



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

MELBOURNE, 21 AUGUST 2018

4 yearly review of modern awards – common issue – payment of wages – payments on termination.

[1] The ‘payment of wages’ terms in modern awards are being dealt with as a common issue in the 4 yearly review of modern awards (the Review). A common issue is a proposal for significant variation or change across the award system, such as an application or proposal seeking to change a common or core provision in most, if not all, modern awards.¹

[2] Further to a Decision² issued on 17 July 2018 (the *July Decision*), which finalised the payments on termination model term, five conferences³ were held on 1 and 2 August 2018 in respect of the 36 modern awards which currently contain terms which provide for the payment of wages and other amounts owing to an employee on the termination of their employment. Those 36 modern awards, and the provisions, are set out at **Attachment A**.

[3] In a Decision⁴ issued on 15 August 2018 (the *August Decision*) the Full Bench expressed the further *provisional* view that of the 36 awards in Attachment A the following awards should be varied to include the model term:

- *Asphalt Industry Award 2010*;
- *Horse and Greyhound Training Award 2010*;
- *Nursery Award 2010*;
- *Pharmaceutical Industry Award 2010*;
- *Professional Diving Industry (Industrial) Award 2010*;
- *Professional Diving Industry (Recreational) Award 2010*;
- *Silviculture Award 2010*; and
- *Storage Services and Wholesale Award 2010*.⁵

¹ [\[2013\] FWC 10195](#); [\[2014\] FWC 1790](#).

² [\[2018\] FWCFB 3566](#).

³ See [Statement \[2018\] FWC 4206](#).

⁴ [\[2018\] FWCFB 4735](#)

⁵ [AWU submission](#), 10 August 2018.

[4] The *August Decision* also expressed the *provisional* view that the *Market and Social Research Award 2010* should be varied to include the model term but that the variation will retain the first sentence of clause 19.5 as a separate entitlement.

[5] The payment of wages on termination term in the following 30 awards remain outstanding:

- *Aged Care Award 2010;*
- *Alpine Resorts Award 2010;*
- *Aluminium Industry Award 2010;*
- *Black Coal Mining Industry Award 2010;*
- *Building and Construction General On-site Award 2010;*
- *Business Equipment Award 2010;*
- *Black Coal Mining Industry Award 2010;*
- *Children's Services Award 2010;*
- *Dry Cleaning and Laundry Industry 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;*
- *Meat Industry Award 2010;*
- *Mobile Crane Hiring Award 2010;*
- *Nurses Award 2010;*
- *Pastoral Award 2010;*
- *Seafood Processing Award 2010;*
- *Supported Employment Services Award 2010;*
- *Passenger Vehicle Transportation Award 2010;*
- *Pharmacy Industry Award 2010;*
- *Plumbing and Fire Sprinklers Award 2010;*
- *Rail Industry Award 2010;*
- *Restaurant Industry Award 2010;*
- *Road Transport and Distribution Award 2010;*
- *Road Transport (Long Distance Operations) Award 2010;*
- *Timber Industry Award 2010;*

- *Vehicle Manufacturing, Repair, Services and Retail Award 2010*;
- *Wine Industry Award 2010*;
- *Waste Management Award 2010*.

Next steps

[6] In relation to the *Aluminium Industry Award*, the Australian Workers' Union and the Australian Industry Group have agreed a variation to the model term and parties are directed to file the proposed variation by **4 pm on 29 August 2018**.

[7] In relation to the *Horticulture Award 2010*, *Wine Industry Award 2010* and the *Pastoral Award 2010*, interested parties are to notify the Commission of their position by **4 pm on 29 August 2018**.

