

REPLY SUBMISSIONS

Introduction / Background

1. In accordance with directions issued by the Fair Work Commission (**Commission**) on 15 July 2016:-

- the Master Plumbers ACT;
- the Master Plumbers and Mechanical Services Association of Australia;
- the Master Plumbers Association of Queensland;
- the Master Plumbers of South Australia; and
- the Master Plumbers Tasmania

(collectively referred to as the **Master Plumbers Group**)

hereby submit the following reply submissions with respect to the *Plumbing and Fire Sprinklers Award 2010 (PFS Award 2010)*, the *Plumbing and Fire Sprinklers Award 2016 (Exposure Draft) (PFS Award 2016)* and the 4 Year Review of Modern Awards.

2. The reply submissions of the Master Plumbers Group are directed to the submissions of:-

- the Communications Electrical Electronic Energy Information Postal Plumbing and Allied Services Union of Australia / Plumbing Trades Employees Union (**CEPU / PTEU**) dated 11 July 2016; and
- the Australian Workers Union (**AWU**) dated 6 July 2016; and
- the Master Plumbers Association of NSW (**MPANSW**) dated 30 June 2016; and
- the National Fire Industry Association (**NFIA**) dated 30 June 2016; and
- the Fire Protection Association Australia (**FPAA**) dated 30 June 2016; and
- Business SA (**BSA**) dated June 2016; and
- Australian Business Industrial (Australian Business Lawyers & Advisors) / The NSW Business Chamber Ltd (**ABI / NSWBC**) dated 1 July 2016; and
- The Australian Industry Group (**AIG**) dated 8 July 2016.

(collectively referred to as **the interested parties**)

Part A Comments / questions posed by the Commission in the exposure draft of the PFS Award 2016 a responses from the interested parties

Clause 7.2 – Facilitative provisions for flexible working practices

3. In the primary submissions, the Master Plumbers Group made the following comments:-

11. The Master Plumbers Group submit that the reference to Clause 15.3 in Clause 7.2 should read “the majority of the affected employees”.
12. The Master Plumbers Group believe that it is appropriate that these words be inserted in to that particular provision, as they accurately reflect the nature of the industry.

13. There are numerous instances of employers having multiple sites operating at the same time. It is submitted that the inclusion of the words “a majority of employees” (or words similar) may lead to confusion with the employer – in that the question becomes whether the employer is obligated to get the agreement of all employees, or only those employees at the affected job site? By including the words “the majority of the affected employees” the confusion has been resolved in that it overcomes the confusion; as the (now, new) obligation to consult remains with the “affected employees”, not the entirety of the employers’ workforce.
14. The Master Plumbers Group suggest that the same words be inserted into Clause 7.2 of PFS Award 2016, for Clause 15.3, 15.4, 16.2 and 26.2.
15. As previously submitted the insertion of the words “the majority of the affected employees” in Clause 15.3, 15.4, 16.2 and 26.2 would require the employer to obtain the approval of the majority of their employees at that one particular site, rather than the majority of all employees employed by the employer.
4. In considering the primary submissions of the interested parties, there is no consistent response and / or approach among the interested parties.
5. The CEPU / PTEU submitted “that the clause should be left how it currently reads”.
6. The AWU submitted that “adding the word ‘affected’ to read ‘the majority of affected employees’ to improve these facilitative clauses – so that only those affected by an agreement can form the majority”.
7. The MPANSW “submitted that an early start should be by agreement with the individual employee”.
8. The NFIA did not address the issue.
9. The FPAA submitted that “the Award should be varied to reflect a mix a circumstances”.
10. BSA “submitted that the change is not necessary”.
11. ABI / NSWBC submitted the reference in Clause 15.3 of the Exposure Draft should refer to “a majority of employees”.
12. The AIG did not address the issue.
13. The Master Plumbers Group maintains the position and supporting commentary made in the primary submission.

14. The Master Plumbers Group would like to add the following additional comments.
15. A reference to “the employees” or “a majority of employees” should be clarified by inserting the word “affected” before the word “employees”. On this basis, the decision as to whether a facilitative provision will, or will not be utilised, would be made by the majority of affected employees. On this basis, it would be the employees who are directly affected by the decision and only the employees who are directly affected by the decision to utilise a facilitative provision, or not, making the decision to use, or not use, the facilitative provision; not employees who are at another site and not subject to the facilitative provision, imposing their will on such a decision.
16. On that basis, it is the Master Plumbers Group submission that PFS Award 2016, should read:-

7.2 Facilitative provisions in this award are contained in the following clauses:-

Clause	Provision	Agreement between an employer and:-
15.3	Early start	a <u>majority of affected employees</u>
15.4	Alternative methods of arranging ordinary hours and rostered days off	a majority of <u>affected employees</u>
16.2	Variation of meal breaks	a majority of <u>affected employees</u>
21.3	Working during meal break	an individual employee
26.2	Public holidays – substitution	a majority of <u>affected employees</u>

Clause 13.14(d) – Adult Apprentices

17. In the primary submissions, the Master Plumbers Group made the following comments:-
18. The Commission has asked that the parties consider whether Clause 13.14(d) – Employment as an Adult Apprentice of PFS Award 2016 is “permitted” in an award, or not.
19. As the Clauses in question are existing clauses (refer to Clause 16.4(a) and Clause 16.4(b) of the PFS Award 2010), the Master Plumbers Group has presumed that in making the PFS Award 2010, the AIRC considered that Clause 16.4(a) and Clause 16.4(b) of PFS Award 2010, satisfied the obligations in Section 139 – Terms that may be included in modern awards – general of the FW Act. On that basis, it is the Master Plumbers Groups view that the clauses satisfy the obligations in Section 139 of the FW Act and on that basis are *allowable*.

