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**Subject:** AM2016/15; AM2016/17 - NTW Award Specific Schedules - Joinery and Building Trades Award 2010

Dear Associate,

Please find **attached** a submission of Master Builders Australia with respect to AM2016/15; AM2016/17.

Yours sincerely,

**Rebecca Sostarko**  
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# BEFORE THE FAIR WORK COMMISSION

s.156 - FAIR WORK ACT 2009

## 4 YEARLY REVIEW OF MODERN AWARDS

### AM 2016/15; AM2016/17 – PLAIN LANGUAGE PROJECT – NATIONAL TRAINING WAGE AWARD SPECIFIC SCHEDULES – JOINERY AND BUILDING TRADES AWARD 2010

#### SUBMISSION IN REPLY

#### MASTER BUILDERS AUSTRALIA

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#### A. INTRODUCTION

1. This submission is filed pursuant to the Statement and Revised Directions of 19 December 2019<sup>1</sup> and responds to the CFMMEU submissions in AM2016/15 & AM2016/17 filed on 4 February 2020<sup>2</sup>.
2. This submission deals with the Joinery and Building Trades Award 2010 ('Joinery Award') in which Master Builders maintains an interest.

#### B. SUMMARY

3. As per previous submissions<sup>3</sup> Master Builders supports the Commission's proposed approach to replace the National Training Wage ('NTW') schedule within individual Awards with a reference to a single NTW schedule within the Miscellaneous Award 2020. This position in support remains and is advanced with respect to the Joinery Award, along with the Building and Construction General On-Site Award 2010 ('On-Site Award').
4. We submit there is no evidence before the Commission that warrants deviation from the proposed model solution for those awards, and certainly no evidence that should disturb the Commission's previous observations about the NTW Schedule and its proposed approach. Master Builders supports those observations and agrees that the inclusion of the NTW schedule has increased the length and complexity of modern awards, particularly when applicable to relatively few award-reliant employers and employees<sup>4</sup>.
5. Master Builders maintains that the Commission's proposal will not only reduce the length and complexity of modern awards (an important consideration in the context of the complex and convoluted nature of the construction awards) but that it would also facilitate greater compliance with the objectives at section 134(1) of the FW Act.

#### C. MASTER BUILDERS' RESPONSE TO CFMMEU'S CLAIM

6. We respectfully urge the Commission to reject the CFMMEU submission.

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<sup>1</sup> [2019] FWCFB 8572

<sup>2</sup> *Submission of the Construction, Forestry, Maritime, Mining and Energy Union (Construction & General Division) on award specific schedules for the Joinery and Building Trades Award 2010 and the Mobile Crane Hiring Award 2010 – AM2016/15, AM2016/17 – 4 Yearly Review of Modern Awards – Plain Language Project – National Training Wage Award Specific Schedules, dated 4 February 2020.*

<sup>3</sup> *Submission of Master Builders Australia - 4 Yearly Review of Modern Awards- National Training Wage (AM2016/15, AM2016/17), 17 March 2017. Submission of Master Builders Australia- 4 Yearly Review of Modern Awards - National Training Wage -AM2016/17, 8 September 2017. Submission of Master Builders Australia – 4 Yearly Award Review – National Training Wage – AM2016/17, 22 November 2019.*

<sup>4</sup> [2016] FWC 4495

7. While certain specific grounds and reasons for this position are set out below, we broadly observe that the CFMMEU position appears to be founded on the notion of resisting any alteration to Modern Awards, even alterations which are administrative in nature and that make no difference to employees engaged pursuant to those Awards.
8. Master Builders submits that the Commission’s proposed approach to the NTW schedule will not reduce or alter the safety net for employees, and we are unable to comprehend how it could even be asserted that this is, or could be, the case. The only practical effect which is likely to be observed in workplaces to which the Construction Awards apply, is a reduction in instrument complexity and greater certainty and clarity as to the detail and source of NTW obligations for Award users.

