

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

Payment of Wages on Termination  
(AM2016/8)

**21 August 2019**

**Ai**  
GROUP

**4 YEARLY REVIEW OF MODERN AWARDS  
AM2016/8 PAYMENT OF WAGES – PAYMENT ON TERMINATION**

**A. INTRODUCTION**

- 1. The Australian Industry Group (Ai Group) files this submission in the Fair Work Commission (Commission) in response to a decision <sup>1</sup> issued by the Commission on 26 July 2019 (Decision).**
  
- 2. The submission relates to the issue of payment of wages on termination and deals specifically with the following matters:**
  - (a) Ai Group’s claim to vary 14 modern awards by replacing the extant payment on termination clause with the ‘model term’ developed by the Commission<sup>2</sup> (Model Clause) (Ai Group Claim);**
  
  - (b) The *Nurses Award 2010* (Nurses Award); and**
  
  - (c) The *Waste Management Award* (Waste Award).**

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<sup>1</sup> *4 Yearly Review of Modern Awards – Payment of Wages* [2019] FWCFB 5146.

<sup>2</sup> *4 yearly review of modern awards – Payment of wages* [2018] FWCFB 3566 at [119].

## B. THE Ai GROUP CLAIM

### Background to the Ai Group Claim

3. Ai Group seeks a variation to the following awards:
- (a) The *Aged Care Award 2010* (**Aged Care Award**);
  - (b) The *Black Coal Mining Industry Award 2010* (**Black Coal Award**);
  - (c) The *Building and Construction General On-Site Award 2010* (**Building Award**);
  - (d) The *Business Equipment Award 2010* (**Business Equipment Award**);
  - (e) The *Electrical, Electronic and Communications Contracting Award 2010* (**Electrical Contracting Award**);
  - (f) The *Food, Beverage and Tobacco Manufacturing Award 2010* (**FBT Award**);
  - (g) The *Graphic Arts, Printing and Publishing Award 2010* (**Graphic Arts Award**);
  - (h) The *Manufacturing and Associated Industries and Occupations Award 2010* (**Manufacturing Award**);
  - (i) The *Meat Industry Award 2010* (**Meat Award**);
  - (j) The *Mobile Crane Hiring Award 2010* (**Mobile Crane Award**);
  - (k) The *Plumbing and Fire Sprinklers Award 2010* (**Plumbing Award**);
  - (l) The *Road Transport (Long Distance Operations) Award 2010* (**Long Distance Transport Award**);
  - (m) The *Road Transport and Distribution Award 2010* (**Road Transport Award**); and
  - (n) The *Seafood Processing Award 2010* (**Seafood Processing Award**).

4. In each case, Ai Group proposes that the extant payment of wages provision be replaced with the Model Clause, which is in the following terms:

**X. Payment on termination of employment**

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under clause X. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

5. Draft determinations giving effect to the proposed variations are attached at **Annexure A** to this submission.
6. At **Annexure B**, we set out the current award provisions that we submit should be replaced with the Model Clause. As can be seen from our collation of the relevant award clauses (and as has previously been observed by the Commission<sup>3</sup>), there is significant diversity in the way in which those provisions regulate the payment of wages on termination. This includes the awards' treatment of the *amounts* that fall due under the relevant provisions, the *time period* within which payment is to be made and the *method* by which such payment must be made.

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<sup>3</sup> 4 *yearly review of modern awards – Payment of wages* [2018] FWCFB 3566 at [14].

7. In broad terms, of the 14 awards that are the subject of the Ai Group Claim:
- (a) Two awards<sup>4</sup> require that payment on termination be made immediately.
  - (b) Three awards<sup>5</sup> require that payment be made on the day of termination or forwarded by post on the next working day.
  - (c) One award<sup>6</sup> requires payment on the day of termination or that it be forwarded to the employee on the next working day, without prescribing the method by which wages are to be so forwarded.
  - (d) One award<sup>7</sup> requires payment on the day of termination, unless the employee is dismissed without notice, in which case it must be forwarded by the end of the next business day by post or EFT.
  - (e) One award<sup>8</sup> requires payment on the day of termination or that it be forwarded to the employee on the next working day by EFT or post.
  - (f) One award<sup>9</sup> requires payment on the day of termination or, at the employee's option, that it be forwarded to the employee on the next working day.
  - (g) One award<sup>10</sup> requires the payment of wages on the day of termination or that it be forwarded to the employee within 48 hours.
  - (h) One award<sup>11</sup> requires the payment of wages on the day of termination or that it be forwarded to the employee by post within 72 hours.
  - (i) One award<sup>12</sup> contains a provision that applies only where the employee's

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<sup>4</sup> Long Distance Transport Award and Road Transport Award.

<sup>5</sup> Business Equipment Award, Electrical Contracting Award and Manufacturing Award.

<sup>6</sup> FBT Award.

<sup>7</sup> Graphic Arts Award.

<sup>8</sup> Mobile Crane Award.

<sup>9</sup> Meat Award.

<sup>10</sup> Seafood Processing Award.

<sup>11</sup> Black Coal Award.

<sup>12</sup> Aged Care Award.

employment is terminating with notice and requires that payment be made no later than the last day of the formal notice period.

(j) Another award<sup>13</sup> also contains a provision that applies only where the employee's employment is terminating with notice and requires that payment be made at the time of termination; unless this is not practicable in which cases payment is to be forwarded by registered post or by EFT if the employee is normally paid by EFT within two working days.

8. None of the 14 awards expressly limit the obligation created by the extant payment on termination clauses to amounts owing under the respective award. Further, some provisions refer only to wages;<sup>14</sup> others refer to "monies" due.<sup>15</sup>

### **The Commission's Prior Consideration of the Relevant Issues**

9. In the context of the 4 yearly review of modern awards, the Commission has issued multiple decisions concerning the payment of wages on termination, which ultimately culminated in its determination of the terms of the Model Clause. Those decisions have given consideration to various issues associated with the payment of wages on termination and are therefore directly relevant to the matters dealt with in this submission.

10. When considering the content of a proposed model clause, the Commission made the following relevant observations: (emphasis added)

**[87]** We also confirm our provisional view that there is utility in common 'payment on termination' provision across all 122 modern awards. But we accept that each modern award is to be reviewed in its own right and there may be sound reasons for departing from a model term in a particular modern award. A case by case assessment is required.

