

# BEFORE THE FAIR WORK COMMISSION

s.156 - FAIR WORK ACT 2009

## 4 YEARLY REVIEW OF MODERN AWARDS

### AM 2016/23 – CONSTRUCTION AWARDS

## DRAFT DETERMINATIONS

### SUBMISSION

#### MASTER BUILDERS AUSTRALIA

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#### A. INTRODUCTION

1. This submission is filed by Master Builders Australia ('**Master Builders**') pursuant to the Decision of 26 September 2018 [FWCFB 6019] ('**the Decision**') and the Directions of 23 November 2018 (AM2016/23).
2. Specific items about which we make submissions are identified below by reference to associated Item number in the Draft Determination ('**the Determination**'). Where any items appearing in the Determination are not specifically addressed in this document, we ask it be read to mean that Master Builders makes no additional comment.

#### B. SUBMISSIONS ON SPECIFIC ITEMS

##### Item 3

3. The Draft Determination proposes to remove the word 'adult' from clause 19.1(a). This item arises following observations in the Decision at paragraph [294]:

*"However we consider that the current position with respect to the pay rates for non-adult employees who are not in apprenticeships or traineeships needs to be clarified. As earlier stated, clause 19.1(a) only refers to pay rates for "adult" employees. We do not consider that the use of the word "adult" serves any purpose and is conducive of confusion. Its presence casts in doubt whether the minimum rates in the Building Award provide a safety net for non-adult employees not in apprenticeships or traineeships, and accordingly it is not consistent with the modern awards objective. It will be deleted from clause 19.1(a)."*

4. Item 3 accurately translates and gives effect to the above paragraph. This notwithstanding, Master Builders notes that the grounds for removing the word 'adult' are that it is the cause of confusion and is not considered to serve any purpose. However, Master Builders are concerned that this removal could be interpreted to mean that the award now provides an appropriate safety net for employees aged 21 or under and who are *not* apprentices or trainees and that this could hinder or be used to resist any future application to vary the Award to include rates of pay for employees aged 21 or under who are not apprentices or trainees. We record our position that this is not the case and reaffirm our general position that the absence of rates of pay for employees aged 21 or under and who are not apprentices or trainees is a significant Award deficiency.
5. We further note that while the word 'adult' exists mainly for historical purposes, existing clause 21.8(c) uses the words 'adult wage' and references clause 19.1(a) for the purpose of determining an allowance payable to non-adult apprentices when undertaking refractory brick work. It is understood that the allowance in clause 21.8(c) is one under consideration by the Commission

insofar as the quantum of proposed sector based industry allowances and its future as a feature of the Award is uncertain. In the event that clause 21.8(c) remains an award clause, we submit that the deletion of the word 'adult' from clause 19.1(a) should be reconsidered and retained.

#### **Item 7**

6. The Determination proposes to delete existing clause 24.3 and inserts a replacement clause dealing with the provision or cost of meals and accommodation. The replacement clause contains an apparent error by omission and should include the word "or" at the end of replacement subclauses 24.3(a)(i) and (ii) to ensure the provision operates as intended.
7. As currently drafted, the replacement clause would have the practical effect of entitling an employee to be:
  - paid the allowance of \$70.81 or fully reimbursed for cost of reasonable accommodation and meals; *and in addition*
  - provided with accommodation and three adequate meals; *and in addition*
  - provided with accommodation and reimbursed for reasonable meal expenses; or
  - provided all board and accommodation free of charge if required to live in camp.
8. The above circumstance is clearly not the intended effect of the revised clause and results in an employee receiving board and accommodation, or compensation for accommodation and meals, three times over.
9. We submit the clause should be redrafted with the following words **highlighted** below:

#### ***24.3 Entitlement***

*(a) Where an employee qualifies under clause 24.1 the employer will:*

*(i) pay the employee the greater of \$70.81 per day or an amount which fully reimburses the employee for all reasonable accommodation and meal expenses incurred; **or***

*(ii) provide the worker with accommodation and three adequate meals each day; **or***

*(iii) provide the worker with accommodation and reimburse the employee for all reasonable meal expenses; or*

*(iv) where employees are required to live in camp, provide all board and accommodation free of charge.*

#### **Item 10**

10. Item 10 of the Determination proposes to delete existing clause 25 and sets out its replacement.
11. The replacement subclause 25.4(a)(i) uses the term "radial zone" whereas subclause 25.4(d) uses the term "radial area" creating a potential for confusion and inconsistency within clause 25 more generally.
12. Master Builders submits that the term "radial zone" be replaced with the term "radial area". This will ensure the terms are used consistently throughout the clause.
13. Further, the term "radial area" is one used extensively throughout the relevant existing Award provisions and actually features in the title of existing Award clauses 25.2, 25.4, 25.5 and 25.6. It is a term with which industry and existing Award users are familiar. We therefore submit that using the term "radial area" consistently and on an ongoing basis will reduce potential confusion arising from the replacement clause as currently proposed.

#### **Item B – Commencement**

14. While accepting it remains the discretion of the Commission to determine the date on which variations to the Award arising from the Decision take effect, Master Builders would respectfully suggest that the operative date be not earlier than **1 February 2019**.

15. There are several reasons as to why the above date is suggested as being most appropriate. These include:
- The Decision and the associated changes to the Award are not insignificant and are likely to represent substantive conceptual change to particular provisions which have operated in their current form for an extended length of time;
  - Some of the expected changes involve matters that should be implemented with advance notice, such as future rostering and planning requirements;
  - All interested parties involved in the proceeding would no doubt be concerned to ensure that their respective membership have an appropriate period to be advised of the final version of changed provisions, the resulting operative effect and impact on workplaces, and to make relevant adjustments;
  - The industry to which the Award applies is one that conventionally has a 'shut-down' period between mid-December and late January; and
  - It would enable workplaces to familiarise themselves and ensure any change is correctly implemented, thereby ensuring maximum compliance with the Award and its new provisions.

**MASTER BUILDERS AUSTRALIA**

**7 DECEMBER 2018**