



4 Yearly Review of Modern Awards – Plain Language – Shutdown  
Provisions Decision (AM2016/15, [2022] FWCFB 161)

*Plumbing and Fire Sprinklers Award 2020*

Filed by:-

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1. In accordance with paragraph 161 – Next Steps of the 4 Yearly Review of Modern Awards – Plain Language – Shutdown Provisions Decision (AM2016/15, [2022] FWCFB 161) (**Shutdown Decision**) the Master Plumbers and Mechanical Services Association of Australia (**Master Plumbers**) makes the following submissions with respect to the Draft Determination for the *Plumbing and Fire Sprinklers Award 2020 (PFS Award)*.
2. Master Plumbers is also a co – submitter to the submissions made by Australian Business Industrial, the New South Wales Business Chamber and the Australian Chamber of Commerce and Industry with respect to the Shutdown Decision as a whole.
3. Master Plumbers supports and endorses the submissions made by Australian Business Industrial, the New South Wales Business Chamber and the Australian Chamber of Commerce and Industry.
4. The following submissions are made on the basis that the Commission does not favour with the submissions made by Australian Business Industrial, the New South Wales Business Chamber and the Australian Chamber of Commerce and Industry and supported by Master Plumbers.
5. The following submissions deal solely with the PFS Award.
6. The Draft Determination for the PFS Award contains two (2) variations to the provisional view expressed in paragraph 156 of the Shutdown Decision. The provisional view of the Commission as expressed in paragraph 156 of the Shutdown Decision was:-

“XX.XX Direction to take annual leave during shutdown

- (a) Clause XX.XX applies if an employer:
  - (i) intends to shut down all or part of its operation for a particular period (**temporary shutdown period**); and
  - (ii) wishes to require affected employees to take paid annual leave during that period.
- (b) The employer must give the affected employees 28 days’ written notice of a temporary shutdown period, or any shorter period agreed between them and the employer.
- (c) The employer must give written notice of a temporary shutdown period to any employee who is engaged after the notice is given under clause XX.XX(b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.

- (d) The employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement.
- (e) A direction by the employer under clause XX.XX(d):
  - (i) must be in writing; and
  - (ii) must be reasonable.
- (f) The employee must take paid annual leave in accordance with a direction under clause XX.XX(d).
- (g) An employee may take annual leave in advance during a temporary shutdown period in accordance with an agreement under clause XX.XX.
- (h) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause XX.XX, to which an entitlement has not been accrued, is to be taken into account.
- (i) Clauses XX.XX to XX.XX do not apply to a period of annual leave that an employee is required to take during a temporary shutdown period in accordance with clause XX.XX.”

7. The first variation to the provisional view is contained in Clause 24.4(a)(i) of the Draft Determination.
8. The provisional view expressed in paragraph 156 of the Shutdown Decision has been altered through the inclusion of the words “in conjunction with the Christmas / New Year period for the purpose of giving the whole of the annual leave due to all, or the majority of their employees qualified for such leave” after the words “particular period”.
9. It is understood that in interpreting an award a person would start with the plain and ordinary meaning of the words that are to be considered.
10. Master Plumbers acknowledges and understands that the additional words have been taken directly out of Clause 24.4(b) of the PFS Award. However, it is Master Plumbers view that whilst the words currently exist in the PFS Award are they not clear and concise in their intent, purpose and operation.

11. As the words are not clear and concise in their intent, purpose and operation, Master Plumbers oppose the insertion of the words “in conjunction with the Christmas / New Year period for the purpose of giving the whole of the annual leave due to all, or the majority of their employees qualified for such leave” in the Draft Determination. Master Plumbers submit that Clause 24.4(a)(i) of the Draft Determination should stop after the words “particular period”.
12. Master Plumbers do not take issue with the words “in conjunction with the Christmas / New Year period for the purpose of giving”. Master Plumbers raises no concern about the words “in conjunction with the Christmas / New Year period for the purpose of giving”.
13. However, Master Plumbers does take issue with the words “the whole of the annual leave due to all, or the majority of their employees qualified for such leave” as the words are in the view of Master Plumbers not clear and concise in their intent, purpose and operation.
14. Therefore, Master Plumbers raises issue with the insertion, and objects to the insertion, of the words “the whole of the annual leave due to all, or the majority of their employees qualified for such leave” in the Draft Determination.
15. If an employer applied the plain and ordinary meaning to these words at issue:-
  - 15.1 is the employer required to examine and assess each individual employee, then determine what annual leave credits the individual employee has accrued and then have an individual temporary shutdown period for each individual employee based on their accrued amount of annual leave, so that each individual employee can access and use “the whole of the annual leave” due to that employee? or
  - 15.2 is the employer required to examine and assess each individual employee, then determine what annual leave credits the individual employee has accrued and then have a temporary shutdown period that whilst applying to all employees would take into account each individual employees annual leave credits, so that each individual employee can access and use all of their accrued annual leave (but not go into debit)?
16. By stopping the clause at “particular period”, the (potential) confusion has been removed and clarity restored.
17. The second variation to the provisional view is contained in Clause 24.4(b) of the Draft Determination.

18. The provisional view expressed in paragraph 156 of the Shutdown Decision has been altered by requiring an employer to provide an employee with two (2) months' notice of a temporary shutdown period.
19. The notice period expressed in Clause 24.4(b) of the Draft Determination to the PFS Award is the same as that required in Clause 24.4(b) of the PFS Award (as it currently stands).
20. Master Plumbers does not oppose the variation to the provisional view contained in Clause 24.4(b).