

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
1.	<i>Accrual of wages–Proposed new term</i>				
	ABI & NSWBC	Submission - 31/10/2017	<i>General</i>	4.1-4.6	<ul style="list-style-type: none"> Given variety of approaches to payment of wages, any term pertaining to accrual of wages must be inserted with specific reference to other provisions contained in the relevant award. Supports adoption of an accrual process whereby entitlement to wages accrues on an hourly basis.
	Ai Group	Submission 7/11/2017	<i>General</i>	33	<ul style="list-style-type: none"> Appears that manner in which various amounts referred to in awards accrue may depend upon the terms of individual awards. There may also be differences in this respect between individual types of entitlements within an award.
	ACTU	Submission – 30/10/17	<i>General</i>	28	<ul style="list-style-type: none"> Proposes wages accrue on day to day basis, but are not payable until pay day.
	ACTU	Submission – 21/12/16	<i>General</i>	8	<ul style="list-style-type: none"> Accept that awards should deal with when the entitlement to payment accrues. No concluded view about where the clause should sit but support the consideration of any clause for adaptation on an award by award basis.
	AHA & Others	Submission 30/10/2017	<i>Hospitality Award</i>	7	<ul style="list-style-type: none"> Considers that accrual issue only arises on termination, and is dealt with under the term addressing termination payments. If adopted, clause should be adapted to accommodate casual, part-time and full-time working arrangements, particularly those dealing with averaging of pay/work hours of work and annualised salaries arrangements. Supports submissions of ABI and NSWBC in relation to accrual of payments.
	CFMEU (M&E)	Submission 30/10/2017	<i>General</i>	10	<ul style="list-style-type: none"> Submits that awards should make provision for the accrual of wages with the model term providing for accrual on a daily basis.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	CFMEU (M&E)	Submission – 22/12/2016	<i>General</i>	5	<ul style="list-style-type: none"> Agree with the need to ensure that all payments due for the relevant period are made. Submit that the wording necessary to ensure due payment may vary between awards and the issue may need to be addressed further.
	HIA	Submission 30/10/2017	<i>General</i>		<ul style="list-style-type: none"> Submits that accrual of wages issue only arises in relation to payments on termination. Submits that accrual issue is addressed in the 'payment on termination of employment' model term by reference to '<i>complete and incomplete pay period</i>'.
	Mark Irving & Andrew Stewart	Submission – 15/12/16	<i>General</i>	Pg 1	<ul style="list-style-type: none"> Propose a new default term in all modern awards dealing with the accrual of wages as follows: “Wages accrue on a day to day basis.” This new term could be modified where industry circumstances require.
	Master Builders	Submission 30/10/2017	<i>Building Award and Joinery Award</i>	4.1	<ul style="list-style-type: none"> Oppose view that there is a legislative gap in relation to timing of accrual of wages. Submit that any deficiencies in regard to accrual of wages more appropriately dealt with via legislative amendments.
	SDA	Submission in reply – 2/02/2017	<i>General</i>	22	<ul style="list-style-type: none"> Support the submission of Irving and Stewart.
2. Model Clause: Payment of Wages: General					
	ABI, NSWBC & Ai Group	Ai Group submission 7/11/2017	<i>General</i>	14	<ul style="list-style-type: none"> Joint Employer Model Clause representing modified version of the provisional term provided at para 14 of Ai Group submission.
	ABI & NSWBC	Submission in reply – 2/02/2017	<i>General</i>	2.1-2.11	<ul style="list-style-type: none"> Submit that in the context of a modern award safety net, it should not be assumed that uniformity equates with simplicity. Submit further that caution should be adopted before industry specific terms are replaced with a model term and that it is important that the impact of the

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					<p>model term is considered on an award-by-award basis.</p> <ul style="list-style-type: none"> • Submit that there are currently 34 awards that unconditionally permit the payment of wages to employees on a monthly basis. A list of these awards is attached to the submissions. The ABI submit that it is not aware of any issues that have arisen with these existing terms.
	ABI & NSWBC	Submission – 6/01/2017	<i>General</i>	2.5-2.6	<ul style="list-style-type: none"> • Implementation of model term across all awards not consistent with the modern awards objective. In principle, ABI have less difficulty with the model term being adapted on an award by award basis.
	Ai Group	Submission 7/11/2017	<i>General</i>	4; 9-12; 24	<ul style="list-style-type: none"> • Continue to rely on submissions of 23 December 2016 and 19 February 2017, unless otherwise indicated. • Observe that many existing payment of wages clauses appear to be unjustifiably restrictive; any review of payment of wages should also reconsider necessity to retain existing provisions. Such considerations should inform development of model term. • There may be a need for transitional arrangements accompanying any variation to existing payment of wages provisions. Parties should be given an opportunity to address the Commission prior to implementation. • Application of proposed Joint Employer Model Clause is limited to regulation of safety net amounts; submit reference to ‘employee’s wages for the pay period’ is potentially broader in scope.
	Ai Group	Submission – 23/12/2016	<i>General</i>	5-13	<ul style="list-style-type: none"> • Submit that the implementation of any model term should be considered on an award by award basis, taking into account existing practices within particular industries and occupations. • Submit further that achieving a degree of standardisation across the awards system may assist in making awards simple and easy to understand. However, this factor alone does not warrant the making of significant change.

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	ACTU	Submission – 30/10/17	<i>General</i>	12-21; 32-37; 58-59; Scheds 1 & 2	<ul style="list-style-type: none"> • Full Federal Court finding in <i>Penalty Rates</i> decision not conducive to wholesale adoption of model terms; Commission must find that each award does not meet modern awards objective before award can be varied (to the extent necessary to meet modern awards objective), and each modern award must be reviewed in its own right. • Clarity is very important, but mere realisation that there is an absence of common terms across award system insufficient reason in itself for change in all circumstances. Commonality and equity ought not be entirely equated. • Award-by-award approach to adoption of any model terms (once settled) is warranted, if not mandatory. • Proposes model terms “X Payment of wages and other amounts” and “Y payment on termination of wages”, which are 'highly modular' model terms that can be adopted and/or adapted, differing from model proposed by Commission and containing several 'optional clauses' (see Sched 2 to ACTU submission). • Appropriate to develop a model term and adapt or translate to existing payment arrangements; model term would be inserted only in the 7 awards which are silent on all issues under this common matter (see Sched 1 to ACTU submission). • ACTU model term includes optional term to accommodate existing arrangements for right for casuals to request payment at conclusion of each engagement. • ACTU model term also includes table that enables employer and employee to know what amounts are payable for the pay cycle. • Propose optional clause at X.1(b) of ACTU's proposed model term to ensure conformity with non-standard annual leave provisions. • Also propose optional clauses at X.1 to ensure proper operation in

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					circumstances of pay averaging, piecework and annualised salary arrangements, though note that there has been no attempt to ensure proposed clause operates compatibly with pay averaging or annualised salary arrangements that are not specified in an award.
	AHA & Others	Submission 30/10/2017	<i>Hospitality Award</i>	4	<ul style="list-style-type: none"> Does not oppose insertion of model term. Support submissions of ABI and NSWBC in relation to the insertion of a payment of wages and other amounts clause.
	AMWU	Submission – 30/10/2017	<i>General</i>	4-8	<ul style="list-style-type: none"> Continues to rely on previous submissions of 24/8/16, 13/10/16, 25/10/16, 9/12/16, 22/12/16. Adopts 30 October 2017 submissions of ACTU. Submits model clauses should be inserted into awards where equivalent terms do not presently exist. Submits that where payment arrangements already exist, Commission should adopt a process of translation where parties are given opportunity to make submissions relating to award-specific matters. Supports an award by award process for insertion of model terms.
	HIA	Submission 30/10/2017	<i>General</i>		<ul style="list-style-type: none"> Relies on submissions from 16 December 2016, 2 February 2017 and 22 March 2017.
	HIA	Submission – 16/12/16	<i>Building Award, Joinery Award and the Timber Award</i>	2.1	<ul style="list-style-type: none"> Support the provisional view that all modern awards should include a term providing for the method and frequency of payment as well as placing a limit on payment in arrears. Generally supportive of model term: payment of wages <i>and all other amounts</i> within 7 days, flexibility in determination of pay cycle, distinction between pay period and pay day and obtaining agreement for monthly cycle. Award specific tailoring appropriate e.g. <i>Timber Award</i>.
	Master Builders	Submission 30/10/2017	<i>Building Award and Joinery Award</i>	2.1	<ul style="list-style-type: none"> Relies on submissions from 22 December 2016 and 2 February 2017.