#### **D. SPECIFIC GROUNDS & REASONS**

9. The CFMMEU submission simply fails to advance any grounds or reasons that demonstrate how its approach should be preferred over that proposed by the Commission. The materials filed in support of the CFMMEU submission do not in any way set out why the Commission’s approach is deficient or provide any evidence that highlights any benefit arising from the CFMMEU proposal whatsoever.
10. The CFMMEU submission and materials do not demonstrate any detriment to award users or those covered by the Award, or even suggest how this might occur. They do not set out how their approach would better satisfy the Modern Awards Objective or how the Commission’s approach is deficient in this regard.
11. The Commission has determined the appropriate approach to NTW Schedules and, given the absence of any ground or cogent reason to consider any deviation, it should be applied generally with respect to all the Construction Awards.
12. Further, it is our submission that the CFMMEU submission, in and of itself, exemplifies the deficiencies with the position it advances and represents a solid ground by which we urge the Commission to reject it.
13. This deficiency arises when consideration is given to the position maintained by the CFMMEU in earlier stages of this proceeding; being that there are only five training packages relevant to the classifications and occupations covered by the Joinery Award. As a result, they maintain these five packages should remain as a schedule to the Joinery Award.
14. However, the CFMMEU submission as filed now lists seven packages of relevance – two more than what was previously stated – which are now as follows:
  - Construction, Plumbing and Services training package;
  - Manufacturing training package;
  - Transport and Logistics training package;
  - Finishing training package;
  - Sustainability training package;
  - Forest and Wood Products training package; and
  - Manufacturing and Engineering training package.<sup>5</sup>
15. It is our submission that this highlights the flaw in the CFMMEU position and demonstrates the significant benefit in the Commission’s proposal. For example, had the CFMMEU position been agreed as advanced at earlier stages of this proceeding and variations made to the Joinery Award, it would now require an additional alteration to reflect the additional two packages. This is exactly the type of circumstance the Commission’s proposal neatly anticipates, comprehends and avoids.
16. Further, the CFMMEU submission attempts to make a substantive alteration to the rates of pay applicable to related training packages, by proposing a deletion of Wage Level C. This again represents a ground to reject the CFMMEU submission as it assumes that there will never be a

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<sup>5</sup> *Submission of the Construction, Forestry, Maritime, Mining and Energy Union (Construction & General Division) on award specific schedules for the Joinery and Building Trades Award 2010 and the Mobile Crane Hiring Award 2010 – AM2016/15, AM20106/17 – 4 Yearly Review of Modern Awards – Plain Language Project – National Training Wage Award Specific Schedules, dated 4 February 2020 at para [12].*

future training package relevant to Joinery that attracts Wage Level C. This clearly limits the ability for the training system to adapt or evolve in a flexible way as it should be free to do, with the related ramification of limiting the ability for future trainees to be employed at Wage Level C in the event an applicable training package became available. In contrast, the Commissions approach does not reduce flexibility, does not remove any existing classification and provides a framework for Modern Awards to operate conjunctively with a nimble and modern training system.

17. As such, Master Builders respectfully urges the Commission to reject the deletion of Wage Level C.
18. Master Builders does not dispute that the packages referenced within the CFMMEU's submission are currently applicable to the Joinery Award, however, we reject the assertion that they are the only packages that will ever be relevant to that award.
19. We hold significant concerns that limiting the number of packages would not provide for the evolving training needs of the construction industry as it becomes increasingly reliant upon employees trained in specialised roles that do not necessarily fall within the scope of a traditional trade. This is particularly relevant as technology, work practices, building products and construction methodology are constantly changing within the sector.
20. We therefore submit that the CFMMEU's approach is at risk of rapidly becoming outmoded and would therefore be inconsistent with ss 134(d) and (g) of the FW Act.

#### **E. OTHER GROUNDS**

21. We refer to paragraph [60] of the Decision which dealt with Preliminary Jurisdictional Issues for the 4 Yearly Review where it was stated that:

*“The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation.”*

And further -

*“... where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.”*

22. Master Builders submits that the CFMMEU has brought no evidence, other than a collective opinion, that the NTW Schedule for the Joinery Award should only contain the seven packages referenced herein, nor any materials which would support its argument that the award should be dealt with differently to the vast majority of awards in this matter. The CFMMEU's submissions should therefore be rejected.

**MASTER BUILDERS AUSTRALIA**

**3 MARCH 2020**