

BEFORE THE FAIR WORK COMMISSION

S.156 – 4 YEARLY REVIEW OF MODERN AWARDS

MATTER NO: AM 2016/8 – PAYMENT OF WAGES

SUBMISSIONS OF MASTER BUILDERS AUSTRALIA

BACKGROUND

1. This submission is filed by Master Builders Australia ('Master Builders') with reference to the above matter and the Directions of 22 April 2020 ('the Directions').
2. 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').
3. The Directions relate to an outstanding application by the Housing Industry Association ('HIA') to vary clause 31.3 of the On-Site Award in relation to the frequency of the payment of wages¹ and seek that all parties supporting HIA's application, file written submissions and evidence by 5:00pm Wednesday 13 May 2020.

RELATED VARIATIONS SOUGHT BY MASTER BUILDERS WHICH REMAIN OUTSTANDING

4. Before addressing the HIA's variations, we draw the Commission's attention to a series of variations sought by Master Builders which are relevant to provisions concerning Payment of Wages. These variations were sought during the award-stage proceedings in AM2014/260 and AM2014/274. As is the case with the remaining HIA variations, it is understood that remaining Master Builders variations will also be dealt with in this matter.²
5. Master Builders' remaining variations seek to:
 - a) Provide for payments to employees to be made either weekly or fortnightly within both the On-Site and Joinery Awards; and
 - b) Clarify the provision that provides a penalty for employers in circumstances where an employee is kept waiting for their wages within both the On-Site and Joinery Awards; and
 - c) Replace the payment on termination provision with the Commission's model term, with the exception of some minor award-specific amendments within the On-Site Award; and
 - d) Remove the requirement for employees paid by cheque to be allowed reasonable time, as agreed between the employer and the employee, to attend the branch of the bank nearest the workplace to cash cheques during working hours within the On-Site Award; and
 - e) Amend the provision within the Joinery award that deals with methods of payment to reflect modern business practices and to align with the mirror provision within the On-Site Award.³
6. Master Builders continues to rely on its previous submissions as filed.⁴ Attachment A contains draft determinations to give effect to our variations for both the On-Site and Joinery Awards.

POSITION ON VARIATION PROPOSED BY HIA

¹ [Housing Industry Association submission - AM2016-8 - 4 Yearly Review of Modern Awards - Payment of Wages - 28 September 2018](#)

² [Refer to FWC Correspondence dated 22 March 2017 annexing Construction group issues summary document at item 4](#)

³ [Master Builders Australia submission - AM2016-23 - 4 Yearly Review of Modern Awards - Construction Awards at paras \[16\] and \[27\]](#)

⁴ *Ibid*

7. As noted above, Master Builders continues to rely on its previous submissions as filed in relation to existing clause 31.3 of the On-Site Award and existing clause 26.1 of the Joinery Award.⁵
8. It is our submission that the Commission should make the variations sought by Master Builders.
9. If, however, the Commission were minded to issue a decision that gives effect to the HIA's draft determination to vary clause 31.3 of the On-Site Award,⁶ Master Builders would not oppose that course, including for clause 26.1 of the Joinery Award.
10. Further, we would note that the HIA's draft determination is not inconsistent with section 323(1) of the Fair Work Act, which requires that an employer pay an employee at least monthly.

MASTER BUILDERS AUSTRALIA

13 MAY 2020

⁵ *Ibid*

⁶ [Housing Industry Association submission - AM2016-8 - 4 Yearly Review of Modern Awards - Payment of Wages - 28 September 2018](#)

Attachment A

MA000020 PR
FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards – Payment of Wages

(AM2016/8)

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010

[\[MA000020\]](#)

Building, metal and civil construction industries

JUSTICE ROSS, PRESIDENT

MELBOURNE, XX XX XXXX

A. Further to the decision issued by the Fair Work Commission on X [XXX], the above award is varied as follows:

1. By deleting clause 31.2.
2. By deleting clause 31.3 and inserting the following as clause 31.2:

31.2 Payments must be paid to employees either weekly or fortnightly.

3. By deleting clause 31.4 and inserting the following as clause 31.3:

31.3 (a) When notice is given in accordance with clause 16 of this award, the employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and

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

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

4. By deleting clause 31.5 and inserting the following as clause 31.4:

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.

5. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from XX XX 2020. In accordance with s. 166(5) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX XX.

PRESIDENT

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards – Payment of Wages (AM2016/8)

JOINERY AND BUILDING TRADES AWARD 2010 [\[MA000029\]](#)

Building, metal and civil construction industries

JUSTICE ROSS, PRESIDENT

MELBOURNE, XX XX XXXX

A. Further to the decision issued by the Fair Work Commission on X [XXX], the above award is varied as follows:

1. By deleting clause 26.1 and inserting the following:

26.1 Payments must be paid to employees either weekly or fortnightly.

2. By deleting clause 26.2 and inserting the following:

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.

3. By deleting clause 26.3 and inserting the following:

26.3 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.

4. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from XX XX 2020. In accordance with s. 166(5) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX XX.

PRESIDENT