or</li><li>• to carry out out-of-hours maintenance; or</li><li>• in the case of unforeseen delays to a particular project or a section of it or other reasons arising from unforeseen or emergency circumstances on a project;</li></ul> <p>in which case, in addition to accrued entitlements, the employee will be paid penalty rates and provisions as prescribed for Saturday work in clause 37-Penalty rates.</p>	<p><b>33. Ordinary hours of work</b></p> <p>Delete 33.1(a)(vi) and replace with:</p> <p><i>33.1(a) (vi) Except where agreement has been reached in accordance with clauses <a href="#">33.1(a)(ii)</a> and <a href="#">33.1(a)(iii)</a>, the rostered day off or any substituted day may be worked where it is required by the employer and such work is necessary:</i></p> <ul style="list-style-type: none"><li>• <i>to allow other employees to be employed productively; or</i></li><li>• <i>to carry out out-of-hours maintenance; or</i></li><li>• <i>in the case of unforeseen delays to a particular project or a section of it or other reasons arising from unforeseen or emergency circumstances on a project;</i></li></ul> <p><i>in which case the employee is entitled to:</i></p> <ul style="list-style-type: none"><li>• <i>be paid penalty rates and provisions as prescribed for Saturday work in clause 37 – Penalty rates or;</i></li><li>• <i>cash-out the prescribed rostered day off or any substituted day; or</i></li><li>• <i>bank the prescribed rostered day off or any substituted day, to be taken at a later date as agreed between the parties.</i></li></ul>
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## ATTACHMENT A

<p>162 163</p>	<p><b>34. Shiftwork</b></p> <p><b>34.1 General building and construction and metal and engineering construction sectors</b></p> <p><b>(a) Definitions</b> For the purposes of this clause: <b>afternoon shift</b> means a shift commencing at or after 1.00 pm and before 3.00 pm <b>night shift</b> means a shift commencing at or after 3.00 pm and before 11.00 pm <b>morning shift</b> means a shift commencing at or after 4.30 am and before 6.00 am <b>early afternoon shift</b> means a shift commencing on or after 11.00 am and before 1.00 pm.</p>	<p><b>34. Shiftwork</b></p> <p>Where work is performed in shifts the provisions of this clause shall apply.</p> <p><b>34.1 General building and construction and metal and engineering construction sectors</b></p> <p><b>(a) Definitions</b> For the purposes of this clause: <b>afternoon shift</b> means a shift commencing at or after 1.00 pm and before 3.00 pm <b>night shift</b> means a shift commencing at or after 3.00 pm and before 11.00 pm <b>early morning shift</b> means a shift starting at 11.00 pm and before 4.30 am <b>morning shift</b> means a shift commencing at or after 4.30 am and before 6.00 am <b>early afternoon shift</b> means a shift commencing on or after 11.00 am and before 1.00 pm.</p>
<p>164</p>	<p><b>34. Shiftwork</b></p> <p><b>34.1 General building and construction and metal and engineering construction sectors</b></p> <p><b>(b)</b> When an employee is employed continuously (inclusive of public holidays) for five shifts Monday to Friday, the following rates will apply: (i) afternoon and night shift – ordinary time hourly rate plus 50% (ii) morning and early afternoon shifts – ordinary time hourly rate plus 25%</p>	<p><b>34. Shiftwork</b></p> <p><b>34.1 General building and construction and metal and engineering construction sectors</b></p> <p><i>(b) When an employee is employed continuously (inclusive of public holidays) for five shifts Monday to Friday, the following rates will apply:</i> <i>(i) afternoon, night and early morning shift – ordinary time hourly rate plus 50%;</i> <i>(ii) morning and early afternoon shifts – ordinary time hourly rate plus 25%.</i></p>
<p>168</p>	<p><b>36. Overtime</b></p> <p><b>36.7</b> Except in an emergency, no trainee will work or be required to work overtime or shiftwork at times which would prevent the employee's attendance at a Registered Training Organisation, as required by any statute, award or regulation.</p>	<p><b>36. Overtime</b></p> <p><b>36.7</b> <i>Except in an emergency, no trainee or apprentice will work or be required to work overtime or shiftwork at times which would prevent the employee's attendance at a Registered Training Organisation, as required by any statute, award or regulation.</i></p>

## ATTACHMENT A

170	<p><b>38. Annual leave</b></p> <p><b>38.1 Leave entitlement</b></p> <p>(a) Annual leave is provided for in the NES.</p>	<p><b>38. Annual leave</b></p> <p><b>38.1 Leave entitlement</b></p> <p>(a) Annual leave is provided for in the NES. <i>Provided that continuous service for purposes of this clause is as defined in clause 3.1 of this award</i></p>
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## JOINERY AND BUILDING TRADES AWARD 2010

FWC ITEM	CURRENT AWARD	MBA PROPOSED WORDING
2		<p><b>30. Overtime</b></p> <p><b>30.9 Time off instead of payment for overtime</b></p> <p>Insert model TOIL clause</p> <p>Insert model TOIL clause at Attachment A</p>
4	<p><b>3. Definitions and interpretation</b></p> <p><b>3.1</b> In this award, unless the contrary intention appears:</p> <p><b>joinery work</b> means work performed by the classifications contained in this award in a joinery shop, provided such establishment is not located on an 'on-site' construction project, and includes the preparation, decoration and assembling of joinery or building components principally in timber or similar material.</p>	<p><b>3. Definitions and interpretation</b></p> <p><b>3.1</b> In this award, unless the contrary intention appears:</p> <p><b>joinery work</b> means work performed by the classifications contained in this award in a joinery shop, and includes the preparation, decoration and assembling of joinery or building components principally in timber or similar material, and the on-site installation of joinery or building components prepared, decorated or assembled off-site by classifications contained in this Award.</p> <p><b>joinery shop</b> means the employers principal or main establishment that is not located on an 'on-site' construction project</p>

## ATTACHMENT A

9	<p><b>24. Allowances and special rates</b></p> <p><b>24.5 Transfers, travelling and working away from usual place of work</b></p> <p><b>(a) Living away from home for a distant job</b></p> <p>(ii) An employee directed by their employer to proceed to a distant job and who complies with such direction is entitled to either:</p> <ul style="list-style-type: none"> <li>• payment of an allowance of \$478.44 per full working week (of seven days), or where the job is for less than a full working week, \$68.45 per day, or if the employee satisfies the employer that a greater outlay than that prescribed was reasonably incurred, reimbursement for the expenses outlaid; or</li> <li>• reasonable board and lodging provided by the employer, where reasonable board and lodging means either a single room or twin room if a single room is not available with adequate furnishings, good bedding, good floor coverings, good lighting and good heating/cooling and with hot and cold running water, all in a well kept hotel/motel type establishment, and three adequate meals each day.</li> </ul>	<p><b>24. Allowances and special rates</b></p> <p><b>24.5 Transfers, travelling and working away from usual place of work</b></p> <p><b>(b) Living away from home for a distant job</b></p> <p>(ii) An employee directed by their employer to proceed to a distant job and who complies with such direction is entitled to either:</p> <ul style="list-style-type: none"> <li>• payment of an allowance of \$478.44 per full working week (of seven days), or where the job is for less than a full working week, \$68.45 per day, or if the employee satisfies the employer that a greater outlay than that prescribed was reasonably incurred, reimbursement for the expenses outlaid; or</li> <li>• <i>reasonable lodging provided by the employer, where reasonable lodging means accommodation in either a single room or twin room if a single room is not available with adequate furnishings, good bedding, good floor coverings, good lighting and good heating/cooling and with hot and cold running water, all in a well-kept hotel/motel type establishment, and</i></li> <li>• <i>reasonable board provided by the employer, where reasonable board means three adequate meals each day.</i></li> </ul>
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## ATTACHMENT A

<b>10</b>	<p><b>26. Payment of wages</b></p> <p>26.1 All monies due to an employee by the employer in relation to the performance of work must be paid and be available by no later than the time of cessation of ordinary hours of work on Thursday of each working week. Provided that in any week in which a public holiday falls on a Thursday or a Friday mutually acceptable alternative arrangements must be made.</p> <p>26.2 All such monies must be paid by cash, cheque or direct credit to the account at an approved financial institution nominated by the employee, provided that payment other than by cash creates no undue financial burden to the employee.</p> <p>26.3 Subject to clause 26.1, an employee who due to circumstances within the control of the employer does not receive such monies by the cessation of the ordinary hours of work on the Thursday of each week must be paid waiting time at overtime rates, with a minimum of a quarter of an hour, until such time as the monies due are paid.</p>	<p><b>26. Payment of wages</b></p> <p><i>26.1 Payments must be paid to employees either weekly or fortnightly</i></p> <p><i>26.2 All wages, allowances and other monies must be paid in cash, or by cheque, bank cheque, electronic funds transfer (EFT) or similar transfer or any combination.</i></p> <p><i>26.3 When notice is given in accordance with clause 16 of this Award, the employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:</i>  <i>(i) within 7 days after the employee's last day of employment; or</i>  <i>(ii) on the next normal pay day.</i></p> <p><i>26.4 Where there is a delay in payment or a payment is not made in accordance with the usual pay cycle (for reasons other than circumstances beyond the control of the employer), and unless the employee is paid by electronic funds transfer (EFT), the employee is to be paid at overtime rates after that quarter of an hour for the period they are kept waiting, with a minimum payment of half an hour.</i></p>
<b>15</b>	<p><b>31. Alternative working arrangement</b></p> <p><b>31.1</b> By written agreement between the employer and the employees, the ordinary hours of work may be altered from those allowed under clauses 28 – Ordinary hours of work and rostering, 29 – Breaks or 30-Overtime to suit the needs of a particular enterprise, factory, workshop or section, provided that:</p> <p>(a) the agreement must be made by at least 60% of employees in the enterprise, factory, workshop or section affected by the alteration; and</p>	<p><b>31. Alternative working arrangement</b></p> <p><b>31.1</b> By written agreement between the employer and the employees, the ordinary hours of work may be altered from those allowed under clauses 28 – Ordinary hours of work and rostering, 29 – Breaks or 30-Overtime to suit the needs of a particular enterprise, factory, workshop or section, provided that:</p> <p>(c) <i>the agreement must be made by at least a majority of employees in the enterprise, factory, workshop, or section affected by the alteration; and</i></p>



## **ATTACHMENT B**

*MASTER BUILDERS AUSTRALIA – SUBMISSION TO THE  
FAIR WORK COMMISSION – 6 SEPTEMBER 2013*

Master Builders Australia

Submission to the Fair Work Commission

on

Modern Award Review 2012 – AM2012/48  
*Building and Construction General On-Site Award*  
2010 – Shift Times

6 September 2013



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## CONTENTS

<u>1</u>	<u>Introduction</u> .....	1
<u>2</u>	<u>Purpose of the submission</u> .....	1
<u>3</u>	<u>Shift work definitions</u> .....	2
<u>4</u>	<u>Conclusion</u> .....	5



## 29 Introduction

- 29.1 Master Builders Australia is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder state and territory Associations. Over 122 years the movement has grown to 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 29.2 The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter. At the same time, the wellbeing of the building and construction industry is closely linked to the general state of the domestic economy.

## 30 Purpose of the submission

- 30.1 On 16 August 2013, Master Builders Australia wrote to the Fair Work Commission (FWC) to draw its 'attention to an anomaly created by the Decision dated 15 July 2013 in [2013] FWC 4576 (the Decision) at paragraphs 262-170:<sup>8</sup>

*In reconfiguring shiftwork, the Senior Deputy President has, we believe, inadvertently, provided a shiftwork spread that does not accommodate the hours between 11 pm and 4.30 am and hence work during those hours would ex facie not be classified as shiftwork. Under the clause as extant before the date of the Decision this period would have been covered by the definition of 'night shift' which in clause 34.1(a) was defined to mean "a shift finishing after 11 pm and at or before 7 am."<sup>9</sup>*

- 30.2 Master Builders asked the FWC whether it should treat this matter as an anomaly to be corrected by the FWC or whether it should make an application to seek for the matter to be clarified formally.<sup>10</sup> The FWC directed Master Builders 'to provide a proposed variation to correct the anomaly and put any further submissions in relation to the anomaly by 6 September 2013'.<sup>11</sup> This

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<sup>8</sup> Attachment A, at para 1.

<sup>9</sup> Ibid, at para 2.

<sup>10</sup> Ibid, at para 4.

