

IN THE FAIR WORK COMMISSION

Matter: AM2016/8



Submissions of the AMWU

AM2016/8 4 Yearly Review of Modern Awards Payment of Wages

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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**4 Yearly Review of Modern Awards
AM2016/8 – Payment of Wages**

1. The Australian Manufacturing Workers' Union (AMWU) makes the following submissions pursuant to a Statement issued by President Ross, issued on 21 August 2018, in which directions were given to confirm whether parties oppose a variation to include the model Payment of Wages on Termination clause into nominated awards.
2. The AMWU makes submissions with respect to the following awards that contain existing clauses dealing with payment of wages:
 - a. *Black Coal Mining Industry Award 2010*
 - b. *Building and Construction General on-site Award 2010*
 - c. *Food, Beverage and Tobacco Manufacturing Award 2010*
 - d. *Graphic Arts, Printing and Publishing Award 2010*
 - e. *Manufacturing and Associated Industries and Occupations Award 2010*
 - f. *Rail Industry Award 2010*
 - g. *Seafood Processing Award 2010*
 - h. *Timber Industry Award 2010*
 - i. *Vehicle Manufacturing Repair, Services and Retail Award 2018*
 - j. *Waste Management Award 2010*
3. With respect to all the awards listed above, with the exception of the *Vehicle Manufacturing Repair, Services and Retail Award 2018* (**The Vehicle Award**), the AMWU confirms that it opposes the insertion of the model payment of wages on termination clause. This is so because the existing provisions have proved unproblematic, represent current industry practices, and meet the modern awards objective.
4. We understand that the Commission continues to hold the view that: *the review of the remaining 36 modern awards will proceed on an award by award basis and any variation will have to be justified on its merits. We do not think it appropriate to proceed from the prima facie position that existing provisions in respect of payments on termination should be replaced by the model term¹.*

¹ [2018] FWCFB 3566, [156]

5. The AMWU's position with respect to the Vehicle Award is dealt with separately below.

The Vehicle Award

6. The current Payment of Wages on Termination clause is contained in clause 24.4 of the *Vehicle Manufacturing, Repair, Service and Retail 2010* ('The Vehicle Award').
7. In a Full Bench decision dated 17 July 2018², the Full Bench provided a model Payment of Wages on Termination clause. It was proposed that the model term be inserted into all awards, save for a number of awards which were to be reviewed on a case by case basis³. The Vehicle Award was identified as one of the awards that would be reviewed on a case by case basis.

The AMWU Position – Summary

8. The AMWU opposes the proposal to include the model term in its current form. It is the AMWU's view that it would be appropriate to make a number of amendments to the model term to keep the provision in line with the current conditions contained in clause 24.4 of the Vehicle Award, which are consistent with common practice within the automotive industry.
9. In anticipation of detailed submissions from the Motor Trades Organisations (MTOs), the AMWU makes the following submissions with respect to the Vehicle Award.
10. The AMWU supports the Motor Trades Organisations (MTOs) submission that the clause needs to be updated to take into account the commission arrangements for Vehicle Salespersons.

AMWU Proposed Amendments to the Model Term

X. Payment on termination of employment

(a) The employer must pay an employee no later than 2 business days after the day on which the employee's employment terminates:

(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) Where a person principally employed to perform vehicle sales related duties is entitled to commission payments at a later date than the date of termination, those payments will be payable within 7 days of becoming applicable.

(c) Where an employee abandons his or her employment or the employee's employment is terminated without notice for serious and wilful misconduct the

² [2018]FWCFB 3566

³ [2018]FWCFB 3566 , [156]

employer may pay the employee the wages and other amounts due set out in paragraph (a) within 7 business days of the termination.

(d) 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.

(e) An employer may deduct from monies due to an employee such amount as is authorised in writing by the employee for a lawful purpose specified in the authority.

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 X. 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.

The AMWU Position – Commentary

Amendments to clauses X(a) and X(c)

11. The amendment to clause X(a) changes the model term from 'the employer must pay an employee no later than 7 days after the day on which the employee's employment terminates', to a requirement that the employer pay the employee within 2 days of termination.
12. The inclusion of clause X(c) provides for an exception to the requirement to pay wages within 2 days of termination. This exception provides that where an employee abandons his or her employment or the employee's employment is terminated without notice for serious and wilful misconduct, the employer has up to 7 days to pay the employee their entitlements.
13. These amendments are consistent with the current Payment of Wages on Termination clause within the Vehicle Award (see clause 24.4(a)), and for this reason the AMWU submits that they are reflective of current practice and therefore justifiable. The AMWU is of the view that the current practice of payment within 2 business days has caused no issues for employers, and is suitably qualified by the exceptions set out in clause X(c) which grants employers up to 7 days in circumstances where they may not be prepared to pay employees within the 2 business day time frame.
14. Further, the current condition is more advantageous for employees faced with the loss of employment, who benefit from being paid expeditiously and

without a cogent reason for departing from the status quo arrangements should not suffer a detriment.

Amendments to clause X(b) and X(e)

15. The AMWU supports the MTO's position to amend the model clause to address the commission arrangements of persons engaged in vehicle sales related duties and to retain the current provision at clause 24.4(b) of the Vehicle Award regarding authorised deductions. We refer to and support the MTO's submissions in respect of these amendments filed on this matter pursuant to the directions issued on 21 August.

END.