



HOUSING INDUSTRY ASSOCIATION



Submission to the
Fair Work Commission

AM2016/8
Common Issue - Payment of Wages

16 December 2016

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1. INTRODUCTION

- 1.1.1 HIA refers to the decision of a Full Bench of the Fair Work Commission (the '**Commission**') in *4 yearly review of modern awards – Payment of Wages (Payment of Wages Decision)*.¹
- 1.1.2 The Payment of Wages Decision determined:
- To grant the ABI application to remove the penalty for late payment of wages in circumstance where wages are paid by EFT in those awards in which variation applications were made; and
 - To grant the Ai Group application to vary three modern awards to address an alleged anomaly in the annual leave clause relating to provisions dealing with the payment of annual leave and annual leave loading.
- 1.1.3 The Payment of Wages Decision also sets out a number of matters seeking further written submissions including:
- The provisional Model Term dealing with the '*Payment of wages and other amounts*' including the provisional view of the Commission that '*there would be benefit in either replacing the existing provision for payment in all modern awards with the model term, or alternatively with a version of the model term appropriately adapted to the existing award arrangements*'; and
 - The provisional Model Term dealing with '*Payment on Termination*'.
- 1.1.4 HIA provides these submissions in response to these matters in accordance with the direction set out at item 4 of paragraph 198 of the Payment of Wages Decision.
- 1.1.5 HIA expresses an interest in the *Building and Construction General Onsite Award 2010 (Onsite Award)*, the *Joinery and Building Trades Award 2010 (Joinery Award)* and the *Timber Industry Award 2010 (Timber Award)*.

2. THE MODEL TERMS

2.1 MODEL TERM – PAYMENT OF WAGES AND OTHER AMOUNTS

- 2.1.1 HIA notes the provisional view of the Commission expressed at paragraph 33 of the Payment of Wages Decision that all modern awards should include a term providing for the method and frequency of payment as well as placing a limit on payment in arrears. HIA agrees with this view.
- 2.1.2 Clause 31.3 of the Onsite Award which deals with the timing for payment of wages is a constant source of frustration for HIA members.
- 2.1.3 HIA currently has application on foot in AM2016/23 to vary the Onsite Award in in the terms set out in the Draft Determination at Attachment A to these submissions. Substantive submissions have been filed in respect of this variation application (amongst others) dated 2 December 2016.²

¹ [2016] FWCFB 8463

² [HIA Submission AM2016/23](#)



- 2.1.4 HIA's claim in AM2016/23 seeks to vary the Onsite Award to provide for a fortnightly and if mutually agreed, a monthly payment cycle. The variation also ensures employers are not held accountable for circumstances outside of their control which may prevent wages from being available to the employee on the day it is due. HIA notes that these aspects of HIA's claim are addressed within the Model Term.
- 2.1.5 However, in light of the Payment of Wages Decision and noting the comments that *'Parties will be given the opportunity to raise awards specific issues if and when draft determinations have been issued'*³ HIA seeks guidance from this Full Bench as to the status of HIA's application in AM2016/23.
- 2.1.6 Notwithstanding the claim currently on foot, HIA makes the following comments on the concepts and wording of the provisional *'payment of wages and other amounts'* model term.
- 2.1.7 HIA is generally supportive of the concepts and wording proposed in the Model Term including:
- Clarifying that the payment of wages and *'all other amounts'* is required within 7 days after the end of the pay period.
 - Providing flexibility in relation to the determination of pay cycles and enabling weekly, fortnightly or monthly (by agreement) pay cycles.
 - Distinguishing between a *'pay period'* and a *'pay day'*. In HIA's view this approach conforms with modern work practices and addresses the lack of clarity in relation to this issue across the Onsite, Timber and Joinery Awards which has been raised by HIA members.
 - That, in HIA's view it is appropriate to obtain agreement with employees where an employer wishes to implement a monthly pay cycle.
- 2.1.8 Paragraph 44 of the Payment of Wages Decision seeks views on whether or not the proposed Model Term should address circumstances when the payment of wages falls on a weekend or a public holiday. HIA submits that these circumstances should be addressed within the Modern Awards however we do not have a set view as to the best way to achieve this.
- 2.1.9 HIA also refers to the award specific tailoring of the provision in the examples provided at paragraph 47 noting that such an exercise would also be appropriate for, for example the Timber Award which provides for the payment of wages three weekly, four weekly or monthly by agreement.

2.2 MODEL TERM – PAYMENT ON TERMINATION OF EMPLOYMENT

- 2.2.1 HIA is concerned that the use of the terms *'complete or incomplete pay period'* at clause x.1(a)(i) of the model term may cause confusion.
- 2.2.2 While HIA appreciates the concerns expressed by the Commission in the Payment of Wages Decision in relation to the accrual of wages and other amounts payable on termination as the awards in which HIA have an interest generally calculate wages on an hourly basis, the matter has not arisen as of significant concern.

³ Payment of Wages Decision at paragraph 50



- 2.2.3 Other comments HIA may have relate to award specific tailoring that may be required. HIA will avail itself of future opportunities to provide comment on these matters at the appropriate stage of the proceedings.



MA000020 PRxxxxxx



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Construction Awards (AM2016/23)

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010 [MA000020]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT HAMILTON
DEPUTY PRESIDENT GOSTENCNIK
COMMISSION GREGORY
COMMISSIONER HARPER-GREENWELL

[XXX 2017]

4 yearly review of modern awards –Construction Awards.

A. Further to the decision issued by the Fair Work Commission on [INSERT], the above award is varied as follows:

1. Delete current clauses 31.3
2. Insert new clause 31.3

Payments must be paid and, to the extent of the employer's control, be made available to the employee not later than the end of ordinary hours of work on Thursday of each working week or fortnight as determined by the employer, or monthly if mutually agreed.

B. This determination comes into operation from [xxx]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [xxx].

PRESIDENT