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	REEF	Submission – 30/10/2017	<i>Real Estate Industry Award</i>	1.11; 3.4	<ul style="list-style-type: none"> Accept utility of establishing a model payment of wages and other amounts term but concerned that the specific needs of real estate industry not met. Propose that cl.21.1(c) of the current Real Estate Award be retained to clarify timing of commission payments and to provide employee with clear legal basis for pursuing unpaid commission, bonus or incentive entitlement.
	SDA	Submission in reply – 2/02/2017		Para 8	<ul style="list-style-type: none"> Support the submissions of other parties that the ‘one size fits all’ approach is not appropriate.
	SDA	Submission – 22/12/16		Pg 1	<ul style="list-style-type: none"> Broadly supportive of the Commission developing a model clause for the payment of wages. Strong preference that the Commission adopt the use of appropriately adapted model terms where payment arrangements currently exist. This provides clarity without changing existing entitlements and helps to ensure stability.
	TCFUA	Submission - 31/10/2017	<i>Textile Award and Dry Cleaning Award</i>	2.5; 3.4	<ul style="list-style-type: none"> Present submission to be read in conjunction with previous written and oral submissions. Adopts observations in paras [7]-[18] of ACTU submission of 30 October 2017. Wholesale adoption of finalised model payment of wages term may not be appropriate for all modern awards. Provisional model would term would constitute a significant diminution of current conditions in Textile & Dry Cleaning Awards.
	United Voice	Submission 31/10/2017	<i>General</i>	1-5	<ul style="list-style-type: none"> Supports ACTU submission. Asks that 31 October submission be read with previous submissions of 13/10/16, 8/11/16 and 23/8/17. Supports ACTU's observation that there should be an award-by-award review of current payment of wages provisions and appropriateness of current terms and application of any model term.

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	CFMEU (CG)	Submission – 22/12/16	<i>Building Award, Joinery Award and Timber Award</i>	4-6	<ul style="list-style-type: none"> Generally supportive of the proposition that all modern awards should contain a provision that provides for the method and frequency of payment. Support the proposed approach of adapting provisions on an award by award basis.
	CFMEU (FFPD)	Submission 30/10/17	<i>General</i>	1-3	<ul style="list-style-type: none"> Relies on submissions from 13 October 2016, 21 December 2016. Supports submissions of ACTU 30 October 2017. Opposes replacement of existing provisions with model terms wherever this results in detriment to workers.
	CFMEU (FFPD)	Submission – 21/12/16	<i>General</i>	31	<ul style="list-style-type: none"> Oppose the replacement of existing provisions with a model term wherever this results in detriment to workers.
	CFMEU (M&E)	Submission 30/10/2017	<i>General</i>	2; 11	<ul style="list-style-type: none"> Submission should be read in conjunction with previous submissions filed in this matter. Where an award currently contains provisions relating to payment of wages, the application of, or need to adapt, any model clause should be dealt with on an award by award basis. Seeks to ensure that there exists no legal technicality by which employee may be deprived of legitimate wages.
	CFMEU (M&E)	Submission – 22/12/2016			<ul style="list-style-type: none"> Submit that the current provisions in modern awards should not be unnecessarily disturbed. The issue should be addressed on an award by award basis.
	Master Builders	Submission – 22/12/16		Para 2.1	<ul style="list-style-type: none"> General view that these matters should be considered and addressed by Parliament in the first instance. However, support the concept of a version of the model terms with appropriate amendments to be applied to the Group 4C Construction Awards.

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	NatRoad	Submission – 22/12/16	Road Transport and Distribution Award and Long Distance Operations Award	8	<ul style="list-style-type: none"> Wording and substance of provisional model term is supported on the basis of the modern awards objective.
	NFF	Submission in reply – 22/02/2017		3	<ul style="list-style-type: none"> Broadly supportive of the Ai Group submission dated 23 December 2016.
3.	x.1(a) The employer must pay each employee no later than 7 days after the end of each pay period: <ul style="list-style-type: none"> (i) the employee’s wages for the pay period; and (ii) all other amounts that are due to the employee under this award and the NES for the pay period 				
	ABI & NSWBC	Submission – 31/10/17	General	2.4-2.8	<ul style="list-style-type: none"> Over-award payments do not form part of the safety net and should not be subject to the model term. Alternate wording submitted as part of Joint Employer Payment of Wages Term: <i>“(a) The employer must pay each employee no later than 7 days after the end of each pay period all amounts that are due to the employee under this award and the NES for the pay period.”</i>
	ABI & NSWBC	Submission in reply – 2/02/2017	General	3	<ul style="list-style-type: none"> Submit that the model term may be interpreted to regulate the payment of over-award payments. Over-award payments do not form part of the safety net and should not be subject to the model term. Propose that x.1(a)(i) be amended as follows: <i>“(a) The employer must pay each employee no later than 7 days after the end of each pay period all amounts that are due to the employee under this Award or the NES.”</i>

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	ABI & NSWBC	Submission – 6/01/2017	General	2	<ul style="list-style-type: none"> Do not oppose the requirement for payment within 7 days after the end of the pay period in clause x.1(a)
	Ai Group	Submission 7/11/2017	General	19-23; page 10-15	<ul style="list-style-type: none"> Propose amending X.1(a) as follows: <i>‘The employer must pay each employee no later than 7 days after the end of each pay period all amounts that are due to the employee under this award and the NES for the pay period’.</i> Submit change will provide employees with certainty as to the date by which they will be paid for amounts accrued and provides employers flexibility to pay employees at an earlier date. Alternate wording provided if Full Bench maintains provisional view that clause should deal with accrual of entitlements: <i>“X.1(a) The employer must pay each employee no later than 7 days after the end of each pay period: (i) The employee’s wages prescribed by this award for the pay period; (ii) All other amounts that are due to the employee under this award and the NES for the pay period.”</i> and submits that this approach balances flexibility for employers and not providing unfettered right to alter employee pay days. Proposed reference to 7 days in provisional model term would restrict capacity of employers to pay employees up to a month in arrears without risking contravention of s.323 FW Act. Submits that X.1(a) may lead to: <ul style="list-style-type: none"> inconsistency with other award provisions contemplating or providing for payments being made at a later point inconsistency with existing contractual arrangements/practices (e.g. annualised salary or pay averaging agreements). Propose addition of clause X.1(f) of Joint Employer Model Clause: <i>‘Clause x1(a) operates subject to the provisions of this award dealing with averaging of hours of work, averaging of pay and annualised salaries’</i> but notes it would likely need to be tailored in the context of each award.

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					<ul style="list-style-type: none"> Propose that parties be afforded a window of 6 months after an annunciation by the Full Bench to adjust to changes, and contemplates that Joint Employer Model Clause X.1(a) would not commence operation until 6 months after any relevant award variation. Should Commission accept that any new obligation with regard to payment in arrears should not disturb existing arrangements between employer and employees that are consistent with current regulatory framework, clause X.1(a) could be limited in application to employees engaged after commencement of that provision.
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	6-9	<ul style="list-style-type: none"> Acknowledge that there may be some consequences for an employee at the point in time at which the first pay day falls after the model term takes effect. Submit that if the Commission considers that such a change would render the clause incapable of providing a fair and relevant safety net (which is not conceded), that issue should be dealt with in the context of specific awards in relation to which the issue arises.
	Ai Group	Submission – 23/12/2016		16-21 and 38-42	<ul style="list-style-type: none"> Submit that this represents a significant change to the safety net which has the potential to disrupt existing practices (eg annualised salary and pay averaging arrangements). Given the potential disruption of current arrangements and the absence of evidence establishing current pay practices, the Commission should not impose a uniform obligation in relation to payment in arrears. Submit that it is unclear what payments are to be captured by reference to ‘wages’. Concerned that this may include over-award payments. Suggest amending x.1(a) to: <i>“The employer must, by no later than 7 days after the end of each pay period, pay each employee all amounts that are due to the employee under this award and the NES for the pay period.”</i>

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	ACTU	Submission – 30/10/17	<i>General</i>	22 (c)	<ul style="list-style-type: none"> • Clause x.1 in ACTU proposed clause differs from x.1(a)(i) and (ii) in Commission's model term. Differences stem from: <ul style="list-style-type: none"> a. different view regarding how s.323 FW Act intersects with notion of accrual of wages; b. desire to continue to permit payment in advance in some circumstances (subject to some merit issues); c. desire to maintain conformity with annual leave related clauses found in some awards; d. desire to maintain conformity with pay averaging, piecework and annualised salary provisions found in some awards. e. desire to ensure clause interacts clearly with terms concerning payment on termination. • Under the term, if amounts accrued become payable, and the interval between when amounts payable does not exceed a month (satisfying 323(1)(c)), it does not matter that the date the amounts becomes payable is 7 days later than the conclusion of the pay period in which they accrue. • Additionally, ACTU proposes model term X.3—Pay day, which is not equivalent to any term proposed by Commission. Pay day to be fixed according to pay period under proposed clause X.3
	ACTU	Submission – 21/12/16	<i>General</i>	9	<ul style="list-style-type: none"> • X.1(a)—The 7 day prescription may result in hardship for employees where the current interval is shorter. This should be dealt with on an award by award basis. • X.1(a)(i)—Consider amending to “the employee’s wages that are due for the pay period” or “the employee’s wages accrued during the pay period” or similar.

