

OUTLINE OF SUBMISSIONS

Introduction / Background

1. In accordance with directions previously issued by the Fair Work Commission (**Commission**):-

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

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

hereby submit the following outline of submissions with respect to the 4 Year Review of Modern Awards.

Background / Introduction

2. Under Section 156 of the *Fair Work Act 2009* (C'th)(**FW Act**), the Commission is required to undertake a review of each modern award each four (4) years. Section 156 of the FW Act provides:-

"156 4 yearly reviews of modern awards to be conducted

Timing of 4 yearly reviews

(1) The FWC must conduct a **4 yearly review of modern awards** starting as soon as practicable after each 4th anniversary of the commencement of this Part.

Note 1: The FWC must be constituted by a Full Bench to conduct 4 yearly reviews of modern awards, and to make determinations and modern awards in those reviews (see subsections 616(1), (2) and (3)).

Note 2: The President may give directions about the conduct of 4 yearly reviews of modern awards (see section 582).

What has to be done in a 4 yearly review?

(2) In a 4 yearly review of modern awards, the FWC:

- (a) must review all modern awards; and
- (b) may make:
 - (i) one or more determinations varying modern awards; and
 - (ii) one or more modern awards; and
 - (iii) one or more determinations revoking modern awards; and

(c) must not review, or make a determination to vary, a default fund term of a modern award.

Note 1: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

Note 2: For reviews of default fund terms of modern awards, see Division 4A.
Variation of modern award minimum wages must be justified by work value reasons

(3) In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons.

(4) **Work value reasons** are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.

Each modern award to be reviewed in its own right

(5) A 4 yearly review of modern awards must be such that each modern award is reviewed in its own right. However, this does not prevent the FWC from reviewing 2 or more modern awards at the same time.”

3. In the Commission’s draft statement (released 15 November 2013), the Commission allocated the *Plumbing and Fire Sprinklers Award 2010 (PFS Award 2010)* to Group 4.
4. The PFS Award was first made by the Australian Industrial Relations Commission (AIRC) on 3 April 2009 [PR986378].
5. There were a number of different federal / state industrial instruments that existed prior to the operation of the PFS Award 2010. The following industrial instruments made by the AIRC were the antecedent awards to the PFS Award 2010:-
 - the *Gasfitters (Queensland) Award 2000*; and
 - the *Plumbing Industry (Australian Capital Territory) Award 1999*; and
 - the *Plumbing Industry (New South Wales) Award 1999*; and
 - the *Plumbing Industry (Queensland and Western Australia) Award 1999*; and
 - the *Plumbing Industry (Victorian Government Departments Instrumentalities and Public Hospitals) Award 2000*; and
 - the *Plumbing Trades (Mixed Industry) Award 2000*; and
 - the *Plumbing Trades (Southern States) Construction Award 1999*; and
 - *The Sprinklers Pipe Fitters Award 1998*

The following industrial instruments that were originally made by the applicable state based industrial tribunal were also antecedent awards to the PFS Award 2010:-

- the *Plumbers Award* (Tasmania); and
 - the *Plumbers & Gasfitters (SA) Award* (South Australia); and
 - the *Plumbers and Gasfitters (State) Consolidated Award* (New South Wales)
6. The Master Plumbers Group has reviewed the application and operation of the PFS Award 2010. Following such review, the Master Plumber Group continues to propose that the PFS Award 2010, be varied in a number of different ways. The Master Plumber Group continue to seek a variation, or variations, to the following clauses of the PFS Award 2010:-
- Clause 18 – Industry Specific Redundancy Scheme;
 - Clause 20 – Minimum Wages;
 - Clause 32 – Penalty Rates; and
 - Clause 33 – Overtime.
7. The Master Plumber Group will provide separate submissions on the various matters that the Master Plumbers Group continues to seek a variation, or variations, to. These submissions will be provided at the direction of the Commission.
8. On 20 May 2016, the Commission published the exposure draft of the *Plumbing and Fire Sprinklers Award 2016 (PFS Award 2016)*. These submissions contain the Master Plumbers Group commentary on PFS Award 2016. In particular these submissions deal with the various questions / comments raised by the Commission throughout PFS Award 2016.
9. In undertaking the review of the exposure draft of the PFS Award 2016, the Master Plumbers Group have identified a number of additional variations that require amendment to ensure that those particular clauses reflect the situation and circumstances that exists at this point of time and into the future.
10. The Master Plumbers Group have considered each of the comments / questions posed by the Commission in the exposure draft of the PFS Award 2016. The comments / questions posed by the Commission are dealt with individually, as follows.

Clause 7.2 – Facilitative provisions for flexible working practices

11. The Master Plumbers Group submit that the reference to Clause 15.3 in Clause 7.2 should read “the majority of the affected employees”.
12. The Master Plumbers Group believe that it is appropriate that these words be inserted in to that particular provision, as they accurately reflect the nature of the industry.

