FAIR WORK COMMISSION

DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 5, Item 6 - Review of all modern awards (other than modern enterprise and State PS awards) after first 2 years

National Fire Industry Association
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
(AM2012/146 & Others)

SENIOR DEPUTY PRESIDENT WATSON MELBOURNE, 13 JUNE 2013

Modern Awards Review 2012 - application to vary the Plumbing and Fire Sprinklers Award 2010.

[1] The Fair Work Commission is required by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Provisions Act) to conduct a review of all modern awards, other than modern enterprise awards or State Reference Public Sector Awards, as soon as practicable after 1 January 2012 (the 2012 Review).

[2] Excluding multiple award applications, five applications were made to vary the *Plumbing and Fire Sprinklers Award 2010*[1] (PFS Award) in the 2012 Review:

- AM2012/146 - joint application by the National Fire Industry Association (NFIA) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), as amended on 12 March 2013;

- AM2012/183 - an application by the CEPU;

- AM2012/199 - an application by The Master Plumbers & Mechanical Contractors Association of New South Wales (MPNSW), as amended on 22 February 2013 and further amended on 23 April 2013;

- AM2012/202 - an application by The Master Plumbers' and Mechanical Services Association of Australia (MPA) on behalf of the MPA, the Master Plumbers' Association of Queensland (Union of Employers) (MPQ), the Plumbing Industry Association of South Australia; the Master Plumbers Drainers and Gasfitters Association of ACT Inc; the Master Plumbers Association of Tasmania and the Air Conditioning and Mechanical Contractors' Association of Australia, as amended on 21 December 2012 and on transcript on 26 March 2013[2] by the MPA; and

- AM2012/229 - an application by the Master Plumbers' Association of Queensland (Union of Employers).

[3] The first four variations within the CEPU application concerning apprentices were referred to the Apprentices, Trainees & Juniors Full Bench. The final variation sought by the CEPU in relation to travelling time in clause 21.8(e)(i) of the PFS Award is before me for determination.

[4] The application by the MPNSW contains proposed variations which are also before Full Benches:

- Variation to clause 7—Award flexibility (the Award Flexibility Full Bench); and

- Variations to clause 15.8—Payment by results, clause 15.10—Attendance at a Registered Training Organisation concerning apprentices and inserting a new clause 27 and Schedule F in relation to elite sports apprenticeships (the Apprentices, Trainees & Juniors Full Bench).

[5] The remaining MPNSW variations are before me for determination.

[6] The application by MPA contains two proposed variations which are before a Full Bench:

- A variation concerning apprentices to clause 15.10—Attendance at a Registered Training Organisation (the Apprentices, Trainees & Juniors Full Bench);

- A variation to clause 34—Annual leave (the Annual Leave Full Bench).

[7] The remaining MPA variations are before me for determination, other than those withdrawn on 26 March 2013:[3]

- The variations sought in items 3-5 of its amended application, dealing with part-time employment;

- The variation in item 15, seeking to introduce annualised salaries in clause 20—Minimum wages; and

- The variation in item 32 of its amended application, seeking to introduce time off in lieu of overtime within clause 33—Overtime.

[8] The matters raised in the various applications were dealt with through the filing of written submissions and evidence which were then posted on the Fair Work Commission's 2012 Review web page, conferences and/or hearings on 28 November 2012, and on 25 and 26 March 2013. Following conferences of the parties, involving myself at times, on 25 March 2013, it was determined that four variations arising out of the various applications would be heard on 26 March 2013 and determined as soon as possible, with all remaining matters, other than those variations withdrawn by the MPA, adjourned to allow further discussion between the parties and possible amended variations. The outstanding matters were fully heard on 30 April 2013, and were to be determined, subject to directions that the relevant applicant file amended variations sought and submissions by 23 April 2013.

