



Fair Work Commission

Award Review 2014

AM2016/8

4 yearly review of modern awards – Payment of wages

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1. The SDA provides the following submission as part of the 4 yearly Review of Modern Awards.
2. The SDA also relies on its correspondence in this matter dated 22 December 2016.
3. The Decision issued by the Full Bench on 1 December 2017¹ (“the Decision”) at PN 198 directs the parties to address various matters.
4. At PN 33 of this Decision the Full Bench states “It is our 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”. The SDA supports this view. The SDA is also in favour of developing a model clause that provides for payment of wages, accrual of payments and payments on termination.
5. The written submissions already filed by both employer organisations and unions in response to the Decision directions at PN 198 (3) are generally consistent in one respect. That is, in determining an appropriate payment of wages clause there must be consideration of the practices and history of particular industries and awards.
6. The submissions of the ACTU, dated 21 December 2016² at PN 5 read:

“But commonality and equity ought not be entirely equated: industry considerations may require different standards to be adopted based on circumstances that indicate a fair minimum in one sector does not translate to a fair minimum benefit in another

And at PN 6

“We believe that an award by award process, examining how the concepts expressed in the model term (even if not the terms verbatim) compare to the existing terms and the relative impact on interested parties of any change is warranted, if not mandatory, in order to satisfy the Commission that a variation to each such award is necessary to meet the modern awards objective.”

And finally at PN 8

“This is a matter which supports a process of adaptation of any model term to each award rather than the imposition of a fixed model term across all awards”

7. The submissions of the Ai Group, dated 23 December³, make a similar point. At PN 5 the submissions read:

“Accordingly, the impact of the implementation of the model term should, to some extent, be considered on and award by award basis”.

¹ FWCFB 8463

² Submissions of the ACTU, AM2016/8, 21/12/2016

³ Submission, Payment of wages (AM2016/8), 23 December 2016

And at PN 9

“In considering whether to adopt the model clause across the award system the Commission should have regard to existing practices in relation to the payment of wages within particular industries or occupations. The history of current provisions is also a relevant consideration”.

8. The SDA does not support a “one size fits all” payment of wages clause. Instead any payment of wages clause must be in such terms that consider the history and practices of the industry and the current provisions.
9. The SDA previously made application (AM2014/267, 270, 271) to vary three modern awards such that wages are to be paid on a regular pay day and within four days of the end of the pay period. These awards did not specify a pay day or a timeframe within which an employee would receive their pay. The three awards are:
 - *Fast Food Industry Award 2010*
 - *General Retail Industry Award 2010*
 - *Hair and Beauty Industry Award 2010*
10. Australian Business Industrial, the Ai Group and the SDA reached a consent position on the variation to these modern awards. The agreed clauses are recorded in the SDA’s submissions of 28 October 2016⁴ and PNs 11 – 13 of the Decision.
11. At PN 47 of the Decision examples are provided of how the provisional model term might be adapted to existing award arrangements. One example provided relates to the *General Retail Industry Award 2010* payment of wages clause. The “possible adaptation of provisional model term” includes matters particular to that award (e.g. 23.1(f) – where an employer cannot change an employee to a monthly pay period). In addition the adapted term also contains provisions from the provisional “payment of wages and other amounts” model term. The SDA supports the approach of appropriately adapting existing arrangements in specific awards.
12. The SDA makes the observation that the above three awards (PN 9) as well as the *Mannequins and Models Award 2010* and the *Pharmacy Industry Award 2010* provide for weekly or fortnightly pay only (the *General Retail Industry Award 2010* permits enterprises with monthly pay arrangements in place prior to 1 January 2010 to continue those arrangements, provided that no employee classified at Level 3 or below may be paid monthly). Monthly payment is not generally a feature of the retail and fast food industries. These are industries characterised by low pay and a casualised and part time workforce. There is the potential for detriment to such workers should they be paid monthly as per the provisional clause at x.1(e).

Model term to include provision to the same effect as AI Act s.36(2), the Decision PN 44

⁴ SDA National, AM2016/8, Submission regarding payment of wages in respect of a regular pay day and variation to the pay day by agreement, 28 October 2016

13. The Decision at PN 44 directs parties "...to consider whether it would be desirable for the model term to include provision to same effect as AI Act s.36(2), or alternatively, to include a note drawing attention to the statutory provision".
14. The SDA already adopted this principle in the consent position reached with Ai Group and ABI in respect of the payment of wages clauses in the *Fast Food Industry Award 2010* and the *Hair and Beauty Industry Award 2010*. Both of these awards include the words "*If the regular pay day falls on a public holiday the wages may instead be paid on the next day that is not a Saturday, Sunday or public holiday*"⁵.
15. The SDA supports the position of the ACTU in its submissions at PN 9⁶.

Payment of wages and other amounts' model term, the Decision PN 48

16. The SDA submits that modern awards should address the issue as to when an entitlement to payment accrues based on the nature of the industry and the award provision. In particular the SDA supports the ACTU contention at PN 8⁷: "*This is a matter which supports a process of adaptation of any model term to each award rather than the imposition of a fixed model term across all awards*".

Payment on termination of employment

17. The SDA notes that of the awards it has an interest in; the *Fast Food Industry Award 2010*, *The General Retail Industry Award 2010*, the *Hair and Beauty Industry Award 2010* and the *Mannequins and Models Award 2010* make no provision at all for the time period within which termination payments are to be made.
18. The *Storage Services and Wholesale Award 2010* specifies that 2 days after termination payment must be made.
19. The SDA does not support a national standard 7 day waiting period for termination payments. We submit that the inclusion of a model term in a particular modern award must be considered individually and be appropriate for that award or industry. The SDA supports the submissions of the ACTU in its opposition to a national 7 day waiting period for termination payments.
20. The SDA submits that its members are typically low paid and largely part time and casual. Workers in such circumstances are often in a position where they do not

⁵ SDA National, AM2016/8, Submission regarding payment of wages in respect of a regular pay day and variation to the pay day by agreement, 28 October 2016, PN 16

⁶ Submissions of the ACTU, AM2016/8, 21/12/2016

⁷ Submissions of the ACTU, AM2016/8, 21/12/2016

have financial reserves. In other words such workers often rely on prompt payment to meet their financial obligations.

21. Where notice of termination is given, an employer has the opportunity to plan for payment of outstanding entitlements. In these circumstances 7 days is excessive. In addition the SDA emphasises the point made by the ACTU, that any termination under s.117(2) is unlawful unless the employer has paid notice before the termination.
22. The SDA notes the submissions made by Irving and Stewart⁸ and supports their proposition that wages should accrue on a day to day basis. The SDA accepts that there is a potential injustice in the operation of the common law in this issue and that the Irving and Stewart proposal accords with common industrial practice and is fair and reasonable.

⁸ Submissions on Standardising Payment of Wages Provisions in Modern Awards, Mark Irving and Andrew Stewart