**[88]** We turn next to the content of the provisional default term. The modern awards objective is to 'ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions'. Fairness in this context is to be assessed from the perspective of employees and employers covered by the modern award in question. A 'fair' model term in respect of termination payments appropriately balances the issues raised on behalf of employees and those raised on behalf of

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<sup>13</sup> Plumbing Award.

<sup>14</sup> See for example FBT Award, Electrical Contracting Award and Manufacturing Award.

<sup>15</sup> See for example Aged Care Award, Building Award and Plumbing Award.

employers.

**[89]** The arguments advanced by ABI and Ai Group in support of the variation of current termination payment terms can be divided into two broad categories:

- impracticability; and
- administrative cost.

**[90]** The impracticability arguments point to the inherent difficulty in providing termination payments at, or shortly after, the time of termination. We accept that this would be so in some instances, particularly in cases of summary dismissal and where an employee resigns their employment without giving notice. In such cases it may plainly take some time to calculate accrued leave payments. In cases of redundancy the applicable taxation arrangements may depend upon the particular circumstances and employers (particularly small businesses) may have to obtain advice externally before processing termination payments. We also accept that on the available data, the majority of terminations are not initiated by the employer so that the timing of the termination of employment is not within the employer's control.

**[91]** The administrative cost argument points to the cost associated with making termination payments outside the ordinary pay cycle at the workplace. There may be a time cost associated with obtaining immediate information about the time worked in the pay period in which termination occurred. Some employers may also be charged an additional cost for 'out of cycle' EFT transactions. We accept that some employers are likely to face such costs, but the costs are not likely to be substantial. ...

**[92]** If termination payments are made, part of an employee's termination payment is likely to be in respect of work that the employee has already performed and leave that has already accrued. It is appropriate that such payments be made in a timely way. We accept that if termination payments are made in accordance with the employee's usual pay cycle – as permitted in the provisional default term – an employee may have to wait up to a month to receive their payment. A period of up to a month is too long. It does not satisfy the requirement for a fair and relevant minimum safety net.

**[93]** But we also accept that there is considerable force in the 'impracticability' argument advanced by ABI and Ai Group. It is not fair to employers to require all termination payments to be made either at the time of termination or within a few days thereafter.

**[94]** It is also relevant that a delay in the payment of the amounts owing to an employee upon the termination of their employment may delay their access to social security payments.

...

**[99]** We think an appropriate balance between the various considerations is for the model term to provide that all unpaid wages and all other amounts due to an employee under the modern award and the NES are to be paid 'no later than 7 days after the employee's last day of employment'.

**[100]** Such a provision ensures that employees receive their termination payments in a timely way while providing employers with sufficient time to calculate and pay the sums due. Such a term would address the 'impracticability' arguments advanced on behalf of

the employers. We accept that we may impose some ‘time costs’ associated with obtaining information about the hours worked in the prior pay period and may require ‘out of cycle’ EFT transactions in some instances, but the costs involved are unlikely to be substantial.

**[101]** Having regard to the terms of the NES, there two potential qualifications to a requirement to make payment ‘no later than 7 days after the employee’s last day of employment’ that need to be considered. The first relates to s.120 and the second to s.117(2)(b) of the FW Act.

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**[104]** The provisional default term will be qualified so that, where an employer has made an application under s.120, the Commission will be able to make an order delaying the requirement to pay redundancy pay to which the employee is entitled under FW Act s.119, until a specified day after the Commission has determined the application. It is envisaged that, consistent with the usual payment requirement under the default term, such orders would generally require payment of the amount (if any) to which the employee is entitled in accordance with the Commission’s decision on the application no later than seven days after the date of that decision.

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**[115]** We think the provisional default term should be amended to make clear that it is subject to s.117(2)(b) and to include a note drawing attention to that statutory provision. The note will be phrased so as to avoid the need to form a concluded view about the proper construction of s.117(2)(b).

**[116]** We also think the provisional default term should be amended to make clear that employees are entitled to be paid wages in respect of any incomplete pay period worked up to the end of the employee’s employment. As discussed in section 2.4 of this decision, absent provision to this effect, there might be doubt as to whether an employee is entitled to be paid wages for an uncompleted pay period.<sup>16</sup>

11. The Commission went on to propose a model term and called for parties’ submissions in respect of the same. After considering such submissions, the Commission issued a further decision, in which it relevantly:

- (a) Confirmed that the Model Clause would require payment within 7 calendar days of termination;<sup>17</sup>
- (b) Amended the proposed model term to clarify that it would regulate over-award payments;<sup>18</sup> and

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<sup>16</sup> 4 yearly review of modern awards – Payment of wages [2016] FWCFB 8463 at [88] – [116].

<sup>17</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [47].

<sup>18</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [51].

- (c) Clarified that the Model Clause was not intended to override existing award terms or provisions of the Act that permit employers to make deductions from termination payments in certain circumstances. The proposed model term was amended accordingly.<sup>19</sup>
12. The Commission then expressed the provisional view that 86 modern awards that did not expressly regulate the payment of wages on termination should be varied to insert the Model Clause.<sup>20</sup> Save for a small number of exceptions<sup>21</sup>, this provisional view was subsequently confirmed by the Commission and the relevant variations were made.
13. As for the awards that presently contain a provision dealing with payment on termination, the Commission stated as follows:

**[156]** ... The review of the remaining 36 modern awards will proceed on an award by award basis and any variation will have to be justified on its merits. We do not think it appropriate to proceed from the *prima facie* position that existing provisions in respect of payments on termination should be replaced by the model term.<sup>22</sup>

### **Why Should the Ai Group Claim be Granted?**

14. In Ai Group's submission, the Model Clause is necessary to ensure that the relevant awards achieve the modern awards objective for the reasons set out below.
15. *First*, the current provisions are unfair to employers.
- (a) They mandate the payment of potentially significant sums of money and require an employer to make arrangements to meet such financial obligations within a very limited period of time.
- (b) The additional costs incurred and regulatory burden borne by an employer due to the need to administer an additional pay run pursuant to the current clauses are also unfair. Whilst the Model Clause does not expressly

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<sup>19</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [57].