Legislative provisions applicable to the 2012 Review

[9] The legislative provisions applicable to the 2012 Review were considered in the 29 June 2012[4] and 18 March 2013[5] decisions of the Penalty Rates Full Bench, which considered preliminary questions as to the approach to be taken in the 2012 Review. The approach of the Full Bench to Item 6, Part 2 of Schedule 5 of the Transitional Provisions Act and other relevant legislative provisions is relied on for the purposes of this decision. That approach was summarised in the 29 June 2012 decision as follows:

> "**[99]** To summarise, we reject the proposition that the Review involves a fresh assessment of modern awards unencumbered by previous Tribunal authority. It seems to us that the Review is intended to be narrower in scope than the 4 yearly reviews provided in s.156 of the FW Act. In the context of this Review the Tribunal is unlikely to revisit issues considered as part of the Part 10A award modernisation process unless there are cogent reasons for doing so, such as a significant change in circumstances which warrants a different outcome. Having said that we do not propose to adopt a "high threshold" for the making of variation determinations in the Review, as proposed by the Australian Government and others.
>
> **[100]** The adoption of expressions such as a 'high threshold' or 'a heavy onus' do not assist to illuminate the Review process. In the Review we must review each modern award in its own right and give consideration to the matters set out in subitem 6(2). In considering those matters we will deal with the submissions and evidence on their merits, subject to the constraints identified in paragraph [99] above."

The four matters for determination in this decision

1. Joint application by the NFIA and the CEPU, to incorporate Fire protection systems testers and inspectors within the classification structure

[10] The joint application, as amended on 12 March 2013, seeks to specifically and clearly reflect employees engaged on inspection and testing functions on fire protection systems within the classification structure in clause B.3.1(d) of Schedule B of the PFS Award, with consequential amendments through the addition of necessary definitions in clause 3 and the amendment of the definition of "fire sprinkler fitting" within clause 4—Coverage. The variation proposed is set out in Attachment A, as provided in the most recent amended joint application dated 9 April 2013, to this decision. It includes an additional variation, to clause 20.1, agreed between the CEPU, NFIA, Chubb Australasia, the Fire Protection Association Australia (FPAA), the MPNSW, the MPA and Tyco Australia Pty Ltd.

[11] The variation was proposed to:

- confirm that any employee engaged primarily as a Fire technician is included within the coverage of the PFS Award and "inspecting, testing, maintaining and retrofitting" is included in the scope of work for a Sprinkler pipe fitter; and

- remove any ambiguity and to provide clarification that the role of a Sprinkler pipe fitter encompasses this scope of work as a part of the trade of sprinkler pipe fitting, by addressing the current silence on "inspecting, testing, maintaining and retrofitting" within its definition for "fire sprinkler fitting".

[12] NFIA submitted that in bringing together the previous plumbing and sprinkler fitting awards into a single award and classification structure, the terms of the classification structure within *The Sprinkler Pipe Fitters' Award 1998*[6] (1998 Award) were condensed with the effect that the coverage of an employee who undertakes the inspection and testing functions on fire protection systems under the PFS Award is uncertain. Such work is currently undertaken by participants in the fire protection industry and is known and recognised within the industry as sprinkler system tester work and should be clearly reflected in the PFS Award.

[13] It was submitted that "persons who undertake this Sprinkler System Tester scope of work may or may not be Sprinkler Pipe Fitters, but they are persons who receive specific and relevant training to this scope of work from a qualification or units of competency that is part of the Australian Qualifications Framework".[7] The NFIA and the CEPU submitted that some employees "are engaged and deployed on a purely inspecting and testing basis and while the installation pipe fitting staff are able to carry out testing as an adjunct to their duties, it will not be and is not, their usual role".[8]

[14] It was submitted that "the appropriate classification for a Fire Technician is the Plumbing and mechanical services worker/Sprinkler fitting worker/Fire technician Level 1(d) classification".[9]

[15] The joint application of the NFIA and CEPU was supported by the MPA, the MPANSW, the MPQ, the Fire Protection Association Australia and the two major employers in the fire protection industry Tyco Australia Pty Ltd and Chubb Australasia.

[16] I am satisfied that a variation to clearly encompass employees engaged primarily in inspection and testing functions on fire protection systems within the classification structure of the PFS Award is necessary to provide clarity and to ensure that the work of an employee engaged primarily as a Fire technician "inspecting, testing, maintaining and retrofitting" is included within the coverage of the PFS Award, as it was under the 1998 Award. I am satisfied that the work and the training for this scope of work from a qualification or units of competency is properly reflected at Level 1(d) within the classification structure.

[17] The PFS Award will be varied in the terms proposed by the NFIA and CEPU and is recorded in Attachment A to this decision.

