



7 September 2018

The Hon. Justice IAK Ross
President
Fair Work Commission
11 Exhibition St
Melbourne VIC 3000

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

Dear President

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

In response to the Statement issued on 21 August 2018, requesting the parties advise the Commission whether they oppose the insertion of the model term 'Payment of wages on termination' by 7 September 2018, the following comments are made on behalf of the Australian Nursing & Midwifery Federation (ANMF).

The Nurses Award

The current award provides at cl17.3 for '*payment of all wages and other moneys owing to an employee*'. It is our submission that this aspect of the current award clause is more favourable than the proposed model term. The current award creates an enforceable entitlement to payment of all monies owing, whether by virtue of the award, NES or other instrument. If the model term were to be adopted as proposed, the enforceable award entitlement to payment on termination would be confined to wages payable under the award and all other amounts that are due under the award and the NES.

The ANMF does not oppose the adoption of the model term with respect to the Nurses Award, subject, however, to amendment of the model term to ensure the superior entitlement to payment of wages and other moneys owing is not lost. The proposed amendment is at a)(i) to delete the words 'under this award' and replace them with 'owing' and at a(ii) to insert the word 'including' after 'all other amounts that are due to the employee'.

Please find attached a table setting out the current clause, the model term and the proposed amendments to the model term. The ANMF has discussed this proposal with the HSU and UV and it understand the interested unions support this proposal.

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ANMF Journals

Australian Nursing and
Midwifery Journal (ANMJ)
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Australian Journal of
Advanced Nursing (AJAN)
E ajan@anmf.org.au

ABN 41 816 898 298



The Aged Care Award

The ANMF, HSU and UV have conferred in relation to the proposed variation to the Aged Care Award. The unions' view is that the current clause 17.3 provides a superior entitlement to that of the Model Term and therefore oppose variation of the award.

Yours sincerely

Kristen Wischer
Industrial Officer



NURSES AWARD 2010	MODEL	MODEL AMENDED
<p>17.3 Termination</p> <p>When notice of termination of employment has been given by an employee or an employee's service have been terminated by an employer, payment of all wages and other moneys owing to an employee will be made to the employee.</p>	<p>X. Payment on termination of employment</p> <p>(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:</p> <p>(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</p> <p>(ii) all other amounts that are due to the employee under this award and the NES.</p> <p>(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.</p> <p>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.</p> <p>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</p>	<p>X. Payment on termination of employment</p> <p>a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:</p> <p>(i) the employee's wages <u>owing</u> for any complete or incomplete pay period up to the end of the day of the termination; and</p> <p>(ii) all other amounts that are due to the employee, <u>including</u> under this award and the NES.</p> <p>(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.</p> <p>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.</p> <p>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.</p> <p>Note 3: State and Territory long service leave laws or long service</p>



	<p>section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.</p> <p>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.</p>	<p>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.</p>
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