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	CFMEU (CG)	Submission – 22/12/16	<i>Building Award, Joinery Award and the Timber Award</i>	Paras 4-6	<ul style="list-style-type: none"> Not supported. A pay period may be up to a month, meaning employees may not receive payment of wages and other amounts for 5-6 weeks in some circumstances. Payment ought to occur within stipulated pay period.
	CFMEU (FFPD)	Submission – 21/12/16	<i>Timber Award</i>	23	<ul style="list-style-type: none"> Provisional term's wider scope, '<i>and other amounts due</i>', may provide greater clarity in relation to employer's obligations to pay award entitlements. Submit that 7 days is too long for an employee to wait to be paid after the end of a pay period but do not express a concluded view at this stage.
	Mark Irving & Andrew Stewart	Submission – 15/12/16	<i>General</i>	Pg 1 & Pg 7	<ul style="list-style-type: none"> Propose clause x.1(a)(i) (at para [34] of the Decision) be amended to read: 'the employee's wages for <i>accrued during</i> the pay period'.
	Master Builders	Submission – 22/12/16	<i>Construction Awards</i>	Para 4	<ul style="list-style-type: none"> Clause x.1 should be titled 'Payment of Wages' or 'Payment of Wages for the Pay Period' to avoid overlap with other provisions that deal with payments of amounts or entitlements arising elsewhere. Clause x.1(a)(ii) should be deleted for same reasons above. Alternatively, insert words 'and payable' after 'all other amounts that are due'.
	NatRoad	Submission – 22/12/16	<i>Road Transport and Distribution Award and Long Distance Operations Award</i>	6-11	<ul style="list-style-type: none"> Supportive of flexibility offered by this provisional term given current award provisions of 'two days' and 'four days' in the Transport Awards.

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	REEF	Submission – 30/10/2017	<i>Real Estate Industry Award</i>	4.3-	<ul style="list-style-type: none"> Not clear whether wording of x1(a)(ii) ‘<i>all other amounts that are due to the employee under this award...</i>’ are referable to payments such as commission, bonus or incentive based payments arising from, but not prescribed by the <i>Real Estate Award</i>. If they are, two concerns arise: <ul style="list-style-type: none"> Commission, bonus and incentive payments may not be realised until expiration of longer period prescribed in a written agreement (more than 7-day period prescribed in model term). Alternately, if model clause requires payment within 7 days after the end of the period in the written agreement, employers will, in some circumstances, be required to pay commission/bonus prior to receiving funds associated with settled property transactions from client. <i>Real Estate Award only</i>: propose amending x1(a)(ii) to include ‘<i>subject to paragraph (g)</i>’ at the beginning of clause, (and inserting the wording of cl.21.1(c) of current <i>Real Estate Award</i> as new clause (g)).
	TCFUA	Submission – 31 October 2017	<i>Textile Award and the Dry Cleaning Award</i>	3.8-3.12	<ul style="list-style-type: none"> Generally supportive of clarity as to when employer required to pay wages and other amounts to employees. Generally, employees should receive wages and other entitlements “at the end of the relevant pay period or shortly after”. Period of 7 days is too great in light of economic position of award dependant employees, who may have minimal if no savings to act as a buffer. Significant numbers of employees covered by these awards are part-time or casual; 7 days “unacceptably long for low paid workers”, in often precarious employment. Never been easier for employers to administer wages given technological advances, therefore should not, and does not, take 7 days to process wages and other amounts after pay period ends. Employers obtain benefit of delay payment in terms of cash flow; in balancing interests, should favour employees as payment is typically for work already undertaken or leave already accrued.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	TCFUA	Submission – 23/12/2016		3.4	<ul style="list-style-type: none"> X.1(a)–Oppose the introduction of a 7 day period for the receipt of payments. Submit that as a general principle, payment for wages and other amounts should occur at the end of the pay period or shortly thereafter.
	United Voice	Submission 23/08/2017	<i>General</i>		<ul style="list-style-type: none"> Proposed clause allows monthly pay dates to in effect be of intervals greater than 1 month; the model terms should reflect that monthly pay option requires payment for work performed at least monthly and before the end of the month. If proposed clause allows employer to withhold monies payable beyond date that money must be paid, withholding is likely an illegal deduction per s.326 FW Act.
4.	(b) An employee's pay period may be: <ul style="list-style-type: none"> (i) one week; (ii) two weeks; or (iii) subject to paragraph (e), one month. 				
	ABI & NSWBC	Submission - 31/10/2017	<i>General</i>	2.17-2.22	<ul style="list-style-type: none"> Interprets provisional term as preventing new employees being paid monthly. Submits that where awards contain no current limitation on monthly payment this should not be changed, as no evidence identifying problems associated with this has been filed to date. Joint Employer Payment of Wages Term contemplates employers being permitted to pay monthly unless employees are already paid weekly or fortnightly, in which case agreement is required to alter pay period.
	Ai Group	Submission 7/11/2017	<i>General</i>	27-30	<ul style="list-style-type: none"> Propose pay period being either weekly fortnightly or monthly. Provide alternative drafting of X.1(b)(iii) of Joint Employer Proposed Clause regarding monthly payments: "<i>subject to paragraph (d), one month or a period not exceeding one month.</i>" Default position should be that monthly pay is an available option. At the very least, instances where current award already permits use of monthly pay should be retained. Submits that movement to monthly payment should be available through a facilitative provision based on either individual or majority agreement.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	15-16	<ul style="list-style-type: none"> Submit that the amendment to X.1(b)(iii) proposed by the ACTU is unnecessary and would render the clause unduly lengthy and confusing.
	ACTU	Submission – 30/10/17	<i>General</i>	40-43	<ul style="list-style-type: none"> Question whether particular pay periods in ACTU model term would translate into any award would be subject to pay periods already permitted and merits arguments regarding any change. ACTU proposed model term for wages and other amounts does not permit casual employees to be paid monthly; adopts paragraphs 5-12 and 41-52 of United Voice submission of <u>23 August 2017</u> in support of this position. Casual workers on lower and variable incomes are subject to particular hardship by longer pay intervals.
	ACTU	Submission – 21/12/16	<i>General</i>	9	<ul style="list-style-type: none"> X.1(b)(iii)–could refer to x.1(e) and (f) to encourage consideration of all of conditions relevant to monthly payment. Submit that consideration should be given to exempting casual employees from the option of monthly payment as their variable hours of work make payment in advantage problematic.
	HIA	Submission in reply – 2/02/2017		2.13-2.15	<ul style="list-style-type: none"> Oppose the ACTU proposal to exempt casuals from monthly pay.
	NFF	Submission in reply – 22/02/2017		5	<ul style="list-style-type: none"> Oppose the ACTU proposal to exempt casual employees from the option of monthly payment.
	SDA	Submission – 22/12/16		Pg 1-2	<ul style="list-style-type: none"> Concerned about introduction of monthly pay cycle in Awards where there is no existing provision. Would not provide safety net for low paid workers as most low paid workers live pay cycle to pay cycle and extending the pay cycle likely to be financially unmanageable for most. Would not meet modern awards objective; particularly detrimental to those employed on casual basis and those who work a low number of hours. Supports and adopts submissions of ACTU.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	TCFUA	Submission – 31/10/ 2017	<i>General</i>	3.13-3.18	<ul style="list-style-type: none"> Strongly opposes introduction of model term allowing for monthly payment of wages and other amounts. Qualification in clause X.1(e) inadequate safeguard against potential abuse of provision in multiple sectors. No interested party sought monthly payment term. Monthly payment not currently included in significant majority of awards. No merit-based case before Commission which would reasonably and necessarily ground inclusion of such term. Unacceptably shifts risk of late payment to employees, whilst providing cash flow benefit to employers. Supports submissions of United Voice of 23 August 2017 in relation to s.323 FW Act.
	TCFUA	Submission – 23/12/2016	<i>Textile Award and Dry Cleaning Award</i>	3.7-3.9	<ul style="list-style-type: none"> X.1(b)–Oppose this clause particularly in relation to the TCF award which currently requires weekly payment. Submit that there is no merit based justification for the inclusion of longer pay periods for award dependant, low paid workers in the TCF or dry cleaning and laundry industries.
	United Voice	Submission 31/10/2017	<i>General</i>	4-5	<ul style="list-style-type: none"> Supports ACTU submission. Monthly payment should not be considered an award based possibility for casual employment generally.
	United Voice	Submission 31/10/2017	<i>Restaurant, Children's Services, and Supported Employment Services Awards</i>	6-11	<ul style="list-style-type: none"> These awards provide for monthly payment, but however modified such method of payment is problematic with the nature of the work under these awards. Submits monthly payment of wages is an outcome best achieved through bargaining. Material change in circumstances not necessary before Commission exercises its review function under s.156 FW Act to alter an award. Model term appears more broadly directed to general regulation of payment of wages rather than consideration of what an appropriate safety net term should