20. It is the Master Plumbers Group view that an award should only contain *enforceable entitlements*. In addition, it is the Master Plumbers Groups view that the provisions of an award should not be *aspirational*.
21. Given this position, it is the Master Plumbers Groups view that neither Clause 13.14(d)(i), nor Clause 13.14(d)(ii), of PFS Award 2016 should be included in the final draft of PFS Award 2016.
22. It is the Master Plumbers Groups view that Clause 13.14(d)(i) of PFS Award 2016, does not establish an *enforceable entitlement*. It is the Master Plumbers Groups view that the *enforceable entitlement* in Clause 13.14(d)(i) is clearly offset (if not negated) by the words at the start of the Clause – “(w)here possible”. If it was suggested that the words “(w)here possible” be deleted, the Master Plumbers Group would oppose such a proposition – such an alteration would completely change the intent and the purpose of the clause.
23. It is the Master Plumbers Group view that Clause 13.14(d)(ii) is either *aspirational* or a statement of intent and purpose. In either sense, it is the view of the Master Plumbers Group that Clause 13.14(d)(ii) of PFS Award 2016 should not be included in the final draft of PFS Award 2016.
24. Neither Clause 13.14(d)(i), nor Clause 13.14(d)(ii), of PFS Award 2016 should be included in the final draft of PFS Award 2016.
18. In considering the primary submissions of the interested parties, there is no consistent response and / or approach among the interested parties.
19. The CEPU / PTEU submit “that this clause brings people’s attention to structuring a career path for workers who do not necessarily have qualifications”. In addition, the CEPU / PTEU “believes that these clauses have already been deemed allowable”.
20. The AWU submits that “if no disadvantage ... can be identified, the AWU would support the deletion of clause 13.14(d)”. The AWU then qualify that statement by adding that if “the AWU become further enlightened to this issue revealing the necessity of clause, we may make further submissions”.
21. The MPANSW did not address the issue.
22. The NFIA did not address the issue.
23. The FPAA submitted that “the provision should be retained”.
24. BSA submit that “clause 13.14(d)(ii) appears to discriminate for reasons of age. Therefore this term is not allowed in an award”.
25. ABI / NSWBC did not address the issue.
26. AIG submitted that “this term could lead to discriminatory practices and should be deleted”.

27. The Master Plumbers Group maintains the position and supporting commentary made in the primary submission.
28. On this basis, it is the submission of the Master Plumbers Group that clause 13.14(d) be deleted.

Clause 16.5 – Overtime rest breaks and Clause 16.6 – Overtime Meal Breaks

29. In the primary submissions, the Master Plumbers Group made the following comments:-
 25. The Master Plumbers Group understand that it makes sense for Clause 16.5 – Overtime rest breaks and Clause 16.6 – Overtime meal breaks to be included in Clause 16 – Breaks, however, from a functional point of view it is the Master Plumbers Group view that Clause 16.5 – Overtime rest breaks and Clause 16.6 – Overtime meal breaks should be inserted into Clause 21 – Overtime (as Clauses Clause 21.6 – Overtime rest breaks and Clause 21.7 – Overtime meal breaks). If these clauses are in fact located in Clause 21 – Overtime, rather than Clause 16 – Breaks, it means that all provisions dealing with overtime are centrally located – this makes it easier for a reader (whether that reader be an employer or that reader be an employee) of the PFS Award 2016 to comprehend their obligations with respect to overtime.
30. In considering the primary submissions of the interested parties, whilst there are similar approaches, there is no consistent response and / or approach among the interested parties.
31. The CEPU / PTEU submitted that “Clause 16.6 (Overtime Meal Breaks) and Clause 16.5 (Overtime Rest Breaks) would be better situated in Clause 21 (Overtime). To avoid confusion the CEPU suggests that these Clauses are mentioned in Clause 16”.
32. The AWU submitted that “both methods are functional”, but that they had a “slight preference for the clauses to be moved back to clause 21”.
33. The MPANSW submitted that it “would be easier and more accessible to read all overtime provisions in one location”.
34. The NFIA did not address the issue.
35. The FPAA submitted that it may “be appropriate to move exposure draft sub clause 16.5 and 16.6 to clause 21 – Overtime”.
36. BSA submitted that it “supports moving the overtime – rest breaks clause into the general overtime clause. It is preferable conditions and entitlements arising out of overtime work all be detailed within the general overtime clause”.
37. ABI / NSWBC submitted that as “clause 16 of the Exposure Draft generally deals with breaks under the award, it would appear to be the most appropriate place to put the clauses. However, ... (ABI / NSWBC) ... would not be opposed to these clauses being placed in the overtime clause of the Exposure Draft, provided that both clauses are kept together”.

38. The AIG did not address the issue.
39. The Master Plumbers Group maintains the position and supporting commentary made in the primary submission.
40. On this basis, it is the submission of the Master Plumbers Group (and the majority of the interested parties) that clause 16.5 and 16.6 be removed from Clause 16 – Breaks and inserted into Clause 21- Overtime as clause 21.6 - Overtime Meal Breaks and Clause 21.7 - Overtime Rest Breaks.
41. On that basis, it is the Master Plumbers Group (and the majority of the interested parties) submission that the Exposure Draft should read:-

21.6 – Overtime Meal Breaks

- (a) An employee working on a Saturday, Sunday or public holiday will be allowed a paid meal break of 20 minutes after four hours of work, to be paid at the relevant overtime rate in clause 21—Overtime, but this will not prevent any arrangement being made for a 30 minute meal period, the time in addition to the paid 20 minutes being without pay.
- (b) In the event of an employee being required to work in excess of a further four hours, the employee will be allowed to take a paid rest break of 30 minutes payable at the relevant overtime rate in clause 21—Overtime.