<sup>20</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [137].

<sup>21</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 4735 at [4].

<sup>22</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [156].

permit the payment of amounts on termination on the next ‘pay day’, the 7 day period within which such payment must be made may in effect enable employers to do so where the usual ‘pay day’ falls during that 7 day period.

- (c) It is unfair that an employer is required to make the relevant payment with little or no notice where an employee resigns without providing notice. In such cases, an employer is put to the task of making arrangements to make final payments to that employee within a very limited period of time. Self-evidently, this is not a fair or reasonable outcome for employers given that they are not able to plan or pre-arrange for the payment that must be made. We acknowledge of course that this issue to a lesser extent in the context of the Aged Care Award, the Building Award and the Plumbing Award, which apply only where the employee’s employment is terminated with notice.

16. *Second*, the provisions may be unfair to employees to the extent that they do not regulate the payment of amounts other than wages (e.g. redundancy pay). The “regulatory gap” previously identified by the Commission<sup>23</sup> appears to be left unoccupied by most of the provisions contained in the awards that are the subject of the Ai Group Claim. If the Commission forms the view that the current provisions are consequently deficient, this matter should be rectified through the implementation of the Model Clause, unless there are award-specific reasons for adopting a different approach. Although this may result in the imposition of additional obligations upon employers covered by the awards, this would to some extent be counterbalanced by the increased ability afforded under the Model Clause to make payments within a slightly extended period.

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<sup>23</sup> 4 yearly review of modern awards – Payment of wages [2016] FWCFB 8463 at [63].

17. *Third*, consistent with the Commission’s previous observations<sup>24</sup>, a ‘fair’ term in respect of termination payments appropriately balances the interests of employees and employers. In the context of developing the Model Clause, the Commission also said:

**[99]** We think an appropriate balance between the various considerations is for the model term to provide that all unpaid wages and all other amounts due to an employee under the modern award and the NES are to be paid ‘no later than 7 days after the employee’s last day of employment’.

**[100]** Such a provision ensures that employees receive their termination payments in a timely way while providing employers with sufficient time to calculate and pay the sums due. Such a term would address the ‘impracticability’ arguments advanced on behalf of the employers. We accept that we may impose some ‘time costs’ associated with obtaining information about the hours worked in the prior pay period and may require ‘out of cycle’ EFT transactions in some instances, but the costs involved are unlikely to be substantial.<sup>25</sup>

18. The extant provisions do not strike a balance between the interests of employers and employees. Whilst they operate to the benefit of employees by requiring the payment of various amounts within a short period of time after the termination of their employment, this is not counterbalanced against the time, cost and impracticability faced by employers as a result of the requirement to make those payments within a limited time period. The Model Clause strikes a better balance between the interests of employers and employees.
19. *Fourth*, the current provisions do not reflect a relevant safety net. They are antiquated and fail to take into account modern payroll systems and the prevalence of payment by EFT.
20. Various claims made in respect of annual leave in the context of the current award review were the subject of a recent Full Bench decision. The Commission in those proceedings acknowledged the need to update modern awards in light of the increased incidence of payments by EFT and in doing so, relied upon evidence called by Ai Group and other employer interests as to the significant proportion of employers who no longer pay their employees by cash, cheque or some other non-electronic method: (emphasis added)

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<sup>24</sup> 4 yearly review of modern awards – Payment of wages [2016] FWCFB 8463 at [88].

<sup>25</sup> 4 yearly review of modern awards – Payment of wages [2016] FWCFB 8463 at [99] – [100].

**[436]** The existing award provisions which require annual leave to be paid prior to taking leave do not appear to have been the subject of any detailed arbitral consideration. It is likely that they simply reflect the position as it was in some pre-modernised awards and in state and territory legislation. During the award modernisation process these provisions were then simply translated into the existing 51 modern awards which are the subject of the Employer Group’s claim, without any consideration of the merits of the provisions.

**[437]** Modern award terms requiring the payment of annual leave at or prior to the commencement of leave relate back to a time when employees were predominantly paid by either cash or cheque, usually with an associated requirement to attend the workplace to receive payment. In such circumstances a requirement for the payment of annual leave at the commencement of the leave makes sense—it avoids the need for the employee to attend work (during their annual leave) simply for the purpose of collecting their pay. But the question is whether such a provision is still relevant in contemporary circumstances.

**[438]** Questions 18–21 of the Employer Survey are directed at this claim. Question 18 provided as follows:

“18. Do you pay any of your permanent employees by cash or cheque (or some other non-electronic transfer method) on a regular basis?”

**[439]** Some 3166 employers (about 85 per cent of all responses) answered no to this question (528 answered yes and 19 were unsure). Hence a substantial majority of respondents pay their employees by EFT. ...<sup>26</sup>

21. The Commission decided to alter awards that presently require that payment for a period of annual leave be made prior to that leave commencing. Employers are now permitted to pay an employee by EFT during their usual pay cycle whilst on annual leave. The Full Bench determined that: (emphasis added)

**[445]** The variation of the relevant modern awards will ensure that each of these modern awards provides a “fair and *relevant* minimum safety net”. The variations will ensure that these modern awards are “relevant” to the needs of the modern workplace.<sup>27</sup>

22. The rationale underpinning many of the relevant award terms as presently crafted can be understood in their historical context, whereby a significant proportion of employees were paid by cash. If such an employee were to be paid outstanding money due at a later time, the employee would need to attend the workplace to collect this payment, which would admittedly put the employee to some inconvenience.

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<sup>26</sup> 4 yearly review of modern awards – Annual leave [2015] FWCFB 3406 at [436] – [439].

<sup>27</sup> 4 yearly review of modern awards – Annual leave [2015] FWCFB 3406 at [445].

