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23 August 2018

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

Dear Justice Ross,

**Re. AM2016/8 Payment of Wages – Payment of Wages on Termination – Aluminium Industry Award 2010**

We refer to the above matter and proceedings conducted before the Fair Work Commission (**Commission**) on 1 August 2018 in relation to the *Aluminium Industry Award 2010* (**Aluminium Award**).

As foreshadowed during those proceedings, the Australian Industry Group (**Ai Group**) and the Australian Workers' Union (**AWU**) have had productive discussions in relation to the payment of wages on termination under the Aluminium Award. As a result of those discussions, the amendment set out in the **attached** draft determination was developed (**Proposed Amendment**).

Ai Group and the AWU agree that any variation to the Aluminium Award concerning the payment of wages on termination should be made be in the terms proposed.

The Proposed Amendment:

- Broadly adopts the structure and substance of the model term determined by the Commission<sup>1</sup> (**Model Term**).
- Deviates from the Model Term only to the extent that it enables the payment of amounts due by the next regular pay day.
- Creates a new obligation to pay NES entitlements and award amounts other than wages within a specified timeframe.

In a decision handed down on 15 August 2018, the Commission indicated that it would await the filing of the attached draft determination and “if satisfied that the variation proposed is necessary to ensure that the award achieves the modern awards objective [it] will vary the award in the terms proposed”<sup>2</sup>. Further, in a statement issued on 22 August 2018, the Commission directed Ai Group and the AWU to file the proposed variation by 29 August 2018.<sup>3</sup>

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

<sup>1</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 3566.

<sup>2</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 4735 at [13].

<sup>3</sup> 4 yearly review of modern awards – Payment of wages [2018] FWCFB 4935 at [6].



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Further, Ai Group respectfully considers that if the Commission determines that the Proposed Amendment will not be adopted and instead, the Aluminium Award will be varied in terms that deviate from it, 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.

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 – Aluminium Industry Award 2010.*

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

1. Deleting clause 17.3 and inserting in lieu:

### **17.3 Payment on termination of employment**

- (a) The employer must pay an employee by the next regular pay day in accordance with clause 17.2:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of the termination; and
  - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The requirement to pay wages and other amounts under paragraph (a) 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 (b) allows the Commission to make an order delaying the requirement to make a payment under clause 17.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000060.

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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