21.7 - Breaks between working days

- (a) If an employee works so much overtime between the end of work on one day and the start of work on the next day that they do not have a break of at least 10 consecutive hours, the employer will:
- (i) release the employee after the end of the overtime until the employee has had at least 10 consecutive hours off duty; and
- (ii) pay the employee for any ordinary working time that falls within the period of absence.
- (b) If an employee works on a Saturday, Sunday or public holiday and does not have a break of 10 consecutive hours in the 24 hours preceding their ordinary starting time on their next ordinary day, the employer will:
- (i) release the employee after the end of the overtime until the employee has had at least 10 consecutive hours off duty; and
- (ii) pay the employee for any ordinary working time that falls within the period of absence.

- (c) If the employer requires an employee referred to in clause 21.7(a) or clause 21.7(b) to resume or continue work, and the employee has not had 10 consecutive hours off duty, the employer must:
 - (i) pay the employee at **200%** of the ordinary hourly rate until the employee is released from duty for 10 consecutive hours; and
 - (ii) once the employee is released from duty, pay the employee for any ordinary working time that falls within the period of absence.
- (d) An employee who has worked continuously (except for work breaks allowed by this award) for 20 hours including holiday work will not be required to continue at or recommence work for at least 12 hours.

Clause 18.8 – Payment of Wages

- 42.** In the primary submissions, the Master Plumbers Group made the following comments:-
- 26.** The Commission has asked that the parties consider whether Clause 18.8 – Payment of Wages of PFS Award 2016, “should specify that payment by electronic means is an acceptable payment of wages method”.
 - 27.** In considering whether Clause 18.8 – Payment of Wages of PFS Award 2016, “should specify that payment by electronic means is an acceptable payment of wages method” the Master Plumbers Group have developed the view that the entire clause is not representative of 2016 and beyond, but rather representative of a system that was alive and well some twenty (20), thirty (30) or even forty (40) years ago.
 - 28.** It is the Master Plumbers Groups view that the following Payment of Wages clause be inserted into the PFS Award 2016, as Clause 18.8 – Payment of wages:-

18.8 Payment of wages

- (a) All wages, allowances and other monies must be paid in cash or electronic funds transfer (**EFT**) or cheque.
- (b) Payments must be paid and available to the employee no later than the cessation of ordinary hours of work on Thursday of each working week.
- (c) An employee paid by cheque will be allowed reasonable time as agreed between the employer and the employee, to attend the branch of their bank nearest the workplace to cash such cheques or draw upon the accounts during working hours.
- (d) When notice is given in accordance with Clause 31—Termination of employment, monies due to the employee must be paid at the time of termination. Where this is not practicable, monies will be paid by EFT, transferred into the employee’s account as soon as practicable.

29. The proposed clause has its' foundation in both Clause 27 – Payment of wages of PFS Award 2010 and Clause 18.8 – Payment of wages of PFS Award 2016. The proposed draft represents significant parts of both Clause 27 – Payment of wages of PFS Award 2010 and Clause 18.8 – Payment of wages of PFS Award 2016. The proposed clause seeks to modernise the provisions to reflect the variety of ways that persons can access their bank accounts – whether that be in person, through a machine (whether that be an ATM, or other electronic method of accessing your bank e.g. EFTPOS) or through other electronic means (phone, computer, mobile, etc).
30. **If** the Commission does not find favour in the clause proposed by the Master Plumbers Group then the Master Plumbers Group makes the following submissions on the commentary made by the Commission at Clause 18.8 – Payment of Wages.
31. The clause should be varied to “specify that payment by electronic means is an acceptable payment of wages method”.
32. It is submitted that additional changes to the clause should be made. The additional changes that need to made to Clause 18.8 – Payment of Wages are:-
- 32.1.1 Clause 18.8(b)** – should be confined to an employee who is paid by cheque.
- 32.1.2** In all other circumstances the employee has their wages paid directly into their bank account and given the variety of ways that an employee can access their money there is no need for an employee to be allowed time off to attend the “branch of their bank”.
- 32.1.3** In addition, the clause as presently drafted is limited to an employee paid by cheque, this should be continued in to the future. It is therefore submitted that the following words “other than cash” be deleted and the words “cheque” be inserted in lieu thereof. This would ensure that only an employee paid by cheque would be entitled to take “reasonable time ... to attend the branch of their bank”.
- 32.2.1 Clause 18.8(d) and Clause 18.8(e)** – should be confined to an employee who is paid by cash.
- 32.2.2** The only time that either Clause 18.8(d) and / or Clause 18.8(e) should be invoked is where an employee is paid in cash.
- 32.2.3** It is submitted that Clause 18.8(d) has been drafted to ensure that an employee paid in cash is not disadvantaged by having to wait around the site for hour after hour whilst the employer waits to receive the cash delivery to pay the employee their wages.
- 32.2.4** Under Clause 18.8(c) an employer is obliged to pay an employee “not later than the end of ordinary hours of work on Thursday of each working week”.

32.2.5 For employees paid by electronic funds transfer this should suffice. For an employee paid by electronic funds transfer there should be no other obligations and / or qualifications on how and when an employee is to be paid.

32.2.6 On this basis, the Master Plumbers Group submits that the words “paid in cash” be inserted after “employee” and before “must” in Clause 18.8(d); Clause 18.8(d) would then read “... an employee paid in cash must be”. In addition, in Clause 18.8(e) the words “paid in cash” be inserted after “employee” and before “kept”; Clause 18.8(e) would then read “An employee paid in cash kept waiting ...”.

43. In considering the primary submissions of the interested parties, whilst there is general consensus that supports the insertion of a reference to electronic funds transfer, there is no consistent response and / or approach among the interested parties as to how this can and / or should be achieved.

44. The CEPU / PTEU submitted “that payment by electronic means is an acceptable method and believes these words should be included in Clause 18.8. Part A of Clause 18.8 could read as the following:

“(a) All wages, allowances and other monies must be paid in cash, cheque, bank cheque or electronic means (electronic funds transfer) or any combination of these”.

45. The AWU submitted that “it is appropriate to update this clause to refer to payment by electronic means. The removal of the words ‘bank cheque, bank or similar transfer’ should be removed, and ‘electronic fund transfer’ added”.