23. With the very widespread adoption of payment by EFT, that rationale becomes far less relevant. Payment can be made by an employer via EFT on termination in the same way that wages would ordinarily be paid. EFT allows employees to access their funds at banks, other financial institutions, ATMs and online at any time. Once payment is made, the funds could be accessed by the employee within a very short period of time, if not immediately.
24. The variations proposed would remedy the archaic and inappropriate effect of the existing provisions. The Model Clause better reflects contemporary payroll practices and the decreasing relevance of cash payments made to an employee whilst they are physically at the workplace.
25. *Fifth*, if left unvaried, the awards would become out of step with the 86 awards that have been varied to include the Model Clause. We cannot identify any considerations that warrant the adoption of a different approach in the 14 awards that are the subject of the Ai Group Claim. There do not appear to be factors specific to businesses or the workforce engaged in the relevant industries that deem the Model Clause necessary in the 86 awards identified above but not in the 14 awards that are the subject of our claim.
26. The fact that the Model Clause (or a similar provision) has not previously operated in the relevant awards should not preclude the variations from being granted. To apply that logic would stagnate any potential for change. We respectfully concur with and adopt Vice President Watson's comments (in his dissenting decision) regarding a claim made by employers covered by the *Stevedoring Industry Award 2010* to reduce penalty rates: (emphasis added)

**[71]** Having put the current penalty rate regime in issue it is incumbent on this Commission to consider the merit of the award penalty payments based on contemporary circumstances. The legislative task does not allow historical inertia to be a determinative factor, or to base decisions on the identity of applicants and supporters. Rather, the Commission must ensure that the award penalty rates represent a fair and relevant minimum safety net having regard to the various elements of the modern awards objective.

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**[76]** As various Full Bench decisions make clear, the 4 yearly review is broader than the 2 year review and broader than other mechanisms under ss. 157 and 160 to seek changes to awards. The 2 year review process nevertheless permitted changes to award provisions that did not provide a fair and relevant minimum safety net. For example in relation to a review of standard award flexibility clauses as part of the 2 year review a Full Bench said:

“[211] The variations proposed are necessary to remedy the issues identified in the Transitional Review and to ensure that the model award flexibility term and modern awards are operating effectively, without anomalies or technical problems arising from the award modernisation process. We are also satisfied that the variations proposed are ‘necessary’ (within the meaning of s.138) to achieve the modern awards objective and will ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions having regard to the matters set out at paragraphs 134(1)(a)-(h). In particular, the variations proposed will provide flexible modern work practices and reduce regulatory burden while taking into account the needs of the low paid and making the model flexibility term simpler and easier to understand.”

**[77]** The Full Bench reviewing provisions regarding apprentice provisions of modern awards also considered whether the current provisions of awards represented a fair and relevant minimum safety net of terms and conditions of employment by reference to the factors in the modern awards objective. In various instances it was found that the provisions should be varied based on merit considerations including fairness, equity and other grounds. It is clear from the decision that the task involved a broad judgement of the type described, without applying a barrier that favours the retention of the status quo.<sup>28</sup>

27. *Sixth*, many of the relevant awards currently contemplate that payment on termination may be sent to the employee by post.<sup>29</sup> It is our understanding that cash exceeding \$200 in value cannot be sent by post. We refer to Australia Post’s terms and conditions in this regard:

57.1 The following prohibited goods shall not be lodged for carriage by post and are prohibited from carriage by post:

...

57.1.11 bank notes lodged for delivery within Australia which exceed a face value of more than \$A200. For the avoidance of doubt, bank notes up to a limit not exceeding the face value of \$A200, lodged for delivery within Australia, are not prohibited from carriage if lodged under the registered post service, or under a parcel delivery service which requires a signature on delivery;

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<sup>28</sup> Re *Stevedoring Industry Award 2010* [2015] FWCFB 1729 at [71] and [76] – [79].

<sup>29</sup> The Black Coal Award, the Building Award, the Business Equipment Award, the Electrical Contracting Award, the Graphic Arts Award, the Manufacturing Award, the Mobile Crane Award and the Plumbing Award.

57.1.13 coins lodged for delivery within Australia which exceed a face value of more than \$A200. For the avoidance of doubt, coins up to a limit not exceeding the face value of \$A200, lodged for delivery within Australia, are not prohibited from carriage if lodged under the registered post service or under a parcel delivery service which requires a signature on delivery;<sup>30</sup>

28. As a result, payment by cash via post will not, in most circumstances, constitute a viable alternative to paying employees on the day of termination, before they leave the workplace. The difficulties that can arise from a resulting requirement to pay wages on the day of termination are self-evident, particularly where the employee's employment is terminated without notice (by the employer or the employee).
29. Accordingly, we consider that the relevant provisions are unfair, they are not relevant to the extent that they do not take into account Australia Post's terms and conditions, they are inconsistent with the need to promote flexible modern work practices and they have an adverse impact on business. The Model Clause would address these matters by enabling an employer to make the relevant payments within a period of seven days by any method including payment by EFT.
30. *Seventh*, the insertion of the Model Clause would not detract from the maintenance of the relative living standards and needs of the low paid. Indeed the variations sought will in many cases create an entitlement to be paid termination payments other than wages within 7 days, which would serve to *enhance* the living standards and needs of the low paid. We refer in this regard to the Commission's decision to insert the Model Clause in the 86 modern awards that did not previously regulate payment on termination:

**[138]** The variation of these 86 modern awards to insert the model term will be of benefit to the employees covered by these awards and is likely to affect low paid employees in particular. Section 134(1)(a) requires that we take into account, relevantly, 'the needs of the low paid'. This consideration is a factor in favour of varying modern awards to include the model term.<sup>31</sup>

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<sup>30</sup> Australia Post, *Terms and Conditions* (July 2019).

<sup>31</sup> *4 yearly review of modern awards – Payment of wages* [2018] FWCFB 3566 at [138].