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					look like; removing or modifying monthly payment in these awards is a good example of where it is proper in this review for Commission to properly consider appropriateness of current award provisions.
	United Voice	Submission 23/08/2017	<i>General</i>		<ul style="list-style-type: none"> • Payment frequency is an important aspect of the safety net for low-paid workers, especially those where cost of living is high. • Restaurant Award & Children's Services Award cover a high rate of casual workers, which makes monthly payment problematic. • Supported Employment Services Award covers employees with disabilities who are on very low incomes, and might have difficulties budgeting over a month. • No award should allow payment of casual wages on a monthly basis. Need to consider risk of indigency to low paid workers in contrast with convenience for employers. United Voice would like the opportunity to progress this claim in relation to the above awards. • S.323 FW Act is not a safety net provision in the sense that it must be considered when setting what is a 'fair and relevant safety net of terms and conditions'. • Awards are not required to contain payment of wages clause. • Any clause simply replicating outer limit for payment in s.323 FW Act arguably unnecessary. • Model clause makes no allowance for commencement of employment, meaning new starters can be offered monthly payment as an only option. • Monthly payment an unadorned gift to employers with no discernible social or productivity benefit as required by modern awards objective. • Monthly payment is a more appropriate matter for enterprise bargaining.
5.	(c) The employer must notify each employee in writing of their pay day and pay period.				
	ABI & NSWBC	Submission - 31/10/2017	<i>General</i>	2.9-2.16	<ul style="list-style-type: none"> • Unnecessary to include additional provision requiring employer to specify pay date in advance and in writing; submit this would be inconsistent with s.134(1)(f) FW Act.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	ABI & NSWBC	Submission – 6/01/2017 And Submission in reply – 2/02/2017	<i>General</i>	4	<ul style="list-style-type: none"> • Oppose the requirement for written notification of the pay day and pay period in clause x.1(c). • Submit that the obligation to notify the pay day in writing may give rise to innocent non-compliance by small business, who commonly engage employees with little formality and without entering into a contract of employment.
	Ai Group	Submission 7/11/2017	<i>General</i>	15	<ul style="list-style-type: none"> • Propose to remove requirement that employees be notified in writing of their pay day, and suggests a requirement that amounts be paid within a set time-frame under its proposed Joint Employer Model Clause.
	Ai Group	Submission – 23/12/2016	<i>General</i>	22-33	<ul style="list-style-type: none"> • Submit that it should not be accepted that it is necessary for every award to provide for the setting of a regular pay day and that imposing such a requirement will reduce existing flexibilities. • Submit that the requirement in x.1(a) that an employer must pay an employee within 7 days after the end of each pay period provides an outer limit and is sufficient. • A final decision should not be made in the absence of evidence about engagement practices in each industry affected by the proposed change. • The Commission should seek to minimise the regulatory burden flowing from awards.
	TCFUA	Submission – 31 October 2017	<i>Textile Award and the Dry Cleaning Award</i>	3.19-3.25	<ul style="list-style-type: none"> • Supports, in principle, intent of clause in that it would create certainty as to when entitlements will be received, and assist in maximising award compliance and reduce disputation over pay day/pay periods. • In its current form, there is no express obligation as to <i>when</i> obligation to provide written notice is triggered; absence of temporal element may lead to uncertainty in application of term. • Submits at a minimum, obligation should be triggered at commencement of employment. • If model term allows employer to change pay period/day (though this is opposed by TCFUA) – obligation should also be triggered prior to the change.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					<ul style="list-style-type: none"> Should contain requirement for employer to keep written notice as an employee record. Proposes reformulated clause: <i>X.1(c) 'The employer must notify each employee in writing of their pay day and their pay period prior to, or at the commencement of employment [optional] [and prior to any subsequent change in an employee's pay day or pay period]. The employer must retain as an employee record the written notification/s provided to the employee.'</i>
	TCFUA	Submission in reply – 3/02/2017	<i>Textile Award and Dry Cleaning Award</i>	2	<ul style="list-style-type: none"> Oppose the Ai Group's submissions. Submit that it is fair and reasonable for employees to have certainty in relation to their pay day and pay period.
	TCFUA	Submission – 23/12/2016	<i>Textile Award and Dry Cleaning Award</i>	3.10	<ul style="list-style-type: none"> X.1(c)–Do not oppose this provision on its face however, submit that it needs greater clarity as to when the obligation is triggered.
	CFMEU (FFPD)	Submission – 21/12/16	<i>Timber Award</i>	23	<ul style="list-style-type: none"> For notification to have practical benefit, “Prior to the commencement of the pay period”, or similar should be added to clause x.1(c).

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	HIA	Submission - 2/12/16	<i>Building Award</i>	7.1	<p><u>Application – AM2016/23</u></p> <ul style="list-style-type: none"> • Clause 31.3 of the Onsite Award is a constant source of frustration for HIA members. Application to vary this is on foot (AM2016/23). See submission. • Seeks to vary clause to provide for a fortnightly and if mutually agreeable, a monthly pay cycle. • Also to protect employers when circumstances beyond their control prevent payment on pay day. • Acknowledge these aspects are addressed in model term. • Seeks guidance as to status of application in AM2016/23.
6.	<p>(d) Subject to paragraph (e), the employer may change an employee's pay day or pay period after giving 4 weeks' notice in writing to the employee.</p> <p>(e) An employer may only change from a one week or two week pay period to a one month pay period by agreement with affected employees. If employees in a particular classification were paid monthly prior to <i>[insert date of commencement of this clause]</i>, the employer may continue to pay employees in that classification monthly without further agreement.</p>				
	ABI & NSWBC	Submission - 31/10/2017	<i>General</i>	2.17-2.22	<ul style="list-style-type: none"> • Interprets provisional term as preventing new employees being paid monthly. • Submits arrangements in 27 awards with no current limitation on monthly payment should not be changed, as no evidence identifying problems associated with this has been filed to date. • Joint Employer Payment of Wages Term contemplates employers being permitted to pay monthly unless employees are already paid weekly or fortnightly, in which case agreement is required to alter pay period.
	ABI & NSWBC	Submission in reply – 2/02/2017		5.1-5.3	<ul style="list-style-type: none"> • Oppose the submission of CFMEU (FFPD) proposing that changes to pay periods or pay days should only be allowed with the agreement of the majority of employees. Submit that such an approach is unnecessarily restrictive.
	ABI & NSWBC	Submission – 6/01/2017	<i>General</i>	2	<ul style="list-style-type: none"> • Oppose the grandfathering arrangement in clause x.1(e) which is also referred to in x.1(b) and x.1(d) • Do not oppose the balance of x.1(d)

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	Ai Group	Submission 7/11/2017	<i>General</i>	18	<ul style="list-style-type: none"> Relies on submissions dated 23 December and 19 February 2017. Proposes removing x.1(c) of the provisional model term and removing other references to a pay day.
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	29-47	<ul style="list-style-type: none"> In response to the submissions of the TCFUA, the CFMEU–FFPD and the CFMEU–C&G, Ai Group submit that it is their primary position that awards should not mandate that a pay day or pay period be set. Submit that the imposition of a 4 week notice period may be unduly restrictive and impractical. Issues could be remedied by limiting the application of x.1(d) to an employee’s <i>regular</i> pay day or pay period. Parties position is as follows: If the Commission nonetheless determines that a set pay day and pay period should be introduced: <ul style="list-style-type: none"> the model clause should permit greater flexibility to an employer seeking to vary the pay day or pay period; the model clause should not require agreement between an employer and its employees to alter the pay day or pay period; and the model clause should not require consultation by an employer with its employees to alter the pay day or pay period. Submit further that there is no evidence to support the contention that a move to monthly pay will disadvantage low paid workers (submissions of the SDA and TCFUA).