13. There are numerous instances of employers having multiple sites operating at the same time. It is submitted that the inclusion of the words “a majority of employees” (or words similar) may lead to confusion with the employer – in that the question becomes whether the employer is obligated to get the agreement of all employees, or only those employees at the affected job site? By including the words “the majority of the affected employees” the confusion has been resolved in that it overcomes the confusion; as the (now, new) obligation to consult remains with the “affected employees”, not the entirety of the employers’ workforce.
14. The Master Plumbers Group suggest that the same words be inserted into Clause 7.2 of PFS Award 2016, for Clause 15.3, 15.4, 16.2 and 26.2.
15. As previously submitted the insertion of the words “the majority of the affected employees” in Clause 15.3, 15.4, 16.2 and 26.2 would require the employer to obtain the approval of the majority of their employees at that one particular site, rather than the majority of all employees employed by the employer.

Clause 11 – Part Time Employment

16. The Master Plumbers Group acknowledge and understand that Clause 11 – Part Time Employment may be affected by the (yet to be finalised) proceedings in AM 2014 / 196 – Part Time Employment. As a result, the Master Plumbers Group will not be making any submissions on Clause 11 – Part Time Employment of PFS Award 2016.

Clause 12 – Casual Employment

17. The Master Plumbers Group acknowledge and understand that Clause 12 – Casual Employment may be affected by the (yet to be finalised) proceedings in AM 2014 / 197 – Casual Employment. As a result, the Master Plumbers Group will not be making any submissions on Clause 12 – Casual Employment of PFS Award 2016.

Clause 13.14(d) – Adult Apprentices

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

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

Clause 16.5 – Overtime rest breaks and Clause 16.6 – Overtime Meal Breaks

25. The Master Plumbers Group understand that it makes sense for Clause 16.5 – Overtime rest breaks and Clause 16.6 – Overtime meal breaks to be included in Clause 16 – Breaks, however, from a functional point of view it is the Master Plumbers Group view that Clause 16.5 – Overtime rest breaks and Clause 16.6 – Overtime meal breaks should be inserted into Clause 21 – Overtime (as Clauses Clause 21.6 – Overtime rest breaks and Clause 21.7 – Overtime meal breaks). If these clauses are in fact located in Clause 21 – Overtime, rather than Clause 16 – Breaks, it means that all provisions dealing with overtime are centrally located – this makes it easier for a reader (whether that reader be an employer or that reader be an employee) of the PFS Award 2016 to comprehend their obligations with respect to overtime.

Clause 18.8 – Payment of Wages

26. The Commission has asked that the parties consider whether Clause 18.8 – Payment of Wages of PFS Award 2016, “should specify that payment by electronic means is an acceptable payment of wages method”.
27. In considering whether Clause 18.8 – Payment of Wages of PFS Award 2016, “should specify that payment by electronic means is an acceptable payment of wages method” the Master Plumbers Group have developed the view that the entire clause is not representative of 2016 and beyond, but rather representative of a system that was alive and well some twenty (20), thirty (30) or even forty (40) years ago.

28. It is the Master Plumbers Groups view that the following Payment of Wages clause be inserted into the PFS Award 2016, as Clause 18.8 – Payment of wages:-

18.8 Payment of wages

- (a) All wages, allowances and other monies must be paid in cash or electronic funds transfer (**EFT**) or cheque.
 - (b) Payments must be paid and available to the employee no later than the cessation of ordinary hours of work on Thursday of each working week.
 - (c) An employee paid by cheque will be allowed reasonable time as agreed between the employer and the employee, to attend the branch of their bank nearest the workplace to cash such cheques or draw upon the accounts during working hours.
 - (d) When notice is given in accordance with Clause 31—Termination of employment, monies due to the employee must be paid at the time of termination. Where this is not practicable, monies will be paid by EFT, transferred into the employee’s account as soon as practicable.
29. The proposed clause has its’ foundation in both Clause 27 – Payment of wages of PFS Award 2010 and Clause 18.8 – Payment of wages of PFS Award 2016. The proposed draft represents significant parts of both Clause 27 – Payment of wages of PFS Award 2010 and Clause 18.8 – Payment of wages of PFS Award 2016. The proposed clause seeks to modernise the provisions to reflect the variety of ways that persons can access their bank accounts – whether that be in person, through a machine (whether that be an ATM, or other electronic method of accessing your bank e.g. EFTPOS) or through other electronic means (phone, computer, mobile, etc).
30. If the Commission does not find favour in the clause proposed by the Master Plumbers Group then the Master Plumbers Group makes the following submissions on the commentary made by the Commission at Clause 18.8 – Payment of Wages.
31. The clause should be varied to “specify that payment by electronic means is an acceptable payment of wages method”.

32. It is submitted that additional changes to the clause should be made. The additional changes that need to be made to Clause 18.8 – Payment of Wages are:-

32.1.1 **Clause 18.8(b)** – should be confined to an employee who is paid by cheque.

32.1.2 In all other circumstances the employee has their wages paid directly into their bank account and given the variety of ways that an employee can access their money there is no need for an employee to be allowed time off to attend the “branch of their bank”.