<sup>11</sup> [2013] 6347, at para 12.

submission outlines that clause 34.1 of the *Building and Construction General On-Site Award 2010* (On-Site Award) as inserted by the Decision creates an anomaly as it does not accommodate the hours of work commenced between 11:00pm and 4:30am. It also sets out a proposed variation to correct this anomaly.

## 31 Shift work definitions

31.1 Clause 34 of the On-Site Award regulates shift workers. This clause provides a dual shiftwork regime, with clause 34.1 regulating shift workers in the general building and construction and metal and engineering construction sectors and clause 34.2 covering shift workers in the civil construction sector. This bifurcation reflects the importation of terms from the *National Building and Construction Industry Award 2000* (NBCIA)<sup>12</sup> and the *Australian Workers' Union Construction and Maintenance Award 2002*,<sup>13</sup> from which clauses 34.1 and 34.2 of the On-Site Award were respectively derived<sup>14</sup> during the Award modernisation process. Whilst both regimes contain different shift work definitions, this submission only deals with the definition of shift work in the general building and construction and metal and engineering sectors where the anomaly arises.

31.2 The original shiftwork definitions in the On-Site Award for the general building and construction and metal and engineering sectors were derived from clause 30.1 of the NBCIA. This clause provided that:

**Afternoon shift** means a shift finishing at or after 9.00 p.m. and at or before 11.00 p.m.

**Night shift** means a shift finishing after 11.00 p.m. and at or before 7.00 a.m.

**Morning shift** means a shift finishing after 12.30 p.m. and at or before 2.00 p.m.

**Early afternoon shift** means a shift finishing after 7.00 p.m. and before 9.00 p.m.

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<sup>12</sup> Clause 30.

<sup>13</sup> Clause 28.

<sup>14</sup> *Re Award Modernisation* [\[2009 AIRCFB 50\]](#); (2009) 180 IR 124, at para 44.

- 31.3 When the On-Site Award commenced on 1 January 2010, these identical definitions were transposed into clause 34.1(a) of the Award. In Master Builders' submission to Fair Work Australia in support of an application to vary the *Building and Construction General On-Site Award 2010*,<sup>15</sup> we outlined that this provision creates an anomaly which is graphically represented at Diagram B1 at Attachment B to this submission derived from diagrams originally lodged with the application:

*One of the peculiarities which emerges from a graphical representation of the shift definitions at clause 34.1(a) for the general building and construction and metal and engineering sectors, is that it does not cover all hours. Shifts ceasing between 7.00 am and 12.30 pm, and 2.00 pm and 7.00 pm, are not defined as shifts, which means that no specific shift loading applies. With respect to shifts finishing between 2.00 pm and 7.00 pm, this is understandable, as such hours are close to ordinary hours for non-shift workers, who work without loadings between the hours of 7.00 am and 6.00 pm.<sup>16</sup> This appears to be the basis for the fact that 'day shifts' in the civil construction sector do not receive any penalties, as they commence between 6.00 am and 7.00 pm, which means that they would finish between 2.00 pm and 6.00 pm, which again is close to ordinary hours for non-shift workers.*

*However, what is more obscure is why shifts ceasing between 7.00 am and 12.30 pm would not be defined as a shift. It may be because shift work in the general building and construction and metal and engineering sectors rarely (if ever) occurs such that shifts would cease during those hours, so the shift definitions were considered unnecessary. In other words, it may be due to the fact that shift work in the general building and construction and metal and engineering sectors is not typified by 24 hour enterprises, unlike the civil construction sector, where shift work is explicitly defined in those terms and for which shift definitions cover all hours.<sup>17</sup>*

- 31.4 Whilst Master Builders supports the variation to the shiftwork clause made by the Decision whereby the definitions were re-drafted based on when they commence, rather than cease,<sup>18</sup> the wording of the replacement clause creates an anomaly. The shifts which previously could end during the period 11 pm to 4.30 am and be encompassed by a shift definition are not accommodated in the redrafted provision. The current definitions in clause 34.1 provide that:

<sup>15</sup> <http://www.fwc.gov.au/documents/awardmod/review/AM201248.pdf> at para 7.5-7.6.

<sup>16</sup> *Building and Construction General On-Site Award 2010*, clause 33.1

<sup>17</sup> Above n 8, at para 7.5-7.6. See also diagrams at Attachment B.

<sup>18</sup> Para 264.

**afternoon shift** means a shift commencing at or after 1.00 pm and before 3.00 pm

**night shift** means a shift commencing at or after 3.00 pm and before 11.00 pm

**morning shift** means a shift commencing at or after 4.30 am and before 6.00 am

**early afternoon shift** means a shift commencing on or after 11.00 am and before 1.00 pm.

31.5 As highlighted in Master Builders letter to the FWC on 16 August 2013 (attached as Attachment A and referred to in paragraph 2.1 of this submission) we stated that this shiftwork spread 'does not accommodate the hours between 11 pm and 4:30 am and hence work during those hours would ex facie not be classified as shiftwork.'<sup>19</sup> This premise is graphically represented in Diagram B2 of Attachment B of this submission.

31.6 To correct this anomaly Master Builders proposes that a new definition of an early morning shift be inserted into clause 34.1(a) of the On-Site Award. This definition would read as follows:

**early morning shift** means a shift starting at 11.00 pm and before 4.30 am

31.7 For clarity, this proposal (which from the Decision introducing the anomalous clause 'the CFMEU did not oppose'<sup>20</sup>) is set out in Diagram B3 in Attachment B.

31.8 If the definition suggested in this submission is inserted into the On-Site Award, Master Builders also proposes that clause 43.2(b) be amended to read:

*(b) When an employee is employed continuously (inclusive of public holidays) for five shifts Monday to Friday, the following rates will apply:*

*(i) afternoon, night and early morning shift – ordinary time hourly rate plus 50%;*

*(ii) morning and early afternoon shifts – ordinary time hourly rate plus 25%.*

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<sup>19</sup> Above n 1, at para 2.

<sup>20</sup> [2013] FWC 4576 at para 266.

## 32 Conclusion

Master Builders asks the FWC to correct the anomaly discussed in this submission, by inserting a definition of an early morning shift and an early morning rate to accommodate the hours of work which commence between 11:00pm and 4:30am.

\*\*\*\*\*

ATTACHMENT A

16 August 2013

Associate to Senior Deputy President Watson  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000



**By email: [chambers.watson.sdp@fwc.gov.au](mailto:chambers.watson.sdp@fwc.gov.au)**

Dear Associate,

**AM2012/48 - Anomaly Created by Decision Dated 15 July 2013**

Master Builders writes to call to your attention to an anomaly created by the Decision dated 15 July 2013 in [2013] FWC 4576 at paragraphs 262-270. These errors were carried forward into the related Determination.

In reconfiguring shiftwork, the Senior Deputy President has, we believe, inadvertently, provided a shiftwork spread that does not accommodate the hours between 11 pm and 4.30 am and hence work during those hours would ex facie not be classified as shiftwork. Under the clause as extant before the date of the Decision this period would have been covered by the definition of 'night shift' which in clause 34.1(a) was defined to mean "a shift finishing after 11 pm and at or before 7 am."

We draw this anomaly to your attention because many companies which had organised their shiftwork around the notion of nightshift in the prior version of the award would be accruing a major contingent liability as nightshift would no longer contemplate the hours which have been omitted from the current version and, arguably, a penalty could apply in relation to work between these hours.

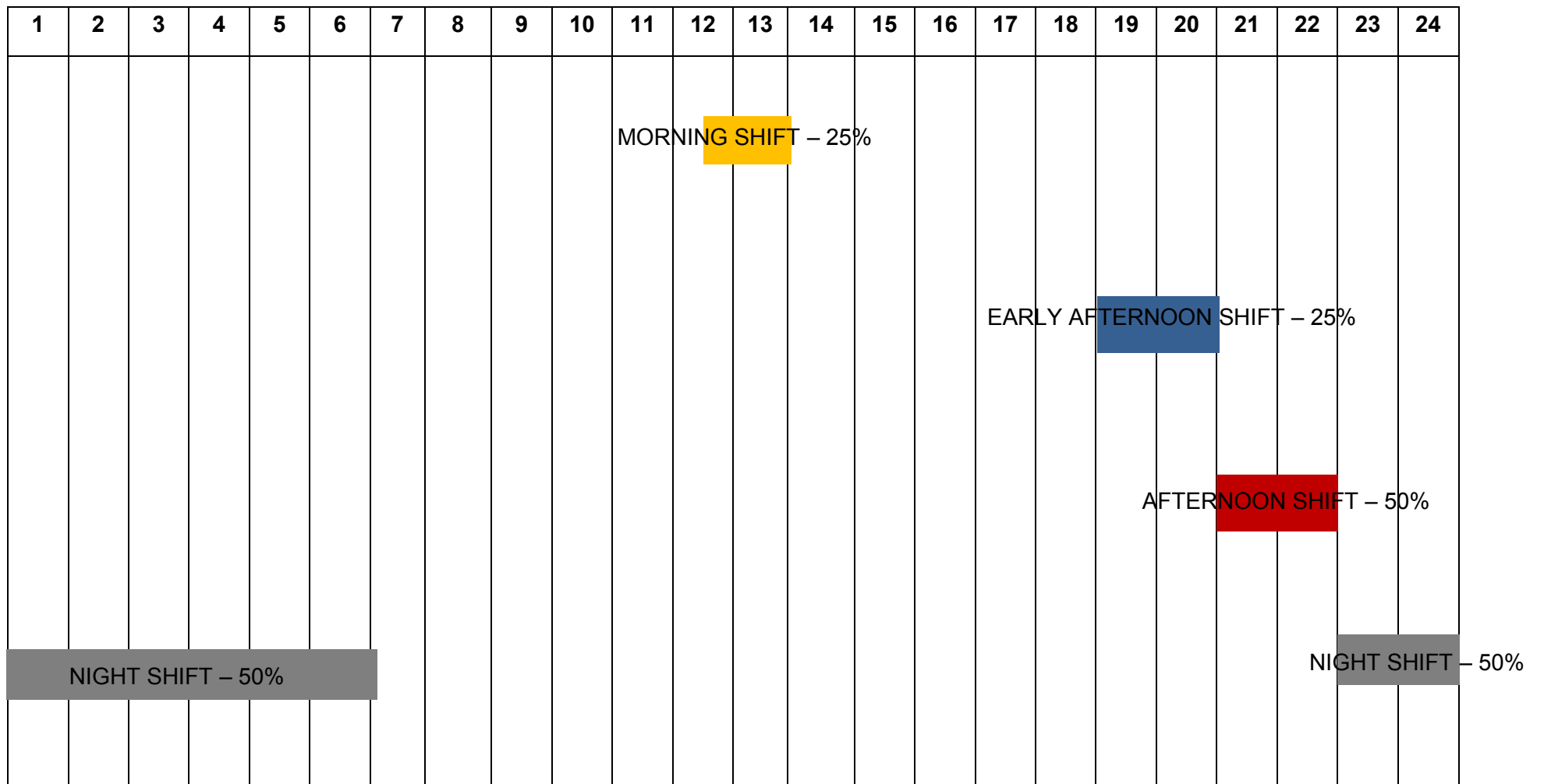
Please advise whether or not Master Builders should treat this matter as an anomaly to be corrected by the Commission or whether or not an application should be made to seek for the matter to be clarified formally.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Richard Calver'.

