



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 GOSTENCNIK
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE
COMMISSIONER HUNT

MELBOURNE, 10 JULY 2020

4 yearly review of modern awards – common issue – payment of wages – draft variation determination – Aged Care Award 2010

[1] On 16 June 2020 a Statement was issued¹ stating that a number of conferences would be convened in respect of the following awards:

- *Aged Care Award 2010;*
- *Building and Construction General On-site Award 2010;*
- *Business Equipment Award 2010;*
- *Electrical, Electronic and Communications Contracting Award 2010;*
- *Graphic Arts, Printing and Publishing Award 2010;*
- *Food, Beverage and Tobacco Manufacturing Award 2010; and*
- *Manufacturing and Associated Industries and Occupations Award 2010.*

[2] A conference for the *Aged Care Award 2010* was held on 8 July 2020 attended by Ai Group, ABI and the Health Services Union (HSU).²

[3] The *Aged Care Award 2010* provides that wages may be paid by cash or electronic funds transfer. In relation to termination payments clause 17.3 provides as follows:

17.3 Termination

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.

¹ [2020] FWC 3157

² The United Workers Union did not attend the Conference but supports the HSU position.

[4] ABI and Ai Group sought to replace the current clause 17.3 with the model term.

[5] In a decision³ issued on 20 May 2020, the parties were directed to confer on the form of a draft variation having regard to views expressed at [209] of the decision. In correspondence of 7 July 2020, Ai Group provided a draft determination which reflected the outcome of discussions between the parties (Ai Group, ABI and the HSU). A copy of the draft determination is at **Attachment A**.

[6] It is our *provisional* view that the Aged Care Award be varied as proposed by the parties. Interested parties will have until **4pm on Friday 17 July 2020** to comment. If no comments are received, we will proceed to issue a final determination in the terms sought. All comments are to be sent to chambers.ross.j@fwc.gov.au.

PRESIDENT

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<PR720876>

Hearing

2020.

8 July.

by telephone

Appearances

Mr L. Izzo for ABI & NSWBC

Mr B. Ferguson for Ai Group

Ms R. Liebhaber for the Health Services Union

³ [2020] FWCFB 1131

ATTACHMENT A

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]⁴ it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Aged Care Award 2010*⁵ be varied by:

1. Deleting clause 17.3 and inserting in lieu:

17.3 Payment on termination of employment

- (a) When notice of termination of employment has been given by an employee in accordance with clause 11.2, or an employee's services have been terminated by an employer who has provided them with notice in accordance with the NES, payment of all wages and other monies owing to an employee will be made to the employee by no later than the last day of the formal notice period.
- (b) In all other circumstances, the employer must pay all wages and other monies owing to an employee by no later than 7 days after the day on which the employee's employment terminates.

⁴ [insert citation].

⁵ MA000018.

- (c) The requirement to pay wages and other amounts under paragraphs (a) and (b) is subject to further order of the Commission and the employer making deductions authorised by this award or 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 required minimum period of notice or "has paid" to the employee payment instead of giving them notice.

Note 2: Paragraph (c) allows the Commission to make an order delaying the requirement to make a payment under clause 17.3(a) or 17.3(b). 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

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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