

# BEFORE THE FAIR WORK COMMISSION

s.156 - FAIR WORK ACT 2009

## 4 YEARLY REVIEW OF MODERN AWARDS

### AM 2016/15 – PLAIN LANGUAGE – STANDARD CLAUSES – REDUNDANCY CLAUSES – AWARD SPECIFIC MATTERS

## SUBMISSION

### MASTER BUILDERS AUSTRALIA

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#### A. INTRODUCTION

1. This submission is filed by Master Builders Australia ('**Master Builders**') pursuant to the Decision of 11 December 2018 [2018] FWCFB 7447 ('**the Decision**') and in response to the directions at paragraph [24] of the Decision with respect to the *Building and Construction (General) On-Site Award 2010* ('**Building Award**').

#### B. OUTMODED REFERENCES

2. Paragraphs [21] - [24] of the Decision refer to a technical issue arising from the wording of the industry-specific redundancy schemes at clause 18.4(d) of the *Plumbing and Fire Sprinklers Award 2010* ('**Plumbing Award**') and clause 17.4(c) of the Building Award which currently read as follows:

*"The redundancy pay scheme must be an Approved Worker Entitlement Fund under the Fringe Benefits Tax Regulations 1992".*

3. The Decision states that the *Fringe Benefits Tax Regulations 1992* have been subsequently replaced by the *Fringe Benefits Tax Assessment Regulations 2018*<sup>1</sup> and that the term 'approved worker entitlement funds' is now defined in the *Fringe Benefits Tax Assessment Act 1986* (Cth) at s.58PB.<sup>2</sup>
4. Master Builders first raised this issue in these proceedings in our correspondence of 6 September 2018<sup>3</sup> where we brought to the Commission's attention that:

*"...we note that the reference at clause 17.4(c) to Worker Entitlement Funds being defined as being approved under the Fringe Benefits Tax Regulations. Our examination of these regulations suggest that the Schedule which historically contained a list of approved funds (Schedule 3) no longer exists and has been repealed.*

*While Master Builders has sought advice as to the legislative background and history regarding this deletion, we understand it is likely that changes to tax law in 2011 removed the requirement for the schedule and replaced it with a requirement to be identified on the Australian Business Register as an Approved Worker Entitlement Fund. As such, the existing reference at clause 17.4(c) may be technically deficient and require a reference update to ensure currency."*

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<sup>1</sup> [2018] FWCFB 7447 at para [22]

<sup>2</sup> *Ibid* at para [23]

<sup>3</sup> AM2016/8 & AM2016/15 -4 Yearly Award Review – Plain Language Standard Clauses – Industry Specific Redundancy Schemes, 6 September 2018

## **C. CONCLUSION**

5. In accordance with paragraph [24] of the Decision we have considered whether the reference to the '*Fringe Benefits Tax Regulations 1992*' in clause 17.4(c) of the Building Award should be replaced with a reference to the '*Fringe Benefits Tax Assessment Act 1986*' and confirm that such an amendment is appropriate.

**MASTER BUILDERS AUSTRALIA**

**21 DECEMBER 2018**