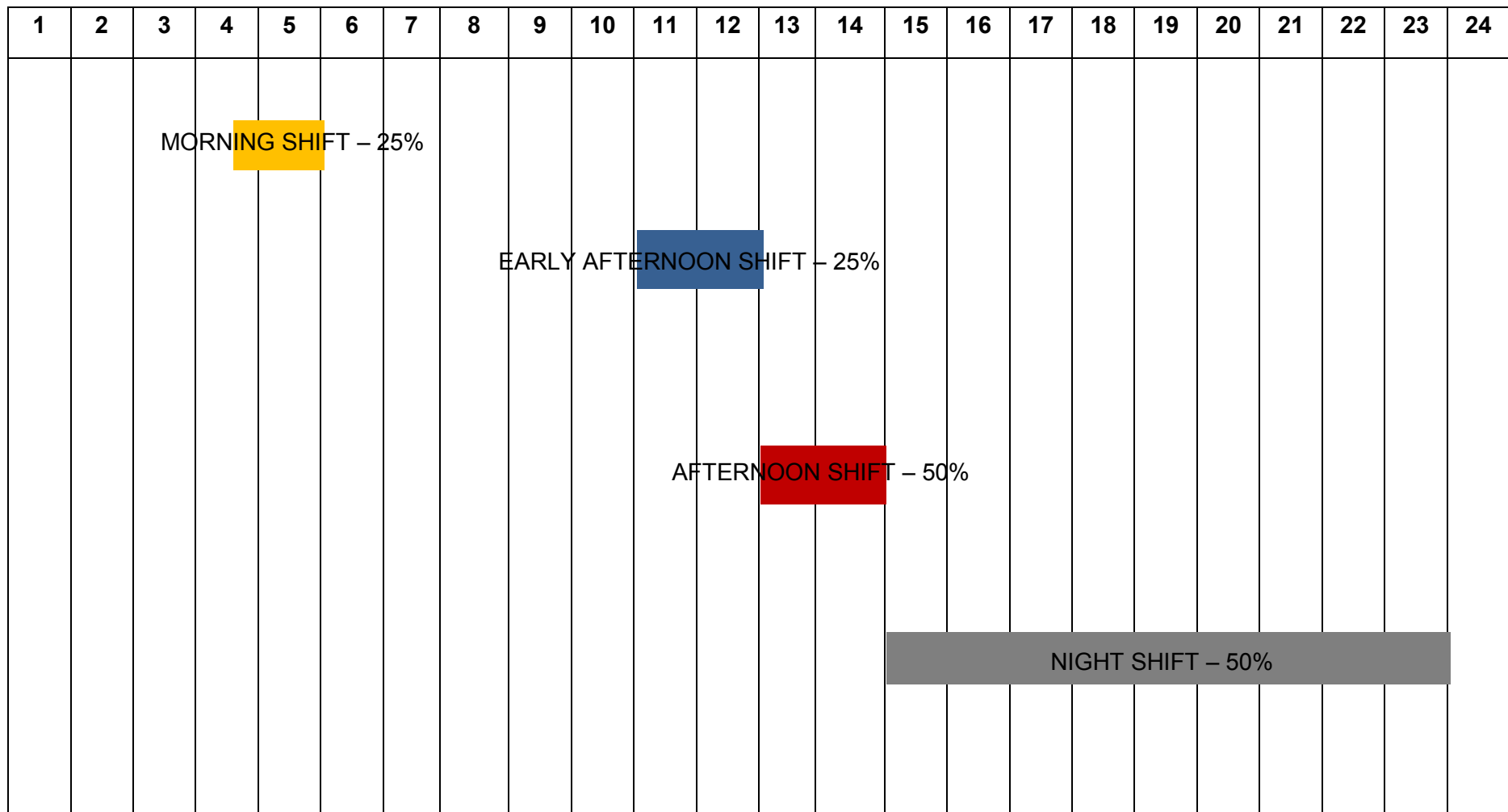
Richard Calver  
**National Director Industrial Relations and  
Legal Counsel**

ATTACHMENT B to original September 2013 submission  
**Diagram B1 – Previous shift work hours under the NBCIA and the *On-Site Award*\***



\* Shifts for the general building and construction and metal and engineering sectors were previously defined by when they finish (clause 34.1(a)), i.e. whether they cease within the windows of time blocked out as a Morning Shift, Early Afternoon Shift, Afternoon Shift or Night Shift.

Diagram B2 – Current shift hours under the *On-Site Award*\*



\* This diagram illustrates shifts in the general building and construction industry are now based on when they start, rather than when they finish (clause 34.1(a)) in order to provide ease of comparison with civil construction shifts which are defined according to when they commence (clause 34.2(a)). The shifts have been translated by moving them eight hours (i.e. the standard hours for a shift – clauses 34.1(e), 34.2(c)) prior to the earliest finishing time of the shifts as defined under clause 34.1(a) and by maintaining the same ‘spread’ of times. For example, a morning shift is defined as one which finishes between 12.30 pm and 2.00 pm, which means that the earliest such a shift could have commenced would be eight hours prior to 12.30 pm (i.e. 4.30 am) while the latest it would have commenced is eight hours prior to 2.00 pm (i.e. 6.00 am), thereby maintaining the 1.5 hour spread over which the shift is defined.







## **ATTACHMENT C**

### *STATEMENT OF MR CAMERON SPENCE*

## IN THE FAIR WORK COMMISSION

### AM2016/23 – 4 Yearly Review of Modern Awards – Construction Awards

Re Application by: Master Builders Australia

#### Statement of Cameron Benedict Spence

On 9 December 2016, I, Cameron Benedict Spence of/- 1 Iron Knob Street Fyshwick ACT 2609, make the following statement:

1. I am employed by the Master Builders Association of the ACT (MBA ACT). I hold the position of Director of Industrial Relations. I commenced this role in March 2016.
2. Prior to this role I worked as a Solicitor in private practice. A significant part of my practice involved industrial relations advice pertaining to the building and construction industry.
3. The main function of my current role is to provide industrial relations advice to businesses in the building and construction industry who are members of MBA ACT. This involves reading and interpreting the *Building and Construction On-Site General Award 2010* (On-Site Award) and the *Joinery and Building Trades Award 2010* (Joinery Award) on a daily basis.

#### Construction Awards - General

4. I have had cause to read, interpret and provide advice on industrial awards in the role I held prior to working at MBA ACT and consider myself to be reasonably familiar with their structure and types of matters they conventionally contain.
5. Notwithstanding my earlier experience, I have found the two main construction awards (On-Site and Joinery) to be needlessly prolix and consequently open to ambiguity and as such difficult to interpret.
6. When I am speaking with member companies and assisting with their inquiries, they routinely complain to me about the complexity of the awards. Many of the calls to our office are from members who are aware of an issue or topic that exists in the awards but can't be found. They will commonly ring our office and seek guidance on navigating the awards, rather than spending time pouring through them.
7. I am aware that Master Builders Australia has sought to change the construction awards as part of the 4 Yearly Review and I am familiar with those claims.
8. In my view, if the changes were made it would be a notable improvement to the awards and provide clarity to those who use them on a daily basis.

#### Payment of Wages      Frequency

9. Clause 31.3 of the On-site Award which requires payments to be made available to employees by the end of ordinary working hours each Thursday, does not reflect modern payroll methods, is significantly more costly for employers and imposes an unnecessary and unreasonable administrative burden on pay masters.
10. Many MBA ACT members have expressed to me their discontent that the On-Site Award does not allow them to pay employees on a fortnightly cycle if that is their preference. Members operating small businesses are particularly concerned about the additional time and cost the requirement to pay employees on a weekly basis imposes upon their business.
11. There would appear no rational justification to impose the obligation to pay wages on a weekly basis, other than that clause 31.3 is a carry-over from a number of pre-modern award

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instruments, which do not reflect modern pay cycles and have little relevance to modern businesses and their preferred payroll methods today.

12. Payment obligations under other modern awards provide for either weekly or fortnightly payment. There would appear no logic to the On-Site Award excluding a similar provision.
13. Members would greatly benefit and welcome an amendment to the On-Site Award that provides them with the option to pay employees on a fortnightly basis if that is their preference.

#### Payment of Wages – Penalties for late payment/ time provided to bank cheques

14. Clause 31.5 which imposes a penalty upon the late payment of wages in accordance with the terms expressed under clause 31.3, and who pay employees by cash or cheque, is outmoded and should be deleted.
15. Not unlike other industries, the building sector has embraced the payment of wages by electronic funds transfer (EFT). I am not aware of any employers throughout our membership that pay their employees by cash or cheque, making the provision for penalties under clause 31.5 redundant.
16. Similarly, the time provided to an employee to bank a cheque is no longer necessary and should also be removed from the On-Site Award.

#### Time off in lieu

17. There have been a number of instances where members have expressed a desire for there to be an option under the award for the provision of time off in lieu. What is even more pertinent is that I have been made aware that employees of some members would like to have an option to take time off in lieu in certain circumstances.
18. It is well known that the vast proportion of workers in the construction industry are men. It is a misconception, however, that only women are interested in time off in lieu and that it is an unnecessary entitlement for the building sector. In contrast, it has been made known to me that an increasing number of employees (including men), require more flexibility to share the care of their children and/or ageing parents and to generally maintain a better work/life balance. Personally, as a father of young children, I greatly value the opportunity to spend as much time with my family as I can.
19. I am familiar with the recent decision in the Fair Work Commission to insert a model time off in lieu term in the vast majority of modern awards, with the exception (amongst only a few) of the construction awards. I understand that this decision was based on the 'unique arbitral history' of the construction awards.
20. I am not aware of any 'history' in our sector that would prevent such a provision being inserted into both the On-Site Award and the *Joinery and Building Trades Award 2010* (Joinery Award).

#### Rostered Days Off

21. One issue that is often raised by our members is the operation of Rostered Days Off, which are known in the sector as "industry RDOs" or "lock-down weekends".
22. The relevant clause in the On-Site award is Clause 33.1(a)(i). It states that 'A rostered day off will be taken on the fourth Monday in each four week cycle, except where it falls on a public holiday, in which case the next working day will be taken instead'.
23. Clause 33.1(a)(ii) states that 'Where an employer and a majority of employees at an enterprise agree, another day may be substituted for the nominated industry rostered day off.'

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24. The way this clause works in practice is varied. If the workplace is governed by a CFMEU Enterprise Bargaining Agreement (EBA) the employer will be required to provide 20 RDOs which the EBA mandates be taken at set times throughout the year – typically on the days immediately preceding and following a long weekend. These are colloquially known as “lock-down weekends”. Even if the employer is not party to a union EBA, they will commonly follow the lock-down weekend calendar for the 13 days mandated under the award.
25. It is my understanding that clause 33.1(a)(ii) is based on an earlier version of the On-Site Award that existed before the Modern Award was made. That instrument contained provisions that required industry employee and employer representatives to agree on when RDOs would be taken. It is these dates that are known as the Industry RDOs.
26. The On-Site Award no longer contains the requirement for the industry to agree on when RDOs would be taken. Notwithstanding this, the Award retains a reference at clause 33.1(a)(ii) to the “nominated industry rostered day off” when in fact the industry does not nominate RDOs.

#### Banking of RDOs

27. I am aware that clause 33.1(a)(iii) allows for RDOs to be banked and taken at another time. However, this only applies to an employer and workers who are doing distant work and also is restricted to agreement with the majority of employees of a particular classification.
28. I regularly receive calls from members asking if this restriction is negotiable as on many occasions my members inform me that employees commonly approach them on an individual basis seeking to cash out a RDO. I suspect that many employers may be cashing out RDOs on an individual basis despite this not being allowed by the award.
29. Employers and the majority of employees at a particular workplace agree to the accrual of RDOs so that they may be taken at a time more suitable to the parties.
30. This is a practical change which would extend this entitlement to all employers and employees, rather than simply being available to distant workers under the current provision of the On-Site Award.
31. Members (together with their employees) would benefit from having greater flexibility in determining when RDOs should be taken, which would also enable work to be undertaken when it is most needed also having the effect of increased productivity.

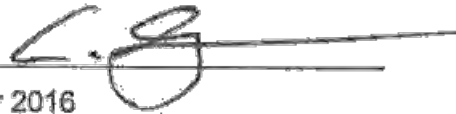
#### Requirement to work on RDOs

32. There have been a number of occasions where members have expressed deep confusion about which entitlements should be provided to employees who are required to undertake necessary work on an RDO.
33. The wording in clause 33.1(a)(vi) of the On-Site Award states that if an employee is required to undertake necessary work, they will be eligible for accrued entitlements *in addition to* being paid Saturday penalty rates.
34. This clause fails to recognise the ability of employers and employees to agree on substituted RDOs, under clause 33.1(a)(ii), which in practice, should have the effect that if necessary work is undertaken on an RDO (that has been substituted by agreement) employees be paid at ordinary rates.
35. From my experience, the industry’s expectation, and interpretation of the relevant clauses in 33.1, is that a day where an RDO has been substituted by agreement and necessary work is undertaken, employees are not paid penalty rates.
36. Master Builders’ proposed amendments to clause 33.1(a)(vi) (which allow in addition to the payment of penalty rates, options for employees to cash-out or bank RDOs) provide greater

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clarity and flexibility as to the options available to the parties when necessary work is undertaken on an RDO, and better reflect the operation of clause 33.1 as a whole.