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	Ai Group	Submission – 23/12/2016	<i>General</i>	43-48	<ul style="list-style-type: none"> • Submit that the model term restricts the operation of monthly pay periods and that there are no cogent reasons for such a restriction. • If the Full Bench does decide to restrict monthly payments, submit that an additional facilitative provision which allows for monthly payments with the agreement of a majority of affected employees. • Submit further that the reference to particular classifications in the saving provision in x.1(e) is too narrow and that that employers that currently use monthly pay periods should be allowed to continue such practices.
	ACTU	Submission – 30/10/17	<i>General</i>	40; 44-48	<ul style="list-style-type: none"> • Proposes model term X.2(c) and (d): <i>(c) Subject to paragraph (d), the employer may change an employee's pay period after giving 4 weeks' notice in writing to the employee.</i> <i>(d) An employer may only change from a one week or two week pay period to a one month pay period by agreement with affected employees. If employees in a particular classification were paid monthly in accordance with this award prior to [insert date of commencement of this clause], the employer may continue to pay employees in that classification monthly without further agreement.</i> • No assumption should be made regarding whether pay periods should be able to be changed unilaterally on notice unless there is some demonstrated need for that flexibility, judged pursuant to the modern awards objective. • Supports changing of pay periods (with some restriction) by notice, but pay day can only be changed by majority agreement (see also proposed term X.3). • With no limit on successive changes to pay days, employer has equivalent of interest free loan, but it is suspected the practical experience is far different as this flexibility is rarely if ever exercised. No unified position as to whether irregular payroll arrangements are benefit or burden to employers. • Notice is not an effective mechanism to obviate risks to employees. Employee agreement is superior to notice as a safeguard against potential negative impacts.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					<ul style="list-style-type: none"> Concur with submission of Irving and Stewart that it would be more appropriate to explicitly limit monthly pay arrangement to circumstances where employees who are captured are only those whose monthly payment arrangements were in accordance with the relevant award. This is reflected in ACTU proposed clause provision X.1(d).
	ACTU	Submission – 21/12/16	<i>General</i>	9	<ul style="list-style-type: none"> X.1(e) and (f)–Endorse submissions of Irving and Stewart.
	CFMEU (CG)	Submission – 22/12/16	<i>Building Award, Joinery Award and the Timber Award</i>	4-6	<ul style="list-style-type: none"> Submit that the ability of an employer to unilaterally alter a pay period by giving notice has potential to operate disadvantageously to employees, particularly the low paid who are reliant on consistent payment of wages. Should only be allowed with agreement of the majority of employees.
	CFMEU (FFPD)	Submission – 21/12/16	<i>Timber Award</i>	23	<ul style="list-style-type: none"> Submit that this provision is deeply concerning and gives employers carte blanche to change pay cycles from weekly to fortnightly and back again at will provided notice is given. Disrupts and disadvantages workers eg. – having to change direct debit arrangements. Submit any changes to pay cycles require agreement between employer and a majority of employees or individual employee as the <i>Timber award</i> currently provides. If term is adopted, safeguards such as a requirement to consult amongst other things, should be built in.
	CFMEU- (M&E)	Submission 30/10/2017	<i>General</i>	3-6	<ul style="list-style-type: none"> Relies on submissions made 22 December 2016, 18 October 2016, 13 October 2016 and 20 September 2016. Oppose clause allowing employer to change pay day after giving 4 weeks' notice in writing. Submit such change should be subject to agreement of affected employees.
	HIA	Submission in reply – 2/02/2017		2.1.9-2.1.12	<ul style="list-style-type: none"> Disagree with the CFMEU submission in relation to an employer's ability to unilaterally change a pay period. Submit that this is legitimately within managerial prerogative.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	Mark Irving & Andrew Stewart	Submission – 15/12/16	<i>General</i>	Pg 7	<ul style="list-style-type: none"> Suggest that ‘paid monthly’ be changed to ‘paid monthly in accordance with this award’. This is so employees who were being paid monthly but should have been paid on another basis, aren’t unintentionally covered by this provision.
	Master Builders	Submission – 22/12/16	<i>Construction Awards</i>	Para 4	<ul style="list-style-type: none"> In clause x.1(e) reference to a ‘particular classification’ is unnecessary and may restrict operation of term as proposed.
	Master Builders	Submission in reply – 2/02/2017	<i>Building Award and the Joinery Award</i>	Para 2.1-2.4	<ul style="list-style-type: none"> Submit that the CFMEU submission is misleading. Under the model term employees would only be paid monthly where such an arrangement is already in place or where there is an agreement between the employer and employee for monthly pay. The model clause requires that, where an employee is paid monthly, 2 weeks must be paid in advance. Therefore the clause operates to limit the amount of entitlements held in arrears.
	NatRoad	Submission – 22/12/16	<i>Road Transport and Distribution Award and Long Distance Operations Award</i>	6-11	<ul style="list-style-type: none"> Provisional term in relation to changing weekly pay to monthly pay is too large a change given current industry practices. <u>“...all other amounts that are due”</u> Submit that proposed wording in provisional term be adopted.
	TCFUA	Submission – 23/12/2016	<i>General</i>	3.26-3.36	<ul style="list-style-type: none"> X.1(d) <ul style="list-style-type: none"> Strongly oppose this term and submit that any changes to pay periods should be with genuine written consent of employees concerned; consistency and reliability of payment is an important safety net provision. It would also create enforceability issues in relation to non-compliance. Also concerned that there is no limit or constraint to number of times changes could be made

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					<ul style="list-style-type: none"> ○ Supports and adopts CFMEU (ME) submissions 30 October 2017 (at paras [3]-[5]) • X.1(e)–Strongly oppose inclusion of model term providing for a monthly pay period.
	United Voice	Submission 31/10/2017	<i>General</i>	12-14	<ul style="list-style-type: none"> • There should be clear recognition in any model term that employees cannot be engaged initially on the basis of monthly payment, and that any change should take place after an initial period of employment of the statutory minimum employment period in s.383 FW Act. • Propose adding ‘<i>after conclusion of the minimum employment period</i>’ at the end of the first sentence in subclause 1(e) of the model term.
7.	(f) Where an employee’s pay period is one month, two weeks must be paid in advance and two weeks in arrears.				
	ABI & NSWBC	Submission - 31/10/2017	<i>General</i>	2.23-2.27	<ul style="list-style-type: none"> • Opposes model term; difficult with respect to casual and permanent staff working regular overtime. • No evidence before Commission suggesting problems have arisen with staff being paid monthly in arrears since commencement of modern awards. • Joint Employer Payment of Wages Term does not prohibit monthly payment in arrears.
	ABI & NSWBC	Submission in reply – 2/02/2017	<i>General</i>	5.5	<ul style="list-style-type: none"> • Submit that ABI & NSWBC’s preference is for employers to be able to continue to pay employees monthly in arrears. • If the model terms does require monthly payments to be made two weeks in advance and two weeks in arrears, submit that this will make paying casuals impossible.
	ABI & NSWBC	Submission – 6/01/2017	<i>General</i>	9	<ul style="list-style-type: none"> • Oppose the restriction on payment in arrears in x.1(f).

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	19-23	<ul style="list-style-type: none"> • Submit that the other submissions in relation to this clause identify various difficulties with this clause. Submit that the Full Bench should consider simply deleting x.1(f) from the model term. • Removing x.1(f) would afford parties the capacity to implement or maintain arrangements that reflect their individual circumstances including monthly payment in arrears.
	ACTU	Submission – 30/10/17	<i>General</i>	23-31; 49-50; 60-61	<ul style="list-style-type: none"> • Does not concur that this provision is necessary. • Provided an award explicitly states when accrued amounts become payable, and that intervals between when amounts are payable is no greater than a month, timing requirement in s.323(1)(c) is met. • ACTU's proposed clause states that wages and other amounts 'may be paid in advance or arrears in accordance with this term' which the ACTU anticipates would be tailored accordingly. • Not possible to discern from the terms of most awards whether there is a preference for, or prohibition against, payment in advance or arrears. • Not fair or relevant to require payment in advance where casual employee's working arrangements are unpredictable; paying casuals in advance would create compliance risks and could diminish offering additional shifts at short notice.
	Mark Irving & Andrew Stewart	Submission – 15/12/16	<i>General</i>	Pg 1 & Pg 7	<ul style="list-style-type: none"> • Propose that clause x.1(f) be amended to read: 'Where an employee's pay period is one month: (i) at least two weeks' wages must be paid in advance; and (ii) the balance of the wages, and all other amounts that are due under this award and the NES for the pay period, are to be paid in arrears.' This is because most months do not have 4 weeks. Second, the amounts payable to an employee may not be certain until the end of the pay period. Third, the current clause x.1(f) raises a problem in the application of clause x.1(a)(ii) payments by linking the arrears payment with 'two weeks'. Fourth, we have divided clause x.1(f) into sub-paragraphs because the current clause x.1(a) requires a payment at the end of the pay period. The