2. Applications by the MPA and MPNSW to vary clause 18—Industry specific redundancy scheme

[18] The NFIA and CEPU applications seek to alter the definition of "redundancy" in clause 18.2 of the PFS Award—"for the purposes of this clause, **redundancy** means a situation where an employee ceases to be employed by an employer other than for reasons of misconduct or refusal of duty" to that reflected in the National Employment Standards (NES) —"employment is terminated at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or because of the insolvency or bankruptcy of the employer".[10] The MPA amended application seeks to achieve this result by excluding a termination which is initiated by the employee from the operation of clause 18. The MPA application also seeks to exclude an employee of a small business employer as defined by the *Fair Work Act 2009* (the Act) from the operation of clause 18 of the PFS Award.

[19] The MPA submitted that the inclusion of the definition of "redundancy" and the omission of a small business exemption in clause 18 of the PFS Award reflected inadvertence or error on the part of the Award Modernisation Full Bench.

[20] The MPA and MPNSW submitted that the industry specific redundancy scheme within the PFS Award is inconsistent with the conventional industrial understanding of redundancy and the NES in s.119(1) of the Act, in respect of the definition of "redundancy", the small business exclusion and its application to apprentices.

[21] The MPA submitted that the omission of a small business exemption is inconsistent with s.513(4) of the *Workplace Relations Act 1996* (WR Act), which limited redundancy payments to the employees of employers of 15 or more employees, with s.525 of the WR Act having the effect of making such non-allowable matters cease in their effect, but that s.123(4)(b) of the Act has the effect of removing the exclusions from obligations to pay redundancy to "an employee to whom an industry-specific redundancy scheme in a modern award applies". The MPA submitted that the broader definition of "redundancy" has compounded and exacerbated the absence of a small business exclusion. The impact has been that, where termination of employment is initiated by the employee through resignation or frustration of the employment contract, an entitlement to redundancy pay arises.

[22] The MPNSW submitted that clause 18.2 of the PFS Award rewards employees who decide to discontinue their employment and places an unreasonable burden on employers, particularly in circumstances of skill shortages. It submitted that a majority of employers in the plumbing industry are small businesses, who are required by clause 18 of the PFS Award not only to make redundancy payments when an employee is made redundant, but also when an employee resigns as it falls within the definition of "where an employee ceases to be employed by an employer".

[23] The MPNSW submitted that clause 18 of the PFS Award:

- "provides a monetary incentive for employees to resign from their employment, leading to decreased retention rates";
- "negatively impacts on retention and provides no incentives for employees to continue their [employment, including] apprenticeships";
- "is contrary to the modern award objective, taking into account the factor set out in clause 134(1)(f)" of the Act; and
- "is contrary to the objects of the *Fair Work Act*, and in particular section 3(g), which states that the object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by '*(g) acknowledging the special circumstances of small and medium sized business*'."

[24] The MPA and MPNSW relied on evidence, in the form of surveys of their members, in support of their applications:

- The MPNSW relied on a statement of Mr P Naylor, Chief Executive Officer of the MPA Group, and General Manager/CEO of the MPNSW, which referred to and attached the results of a survey, "Modern Award Review", of its members in early 2012; 27% of members responded to this survey. Although it was relied on principally in relation to apprenticeship matters, the survey contained a question "Should the obligation be that employees only receive redundancy payments when you genuinely make them redundant?" to which 93.5% of respondents agreed.[11]

- The MPA relied on a survey, "Modern Award Review 2012", it undertook in conjunction with the MPQ and the Plumbing Industry Association of South Australia in early 2012, to which 230 members responded; 88.2% of respondents indicated that they employed less than 15 employees (including working directors). The industry specific redundancy scheme, or variation of it, was not included as one of the matters respondents were invited to nominate as terms and conditions of the PFS Award which suit their businesses or changes the business would benefit from in questions 6 and 7 of the survey. The MPA relied on comments of some respondents in question 8, which asked: "What changes (if any) respondents would you like to see in the PFS Award?" Seven of the 53 responses made, or seven of the 230 respondents who were able to make a comment, recorded a concern about the redundancy provision, generally in relation to the definition.[12]

[25] The MPA and MPNSW applications were supported by the MPAQ, the NFIA and Chubb Australasia and opposed by the CEPU.