Signature by:



On 9 December 2016

**Cameron Benedict Spence**

Lawyer admitted to the ACT Supreme Court  
1 Iron Knob Street, Fyshwick ACT 2609

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## **ATTACHMENT D**

### *STATEMENT OF MR PETER GLOVER*

## IN THE FAIR WORK COMMISSION

### AM2016/23 – 4 Yearly Review of Modern Awards – Construction Awards

Re Application by: Master Builders Australia

#### Statement of Peter Vivian James Glover

On 9 December 2016, I, Peter Vivian James Glover of the Master Builders Association of NSW ('MBA NSW'), 52 Parramatta Road Forest Lodge NSW 2037, make the following statement:

1. Since 2001 I have been employed as Director of Construction and oversee our work health and safety and industrial relations departments.
2. These departments provide WHS and IR advice to member companies of which we have approximately 8000. The two main awards we use in our sector are the *Building and Construction On-Site General Award 2010* (On-Site Award) and the *Joinery and Building Trades Award 2010* (Joinery Award).
3. I originally commenced work at MBA NSW in 1981 and worked as an industrial officer until 1984, before moving to another industry association, and then returned to the construction sector. Throughout this time my role always involved interpreting awards and providing advice to employers about how they apply.
4. The On-Site and Joinery Awards are particularly difficult to read and understand. The bulk of the calls we receive from members are questions about how the award works or what it means.
5. As we are interpreting the construction awards every day, we discover problems or issues that many others might not notice. This is because we are speaking to employers in the sector and giving them information and advice about how the awards apply to their workplaces and in circumstances particular to them.
6. I know the construction awards are undergoing the 4 Yearly review of modern awards in the Fair Work Commission. There are many areas in the construction awards that create problems on the ground that I hope will be fixed in this process.
7. Master Builders Australia is involved in the 4 Yearly review and I am aware of claims they have made to fix problems in the awards.
8. There are some problems that I think are pressing and other problems are the subject of regular questions from members.

#### Board and Lodging

9. One common issue involves confusion about board/lodging and the living away from home allowance in the On-Site Award. The issue seems to stem from what board and lodging (in clause 24) means to members and whether or not they have to also pay the allowance.
10. This was not as big a problem under the previous NBCIA (National Building and Construction Industry Award 2000) that was in place before the Modern On-Site Award took effect.
11. Under the NBCIA, it was easy to understand because the clause, as it was, then included a clear indication of what reasonable board and lodging meant. The words "shall mean" were in NBCIA to identify what it did and did not include.

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12. As those words have been deleted from the equivalent clause in the On-Site Award, members are unclear as to whether the allowance is payable as well as the board and lodging.

13. During my time at MBA NSW, we have always told members that employees would not get the allowance if they were provided board and lodging that included three meals a day. This is what happened before the On-Site Award when the NBCIA applied.

14. If this issue was clarified it would reduce confusion and reflect what happens on the ground.

#### Radial areas

15. Clause 25 of the On-Site Award which deals with radial areas for calculating fares and travel patterns allowances, is out of date and in need of review.

16. At the moment, workers receive a travel allowance when they are required to work on a site within a 50km radius of either the GPO or principal post office of either the capital or regional city (Metropolitan), or the post office nearest to the employer's location of their business (Country).

17. The 50km radius comes from the NBCIA. I remember that similar clauses also existed in even older awards such as the 1978 and 1982 versions of the Building Construction Employees and Builders Labourers Award, as well as the National Building Trades Construction Award 1975. All these awards set the majority of Metropolitan and Country radial areas as being 50km.

18. It goes without saying that there have been significant upgrades to many Metropolitan and Country roads since these older awards were around. The time it would have taken a worker back then to drive to a particular site has been, in many cases, reduced as a result of upgrades to modern motorways. That aside, the radial areas in the On-Site Award have not been changed to take developments in urban infrastructure and modern transportation into account.

19. The NBCIA also talked about NSW Metropolitan Radial areas and that the travel allowance should be calculated by referring to the relevant county being Cumberland, Northumberland or Camden, a reference that is still within the CFMEU's pattern agreement. This seems to be the source of the retention of the 50km radius.

20. It would be impossible to travel across the Sydney Metropolitan area without exceeding a 50km radius, a trip that is common in the building and construction sector.

#### Shift work definitions

21. I remember in October 2013 a decision handed down by the Fair Work Commission about shift work definitions under the On-Site Award. I am aware that Master Builders appeared in that case and said that an earlier decision about reference rates under the award led to a change in the shift work definitions. The change meant that the hours between 11:00pm and 4:30am were no longer included within the definitions.

22. I understood that the Commission said that there was no evidence of a demand for the additional definition in the construction sector.

23. Although rare, there are circumstances where employees need to work between the hours of 11:00pm and 4:30am, such as companies who undertake general commercial or commercial fit-out works. There is a genuine need for this gap in the award to be fixed.

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## Redundancy

24. I strongly support Master Builders' claim to change both the On-Site and Joinery Awards so that businesses with 5 or less employees are given an exemption to provide redundancy pay for their workers.
25. From my experience, members with a small number of employees are often faced with less regular work and therefore it is very important that they have more flexibility in how they manage the staffing arrangements.
26. At the moment, all businesses large or small are required to make redundancy contributions for their employees by either making monthly payments into an industry specific redundancy scheme, or setting aside redundancy payments, for when an employee leaves of their own choice once they have been employed for 12 months. Businesses with 5 or less employees have the same admin responsibilities as larger businesses, even though they have less resources.
27. It goes without saying that these very small businesses have reduced cash flow compared to larger companies and having to make regular redundancy contributions can turn them off employing more staff.
28. There is no reason why the exemption under the Fair Work Act, provided to employers with 15 or less staff, should not have been given to our sector. If nothing else, it should be provided to very small businesses that need it the most, particularly as redundancy entitlements have to be paid even if the claim is not genuine.

## Junior rates

29. A number of members over the years have asked why there is no way for them to employ staff, who are not apprentices, under junior rates. Again, there is no reason why awards in other sectors, such as the Manufacturing Award have junior rates and the construction awards don't.
30. Providing employers with the opportunity to employ junior workers on reasonable rates, would provide a huge incentive for employers to take on staff who they might not have considered before.
31. The flow-on benefit could also be that young workers would get the opportunity to be exposed to the industry without having to make the commitment to a long-term apprenticeship. On the flip-side, junior workers who may not have thought about taking on a trade, could transition from a junior worker into a full apprenticeship, something that could also help to boost the intake and completion rates of apprenticeships in our sector.

## National Training Wage

32. I'm aware that the Fair Work Commission wants to delete clause 28 of the On-Site Award (which sets out wage rates and conditions for traineeships) and instead insert a simple reference to the training wage schedule in the Miscellaneous Award.
33. The current clause in the On-Site Award has Stage and Skill level based payment scales which members find difficult to understand are different to the time-based progression of pay under Schedule C.
34. The problem has come about as only some of the NBCIA training clause has been included in the On-Site Award which has caused a conflict with what is in Schedule C and needs to be fixed.

## Hours for underground workers

35. For no apparent reason, the hours of work for underground workers under clause 33.1(e)(iii) of the On-Site Award is 30 hours per week. The award says this is exclusive

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of crib time, with the exception of miners driving tunnels and sinking shafts in certain circumstances and employees doing scabbling or boodler working.

36. The NBCIA did not have within it anywhere that a week's work should be any less than 38 hours. I don't know of any clause in a pre-modern award that says a week's work is only 30 hours for any particular classification of work.
37. More importantly the clause is out of line with the clause directly before it where it is stated that the hours of work for underground work will be 38 hours per week. It is my view that the 30 hours per week can only be a typing error in the On-Site Award.

#### Provision of transport

38. Calls have come in to MBA NSW from employees of members asking what, if any, restrictions are in place when an employer provides a vehicle free of charge for them to drive to and from work under clause 25.8 of the On-Site Award. There needs to be better clarity under this clause as to what workers can and can't do if they are provided with a vehicle by their employer.

#### Definition of continuous service

39. Clause 3.1 of the On-Site Award contains a definition of continuous service, a definition that is familiar to members and consistent with the Fair Work Act.
40. I am aware that Master Builders has sought an amendment to clause 38.1(a) to include a reference to the definition of continuous service within the award. This would be a useful signpost which would have the effect of drawing attention to the definition at clause 3.1 and would assist users in applying leave entitlements under the award.

#### Old references within the Award

41. There are a number of clauses within the On-Site Award that no longer have any relevance to the construction sector and therefore should be removed.
42. Clause 33.1(d), for example, makes reference to AS 4774.1-2003 – the former Australian Standard for working in compressed air, which is no longer current. In addition to the information being outdated, members cannot believe that, in order to meet their obligations under the award, they have to purchase a costly Standard.
43. I agree and think it's completely inappropriate for any modern award to reference Australian Standards and require employers to purchase more documentation for them to understand their obligations. Also, references generally to Work Health and Safety (WHS) within the On-Site Award are inappropriate given existence of the WHS Act and Regulations.
44. Another example of an out of date provision is clause 20.1(d)(iii) which requires employers to cover the costs of employees for the cost of an x-ray every six months if they are engaged in refractory brickwork, or working in a tuberculosis home or hospital.
45. Clearly tuberculosis is almost unheard of in Australia today and treatment facilities are virtually no longer in existence given the disease's rapid decline since the 1960s. This clause is therefore unnecessary and surely should be removed.

#### Coverage of Joinery work

46. The current definition of joinery work under clause 3.1 of the Joinery Award has created confusion amongst award users.
47. The definition under the Joinery Award provides coverage of workers who prepare, decorate and assemble joinery or building components in a joinery shop, but is not clear as to the extent that on-site work is capable of being covered by the Joinery Award. It is

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my experience that it is not uncommon for joinery shops to engage part of their workforce to work predominantly in the workshop and another part of their workforce to undertake fixing and installing on site.

48. This scenario has the effect of employers having to calculate entitlements under both the Joinery and On-Site Awards for projects. An expansion of the definition to include the on-site installation of joinery would get rid of any confusion and simplify the way in which joiners are employed.



Signature by:

on 9 December 2016

<b>Lodged by:</b> Rebecca Sostarko, Master Builders Australia	<b>Telephone:</b>	02 6202 8888
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## **ATTACHMENT E**

### *STATEMENT OF MR ROBERT WILSON*

## IN THE FAIR WORK COMMISSION

AM2016/23 – 4 Yearly Review of Modern Awards – Construction Awards

Re Application by: Master Builders Australia

### Witness Statement of Robert Wilson

On 9 December 2016, I, Robert Wilson of Master Builders Australia, Level 3, 44 Sydney Avenue, Forrest ACT 2603 National Director Workforce Development and Training, make the following statement.

1. I have been employed as the National Director Workforce Development and Training by Master Builders Australia since September 2014.
2. Prior to this position I held the role of General Manager Industry Strategy and Intelligence at AgriFood Skills Australia, and before that the role of National Manager Employment, Education and Training at Australian Mines and Metals Association.
3. In both of these roles I was responsible for the development of education and training policy that would assist young people to develop the skills to be successful in the workplace.
4. When I commenced employment with Master Builders Australia, I undertook a project to develop a Master Builders' training policy entitled *Towards 2020*.
5. *Towards 2020* involved an assessment of the current skills and workforce needs of the building and construction industry, as well as its future needs.
6. I attach hereto a copy of *Towards 2020* marked Annexure A.
7. The result of this project was that Master Builders Australia predicts that an additional 300,000 people will be required by the year 2024 in the building and construction industry. This is on top of replacing the approximately 30,000 workers who leave the industry each year.
8. In the building and construction industry, a major pathway into jobs is through the apprenticeship system. When preparing *Towards 2020* in 2014, Master Builders identified that 44,225 of our 1 million strong workforce were what statisticians term Construction Trade Apprentices, which includes carpenters, plumbers, bricklayers, tilers and a number of other trades. This figure was down from 56,447 apprentices in December 2010.
9. I also attach hereto an extract of data from the National Centre for Vocational Education Research (NCVER) containing information about projected apprentice completion rates marked Annexure B and the latest commencement rates involving trades in the building and construction sector, marked Annexure C.
10. This data reveals there has been a trend decrease in the number of completions however there has been an increase in the number of commencements.
11. This recent increase, however, bucks the trend involving a general decrease in the number of new commencements of young people undertaking trades apprenticeships in the building and construction sector.
12. In dealing with our member associations, it is often reported to me that there is an inability for young people to experience what it is like to be employed in the building and construction sector unless they have enrolled in an apprenticeship. To compound matters, it is also clear from our members that due to the design of our industry's qualifications, that students undertaking school-based apprenticeships and vocational learning at certificate II level are reaching second stage apprentice wages without possessing the associated skills expected of employers.

