

Master Builders Australia

## Submission to the Fair Work Commission

on

*4 Yearly Review of Modern Awards –*

*Payment of Wages (AM2016/8)*

4 December 2017



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## CONTENTS

1	Introduction .....	3
2	Adoption of the Commission's provisional model terms.....	3
3	References to the On-Site Award in ACTU submission.....	4

## 1 Introduction

- 1.1 This submission is made by Master Builders Australia ('Master Builders'). 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.
- 1.2 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.
- 1.3 This submission is filed pursuant to the Commission's Statement and directions dated 19 September 2017<sup>1</sup>, with reference to the following:
- (i) The provisional 'payment of wages and other amounts' model term set out at paragraph [34] of the Full Bench decision dated 1 December 2016 ([2016] FWCFB 8463) ('Decision');
  - (ii) The provisional 'payment on termination of employment' model term at paragraph [117] of the Decision; and
  - (iii) The issue related to the accrual of payments referred to at paragraphs [19] to [22] of the Statement of the Full Bench issued on 19 May 2017.<sup>2</sup>
- 1.4 Master Builders maintains an interest in the *Building and Construction General On-Site Award 2010* (On-Site Award) and the *Joinery and Building Trades Award 2010* (Joinery Award) and makes the following submissions in reply to the ACTU's submissions<sup>3</sup> with reference to those two awards.

## 2 Adoption of the Commission's provisional model terms

- 2.1 Master Builders urges against the Commission adopting the ACTU's proposal.<sup>4</sup>

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<sup>1</sup> [2017] FWCFB 4817 at paragraph [2] of Attachment A

<sup>2</sup> [2017] FWCFB 2729

<sup>3</sup> ACTU submission – 4 yearly review of modern awards – Payment of Wages – AM2016/8 – 30 October 2017

<sup>4</sup> Ibid at Schedule 2.

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- 2.2 Master Builder supports the Commission’s provisional ‘payment of wages and other amounts’ and ‘payment on termination of employment’ model terms<sup>5</sup>. We submit that, consistent with our previous submissions,<sup>6</sup> the insertion of the Commission’s provisional model terms (albeit with minor sector specific amendments) would be the most elegant and least complex approach.
- 2.3 The provisional term would ensure all modern awards better meet the modern awards objective, by facilitating a simpler, easier to understand and more consistent payment of wages provision across all modern awards. We submit this would better meet the objectives under section 134(1)(g) of the FW Act, while providing for the unique circumstances of particular sectors.
- 2.4 Master Builders’ has proposed minor amendments to the Commission’s provisional model terms to better suit the On-Site and Joinery Awards, as outlined in our previous submissions.<sup>7</sup> A draft setting out our proposed amendments to the provisional ‘payment of wages and other amounts’ and ‘payment on termination of employment’ model terms, with proposed amendments highlighted, is at **Attachment A** of this submission.

### 3 References to the On-Site Award in ACTU submission.

- 3.1 The ACTU make reference to a number of awards, including the On-Site Award, which provide for annual leave and loading to be paid in advance of leave commencing. The ACTU propose an optional model term to address circumstances in which this occurs.<sup>8</sup>
- 3.2 While clause 38.2 of the On-Site Award does provide for leave to be paid in advance for an employee taking annual leave, the ACTU’s provisional term<sup>9</sup> is unnecessary. Master Builders’ sector specific alterations<sup>10</sup> to the Commission’s

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<sup>5</sup> [2016] FWCFB 8463 at paras [34] and [117].

<sup>6</sup> Master Builders Australia submission – 4 yearly review of modern awards – Payment of Wages – AM2016/8 – 30 October 2017 at para [2.1]

<sup>7</sup> Ibid at Attachment A – refer to paras [4] and [5]

<sup>8</sup> ACTU submission – 4 yearly review of modern awards – Payment of Wages – AM2016/8 – 30 October 2017 at para [33]

<sup>9</sup> Ibid at Schedule 2 clause X.1(b)

<sup>10</sup> See clause x.1(a)(ii) of **Attachment A**

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provisional model term adequately provides for and comprehends circumstances enlivened by clause 38.2 of the On-Site award.

- 3.3 The ACTU submit further that piece rates arrangements should to be prescribed under any 'payment of wages' model term and has included reference to same in its provisional model term.<sup>11</sup> While piece rates are provided for under clause 19.6 of the On-Site Award, these too would also be adequately covered under the Commission's 'payment of wages and other amounts' model terms, albeit with our proposed sector specific amendments.<sup>12</sup>
- 3.4 We also observe that the provisions in the On-Site Award referenced within the ACTU's submission, per paragraphs 3.2 and 3.3 above, are in our submission not a source confusion amongst award users in the building and construction sector. The ACTU's proposal therefore seeks to address confusion that does not exist amongst users of the On-Site Award.
- 3.5 We submit the ACTU's alternative proposal to that of the Commission's provisional 'payment of wages and other amounts' and 'payment on termination of employment' model terms is unnecessary, would create greater complexity and is needlessly prescriptive.
- 3.6 We reiterate the support of Master Builders for the Commission's provisional term, amended to incorporate sector specific nuances, per **Attachment A**.

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<sup>11</sup> ACTU submission – 4 yearly review of modern awards – Payment of Wages – AM2016/8 – 30 October 2017 at para [33]

<sup>12</sup> As expressed in clause x.1(a)(ii) of **Attachment A**.

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## **Attachment A**

### **X. Payment of wages and other amounts**

#### **x.1 Pay periods and pay days**

*(a) The employer must pay each employee no later than 7 days after the end of each pay period:*

*(i) the employee's wages for the pay period; and*

*(ii) all other amounts that are due **and payable** to the employee under this award and the NES for the pay period.*

*(b) An employee's pay period may be:*

*(i) one week;*

*(ii) two weeks; or*

*(iii) subject to paragraph (e), one month.*

*(c) The employer must notify each employee in writing of their pay day and pay period.*

*(d) Subject to paragraph (e), the employer may change an employee's pay day or pay period after giving 4 weeks' notice in writing to the employee.*

*(e) An employer may only change from a one week or two week pay period to a one month pay period by agreement with affected employees. If employees were paid monthly prior to [insert date of commencement of this clause], the employer may continue to pay employees in that classification monthly without further agreement.*

*(f) Where an employee's pay period is one month, two weeks must be paid in advance and two weeks in arrears.*

#### **x.2 Method of payment**

*Payments under clause x.1(a) must be made by electronic funds transfer to the account at a bank or financial institution nominated by the employee, or by cash or cheque.*

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**x.3 Payment on termination of employment**

(a) ~~Subject to paragraph (b)~~ Where notice is given as required by clause 16 of this Award, the employer must pay an employee no later than 7 days after the employee's last day of employment:

(i) the employee's wages for any complete or incomplete pay period up to the end of the employee's last day of employment;  
and

(ii) all other amounts that are due to the employee under this award and the NES.

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