[26] The proposition advanced by the MPA that the inclusion of the definition of "redundancy" and the omission of a small business exemption in clause 18 of the PFS Award reflected error or inadvertence on the part of the Award Modernisation Full Bench is unsustainable having regard to the decision of the Award Modernisation Full Bench in relation to the *Building and Construction On-site Award 2010*[13] (Building On-site Award) which it applied to the PFS Award.[14] The Award Modernisation Full Bench considered the same issues as are now raised by the MPA, determining to include the industry specific redundancy scheme in the PFS Award, and its terms and had regard to the history of award provisions for redundancy in the broader construction industry, including the plumbing industry. It also had regard to the terms of the pre-modern awards in the plumbing industry which, in relation to each MPA and MPNSW variation proposed, supported the terms currently contained in clause 18 of the PFS Award. See, for example, the definition of "redundancy" in clause 34.1 of the *Plumbing Trades (Southern States) Construction Award, 1999*,[15] clause 10.1 of the 1998 Award,[16] and clause 30(a) of the *Plumbers and Gasfitters (State) Consolidated Award* [1998 (NSW)],[17] which are in the same terms as clause 18.2 of the PFS Award[18] and which generally applied in pre-modern awards in the plumbing industry. The Award Modernisation Full Bench also applied the general approach it applied in respect of the small business exemption appropriately having regard to the circumstances of the relevant pre-modern awards.[19]

[27] The MPA submission concerning s.513(4) and s.525 of the WR Act provides no basis for the variation of the PFS Award in respect of small business, against Item 6, Part 2 of Schedule 5 of the Transitional Provisions Act. In respect of the small business exemption in relation to redundancies, the Award Modernisation Full Bench considered the arbitral and legislative history of redundancy pay for employees of small businesses including s.513(4) of the *Workplace Relations Amendment (Work Choices) Act 2005*,[20] deciding, as a general rule,

that the small business exemption would be maintained, except for "federal awards and industries in which there was no small business exemption prior to the *Redundancy Case 2004* [PR032004]."[21] The absence of a small business exemption within clause 18 of the PFS Award is consistent with that general rule.

[28] Similarly, the MPA and MPNSW proposition that the industry specific redundancy scheme within clause 18 of the PFS Award is inconsistent with the NES in respect of redundancy provides no basis for the variation of the PFS Award in relation to small business, against Item 6, Part 2 of Schedule 5 of the Transitional Provisions Act. The Act envisages that industry specific redundancy schemes may deviate from the NES provisions in respect of redundancy, with s.123(4)(b) providing that the redundancy pay provisions of the NES, in Subdivision B of Division 11 of Part 2-2 of the Act, do not apply to an employee to whom an industry specific redundancy scheme in a modern award applies. It is an argument considered by and rejected by the Award Modernisation Full Bench.[22]

[29] The remaining submissions of the MPA and MPNSW seek to challenge the merit of the terms of clause 18 of the PFS Award, through a fresh assessment unencumbered by previous authority, rather than to provide cogent reasons why the industry specific redundancy scheme in the PFS Award, as made by the Award Modernisation Full Bench, should be varied to achieve the modern awards objective or to ensure that the PFS Award is operating effectively, without anomalies or technical problems arising from the award modernisation process.

[30] The evidence brought by the MPA and the MPNSW falls well short of establishing a basis for the variation of clause 18 in the context of the 2012 Review. The fact that most respondents to the MPNSW survey believed that "employees only receive redundancy payments when you genuinely make them redundant"[23] and seven of 230 respondents to the MPA survey saw fit to express their dissatisfaction with aspects of clause 18 of the PFS Award and the definition of "redundancy" in particular, does not establish a cogent reason for disturbing the considered outcome of the Award Modernisation Full Bench in respect of clause 18 of the PFS Award.

[31] The MPA and MPNSW essentially reargued matters raised with and considered by the Award Modernisation Full Bench when including an industry specific redundancy scheme within the PFS Award and other construction industry awards, arguing the issues from first principles, rather than in reliance of the matters within Item 6, Part 2 of Schedule 5 of the Transitional Provisions Act and without regard to the approach to the 2012 Review set out in the 29 June 2012 decision of the Penalty Rates Full Bench,[24] which considered preliminary questions as to the approach to be taken in the 2012 Review.