<b>Lodged by:</b> Rebecca Sostarko, Master Builders Australia	<b>Telephone:</b>	02 6202 8888
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13. This means that young people wishing to investigate a future career or a trade career need to be enrolled and indentured as a trades employee/apprentice and may be at second year stage without the corresponding skills. The impact is employers are not employing young people who have started on a career pathway during their school years.
14. To further compound matters, it is commonly reported to me that once young people have gone through their first few days and months of working on site experiencing the industry first-hand, they determine that construction is not a career and/or industry for them.
15. In my view, it would be appropriate for young people to have the option of being engaged on a construction site so as to experience what it might be like should they peruse a trades career or career in the building and construction sector.
16. However, for an employer to do this and to offer a young person such an opportunity (even for one or two weeks) the young person, irrespective of their age, must be engaged and paid an adult rate of pay.
17. This in my view, and it has been reported to me, creates a disincentive for employers to take on and trial young people in the building and construction industry.
18. As a result, an employer in the sector must, due to the restrictions in the *Building and Construction General On-Site Award 2010*, employ a young person as an indentured apprentice which involves a large degree of time consuming paperwork and other related requirements.
19. It would therefore be appropriate if a young person could be engaged on a building construction site to experience what it is like in terms of assessing a future career.
20. In my view, removing the disincentive to employers created by the requirement to pay only an adult rate of pay, would encourage more young people to experience the building and construction sector for a short period, allowing them an opportunity to make an informed objective decision about whether or not they wish to pursue a career in this industry.
21. I am aware that the provisions of the On-Site Award hinder this outcome. I have been shown a table outlining claims made by Master Builders Australia in this four yearly review proceeding.
22. I am aware that one claim involves the insertion of junior rates of pay for young people who are not indentured apprentices.
23. I am aware that the provision sought to be included is the same as that applicable to junior employees in other like industries, for example, the manufacturing industry and the associated manufacturing award.
24. In my view, were the Commission to grant the claim advanced by Master Builders Australia, it would facilitate a new alternative pathway for young people to explore a career in the building and construction sector.
25. I believe this would improve the number of young people entering the sector and would also assist in making sure that when they do enrol in an apprenticeship, that they have a greater chance and prospect of completing their apprenticeship training.

Signature by: \_\_\_\_\_



on 9 December 2016

<b>Lodged by:</b> Rebecca Sostarko, Master Builders Australia	<b>Telephone:</b>	02 6202 8888
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**MASTER BUILDERS**  
A U S T R A L I A

# *Towards* **2020**

Policy for Australian Apprenticeship Reforms







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Image: Theory - Bricklaying  
students - from a report to the  
Twenty First Convention of  
the Federated Master Builders  
Association of Australia,  
10 November 1927

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## CONTENTS

1	Key Points	2
2	Introduction	3
3	About Master Builders	3
4	The Need for Change	4
5	The Plan	7
6	Training our Existing and Future Workforce	8
7	Quality Vocational Training Structures	12
8	Attracting Our Future Workforce	15
9	Measuring Success	16

# 1 Key Points

The benchmarks for Master Builders Australia's *Policy for Australian Apprenticeship Reforms* outcomes are:

- 80% of the construction workforce holding a post-school qualification (currently 60%). Commencements reaching 30,000 per annum, up by 66% on current commencements of 18,000
- 100,000 apprentices in training, up by 132% on current apprentices in training of 43,100
- Quality training outcomes with pre-apprenticeship and apprenticeship programmes delivering site-ready and productive apprentices to an appropriate level determined by industry
- Introduction of a national building and construction skills passport
- A review of training packages to deliver the qualifications and skill sets that meet modern employer requirements.

Master Builders Australia's *Policy for Australian Apprenticeship Reforms* sets out a pathway to achieve a productive and sustainable construction workforce that meets the needs of employers. The policy objectives are:

- A national apprenticeship system that meets the needs of employers
- New trade apprenticeships, qualifications and skill sets that recognise emerging job roles and tasks
- Increased enrolments and completions in apprenticeships
- Improved literacy, numeracy and job readiness of apprentices
- Policy settings that support multiple pathways into building and construction jobs.

Australia's future productivity and competitiveness depend on a highly skilled and trained workforce. The National Training System performs an undeniable public good in providing a supply of necessary and valued skills for the nation and a pathway for satisfying careers for many Australians.

The construction industry is in a situation of record workforce participation but experiencing a decline in accredited training outcomes. The industry needs more apprentices to meet predicted workforce growth over the coming decade.

The National Training System will be required to deliver qualifications and skill sets that match changes in job roles, employer needs and in construction techniques. Apprenticeship and pre-apprenticeship programmes must lift productivity and improve safety in the workplace.

The National Training System will require Industrial Awards that facilitate apprenticeship outcomes within a competitive business environment and support apprenticeship completions.

Apprentices must develop skills and attributes such as job readiness, safety awareness, time management, teamwork and literacy and numeracy from their training.

Master Builders Australia's *Policy for Australian Apprenticeship Reforms* will ensure Australia has a highly skilled and capable workforce to meet the needs of a competitive construction industry.

'100,000  
apprentices  
in training by  
2020'

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## 2 Introduction

The construction industry is one of the key growth sectors of the economy with average real growth of around three per cent per annum expected. This growth risks being constrained by shortages of labour, including in semi-skilled, skilled, para-professional and managerial roles.

Master Builders predicts that the construction industry will require an additional 300,000 people over the next decade, a 30 percent increase on the current workforce of 1,033,000 people.

This policy paper concentrates on the issues impacting on the supply of skilled labour, which in the construction industry are tradespeople trained through the apprenticeship system.

The industry's challenge is to meet the rising demand for a skilled workforce against a background of decreasing apprentices in accredited training, high drop-out training rates, an ageing demographic and a yearly exit rate of existing workers at approximately 30,000.

The construction industry has experienced a 23 per cent drop in the number of apprentices in training, from 56,000 to 43,100 since 2010. In addition, the apprenticeship commencement rate has decreased by 18.8 percent since 2010, from 22,100 to 18,000 commencements in the past five years (Apprentices and Trainees 2014, June Quarter Report, NCVET).

The nature of construction jobs is changing due to the introduction of new technologies and pre-fabrication. This is leading to altered work practices which no longer guarantee that traditional career paths will generate the mix of skills needed to meet the future demands of the industry.

Employers have reported that apprentice quality is the number one issue impacting on their businesses. Employers report that there is a lack of awareness of construction career opportunities amongst teachers, parents and students; apprentice candidates lack "soft skills" such as communication, time management and life skills; and apprentice candidates do not possess the necessary literacy and numeracy skills to successfully complete an apprenticeship.

New thinking and approaches are required for skills development and attainment suitable for the construction industry.

**'apprentice quality is the number one issue'**

## 3 About Master Builders

Master Builders Australia is the nation's peak building and construction industry association, which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder state and territory associations.

Over 125 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors: residential, commercial and engineering construction.

The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter.

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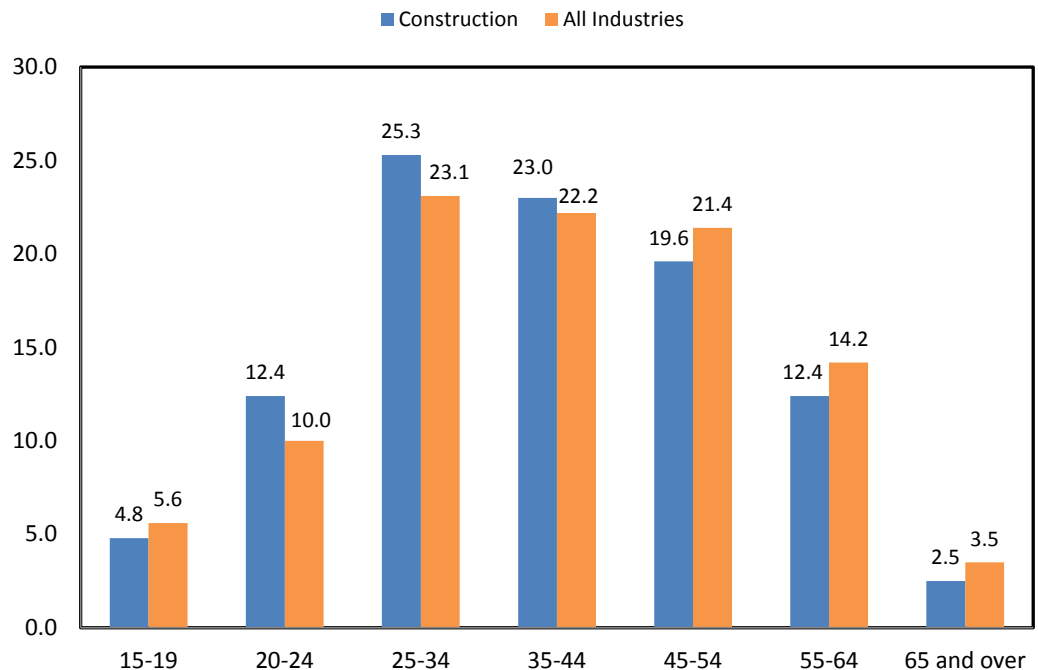


## Construction Industry Facts...At a Glance

**'construction is a major driver of the Australian economy'**

- Construction accounts for close to 8% of GDP
- Value-added \$120 billion to the economy, or 8% of total economic output in 2014
- Cumulative work over next decade valued at \$2.8 trillion
- Employs 9% of Australian workers, or 1,033,000 people
- 86% of workforce are full time workers
- Largest employer of young full-time workers aged 15 to 24, some 154,600 Australians (Figure 1)
- 99% of construction trade workers are male
- 27% are business owners/self-employed
- Third strongest industry sector employment growth in the past decade

**Figure 1: Employed persons by age, February 2014 (% share of employment)**



## 4 The Need for Change

**'builders hiring intentions highest since pre-GFC'**

Master Builders Australia's *National Survey of Building and Construction* (January, 2015) shows that industry's confidence and profitability are increasing and housing construction activity is forecast to see dwelling starts exceed 200,000 in 2015-16. The survey also shows that builders hiring intentions rose strongly in the December quarter 2014 to pre-GFC levels with employers' intentions to put on more apprentices lifting to the highest level in seven years. This will have positive flow-on effects for young Australians seeking to enter into an apprenticeship. However, to be successful, there needs to be changes to the National Training System.

Of the workers in construction, 44,225 are what statisticians term Construction Trade Apprentices, which includes carpenters, plumbers, bricklayers, tilers and a number of other trades. This is down from 56,447 in December 2010. It should be noted that the number of other apprentices working in the construction industry is higher at 76,384, as there are significant numbers of apprentices in electrical and metalworking trades in the industry.

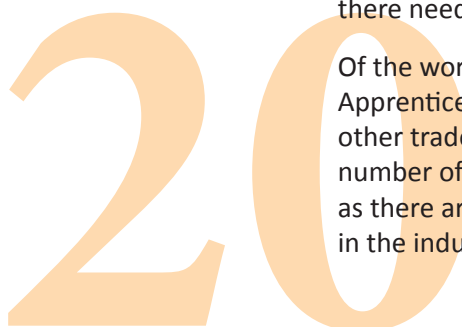


Figure 2 shows Master Builders’ expected growth in the construction workforce by occupation type to 2023-2024. According to these projections, high-skilled managerial and professional positions in the industry will grow at an average of 3.7 per cent per annum over the next decade, with trade positions growing at a rate of 2.7 per cent per annum and lower skilled positions at a rate of 2.4 per cent per annum.

