IN THE FAIR WORK COMMISSION

FAIR WORK ACT 2009
PART 2-3, DIV 4 –S.156 - 4 YEARLY REVIEW OF MODERN AWARDS

AM2014/197 – 4 YEARLY REVIEW OF MODERN AWARDS – COMMON ISSUE – CASUAL EMPLOYMENT

SUBMISSION IN REPLY - MASTER BUILDERS AUSTRALIA

CASUAL MINIMUM ENGAGEMENT - JOINERY AND BUILDING TRADES AWARD 2010

1. On 15 July 2016 the Fair Work Commission ('the Commission') published directions with respect to the 4 Yearly Review of Modern Awards – Casual Employment – with specific reference to a discrete issue regarding the *Joinery and Building Trades Award 2010* ('the Joinery Award') and casual minimum engagement provisions contained therein.

2. Specifically, the Commission directed "proponents of the claim to reduce the casual minimum engagement period in the Award" (of which MBA is one) to file written submissions in reply by 22 July 2016.[1]

3. Master Builders Australia ('MBA') files this submission pursuant to the above direction[2].

MBA CLAIM

4. The claim we advance seeks greater consistency within the building and construction sector in terms of casual minimum engagement periods.

5. This is achieved by varying the Joinery Award clause 12.3 by removing the words “minimum daily engagement of 7.6 hours” and replacing those words with the words “minimum engagement of 4 hours”.

6. If granted, the variation would bring the Award casual minimum engagement period more in-line with the majority of other modern awards and, in particular, those which are conventionally applicable to the sector, being the Building and Construction General On-site Award 2010 ('the On-Site Award') the Mobile Crane Hiring Award 2010 ('the Mobile Crane Award') and the Plumbing and Fire Sprinklers Award 2010 ('the Plumbing Award').

DRAFT DETERMINATION

7. A draft determination giving effect to our claim was attached to a MBA submission dated 26 February 2016. This draft determination reflects, in a conventional format, the variation as detailed and relevantly set out in the MBA submission of 17 July 2015.

8. A copy of the draft determination we seek is attached hereto marked ***Annexure A***.

[1] [2016] FWC Directions dated 15 July 2016
[2] Albeit 1 day late for which we apologise

9. The MBA submission of 17 July 2015 incorporated by reference a separate MBA submission dated 11 November 2014, that itself incorporated by reference an MBA submission dated 27 September 2012. We refer to and rely on those submissions in addition to the matters set out hereunder.

WHY THE VARIATION IS NECESSARY – SUMMARY [3]

10. There are a number of reasons why the variation as sought is necessary. They are, in summary, that:

- the existing provision does not meet the modern award objectives;
- there is no rationale for a minimum engagement of 7.6 hours;
- the existing provision is anomalous when considered against other modern awards;
- the existing provision presents an inflexibility that is both unwarranted and outdated;
- the existing provision has not been subject to a full merits review for 22 years.

11. The variation we seek is not inconsistent with the modern award objectives and is in fact necessary to achieve them. This is because the existing provision:

- provides no incentive to bargain;
- acts as a disincentive to the use of casual labour;
- is a disincentive to provide more casual employment opportunities and facilitate more flexible work arrangements;
- has denied the right of many prior respondents to pre-modern awards or NAPSAs to properly engage casuals;
- has led to employees missing out on work;
- is inconsistent with the needs of employers and employees in modern workplaces covered by the award;
- means that casual employees can only be engaged for the same duration as a typical full-time permanent employee; and
- is a barrier to the employment of women.

12. In addition, the variation sought would not adversely impact the living standards and the needs of the low paid.

[3] These matters are detailed and/or referred to in earlier MBA submissions referenced above.

SUBMISSIONS OPPOSING THE VARIATION

13. The submission filed by the Construction, Forestry, Mining and Energy Union (Construction & General Division)[4] ('the union submission') sets out the basis on which it opposes the variation. These are, in summary, that:

- There is a rationale for the existing provision and the provision is not outdated[5];
- The existing provision is not anomalous[6];
- The existing provision has been considered or reviewed on previous occasions[7];
- There is no evidence the existing provision is a disincentive to the use of casual labour[8];
- There is no evidence that the claim sought would encourage enterprise bargaining or that the existing provision provides is a disincentive to bargain[9]; and
- Pointing out how a casual employee can only be engaged for the same duration as a typical full-time permanent employee is nothing more than "empty rhetoric"[10].

