

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Reply Submission
Payment of Wages
(AM2016/8)

6 December 2017



4 YEARLY REVIEW OF MODERN AWARDS

AM2016/8 – PAYMENT OF WAGES

1. INTRODUCTION

1. This Reply Submission is made in response to the Commission’s Directions of 19 September 2017.¹
2. This submission responds to various submissions of other parties. Ai Group’s position in response to most of the issues raised by other parties would be obvious from the terms of our [submission of 7 November 2017](#). None of the submissions of other parties have convinced Ai Group that the positions set out in our submission of 7 November 2017 should be amended.
3. Ai Group and ABI have proposed a “Joint Employer Model Clause”. This clause was set out at paragraph 14 of Ai Group’s submission of 7 November 2017. The ACTU has also proposed a model clause.
4. The table below compares the Commission’s Provisional Model Term, the Joint Employer Model Clause, and the ACTU’s Model Clause.
5. The table briefly identifies the reasons why the provisions of the Joint Employer Model Clause should be adopted. The reasons are explained in more detail in our earlier submission.

¹ [2017] FWCFB 4817

FWC Provisional Model Term	Joint Employer Model Clause	ACTU Model Clause	Comments
X. Payment of wages and other amounts	X. Payment of wages and other amounts	X. Payment of wages and other amounts	
		X.1 Accrual of wages (a) Wages accrue on a day to day basis, but are not payable until pay day except where clause [Y] otherwise provides. [optional sub clauses] (b) Wages may accrue on the basis of: (i) actual time worked; (ii) an average over a roster cycle worked under this award; (ii) the applicable piecework payment; or (i) on the basis of the proportional value of day's work allowed for in an annual salary paid in accordance with clause X"	Ai Group is not convinced that there is a need to address the accrual of wages.
x.1 Pay periods and pay days	x.1 Pay periods		
		(b) Wages and other amounts may be paid in advance or arrears in accordance with this clause [optionally:" and clause X (reference annual leave clause)/however annual leave loading must be paid in advance in accordance with clause X etc"] .	The subject matter of this subclause is unnecessary. Also, the subclause includes unnecessary restrictions
(a) The employer must pay each employee no later than 7 days after the end of each pay period: (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.	(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.		Ai Group's subclause is simple and appropriate. If the FWC prefers its form of wording, the words "prescribed by this award" should be inserted after "wages" in paragraph (a)(i).

FWC Provisional Model Term	Joint Employer Model Clause	ACTU Model Clause	Comments
<p>(b) An employee's pay period may be:</p> <p>(i) one week;</p> <p>(ii) two weeks; or</p> <p>(iii) subject to paragraph (e), one month.</p>	<p>(b) An employee's pay period may be:</p> <p>(i) one week;</p> <p>(ii) two weeks; or</p> <p>(iii) subject to paragraph (d), one month.</p>	<p>X.2 Pay Period</p> <p>(a) An employee's pay period may be:</p> <p>(i) one week;</p> <p>(ii) two weeks; or</p> <p>(ii) for an employee who is not a casual employee and subject to paragraph (d), one month.</p>	<p>The ACTU's subclause contains an unnecessary restriction on arrangements for casual employees.</p>
<p>(c) The employer must notify each employee in writing of their pay day and pay period.</p>	<p>(c) The employer must notify each employee of their pay period.</p>	<p>(b) The employer must notify each employee in writing of their pay day and pay period</p>	<p>The following aspects of the FWC subclause and the ACTU subclause would impose an unnecessary regulatory burden upon employers:</p> <ul style="list-style-type: none"> - A requirement to notify employees in writing; and - A requirement to notify employees of their pay day.
<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 [insert date of commencement of this clause], the employer may continue to pay employees in that classification monthly without further agreement.</p>	<p>(d) Where an employee is paid weekly or every two weeks, an employer may only change from a one week or two week pay period to a one month pay period by individual agreement with affected employees or by agreement with a majority of the affected employees covered by this award.</p>	<p>(c) Subject to paragraph (d), the employer may change an employee's pay period after giving 4 weeks' notice in writing to the employee.</p> <p>(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.</p>	<p>The FWC subclause and the ACTU subclause contain unnecessary detail and unnecessary restrictions.</p> <p>Ai Group's subclause is simple and appropriate.</p>

FWC Provisional Model Term	Joint Employer Model Clause	ACTU Model Clause	Comments
(f) Where an employee's pay period is one month, two weeks must be paid in advance and two weeks in arrears.			This clause includes an unnecessary restriction. Also, 2 weeks + 2 weeks does not equal 1 month. Therefore, there is a technical problem with the drafting.
		<p>X.3 Pay Day</p> <p>(a) Except as provided in clause [reference payment on termination clause], wages and other under the award and the NES are payable on the pay day in accordance with the table below.</p> <p>[Optional clause] (b) The pay day for a casual employee is at the conclusion of each engagement. However, a casual employee may agree to instead be paid on the usual pay day as below</p> <p>(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:</p> <p>(i) The last working day occurring before the usual pay day, if the employees are not paid monthly; or</p> <p>(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.</p> <p>(c) The employer may change the pay day by agreement with the majority of employees in the workplace.</p> <p>[Table not reproduced]</p>	This clause includes a large amount of unnecessary detail and unnecessary restrictions.

FWC Provisional Model Term	Joint Employer Model Clause	ACTU Model Clause	Comments
	(e) Where a payment falls due on a public holiday, the payment may be made on the next day that is not a public holiday.		This subclause deals with an important issue that should not be left unaddressed
	(f) Clause X.1(a) operates subject to the provisions of this award dealing with averaging of hours of work, averaging of pay and annualised salaries.		This subclause deals with an important issue that should not be left unaddressed.
	(g) Clause X.1(a) takes effect (insert date 6 months from commencement of the order).		This subclause deals with an important issue that should not be left unaddressed.
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.	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.	X.4 Method of payment Payment 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.	There are no differences of substance in the three proposed subclauses

6. If any model clause is determined by the Commission, it is essential that flexibility be provided to enable industry-specific, occupation-specific and award-specific matters to be addressed in the payment of wage clause for a particular award.