46. The MPANSW submitted that “bank or similar transfer means a payment by electronic means which already specified in clause 18.8(a)”.

47. The NFIA submitted that it “supports the proposition put forward by the Master Plumbers Group”.

48. The FPAA submitted that the clause should be updated to include electronic funds transfer. The FPAA then submitted that the following clause be inserted

“18.8(a) All wages, allowances and other monies must be paid in cash, cheque, ~~bank cheque, bank or similar transfer~~ or electronic fund transfer”.

Finally, the FPAA submitted that the “proposed clause provides for a variety of options and the reference to “cheque” and “electronic fund transfer” up – dates the current words / method of payments of “bank or similar transfer”.

49. BSA submitted that they support “this addition”.

50. The ABI / NSWBC submitted that “‘a bank or similar transfer’ allows for the payment of wages by electronic means. However, to ensure that there is no ambiguity concerning electronic transfer being an acceptable method of paying wages, clause 18.8(a) could be amended to include an express reference to electronic means”.

51. The AIG did not address this issue.
52. The submissions of the Master Plumbers Group sought additional changes to the question posed by the Commission.
53. The Master Plumbers Group maintains the position and supporting commentary made in the primary submission.
54. The additional changes proposed by the Master Plumbers Group are needed to ensure that the clause is brought into the year 2016.
55. The Master Plumbers Group notes that, in a separate application to the Commission, ABI / NSWBC “is seeking to vary the provisions in 10 modern awards which impose a penalty for late payment of wages”. PFS Award 2016, is one of those ten (10) awards.
56. On 2 August 2016, the Commission issued a Statement [2016] FWCFB 5254 – 4 Yearly review of modern awards – payment of wages. In that Statement, the Commission determined that the ABI / NSWBC application (and the other applications) will be heard on 25 October 2016.
57. The Master Plumbers Group acknowledge that a part of Clause 18.8 – Payment of wages of PFS Award 2016, will not be able to be resolved until after the Commission has determined the ABI / NSWBC application. On that basis, it may be appropriate that the debate / argument on Clause 18.8 – Payment of wages be deferred until after the Commission has published their decision in the abovementioned matter.

Clause 20.3(f) – Industry disability allowance and space, height and dirt money allowance – fire sprinklers fitter employees

58. In the primary submissions, the Master Plumbers Group made the following comments:-
 30. Clause 18.2(b)(iii) – Apprentices engaged before 1 January 2014, and Clause 18.2(c)(iii) – Apprentices engaged on or after 1 January 2014, of PFS Award 2016, (which replicates Clause 20.2(b)(iii) and Clause 20.2(c)(iii) of PFS Award 2010) provides that the apprentice wages will be determined by the applicable apprentice “percentage” “for sprinkler pipe – fitting: ... (of) ... the industry disability allowance and space, height and dirt money (clause 20.3(f))”. On that basis, Clause 20.3(f) is payable to an apprentice, but only at the applicable apprentice “percentage”. So the answer to the question is “no”.
59. In considering the primary submissions of the interested parties, there is no consistent response and / or approach among the interested parties as to whether the allowances does, or does not apply, to an apprentice.
60. The CEPU / PTEU submitted that “Apprentices whether Adult or not receive this Allowance. The Allowance is payable on a % rate as per the % rate of the applicable year of their Apprenticeship”.
61. The AWU submitted that the allowance is also payable to apprentices.

62. The MPANSW did not address this issue.
63. The NFIA did not address this issue.
64. The FPAA did not address this issue.
65. BSA submitted that the allowances also applies to an apprentice.
66. The ABI / NSWBC submitted that the clause is “only payable to adults, and this clearly reflects the provision at 21.1(g) of the current award”.
67. The AIG does not address this issue.
68. The Master Plumbers Group maintains the position and supporting commentary made in the primary submission.
69. Clause 20.2(b)(iii) and Clause 20.2(c)(iii) of PFS Award 2010 and Clause 18.2(b)(iii) and Clause 18.2(c)(iii) of PFS Award 2016, provide that the referred allowance is payable on the applicable percentage basis to an apprentice.

Schedule B – All Purpose Rates of Pay

70. In the primary submissions, the Master Plumbers Group made the following comments:-
 33. Neither Clause 18.2(b)(iii), nor Clause 18.2(c)(iii) of PFS Award 2016 (which replicate Clause 20.2(b)(iii) and Clause 20.2(c)(iii) of PFS Award 2010) reference the “sprinkler fitting trade allowance” (Clause 20.3(e) of PFS Award 2016 or Clause 21.1(f) of PFS Award 2010) as being a component that makes up the wages for a fire sprinkler fitter apprentice. On that basis the answer asked by the Commission is that the allowance is not payable to a fire sprinkler fitter apprentice.
71. In considering the primary submissions of the interested parties, there is no consistent response and / or approach among the interested parties as to whether the allowances does, or does not apply, to an apprentice.
72. The CEPU / PTEU submitted that “this is an allowance for Trades persons only”.
73. The AWU submitted that the allowance is payable to an apprentice.
74. The MPANSW did not address this issue.
75. The NFIA submitted that the allowance “applies to fire sprinkler fitting trades persons only”.
76. The FPAA submitted that that the allowance is not payable to an apprentice.
77. BSA submitted that the allowance is payable to “employees in a classification at or exceeding ‘Sprinkler fitting tradesperson Level 1’. Employees below this classification instead receive the plumbing trade allowance on an incidence basis, calculated hourly”.

- 78. The ABI / NSWBC did not address this issue.
- 79. The AIG did not address this issue.
- 80. The Master Plumbers Group maintains the position and supporting commentary made in the primary submission.

