



MASTER BUILDERS
A U S T R A L I A

21 October 2016

The Hon. Justice Ross, President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

Via email: chambers.ross.j@fwc.gov.au

Dear Justice Ross

4 YEARLY REVIEW OF MODERN AWARDS — PAYMENT OF WAGES – AM2016/8

We refer to the above matter and the Statement of 14 October 2016¹ regarding payment of wages on termination of employment.

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).

The purpose of this letter is to outline the position of Master Builders in response to the questions set out at paragraph 20 of the Statement.

Question 1:

Master Builders considers the provisional default term to be appropriate subject to a minor alteration that is necessary to accommodate issues associated with the Daily Hire category of employment under the On-site Award. A revised draft determination setting out the alteration is at **Attachment A**.

Question 2:

Master Builders would not oppose the inclusion of the provisional default term in all modern awards subject to the alterations proposed herein.

Question 3:

Master Builders does not seek to retain a current award provision, however, we do seek to retain an *element* of the current provision relevant to Daily Hire employment in the On-Site Award. This retention is achieved by our revised proposal at **Attachment A**.

Question 4:

Onsite Award

Master Builders' revised alternative draft determination, as it relates to the On-Site award, accommodates this issue via the inclusion of additional words in the first sentence being "*When notice is given in accordance with clause 16 of this Award...*"

¹ [2016] FWCFB 7455

Clause 16 is relevant as it sets out the requisite notice periods and resulting obligations of the employer and employee. It contains an express reference to the NES and the exemption provided from same with respect to the Daily Hire category of employment.

The additional words we propose are primarily intended to draw the reader's attention to and appropriately accommodate notice obligations elsewhere within the Award and the NES exemption associated with Daily Hire. Those words concurrently satisfy the need to deal with matters arising with respect to s. 117 (2) (b).

Other awards

More generally, Master Builders would propose that the words "*When notice is given...*" be added to the provisional default term so that it would read "*When notice is given in, the employer must pay all amounts that are due to an employee....*"

Proceedings today

Ms Sostarko will appear in this proceeding for Master Builders and will speak to this letter and attachment as required to assist the Commission.

Yours sincerely

Shaun Schmitke
National Director Industrial Relations

MA000020 PRXXXXXX

ATTACHMENT A

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards – Award Stage

(AM2016/8)

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010

[MA000020]

Building, metal and civil construction industries

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT BOOTH
DEPUTY PRESIDENT CLANCY
COMMISSIONER CRIBB
COMMISSIONER HUNT

MELBOURNE, XX OCTOBER 2016

4 yearly review of modern awards – payment of wages common issue – payment of wages on termination of employment

- A. Further to the decision issued by the Fair Work Commission on XX Month 2016, the above award is varied as follows:
1. By deleting clause 31.4 and replacing it with the following:
31.4 *When notice is given in accordance with clause 16 of this Award, the employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:*
 - (i) *within 7 days after the employee's last day of employment; or*
 - (ii) *on the next normal pay day.*
- B. This determination comes into operation from XX Month 2016. In accordance with s. 165(3) 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 Month 2016.

PRESIDENT