[8] During the conferences an issue arose in relation to the interpretation of the current payment of wages on termination clauses in the *Timber Industry Award 2010*. The current payment on termination term in the *Timber Industry Award* is set out below:

25.3 Payment of wages on termination

(a) Upon termination of the employment after the prescribed period of notice of termination has been given by either the employer, or the employee or where the period of notice is dispensed with in accordance with the provisions of clause 15—Redundancy all monies which are legally due must be paid to the employee at the usual place of payment within 15 minutes of the ceasing time on the day of termination of the employment. Provided that if the usual place of payment be at the work in the bush, then such payment must be made within 30 minutes of the usual ceasing time on the day of the termination of employment at the usual place of payment.

(b) Should the employment be otherwise terminated the employer may retain any monies legally due to the employee no later than the expiration of the pay period.

[9] The payment of wages term in the *Timber Industry Award* will be considered in a separate process. Parties are encouraged to have discussion about whether there are any industry specific elements of the clause that should be retained in the event that the model term is inserted into the award. Interested parties are directed to report back to the Commission by **4pm on 7 September 2018**. The matter will then be referred to the Plain Language Full Bench for determination.

[10] During the conference for the *Children's Services Award*, an issue also arose about the interpretation of clause 19.3 which provides:

19.3 Where an employee lawfully leaves their employment they will be paid all moneys due at the time of leaving by cash, cheque or electronic funds transfer. Alternatively, the employee may be paid on the next working day where this is reasonable.

[11] At the conference, there was discussion about whether this clause permits the deduction of wages on termination in circumstances where an employee does not leave their employment 'lawfully'. It was proposed that clause 19.3 be deleted and the model term inserted. No party at the conference opposed this course of action. In order to allow other

interested parties an opportunity to consider the proposed variation, a draft determination will shortly be published and interested parties will have 14 days to comment.

[12] In relation to the *Restaurant Industry Award*, United Voice raised a concern about the interaction between the model term and the existing provisions about the payment of casual employees in the award as follows:

13.4 A casual employee must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.

[13] Similar clauses also appear in the *Hospitality Industry Award 2010* and the *Registered and Licenced Clubs Award 2010*. Parties are encouraged to have discussions to try and reach an agreed position about the insertion of the model term and the interaction with the payment of casual position. Parties are directed to report back to the Commission by **4pm on 7 September 2018**.

[14] The interpretation of the current provision in the *Waste Management Award 2010* was also discussed at the conference. The award currently provides:

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.

[15] As the words ‘as soon as possible’ don’t provide a time period for payment on termination, parties were asked to engage in discussions to see if an agreed position could be reached. Interested parties are directed to report back by **4pm on 7 September 2018**. If there is no agreement, this award will be the subject of further proceedings.

[16] The remaining 22 awards will be dealt with as follows;

- Interested parties are directed to confirm whether they oppose the variation of these awards to include the model term by **4pm on 7 September 2018**.
- Any party wishing to press for the variation of one of the awards to insert the model term must file an application by **4 pm on Friday 21 September 2018**.
- Interested parties are encouraged to engage in discussions and report back to the Commission as part of this submission process.

[17] Liberty to apply.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR620061>

ATTACHMENT A—Payment of wages on termination

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
Aged care award 2010 [MA000018]	Cash or EFT	Clause 17.3	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.
Aluminium Industry Award 2010 [MA000060]	Cash, cheque or EFT	Clause 17.3	On termination of employment, wages due to an employee must be paid on the day of termination or paid to the employee by the next regular pay day in accordance with clause 17.2.
Asphalt Industry Award 2010 [MA000054]	Cash, cheque or EFT	Clause 19.3	On termination of employment the wages due to an employee must be paid on the day of termination or be forwarded to the employee within 2 business days after termination.
Black Coal Mining Industry Award 2010 [MA000001]	Cheque or EFT	Clause 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. Note also cl. 13.5 which sets out payments on termination.
Building and Construction General On-site Award 2010 [MA000020]	Cash, cheque, bank cheque or EFT	Clause 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).
Business Equipment Award 2010 [MA000021]	Cash, cheque or EFT	Clause 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.
Children's Services Award 2010 [MA000120]	Cash, cheque or EFT	Clause 19.3	Where an employee lawfully leaves their employment they will be paid all moneys due at the time of leaving by cash, cheque or electronic funds transfer. Alternatively, the employee

