

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

**Submission –
Payment on Termination
Payment of Wages
(AM2016/8)**

7 September 2018

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2016/8 PAYMENT OF WAGES – PAYMENT ON TERMINATION

Introduction

1. The Australian Industry Group (**Ai Group**) makes these submissions in response to:
 - a) The statement¹ issued by the Fair Work Commission (**Commission**) on 21 August 2018 (**21 August Statement**); and
 - b) The statement² and schedule of draft determinations published by the Commission on 24 August 2018.
2. The 21 August Statement identifies that 36 modern awards currently contain provisions dealing with the payment of wages on termination.

Paragraph [3] of the 21 August Statement

3. At paragraph [3] of the 21 August Statement, the Commission refers to 8 modern awards about which it has expressed the provisional view that the model term should be inserted. Draft determinations proposing a change to that effect were published on 24 August 2018.
4. Ai Group has reviewed the draft determinations relating to those awards in which it has an interest. Our review has identified the following errors which, we submit, should be amended as proposed:
 - a) The draft determination relating to the *Horse and Greyhound Training Award 2010* proposes to insert the model term without deleting the existing clause 18.1, which governs payment on termination. The draft determination should be amended such that it proposes the deletion of the current clause 18.1.

¹ 4 yearly review of modern awards – Payment of Wages [2018] FWC 4935.

² 4 yearly review of modern awards – Payment of Wages – Plain Language – Standard Clauses [2018] FWC 4976.

- b) There is a typographical error in paragraph 1 of the draft determination relating to the *Pharmaceutical Industry Award 2010*. It should be amended as follows:

By deleting clause ~~21.3~~ 22.3 and inserting the following:

Paragraph [6] of the 21 August Statement – the *Aluminium Industry Award 2010*

5. At paragraph [6] of the 21 August Statement, the Commission dealt with the *Aluminium Industry Award 2010*.
6. Ai Group filed [a proposed variation and accompanying correspondence](#) in accordance with the Commission's direction on 23 August 2018.

Paragraph [7] of the 21 August Statement – the *Agriculture Industry Awards*

7. At paragraph [7] of the 21 August Statement, the Commission dealt with the *Horticulture Award 2010*, the *Wine Industry Award 2010* and the *Pastoral Award 2010*.
8. On 29 August 2018, an extension of time was granted. Interested parties were directed to advise the Commission of the outcome of discussions between them by 4.00pm on 7 September 2018.
9. Ai Group considers that as a product of discussions with the National Farmers' Federation (**NFF**) and the Australian Workers' Union (**AWU**), an in-principle agreement regarding an appropriate amendment to the awards identified above has been reached between those parties.
10. For the purposes of affording Ai Group, the NFF and the AWU an opportunity to reduce the agreement to writing and to consult with other interested parties, the parties seek the Commission's leave to file a proposed variation by close of business on 14 September 2018.

Paragraphs [8] – [9] of the 21 August Statement – the *Timber Industry Award 2010*

11. Paragraphs [8] – [9] of the 21 August Statement, the Commission dealt with the *Timber Industry Award 2010*. A subsequent extension of time was granted on 6 September 2018. Interested parties are now required to report back by 4pm on 17 September 2018.

Paragraphs [14] – [15] of the 21 August Statement – the *Waste Management Award 2010*

12. Paragraph [15] of the 21 August Statement direct interested parties to “engage in discussions to see if an agreed position could be reached” in relation to the *Waste Management Award 2010* and report back by 4.00pm on 7 September 2018.
13. Ai Group has engaged in discussions as directed with various unions, including, primarily, the Transport Workers’ Union. Those discussions have not resulted in an agreed position.

Paragraph [16] of the 21 August 2018 Statement – the Remaining 22 Awards

14. At paragraph [16] of the 21 August Statement, interested parties were directed to confirm whether they oppose the variation of “the remaining 22 awards” to include the model term.
15. The 22 modern awards constitute a subset of the 30 awards listed at paragraph [5] of the statement. We note, however, that the *Black Coal Mining Industry Award 2010* is there listed twice and the *Electrical, Electronic and Communications Contracting Award 2010* appears to have been omitted.

16. Assuming that the 22 modern awards referenced at paragraph [16] of the statement includes the *Electrical, Electronic and Communications Contracting Award 2010* in lieu of the second reference to the *Black Coal Mining Industry Award 2010*, Ai Group has a relevant interest in the following of the 22 modern awards:
- a) The *Aged Care Award 2010*;
 - b) The *Black Coal Mining Industry Award 2010*;
 - c) The *Building and Construction General On-Site Award 2010*;
 - d) The *Business Equipment Award 2010*;
 - e) The *Electrical, Electronic and Communications Contracting Award 2010*;
 - f) The *Food, Beverage and Tobacco Manufacturing Award 2010*;
 - g) The *Graphic Arts, Printing and Publishing Award 2010*;
 - h) The *Manufacturing and Associated Industries and Occupations Award 2010*;
 - i) The *Meat Industry Award 2010*;
 - j) The *Mobile Crane Hiring Award 2010*;
 - k) The *Seafood Processing Award 2010*;
 - l) The *Plumbing and Fire Sprinklers Award 2010*;
 - m) The *Rail Industry Award 2010*;
 - n) The *Road Transport and Distribution Award 2010*;
 - o) The *Road Transport (Long Distance Operations) Award 2010*; and
 - p) The *Vehicle Manufacturing, Repair, Services and Retail Award 2010*.

17. The Commission's directions at paragraph [16] of the 21 August Statement do not invite interested parties to advance a variation to the relevant awards other than to express a view about the current clauses being replaced by the Commission's model term. That is, the directions do not contemplate proposals being put to vary the awards in any other terms.
18. The insertion of the model 'payment of wages on termination' clause in the above awards will, in many cases, introduce a new award obligation to pay amounts other than wages within a specified timeframe. Many of the awards listed do not currently impose any temporal requirement for the payment of such other amounts due under the NES or the award.
19. The insertion of the model clause will, however, grant employers covered by those awards greater flexibility as to the period of time within which wages must be paid on termination. To this extent, the model clause addresses some of the concerns ventilated by Ai Group throughout these proceedings and which formed the very basis for Ai Group's claim (which was the genesis of these proceedings) to vary some of the above awards.
20. Accordingly, on balance, Ai Group does not oppose the model term being included in the above awards in preference to the retention of the relevant current provisions; with the exception, however, of the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* in respect of which we are not currently in a position to advise whether we oppose the insertion of the model clause.
21. Ai Group seeks the Commission's leave to advise of its position in relation to the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* by close of business on 21 September 2018.