Schedule H – Peak Sports Apprenticeships

- 81. In the primary submissions, the Master Plumbers Group made the following comments:-
 - 34 It is the view of the Master Plumbers Group that the list of Peak Sports Bodies would accord with those types of organisations that could be considered to be a Peak Sports Body.
- 82. In considering the primary submissions of the interested parties, of those who made submissions in response to the Commissions question there is a consistent response that the clause as drafted is accurate and up to date.
- 83. The CEPU / PTEU submitted that they believed that the “list ... (was) up to date”.
- 84. The AWU did not address this issue.
- 85. The MPANSW submitted that “to the best of its knowledge ... the list is current and meets the intent of the original proposal to establish the category of such an apprenticeship”.
- 86. The NFIA did not address this issue.
- 87. The FPAA did not address this issue.
- 88. BSA did not address this issue.
- 89. The ABL / NSWBC did not address this issue.
- 90. The AIG did not address this issue.
- 91. Given the comments of the Master Plumbers Group and the interested parties Schedule G – Peak Sports Apprenticeships (of PFS Award 2016) is accurate and up to date and as a consequence should not be changed.

Schedule I – National Training Wage - Coverage (Training Programs)

92. In the primary submissions, the Master Plumbers Group made the following comments:-
35. The parties have been “asked to identify *“any training program which applies to the same occupation and achieves the same training outcome as an existing apprenticeship in an award as at 25 June 1997”* that they consider should not be covered by this Schedule”. The Master Plumbers Group has not been able to identify any such *“training programs”*; as the training for a Plumber remains fundamentally the same in 2016, as it did in 1997 – in that the only way to become a registered plumber is through an apprenticeship.
93. In considering the primary submissions of the interested parties, of those who made submissions in response to the Commissions question there is a consistent response that the clause as drafted is accurate and up to date as the only way to become a plumber is through an apprenticeship.
94. The CEPU / PTEU submitted “that the only training is that of an Apprenticeship”.
95. The AWU did not address this issue.
96. The MPANSW did not address this issue.
97. The NFIA did not address this issue.
98. The FPAA did not address this issue.
99. BSA did not address this issue.
100. The ABL / NSWBC did not address this issue.
101. The AIG did not address this issue.
102. Given the comments of the Master Plumbers Group and the CEPU / PTEU Schedule I – National Training Wage (of PFS Award 2016) is accurate and up to date and as a consequence should not be changed.

Schedule I – National Training Wage - Allocation of Traineeships to Wage Levels

103. In the primary submissions, the Master Plumbers Group made the following comments:-
36. The parties have been “asked to review the packages listed to ensure the lists are complete and up – to – date”. It is the Master Plumbers Group view that the only applicable training package on the list is the “Construction, Plumbing and Services Integrated Framework”. However, it is the Master Plumbers Groups view that the current training package is titled “Construction, Plumbing and Services Training Package”. On this basis all other references could be deleted from the table in Schedule I – National Training Wage.

104. In considering the primary submissions of the interested parties, of those who made submissions in response to the Commissions question there is a differing view as to the finalisation of the draft clause.
105. The CEPU / PTEU submitted that they believed “that the packages listed in Schedule I generally do not apply to Plumbing or Fire Sprinkler Work. “Construction, Plumbing and Services Integrated Framework” is applicable although the training package may be worded a bit differently”. The CEPU / PTEU additionally submitted that “all parties look into this further as some parts of the Plumbing and or Fire Sprinkler work could fall under packages such as the following:-... Gas Industry, Food Processing Industry, Metal and Engineering, Water Industry, Civil Construction, Local Government, Pulp and Paper Manufacturing Industries”.
106. The AWU did not address this issue.
107. The MPANSW did not address this issue.
108. The NFIA did not address this issue.
109. The FPAA did not address this issue.
110. BSA did not address this issue.
111. The ABL / NSWBC did not address this issue.
112. The AIG did not address this issue.
113. The intent of the Master Plumbers Group in the primary submissions was to remove those training packages that had no relationship with the training package for plumbing / fire sprinkler fitting work. The Master Plumbers Group support the submissions of the CEPU / PTEU and would endorse the maintenance of the training packages the CEPU / PTEU referred to, however, would maintain the position that the remaining training packages be deleted because they do little or no work in this particular award.

Note:- The Master Plumbers Group acknowledge the Commission Statement dated 6 July 2016 ([2016] FWC 4495) , in which the Commission made the following comments:-

It is proposed that a standard NTW Schedule be created and adopted in all modern awards. The proposed standard NTW Schedule will be based on the version published in the exposure draft process and set out at Attachment C. This Schedule may be the subject of plain language re-drafting. All interested parties will be given an opportunity to comment on any changes proposed

Given these comments, the Master Plumbers Group accept and acknowledge that the questions posed by the Commission in PFS Award 2016, regarding the NTW Schedule will now be considered and determined by a separate Full Bench.

The Master Plumbers Group have made the submissions In PN89 to 110 for completeness sake.

Part B – Additional issues raised by the interested parties

- 114.** The Master Plumbers Group concentrated solely on the questions posed by the Commission and did not raise any additional issues.
- 115.** The Master Plumbers Group maintains the previously stated position that:-
- Clause 18 – Industry Specific Redundancy Scheme of PFS Award 2010 (Clause 33 of PFS Award 2016) should be deleted, or, in the alternative, should be varied to expressly exclude employees receiving redundancy pay in circumstances where they resign;
 - Clause 20 – Minimum Wages of PFS Award 2010 (Clause 18 of PFS Award 2016) should be amended to include provisions that provide for the payment of Junior Rates to persons employed in the Plumbing and Mechanical Services Worker / Sprinkler Fitting Worker Level 1(a), 1(b), 1(c) and 1(d) classifications;
 - Clause 32 – Penalty rates of PFS Award 2010 (Clause 22 of PFS Award 2016), should be reviewed and amended to simplify the obligations payable under that particular clause (without the variation of the entitlements provided under the clause itself);
 - Clause 33 - Overtime of PFS Award 2010 (Clause 21 of PFS Award 2016) should be reviewed and amended to insert a provision that confirms that “Each days’ overtime stands alone”.