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
			may be paid on the next working day where this is reasonable.
Dry Cleaning and Laundry Industry Award 2010 [MA000096]	Cash or EFT	Clause 19.3	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 money owing to an employee will be made to the employee by no later than the last day of the formal notice period.
Electrical, Electronic and Communications Contracting Award 2010 [MA000025]		Clause 22.3	(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. (b) Where an employee is paid under a rostered day off system and has accrued a credit towards a rostered day off such credit must be taken into account in calculating wages due on termination.
Food, Beverage and Tobacco Manufacturing Award 2010 [MA000073]	Cash, cheque or EFT	Clause 28.3	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.
Graphic Arts, Printing and Publishing Award 2010 [MA000026]	Cash, cheque or EFT	Clause 28.5	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.
Horse and Greyhound Training Award 2010 [MA000008]	Cash, cheque or EFT	Clause 18.1	When an employee's employment is terminated before the usual payday, the employee must be paid all wages and holiday pay to which the employee is entitled within 24 hours of leaving the employer's service.
Horticulture Award 2010 [MA000028]	Cash, cheque or EFT	Clause 19.3	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.
Manufacturing and Associated Industries and Occupations Award 2010	Cash, cheque or EFT	Clause 34.3	On termination of employment, wages due to an employee must be paid on the day of termination or

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
[MA000010]			forwarded to the employee by post on the next working day.
Market and Social Research Award 2010 [MA000030]	EFT or by agreement cash or cheque	Clause 19.5	An employer must, on request, provide to an employee on termination a detailed statement of outstanding entitlements. The wages due to an employee must be paid on the day of such termination or forwarded via post on the next working day.
Meat Industry Award 2010 [MA000059]	"In manner agreed"	Clause 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.
Mobile Crane Hiring Award 2010 [MA000032]	Cash, cheque or EFT	Clause 19.5	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.
Nursery Award 2010 [MA000033]	Cash, cheque or EFT	Clause 22.3	On termination of the employment, the wages due to an employee must be paid on the day of termination or be forwarded to the employee within 2 business days after termination.
Nurses Award 2010 [MA000034]	Cash, cheque or EFT	Clause 18.3	When notice of termination of employment has been given by an employee or an employee's services have been terminated by the employer, payment of all wages and other monies owing to an employee will be made to the employee.
Passenger Vehicle Transportation Award 2010 [MA000063]	The employer at its discretion may pay an employee by electronic funds transfer to a bank account nominated by an employee	Clause 19.4	Notwithstanding anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all moneys due to the employee within two working days.
Pastoral Award 2010 [MA000035]	Cash, cheque or EFT	Clause 16.3	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.
Pharmaceutical Industry Award 2010 [MA000069]	Cash, cheque or EFT	Clause 21.3	On termination of employment the wages due to an employee must be paid on the day of such termination or be forwarded to them within 2 business days after termination.

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
Plumbing and Fire Sprinklers Award 2010 [MA000036]	Cash, cheque, bank cheque or EFT		<p>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> <p>Note- penalty payment for waiting time (ordinary rates for 8 hours per day for up to a week)</p>
Professional Diving Industry (Industrial) Award 2010 [MA000108]	Cash, cheque, bank cheque or EFT	Clause 19.4	On termination of employment, wages due to employees must be paid to them on the day of such termination or forwarded to them by post on the next working day.
Professional Diving Industry (Recreational) Award 2010 [MA000109]	Cash, cheque, bank cheque or EFT	Clause 18.4	On termination of employment, wages due to employees must be paid to them on the day of such termination or forwarded to them by post on the next working day.
Restaurant Industry Award 2010 [MA000119] CSH,	Cash, cheque or EFT	Clauses 27.4 and 27.5	<p>27.4 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 due must be made during working time, prior to the employee leaving their employment.</p> <p>27.5 Where an employee is dismissed for misconduct the employee must be paid within one hour of their dismissal or as soon as practicable thereafter.</p>
Road Transport (Long Distance Operations) Award 2010 [MA000039]	EFT at the employer’s discretion	Clause 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