31. *Eighth*, we do not anticipate that the variations proposed, if made, would undermine s.134(1)(b). It appears unlikely that the relevant current award terms would of themselves provide an impetus for engaging in the process of collective bargaining. As such, we would consider this a neutral consideration in this matter.
32. When considering whether to vary the 86 awards that did not regulate payment on termination, the Commission reached a similar conclusion:

**[139]** Section 134(1)(b) requires that we take into account ‘the need to encourage enterprise bargaining’. There is no evidence before us which would lead us to conclude that inserting a term providing for the payment of termination entitlements would have an adverse impact on the incentive to bargain in respect of this matter. But, nor is there anything before us to suggest that such a term would necessarily *encourage* enterprise bargaining.<sup>32</sup>

33. In any event, the retention of inflexible or costly provisions should not be justified on the basis that they might provide a ‘bargaining chip’ and as a result, encourage enterprise level negotiations:

**[229]** The variations concerning cashing out of annual leave are vehemently opposed by various unions and the ACTU. The ACTU is also strongly opposed to the Ai Group’s application to vary the award flexibility clause. The ACTU submits that it cannot be said that all awards are not operating effectively, contain anomalies or do not meet the modern awards objective without the variation it seeks to the award flexibility clause. Some unions oppose the variations because it would remove an incentive for employers to make enterprise agreements. I note in this regard that the concept of retaining inflexibilities in awards to provide a bargaining chip for making enterprise agreements was discredited during the award simplification process from the late 1990s.<sup>33</sup>

34. *Ninth*, the variations proposed are consistent with the need to promote flexible modern work practices and are likely to have a positive impact on business:

(a) We have earlier made submissions regarding the increased incidence of EFT payments and the need to update award terms such that they reflect modern payroll practices. To this end, the variations proposed are consistent with the need to promote flexible modern work practices. This logic is akin to that which was adopted by the Full Bench in the Annual

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<sup>32</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [139].

<sup>33</sup> Modern Awards Review 2012 – Annual Leave [2013] FWCFB 6266 at [229], citing as an example Re BHP Coal and others (Print S6142).

Leave Common Issues Proceedings when it determined that modern awards would be varied to permit payment during a period of leave by EFT.<sup>34</sup>

- (b) To the extent that the Model Clause enables an employer to make the relevant payments to the employee in the next pay cycle, thereby avoiding a separate pay run, the employer will avoid incurring additional employment costs in the form of transactional fees charged by the relevant bank or financial institution.
  - (c) Time spent by staff members responsible for payroll also comes at a cost to the business. In certain small or medium enterprises, payroll personnel may not be engaged on a full-time basis. An award term that nonetheless requires payment to be made on termination (or within a very limited timeframe thereafter) in circumstances where the relevant payroll personnel is not otherwise required to work, imposes a clear operational difficulty for the business. Assuming the payroll employee can be required to work for the purposes of processing the necessary payment, this would give rise to a clear additional cost and regulatory burden. These difficulties would, to some degree, be alleviated by a clause that enables payment within a longer period of time (i.e. 7 days).
  - (d) To the extent that the Model Clause enables an employer to make the relevant payments to the employee in the next pay cycle, thereby avoiding a separate pay run, this will also improve the efficiency with which an employer is able to process payment on termination.
35. *Tenth*, the insertion of the Model Clause in the relevant awards is consistent with the need to ensure a simple, easy to understand modern awards system. Relevantly, the Model Clause:
- (a) Is simple and easy to understand.

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<sup>34</sup> 4 *yearly review of modern awards – Annual leave* [2015] FWCFB 3406 at [446].

- (b) Clarifies that the obligation to make certain payments within the prescribed timeframe are limited to those entitlements that arise under the award and the NES; that is, the obligation does not extend to above-award amounts.
- (c) Creates a clear, express obligation to pay wages accrued during a partial pay period upon termination.
- (d) Creates a clear, express obligation to pay amounts due pursuant to the NES within a specific time period.
- (e) Expressly contemplates an employer's ability to seek an order pursuant to s.120 of the Act and the Commission's power to delay the requirement to make payments under the Model Clause.
- (f) Draws the reader's attention to the potentially differential treatment of payment for long service leave on termination.
- (g) Is contained in the majority of modern awards. The grant of the Ai Group Claim would provide for greater consistency across the awards system.

36. *Finally*, the variations proposed are unlikely to have an adverse impact on employment growth, inflation or the sustainability, performance and competitiveness of the national economy.

### **Additional Submissions about the Awards that are the Subject of the Ai Group Claim**

37. In addition to the above overarching submissions, we also make the following submissions specific to some of the awards that are the subject of the Ai Group Claim. These submissions highlight the necessity of the Model Clause to ensure that these awards achieve the modern awards objective.

## The Black Coal Award

38. The current provision in the Black Coal Award is in the following terms:

**16.7** Upon termination of employment, wages due to an employee will be paid on the day of such termination or forwarded by post, within 72 hours, to the last address notified in writing by the employee.

39. We note that the clause:

- (a) Deals only with wages. It is not clear that the clause creates an obligation to pay all amounts prescribed by the award. Nonetheless, it does create an obligation to pay over-award amounts. Further, it does not deal with NES entitlements. To this extent, the current clause is potentially unclear, unfair and does not fill the “regulatory gap” identified by the Commission.
- (b) Requires payment on the day of termination, regardless of the means by which payment is made. In the alternate it permits payment by post within 72 hours of termination. For the reasons articulated above this is unfair to employers and it does not reflect or enable modern work practices. Further, the clause creates additional employment costs and a regulatory burden.
- (c) The clause would apply even where the employee’s employment is terminated without notice, by the employee or employer. This compounds the unfairness and adverse impact on business.

## The Building Award

40. The existing provision in the Building Award is in the following terms:

**31.4** When notice is given, all monies due to the employee must be paid at the time of termination of employment. Where this is not practicable, the employer will have two working days to send monies due to the employee by registered post (or where paid by EFT the monies are transferred into the employee’s account).

41. We note that the clause:

- (a) Requires the payment of all monies.
  - (i) To the extent that this includes over-award amounts, this is unfair to employers and inconsistent with the purpose of a minimum safety net.
  - (ii) To the extent that it requires the payment of redundancy pay on the day of termination or within two working days of the termination, this is unfair to employers to the extent that it requires payment before an employer can consider and / or seek advice as to whether an application pursuant to s.120 of the Act should be made and if so, to in fact make such an application and have it determined.
- (b) Requires payment up to two working days after the termination of the employee's employment. For the reasons articulated above this is unfair to employers and it does not reflect or enable contemporary work practices. Further, the clause creates additional employment costs and a regulatory burden.

#### The Business Equipment Award

42. The extant provision in the Business Equipment Award says as follows:

**25.4** Upon termination of employment, the wages due to an employee must be paid on the day of such termination or forwarded by post on the next working day.

43. We note that the clause:

- (a) Deals only with wages. Arguably it does not create an obligation to pay other amounts prescribed by the award but does create an obligation to pay over-award amounts. Further, it does not deal with NES entitlements. To this extent, the current clause is potentially unclear, unfair and does not fill the "regulatory gap" identified by the Commission.

