



# STATEMENT

*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 BOOTH  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER CRIBB  
COMMISSIONER HUNT

MELBOURNE, 2 AUGUST 2016

*4 yearly review of modern awards –Payment of wages.*

### **1. Background**

[1] A number of matters concerning various ‘payment of wages’ terms in certain modern awards have been referred to this Full Bench for determination. A summary of the various matters is set out in a [Statement](#) issued 6 July 2016 (the 6 July Statement).

[2] Conciliation conferences were held on 27 July 2016 in accordance with the schedule set out at Attachment A to the 6 July Statement.

[3] The purpose of this Statement is to report on the outcome of the conciliation process and to set out draft directions for the finalisation of these matters.

### **2. The Matters**

(i) *Timing of payment of wages*

[4] The SDA application<sup>1</sup> seeks a variation to require, among other things, that all wages be paid on a regular payday within four days of the end of the pay period. The variation is sought in the following awards:

- *Fast Food Industry Award 2010;*
- *General Retail Industry Award 2010;*
- *Hair and Beauty Industry Award 2010.*

---

<sup>1</sup> SDA [submission](#) 2 March 2015; [Transcript](#) 14 December 2015, PN 410.

[5] The SDA has filed [draft variation determinations](#) in respect of each of these awards.

[6] The draft variation determinations proposed that all three awards be varied to insert a requirement that the regular payday falls within 4 days of the end of the pay period.

[7] Three further changes were sought in the *Fast Food Industry Award 2010* and the *Hair and Beauty Industry Award 2010* to provide that;

- (i) wages are to be paid on a regular payday;
- (ii) the employer notify the employee in writing of the payday; and
- (iii) where the employer wishes to change the payday, then they could do so on the provision of 4 weeks' written notice.

Items (ii)-(iii) above were not sought in relation to the *General Retail Industry Award 2010* because the award already contained these provisions.

[8] The parties agreed to give consideration to a draft term which may reflect a compromise between the parties' respective positions. The proposed draft term for the *Fast Food Industry Award 2010* and the *Hair and Beauty Industry Award 2010* is as follows:

'Wages will be paid weekly or fortnightly according to the actual hours worked each week or fortnight.

All wages are to be paid on a regular pay day, within 7 days of the end of the pay period. The employer must notify each employee of the regular pay day. The regular pay day may be varied by agreement between the employer and employee(s) or by the provision of 4 weeks' notice by the employer to the employee(s).'

**(ii) *Removing a restriction on the days for payment of wages***

[9] Restaurants and Catering Industrial (RCI) is seeking to vary the *Restaurant Industry Award 2010* to delete the current prohibition on the payment of wages on Fridays, Saturdays and Sundays. The claim is opposed by United Voice. The RCI proposed that its claim be dealt with in the Award Stage of the Review, rather than as part of these proceedings on the basis that 'this particular claim [is] interested with other claims [RCI] will be seeking in the Award Stage [and] is specific to a single award'. United voice did not oppose that course.

[10] We agree with the course proposed and this claim will be referred to the Award Stage of the Review.

**(iii) *Timing of payment on termination of employment***

[11] Ai Group and Australian Business Industrial and NSW Business Chamber (ABI) are seeking to vary 10 awards to enable employers who pay by EFT to make termination payments in accordance with the normal pay cycle. The modern awards sought to be varied are:

- *Business Equipment Award 2010;*
- *Food, Beverage and Tobacco Manufacturing Award 2010;*

- *Graphic Arts, Printing and Publishing Award 2010*;
- *Horticulture Award 2010*;
- *Manufacturing and Associated Industries and Occupations Award 2010*;
- *Road Transport and Distribution Award 2010*;
- *Road Transport (Long Distance) Award 2010*;
- *Storage Services and Wholesalers Award 2010*;
- *Supported Employment Services Award 2010*;
- *Wine Industry Award 2010*.

[12] These matters were not resolved in conciliation and will be determined in accordance with the process set out at paragraphs [26] – [27] of this Statement.

[13] Ai Group and ABI may seek to call one or two witnesses in support of their claims.

[14] There are 27 other modern awards which are not presently subject to claims by any party but which also impose timeframes with respect to termination payments.<sup>2</sup> These awards are set out at Attachment A. This Full Bench will also review the payments on termination terms of these 27 modern awards. Draft variation determinations will be published by mid-September in respect of these awards, in the same terms as those sought by Ai Group and ABI in relation to the 10 modern awards which are the subject of their claims. The publication of these draft variation determinations is intended to facilitate the review of the relevant terms of the modern awards in Attachment A, they do not represent the concluded (or provisional) view of the Full Bench. The concurrent review of all of these modern awards will protect the interests of all relevant parties and ensure that all interested parties are given an opportunity to make submissions in respect of these issues.

*(iv) Penalty for late payment of wages*

[15] The Health Services Union (the HSU) has indicated that it will not be pursuing its foreshadowed claim to introduce penalties for the late payment of wages in three modern awards: *Aboriginal Community Controlled Health Services Award 2010*; *Aged Care Award 2010*; and *Social Community, Home Care and Disability Services Industry Award 2010*.

[16] There are also applications by ABI and the Master Builders Australia (MBA) to vary the terms of certain awards which provide a penalty for late payment of wages.

[17] The MBA claims in the *Building and Construction General On-Site Award 2010* and the *Joinery and Building Trades Award 2010* are the subject of current conciliation proceedings before Senior Deputy President Watson. The intended parties to these awards have expressed a preference for these issues to be dealt with during the Award Stage of the Review, and that is the course which we will adopt.