14. For reasons set out in earlier MBA submissions and below we respectfully submit that the union arguments opposing the claim should be rejected, and in addition, that there are no valid reasons as to why the MBA claim as sought should not be made.

GENERAL MATTERS IN UNION SUBMISSION

15. The union submission asserts that the MBA (and other employer) claims should fail and raise a jurisdictional question regarding evidence.[11] This view should be rejected on a number of grounds.

16. First, it is trite to observe that the existing Joinery Award provision for the minimum engagement of casuals does not represent a fair and relevant minimum safety net having regard to the various elements of the modern awards objective. This is clear on its face.

a. It is manifestly out of step with all other modern awards including those commonly applicable elsewhere in the building and construction sector.

b. It causes casual employees to be engaged in circumstances that do not meet, and/or are inconsistent with, conventional definitions or descriptions of casual employment either at common law or commonly adopted in other awards.

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[4] Submission of the Construction, Forestry, Mining and Energy Union (Construction & General Division) in Reply (AM2014/196 and AM2014/197) dated 22 February 2016
[5] Ibid at page 34, para [72]
[6] Ibid at page 40, para [85]
[7] Ibid at page 40, para [84]
[8] Ibid at page 32, para [65-69]
[9] Ibid at page 43, para [92]
[10] Ibid at page 44, para [93]
[11] Ibid at page 32, para [65]

c. A requirement to engage a casual employee for the same hours as permanent full-time employees is simply not a 'casual minimum engagement' provision and is, in fact, a provision akin to the 'Daily Hire' arrangements available under the On-Site Award.

17. Second, and further to the immediately preceding point, if follows that there is by default a barrier in considering sector specific evidence about a change to casual engagement when the existing provision requires their engagement to be the same as full-time employees.

18. Third, there is nothing unique or distinct about those doing Joinery work that would cause those casual employees to be engaged for a minimum period that is different to other periods for casual employees elsewhere in the sector. In other words, there are no unique applicable circumstances and therefore any assessment of the impact arising from the changes as sought by the variation can be made with reference to the engagement of casuals elsewhere in the sector. It is noted that the union has not sought to change equivalent provisions in the other industry awards.

19. Fourth, there are unique circumstances in the building and construction sector (and about which employers in the sector are acutely aware) that increase the extent to which participants are hesitant to provide information or adopt a public view that is inconsistent with views held by the union. These circumstances have been widely and comprehensively documented on many earlier occasions.[i]

20. A further general point upon which the union rely is that some changes to the Joinery Award have been made by consent.

21. We submit that the circumstances in which changes to the Joinery Award have been made (e.g. by consent or otherwise) should not limit the Commission's considerations. To that end, we refer to the Stevedoring Industry Award 2010 Decision [2015] FWCFB 1729 and the dissenting comment of Watson VP at paragraph 89:

> *"The penalty provisions have a long history but the consensual nature of the provisions and the changes that have occurred since that time require a reconsideration of what are quite anomalous safety net provisions. New stevedores are entering the market. Automation is occurring. Ship volumes are increasing at the larger ports. These trends suggest that for many employees there will be increased predictability of working hours and their disabilities are more in line with those experienced in other industries. In my view, it is no longer sustainable to have an inflated penalty rates regime, inherited from another era, so out of proportion with the safety net provisions of other modern awards."* (our emphasis)

22. However, the majority went on to observe at para 156:

> *"Together these factors support a finding that the evidence led by the Applicants is inadequate to justify the significant variations to penalty rates sought, particularly in circumstances where the evidence supports a finding that there are factors unique to*

this industry which are relevant when considering the level of penalty rates in this Award necessary to meet the modern awards objective."

(our emphasis)

23. The majority then concluded at para 161:

"In our view, the evidence before us indicates that there are factors unique to this industry when compared to other industries that work on a 24/7 basis."

(our emphasis)

24. The relevant consideration causing a divergence from the position of Watson VP was the extent to which factors existed (historical or otherwise) that would make the relevant industry unique or exceptional. We submit that there is no evidence that to conclude that the nature of Joinery work is in any way exceptional or unique.

25. The last general point to be made about the union submission is its reliance on historical matters as a justification both for the necessity of the existing provision and its retention. While regard to historical matters is often appropriate (particularly for context), we submit that it should not be considered a sound justification for the currency of an existing award provision and/or a basis on which to justify its retention. This view is consistent with the decision in *Telum Civil (Qld) Pty Limited v Construction, Forestry, Mining and Energy Union*[12].

