



The Australian Industry Group
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17 September 2018

The Hon. Justice Ross, President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By email: chambers.ross.j@fwc.gov.au

Dear Justice Ross,

Re. AM2016/8 Payment of Wages – Payment of Wages on Termination – Agriculture Industry Awards

I refer to the above matter to the extent that it concerns the following modern awards:

- a) The *Horticulture Award 2010*; and
- b) The *Wine Industry Award 2010*.

(collectively, **Awards**).

The following organisations have been involved in discussions concerning the ‘payment of wages on termination’ provisions in the Awards:

- The Australian Industry Group (**Ai Group**);
- The Australian Workers’ Union (**AWU**);
- The National Farmers’ Federation (**NFF**); and
- The South Australian Wine Industry Association (**SA WIA**).

As a result of those discussions, the amendments set out in the attached draft determinations were developed (**Proposed Amendments**).

Ai Group, the AWU and the SA WIA agree that any variation to the Awards concerning the payment of wages on termination should be made be in the terms proposed.

The Proposed Amendments:

- Broadly adopt the structure and substance of the model term determined by the Fair Work Commission¹ (**Commission**) (**Model Term**).
- Create a new obligation to pay NES entitlements and award amounts other than wages within a specified timeframe.
- Provide specifically for circumstances in which employees are paid by cash or cheque.

The Commission has not, as such, invited or directed interested parties to file submissions addressing why the proposed clauses achieve the modern awards objective. Accordingly, we have not sought to file such submissions at this time.

¹ *4 yearly review of modern awards – Payment of wages* [2018] FWCFB 3566.



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Ai Group respectfully considers that if the Commission determines that the Proposed Amendments will not be adopted and instead, the Awards will be varied in terms that deviate from them, in the interests of fairness the Commission should not make its decision in that regard without first granting interested parties, such as Ai Group, an opportunity to be heard.

For completeness, Ai Group also advises that:

- Whilst the NFF has been involved in the relevant discussions, it is still consulting its membership regarding the practical implications of the Proposed Amendments. We understand that the NFF will separately advise the Commission of its position in relation to the Proposed Amendments.
- The relevant discussions also related to the *Pastoral Award 2010*. Ai Group does not, however, appear in these proceedings in relation to that award. We understand that the NFF's advice which will follow as foreshadowed above, will also advise the Commission of the relevant parties' position in relation to the *Pastoral Award 2010*.

Yours sincerely,

A handwritten signature in blue ink that reads 'R. Bhatt'.

Ruchi Bhatt
Senior Adviser – Workplace Relations Policy



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Payment of Wages

(AM2016/8)

JUSTICE ROSS, PRESIDENT

SYDNEY, XX XXXX 2018

4 yearly review of modern awards – payment of wages on termination.

A. Further to the decision issued on [insert date]¹ it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Horticulture Award 2010*² be varied by:

1. Deleting clause 19.3 and inserting in lieu:

19.3 Payment of wages on termination of employment

- (a) If the employment of an employee terminates, the employer must pay an employee the following amounts in accordance with this clause:
 - (i) The employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) All other amounts that are due to the employee under this award and the NES.
- (b) The amounts described at clause 19.3(a)(i) must be paid to the employee:
 - (i) By cash or cheque on the day of termination or forwarded to the employee by post on the next working day; or
 - (ii) By electronic funds transfer no later than 7 days after the day on which the employee's employment terminates.
- (c) The amounts described at clause 19.3(a)(ii) must be paid to the employee:

¹ [insert citation].

² MA000028.

- (i) By cash or cheque on the day of termination or forwarded to the employee by post as soon as reasonably practicable and by no later than 7 days after the day on which the employee's employment terminates; or
 - (ii) By electronic funds transfer by no later than 7 days after the day on which the employee's employment terminates.
- (d) The requirement to pay wages and other amounts under clause 19.3 is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

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.

Note 2: Paragraph (d) allows the Commission to make an order delaying the requirement to make a payment under clause 19.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

B. This determination comes into effect on [insert date].

PRESIDENT

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DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Payment of Wages (AM2016/8)

JUSTICE ROSS, PRESIDENT

SYDNEY, XX XXXX 2018

4 yearly review of modern awards – payment of wages on termination.

A. Further to the decision issued on [insert date]¹ it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Wine Industry Award 2010*² be varied by:

1. Deleting clause 26.3 and inserting in lieu:

26.3 Payment of wages on termination of employment

- (a) If the employment of an employee terminates, the employer must pay an employee the following amounts in accordance with this clause:
 - (i) The employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) All other amounts that are due to the employee under this award and the NES.
- (b) The amounts described at clause 26.3(a)(i) must be paid to the employee:
 - (i) By cash or cheque on the day of termination or forwarded to the employee by post on the next working day; or
 - (ii) By electronic funds transfer no later than 7 days after the day on which the employee's employment terminates.

¹ [insert citation].

² MA000090.

- (c) The amounts described at clause 26.3(a)(ii) must be paid to the employee:
 - (i) By cash or cheque on the day of termination or forwarded to the employee by post as soon as reasonably practicable and by no later than 7 days after the day on which the employee's employment terminates; or
 - (ii) By electronic funds transfer by no later than 7 days after the day on which the employee's employment terminates.
- (d) The requirement to pay wages and other amounts under clause 26.3 is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

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.

Note 2: Paragraph (d) allows the Commission to make an order delaying the requirement to make a payment under clause 26.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

B. This determination comes into effect on [insert date].

PRESIDENT

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