



## INTERIM DECISION

*Fair Work Act 2009*

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

### **The Master Plumbers' and Mechanical Services Association of Australia** (AM2011/24)

Plumbing industry

SENIOR DEPUTY PRESIDENT WATSON

MELBOURNE, 21 JUNE 2011

*Proposed variations to several clauses of the Modern Award to correct errors and remove ambiguity.*

[1] On 6 May 2011, The Master Plumbers & Mechanical Services Association of Australia (MPMSAA) made an application under s.160 of the *Fair Work Act 2009* (the Act) to vary numerous provisions of the *Plumbing and Fire Sprinklers Award 2010*<sup>1</sup> (the modern award), to remove ambiguity and/or uncertainty or correct error.

[2] One set of variations involves variations to Part 3 of the Award - Types of Employment and Termination of Employment - in respect of part-time work. Those variations are numbered 2 to 6 in the MPMSAA application.

[3] The MPMSAA submitted that, in the context of an increasing trend where employees engaged on daily hire wish to be employed on a part-time basis and some are already employed on that basis, the absence of part-time provisions for daily hire employees creates an uncertainty whereby the only form of non full-time employment permitted to plumbing and mechanical services employees is casual employment, causing the loss of many conditions of employment enjoyed by non casual employees.

[4] MPMSAA also submitted that variations to clauses 10 and 12 to 14 of the modern award were required to correct an error which had the effect of preventing plumbing and mechanical services employees being engaged on a part-time basis, submitting that to be engaged on other than a full-time basis such employees would have to be engaged on a casual basis.

[5] The variations proposed by MPMSAA were:

1. deleting “weekly hire” from clause 10.1(c), so that it reads “part-time employees”;
2. replacing the current heading to clause 12 -“Weekly hire employment” with “Full-time weekly hire employment” and renumbering the current clauses 12.1(a) and (b) as clause 12.1 and 12.2 respectively;

3. renumbering the current clause 12.2 - Part-time employment as clause 13, with clauses 12.2(a) to (e) being renumbered as clauses 13.1 to 13.5;
4. renumbering the current clause 13 - Casual employment - as clause 14 and renumbering the current clause 14 - Casual conversion to full-time or part-time employment - as clause 14.3, with current clauses 14.1 to 14.12 being renumbered as clauses 14.3(a) to 14.3(l).

[6] These variations were opposed by The Master Plumbers & Mechanical Contractors Association of New South Wales (MPMCANSW) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.

[7] It is clear from the Stage 2 Exposure Draft statement<sup>2</sup> of the Award Modernisation Full Bench that it intended to include a provision for part-time employment in the modern award.<sup>3</sup> Provisions in respect of Types of Employment were included in the Exposure Draft in the terms of the current modern award provision, save that in the final modern award daily hire was limited to plumbing and mechanical services classifications, consistent with previous award provisions, and some minor amendments were made in the final modern award to the Types of Employment provision in the Exposure Draft.<sup>4</sup> The latter amendments included the integration of the Exposure Draft clauses 12 - Full-time weekly hire employment and 13 - Part-time employment, into the modern award clause 12 - Weekly hire employment, which contains clause 12.1 - Full-time and 12.2 - Part-time employment. The Exposure Draft clause 13.1 became clause 12.2(a), which was amended to include the underlined words:

“(a) A part-time employee is an employee who works an average of fewer than 38 ordinary hours per week or fewer than eight ordinary hours per day and has reasonably predictable hours of work.”

[8] It appears to me that there is some uncertainty as to the circumstances in which part-time work is permitted by the modern award, with part-time employment being contained as a subclause within clause 12 - Weekly hire employment, but with the addition of the criteria for part-time work of working fewer than eight ordinary hours per day suggesting application of part-time work to the circumstances of daily hire employment.

[9] The uncertainty arises in the context of:

- The intent of the Award Modernisation Full Bench to include provisions for part-time work within the modern award;
- The proposition advanced by the MPMSAA that there exists a demand for part-time employment by some plumbing and mechanical services employees on the basis of daily hire employment in order to maintain the conditions associated with that form of employment;
- The proposition advanced by MPMCANSW that the nature of daily hire employment is inconsistent with part-time employment on a daily hire basis;
- The protections within the part-time provision of the modern award in respect of part-time employment, found in clause 12.2(b) to (e), consistent with the “the essential integrity of part-time employment which should be akin to full time employment in all respects except that the average weekly ordinary hours are fewer than 38.”<sup>5</sup>

[10] This is an issue on which I would benefit from further input from interested parties.

[11] Accordingly, I will list a further consultation at 10.00 a.m. on Wednesday, 29 June 2011 in Melbourne, with video access in Sydney if requested.

SENIOR DEPUTY PRESIDENT

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<sup>1</sup> MA000036.

<sup>2</sup> [2009] AIRCFB 50.

<sup>3</sup> [2009] AIRCFB 50, at para 40.

<sup>4</sup> Decision in relation to making of Stage 2 modern awards, [2009] AIRCFB 345 at para 105.

<sup>5</sup> [2008] AIRCFB 1000, at para 291.