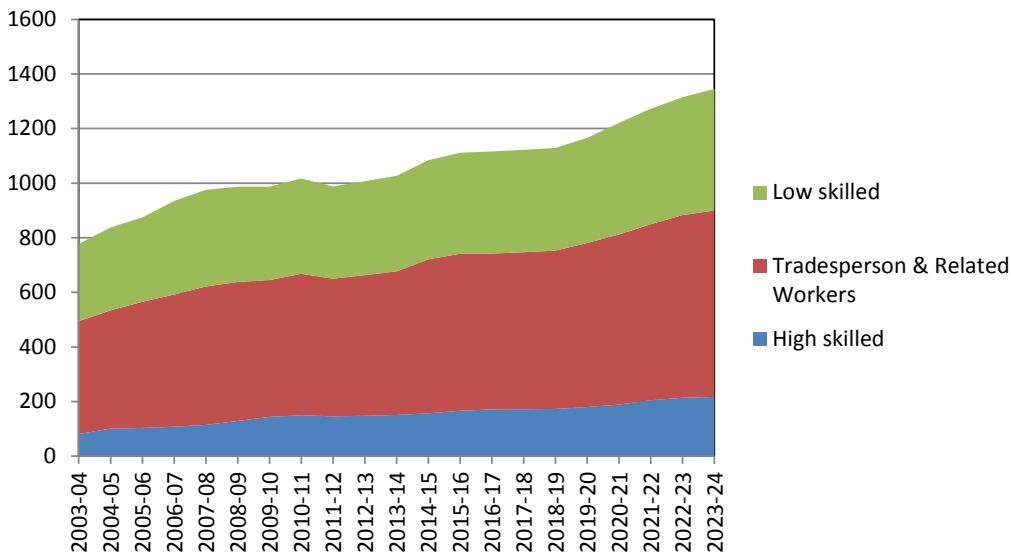
Table 1 provides a non-exhaustive list of roles for which there is an expected growth in industry demand over the coming decade.

### Construction Apprenticeship Facts...At a Glance



- Workforce projected to grow by more than 300,000 over the next decade to 1.3 million Australians (Figure 2)
- Annual exit rate of approximately 30,000 workers
- Ageing workforce, with a median age of 38 years
- 40% of workforce do not hold any post-school qualifications
- 23% drop in the number of apprentices in training from 56,000 to 43,100 since 2010
- 19% decrease in apprentice commencements from 22,100 to 18,000 since 2010

**Figure 2: Projected construction employment demand to 2023/24 (thousands)**



Source: ABS Labour Force Series, Master Builders Australia projections



**Table 1: Current and expanding job roles by indicative skill level**

<b>Professional</b>	Project Managers
	Engineers
<b>Paraprofessional</b>	Site Managers
	Estimators
	OHS Managers
	Skilled Office Workers (e.g. contracts, sales, human resources)
<b>Skilled Trade</b>	Carpenters (including formworkers, and first/second fix carpenters)
	Bricklayers and Blocklayers
	Plumbers (including fire services)
	Electricians
	Wall and Floor Tilers
	Steelfixers (including structural steel and steel roofing)
	Concreters
	Painters
	Glaziers (including structural glazing)
	Drywall Plasterers (including flushers and finishers)
<b>Semi-Skilled</b>	Mobile Plant Operators (e.g. grader drivers)
	Crane Drivers, Doggers and Riggers
	Concrete Placers
	Transport Drivers

**‘apprentice training is a shared responsibility’**

The construction industry views skills development of apprentices as a shared responsibility between employers, governments, and the apprentices themselves. Industry focussed RTOs and GTOs play a significant role in the training of apprentices due to the project nature of work in the construction industry.

Industry’s view is the current training system suffers from administrative confusion as governance structures, responsibilities and custodianship of the system remain unclear to many users.

The system has been captured by public (TAFEs) and private RTOs who are able to influence the system for their own benefit. State jurisdictions, through the implementation of different education and training priorities and funding models, have added complexities to the system. We are in a situation where jurisdictions can hold up the endorsement of national qualifications that have demonstrated support from industry.

Further, in the above-mentioned skilled and semi-skilled areas, the national training system has not kept up pace with the growth or the changes in work practices in these areas. There is a lack of formal qualifications and skill sets to recognise workers’ skills, in particular for crane drivers, doggers and riggers. Students are enrolling in full qualifications and only completing the units of competency to meet licencing requirements, or to be competent in one aspect of a job role. There is a need for qualifications and skill sets that enable industry to recognise the skills of its entire workforce. Compounding the problem is the differences in the jurisdictions to funding skill sets.

The workplace relations system does not currently complement the Australian Apprenticeship system and has created potential barriers to the apprenticeship system being able to deliver maximum productivity benefits. For example, the inclusion of competency based wage progression into modern awards contemporaneously with large wage increases not based on additional work value has negatively impacted on employers’ decisions to take on apprentices. This affects students undertaking VET in school programmes who may find themselves unable to find employment or an apprenticeship due to the increased cost of their wages as opposed to a student without any formal recognition of their skills.

Master Builders believes that the apprenticeship system should support those employers that invest in skills development through Australian Apprenticeships to achieve business productivity outcomes that will benefit the Australian economy over the long term.

## 5 The Plan

The construction industry is one of the key growth sectors of the economy with the workforce to grow by a projected 300,000 people over the next decade. Trade based positions are projected to grow by an average rate of 2.4 per cent per annum. To meet this projected growth, new thinking and approaches will be needed for the National Training System. The construction industry will need to work in partnership with governments, education providers and the community to ensure the National Training System meets the needs of its clients.

The Master Builders Plan for an Australian Apprenticeship System that meets the needs of the building and construction industry covers three core areas:

1. Training our existing and future workforce
2. Quality vocational training structures
3. Attracting our future workforce.

### The Plan....At a Glance



#### Training our existing and future workforce

- Harmonise the National Training System to ensure national consistency in funding, construction pathways and apprenticeships and cease jurisdictions' ability to hold up national training package accreditation that has demonstrated support from industry
- Review the National Training System with the aim to dismantle its current complexities and rebuild a system that is nationally focussed, transparent to employers with clear funding models
- Introduce a building and construction passport to recognise competencies and support labour mobility
- Introduce a construction industry and school partnership programme that will support quality vocation and vocational outcomes in schools led by industry
- Introduce a non-accredited vocation course in partner schools
- Support mentoring programmes that have demonstrated evidence of increasing apprentice completions
- Support early intervention language, literacy and numeracy programmes that support apprentice completions

#### Quality vocational training structures

- Establish RTO and GTO networks to facilitate industry and RTO/GTO engagement to minimise duplication
- Ensure industry is at the centre of the development of training packages, qualifications and skill sets
- Include the construction industry as a priority industry in the *Industry Skills Fund*
- Review employer incentives that support apprenticeships

#### Attracting our future workforce

- Establish a school engagement programme to improve teacher and student understanding of the construction industry and the pathways into careers
- Provide teacher professional development and teaching materials that assist in the teaching and learning of construction in schools
- Develop engaging career information that focus on the skills and attitudes to be successful in the construction workplace.



## 6 Training our Existing and Future Workforce

### 6.1 Harmonisation of the National Training System

The inconsistency of the National Training System between state and territories is a significant issue for the construction industry.

The problem of inconsistency has been recognised by the Commonwealth. Master Builders congratulates the Australian Government on the work that has been undertaken with states and territories to establish nationally consistent positions on eligibility and requirements for apprenticeships to date to promote quality of outcomes and simplify engagement with the system but more still needs to be done.

There is a strong need to review the National Training System in its entirety with the aim to dismantle its current complexities and rebuild a system that is nationally focussed, transparent to employers with clear and consistent funding models.

The harmonisation of apprenticeship pathways and funding of qualifications is a micro-economic reform that is required to provide national consistency in the implementation of apprenticeship reform. This reform is necessary to reduce barriers to apprentice labour mobility and to reduce costs for business.

The National Training System must become:

- Nationally focussed with greater collaboration between the Commonwealth and states and territories to meet the needs of industry and the economy including improved implementation, consistency in funding, and outcomes across jurisdictions
- Leading edge in the design and development of national training packages that are flexible to meet the needs of industry and provide clear guidance to RTOs on the training and skills outcomes sought by industry. They must also clearly codify the skills and knowledge that a worker needs to perform a task or job
- Responsive to the ever changing needs of industry to compete within a globally competitive economy
- Flexible to develop new skill sets, qualifications, trades and apprenticeships that are required due to disruptive factors in the economy, for example new technologies, more efficient practices
- Trustworthy so that industry has confidence that VET sector graduates hold the necessary skills, attributes and knowledge to work safely and productively in the workplace
- Efficient in delivering services to industry within an increasingly fiscally constrained environment at Commonwealth and state/territory levels.

It is important that the development and endorsement processes of national qualifications be simplified and not be held up by jurisdictions where draft qualifications have the clear support of industry nationally.

With the establishment of the Australian Industry and Skills Committee to oversee VET governance, Master Builders is concerned that the significant state and territory representation on the Committee could potentially lead to blockages in the National Training System.

Master Builders seeks a dedicated construction representative on this important committee who can represent the views of an industry that employs over 1 million

**‘strong need to review the National Training system in its entirety’**

**‘the National Training System must be responsive to the ever changing needs of the industry’**

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Australians. In addition, a national roundtable should be held to examine and drive consistency in VET policy.

## 6.2 Passport of Competencies and Skill Sets

Australia's training system is currently heavily focussed on the completion of full qualifications, despite the fact that the completion rate for all publicly funded VET qualifications is only 36%. A result of this is that in many trades the proportion of workers holding formal qualifications is actually dropping over time. Table 2 shows the current proportion of workers in various trades without at least a Certificate III qualification, based on unpublished data obtained from the ABS.

**Table 2: Construction Workers without minimum Cert III qualifications**

Occupation	Workers	% with < C3
3411 Electricians	67,117	20.7
3341 Plumbers	57,933	23.5
3121 Architectural, Building and Surveying Technicians	28,218	25.2
3312 Carpenters and Joiners	80,221	25.4
3311 Bricklayers and Stonemasons	20,536	37.4
3322 Painting Trades Workers	35,758	39.6
3334 Wall and Floor Tilers	13,712	41.5
3622 Gardeners	15,671	45.9
3332 Plasterers	24,435	50.4
8217 Structural Steel Construction Workers	12,580	61.8
8211 Building and Plumbing Labourers	30,553	68.1
8212 Concreters	22,734	68.4

Source: ABS 2011 Census

Many of these workers, with the support of their employers, would wish to obtain some level of formal certification to provide confidence in their current work.

Master Builders recommends that part-qualifications, or skill sets, which may be appropriate to undertake a particular job role in the industry, should be recognised as a viable pathway to a job. Skill sets should not be seen as the end to training, but the "building blocks" to gain a full qualification over time where it is supported by the worker and employer.

Master Builders recommends the introduction of a 'skills passport' for the building and construction industry where skill sets and individual units of competency can be undertaken and tracked in stages as a person's skills needs develop over time.

The 'passport' would allow for improved safety and quality outcomes and enable employers to quickly access workers' existing skills. The introduction of the Unique Student Identifier will be beneficial in helping employers and workers track their competencies.

Master Builders recommends that a "starter" skill set, which could contain units of competency in workplace health and safety, workplace communication and using hand tools be developed and made available to all new workers and VET in school students. This would have long-term health and safety and productivity benefits.

Other more advanced skill sets could be developed and include residential bricklaying, tiling, formwork, shop-fitting, estimating, water-proofing and concreting.

**'skill sets  
should be  
recognised as a  
viable pathway  
to jobs'**

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An additional benefit to the introduction of skill sets is to enable workers to gain skills in various components of work that may sit outside a qualification but that is important to undertake a job role and to upskill in areas where new technology has changed building techniques and practices.

By combining a series of units of competency and skill sets within the passport, students and workers could obtain a full qualification over time. The passport would be a mechanism to support workers life-long learning.

In order to achieve this aim, the funding of skill sets and individual units of competency would need to be agreed on a national basis as currently there are different funding guidelines in each jurisdiction.

### 6.3 Industry and School Partnerships

The number one issue identified by NSW Master Builders in their 2014 survey of members was quality apprentices. Quality apprentices with the right skills and attitudes are a real and pressing issue for the construction industry and are continually raised in discussions on a national basis by members.

Master Builders recommends that a national approach be implemented to drive industry and school partnerships that support students to establish pathways into construction jobs from year 10 onwards. These partnerships should be formalised with schools through the development of contracts and memoranda of understanding, which clearly outline the roles of industry, government and schools. The benefit of these formal partnerships is for industry and schools to work together to ensure quality vocational education is delivered in schools that meets the needs of local industry.

School industry partnerships would be closed models, only open to selected public and private schools that have the capacity to deliver appropriate formal and non-formal training agreed by industry. This partnership should include all-girls schools to support young women who want to follow a non-traditional pathway into a trade.

Each jurisdiction should have a state-wide committee to drive the partnerships with membership drawn from the Departments of Education and Training and Catholic and Independent school authorities as well as senior representatives drawn from various sectors of the construction industry.

Funding should be made available to provide opportunities for students in these schools to participate in programmes, which may include:

- school-based apprenticeships
- pre-apprenticeship and vocation programmes
- Try-a-Trade programmes
- construction industry school camps to bring students with common interests together
- teacher professional development
- trade maths classes
- small business skills training.

