



HOUSING INDUSTRY ASSOCIATION



# Housing Australians



Submission to the  
Fair Work Commission

**AM2016/8**  
**Common Issue - Timing of Payment of Wages**

20 October 2016



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## 1. INTRODUCTION

- 1.1.1 In order to assist the Fair Work Commission (**Commission**) HIA provides these written submissions in response to the submission of the CFMEU dated 14 October (**CFMEU Reply Submissions**) and the Statement of the Commission also dated 14 October (**October Statement**).
- 1.1.2 HIA maintains an interest in the *Building and Construction General Onsite Award 2010* (**Onsite Award**), the *Joinery and Building Trades Award 2010* (**Joinery Award**) and *Timber Industry Award 2010* (**Timber Award**).
- 1.1.3 HIA refers to and relies on submission filed in this matter dated 20 September 2016 (**September Submission**).

## 2. CFMEU – CONSTRUCTION AND GENERAL DIVISION

- 2.1.1 There are two matters that HIA seeks to address arising out of the CFMEU Reply Submissions:
- The relevance of the Annual Leave Decision.
  - Complexity of the termination payment.

### 2.2 ANNUAL LEAVE DECISION

- 2.2.1 At paragraph 19 of their submission, the CFMEU attempt to confine the propositions arising from the Annual Leave Decision<sup>1</sup> to situations of ongoing employment. HIA submit that such a position should be rejected.
- 2.2.2 Firstly, HIA submits that the distinction between ongoing employment and the end of employment is superfluous; the ending of the contract of employment does not put an end to the obligations of an employer to make a termination payment.
- 2.2.3 Secondly, as outlined in HIA's September Submission the Annual Leave Decision demonstrates a general acceptance of:
- The prevalence of payment by EFT.
  - The cost impact on business of making a payment outside of the usual pay cycle.
- 2.2.4 Such matters are entirely relevant in relation to the considerations currently before this Full Bench.
- 2.2.5 Thirdly, as outlined in the Preliminary Jurisdictional Issues Decision<sup>2</sup>, Full Bench decisions should be followed unless there is a cogent reason to do otherwise, the CFMEU has put forward no cogent reason to support a departure from the findings in the Annual Leave Decision.

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<sup>1</sup> [2015] FWCFB 3406

<sup>2</sup> [2014] FWCFB 1788



## 2.3 COMPLEXITY OF TERMINATION PAYMENTS

- 2.3.1 At paragraph 47 of their submission, the CFMEU make an inaccurate generalisation about the coverage of those in the industry by redundancy funds which, it is argued mitigates the complexity of redundancy payments.
- 2.3.2 This argument bears little to no weight in relation to HIA members, most of whom are award covered and do not contribute to redundancy funds. As such, the propositions put at paragraph 3.1.18 and 3.1.19 of HIA's September Submission remain largely unchallenged.

## 3. RESPONSES TO QUESTIONS POSED BY THE COMMISSION

### 3.1 QUESTION 1

- 3.1.1 At paragraph 19 of the October Statement, the Commission outlines the following proposed default term to be inserted in all Modern Awards:

*Payment on termination of employment*

*The employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:*

*(a) within 7 days after the employee's last day of employment; or*

*(b) on the next normal pay day.*

- 3.1.2 HIA seeks to propose an amendment to the provision to be inserted into the Onsite Award in light of the unique circumstances of the notice of termination requirements associated with Daily Hire employment.
- 3.1.3 In order to address this HIA would suggest that the default term be confined to situations in which notice has been given and a reference to clause 16 of the Onsite Award be made in order to specifically highlight the exclusion of daily hire arrangements from the general notice of termination provisions provided for by the NES.
- 3.1.4 This approach is generally consistent with the current provisions of the Onsite Award (in that its application is confined to situations where notice is given) and as such, in HIA's view would better meet the Modern Awards Objectives.
- 3.1.5 HIA would suggest that the following words underlined and in **bold** be added to the default term to be inserted into the Onsite Award:

***'When notice is given (in accordance with the provisions of clause 16)** the employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:*

*(a) within 7 days after the employee's last day of employment; or*

*(b) on the next normal pay day.*



## 3.2 QUESTION 2

- 3.2.1 HIA notes that the Joinery Award does not currently contain a provision in relation to the timing of payment on termination of employment. Notwithstanding this HIA does not oppose the insertion of the default term into the Joinery Award.
- 3.2.2 Conditioned by the comments outlined above, HIA supports the insertion of the default term into the Timber Award and the Onsite Award.

## 3.3 QUESTION 3

- 3.3.1 N/A.

## 3.4 QUESTION 4

- 3.4.1 While HIA broadly agrees with the proposition advanced by ABI & NSWBC in their submission dated 19 October HIA has reservations about the inclusion of the NOTE as suggested.
- 3.4.2 It is HIA's view that the proposed amendments to the default term outlined above in relation to the Onsite Award removes the need for the NOTE and mitigates any issues that may arise from the interaction between the default term and s117(2)(b) of the *Fair Work Act 2009*.
- 3.4.3 In furtherance of this view HIA would suggest the following amendment to the default term in relation to the Joinery Award and Timber Award:

***When notice is given*** the employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:

*(a) within 7 days after the employee's last day of employment; or*

*(b) on the next normal pay day.*

- 3.4.4 Similar to the view expressed above, this approach is generally consistent with the current provisions of the Timber Award and as such, in HIA's view would better meet the Modern Awards Objectives.