- (b) Requires payment on the day of termination, regardless of the means by which payment is made. In the alternate it permits payment by post to be forwarded on the next working day. For the reasons articulated above this is unfair to employers and it does not reflect or enable modern work practices. Further, the clause creates additional employment costs and a regulatory burden.
- (c) The clause would apply even where the employee's employment is terminated without notice by the employee or employer. This compounds the unfairness and adverse impact on business.

#### The Electrical Contracting Award

44. The current provision in the Electrical Contracting Award is in the following terms:

##### **22.3 Payment of wages on termination of employment**

(a) On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.

45. The clause is in relevantly similar terms to clause 25.4 of the Business Equipment Award. We therefore rely on the submissions made above in that regard.

#### The FBT Award

46. The current provision contained in the FBT Award is in the following terms: **28.3**

##### **Payment of wages on termination of employment**

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee on the next working day.

47. Subject to the absence of prescription as to the method by which payment may be forwarded to the employee on the working day following the termination date, the clause is in relevantly similar terms to clause 25.4 of the Business Equipment Award. We rely on the submissions made above in that regard.

## The Graphic Arts Award

48. The existing provision contained in the Graphic Arts Award is in the following terms:

### **28.5 Payment on termination**

On termination of employment, all monies due to an employee must be paid on the day of termination. When an employee is dismissed without notice all monies are to be forwarded to the employee by post or electronic funds transfer by the end of the next business day following the termination.

49. The clause:

- (a) Requires payment on the day of termination, regardless of the means by which payment is made, except where the employee is terminated without notice. For the reasons articulated above this is unfair to employers and it does not reflect or enable modern work practices. Further, the clause creates additional employment costs and a regulatory burden.
- (b) Requires payment by the end of the next business day where the employee is dismissed without notice. Whilst the clause provides slightly greater latitude in the context of terminations without notice than those that are effected with notice, the submissions earlier made about the unfairness to employers, the need to reflect or enable modern work practices and the additional employment costs and regulatory burden remain apposite given the limited period of time within which payment must be made.
- (c) Requires the payment of all monies.
  - (i) To the extent that this includes over-award amounts, this is unfair to employers and inconsistent with the purpose of a minimum safety net.
  - (ii) To the extent that it requires the payment of redundancy pay on the day of termination, this is unfair to employers to the extent that it requires payment before an employer can consider and / or seek advice as to whether an application pursuant to s.120 of the Act

should be made and if so, to in fact make such an application and have it determined.

50. For completeness, we note that the payment on termination clause was considered by the Commission in the context of the two year review<sup>35</sup>.

However:

(a) The proposed change advanced by ABI was substantively different to that which is now sought. Clause 28.5, as it then applied, was in the following terms:

If an employee's employment is terminated during the course of a week, the employee will at termination of their employment be paid all monies due to them. Where an employee is dismissed without notice all monies due are to be forwarded to the employee by post or electronic funds transfer within 24 hours of the termination.

The claim was for it to be deleted and replaced with the following: (our emphasis)

Upon termination of the employment, the employer will pay wages due to an employee as soon as is reasonably practicable, however no later than the employee's next usual pay day.

(b) The Commission's decision was made in a different legislative context. As has been observed by the Commission on many occasions, the two year review proceeded on a narrower basis than the considerations arising in the 4 yearly review of modern awards.

51. Therefore, the Commission is not, in our view, constrained by the aforementioned decision in its consideration of the Ai Group Claim.

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<sup>35</sup> *Re Australian Business Industrial* [2012] FWC 8726; upheld on appeal, *AMWU v Australian Business Industrial* [2013] FWCFB 580.

## The Manufacturing Award

52. The current clause contained in the Manufacturing Award is in the following terms:

### **34.3 Payment of wages on termination of employment**

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.

53. The clause is in relevantly similar terms to clause 25.4 of the Business Equipment Award. We therefore rely on the submissions made above in that regard.

## The Meat Industry Award

54. The current clause contained in the Meat Industry Award is in the following terms:

**29.2** Upon termination of employment, any wages due to an employee will be paid on the day of such termination or, at the employee's option, forwarded to them on the next working day.

55. The clause is in broadly similar terms to clause 25.4 of the Business Equipment Award. We therefore rely on the submissions made above in that regard.

56. To the extent that the clause, unlike that which is contained in the Business Equipment Award, allows payment to be forwarded to the next day *at the employee's option*; this does not provide the employer an effective flexibility or the certainty afforded by the Model Clause as to when payment must be made. There is, as such, no incentive for an employee to elect to be paid the day after termination. It is unclear whether that element of the clause in fact has any material work to do.

## The Mobile Crane Hiring Award

57. The current clause in the Mobile Crane Hiring Award states:

### **19.5 Termination of employment**

Upon termination of employment, wages due will be paid on the day of such termination or forwarded by electronic transfer or post on the next working day.

58. The clause is in broadly similar terms to clause 25.4 of the Business Equipment Award. We therefore rely on the submissions made above in that regard.

## The Long Distance Transport Award

59. The current clause in the Long Distance Transport Award is in the following terms:

**18.3** Notwithstanding anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all money due to the employee immediately.

60. We note that the clause:

- (a) Requires payment *immediately*, regardless of the means by which payment is made. For the reasons articulated above this is unfair to employers and it does not reflect or enable modern work practices. Further, the clause creates additional employment costs and a regulatory burden.
- (b) The clause would apply even where the employee's employment is terminated without notice by the employee or employer. This compounds the unfairness and adverse impact on business.
- (c) Requires the payment of all money.
  - (i) To the extent that this includes over-award amounts, this is unfair to employers and inconsistent with the purpose of a safety net.

- (ii) To the extent that it requires the payment of redundancy pay on the day of termination, this is unfair to employers to the extent that it requires payment before an employer can consider and / or seek advice as to whether an application pursuant to s.120 of the Act should be made and if so, to in fact make such an application and have it determined.