**‘industry  
& school  
partnerships  
to establish  
pathways into  
jobs’**

## 6.4 School Vocation Course

With the establishment of a formal industry and school partnership programme, there is a need to develop a national school vocation programme that can be rolled out in partnership schools.

The aim of the programme will be to provide students with quality training that will improve their job readiness and to have national consistency in the training programme delivered in the partner schools. The development of the programme would be led by industry and would include the development of skills in workplace safety, communications, using hand tools and basic building and construction techniques, and support the building of knowledge required to perform well of the construction industry including trade maths and business skills.

The school vocation course would offer the ability for students to undertake both accredited and non-accredited training and obtain a white card to enable them to work onsite. On completing this vocation course and on joining the workforce, students would have the opportunity to have their prior learning recognised by an RTO which would establish a pathway into an apprenticeship.

## 6.5 Mentoring

The research is clear that many individuals do not complete their apprenticeship due to poor experiences in the workplace, not feeling supported and lack a person to whom they can turn for advice.

The employment relationship between the apprentice and the employer, as well as the quality of the training provided, is critical to the successful completion of an apprenticeship. Support mechanisms for both the apprentice and the employer, such as mentoring, pastoral care and quality training provision are required. A shared investment by both government and industry is essential to build these support mechanisms into the system.

There is strong evidence in the construction industry that mentoring programmes that have been developed and implemented to support apprentices have strong results in increasing the completion rates of apprenticeships. An independent evaluation of the Master Builders' Construction Apprenticeship Mentoring Scheme (CAMS), which has signed up 1,000 apprentices into mentoring and provided general advice to over 5,000 apprentices, found 84% of CAMS apprentices and 80% of CAMS mentors agreed or strongly agreed that mentoring programmes made a difference to apprentice completions.

Master Builders recommends that any future mentoring programmes are industry centred and led. In the construction industry, it is clear that industry led programmes have great success in supporting young people to complete their apprenticeships.

## 6.6 Language, Literacy and Numeracy Programmes

Many Australians that are attracted to working in the construction trades have a history of poor language, literacy and numeracy (LLN) skills. Employers have reported that poor language, literacy and numeracy skills in their apprentices have been a barrier to students completing their apprenticeship.

Master Builders recommends that early LLN intervention strategies are required for students who wish to follow an apprenticeship pathway into building and construction. These early intervention strategies should be implemented into targeted schools, particularly into schools that are participants in the industry and school partnership model and offer the Master Builders vocation course.

**‘LLN are a barrier to young people completing their apprenticeship’**

Industry also requires LLN programmes that support the current workforce to improve their skills which will enable them to be productive on the worksite. Many workers miss out on promotions and following a pathway into higher paid jobs due to poor LLN skills.

LLN programmes should be delivered in the workplace where possible using real-life examples. However, it necessary to be mindful of the stigma that poor LLN skills carry and to not subject workers to feeling like second rate employees.

## 7 Quality Vocational Training Structures

### 7.1 RTO and GTO Networks

There is a history of mixed student quality outcomes from training from both public and private providers. RTOs report that it is difficult to engage with industry and employers. The increasing requirements for RTOs to engage with industry on training and assessment increase this pressure on both areas.

Employers report that they are focussed on their businesses and do not have time to deal with numerous RTOs delivering construction courses.

GTOs play an important role in the construction industry due to the project nature of work. GTOs have a strong history of supporting employers through the training of apprentices and in supporting them to complete their qualifications.

Master Builders recommends that communities of practice be established of RTOs and GTOs (both public and private) that deliver construction qualifications and apprenticeship services to industry. These networks would be led by industry and would meet on a six-monthly basis in major population centres with agendas driven by industry representatives.

**‘RTO networks provide real-time advice from industry’**

The networks would provide a one-stop-shop to bring all key players together in a region at one point in time to discuss industry intelligence, skill shortages, apprentice quality of learning and skills, training package implementation, course development and delivery and assessment. The Networks would provide real-time advice from industry and would discussion to improve quality outcomes from training and to increase apprenticeship completion rates.

The benefit of this model is to allow industry to take leadership on the implementation of apprenticeships at a grassroots level. The localised RTO/GTO networks would enable industry to have a greater say in the development of the future of their workforce.

For RTOs and GTOs, the benefits of this model include avoiding duplication of services, course and resource development and enables greater sharing of teaching and learning practices.

The model has proved highly successful in the meat processing industry through the leadership provided by the National Meat Industry Training Advisory Council (MINTRAC).

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## 7.2 Industry-owned Qualification and Competency Development

Master Builders supports the Australian Government's review into *Industry Engagement in Training Packages: Towards a Contestable Model*. The centrality of industry in training package design, development, implementation and review is the cornerstone of the National Training System.

As VET is essentially an economic strategy to develop a skilled workforce to enable Australia to compete globally, the Government must remain committed to supporting their continual development and review to ensure they are meeting the needs of industry.

The construction industry has traditionally been a significant user of the national Vocational Education and Training system.

Training packages are an essential component of the national VET system. In fact, they are one of the few truly national components of the system. Master Builders recommends that training packages:

- Be informed by real time intelligence that identifies the changing nature of industry, work practices and disruptive events including technological change and its resulting impact on required skills and knowledge
- Specify the knowledge and skills required to perform effectively in the workplace as determined by industry
- Provide clear guidance to RTOs on the skills and knowledge students are expected to acquire; and inform course design and assessment practices to ensure consistent outcomes across VET
- Be responsive to changing industry requirements including ensuring licensing requirements for specific occupations are considered in training package development and continually updated as needed
- Reflect that many occupations operate across industries with common competencies. Training packages must support the mobility of labour to meet ever changing workforce needs of industry; Remain national in their focus ensuring that RTOs deliver consistent training outcomes across the nation.

Given the public benefits from a well regulated training system, there is a strong case that funding to develop training packages be maintained at current levels with a focus on greater synergies and the reduction of red tape in their development and approval processes.

Master Builders recommends that the final structure adopted by Government to enhance industry engagement in training package development must be:

- Flexible to cater to the diverse needs of industry and place industry at the centre of decision making
- Responsive to the changing skill and workforce needs of industry
- Sustainable with appropriate public funding to support industry engagement, intelligence gathering and the development of industry-centred qualifications
- Robust to enable the model to provide qualifications across the Commonwealth and jurisdictions and survive changes of governments
- Accountable to industry and not let jurisdictions hold up qualification approval if the support of industry is evident

**'funding should be maintained to develop training packages'**

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- Reviewed to ensure the model is able to continually respond to the needs of industry and the skills and knowledge it requires to be competitive in a global marketplace.

### 7.3 Industry Skills Fund

Master Builders Australia recommends that the Commonwealth Government maintain its investment in post-secondary education, particularly in skills training and development. At a time when the proportion of skilled jobs is increasing, the number of core Commonwealth and State funded training places has been static for many years and real funding per contact hour has fallen in most jurisdictions.

Master Builders recommends the construction industry be included as a priority industry in the Industry Skills Fund to recognise that some 60,000 new entrants will be required each year to meet the projected employment growth of 300,000 over the next decade, and to replace some 30,000 workers who leave the industry each year through attrition.

Master Builders also recommends that courses that may have a licencing outcome on completion be eligible for funding as these jobs contribute to economic growth.

### 7.4 Employer Incentives

The basic employer incentive for taking on and retaining apprentices has been static at around \$4,000 for many years, which represents a tiny fraction of the net cost of on-the-job training, administration and wages. Employer incentive payments are even more an imperative against the background of increasing wages and conditions being imposed as a consequence of industrial relations decisions that came into effect on 1 January 2014.

In the short term, limited and tightly targeted financial assistance to employers is a policy response supported by Master Builders to dealing with construction's looming skills shortage. Assistance could have the following key elements:

- Rephasing the standard employer incentive (\$1,500 at six months and \$2,500 at completion) to \$1,500 at six months, \$1,500 at 18 months and \$1,000 at completion, in recognition that apprentices who make it through to third year are more likely to complete their studies
- As the payment has been static for many years, a 15% increase over the next three years should be considered to support employers to ultimately lift apprenticeships
- Reintroducing a 'Kickstart Bonus' of \$3,350 on top of the standard employer incentive for construction trades in demand to support employers to take on apprentices.

## 8 Attracting Our Future Workforce

### 8.1 Engaging Teachers and Students

Australian apprenticeship, especially traditional trades are an undervalued career choice and often described in negative terms in schools. For example, they are often perceived as physically demanding, unsafe and poorly paid. Australian apprentices are often viewed as being from a lower socio-economic background and without the capabilities to enter into a university pathway to employment.

**‘traditional trades are an undervalued career choice’**

Master Builders recommends that there should be a strategy to lift the status of apprenticeships as representing a pathway towards a satisfying career amongst teachers and students.

Industry must engage with teachers and students to develop their understanding of the construction industry, in particular the key attributes employers are seeking from future apprentices and the jobs and pathways available that lead to long-term employment outcomes.

There should also be strategies to increase involvement by males and females in non-traditional gender occupations through targeting career counsellors, parents, the community, students and employers.

Master Builders recommends a programme be established that engages teachers and students directly in schools to support their understanding of the industry and the personal requirements to be successful in a job such as the right attitudes to safety, time management, commitment to work and equal opportunities for both male and females.

The programme should also engage with Indigenous Australians to discuss the opportunities for a career in the industry.

### 8.2 Teacher Professional Development and Teaching Materials

It is clear from surveys of employers that students leaving school do not hold the required skills to be productive in the workplace. In particular, students’ ability to apply maths, science and technology skills is limited.

Master Builders recommends that teaching materials be developed to support teachers to teach maths, science and technology using the construction industry as a context for learning. These materials should be based on the national curriculum for years 5 through 10. The benefit of such materials is to support teachers to provide students with real-life practical examples used in industry.

A professional development programme for teachers and trainee teachers should be implemented to support the implementation of these materials into schools, and to build teachers’ confidence in the teaching of math and science, particularly in the primary years.

### 8.3 Career Information

There is a lack of understanding amongst both school students and teachers of the knowledge and skills required to perform successfully in the building and construction workplace.

Short, sharp and focussed career materials should be developed to support teachers to gain an improved understanding of the attributes, skills and knowledge required by young people to perform successfully in the workplace. Materials may include printed career information and an online app.



## 9 Measuring Success

By 2020, Master Builders Australia's *Policy for Australian Apprenticeship Reforms* will have been successful if:

- 80% of the building and construction workforce holds a post-school qualification (currently 60%)
- Apprenticeship commencements reach 30,000 per annum, up by 66% on current commencements of 18,000
- 100,000 apprentices are in training, up by 132% on current apprentices in training at 43,100
- A national building and construction skills passport has been implemented
- Skill sets are accepted as a viable pathway into a job and are funded in all jurisdictions
- The construction training package includes skill sets at certificate II and III levels
- New trade apprenticeships, qualifications and skill sets recognise emerging job roles and tasks
- Employers report improved job readiness of apprentices with demonstrable productivity benefits to the economy
- Policy settings that support a national vocational education and training system with transparent and consistent funding models have been implemented.



# Towards 2020:

## Policy for Australian Apprenticeship Reforms

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### HIGH LEVEL SUMMARY

#### Why Reform is Needed

- The current situation – Accredited training outcomes continue to decline against a record level of participation in the industry. A disconnect clearly exists.
- Construction will be one of the growth sectors in the economy over the next decade. It will require an additional 300,000 skilled workers on top of an existing workforce of 1 million.
- It will require an apprenticeship system that delivers skill sets that match changes in construction techniques and technology and lifts productivity.
- It will require Industrial Awards that facilitate enhanced apprenticeship training.

#### The Reform Challenges

- Apprentices need a range of skills and attributes such as job readiness, safety awareness, teamwork, life skills and numeracy and literacy which are not currently well provided for by the school and VET systems.
- 40% of the current workforce – some 400,000 people - do not hold any post-school qualifications.
- There is a significant shortfall of skilled people to meet the future workforce needs of the industry.
  - Apprenticeship commencements have fallen from 22,100 to 18,000 since 2010, a 19% drop.
  - Apprentices in training have fallen from 56,000 to 43,100 since 2010, a 23% drop.
  - The industry's current yearly worker exit rate is approximately 30,000.