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
Road Transport and Distribution Award 2010 [MA000038]	EFT at employer's discretion	Clause 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.
Seafood Processing Award 2010 [MA000068]	Cash, cheque or EFT	Clause 21.3	On the day of termination or forwarded within 48 hours.
Silviculture Award 2010 [MA000040]	Cash, cheque or EFT	Clause 21.3	When notice is given in accordance with the NES, all money due to the employee pursuant to this award must be paid at the time of termination. Where this is not practicable, the employer must, within two clear working days of the termination, transfer all money due by electronic funds transfer or by registered post to the employee's home address. Any time spent waiting beyond the two working days must be paid for at ordinary rates of eight hours per day for up to one week.
Storage Services and Wholesale Award 2010 [MA000084]	Cash or cheque during working hours or by EFT	Clause 20.3	On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee as soon as reasonably practicable and within two working days after the termination.
Supported Employment Services Award 2010 [MA000103]	Cash, cheque or EFT, as determined by employer.	Clause 18.4 and 18.5	18.4 Where an employee is discharged from employment the employee will be paid immediately for all wages, overtime, pro rata payment for annual leave, annual leave loading or any remuneration due. Payment may be made by cash, cheque or electronic funds transfer at the discretion of the employer. 18.5 Where an employee lawfully leaves their employment they will be paid all monies due at the time of leaving. Payment may be made by cash, cheque or electronic funds transfer at the discretion of the employer. 18.6 In the event of a delay of this payment, within the control of the employer, the employee to be paid ordinary time rates for 'waiting time'. Time kept waiting will be

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
			deemed to operate after 6pm on the Friday of each pay week where payment made by EFT.
[Timber Industry Award 2010 [MA000071]]	Cash, cheque or EFT	Clause 25.3	<p>25.3(a) Upon termination after the prescribed period of notice, or where the notice period has been dispensed with in accordance with clause 15 (Redundancy) all monies must be paid at the usual place of payment within 15 minutes of the ceasing time on the day of the termination of employment. If the usual place is at work in the bush, within 30 minutes of the usual ceasing time.</p> <p>25.3(b) - If the employment is otherwise terminated, no later than the expiration of the pay period.</p>
[Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA000089]]	<p>Cash or, with the agreement of the majority of workers in a workplace, by cheque or direct transfer.</p> <p>An employer and an employee may agree to pay by cheque or direct transfer.</p>	Clause 24.4	<p>(a) Upon termination of the employment, the employer will pay wages due to an employee:</p> <ul style="list-style-type: none"> (i) on the day of such termination; (ii) by forwarding such wages to the employee on the next working day; <p>or</p> <ul style="list-style-type: none"> (iii) at the employer's place of business on a stated day not later than seven days after such termination. If the employer requires the employee to visit such place of business to collect wages then, in addition to the amount of moneys due, the employer will pay the employee an additional four hours' ordinary pay. <p>Except that where an employee abandons his or her employment or the employee's employment is terminated without notice for serious and wilful misconduct the employer will pay the wages due to the employee within two business days (not including a Saturday, Sunday or public holiday) of the termination.</p> <p>(b) An employer may deduct from monies due to an employee such amount as is authorised in writing by the employee for a lawful purpose specified in the authority.</p>

Award	Method of payment	Provision for payment on termination	Timeframe for payment on termination
Waste Management Award 2010 [MA000043]	At the employer's discretion, by EFT.	Clause 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.
Wine Industry Award 2010	Cash or EFT	Clause 26.3	On termination of the employment, wages due to an employee must be paid on the day of such termination or be forwarded to the employee on the next working day.