[18] ABI is seeking to vary the provisions in 10 modern awards which impose a penalty for late payment of wages. The relevant awards are:

- *Cleaning Services Award 2010*;

---

<sup>2</sup> 26 of these were included in [ABI's submission](#) dated 19 July 2016, the Commission has identified one other award not included in this list.

- *Hospitality Industry (General) Award 2010;*
- *Joinery and Building Trades Award 2010;*
- *Plumbing and Fire Sprinklers Award 2010;*
- *Professional Diving Industry (Industrial) Award 2010;*
- *Professional Diving Industry (Recreational) Award 2010;*
- *Racing Industry Ground Maintenance Award 2010;*
- *Registered and Licensed Clubs Award 2010;*
- *Silviculture Award 2010;*
- *Supported Employment Services Award 2010.*

[19] The variations sought remove the penalty for late payment of wages where wages are paid by Electronic Funds Transfer (EFT).

[20] These matters were not resolved in conciliation and will be determined in accordance with the process set out at paragraphs [26] – [27] below.

[21] The parties, particularly those interested in the *Hospitality Industry (General) Award 2010*, are to hold further discussions in an effort to arrive at an agreed position.

(v) *Annual leave loading issue*

[22] Ai Group seeks to vary three modern awards to address an alleged anomaly in the annual leave clauses relating to provisions dealing with payment of annual leave and annual leave loading, namely:

- *Electrical, Electronic and Communications Contracting Award 2010;*
- *Food, Beverage and Tobacco Manufacturing Award 2010;*
- *Joinery and Building Trades Award 2010.*

[23] During the course of the conciliation conferences, agreement in principle was reached in respect of the proposed variation of the *Food, Beverage and Tobacco Manufacturing Award 2010*. The interested parties are to file a joint document setting out the terms of their agreement, within 7 days. Ai Group will file a short written submission in support of the agreed variation, in accordance with the final directions issued in respect of these issues.

[24] Further discussions are to take place between the parties with an interest in the *Electrical, Electronic and Communications Contracting Award 2010*.

[25] The proposed variation of the *Joinery and Building Trades Award 2010* is opposed by the AWU and CFMEU and will be determined in accordance with the process set out at paragraphs [26] – [27] below. Ai Group is to give further consideration to the terms of its proposed variation and advise of its final position, within 7 days.

### 3. Next Steps

[26] It is proposed that the hearing in respect of all these matters be listed for **9:30 am Tuesday, 25 October 2016**, in Sydney. Draft directions for the filing of submissions and evidence are set out at Attachment B.

[27] Any comments on the draft directions are to be filed by **4:00 pm Wednesday, 10 August 2016**. Final directions will be issued shortly after this time.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<Price code C, PR583599>

**Attachment A****Other awards that prescribe timeframes for termination payments**

<b>Modern Award</b>	<b>Payment of wages clause</b>
<i>Aged Care Award 2010</i>	clause 17
<i>Aluminium Industry Award 2010</i>	clause 17
<i>Asphalt Industry Award 2010</i>	clause 19
<i>Black Coal Mining Industry Award 2010</i>	clause 16.7
<i>Building and Construction General On-site Award 2010 –</i>	clause 31
<i>Children's Services Award 2010 –</i>	clause 19
<i>Dry Cleaning and Laundry Industry Award 2010</i>	clause 19
<i>Electrical, Electronic and Communications Contracting Award 2010</i>	clause 22
<i>Horse and Greyhound Training Award 2010</i>	clause 18
<i>Market and Social Research Award 2010</i>	clause 19
<i>Meat Industry Award 2010</i>	clause 29
<i>Mobile Crane Hiring Award 2010</i>	clause 19
<i>Nursery Award 2010</i>	clause 22
<i>Nurses Award 2010</i>	clause 18
<i>Passenger Vehicle Transportation Award 2010</i>	clause 19
<i>Pastoral Award 2010</i>	clause 16
<i>Pharmaceutical Industry Award 2010</i>	clause 21
<i>Plumbing and Fire Sprinklers Award 2010</i>	clause 27
<i>Professional Diving Industry (Industrial) Award 2010</i>	clause 19
<i>Professional Diving Industry (Recreational) Award 2010</i>	clause 18
<i>Restaurant Industry Award 2010</i>	clause 27
<i>Seafood Processing Award 2010</i>	clause 21
<i>Silviculture Award 2010</i>	clause 21
<i>Timber Industry Award 2010</i>	clause 25
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	clause 24
<i>Waste Management Award 2010</i>	clause 24
<i>Wine Industry Award 2010</i>	clause 26

**Attachment B**



**DRAFT DIRECTIONS**

*Fair Work Act 2009*  
s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards—Group 4**  
(AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT BOOTH  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER CRIBB  
COMMISSIONER HUNT

MELBOURNE, XX AUGUST 2016

It is directed that:

1. Parties seeking to vary the payment of wages term in any modern award are to file a written submission and any supporting evidence by **4:00 pm Thursday, 15 September 2016**.
2. Parties opposing the variation of any of the payment of wages terms in the modern awards referred to in the 1 August 2016 Statement are to file written submissions and any supporting evidence by **4:00 pm Thursday, 13 October 2016**.
3. Applicants may file submissions in reply by **4:00 pm Thursday, 20 October 2016**.
4. A Mention will be held at **1:00 pm Monday, 17 October 2016**.
5. A Full Bench Hearing will take place at **9:30 am Tuesday, 25 October 2016**, in Sydney.
6. All submissions and evidence should be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).
7. All requests for video link should be sent to [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au).
8. Leave is granted to apply generally.

PRESIDENT