

## BEFORE THE FAIR WORK COMMISSION

### S.156 – 4 Yearly Review of Modern Awards

#### MATTER NO: AM2016/8 – Payment of Wages – Payments on Termination Model Term – Draft Variation Determination – *Building and Construction General On-Site Award 2010*

#### SUBMISSIONS OF MASTER BUILDERS AUSTRALIA

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#### BACKGROUND

1. This submission is filed by Master Builders Australia ('Master Builders') with reference to the above matter and the Report of 17 July 2020<sup>1</sup> ('the Report').
2. Master Builders maintains an interest in the *Building and Construction General On-Site Award 2010* ('the On-Site Award') and makes these submissions in response to paragraph [8] of the Report.

#### SUMMARY OF MASTER BUILDERS' POSITION

3. Master Builders relies on our previous submissions<sup>2</sup> wherein we outlined our primary position which was to support the inclusion of the Commission's Model Payment on Termination model term, subject to it being amended to adopt minor Award-specific alterations.
4. We note that the Commission has determined not to delete clause 31.4 of the On-Site Award and replace it with the model term<sup>3</sup>, however, identified that the current termination payment term does not address all of the circumstances in which termination payments may be required.<sup>4</sup>
5. Our secondary position, therefore, is that we would not oppose the deletion of clause 31.4 within the On-Site Award and for it to be replaced with the Draft Determination, at **Attachment B** of the Report, save for a number of amendments to improve clarity and ensure consistency with existing payment of wages provisions as outlined herein.
6. The Commission would also be aware that there are a number of claims which remain unresolved in this matter, including those seeking to vary the frequency of which payments can be made under clause 31.3. Those claims are the subject of on-going submissions and a two-day hearing to be held on 26 and 27 October 2020.
7. Master Builders submits that the outcome of those outstanding claims in this matter may be relevant to any amendments to the payment on termination provision. We therefore respectfully seek that the settlement of any proposed amendments to clause 31.4 be deferred until all outstanding matters with respect to clause 31 of the On-Site Award have been resolved.

#### PROPOSED CHANGES TO DRAFT DETERMINATION

##### *Draft Clause 31.4(b)*

8. Master Builders submits that clause 31.4(b) of the Draft Determination should be amended as follows so as to provide a signpost to the termination obligations of both employers and employees under clause 16 of the On-Site Award:

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<sup>1</sup> [Fair Work Commission Report - 4 Yearly Review of Modern Awards - AM2016/8 Payment of Wages - Payments on termination model term - draft variation determination - Building and Construction General On-Site Award 2010 - 17 July 2020](#)

<sup>2</sup> See [Submission of Master Builders Australia - AM2016/8 - 4 Yearly Review - Payment on Termination of Employment - 25 September 2019](#), [Submission of Master Builders Australia - AM2016/8 - 4 Yearly Review - Payment of Wages - 30 October 2017](#)

<sup>3</sup> [\[2020\] FWCFB 1131 at para \[237\]](#)

<sup>4</sup> *Ibid* at [238]

(b) Where notice of termination is given by an employer or employee in accordance ~~with clause 16 the terms of this award or the NES~~ the amounts described at clause 31.4(a)(i) must be paid to the employee:

**Draft Clause 31.4(c)(i)**

9. Clause 31.4(c)(i) should be deleted, as it is inconsistent with the Decision of 20 May 2020<sup>5</sup>. In response to a proposed amendment to clause 31.4 of the On-Site Award by the CFMMEU, the Full Bench stated at paragraph [240] of the Decision the following:

*“We do not propose to make the variation proposed. The proposed amendment appears to seek to expand both the class of termination payments to be subject to the clause (to include all other amounts due to the employee under the award and the NES) and the circumstances to which the clause applies. As to the latter point, the current term only applies to termination by notice and the CFMMEU (C & G) proposed variation would extend the term to termination without notice”.*

And further at paragraph [240]:

*“In our view where the scope of a current termination payment term is extended in the manner proposed the 7-day period in the model term should apply to the areas to which the clause is extended. Hence in this instance, in circumstances of summary dismissal a 7-day payment period would apply. Similarly, a 7-day payment period would apply to NES payments and ‘other amounts due’ under the award.”*

10. Therefore, where notice is not given, the award should only provide that an employer is required to pay the employee’s wages and all other amounts due under the NES within 7 days of termination.

**Draft Clause 31.4(c)(ii) – to be renumbered 31.4(c)(i)**

11. To address the consequential amendments required in response to those proposed changes outlined at paragraph 9. above, and to maintain consistency with the methods of payment as outlined in clause 31.1 of the On-Site Award, we propose that clause 31.4(c)(ii) of the Draft Determination be amended as follows:

(ii) ~~(i) forwarded b~~*By electronic funds transfer any payment method prescribed within clause 31.1 by no later than 7 days after the day on which the employee’s employment terminates.*

**MASTER BUILDERS AUSTRALIA**  
**24 July 2020**

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<sup>5</sup> [\[2020\] FWCFB 1131](#)