[32] The decision of the Award Modernisation Full Bench in respect of the terms of the industry specific redundancy scheme, including the broader application arising from the definition of "redundancy",[25] specifically considered the terms and history of the current redundancy prescriptions within the pre-modern awards in the construction industry[26] and deviations within it from the NES.[27] The Award Modernisation Full Bench considered and rejected the suggestion that the definition of "redundancy" should be modified to reflect the NES.[28]

[33] The decision of the Award Modernisation Full Bench in respect of the small business exemption in the PFS Award is consistent with its general approach to the small business

exemption within modern awards, reflected in its 19 December 2008 decision[29] in relation to the making of priority modern awards. The approach taken—that "as a general rule therefore the small business exemption will be maintained . . . exception for federal awards and industries in which there was no small business exemption prior to the *Redundancy Case 2004*"[30]—had regard to the full arbitral and legislative history of redundancy pay for employees of small business in the plumbing industry.

[34] Neither the MPA nor the MPNSW has advanced cogent reasons for altering the terms of clause 18 of the PFS Award. Their case was advanced without identifying any changed circumstances or any other cogent reason to support the variation of the PFS Award. The terms of clause 18 which the MPA and MPNSW seek to vary were the product of extensive debate and a considered decision by the Award Modernisation Full Bench and which is taken to be consistent with the modern awards objective,[31] absent cogent reasons for deciding otherwise.

[35] The MPA and MPNSW applications in respect of clause 18 are refused.

3. MPA application to vary clause 33.1—Overtime

[36] The MPA seeks to vary clause 33.1 to subject a State-based difference applying to plumbing and mechanical services and irrigation installers in Victoria to a transitional provision, expiring on 31 December 2014, on the basis that the retention of such a provision after this date would be inconsistent with s.154—Terms that contain State-based differences, of the Act.

[37] Clause 33.1 of the PFS Award when published by the Award Modernisation Full Bench on 11 September 2009, was in its current terms as follows:

> "**33.1 General overtime provision**
>
> **(a)** In respect of all time worked beyond the ordinary hours of work as prescribed in clause 29—Ordinary hours of work over a four week work cycle, employees must be paid:
>
> **(i)** plumbing and mechanical services employees—150% for the first two hours and 200% thereafter;
>
> **(ii)** plumbing and mechanical services employees in Victoria—150% for the first hour and 200% thereafter;
>
> **(iii)** sprinkler fitter employees—150% for the first two hours and 200% thereafter.
>
> **(b)** Work commenced after midnight and prior to the commencement of ordinary hours must be paid for at the rate of 200%."

[38] Section 154(2) of the Act permits State-based difference terms only if included in a modern award during the award modernisation process "but only for up to 5 years starting on the day on which the first modern award that included those terms came into operation".

Clause 33.1(a)(ii) of the PFS Award provides for differential provisions in respect of the State of Victoria, but does not contain the cut-off point required by s.154(2) of the Act.

[39] The application is related to an application by the MPA in 2011[32] to vary clause 32.1(a), which dealt with overtime on a Saturday, in that case, to replace the Victorian provision for 150% for the first hour which appeared in the PFS Award when made as the general provision plumbing and mechanical services employees, with a provision providing for 150% for the first two hours as the general provision, in line with the provisions of the pre-reform award instruments other than in respect of Victoria, with the Victorian provision retained on a transitional basis. The PFS Award was then varied[33] to correct the error in respect of clause 32.1(a) in the terms sought by the MPA.

[40] Clause 33.1 of the PFS Award clearly reflects a similar error to that corrected in respect of clause 32.1(a) in 2011, if not a more obvious error in that a State-based provision of Victoria is prescribed in clause 33.1(a)(ii), without the requisite cut-off date, as required by s.154(2) of the Act. Clause 33.1 will be varied as proposed by the MPA in order to correct the error reflected in the omission of the qualification of clause 33.1(a)(ii) which is necessary in a transitional provision.

[41] Clause 33.1 will be varied by adding the highlighted words, to read:

"**33.1 General overtime provision**

(a) In respect of all time worked beyond the ordinary hours of work as prescribed in clause 29—Ordinary hours of work over a four week work cycle, employees must be paid:

(i) plumbing and mechanical services employees—150% for the first two hours and 200% thereafter;

(ii) plumbing and mechanical services employees in Victoria—150% for the first hour and 200% thereafter, <u>provided that this clause will cease to operate on 31 December 2014</u>;

(iii) sprinkler fitter employees—150% for the first two hours and 200% thereafter.