26. The Telum Case, we submit, essentially drew a line in the sand between the historical circumstances giving rise to an award provision and the provision as expressed in a modern award[13]. The issue under consideration was whether or not particular employees should be categorised as casual workers, the Commission held that historical circumstances should not represent a settled position on provisions in a modern award.

27. While historical matters should not be considered entirely irrelevant, we submit that they should not be the only basis on which a rationale to justify and retain a provision in the Joinery Award that operates in 2016. The Commission has discretion to take into account other matters to vary the award.

SPECIFIC MATTERS IN UNION SUBMISSION

28. We now turn to the specific matters in the union submission.

29. The union submits that there is a rationale for the existing Joinery Award provision and it is not outdated[14]. Those submissions should be rejected. We reiterate that there is no logical rationale for a 7.6-hour casual minimum engagement period and that such a provision is manifestly outdated.

[12] [2013] FWCFB 2434
[13] MBA Submission dated 26 February 2016
[14] Ibid at page 34, para [72]

30. The *rationale* for the existing provision is, according to the union stated to be "*that casuals in off-site joinery shops have been traditionally employed for the full day.*"[15]

    a. First, this is not a logical basis on which to justify the existence of an existing provision.

    b. Second, this traditionalistic method of engagement is due to nothing more than the fact that the Joinery Award allows for the engagement of casuals only in this way - by the full day. There is no capacity either currently or historically to engage casuals in any other manner or for a lesser period in a day.

    c. Third, there have been many changes to the entitlements of casual employees, protections they receive, and the obligations of employers in respect of casual employees against which this 'tradition' must be re-considered and assessed.

31. The union has not addressed employer arguments that demonstrate the existing provision is outdated. Other than assertions that the existing provision is current and relevant, they refer generally to statements made in 1990, some 26 years ago[16].

32. While we contest the context and use of those statements below, the mere fact that statements made in 1990 are used to justify the currency of an existing provision some 26 years later is, in and of itself, cause to consider that the existing provision *is* in fact outdated and requires amendment to suit circumstances in 2016.

33. We reject the argument set out at paragraphs 72-73 of the union submission and, further, say that the quotations therein are irrelevant or, at best, taken out of context and should therefore be viewed cautiously. There are several bases for our view.

34. First, it is clear that the evidence quoted was given in an entirely different proceeding, at a different time and in a materially different context. The proceeding revolved around limitations on the engagement of casuals over a period of time (e.g. the capacity to engage a casual for more than 12 weeks) as opposed to the engagement of casuals for a particular period of time per day.

35. The passage cited at paragraph 74 of the union submission supports our view. In that passage, Grimshaw C describes the matter before him as:

> *"The employers sought the removal of all restrictions currently existing on the usage of casuals, they being the limitation of employing casuals for more than twelve weeks in any twelve months without the consent of the branch secretary of the union."*[17] (our emphasis)

36. The passage cited at paragraph 75 of the union submission also supports our view. In that passage, the Full Bench describe the concerns of employers as being:

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[15] Ibid

[16] Ibid at page 35, para [73]

[17] Submission of the Construction, Forestry, Mining and Energy Union (Construction & General Division) in Reply (AM2014/196 and AM2014/197) dated 22 February 2016 at page 36, para [74]

".....<u>the perception that there was a limit</u> on the engagement of employees to either the category of casual, and <u>that engagement was limited to a 12 week period, or full-time</u>[18]" (our emphasis)

37. There is an important and obvious difference between casual engagement for periods over weeks or months versus the minimum engagement per day. It is clear, therefore, that the circumstances of that case are distinctly different to the current proceeding and quotations of witnesses should therefore be considered irrelevant, or read and considered in that context.

38. Second, the matters in the 1993 case before Grimshaw C were heard under a distinctly different legislative regime that involved considerations substantially different to those in the current proceeding.