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					current clause x.1(f) requires payment in the middle of or at the start of the monthly pay period. This creates a tension that is best resolved by clarity.
	Master Builders	Submission in reply – 2/02/2017		2.1-2.4	<ul style="list-style-type: none"> Submit that the CFMEU (CG) claim that employees may have to wait 5-6 weeks for their entitlements is misleading. X.1(e) and x.1(f) operate to limit monthly payment.
	TCFUA	Submission – 31 October 2017	<i>General</i>	3.35-3.36	<ul style="list-style-type: none"> Strongly oppose inclusion of model term providing for a monthly pay period.
8.	x.2 Method of payment Payments under clause x.1(a) must be made by electronic funds transfer to the account at a bank or financial institution nominated by the employee, or by cash or cheque.				
	ABI & NSWBC	Submission in reply – 2/02/2017	<i>General</i>	5.6-5.10	<ul style="list-style-type: none"> Oppose the submissions by the ACTU and the TCFUA that cheque payments are obsolete. Submit that cheques are still a relevant payment method to some employers and s.323 specifically contemplates cheque payments.
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	48-54	<ul style="list-style-type: none"> In response to the ACTU and the TCFUA the Ai Group submit that it is appropriate that the model term enable an employer to pay employees by cheque. Accept that the majority of transactions are completed by EFT but that it cannot be assumed that a provision that allows for payment by cheque would be otiose. Submit that if the ability to pay by cheque is removed from the model term, it should at least be allowed to continue in those awards that presently allow for payment by cheque.
	ACTU	Submission – 30/10/17	<i>General</i>	62, Schedule 2	<ul style="list-style-type: none"> Proposes model clause which almost entirely adopts Commission's proposed clause X.2, other than slight change to introductory wording: (“payment under clause x.1(a) must be made..” vs. “Payment must be made..”).

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	ACTU	Submission – 21/12/16	<i>General</i>	9	<ul style="list-style-type: none"> X.2–contemplates payment by cheque. It is submitted that it would be beneficial to consider the extent to which payment by cheque remains prevalent in any particular industry.
	NFF	Submission in reply – 22/02/2017		4	<ul style="list-style-type: none"> Submit that payment by cheque is still a feature in the agriculture industry.
	TCFUA	Submission – 31 October 2017	<i>Textile Award and Dry Cleaning Award</i>	3.41-3.45	<ul style="list-style-type: none"> Refer to, and continue to rely on, previous submission of 23 December 2016 (at paras 3.18-3.21). Notes great majority of employees paid by EFT. Should the Commission determine to include payment by cheque as an option in the model term, TCFUA continues to oppose adoption of such method in Textile Award and Dry Cleaning Award and will provide further submissions regarding these awards at an appropriate time.
	TCFUA	Submission – 23/12/2016	<i>Textile Award and Dry Cleaning Award</i>	3.18-3.21	<ul style="list-style-type: none"> X.2–Oppose the inclusion of payment by cheque in the TCF and Dry Cleaning awards which both only allow for payment by cash or EFT.
	Master Builders	Submission – 22/12/16	<i>Construction Awards</i>	4	<ul style="list-style-type: none"> In clause x.1(e) reference to a ‘particular classification’ is unnecessary and may restrict operation of term as proposed.
	NatRoad	Submission – 22/12/16	<i>Road Transport and Distribution Award and the Long Distance Operations Award</i>	10	<ul style="list-style-type: none"> Subsection x.2 of provisional term is supported.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
9	<i>Weekends and Public Holidays</i>				
	ABI & NSWBC	Submission – 6/01/2017	<i>General</i>	2.7-2.8	<ul style="list-style-type: none"> Agree with the inclusion of a note referring to s.36(2) of the <i>Acts Interpretation Act</i>.
	Ai Group	Submission 7/11/2017		31 (page 9)	<ul style="list-style-type: none"> Propose that where a payment falls due on a public holiday, the payment may be made on the next day that is not a public holiday. In addition, propose that this approach be adopted in relation to weekends.
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	10-14	<ul style="list-style-type: none"> Confirm the previous submission that the model term should provide employers with the ability to make the relevant payment at a later point in time. Do not agree with the insertion of a note.
	Ai Group	Submission – 23/12/2016	<i>General</i>	34-37	<ul style="list-style-type: none"> Submit that any award term regulating the payment of wages should allow payment to be made at a later point when a pay day falls on a public holiday. Reliance on the provisions of the <i>Acts Interpretation Act</i> is insufficient because employers may not be aware of this legislation. Further, the Commission should not rely on the continued operation of legislation to ensure that awards constitute a fair and relevant safety net. Submit that the inclusion of a note may overcome these issues but that a better approach would be for the award to specify what may occur when a pay day falls on a public holiday.
	ACTU	Submission – 30/10/17	<i>General</i>	55-57; Sched 2	<ul style="list-style-type: none"> Proposed model clause permits payment up to 7 days post conclusion of pay period, providing sufficient latitude to bring forward (not delay) pay days to address weekend and public holidays issues: <i>X.3 (b) The pay day must be fixed and on a day that is no later than 7 days after the end of each pay period. However, if the usual the pay day falls on a public holiday, the pay day for a particular pay period may be changed to be:</i> <i>(i) The last working day occurring before the usual pay day, if the employees are not paid monthly; or</i> <i>(ii) The first day that is not a public holiday after the usual pay day, where this agreed with the majority of employees in the workplace.</i>

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					<ul style="list-style-type: none"> Where payment is required on a specific day, the next day is acceptable per <i>Acts Interpretation Act</i>, however, interpretation rules about references to day are different to those relating to a month: it would be impermissible given s.323 FW Act to extend interval between payments beyond one month Notes that it is open to the Commission to decide payment should be made earlier. Submits proposal creates preference for bringing forward pay days in relevant circumstances, and mandates it in circumstances where delaying pay days could lead to non-compliance.
	ACTU	Submission – 21/12/16	<i>General</i>		<ul style="list-style-type: none"> Support the inclusion of such a term subject to one reservation. Submit that it is unclear whether s40A of the FW Act alters the position expressed in the decision. Submit that the appropriate location for the term is immediately after x.1(a).
	HIA	Submission in reply – 2/02/2017		2.1.1	<ul style="list-style-type: none"> Submit that the provision proper should deal with this. For example the inclusion of a line that states: <i>‘If the regular pay day falls on a Saturday, Sunday or public holiday the wages may instead be paid on the next day that is not a Saturday, Sunday or public holiday.’</i>
	HIA	Submission – 16/12/16		2.1	<ul style="list-style-type: none"> Model term should address circumstances where payment of wages falls on weekend or public holiday. No set view on how best to achieve this.
	NatRoad	Submission – 22/12/16		11	<ul style="list-style-type: none"> To remedy issue with payment being due on weekends and public holidays and the possibility of referencing the <i>Acts Interpretation Act</i>, first preference is that a distinction be made between “days” and “business days”. Second preference is a reference to s.36(2) of the <i>Acts Interpretation Act</i>.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	SDA	Submission in reply – 2/02/2017		Para 9	<ul style="list-style-type: none"> Support the submission of the ACTU.
	TCFUA	Submission – 31 October 2017	<i>General</i>	3.37-3.40	<ul style="list-style-type: none"> Refer to previous submission of 3 February 2017 (paras 2.11-2.18) and continue to rely on them. Notes employees currently paid monthly must be paid prior to the public holiday under s.323 FW Act.
	TCFUA	Submission in reply – 3/02/2017	<i>Textile Award and the Dry Cleaning Award</i>	2.14-2.18	<ul style="list-style-type: none"> Oppose the submission of Ai Group that award terms should allow for payment at a later date after a public holiday. Submit that if the Commission determines that it is appropriate to include a term dealing with public holidays, the term should require payment <u>before</u> a public holiday and not after.
	United Voice	Submission 23/08/2017	<i>General</i>		<ul style="list-style-type: none"> <i>Acts Interpretation Act</i> not relevant to question of when payment is required when <u>monthly</u> pay day is on a weekend or public holiday given operation of s.323 FW Act.
10	<i>Model Clause: Payment on Termination of Employment</i> (a) Subject to paragraph (b), the employer must pay an employee no later than 7 days after the employee's last day of employment: (i) the employee's wages for any complete or incomplete pay period up to the end of the employee's last day of employment; and (ii) all other amounts that are due to the employee under this award and the NES.				
	ABI & NSWBC	Submission – 31/10/17	<i>General</i>	3.1-3.4	<ul style="list-style-type: none"> Maintain earlier submissions that payment on termination should be in accordance with the normal pay cycle. Employees already paid monthly are accustomed to when they will be paid, therefore no prejudice caused to employees in these circumstances. Model term (payment within 7 days of employees last day of employment) provided in 14 October 2016 Statement is appropriate. Subject to amendments reflecting the above position, provisional term not opposed.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	ABI & NSWBC	Submission – 6/01/2017		3	<ul style="list-style-type: none"> • Maintain earlier submission that payment on termination should be in accordance with the normal pay cycle. • Submit that the Full Bench’s provisional default term from the 14 October 2016 Statement is more appropriate. • Do not oppose the balance of the payment on termination model term.
	Ai Group	Submission in reply – 13/02/2017	<i>General</i>	56-58	<ul style="list-style-type: none"> • In response to the CFMEU (FFPD) submissions regarding long service leave entitlements, the Ai Group submit that modern awards cannot contain terms dealing with long service leave. However, the possibility that an employer may have to make a payment of long service leave entitlements separately to termination payments does not warrant the Commission refraining from allowing greater flexibility in relation to termination payments.
	Ai Group	Submission – 23/12/2016		50-55	<ul style="list-style-type: none"> • Submit that if the model term is included in awards it should be amended to make clear that it operates subject to award clauses authorising deductions from termination payments. Such amendment would reduce the risk of employers being misled into paying an employee more than is necessary should they read the provision in isolation. • Submit further that the model term should be amended to clarify that it only regulates the payment of amounts payable pursuant to the NES or the Award.
	ACTU	Submission – 30/10/17	<i>General</i>	38; 52; (D); Sched 3	<ul style="list-style-type: none"> • Advocates for model term on payment on termination that provides for payment other than on the regular cycle; see X.1(a) of ACTU model term. • Supports model term for awards currently silent on the issue; those with existing clauses should be “varied if necessary for clarity and to correct any errors or uncertainty”. • Assess each award on case by case basis. • Notes there are limits on what a term, or model term, directed to the relevant issues could achieve. • Proposes model clause Y: “Payment on termination of employment” (see Sched 3 ACTU submission). <ul style="list-style-type: none"> ○ Payment to be made no later than 7 days after termination if