(b) Work commenced after midnight and prior to the commencement of ordinary hours must be paid for at the rate of 200%. *(added words underlined)*"

4. MPA application to vary clause 37—Public holidays

[42] The MPA seeks to vary clause 37.2 of the PFS Award.

[43] Clause 37.2 currently provides that:

"**37.2** By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday instead of any of days prescribed in s.115 of the Act."

[44] The MPA seeks that it be altered to read:

> "**37.2** By agreement between the employer and the employee, an alternative day may be taken as the public holiday instead of any of the days prescribed in s.115 of the Act."

[45] The purpose of the variation is to allow agreement to an alternative public holiday between the employer and the employee, rather than between the employer and the majority of employees in the relevant enterprise or section of the enterprise.

[46] The variation is proposed by the MPA on the basis that, as proposed, the clause will allow the employer to reach agreement with an individual employee consistent with s.115 of the Act and to facilitate individual flexibility (albeit at the expense of the ability to substitute for the workplace or a section of it as a whole, with majority agreement).

[47] The variation is opposed by the CEPU.

[48] The MPA has not established any evidentiary basis for the variation of clause 37.2 of the PFS Award in order to achieve the modern awards objective or to ensure that the PFS Award is operating effectively, without anomalies or technical problems arising from the award modernisation process. The current terms of clause 37.2 reflect the terms of pre-reform award instruments. No cogent reason has been established for disturbing its terms as decided by the Award Modernisation Full Bench.

[49] A determination giving effect to the variations approved in this decision is published as PR536408. It will have effect from today's date.

SENIOR DEPUTY PRESIDENT

Appearances:

P Naylor for The Master Plumbers & Mechanical Contractors Association New South Wales.

P Coffey for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.

S Williams for the Fire Protection Association Australia.

S Kraemer for The Master Plumbers' and Mechanical Services Association of Australia.

E Lutz for the Master Plumbers' Association of Queensland (Union of Employers).

C Coate for the National Fire Industry Association.

R Krajewski for Chubb Australasia.

Hearing details:

2013.
Melbourne:
March 25 and 26.

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ATTACHMENT A

Joint application by the NFIA and the CEPU, to incorporate fire protection systems testers and inspectors within the classification structure

1. Clause 3 - Definitions and interpretation.

Clause 3.1 Insert:

Fire Technician means**:**

(a) an employee who undertakes the inspection and testing functions on fire protection systems as detailed in Australian Standard AS 1851 following commissioning of the fire protection system after construction.

Fire Alarm System means**:**

(a) the industry and trades which are concerned with the erection, fitting, fixing, altering, inspecting, testing, maintaining, retrofitting, overhauling or repairing of fire alarms, bells and associated equipment.

Inspection and Testing means:

(a) to inspect by visual examination the components of fire protection systems or equipment to establish correct settings, physical condition or fitness for purpose under AS 1851; and

(b) to test, after inspecting, by the confirmation of correct function or performance of a component or system under AS1851

2. Clause 4.7 - Coverage.

Clause 4.7(b) Delete:

fire sprinkler fitting means the erection, fitting, fixing, altering, overhauling or repairing of apparatus, pipes and/or fittings in and/or outside of buildings, ships or other structures for the extinguishment of fire by automatic sprinklers and/or other fire protection systems.

Clause 4.7(b) and insert:

fire sprinkler fitting means the erection, fitting, fixing, altering, inspecting, testing, maintaining, retrofitting, overhauling or repairing of apparatus, pipes and/or fittings in and/or outside of buildings, ships or other structures for the extinguishment of fire by automatic sprinklers and/or other fire protection systems.