39. Third, while maintaining the witness statements quoted are largely irrelevant and used without appropriate context, it should also be noted that:

- The observations of Mr Howard are clearly identified as being his personal view. Contrary to the impression the union submission seeks to convey, those observations are not those from, or made on behalf of, MBA SA.

    i. Notwithstanding this, Mr Howard's personal observations relate to restrictions on the engagement of casuals on an *ongoing basis*, not on a *daily basis*.

    ii. Mr Howard says that the engagement of a casual for 38 hours per week on an ongoing basis is an outcome that he would "*not personally believe that would be true casual employment.*[19]" In other words, casuals engaged for periods akin to those of full-time permanent employees are, in Mr Howard's personal view, not something he would describe to be a true casual arrangement. Ironically, such an arrangement is exactly the effect of the existing provision in the Joinery Award – it restricts engagement to circumstances akin to full-time employees or, in the alternative, limits workplaces to adopt such an arrangement.

    iii. Mr Howard further notes that "*if they have sought them for an average of 38 hour week they have been for a minimum period to meet demands associated with their work output*[20]." In other words, casuals are engaged in such a way as to accommodate work flow and other variables and that this is the factor that decides hours of work offered to casual employees. This is a notion that, once again, is entirely contradicted by the existing provision in the Joinery Award which would require casuals for 7.6 hours per day irrespective of work flow or other variables.

[18] Ibid at page 37, para [75]
[19] Ibid at page 35, para [73]
[20] Ibid

- Witness Mr Coull confirms that the issue to which his evidence relates is engagement over time, not per day, with reference to contract length and then award provisions[21].

- Witness Mr Kinnear notes his evidence relates to the engagement of new staff as casual in order "*to make sure they're suitable and the job suits them*"[22] and does not relate to minimum hours of engagement per day.

    i. It is also clear that Mr Kinnear's other evidence is a preference expressed when faced with the option of taking RDO's – or – working less than 7.6 hours per day. Such a preference should be considered in the context that the witness is also the owner/manager of the company and the company is one which is open particular set hours to engage in trade with the public[23]. Any inference that the quotations of Mr Kinnear demonstrate a rejection for the need to engage casual employees for less than 7.6 hours per day is wrong and should be rejected.

40. At paragraph 75 of the union submission, an appeal matter is cited and a passage quoted. We submit that this matter is irrelevant or, in the alternative, quoted without appropriate context.

    a. The passage so quoted deals with the matter of evidentiary considerations in the context of determining whether or not there are grounds to appeal and/or overturn an original decision. It is limited, discrete and should only be considered as relevant to the question of whether or not a Commissioner erred in deciding whether or not to exercise their discretion in the context of determining an Appeal.

41. We submit that the 2002 Award Simplification process referenced at paragraph 76 of the union submission is not relevant.

    a. That process involved a review of awards to determine if they contained provisions that were not then considered "allowable award matters". That process was materially different to this 4 Yearly Review process.

42. The proceedings before Harrison C described at paragraph 77 of the union submission are also either irrelevant or without appropriate context. That case involved a union application to increase the casual loading in the Joinery Award.

43. It is simply wrong to assert, as the union submission does, that Harrison C rejected the "*variations sought by the MBA*[24]". It is clear from the cited passage[25] of Harrison C's decision that:

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[21] Ibid
[22] Ibid
[23] These being 8:00am to 5:00pm Monday to Friday
http://www.startlocal.com.au/business/shopofficefitti/sa_adelaide/Kinnear_s_Joinery_Pty_Ltd_1804222.html
[24] Submission of the Construction, Forestry, Mining and Energy Union (Construction & General Division) in Reply (AM2014/196 and AM2014/197) dated 22 February 2016 at page 37, para [78]

- the Employer parties position was to oppose the union claim;
- the Employer parties were prepared to alter their position on a conditional basis only; and
- this preparedness was *without prejudice* to their stated formal position.

44. There was no rejection of any MBA claim. Instead, the Commission simply declined to entertain an alternative course that involved an offset put forward on a without prejudice basis. This was noted in the decision set out below:

> *" ……..I am not prepared in this application to confuse the issues of casual loading and increased flexibility in terms and periods of engagement of casual employees, nor to offset the casual loading with changes to these existing provisions.*[26]*"*

45. This is not a rejection of a claim. It is a decision to decline consideration of an offset in order to avoid confusion about two separate issues.

46. The Award Modernisation process is referred to at paragraphs 79 – 81 of the union submission. We reject the related union arguments for a number of reasons.

a. First, the union appear to assert that the decision of the then AIRC to publish a draft modern award for the joinery and building trades sector containing a 7.6 hour minimum engagement period represents tacit approval of the provision[27]. This is entirely wrong and should be rejected.

b. Second, the union assert that the subsequent retention of the 7.6 hour clause in the award later made (despite a challenge from employers) should represent consideration and approval of the existing provision[28]. We say this is again entirely wrong and should be rejected. The retention of the 7.6 hour clause simply indicates that the provision was not inconsistent with the relevant provisions of the *Workplace Relations Act 1996* and the requirements of the Modern Award Request.

c. Third, the modern award was made under a substantially different legislative regime with distinct differences between it and the current 4 Yearly Review process. The stated aim of the modern award process was to "*create a comprehensive set of modern awards*" that met the requirements in s.576A of the *Workplace Relations Act 1996*.