#### Reform Benchmarks

- Apprenticeship reform must improve the quality and quantity of an appropriately skilled workforce with skill sets to meet the diverse and changing construction process.
- The National Training System should be reviewed with the aim to dismantle its current complexities and rebuild a system that is nationally focussed, transparent to employers with clear funding models.
- By 2020:
  - 80% of the workforce should hold a post-school qualification (currently 60%);
  - Apprenticeship commencements to reach 30,000, up by 66% (currently 18,000);
  - Apprentices 'in training' to reach 100,000, up by 132% (currently 43,100).
- By 2020, quality outcomes from training to be achieved by:
  - A redesign of training packages to deliver skill sets that match modern building techniques;
  - A redesign of early training delivery to ensure that apprentices are site and job ready;
  - Industry engagement with education and training to improve understanding of the skills and attributes required to be successful as an apprentice.

# TOWARDS 2020

Why apprenticeship reform is needed



MASTER BUILDERS  
AUSTRALIA

## TRAINING OUTCOMES IN DECLINE



There is a disconnect

There is a record level of participation in the industry but accredited training outcomes are declining.



## CONSTRUCTION IS GROWING

Our workforce is heading to 1.3 million



## AN UPDATED APPRENTICESHIP SYSTEM IS NEEDED

The industry requires an apprenticeship system that delivers skill sets and qualifications that match changes in construction techniques, technology and lifts productivity.

At a glance:



Additional 300,000  
skilled workers



Accredited training  
outcomes declining



An Industrial Awards  
System that enhances  
training

# Towards 2020

## POLICY FOR AUSTRALIAN APPRENTICESHIP REFORMS



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### The Reform Challenges

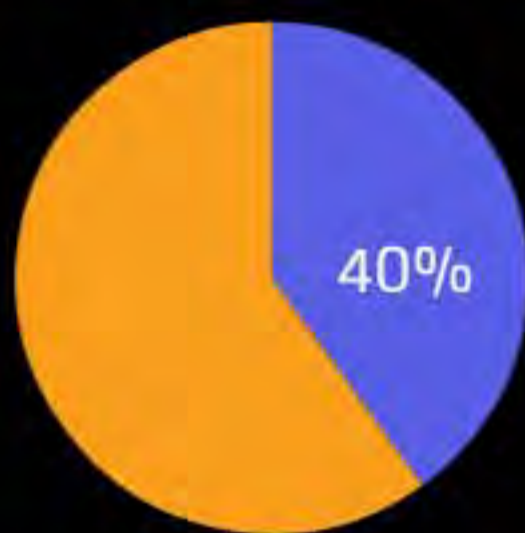
Apprentices need a range of skills and attributes such as:

- job readiness
- safety awareness
- teamwork
- life skills
- literacy and numeracy.



These skills are not currently well provided for by the school and VET systems.

### A qualified workforce



40% of the current workforce – 400,000 people – do not hold any post-school qualifications.

No post-school qualifications (40%)    Qualified workers (60%)

Qualified Workforce

### The future of building and construction



A highly skilled workforce that meets the needs of industry

### The stats:

Apprenticeship commencements



19%

From 22,100 to 18,000 since 2010

Apprentices in training



23%

From 56,000 to 43,100 since 2010

Current yearly worker exit rate



x 30,000

# Towards 2020

## POLICY FOR AUSTRALIAN APPRENTICESHIP REFORMS



MASTER BUILDERS  
AUSTRALIA

### A national review...

The National Training System should be reviewed with the aim to dismantle its current complexities and rebuild a system that is nationally focused, transparent to employers with clear funding models.

### Quality and quantity...

Apprenticeship reform must improve the quality and quantity of an appropriately skilled workforce with skill sets to meet the diverse and changing construction process.

### Ways to get there...

- A redesign of training packages to deliver skill sets and qualifications that match modern building techniques.
- A redesign of early training delivery to ensure that apprentices are site and job ready.
- Industry engagement with education and training to improve understanding of the skills and attributes required to be successful as an apprentice.

### The benchmarks by 2020:



of the workforce should hold a post-school qualification

Apprenticeship commencements



to reach 30,000

The number of apprentices to reach



up by 132%





**MASTER BUILDERS**  
A U S T R A L I A

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Wilson Statement Annexure B - Extracted from NCVET 2016, Australian vocational education and training statistics: completion and attrition rates for apprentices and trainees 2015, National Centre for Vocational Education Research, Adelaide

<b>Table 3 &amp; 5 Aus: Projected contract completion and attrition rates by selected occupation, for contracts commencing in December quarter 2013-15</b>						
<b>Occupation (ANZSCO) group</b>	<b>Completion rate (%)</b>			<b>Attrition rate (%)</b>		
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Managers</b>	<b>49.4</b>	<b>61.2</b>	<b>60.0</b>	<b>42.7</b>	<b>35.0</b>	<b>33.0</b>
<b>Professionals</b>	<b>60.4</b>	<b>52.7</b>	<b>54.7</b>	<b>31.9</b>	<b>37.5</b>	<b>37.7</b>
<b>Technicians and trades workers</b>	<b>51.9</b>	<b>43.3</b>	<b>43.8</b>	<b>45.5</b>	<b>53.7</b>	<b>53.7</b>
31 Engineering, ICT and science technicians	57.5	64.5	49.7	38.0	32.0	46.2
32 Automotive and engineering trades workers	51.9	44.0	48.7	46.3	54.0	50.2
<b>33 Construction trades workers</b>	<b>47.0</b>	<b>33.8</b>	<b>38.3</b>	<b>50.7</b>	<b>62.7</b>	<b>59.0</b>
34 Electrotechnology and telecommunications trades workers	55.2	52.2	54.0	40.8	44.7	44.0
35 Food trades workers	42.7	31.3	34.7	55.6	66.5	62.8
36 Skilled animal and horticultural workers	52.2	47.1	48.1	44.7	49.0	48.5
39 Other technicians and trades workers	55.8	45.1	40.3	41.7	51.0	56.5
391 Hairdressers	38.9	33.6	33.7	59.4	63.9	65.0
392 Printing trades workers	64.0	64.7	64.0	29.8	26.9	33.2
394 Wood trades workers	42.7	26.1	29.3	55.1	72.7	69.6
399 Miscellaneous technicians and trades workers	65.9	55.6	45.4	31.3	39.3	49.2



<b>Table 4: Apprentice and trainee commencements in trade occupations, 2005-15 ('000)</b>											
<b>Occupation (ANZSCO) Group</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
31 Engineering, ICT and science technicians	2.5	2.6	3.0	3.4	3.8	5.2	7.7	8.7	7.4	4.5	3.5
32 Automotive and engineering trades workers	20.6	21.1	22.4	22.4	17.0	20.7	21.3	21.4	18.7	16.7	15.6
<b>33 Construction trades workers</b>	<b>18.3</b>	<b>19.4</b>	<b>22.5</b>	<b>22.3</b>	<b>17.3</b>	<b>24.4</b>	<b>18.9</b>	<b>16.8</b>	<b>17.8</b>	<b>20.0</b>	<b>24.0</b>
34 Electrotechnology and telecommunications trades workers	9.8	11.0	11.7	11.9	9.6	12.2	12.4	12.9	17.1	14.0	14.4
35 Food trades workers	8.7	9.3	9.8	9.7	9.8	10.6	9.5	9.6	10.8	10.2	8.9
36 Skilled animal and horticultural workers	4.0	3.7	3.8	4.7	3.9	5.3	5.2	5.6	5.4	4.3	3.8
39 Other technicians and trades workers	9.9	9.6	10.9	12.1	16.9	18.0	16.7	21.1	21.8	12.6	12.3
391 Hairdressers	5.5	5.4	6.0	5.7	5.4	6.1	5.1	4.9	4.9	4.2	3.8
392 Printing trades workers	0.7	0.7	0.6	0.7	0.6	0.8	0.8	1.2	0.8	0.8	0.5
393 Textile, clothing and footwear trades workers	0.3	0.3	0.2	0.2	0.1	0.2	0.1	0.1	0.1	0.1	0.1
394 Wood trades workers	2.0	2.0	2.2	2.1	1.5	2.0	1.7	1.5	1.5	1.7	2.1
399 Miscellaneous technicians and trades workers	1.4	1.3	1.9	3.4	9.2	8.9	9.0	13.4	14.5	5.8	5.8
<b>Total</b>	<b>73.7</b>	<b>76.7</b>	<b>84.1</b>	<b>86.6</b>	<b>78.3</b>	<b>96.4</b>	<b>91.7</b>	<b>96.1</b>	<b>98.9</b>	<b>82.2</b>	<b>82.4</b>



**ATTACHMENT F**  
*STATEMENT (REDACTED)*

**IN THE FAIR WORK COMMISSION**

**AM2016/23 – 4 Yearly Review of Modern Awards – Construction Awards**

**Re Application by: Master Builders Australia**

**Statement of**

On 9 December 2016, I, [REDACTED] Building and Civil Contractors [REDACTED] Human Resource Manager, make the following witness statement.

1. I have been employed by [REDACTED] since December 2005.
2. [REDACTED] was established in [REDACTED] and is a family-owned and operated commercial, residential and civil construction company and a [REDACTED] Master Builders [REDACTED] carries out contract building work (including construction, maintenance and licensed asbestos removal) and also develops and builds its own construction projects.
3. As Human Resource Manager, I am responsible for the day to day Human Resource management of [REDACTED] 45 full-time and 15 casual staff. These staff include labourers, plant operators, apprentices and carpenters employed under the *Building and Construction On-Site General Award 2010* (On-Site Award).
4. My role includes calculating pay and entitlements for employees, as well as making sure [REDACTED] complies with its responsibilities under the On-Site Award.
5. Prior to being employed by my current employer, I worked in the [REDACTED] holding a number of positions in Human Resources.
6. I have had approximately 34 years' experience in working with pre-modern and modern awards through the course of my various positions in Human Resources.
7. I am aware that Master Builders Australia (Master Builders) has made claims to change the On-Site Award as part of the 4 yearly review.
8. I make the following comments in support of a number of the changes sought by Master Builders based on my extensive experience as a Human Resources Manager.

Simplification/consolidation of allowances

9. The On-Site Award contains approximately 70 separate allowances. It is my understanding that these allowances were carried over from three pre-modern awards.
10. Replication of such a large number of allowances within the On-Site Award has led to it being almost impossible for me to calculate and meet [REDACTED]'s obligations under the award, even with the best intentions.
11. As an example, one of our employees may be eligible for a range of allowances including for working from heights (this being a particularly difficult allowance to

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quantify), operating particular types of machinery or tools, travel, hot, cold or dirty work, to name just a few.

12. Formulas and payment calculations are often extremely complicated and can be inconsistent throughout the award (for example some allowances are determined according to the employee's ordinary hourly rate and others on the daily or weekly rate).
13. Prior to starting with [REDACTED] I had close involvement with payroll operations which included working out the obligations and entitlements under the relevant awards. When, however, I started work in my current role, and aside from my extensive experience, I was amazed as to how complicated the On-Site Award was.
14. Award users would benefit from consolidation and/or simplification of the allowances and changes that remove their potential for overlap. At the very least, allowances should be categorised as either skill, expense or disability based (including whether they are all-purpose) to assist in determining which is applicable to a particular employee's (often changing) circumstances.
15. In addition, the references to Work Health and Safety (WHS) under the On-Site Award are confusing and do not match the requirements under the WHS Act and Regulations. As a result, with the exception of the asbestos and confined spaces allowances, I go to the WHS Act and Regulations and not the On-Site Award for guidance on our WHS obligations associated with PPE and safe work practices.
16. After [REDACTED] of recruiting employees under the On-Site Award, I continue to find it unnecessarily complicated and a burden on [REDACTED]'s administrative operations.

#### Time off in lieu (TOIL)

17. The inclusion of a clause in the On-Site Award that provides employees with an option to take TOIL, would benefit both our company and employees.
18. Although at this time our employees do not often request TOIL, I frequently receive applications for leave to be taken without pay and for the cashing-out of annual leave (requested often by male employees and in particular, older workers). The logical reason for this is that these are now available under the Award, whereas TOIL is not.
19. An option for TOIL in the On-Site Award would provide both employers and employees with greater flexibility and would boost the company's operations, particularly in circumstances where employees have used all of their annual leave or want to undertake professional or personal sabbaticals.

#### Junior Rates

20. [REDACTED] has a strong apprentice program and currently has [REDACTED] apprentices that we supervise. We also have a high completion rate of apprenticeships within our organisation, the [REDACTED] they have completed the [REDACTED]
21. Most employees that are hired as apprentices by [REDACTED] are junior employees, however, some are employed as adult apprentices.

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Signature by: 

on (9 December 2016)

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