61. The potential for the clause to operate in an impractical and unfair manner is obvious when regard is had to the nature of the work undertaken in this industry and the methods of remuneration applied under the award. Employees covered by this award work remotely and are often paid by reference to kilometres actually travelled. Consequently, in some instances, the calculation of payments due to an employee will require the processing of paperwork completed by a driver that sets out the kilometres travelled and which is only provided to the employer upon the driver's return to a relevant depot. Such processes inevitably take time and cannot always be handled through automated systems. If an employee terminates their employment whilst still undertaking remote work, fails to provide the relevant paperwork to their employer, or simply terminates at short notice, immediate payment will not be possible or practical.

#### The Road Transport Award

62. The current clause in the Road Transport Award is in the following terms:

**20.3** Notwithstanding anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all moneys due to the employee forthwith.

63. We note that the clause requires payment *forthwith*, regardless of the means by which payment is made. The clause is not simply and easy to understand; but as we understand it, the clause effectively requires payment *immediately*. We rely therefore on the submissions made above regarding the Transport Long Distance Award.

## The Seafood Processing Award

64. The current clause in the Seafood Processing Award states:

### **21.3 Payment of wages on termination of employment**

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee within 48 hours.

65. The clause is in broadly similar terms to clause 25.4 of the Business Equipment Award. We therefore rely on the submissions made above in that regard.

## C. THE NURSES AWARD

66. The ANMF has proposed the following amendments to the Model Clause:

### **X Payment on termination of employment**

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages ~~under this award~~ owing for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee, including under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.<sup>36</sup>

67. The purpose of the proposed amendments appears to be to require the payment of over-award amounts in accordance with the Model Clause.

68. Ai Group opposes the variations to the Model Clause sought by the ANMF. As we have previously submitted, employers and employees should be free to determine arrangements governing the payment for any element of an individual's wages that exceeds entitlements set by the award. There are many legitimate reasons why over-award payments may not be provided until a point in time beyond 7 days from the date of termination. It is not *necessary* for a minimum safety net of terms and conditions to regulate such matters.

69. The ANMF's proposal "may have the consequence of overriding private contractual arrangements by which such payments are made, in circumstances where [the Commission has] no knowledge as to the terms of such arrangements"<sup>37</sup>. The Commission decided to draft the Model Clause to apply only to entitlements arising from the safety net for this very reason.<sup>38</sup> There is no cogent reason to depart from that decision in the context of the Nurses Award.

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<sup>36</sup> 4 Yearly Review of Modern Awards – Payment of Wages [2019] FWCFB 5146 at [47].

<sup>37</sup> 4 yearly review of modern awards – Plain language re-drafting – Standard clauses [2018] FWCFB 3009 at [67].

<sup>38</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566 at [51].

## D. THE WASTE AWARD

70. The payment of wages provisions within the Waste Award provide as follows:
- 24.1** All earnings, including overtime, must be paid in the employer’s time on a day to be fixed by the employer. Once fixed, the day must not be altered more than once in three months.
- 24.2** All earnings, including overtime, must be paid within three days of the end of the week in which they accrue.
- 24.3** Despite anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all money due to the employee as soon as possible.
- 24.4** The employer at its discretion may pay an employee by electronic funds transfer to a bank account nominated by the employee in question.
71. The Commission has called for submissions in relation to the potential replacement of the current provisions regulating payment on termination with the Model Clause. It has indicated that “submissions should address the meaning of the expression ‘as soon as possible’ in the Waste Management Award and why the insertion of the model term is opposed (or supported).”<sup>39</sup>
72. Clause 24.3 is the provision that falls for consideration in the context of these proceedings and which we primarily address in these submissions. We nonetheless observe that there is a degree of interconnectedness between both the operation of clause 24.3 and the other provisions of the clause. The broader underlying issue of the extent to which monetary entitlements should be required to be paid within a very short timeframe from their accrual and the burden that this imposes on employers is relevant to a consideration of whether both clause 24.2 and clause 24.3 are necessary elements of the award.
73. Before addressing clause 24.3 specifically, we observe that there are arguable deficiencies in clause 24 more broadly that may require amendment in the course of this Review. For example, we doubt that an obligation to pay employees within three days of the end of the week in which they accrue should be viewed as *necessary*, in the sense contemplated by s.138. Further, there is no relevant justification for the payment of all earnings, rather than just

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<sup>39</sup> 4 Yearly Review of Modern Awards – Payment of Wages [2019] FWCFB 5146 at [63].

amounts payable under the safety net comprised by the award and NES, being regulated by the award as currently the case. This is not the forum for the resolution of such matters; however, we raise this context for consideration in anticipation of a potential argument advanced by the unions that the current payment of wages provisions should simply be left unamended.

74. Turning to clause 24.3, it is patently obvious that the current provisions should not stand unamended, given the approach taken by the Commission to addressing the “regulatory gap” regarding payment on termination in the context of other awards. As observed by the Commission, the words ‘as soon as possible’ do not provide a time period for payment on termination.
75. The interaction between clause 24.3 and clauses 24.1 and 24.2 is not clear. Clause 24.3 would compel an employer to make a payment in a shorter period of time than would be permissible under clause 24.1 or clause 24.2. However, it could also be interpreted as extending the period of time permissible for the payment of termination payments beyond that contemplated by clause 24.1 and clause 24.2 if compliance with such provisions was not ‘possible’.
76. Depending on the circumstances of particular enterprises, the current provisions may operate in a manner that is unfair to either an employees or to employers. From the perspective of an employee, the provision may operate unfairly because it does not provide any absolute obligation as to when a payment must be made. If an employer is faced with some difficulty in making a payment (such as not having the funds or persons available to process or calculate the payment) the provision would, on one view, not compel the employer to make the relevant payment. Indeed, it would permit an employer to simply make the relevant payment when it became possible, subject to compliance with s.323.
77. From an employer’s perspective there are no sensible limitations on the requirement. It does not, for example, require payment as soon as is ‘reasonably possible’. Nor does it require any consideration of what can, from a practical perspective, be achieved. This could be interpreted as requiring an employer to do everything they can to make a payment, without any limitation

on the burden that this may impose upon an employer. For example, it might be argued to mean that an employer has to drop everything else that they are doing to process the payment, or that they need to unreasonably work out of hours to achieve this. Such a provision cannot be consistent with a consideration of fairness from the employer's perspective. A better approach would be to impose a timeframe that would be reasonable in all circumstances.

