

Master Builders Australia

Submission to the Fair Work Commission

on

4 Yearly Review of Modern Awards –

National Training Wage (AM2016/15, AM2016/17)

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1 Introduction

- 1.1 Master Builders Australia (Master Builders) is the nation’s peak building and construction industry association which was federated on a national basis in 1890. Master Builders’ members are the Master Builder State and Territory Associations. Over 127 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 1.2 The building and construction industry is an extremely important part of, and contributor to, the Australian economy and community. It is the second largest industry in Australia, accounting for 8.1 per cent of gross domestic product, and around 9 per cent of employment in Australia. The cumulative building and construction task over the next decade will require work done to the value of \$2.6 trillion and for the number of people employed in the industry to rise by 300,000 to 1.3 million.
- 1.3 Master Builders files this submission pursuant to paragraph [12] of the Statement dated 23 February 2017 (‘the February Statement’)¹ regarding the 4 yearly review of modern awards - National Training Wage schedule (AM2016/15, AM2016/17).
- 1.4 Master Builders maintains an interest in the *Building and Construction General On-Site Award 2010* (‘On-Site Award’) and the *Joinery and Building Trades Award 2010* (‘Joinery Award’) and makes the following submissions with regard to those two awards.

2 Overview

- 2.1 The February Statement has been issued further to an earlier statement, dated 6 July 2016 (‘the July Statement’) in which the Commission expressed its

¹ [2017] FWCFB 1095

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intention to apply a standard National Training Wage ('NTW') schedule across all modern awards.

2.2 The July Statement outlined that this would be achieved by removing the existing NTW schedule within awards and replacing it with a simple reference to a standard NTW schedule contained within the *Miscellaneous Award 2010* ('the Miscellaneous Award').² At paragraph [9] of that same statement, the Commission conveyed its intention for the proposed standard NTW Schedule to be based on the version published in the exposure draft process, set-out at Attachment C and that the schedule may be the subject of plain language re-drafting.

2.3 At the conclusion of the July Statement, the Commission made the following directions with regard to the submissions of parties:

'[24] Interested persons are invited to make written submissions on the proposals outlined in this Statement addressing the following:

- (i) *any changes required to the standard NTW Schedule as set out in Attachment C including:*
- *updates or corrections to names of various training bodies and legislation;*
 - *the addition of any training packages established since the commencement of modern awards; and*
 - *the deletion of any training packages no longer offered;*
- (ii) *comments on the form of the proposed reference term and Annual Wage Review determinations outlined in paragraphs [17] and [20]; and*

² [2016] FWC 4495 at para [18]

(iii) *objections to the removal of the NTW Schedule from a particular modern award.*

[25] Submissions should be forward to amod@fwc.gov.au by 4.00pm on Thursday, 28 July 2016.³

- 2.4 Submissions were filed by a number of employer and union groups in response to the directions highlighted in the July Statement above. Master Builders did not file a response as we did not have any technical amendments to propose, nor did we object to the inclusion of the standard NTW Schedule in the On-Site or Joinery Awards (together, the Construction Awards’).
- 2.5 Master Builders did, however, make submissions in support of the Commission’s proposal, with regard to the reference to a standard NTW Schedule, in submissions made during the award-stage review of the Construction Awards.⁴
- 2.6 In response to the submissions made by the union parties in the common issue matter rejecting the Commission’s proposal, the Commission stated at paragraph [5] of the February Statement that a number of modern awards (including the Construction Awards) might require the retention of a NTW Schedule (albeit with modifications).⁵
- 2.7 We do not agree with CFMEU’s claim that the standard NTW schedule would have no application to the Construction Awards⁶ and urge the Commission to re-consider carving out those awards from the standard approach being adopted in this matter.
- 2.8 In accordance with the Commission’s directions⁷, Master Builders will first provide comment on the plain-language re-draft of the NTW schedule and then

³ Ibid at paras [24] and [25]

⁴ Master Builders Australia submission (AM2016/23), 2 December 2016 at para 15.3.

