

4 YEARLY REVIEW OF MODERN AWARDS

Fair Work Act 2009

COMMON ISSUES - PAYMENT OF WAGES

(AM2016/8)

CONSTRUCTION, FORESTRY MINING AND ENERGY UNION, MINING AND
ENERGY DIVISION ("CFMEU-M & E")

SUBMISSION IN ACCORDANCE WITH DIRECTIONS ISSUED ON 19 SEPTEMBER
2017

1. As identified in the Directions issued by the Full Bench on 19 September 2017¹, this submission goes to the provisional "payment of wages and other amounts" model term; the "payment on termination of employment" model term as set out in the Full Bench Decision, dated 1 December 2016,² and the issue of accrual of payments referred to in the Full Bench Statement dated 19 May 2017.³
2. This submission is made in the context of the application of any final "model" clause to those modern awards without a "payments of wages and other amounts" provision or a "payment on termination of employment" provision. Where there is a current modern award with such provisions (in whole or in part), the application of, or the need to adapt, any final model clause, should be dealt with on an award by award basis.

¹ Statement and Directions, [2017] FWCFB 4817

² [2016] FWCFB 8463

³ [2017] FWCFB 2729

3. With respect to the provisional "payment of wages and other amounts" model term the CFMEU-M & E is opposed to the provision that entitles an employer to change and employee's pay day or pay period after giving 4 week's notice in writing to an employee. Any change in this regard should, as with any proposal to introduce a monthly pay period, be subject to the agreement of the affected employees.
4. We make this submission because any change to the pay period or pay day can have a detrimental impact on the various arrangements employees may have to settle the payment of various debts e.g. mortgage payments, rent, motor vehicle payments, credit cards etc. In this respect employees seek a correlation between the receipt of pay and the settlement of debts so as to avoid any potential for missing a due payment. Missing a payment can have detrimental implications for employees such as a negative credit rating or incurring penalty payments.
5. Agreement for any change to either or both the pay period and pay day is both fair and relevant to a minimum term on payment of wages. This is so, even though the provisional terms provides for 4 week's notice of any change. Regardless of the notice, it puts employees in a difficult position of endeavouring to change the payment arrangements for reasons beyond their control or agreement and, as far as we can see, there is no reason why it would be fair and relevant to allow an employer to simply change the pay period or pay day upon the giving of notice.
6. With respect to payment upon termination of employment, the CFMEU-M & E maintains the position that where payment is not made upon the actual termination of employment it should be made within 72 hours of the actual termination.
7. It is recognised that the Full Bench has addressed the issue of the timing of any such payment and concluded that an "appropriate balance" is 7 days.⁴
8. This conclusion was based on an assessment of what were variously described as the "impracticality" issues and the "administrative cost".

⁴ [2016] FWCFB 8463 @ PN [88]-[99]

9. In that regard the Full Bench noted that the administrative "costs are not likely to be substantial".⁵ We agree. It is also our submission that the "impracticality" issues are mitigated by the operation of modern technology. As has been observed in earlier submissions, the implementation of modern computer based payroll systems, together with the availability of fast, efficient and cheap communication means such as mobile phones, internet, emails and text messaging have circumvented the problem of any difficulty or delay in obtaining the requisite information.⁶ Accordingly, we submit that the practicality and administrative costs are insufficient to warrant a delay in termination payment beyond 72 hours. For this reason, we seek that the Full Bench give further consideration to this term of the payment of wages upon termination of employment clause.
10. With respect to the accrual of wages, the CFMEU-M & E seeks to ensure that there exists no legal technicality by which an employee may be deprived of his/her legitimate wages. This is so given some of the complexities raised during these proceedings. It is noted that the Full Bench is seeking to do the same. It is submitted that awards should make provision for the accrual of wages with the model term providing for accrual on a daily basis.
11. With respect to paragraph [13] of the Statement and Directions of 19 September 2017, the CFMEU-M & E advises that this submission should be read in conjunction with previous submissions filed in this matter.

Construction, Forestry, Mining and Energy Union
Mining and Energy Division
30 October 2017

⁵ [2016] FWCFB 8463 @ PN [91]

⁶ See the CFMEU M & E Submission dated 20 September 2016 @ PN 12.4