47. The points noted above are also relevant to the reference to the 2 Yearly Review process at paragraph 83 of the union submission.

a. There are trite differences between the 2 Yearly Review process and the current 4 Yearly Review process and its relevance is questioned.

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[25] Ibid
[26] Ibid
[27] Ibid at page 38, para [81]
[28] Ibid at page 39, para [82] and [83]

b. Further, the decision quoted is in the context of whether or not the provision failed to achieve the Modern Award Objectives or is operating other than effectively, without anomalies or technical problems arising from the Part 10A of the award modernisation process. In other words, considerations that are clearly different to the current process.

48. At paragraph 85 of their submission, the union say that the existing Award provision is not anomalous or inconsistent with provisions in other awards. This argument should be rejected as it is simply wrong.

a. We reiterate that the provision requiring casuals to be engaged for a minimum of 7.6 hours is entirely *inconsistent* with every other Modern Award. This is confirmed in the table set out at Item 5 in the MBA submission of 11 November 2014.

49. The union submission has not attempted to address the anomalous nature of the existing provision. Previous MBA submissions[29] have established the basis on which we say it is in fact anomalous. We reiterate those bases as summarised below:

- The Award in large part derived from the prior *National Joinery and Building Trades Products Award 2002* ('the Old Joinery Award') and there is no historical rationale for the existence of a 7.6 hour provision.
- The current and predecessor provisions are not in fact casual provisions even though expressed as such. For each day worked a minimum of 7.6 hours must be paid. Hence, engagement under this clause requires that for 5 days work 38 hours pay is made; to engage a casual during the period of a week therefore equates with engaging a person on a full time basis. This is unique and unnecessary.
- Casuals are frequently paid for a minimum period of hours per engagement (and we cite other Award casual provisions, including those relevant to the building and construction industry).[30] Those provisions specify conditions for casual employment as it is generally formulated at common law (as discussed below) or at the least in a manner that clearly distinguishes it from other forms of engagement. This is in absolute contrast with the peculiar manner in which this subject area is dealt with under the Joinery Award. The Joinery Award provision in fact does not permit casual employment as such and is misnamed.
- The expression of the current provision nullifies the notion of casual employment. A provision which is labelled as a casual provision should in fact be such. It is not simple or easy to understand that the expression of the provision in fact nullifies the method of engagement which it is expressed to facilitate.

[29] MBA Submissions dated 27 September 2012, 11 November 2014 and 17 July 2015
[30] MBA Submission dated 11 November 2014 (as per para 42)

- Further, it is an anomaly that there should be such a variance between modern awards about a matter that is a foundational element of engagement of employees. Casual employment should be just that.
- We cite the description of casual employment of Barker J in *Williams v MacMahon Mining Services Pty Ltd*.[31] We submit that it cannot be said that the provision under scrutiny reflects an understanding of casual employment but more reflects the concept of daily hire expressed as such in the On-Site Award at clause 11, a method of engagement not reflected in the Joinery Award.
- We note how the above circumstance contrasts with the protection which was inserted pursuant to the award modernisation process, that is clause 12.7 which is not a provision found in the Old Joinery Award. It is that provision which protects casual employees from use of the casual engagement clause as something other than a reflection of irregular engagement. Hence, the protection found in clause 12.3 is an anomaly; this is especially the case when it is considered that clause 12.7 is a readily identifiable common provision, the existence of which means that other provisions regulating casuals should also be regularised to achieve a similar easy to understand notion of casual employment.
- We affirm that a provision which provides a minimum daily engagement equivalent to full-time hours is a notion which contradicts a fundamental element of the method of engagement that the clause purports to allow. It is an anomaly.

50. At paragraphs 91 and 92, the union makes reference to evidence regarding the existing provisions being a distinctive to the use of casual labour and the encouragement or otherwise of enterprise bargaining. We reject these views and refer instead to paragraph 16 to 19 above in this submission.

51. At paragraph 93, the union argue that observations made by employer parties in this matter about how a casual employee can only be engaged for the same duration as a typical full-time permanent employee is nothing more than "*empty rhetoric*". This should be rejected. The observation is true and factual as noted earlier (see Item 5 in the MBA submission of 11 November 2014.)