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					<p>termination was at the initiative of the employee and the employee failed to give notice as required under the relevant award, unless earlier payment is required by law.</p> <ul style="list-style-type: none"> Otherwise, no later than 3 days after termination, unless earlier payment is required by law.
	ACTU	Submission – 21/12/16	<i>General</i>	10-15	<ul style="list-style-type: none"> Support a model clause being developed to deal with the timing of termination payments and the amount that must be paid. Support the inclusion of such a term in awards that do not currently provide for payment on termination. Also support the review of existing clauses dealing with termination. Oppose the 7 day waiting period for termination payments, support submissions from other parties about why this would occasion hardship and represent a derogation of entitlements. In the alternative, if the Commission does determine that the establishment of a 7 day period for payment of termination payments, submit that this should be limited to terminations <i>other than at the initiative of the employer</i>. Support Irving and Stewart’s proposed amendment to (a)(i).
	AHA & Others	Submission 30/10/2017		5-6	<ul style="list-style-type: none"> Support insertion of a payment on termination of employment clause and such term applying to wages <i>accrued</i> for any complete or incomplete pay period. Supports submissions of ABI & NSWBC in relation to termination payments being made in accordance with employee's normal pay cycle.
	CFMEU- (M&E)	Submission 30/10/2017	<i>General</i>	2; 6-9	<ul style="list-style-type: none"> Where an award currently contains provisions relating to payment on termination, the application of, or need to adapt, any model clause should be dealt with on an award by award basis. Maintains that payment on termination must be made within 72 hours of actual termination if not paid upon actual termination. Submits practicality and administrative costs are insufficient to warrant delay in payment beyond 72 hours, and seeks that Full Bench give further consideration to this term.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	CFMEU (M&E)	Submission – 22/12/2016		7	<ul style="list-style-type: none"> • Submit that the current provisions in modern awards should not be unnecessarily disturbed. The issue should be addressed on an award by award basis. • Do not support the 7 day period for payment on termination in awards that already provide for a shorter timeframe.
	CFMEU (FFPD)	Submission 30/10/17	<i>Timber Award</i>	4,5	<ul style="list-style-type: none"> • Does not support provisional clause insofar as it removes longstanding right for employees to be paid on termination in relevant circumstances under the <i>Timber Award</i> (see clause 25.3).
	CFMEU (FFPD)	Submission – 21/12/16	<i>General</i>	11-14	<p><u>Long Service Leave</u></p> <ul style="list-style-type: none"> • Provisional term may create a dual obligation for employers with respect to accrued leave payable under some State Long Service Leave Acts and render term otiose. NSW, Vic and SA Long Service Leave Acts provide for payment of accrued long service leave on termination “forthwith...in full”; “on the day the employment ended”; “immediately on the termination” respectively. This would have effect, for example, of employer having to pay long service leave entitlements on day of termination and then other monies owing under the award within 7 days.
	CFMEU (FFPD)	Submission – 21/12/16	<i>Timber Award</i>	6-10	<ul style="list-style-type: none"> • Do not support provisional clause – it removes longstanding right for employees, in all circumstances except summary dismissal, to be paid on termination under the <i>Timber award</i> (clause 25.3). • Minimum notice period under NES is one week, so under current award provision, where notice is worked, employers would have one week to process final pay. Para [93] of Decision states it is not fair for all termination payments to be made on or within a few days of termination. Submit this is not the case in the <i>Timber award</i>. • For clarity, any model term referring to a time frame ought to refer to ‘calendar days’.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	HIA	Submission in reply – 2/02/2017			<ul style="list-style-type: none"> Continue to support the model term outlined in the 14 October 2016 Statement allowing payment on termination in accordance with the normal pay cycle. In the alternative, support the model term set out in the Decision.
	HIA	Submission – 16/12/16	<i>Building Award, Joinery Award and the Timber Award</i>	2.2	<ul style="list-style-type: none"> Concerned that the use of the terms ‘<i>complete or incomplete pay period</i>’ at clause x.1(a)(i) of the model term may cause confusion. Concerns expressed by FWC in relation to accrual of wages and other amounts payable on termination has not been a significant concern (note: awards in which HIA have interest generally calculate wages on hourly basis). Seek to comment on award specific tailoring in future.
	Mark Irving & Andrew Stewart	Submission – 15/12/16	<i>General</i>	Pg 1	<ul style="list-style-type: none"> Propose clause (a)(i) be amended to read: ‘the employee’s accrued wages for any complete or incomplete pay period ...’.
	Master Builders	Submission 30/10/2017	<i>Building Award and Joinery Award</i>	3	<ul style="list-style-type: none"> Relies on submissions from 22 December 2016 and 2 February 2017. No amendments made to previous submissions.
	Master Builders	Submission in reply – 2/02/2017	<i>Building Award and the Joinery Award</i>	3.1-3.2	<ul style="list-style-type: none"> Support the inclusion of the model term in the Joinery and Building Awards. The model term would remedy an issue in the On-Site award which requires that daily hire employees receive termination payments on the same day that they provide notice.
	NatRoad	Submission – 22/12/16	<i>Road Transport and Distribution Award and Long Distance</i>	12-16	<ul style="list-style-type: none"> The term proposed by AIG/ABI is supported as the optimal outcome however the term proposed by FWC is preferable to the current situation under the Transport Awards. If Full Bench considers that employees paid monthly would be prejudiced by this, have no objection to limiting Transport Awards so this option not available. The Distribution Award uses the word ‘forthwith’ in relation to termination payment whilst the Long Distance Award uses the term ‘immediately’. The

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
			<i>Operations Award</i>		term 'forthwith' should be replaced by 'immediately' for simplicity.
	Payroll Matters	Submission – 9/12/16	<i>General</i>	Pg-1-2	<ul style="list-style-type: none"> • Submit that the proposed term poses significant administrative burden on employers. Prefer model term submitted by AIG. • Cost to employers of payment within 7 days far outweighs receiving final payments in usual pay cycle time frame.
	REEF	Submission – 30/10/2017	<i>Real Estate Industry Award</i>		<ul style="list-style-type: none"> • Propose amending payment on termination of employment clause (a)(ii) to read '<i>subject to paragraph (c), all other amounts that are due to the employee under this award and the NES.</i>' and adding new para (c) as follows: (c) '<i>following termination of an employee's entitlement, the payment of commission, bonus or incentive will be made in accordance with clause 17.3 of this award</i>'.
	SDA	Submission in reply – 2/02/2017	<i>General</i>	19	<ul style="list-style-type: none"> • Support the submission of the ACTU.
	TCFUA	Submission – 31 October 2017	<i>Textile Award and Dry Cleaning Award</i>	4.1-4.9	<ul style="list-style-type: none"> • Refer to previous submissions 14 Oct 2016, 23 Dec 2016, 3 Feb 2017. • Dry Cleaning Award contains payment on termination clause; TCFUA will make further submissions regarding application of the model term (once settled) to TCF Award and Dry Cleaning Award once a process is confirmed. • Blanket 7 day period in which payment can be made has capacity to cause financial hardship to employees; model term should be beneficial in nature • Submits that employer 'impracticality' and 'cost' arguments are significantly overstated. • Proposes 3 day outer limit. Supports and adopts submission of CFMEU (M&E) of 30 October 2017 (at paras [6]-[9]), to the effect that: '<i>where payment is not made upon the actual termination of employment it should be made within 72 hours of the actual termination.</i>' Also notes ACTU's similar submission. • TCFUA notes its submissions on this issue are made without prejudice to the

