
Fair Work Commission: 4 yearly review of modern awards

AM2016/8 PAYMENT OF WAGES

AUSTRALIAN BUSINESS INDUSTRIAL

and -

THE NSW BUSINESS CHAMBER LTD

26 AUGUST 2019

1. INTRODUCTION

- 1.1 These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**) and relate to the *Waste Management Award 2010* (**Waste Award**).
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and the NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has members in the waste industry throughout Australia.
- 1.3 In a decision¹ of the Full Bench for these proceedings published on 26 July 2019 (**26 July 2019 Decision**), the Commission invited interested parties to file submissions in relation to the potential replacement of the current provisions that regulate payment on termination in the Waste Award with the Commission's model term (**Model Term**).
- 1.4 ABI and NSWBC support the inclusion of the Model Term in the Waste Award.
- 1.5 ABI and NSWBC seeks to rely on its submission published on 21 August 2019 as it directly relates to this submission (**21 August 2019 Submission**)².

2. INCLUSION OF MODEL TERM IN WASTE AWARD

- 2.1 Currently, the payment of wages provisions in the Waste Award are as follows:

“24.1 All earnings, including overtime, must be paid in the employer's time on a day to be fixed by the employer. Once fixed, the day must not be altered more than once in three months.

24.2 All earnings, including overtime, must be paid within three days of the end of the week in which they accrue.

24.3 Despite anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all money due to the employee as soon as possible.

¹ [2019] FWCFB 5146

² NSWBC and ABI 21 August 2019 [Submission](#)

24.4 The employer at its discretion may pay an employee by electronic funds transfer to a bank account nominated by the employee in question.”

2.2 ABI and NSWBC submit that the current clause in the Waste Award is impractical and vague in its operation, rendering it inconsistent with the modern awards objective. This is because the award provision does not specify a precise timeframe within which payments are to be made on termination, but rather refers to the payment being made “*as soon as possible*”. Significant uncertainty arises regarding:

- (a) what might constitute a period which is “*as soon as possible*”; and
- (b) what factors are to be considered regarding whether a payment could possibly have been made earlier.

2.3 ABI and NSWBC accordingly submit that the current provisions should be replaced with the Model Term. This reasoning supporting the insertion of the Model Term is substantially the same as the reasoning pertaining to the other 12 awards that ABI and NSWBC seek to vary. This reasoning is outlined at paragraphs 6.1 through to 7.8 of the 21 August 2019 submission.

3. CONCLUSION

3.1 For the reasons outlined above and in the 21 August 2019 Submission, ABI and NSWBC submit that the payment of wages clause in the Waste Award is impractical and inconsistent with the modern awards objective.

3.2 For this reason, the Commission should make the determination proposed by ABI and NSWBC, which would have the effect of ensuring a common payment on termination across the modern award system which balances when employees readily receive their termination payments while providing employers with adequate time to make the payment.

Filed on behalf of ABI and NSWBC by:

Luis Izzo

Managing Director - Sydney Workplace
Australian Business Lawyers & Advisors

Helen Hamberger

Associate
Australian Business Lawyers & Advisors

26 August 2019