CONTEXT OF PROCEEDING

52. Only in the event that the Commission declines our application and determines that no change should be made to the relevant existing provisions in the Joinery Award, then we submit that the broader context within which our application arises should also be relevant to the Commission's considerations.

53. The broader context involves a common claim from the Australian Council of Trade Unions ('the ACTU') that seeks the inclusion of a series of standard provisions for the engagement

[31] [2010] FCA 1321

of casuals in the majority of modern awards. Those standard provisions deal set a 4-hour minimum engagement period for casual employees and a standard casual conversation clause.

54. MBA has previously affirmed our opposition for the ACTU claim[32] and reiterates that opposition again.

55. It is clear that the common claim only seeks to alter those awards that do not currently have such provisions and/or where such provisions provide an entitlement that is less favourable to employees than what the common claim would provide. This does not capture the Joinery Award given the nature of the existing relevant provision.

56. At earlier stages of this proceeding it has been suggested that the provisions proposed under the common claim should become the standard in modern awards.

57. Subject to the caveats and our position expressed at paragraphs 52 and 54 above, and only in the event that the Commission determines to grant the ACTU claim, there is no reason why the Joinery Award should be exempt from the inclusion of a 'standard' 4-hour minimum engagement period.

SUMMARY

58. The existing provision is no longer appropriate for a modern award in 2016. On any viewing of the existing provision in context, there is only one plausible and logical conclusion that can be drawn.

59. That conclusion is that the existing provision simply does not reflect current and conventional arrangements that exist elsewhere, is anomalous, outdated, does not represent a fair minimum safety net that is consistent with the modern award objectives, does not provide any benefit of flexibility to employers or employees, is actually reflective of 'daily hire' arrangements in the On-Site Award, and not a provision that allows for the engagement of casuals in a manner that fits that description.

60. Those opposed to the MBA claim have not made any case that would disturb the above conclusion or that to grant the claim as sought would contradict that Full Bench's guiding decision in relation to the current review.

61. We submit that an appropriate case has been satisfactorily made that our claim as advanced should be granted.

62. Only in the event that the Commission determines to reject our application and determines that no change should be made to the relevant existing provisions in the Joinery Award, we say that there is no reason why the Joinery Award should be exempt from the inclusion of a 'standard' 4-hour minimum engagement period as proposed by the ACTU common claim.

[32] See para 2.1 of MBA submission dated 26 February 2016

[i] As set out in:

Final Report of the Royal Commission into Trade Union Governance and Corruption

Volume 1:

- Page 12 para 10

Volume 2:

- Page 411 para 387
- Page 731 para 119

Volume 3:

- Page 57 para 28
- Page 98 para 134
- Page 100 para 139
- Page 102 para 144
- Page 102 para148
- Page 103 para149
- Page 105 para 156
- Page 106 para 158
- Page 124 para 214
- Page 124 para 215
- Page 124 para 216
- Page 131 para 232
- Page 133 para 238
- Page 133 para 239
- Page 133 para 240
- Page 134 para 241 (b)
- Page 134 para 242
- Page 134 para 243
- Page 186 para 42 (e)
- Page 187 para 46
- Page 193 para 60
- Page 432 para 191
- Page 529 para 127
- Page 536 para 144

Volume 4

- Page 276 para 102
- Page 279 para 115
- Page 280 para 117
- Page 280 para 119
- Page 298 para 180
- Page 315 Para 5

Volume 5:

- Page 44 para 2
- Page 112 para 146,147 & 148
- Page 129 para 11
- Page 393 para 1
- Page 577 paras 3-4

MA000020 PR **"ANNEXURE A"**

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards - Casual employment and Part-time employment

(AM2014/196 and AM2014/197)

JOINERY AND BUILDING TRADES AWARD

[MA000029]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HARRISON
SENIOR DEPUTY PRESIDENT HAMBERGER
COMMISSIONER ROE
COMMISSIONER BULL

SYDNEY, XX XX 2016

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

1. By deleting clause 12.3 and replacing it as follows:

   12.3 A casual employee is engaged by the hour with a minimum engagement of 4 hours.

2. By deleting clause 12.5 and inserting as follows:

   12.5 A casual employee for working ordinary time must be paid an hourly rate calculated on the basis of 1/38th of the minimum weekly wage prescribed in clause 18.1 — Classifications and minimum wages, for the employee's classification plus a casual loading of 25%.

B. This determination comes into operation from XXXX.

VICE PRESIDENT