

BEFORE THE FAIR WORK COMMISSION

s.156 - FAIR WORK ACT 2009

4 YEARLY REVIEW OF MODERN AWARDS

AM 2016/8 – PAYMENT OF WAGES – PAYMENTS ON TERMINATION – OUTSTANDING AWARDS

SUBMISSION IN REPLY

MASTER BUILDERS AUSTRALIA

A. INTRODUCTION

1. This submission in reply is filed by Master Builders Australia ('**Master Builders**') pursuant to the Decision of 26 July 2019¹ ('**the Decision**') and in response to the submissions of the Housing Industry Association ('**HIA**') dated 21 August 2019² and the Australian Industry Group ('**AIG**') dated 21 August 2019.³
2. Master Builders makes these submissions with respect to the *Building and Construction (General) On-Site Award 2010* ('**On-Site Award**') in which Master Builders maintains an interest.

B. BACKGROUND: – PAYMENT OF WAGES ON TERMINATION OF EMPLOYMENT MODEL TERM

3. The Decision dealt with the Payment on termination of employment model term ('**Model Term**') which was finalised in an earlier decision issued on 17 July 2018⁴ and set out as follows:

X. Payment on termination of employment

(a) *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 clause X. 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.

¹ [2019] FWCFB 5146

² *Submission of the Housing Industry Association – AM2016/8 – Payment of Wages – Payment on termination of employment, 21 August 2019.*

³ *Submission of the Australian Industry Group – AM2016/8 – Payment of Wages – Payment on termination, 21 August 2019.*

⁴ [2018] FWCFB 3566

4. The Decision referenced the submissions of Master Builders⁵ wherein we stated our primary position to not oppose the inclusion of the Model Term within both the On-Site Award and the *Joinery and Building Trades Award 2010* (**'Joinery Award'**), subject to the adoption of a number of award-specific amendments proposed to signpost notice requirements specifically prescribed in the relevant provisions that currently exist within both awards.
5. The Decision addressed the submissions of the HIA and AIG which each supported the adoption of the Model Term within the On-Site Award albeit unamended⁶ and as noted at paragraph [1] of this submission, both parties filed further submissions maintaining that position.
6. We note separately that in correspondence dated 7 September 2018 the Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) (**'CFMMEU'**) opposed the On-Site Award being varied to include the Model Term.⁷ There were no grounds or reasons identified or set out to explain the CFMMEU objections.

C. MASTER BUILDERS' POSITION

7. Master Builders primary position is that we are not opposed to the inclusion of the Model Term, subject to it being amended to adopt minor Award-specific alterations as earlier proposed.
8. We respectfully urge the Commission to revisit the virtue and benefits that would arise were our primary position to be adopted, particularly when regard is had to the s.134(1)(g) of the *Fair Work Act 2009*.
9. In the event the Commission maintains the comments expressed in response to our primary position⁸, Master Builders' alternative position is that we would not oppose the inclusion in the On-Site Award of the Model Term in an unamended form. To this end, Master Builders notes and therefore supports the submissions of both the HIA and AIG dated 21 August 2019.
10. The bases for the above position are that the Model Term would (when compared on an holistic basis to the current provision) better meet all of those various elements that constitute the Modern Awards Objective at s.134, particularly because it would:
 - provide a more fair and balanced minimum safety net by allowing employers a reasonable timeframe to reconcile often complex employee entitlements under the On-Site Award, such as allowances and accrued RDOs; and
 - provide greater flexibility for workplaces and recognise modern work practices.
11. In relation to the CFMMEU submission, we urge the Commission to disregard and reject the position they advance. The CFMMEU has not provided any cogent reasoning or evidence to:
 - support their overall position to oppose to the relevant provision being varied;
 - demonstrate any detriment arising were the Model Term to be adopted;
 - satisfactorily explain why the Commission should depart from its model approach; or
 - demonstrate why 31.4 better meets the Modern Awards Objective.

MASTER BUILDERS AUSTRALIA

25 SEPTEMBER 2019

⁵ *Submission of Master Builders Australia – Re: AM2016/8 - 4 Yearly Award Review – Payment on Termination of Employment Clause, dated 6 September 2018 and 30 October 2017.*

⁶ *Submission of the Housing Industry Association – 4 Yearly Review of Modern Awards – Model Clause – Payment of Wages on Termination – AM2016/8, 28 September 2018. Submission of the Australian Industry Group – Re: AM2016/8 – Payment of Wages – Payment of Wages on Termination – Proposals to Vary Modern Awards, 21 September 2018.*

⁷ *CFMMEU correspondence re: AM2016/8 – 4 yearly review of modern awards – Payment of Wages, 7 September 2018*

⁸ [2019] FWCFB 5146 at para [43]