32.1.3 In addition, the clause as presently drafted is limited to an employee paid by cheque, this should be continued in to the future. It is therefore submitted that the following words “other than cash” be deleted and the words “cheque” be inserted in lieu thereof. This would ensure that only an employee paid by cheque would be entitled to take “reasonable time ... to attend the branch of their bank”.

32.2.1 **Clause 18.8(d)** and **Clause 18.8(e)** – should be confined to an employee who is paid by cash.

32.2.2 The only time that either Clause 18.8(d) and / or Clause 18.8(e) should be invoked is where an employee is paid in cash.

32.2.3 It is submitted that Clause 18.8(d) has been drafted to ensure that an employee paid in cash is not disadvantaged by having to wait around the site for hour after hour whilst the employer waits to receive the cash delivery to pay the employee their wages.

32.2.4 Under Clause 18.8(c) an employer is obliged to pay an employee “not later than the end of ordinary hours of work on Thursday of each working week”.

32.2.5 For employees paid by electronic funds transfer this should suffice. For an employee paid by electronic funds transfer there should be no other obligations and / or qualifications on how and when an employee is to be paid.

32.2.6 On this basis, the Master Plumbers Group submits that the words “paid in cash” be inserted after “employee” and before “must” in Clause 18.8(d); Clause 18.8(d) would then read “... an employee paid in cash must be”. In addition, in Clause 18.8(e) the words “paid in cash” be inserted after “employee” and before “kept”; Clause 18.8(e) would then read “An employee paid in cash kept waiting ...”.

Clause 20.3(f) – Industry disability allowance and space, height and dirt money allowance – fire sprinklers fitter employees

30. Clause 18.2(b)(iii) – Apprentices engaged before 1 January 2014, and Clause 18.2(c)(iii) – Apprentices engaged on or after 1 January 2014, of PFS Award 2016, (which replicates Clause 20.2(b)(iii) and Clause 20.2(c)(iii) of PFS Award 2010) provides that the apprentice wages will be determined by the applicable apprentice “percentage” “for sprinkler pipe – fitting: ... (of) ... the industry disability allowance and space, height and dirt money (clause 20.3(f))”. On that basis, Clause 20.3(f) is payable to an apprentice, but only at the applicable apprentice “percentage”. So the answer to the question is “no”.

Clause 21 – Overtime

31. The Master Plumbers Group acknowledge and understand that Clause 21 – Overtime may be affected by the (yet to be finalised) proceedings in AM 2014 / 300 – Award flexibility. As a result, the Master Plumbers Group will not be making any submissions on Clause 21 - Overtime of PFS Award 2016.

Clause 23 – Annual leave

32. The Master Plumbers Group acknowledge and understand that Clause 23 – Annual leave may be affected by the (yet to be finalised) proceedings in AM 2014 / 47 – Annual leave. As a result, the Master Plumbers Group will not be making any submissions on Clause 23 – Annual leave of PFS Award 2016.

Schedule B – All Purpose rates of Pay

33. Neither Clause 18.2(b)(iii), nor Clause 18.2(c)(iii) of PFS Award 2016 (which replicate Clause 20.2(b)(iii) and Clause 20.2(c)(iii) of PFS Award 2010) reference the “sprinkler fitting trade allowance” (Clause 20.3(e) of PFS Award 2016 or Clause 21.1(f) of PFS Award 2010) as being a component that makes up the wages for a fire sprinkler fitter apprentice. On that basis the answer asked by the Commission is that the allowance is not payable to a fire sprinkler fitter apprentice.

Schedule H – Peak Sports Apprenticeships

34. It is the view of the Master Plumbers Group that the list of Peak Sports Bodies would accord with those types of organisations that could be considered to be a Peak Sports Body.

Schedule I – National Training Wage - Coverage (Training Programs)

35. The parties have been “asked to identify *“any training program which applies to the same occupation and achieves the same training outcome as an existing apprenticeship in an award as at 25 June 1997”* that they consider should not be covered by this Schedule”. The Master Plumbers Group has not been able to identify any such “*training programs*”; as the training for a Plumber remains fundamentally the same in 2016, as it did in 1997 – in that the only way to become a registered plumber is through an apprenticeship.

Schedule I – National Training Wage - Allocation of Traineeships to Wage Levels

36. The parties have been “asked to review the packages listed to ensure the lists are complete and up – to – date”. It is the Master Plumbers Group view that the only applicable training package on the list is the “Construction, Plumbing and Services Integrated Framework”. However, it is the Master Plumbers Groups view that the current training package is titled “Construction, Plumbing and Services Training Package”. On this basis all other references could be deleted from the table in Schedule I – National Training Wage.

Schedule K – 2015 Part – day Public Holidays

- 37.** The Master Plumbers Group acknowledge and understand that Schedule K – Part Day Public Holidays may be affected by the (yet to be finalised) proceedings in AM 2014 / 301 – Public Holidays. As a result, the Master Plumbers Group will not be making any submissions on Schedule K – Part Day Public Holidays.

Tuesday 5 July 2016