The Master Plumbers Group acknowledge that the determination of the variation, or not, of Clause 18 – Industry Specific Redundancy Scheme of PFS Award 2010 (Clause 33 of PFS Award 2016), will be subject to arguments before either a separate Full Bench, or the same Full Bench, at the same time as the applications to vary the applicable Industry Specific Redundancy Scheme clauses in the *Building and Construction General On – site Award 2010* and the *Joinery and Building Trades Award 2010* and is not a part of these particular proceedings.

- 116.** The CEPU / PTEU primary submissions concentrated solely on the questions posed by the Commission and did not raise any additional issues.
- 117.** The AWU’s primary submissions made some additional comments.
- 118.** The AWU’s additional comments related to Clause 21.1, 22.1 and 22.2(a) of PFS Award 2016 (Clauses 33 – Overtime and 32 – Penalty Rates of PFS Award 2010).

119. The AWU take issue about the payment of overtime after an employee has worked shiftwork on a Saturday. The AWU argue that:-

19 On a Saturday the penalty rate for all employees is 150% of the ordinary hourly rate for the first two hours, and 200% thereafter. For plumbing and mechanical services employees, the overtime rate on a Saturday for the first two hours is 150% and 200% thereafter. The correct observance of these two clauses sees the identified class of employees dropping to lower rates during the first two hours of overtime on Saturdays having performed the majority of hours that day at 200%. This construction is consistent with clauses 21.1(b)

120. There are a couple of observations that need to be made on the AWU's expressed view.

121. Firstly, under Clause 33.2(a) of PFS Award 2010 (Clause 21.1(a) of PFS Award 2016), a mechanical services employee is paid 200% for all overtime worked "after 12 noon" on a Saturday. Therefore, if the employee was to finish their shiftwork on a Saturday after 12 noon, then perform overtime, that employee would be paid overtime at 200% (not 150% as it appears to be the contention of the AWU). It is acknowledged that if an employee was to finish their shiftwork on a Saturday before 12 noon, then perform overtime, that employee would be paid overtime at 150% for the first two hours, which is at a lesser rate than that that they were receiving whilst performing shiftwork.

122. Secondly, the situation described by the AWU has been that way since the establishment of the PFS Award 2010. As such, this is not, in the Master Plumbers Group, a matter that should be dealt with in the Exposure Draft Stage. The AWU are seeking to substantially vary the PFS Award 2010, as such a separate application should be made by the AWU. The Commission should not consider the AWU's proposition at this stage of the proceedings.

123. The AWU take issue about the structure and missing terms under Clause 22 – Penalty Rates of PFS Award 2016 (Clause 32 of PFS Award 2010).

124. The Master Plumbers Group have previously submitted a proposal for variation of Clause 22 – Penalty Rates of PFS Award 2016 (Clause 32 of PFS Award 2010).

125. It is the Master Plumbers Group view that the issues raised by the AWU should be dealt with at the same time as the Master Plumbers Group application. On this basis, the Commission should not consider the AWU's proposition at this stage of the proceedings.

Note PN115 through to 121 should also be read in conjunction with PN155 through to 158, as these paragraphs deal with the issues raised by the AIG on Clause 22 – Penalty Rates of PFS Award 2016 (Clause 32 – Penalty Rates of PFS Award 2010).

126. The AWU take issue about the shift work rates missing from Schedule E.

127. The Master Plumbers Group agrees with the AWU's contention. For the sake of completeness and to replicate what is produced within other parts of Schedule E – Summary of Hourly Rates – Apprentice Rates, the shift work rates for apprentices should be inserted.

128. The MPANSW primary submissions concentrated solely on the questions posed by the Commission and did not raise any additional issues.
129. The NFIA primary submissions concentrated solely on the questions posed by the Commission and did not raise any additional issues.
130. The FPAA primary submissions raised issue about the definition of “Fire Technician”.
131. In an email dated 14 July 2016, the FPAA advised the Master Plumbers Group, the CEPU / PTEU, the MPANSW and the NFIA, that “it appears that there is no consent to this application ... on the basis of this lack of support, the application won’t be proceeded with at this point of time”.
132. As FPAA have withdrawn the application, the Master Plumbers Group does not intend to make any submissions on the matter.
133. BSA’s primary submissions made some additional comments.
134. BSA’s additional comments relate to Clause 2 - Definitions, Clause 8. – Types of Employment, Clause 9 - Daily Hire Employees and Clause 18 – Minimum Wages of PFS Award 2016 (Clause 3 – Definitions, Clause - 10 Types of Employment, Clause 11 – Daily Hire Employees and Clause 20 – Minimum Wages of PFS Award 2010).
135. BSA take issue about the duplication of the definition of “plumbing” and “fire sprinkler fitting” in Clause 2 – Definitions and Clause 4 - Coverage.
136. The Master Plumbers Group neither supports, nor opposes the primary submission made by BSA with respect to the definition of “plumbing” and “fire sprinkler fitting”.
137. BSA take issue as to whether the drafting of Clause 8 – Types of Employment is clear or not. BSA submit that “strict separation of these clauses (Clause 10 – Weekly Hire Employment and Clause 11 – Part – time Employment) implies part – time employment is a fourth category of employment”.
138. The Master Plumbers Group disagrees with the BSA primary submissions on this matter.
139. The Master Plumbers Group does not accept that there is the creation of a “fourth category of employment”.
140. The drafting of the PFS Award 2016, reflects the drafting of the PFS Award 2010, in that Clause 10 – Types of Employment, Clause 11 – Daily Hire Employees, Clause 12 – Weekly Hire Employment, Clause 13 – Part – time Employment and Clause 14 – Casual Employment of PFS Award 2010 are replicated as Clause 8 – Types of Employment, Clause 9 – Daily Hire Employees, Clause 10 – Weekly Hire Employment, Clause 11 – Part – time Employment and Clause 12 – Casual Employment of PFS Award 2016. The Master Plumbers Group has not experienced any incidences of confusion about the employment of a part – time employee, nor has it been made aware of any issues arising *in the field* over the matter.