3. Clause 20.1 - General.

Delete the 4th classification in the table:

"Plumbing and mechanical services worker/Sprinkler fitting worker Level 1(d) (upon fulfilling the substantive requirements of Plumbing and mechanical services worker Level 1(d))"

and replace with:

"Plumbing and mechanical services worker/Sprinkler fitting worker/Fire Technician Level 1(d) (upon fulfilling the substantive requirements of Plumbing and mechanical services worker Level 1(d))"

4. Schedule B - Clause B.3.1.(d).

Delete clause B.3.1.(d) in Schedule B and insert:

B.3.1 Work levels

(d) Plumbing and mechanical services worker/Sprinkler fitting worker/Fire technician Level 1(d)

A Plumbing and mechanical services worker/Sprinkler fitting worker/Fire technician Level 1(d) is an employee who has fulfilled the substantive requirements of a Plumbing and mechanical services worker/Sprinkler fitting worker Level 1(d) as detailed below. An employee at this level will have:

(i) successfully completed a Services Stream Certificate (Plumbing and mechanical services/Sprinkler fitting) or Property Services (Asset Maintenance), as appropriate, Certificate Level 1 consisting of 16 appropriate modules of structured training; or

(ii) obtained equivalent skills gained through work experience subject to competency testing to the prescribed standard covering the same content as the above modules of training.

An employee at this level performs work above and beyond the skills of an employee at Plumbing and mechanical services worker/Sprinkler fitting worker Level 1(c) and to the level of their training. The following indicative tasks which an employee at this level may perform are:

- assists in the co-ordination of work in a team environment or works individually under general supervision;
- is responsible for ensuring the quality of their own work;
- exercises discretion within their level of skill and training;
- has an understanding of the construction processes within the services stream;

- assists in the provision of on-the-job training to a limited degree;
- works from instructions and procedures;
- implements basic fault-finding and problem solving skills within the employee's sphere of work;
- measures accurately for their area of operation;
- works in a safe manner;
- interacts harmoniously with employees of other companies on-site or at the workplace; and
- adapts to a changing work environment.

The following indicative tasks which an employee at this level may perform are subject to the employee having completed the appropriate training to perform the particular task:

- erect and dismantle scaffolding;
- assist with rigging;
- undertake basic oxy cutting;
- execute shoring/trenching;
- undertake site drainage and de-watering;
- assist one or more tradespersons;
- safely handle waste; and
- use tools, plant and equipment requiring the exercise of skill and knowledge beyond that of an employee at Plumbing and mechanical services worker/Sprinkler fitting worker Level 1(c).

The Plumbing and mechanical services worker/Sprinkler fitting worker/Fire technician Level 1(d) classification incorporates the following translated award classifications:

- plumber's labourer; and
- sprinkler fitter's assistant

[1] MA000036.

[2] Transcript, at para 81.

[3] Transcript, at para 81.

[4] [2012] FWAFB 5600.

[5] [2013] FWCFB 1635.

[6] AP796030CRV.

[7] NFIA amended application of 12 March 2013, Appendix B at para 6.

[8] NFIA amended application of 12 March 2013, Appendix B at para 7.

[9] NFIA amended application of 12 March 2013, Appendix B at para 8.

[10] Section 119(1) of the *Fair Work Act 2009*.

[11] Additional Statement of Mr Naylor of 22 March 2013, para 7(b) and page 1 of the survey, added to MPANSW Outline of Submissions of 18 March 2013.

[12] MPA amended application of 9 March 2012, survey attached to Appendix B, pages 5-12.

[13] [2009] AIRCFB 345, at paras 75-82.

[14] [2009] AIRCFB 345, at para 102.

[15] AP792355 CRV.

[16] AP796030 CRV.

[17] AN120684.

[18] MA000036.

[19] [2008] AIRCFB 1000, at paras 59-60.

[20] [2008] AIRCFB 1000, at para 59.

[21] [2008] AIRCFB 1000, at para 60.

[22] [2009] AIRCFB 345, at para 81.

[23] Additional Statement of Mr Naylor of 22 March 2013, page 1 of the survey, added to MPANSW Outline of Submissions of 18 March 2013.

[24] [2012] FWAFB 5600.

[25] [2009] AIRCFB 345, at paras 80-81.

[26] [2009] AIRCFB 345, at paras 77-80.

[27] [2009] AIRCFB 345, at para 81.

[28] [2009] AIRCFB 345, at para 81.

[29] [2008] AIRCFB 1000, at paras 59-60.

[30] [2008] AIRCFB 1000, at para 60.

[31] [2012] FWAFB 5600, at para 85.

[32] AM2011/24.

[33] [2011] FWA 4781, at para 71; and Determination PR512383.