78. There is also a degree of uncertainty that arises from the phrase 'as soon as possible'. Different parties are likely to take varying views as to what might be possible in a particular context. The provision, as it stands, would be fertile ground for disagreement, is not simple and easy to understand and would be inherently difficult to enforce.
79. A further deficiency in clause 24.3 is that it regulates the payment of "all monies due to an employee". This would include 'over award' payments. It is not necessary or appropriate for an award to regulate such matters. Consequently, this element of the provision should be amended.
80. For all of the above reasons, the Waste Award should be amended to include the Model Clause. It should also be amended to clarify that clauses 24.1 and 24.2 operate subject to clause 24.3. This issue may be revisited in the context of the review of the payment of wages provisions more broadly.

MA000018 [insert print number]



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## 4 yearly review of modern awards – Payment of Wages (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Aged Care Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Aged Care Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 17.3 and inserting in lieu:

### 17.3 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission

<sup>1</sup> [insert citation].

<sup>2</sup> MA000018.

could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Black Coal Mining Industry Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Black Coal Mining Industry Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 16.7 and inserting in lieu:

### **16.7 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000001.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Building and Construction General On-Site Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Building and Construction General On-Site Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 31.4 and inserting in lieu:

### **31.4 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000020.

required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee’s employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT

DEPUTY PRESIDENT GOSTENCNIK

DEPUTY PRESIDENT CLANCY

COMMISSIONER LEE

COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Business Equipment Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Business Equipment Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 25.4 and inserting in lieu:

### **25.4 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000021.

could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Electrical, Electronic and Communications Contracting Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Electrical, Electronic and Communications Contracting Award 2010*<sup>2</sup> be varied by:

1. Renumbering Clause 22.3(b) as clause 22.4.
2. Deleting clause 22.3(a) and inserting in lieu:

### **22.3 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000025.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

3. Renumbering clauses 22.4 and 22.5 as 22.5 and 22.6 respectively.
4. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Food, Beverage and Tobacco Manufacturing Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Food, Beverage and Tobacco Manufacturing Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 28.3 and inserting in lieu:

### **28.3 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000073.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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<Price code A>



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Graphic Arts, Printing and Publishing Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Graphic Arts, Printing and Publishing Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 28.5 and inserting in lieu:

### **28.5 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000026.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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<Price code A>



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Manufacturing and Associated Industries and Occupations Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Manufacturing and Associated Industries and Occupations Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 34.3 and inserting in lieu:

### **34.3 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000010.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Meat Industry Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Meat Industry Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 29.2 and inserting in lieu:

### **29.2 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000059.

could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Mobile Crane Hiring Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Mobile Crane Hiring Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 19.5 and inserting in lieu:

### **19.5 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000032.

could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Plumbing and Fire Sprinklers Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Plumbing and Fire Sprinklers Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 27.4 and inserting in lieu:

### **27.4 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000036.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Road Transport (Long Distance Operations) Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Road Transport (Long Distance Operations) Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 18.3 and inserting in lieu:

### **18.3 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000039.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Road Transport and Distribution Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Road Transport and Distribution Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 20.3 and inserting in lieu:

### **20.3 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000038.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages**

(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Seafood Processing Award 2010.*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Seafood Processing Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 21.3 and inserting in lieu:

### **21.3 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000068.

could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [insert date].

PRESIDENT

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### AM2016/8 Payment of Wages – Payment on Termination

This table sets out the extant payment of wages provisions contained in the awards that are subject of the Ai Group Claim.

	Award	Clause to be Deleted
1	Aged Care Award 2010	<b>17.3 Termination</b> When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other moneys owing to an employee will be made to the employee by no later than the last day of the formal notice period.
2	Black Coal Mining Industry Award 2010	<b>16.7</b> Upon termination of employment, wages due to an employee will be paid on the day of such termination or forwarded by post, within 72 hours, to the last address notified in writing by the employee.
3	Building and Construction General On-Site Award 2010	<b>31.4</b> When notice is given, all monies due to the employee must be paid at the time of termination of employment. Where this is not practicable, the employer will have two working days to send monies due to the employee by registered post (or where paid by EFT the monies are transferred into the employee's account).
4	Business Equipment Award 2010	<b>25.4</b> Upon termination of employment, the wages due to an employee must be paid on the day of such termination or forwarded by post on the next working day.
5	Electrical, Electronic and Communications Contracting Award 2010	<b>22.3 Payment of wages on termination of employment</b> <b>(a)</b> On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.
6	Food, Beverage and Tobacco Manufacturing Award 2010	<b>28.3 Payment of wages on termination of employment</b> On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee on the next working day.
7	Graphic Arts, Printing and Publishing Award 2010	<b>28.5 Payment on termination</b> On termination of employment, all monies due to an employee must be paid on the day of termination. When an employee is dismissed without notice all monies are to be forwarded to the employee by post or electronic funds transfer by the end of the next business day following the termination.
8	Manufacturing and Associated Industries and Occupations Award 2010	<b>34.3 Payment of wages on termination of employment</b> On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.
9	Meat Industry Award 2010	<b>29.2</b> Upon termination of employment, any wages due to an employee will be paid on the day of such termination or, at the employee's option, forwarded to them on the next working day.

**ANNEXURE B**

10	Mobile Crane Hiring Award 2010	<p><b>19.5 Termination of employment</b></p> <p>Upon termination of employment, wages due will be paid on the day of such termination or forwarded by electronic transfer or post on the next working day.</p>
11	Plumbing and Fire Sprinklers Award 2010	<p><b>27.4</b> When notice is given in accordance with clause 17—Termination of employment, monies due to the employee must be paid at the time of termination. Where this is not practicable monies will be sent by registered post or, if the employee is normally paid by electronic funds transfer, transferred into the employee's account within two working days.</p>
12	Road Transport (Long Distance Operations) Award 2010	<p><b>18.3</b> Notwithstanding anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all money due to the employee immediately.</p>
13	Road Transport and Distribution Award 2010	<p><b>20.3</b> Notwithstanding anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all moneys due to the employee forthwith.</p>
14	Seafood Processing Award 2010	<p><b>21.3 Payment of wages on termination of employment</b></p> <p>On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee within 48 hours.</p>