- 141.** The Master Plumbers Group does not see the necessity of making the changes proposed by BSA.
- 142.** BSA take issue with “the method for calculating a daily hire employee’s minimum hourly wage ... (as it is) ... unclear and should be clarified”.
- 143.** The Master Plumbers Group accepts that, for a lay person, unfamiliar with the building and construction industry, there may be confusion as to how a daily hire employee is paid.
- 144.** The drafting of the PFS Award 2016, reflects the drafting of the PFS Award 2010, in that Clause 20 – Minimum Wages and Clause 21.1(j) – Lost Time Loading – Daily Hire Employees of PFS Award 2010 are replicated as Clause 18 – Minimum Wages and Clause 20.3(i) – Lost Time Loading – Daily Hire Employees of PFS Award 2016. The Master Plumbers Group has not experienced any incidences of confusion about the employment of a part – time employee, nor has it been made aware of any issues arising *in the field* over the matter. However, the Master Plumbers Group acknowledge that there is the potential for confusion and as such it may be appropriate to make a change to Clause 9 – Daily Hire Employees of PFS Award 2016, to ensure avoidance of such potential confusion.
- 145.** On this basis, the Master Plumbers Group would suggest that the following clause be inserted into PFS Award 2016 as Clause 9.4:-
- “9.4** A daily hire employee must be paid no less than the:-
- (a)** minimum rate for the relevant classification provided in Clause 18.1; and
- (b)** the lost time loading – daily hire employees provided in Clause 20.3(j).
- 146.** BSA take issue with Clause 18.1 and seek to insert additional words to ‘indicate the minimum weekly rate is only payable to a full – time weekly hire employee”.
- 147.** The Master Plumbers Group does not see the need for such a variation and / or clause.
- 148.** It is the Master Plumbers Group view that Clause 11.2 – Part – time Employment and Clause 12.2 – Casual Employment deal with this issue and clarify the obligations established in Clause 18.1 of PFS Award 2016.
- 149.** The ABL / NSWBC primary submissions made some additional comments.
- 150.** The ABL / NSWBC take issue with Clause 7 – Facilitative Provisions for Flexible Working Practices.
- 151.** The ABL / NSWBC highlight the fact that Clause 15 - Hours of Work of PFS Award 2016, contains at Clauses 15.5(c), 15.5(e) and 15.5(f) all contain facilitative provisions, but such facilitative provisions are not cross referenced in Clause 7 – Facilitative Provisions for Flexible Working Practices of PFS Award 2016.
- 152.** The Master Plumbers Group agrees and supports the submissions of the ABL / NSWBC.

- 153.** The Master Plumbers Group however, would submit that the word “affected” be inserted into the line that cross references Clause 15.5(e) and 15.5(f) proposed by ABL / NSWBC. The insertion of the word “affected” and the utilisation of the same words previously proposed for insertion at Clause 7.2 would ensure consistency throughout Clause 7.2. This would mean that the Clause 7.2 would read:-

Clause	Provision	Agreement between an employer and:-
15.3	Early start	a majority of <u>affected</u> employees
15.4	Alternative methods of arranging ordinary hours and rostered days off	a majority of <u>affected</u> employees
15.5(c)	Overtime instead of RDO for employer with fewer than 15 employees	an individual employee
15.5(e)	Alternate RDO for employees not working alongside other building and construction workers	a majority of <u>affected</u> employees
15.5(f)	Alternate RDO for employees working alongside other building and construction workers	a majority of <u>affected</u> employees
16.2	Variation of meal breaks	a majority of <u>affected</u> employees
21.3	Working during meal break	an individual employee
26.2	Public holidays – substitution	a majority of <u>affected</u> employees

- 154.** The AIG primary submissions made some additional comments.
- 155.** The AIG take issue with Clause 12 – Casual Employment of PFS Award 2016.
- 156.** In the primary submissions, the Master Plumbers Group make the following comments about Clause 12 – Casual Employment of PFS Award 2016:-
- 17.** The Master Plumbers Group acknowledge and understand that Clause 12 – Casual Employment may be affected by the (yet to be finalised) proceedings in AM 2014 / 197 – Casual Employment. As a result, the Master Plumbers Group will not be making any submissions on Clause 12 – Casual Employment of PFS Award 2016.

- 157.** The Master Plumbers Group maintains that position and submits that the issues raised by the AIG with respect to Clause 12 – Casual Employment of PFS Award 2016 are, at this stage, premature, in that the proceedings in AM 2014 / 197 – Casual Employment may well resolve the issues complained of by the AIG. However, if they are not settled in AM 2014 /197 – Casual Employment, then the AIG would be at liberty to continue the issues submitted.
- 158.** The AIG take issue with Clause 22 – Shiftwork of PFS Award 2016.
- 159.** The AIG submit that “the entitlements ... (have been) ... substantially changed from those in” PFS Award 2010. The AIG have highlighted three (3) areas of concern. The first being the change in the wording from “midnight on Sunday and midnight on Friday” to “Monday to Friday”. The second being the change in the eligibility to claim the shiftwork payment from “five or more consecutive shifts” to “less than 5 consecutive shifts”. The third being the reference to “minimum hourly rate” rather than “ordinary hourly rate”.
- 160.** The Master Plumbers Group have previously submitted a proposal for variation of Clause 22 – Penalty Rates of PFS Award 2016 (Clause 32 of PFS Award 2010).
- 161.** It is the Master Plumbers Group view that the issues raised by the AIG should be dealt with at the same time as the Master Plumbers Group application. On this basis, the Commission should not consider the AIG’s proposition at this stage of the proceedings.
- Note** PN155 through to 158 should also be read in conjunction with PN115 through to 121, as these paragraphs deal with the issues raised by the AWU on Clause 22 – Penalty Rates of PFS Award 2016 (Clause 32 – Penalty Rates of PFS Award 2010).
- 162.** The AIG take issue with Schedule C – Summary of Hourly rates – Plumbing and Mechanical Services Employees and Irrigation Installer Employees of PFS Award 2016.
- 163.** The AIG submit that “the tables at C.1.6, C.1.7, D.1.6 and D1.7 should reflect that the casual loading is calculated on the minimum hourly rate and not the ordinary rate”.
- 164.** PFS Award 2016 defines “ordinary hourly rate”; but does not define “minimum hourly rate”. PFS Award 2016 defines “hourly minimum wage”, but does not define “minimum hourly rate”.
- 165.** It is the Master Plumbers Group view that the words used in Clause 22 of PFS Award 2016, should ensure that there is no new, or additional, obligation imposed on the employers arising from the making of PFS Award 2016. The Master Plumbers Group view is that the terms and / or the words used throughout PFS Award 2016 should be consistent and should be (where important enough to warrant it) defined. The Master Plumbers Group supports the contentions of the AIG.