⁵ [2017] FWCFB 1095

⁶ Construction, Forestry, Mining and Energy Union (Construction & General Division) submission (AM206/17), 28 July 2016 at para 18

⁷ [2017] FWCFB 1095 at para [12]

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address the submissions made by the CFMEU which gave rise to the Commission’s proposed carve-out of the Construction Awards.

3 Plain Language re-draft of the NTW Schedule

- 3.1 Master Builders broadly supports the proposition that plain language drafting principles should be applied, wherever appropriate, to all modern awards, providing they have no substantive legal or practical effect on the application and interpretation of existing award provisions.
- 3.2 In response to the Commission’s Plain Language Re-Draft National Training Wage Schedule, as at 6 February 2017, Master Builders makes the following brief comments.
- 3.3 Clause A.3(b) – the following phrase (which appears in existing clause E.4.2) has been omitted from the plain language re-draft and should be re-inserted at the end of clause A.3(b) and after the word ‘training’ – *‘being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job’*.
- 3.4 Clauses A.4.1(a),(b),(c),(d) and A.4.2(a),(b),(c) – the following words at the end of these clauses, and after the word/s ‘column/s’, should be deleted as they have no relevance to the operation of the time-based (rather than competency-based) progression provisions contained within both the Miscellaneous Award NTW schedule exposure draft and the plain language re-draft NTW schedule – *‘and the experience level of the trainee specified in column 1.’*
- 3.5 A.5.3 – within the ‘Note’, the reference, with regard to the calculation of wages for part-time trainees, should be amended to read ‘clause A.4.2’ instead of ‘clause 0’.

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4 NTW schedule and the Construction Awards

- 4.1 In its submission, dated 28 July 2016, the CFMEU rejected the Commission’s proposal, as outlined in the July Statement, and instead argued that a modified NTW Schedule should be retained within the Construction Awards.⁸
- 4.2 The CFMEU’s submission is that the Commission’s proposed standard NTW schedule had limited application to the Construction Awards and that the training packages, as referenced within the standard schedule, had little relevance to those utilised in the building and construction sector.⁹
- 4.3 In terms of the On-Site Award, the CFMEU claim that the only wage provisions for the NTW Schedule having any application under that award were the AQF Certificate Level 4 traineeship and school-based traineeship rates.¹⁰
- 4.4 Master Builders is aware of many members who engage trainees under AQF Certificate Level I-III traineeships, *in addition to* those under an AQF Certificate IV traineeship.
- 4.5 The broader (and more significant) point not mentioned by the CFMEU is that the standard NTW schedule provides for time-based (as opposed to competency-based) progression. It is Master Builders understanding that the CFMEU opposes progression that is time-based and supports instead a competency-based model.
- 4.6 In submissions filed elsewhere in the 4 Yearly process, the CFMEU has argued that clause 28.2 should be *‘varied to provide for competency based wage progression through the stages similar to that provided for three year apprenticeships...’*¹¹ It has also sought to expand the civil contracting

⁸ Construction, Forestry, Mining and Energy Union (Construction & General Division) submission (AM206/17), 28 July 2016 at para 18

⁹ Ibid at para 5

¹⁰ Ibid at para 10

¹¹ Construction, Forestry, Mining and Energy Union (Construction & General Division) submission (AM2016/23), 9 December 2016 at para 9

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provisions under the schedule and proposed an increase to existing wage rates.

- 4.7 Master Builders prefers progression that is time-based rather than competency-based as it is the only method to ensure competencies required are truly and comprehensively realised in trainees. It allows for assessment of competency using a system that is robust and incapable of external influence.
- 4.8 While Master Builders appreciates that in some circumstances there could be a benefit to 'fast-tracking' trainees who can demonstrate competencies earlier than others, there are also significant negative ramifications. It is crucial that workers are adequately trained and sufficiently competent to undertake the tasks for which they have been engaged. Master Builders supports the model set out in the standard NTW schedule as proposed by the Commission.

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