

IN THE FAIR WORK COMMISSION

AM2016/8

4 yearly review of modern awards - Payment of wages - Timing of payment on termination

Submissions of the National Road Transport Association (NatRoad)

Background

1. These submissions are filed on behalf of the National Road Transport Association (**NatRoad**) in response to questions posed in the Statement made by the Full Bench of the Fair Work Commission (the **Commission**) on 14 October 2016¹ (the **Statement**).
2. NatRoad is a not-for-profit industry association. It represents the interests of more than 1000 contract carriers, employing contractors, and owner drivers, working within the road transport industry throughout Australia. Most of NatRoad's members are small business owners and operators.
3. In addition to coverage by other modern awards, NatRoad's members are typically covered by either or both of the *Road Transport and Distribution Award 2010* and the *Road Transport (Long Distance Operations) Award 2010* (together the **Transport Awards**).
4. NatRoad fully supports the preliminary view reached by the Full Bench of the Commission as set out in paragraph 19 of the Statement. Paragraph 19 provides that the default term for payment of wages and other amounts due on termination of employment should be as follows:

Payment on termination of employment

The employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:

(a) within 7 days after the employee's last day of employment; or

(b) on the next normal pay day.

Response to Question 1

5. In response to Question 1 of the Statement which asks for comment on the default term, NatRoad considers that it contains appropriate wording to assist small business. Many of NatRoad's members use accounting packages designed for small businesses such as MYOB, QuickBooks, Reckon One and Sage.

¹ [2016] FWCFB 7455

Filed By:	The National Road Transport Association
Address:	Level 3, Minter Ellison Building, 25 National Circuit, Forrest, ACT, 2603
Email :	allison.ballard@natroad.com.au or richard.calver@natroad.com.au
Telephone:	(02) 6295 3000

6. As wages are the industry's largest expense, payroll data is not only a critical input to the efficiency and effectiveness of a business, but can prove one of the most challenging aspects of operating a small business.
7. Whilst all software packages offer the provision of one-off payments, linking termination payments to the usual pay cycle will assist small business. This is especially the case for the road freight industry where margins are slim and the operators are time poor; administration nearly always takes second place to operational matters in such an environment.

Response to Question 2

8. Question 2 of the Statement asks parties to comment on the view that the default term be inserted into all modern awards.
9. NatRoad is cognisant of the fact that each award must be considered in its own right against the objectives of the modern awards.
10. Accordingly, in respect of the Transport Awards, NatRoad considers that the proposed provision would enhance the modern awards' objective and deliver a fair and relevant minimum safety net. In formulating this view we have had regard to the matters set out in section 134(1) (a) to (h) of the *Fair Work Act, 2009 (Cth)* (the **FW Act**), especially 134(1) (d) in relation to flexible work practices and the efficient and productive performance of work.
11. As is evident from the comments made in paragraphs 5-7 of this submission, the efficient and productive performance of work would be enhanced by having in place modern award provisions that reflect the manner in which modern payroll systems operate.

Response to Question 3

12. Question 3 is not relevant to this submission as NatRoad does not seek to retain a current award provision.

Response to Question 4

13. Question 4 asks parties to consider how s117 (2) (b) might interact with the proposed default term and whether the clause should include reference to s117 (2) (b).
14. The current provisions in the Transport Awards accommodate s117(2)(b) because of the breadth of the requirements:
 - a. Clause 18.3 of the *Road Transport (Long Distance Operations) Award 2010* states that: "*Notwithstanding anything contained in this clause, the employer must pay to an employee who leaves or is dismissed all money due to the employee immediately; and*
 - b. Clause 20.3 of the *Road Transport and Distribution Award 2010* uses the same terms except that the word "forthwith" is used rather than the word "immediately."
15. These terms are synonyms and, in practice, the difference in wording is immaterial, though replacing 'forthwith' with 'immediately' would make for simplicity.

16. In NatRoad's view, the solution to the question of the entitlement raised by s117 (2) (b) is to make its terms subject to the obligation contained in that provision. This could be by way of reference to the statute but, preferably, by making an exception to the circumstances where an employer is making a payment in lieu of notice.

17. As the Full Bench has noted in paragraph 16 of the Statement, a judge of the Federal Court has indicated the following about s117(2)(b):

*On its proper construction, s 117(2) prohibits the termination of an employee's employment unless (relevantly) the employer "has paid" the requisite payment in lieu of notice. A contravention of s 117(2) is a contravention of a National Employment Standard for which a civil penalty may be imposed: Fair Work Act, s 44(1) and s 539. Accordingly, employers who terminate an employee's employment in the circumstances contemplated by s 117(2) without providing the minimum period of notice or by **making a payment in lieu at the time of the termination** are likely to expose themselves to the imposition of a civil penalty.²*

18. NatRoad asks that the Commission change the Transport Awards to bring into effect the draft default term set out in paragraph 4 of this submission, subject only to the substantive obligation contained in s117(2)(b).

National Road Transport Association

Richard Calver

17 October 2016

² White J *Melbourne Stadiums Ltd v Sautner* [2015] FCAFC 20 at [214] [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2015/20.html?stem=0&synonyms=0&query=title\(Melbourne%20Stadiums%20Ltd%20and%20Sautner%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2015/20.html?stem=0&synonyms=0&query=title(Melbourne%20Stadiums%20Ltd%20and%20Sautner%20)) accessed 17 October 2016 NatRoad emphasis