- 166.** However, the Master Plumbers Group acknowledge that the words “ordinary hourly rate” are defined to include “ the hourly rate for the employee’s classification ... plus any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes”. It is the Master Plumbers Group’s view that the definition of “ordinary hourly rate” is applicable and appropriate for the purposes of PFS Award 2016. The definition of “ordinary hourly rate” provided in PFS Award 2016, does not add or remove any provision from an employee’s entitlement that exist under PFS Award 2010.
- 167.** Whilst supportive of the AIG contention, the Master Plumbers Group does not see the necessity for making the change proposed by AIG, as the words provided in PFS Award 2016 do no more, nor no less, than that that existed in PFS Award 2010.
- 168.** The AIG take issue with the calculations provided in “tables C.1.6, C.1.7, D.1.6 and D.1.7 in that “the casual loading is calculated on the minimum hourly rate and not the ordinary rate.
- 169.** The Master Plumbers Group disagrees with the AIG assertions.
- 170.** It is the Master Plumbers Group view that the allowances provided in:-
- Clauses 20.3(a) – Industry Allowance;
 - Clause 20.3(b) – Plumbing Trade Allowance;
 - Clause 20.3(c) - Registration Allowance;
 - Clause 20.3(d) – Special Fixed Allowance;
 - Clause 20.3(e) – Fire Sprinkler Fitting Trade Allowance;
 - Clause 20.3(f) – Industry Allowance and Space, height and Dirt Money Allowance – Fire Sprinkler Fitter Employees;
 - Clause 20.3(g) - Sprinkler Fitters Adjustments;
 - Clause 20.3(h) – Leading Hand Allowance; and
 - Clause 20.3(i) – Lost Time Loading – Daily Hire Employees

(of PFS Award 2016)

should, where applicable, be included in the calculation of the casual rate.

171. Clause 20.2 – All Purpose Allowances of PFS Award 2016, provides that the “All – purpose allowances are:-

- (i) payable for all purposes of the award;
- (ii) are part of the employee’s regular weekly wage; and
- (iii) must be included as appropriate when calculating all payments including, but not limited to:

payments for overtime;
annual leave and annual leave loading;
personal leave;
compassionate leave;
community service leave;
penalty rates; and
payments on termination”.

It is the Master Plumbers Group view that, on any reading of the clause, each and every applicable all - purpose allowance is included in the calculation for the determination of the hourly rate relevant for that class of employee. That amount is then increased by twenty five percent (25%) for a casual employee.

172. On that basis, the Master Plumbers Group does not accept the assertions of the AIG.

173. The AIG take issue with the calculations provided in “tables C.1.6, C.1.7, D.1.6 and D.1.7 ... (in that) ... the penalty rates are calculated by adding them to the casual loading”.

174. The Master Plumbers Group agrees with the assertions of the AIG.

- 175.** It is the Master Plumbers Group view that in calculating the applicable penalty rate for a casual employee the casual loading does not get included in that calculation, rather it is a separate calculation and the amount determined for the casual employee and (separately) the penalty rate are added together to form the applicable rate. For example:-

Under PFS Award 2016, a Plumbing and Mechanical Services Tradesperson is paid **\$783.30** per week (**\$20.61** per hour).

In addition, that employee is paid the following all – purpose allowances:-

- the Industry Allowance (Clause 20.3(a) of PFS Award 2016) - **\$28.98 (\$0.76** per hour); and
- the Plumbing Trade Allowance (Clause 20.3(b) of PFS Award 2016) - **\$23.50 (\$0.62** per hour); and
- the Special Fixed Allowance (Clause 20.3(d) of PFS Award 2016) - **\$7.70** per week (**\$0.20** per hour)

The combined total of these amounts is **\$843.48** per week (**\$22.20** per hour).

From this amount one can then calculate the casual loading **\$22.20** per hour multiplied by twenty five per cent (25%) equals **\$27.75** per hour.

From this amount one can calculate the applicable penalty rate – the **\$22.20** would be the base and on top of that base the applicable penalty rate would be applied:-

- Monday to Friday for more than five (5) consecutive shifts with at least forty eight (48) hours' notice – **\$22.20** multiplied by **33%** equals **\$7.33**.

It is the Master Plumbers Group view that a casual employee working shiftwork between Monday and Friday for more than five (5) consecutive shifts with at least forty eight (48) hours' notice would be paid **\$29.53** per hour.

- 176.** The Master Plumbers Group notes that the rates proposed for inclusion in Schedule C – Summary of Hourly Rates – Plumbing and Mechanical Services Employees and Irrigation Installer Employees, Schedule D – Summary of Hourly Rates – Sprinkler Fitting Employees of PFS Award 2016 and Schedule E – Summary of Hourly Rates – Apprentice Rates of PFS Award 2016 are based on the pre 1 July 2016 rates and do not take account the recent Annual Wage Review.