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
					position it may take in relation to inclusion or adaptation of model term in TCF and Dry Cleaning Awards.
	TCFUA	Submission – 23/12/2016			<ul style="list-style-type: none"> Support the submissions of the ACTU and other union parties in opposing the 7 day waiting period for termination payments and the submissions regarding the operation of s.117 (2) , s119 and s120.
	United Voice	Submission 31/10/2017	<i>General</i>	15-17	<ul style="list-style-type: none"> Relies on submission of ACTU and previous submissions. Queries utility of provisional payment on termination model term. Supports a well sign-posted single cut-off point such where an employer pays what is owed to an employee; prompt payment after termination should be the award standard. Model term will have difficulty in providing useful standard-setting provision, there is no clear provision mandating one payment at any particular time before or after end of employment relationship.
	United Voice	Submission- 8/11/2016	<i>General</i>		<ul style="list-style-type: none"> Previously submitted there is an established common law position that monies owed to an employee by an employer must be paid when the employment relationship ends. Statements of principle from English texts and judgements provided. <i>Delaney v Staples</i> – (in the context of summary dismissal) the proper analysis of the employee's claim is that the claim is for damages for breach of contract of employment. It is not a claim for payment in accordance with the terms of the contract. Problematic to give employers specific timeframes within which to delay payment of termination entitlements after termination. English formulation ‘before or after the termination’ provides sensible and practical statement of employer's obligation to pay promptly. 117(2)(b) FW Act provides further difficulty for any award term departing from what could be characterised as demanding prompt payment of all termination entitlements.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
11	<p>(b) The requirement to pay an employee no later than 7 days after the employee's last day of employment is subject to s.117(2) of the Act and to any order of the Commission in relation to an application under s.120 of the Act.</p> <p>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.</p> <p>Note 2: Section 120 of the Act provides that in some circumstances an employer can apply to the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES. In dealing with an application, the Commission could make an order delaying the requirement to make payment until after the Commission makes a decision on the application.</p>				
	ABI & NSWBC	Submission – 6/01/2017	General	3	<ul style="list-style-type: none"> • Submit that it is important that the proposed clause not undermine the operation of s.120. • Submit that the model term should be amended so that the obligation arising from the award does not apply in circumstances where a s 120 application is made. • Further, if the s120 application is made outside of the 7 days required in the model term, the award obligation should be taken to have never applied. There is currently no limitation on the time for making a s120 application and awards should not operate to effectively create one. Propose the following alternative clause: <i>"The requirement to pay an employee no later than 7 days after the employee's last day of employment will not apply, and will be deemed to have never applied, if an employer makes application under s.120 of the Act to have the amount of redundancy pay payable to the employee reduced. In such circumstances any redundancy pay will be payable from a date determined by the Commission, provided that this date is not less than 7 days from the date of the Commission's decision in relation to the employer's application."</i>
	ACTU	Submission – 30/10/17	General	69-72 Sched 3	<ul style="list-style-type: none"> • Proposed model terms with Note with respect to interaction of Award with ss.120, 117(2) FW Act & other laws. • 7 day waiting period would occasion hardship ad represent derogation of entitlements for many workers.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	ACTU	Submission – 21/12/16	<i>General</i>	10-15	<ul style="list-style-type: none"> Support Irving and Stewart’s proposed amendment of “the employee’s last day of employment” to “the day on which the employee’s employment terminates” or similar. Submit that s120 may be problematic in any event in its present form, however, it may be useful to point to it either in the award or in the annotated award.
	AHA & Others	Submission 30/10/2017	<i>Hospitality Award</i>	6	<ul style="list-style-type: none"> Support submissions of ABI and NSWBC in relation to termination payments being made in accordance with employee’s normal pay cycle.
	CFMEU (CG)	Submission – 22/12/16	<i>Building Award, Joinery Award and the Timber Award</i>	Para 7	<ul style="list-style-type: none"> s.119 FW Act requires payment of redundancy pay on termination. Any term of a modern award that delayed redundancy payment would be impermissible under s.55 of the Act. Model payment of wages term would require a carve-out for redundancy under s.119 as well as notice under s.117.
	CFMEU (FFPD)	Submission – 21/12/16	<i>Timber Award</i>	6-10	<ul style="list-style-type: none"> Object to inclusion of reference to s.120 in provisional term. Explicit reference to s.120 may incentivize s.120 applications and provide rogue employers with a clear path to delay or avoid their NES obligations. Also a question of what remaining entitlements would be payable within 7 day timeframe if employer made s.120 application.
	TCFUA	Submission – 31 October 2017	<i>Textile Award and Dry Cleaning Award</i>	4.10-4.11	<ul style="list-style-type: none"> Relies on previous submissions. Otherwise supports and adopts submission of ACTU of 30 October 2017.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	TCFUA	Submission in reply – 3/02/2017	<i>Textile Award and the Dry Cleaning Award</i>		<ul style="list-style-type: none"> Concerned that the inclusion of the note in relation to s.120 could encourage non-genuine s.120 applications to delay the payment of redundancy pay.
	TCFUA	Submission – 23/12/2016	<i>TCF & Dry Cleaning</i>	4	<ul style="list-style-type: none"> Submit that the inclusion of a model term should be considered and adapted on an award by award basis. Support the submissions of the ACTU and other union parties in opposing the 7 day waiting period for termination payments and the submissions regarding the operation of s.117 (2) , s119 and s120.
	Mark Irving & Andrew Stewart	Submission – 15/12/16	<i>General</i>	Pg 1 & Pg 9	<ul style="list-style-type: none"> Propose wording to be used instead of ‘the employee’s last day of employment’: We suggest that it would be safer to refer instead to ‘the day on which the employee’s employment is terminated’ (first instance) or ‘the day of the termination’ (second and third instances). This has the virtue of aligning the clause with the language used by s 117 FW Act.
	Master Builders	Submission – 22/12/16	<i>Construction Awards</i>	Para 5	<ul style="list-style-type: none"> Submit that the inclusion of items as ‘notes’ is unnecessary. Submit that the provisions of s.117 and s.120 are relevant but should not be specifically included in the model term. Seeks to address circumstances that are dealt with in other sections of modern awards (eg. clause 16 of the Onsite Award). Does not address termination at the initiative of the employee. There is no uncertainty about s.120 that needs to be addressed – any benefit of this is outweighed by inclusion of additional words that are arguably unnecessary. These sections of the act exist and operate irrespective of their inclusion in an award – no need for their inclusion. Submitted alternate model term.

ITEM	PARTY	DOCUMENT	AWARD	REF	SUMMARY OF ISSUE
	NatRoad	Submission – 22/12/16	<i>Road Transport and Distribution Award and the Long Distance Operations Award</i>	Paras 12-16	<p><u>Reference to s.117(2)(b)</u></p> <ul style="list-style-type: none"> No objection to proposal at [115] of the Decision.

Abbreviation	Party name
AHA and others	Australian Hotels Association , Accommodation Association of Australia, Motor Inn, Motel and Accommodation Association
REEF	Real Estate Employer’s Federation
ABI & NSWBC	Australian Business Industrial and the New South Wales Business Chamber
ACTU	Australian Council of Trade Unions
AIG	Australian Industry Group
AMWU	“Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU)
CFMEU - CG	Construction, Forestry, Mining & Energy Union – Construction & General Division
CFMEU - FFPD	Construction, Forestry, Mining & Energy Union – Forestry, Furnishing, Building Products & Manufacturing Division

Abbreviation	Party name
CFMEU – M&E	Construction, Forestry, Mining & Energy Union – Mining and Energy Division
HIA	Housing Industry Association
Master Builders	Master Builders Australia
NatRoad	National Road Transport Association
NFF	National Farmers Federation
SDA	Shop, Distributive and Allied Employees Association
TCFUA	Textile, Clothing and Footwear Union of Australia