

BEFORE THE FAIR WORK COMMISSION

S.156 – 4 Yearly Review of Modern Awards

MATTER NO: AM2020/101 – Building and Construction General (On-Site) Award 2020 – Finalisation of Awards Exposure Drafts – Distant Work Payment Provisions

SUBMISSIONS OF MASTER BUILDERS AUSTRALIA

INTRODUCTION

1. This submission is filed by Master Builders Australia ('Master Builders') with reference to the above matter and the Decision issued on 2 March 2021¹ affecting the *Building and Construction General (On-Site) Award 2020* ('the Award').
2. This submission responds to paragraphs [10] and [11] of the Decision and the Commission's *provisional view* expressed therein to address the confusion and potential double compensation arising from the current clause 26.4 within the Award.

MASTER BUILDERS' RESPONSE TO PROVISIONAL VIEW

3. The Commission has expressed a provisional view that clause 26.4 should be **amended** as follows:

26.4 Distant work payment

(a) *If an employee is required to travel to a construction site that is:*

(i) *not located in a metropolitan radial area in which the employee's usual place of residence is located; and*

(ii) *more than 50 kms by road from the employee's usual place of residence;*

the employee will be entitled to the distant work payment in clause 26.4(b) ~~in addition to~~ instead of the allowance in clause 25.1.

(b) *The distant work payment is:*

(i) *payment for the time outside ordinary working hours reasonably spent in travel, paid at the ordinary time hourly rate, calculated to the next quarter of an hour, and with a minimum payment of one half an hour per day for each return journey; and*

(ii) *any expenses necessarily and reasonably incurred in such travel, which will be \$0.47 per kilometre where the employee uses their own vehicle.*

(c) *Despite paragraph (a), the distant work payment is not payable when, at the commencement of employment, the employee's usual place of residence was more than 50km by road from the construction site on which the employee was initially engaged.*

(d) *In this subclause, a metropolitan radial area is the area within a radius of 50 kilometres of:*

¹ [\[2021\] FWCFB 1105](#)

(i) the GPO of a capital city of a State or Territory; or

(ii) the principal post office in a regional city or town in a State or Territory.

4. Master Builders submits that the proposed variation to clause 26 identified above does improve the existing provision by reducing the potential for it to be read as giving rise to a “double-dip” of entitlement. However, Master Builders submits that the provision should be amended in a different way so as to provide a clause that is abundantly clear and entirely consistent with the Full Bench Decision in AM2016/23 of 26 September 2018.
5. The proposed alternative amendment is set out at para 7 below (‘Master Builders Primary position’). The additional benefits of our Primary position are that:
 - Consistent with submissions already made by Master Builders,² the amendments we propose re-instate a reference to the allowance being payable from the radial area boundary to the distant work site and return to the boundary. This restores a concept well understood by award users and its absence will maintain the confusion as to the provision’s interpretation; and
 - Proposed clause 26.4(a) establishes a requirement for an employer to calculate the daily entitlement from each employee’s home to the distant work site and return, which creates an unworkable and unreasonable administrative burden for award users.
6. While supporting the Commission’s intent to simplify the distant work provisions, we continue to submit that the provision (and its provisionally proposed amendment) does not reflect the Full Bench Decision in AM2016/23 of 26 September 2018, being that amendments were (unless identified to the contrary) confined to drafting changes that reduced complexity.³

MASTER BUILDERS’ PRIMARY POSITION

7. As an alternative to the Commission’s provisional view, Master Builders proposes the following amendments to clause 26.4 (as marked below in **green**), which would both clarify when the distant work travel allowance is payable and be more akin to the predecessor provision by retaining its key components being that the allowance is payable from the radial boundary and return:

26.4 Distant work payment

(a) *If an employee is required to travel to a construction site that is:*

*(i) not located in a metropolitan radial area, **in which the employee’s usual place of residence is located; and***

*(ii) **more than 50 kms by road from the employee’s usual place of residence;***

*the employee will be entitled to the distant work payment in clause 26.4(b). **in addition to the allowance in clause 26.1.***

(b) *The distant work payment is:*

*(i) **payment for the time outside ordinary working hours reasonably spent in travel, from the boundary of the metropolitan radial area to the distant work construction site and return to the boundary; and***

² [Submissions of Master Builders Australia - 4 Yearly Review of Modern Awards - AM2014/17, AM2014/260 - Finalisation of Exposure Drafts and variation determinations - Tranche 3 - Construction Awards - 26 October 2020](#), [Outline of Submissions of Master Builders Australia - 4 Yearly Review of Modern Awards - AM2020/101 - 1 March 2020](#)

³ [\[2018\] FWCFB 6019 at para \[184\]](#)

- (ii) paid at the ordinary time hourly rate, calculated to the next quarter of an hour, and with a minimum payment of one half an hour per day for each return journey; and*
- (iii) any expenses necessarily and reasonably incurred in such travel, which will be \$0.47 per kilometre where the employee uses their own vehicle.*

(c) Despite paragraph (a), the distant work payment is not payable when, at the commencement of employment, the employee's usual place of residence was more than 50km by road from the construction site on which the employee was initially engaged.

(d) In this subclause, a metropolitan radial area is the area within a radius of 50 kilometres of:

(i) the GPO of a capital city of a State or Territory; or

(ii) the principal post office in a regional city or town in a State or Territory.

MASTER BUILDERS' ALTERNATIVE POSITION

8. During the Full Bench hearing held on Monday 1 March 2021, the Commission presented the parties with two options to address the anomaly arising from clause 26.4. Option 1, reflected the Commission's provisional view and Option 2 was drafted as follows:

26.4 Distant work payment

(a) If an employee is required to travel to a construction site that is:

(i) not located in a metropolitan radial area in which the employee's usual place of residence is located; and

(ii) more than 50 kms by road from the employee's usual place of residence;

the employee will be entitled to the distant work payment in paragraph (b) in addition to the allowance in clause 26.1.

(b) The distant work payment is:

*(i) payment for the time outside ordinary working hours reasonably spent in travel **from the employee's usual place of residence or the metropolitan radial area boundary nearest the residence, to the construction site (whichever distance is the greater)** paid at the ordinary time hourly rate, calculated to the next quarter of an hour, and with a minimum payment of one half an hour per day for each return journey; and*

(ii) any expenses necessarily and reasonably incurred in such travel, which will be \$0.47 per kilometre where the employee uses their own vehicle.

(c) Despite paragraph (a), the distant work payment is not payable when, at the commencement of employment, the employee's usual place of residence was more than 50km by road from the construction site on which the employee was initially engaged.

(d) In this subclause, a metropolitan radial area is the area within a radius of 50 kilometres of:

(i) the GPO of a capital city of a State or Territory; or

(ii) the principal post office in a regional city or town in a State or Territory.

9. Notwithstanding our submissions with respect to the administrative burden associated with employers having to calculate the entitlement from each employee's home to the distant work site, only in the event the Commission is not amenable to our primary position, Master Builders would not be opposed were the Commission to amend clause 26.4 per the Commission's Option 2 as set out above.

MASTER BUILDERS AUSTRALIA

9 March 2021