

4 yearly review of modern awards

Matter No. AM2016/8 – timing of payment of wages

NATIONAL FARMERS' FEDERATION

SUBMISSION

Date: 18 October 2016

1. The National Farmers' Federation (NFF) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia's major agricultural commodity groups.
2. The NFF makes this submission in accordance with the Direction issued in this matter in a Statement of 15 August 2016.
3. The NFF responds to the submissions of the parties opposing the variation and the preliminary view reached by the Full Bench of the Fair Work Commission (**the Commission**) in a further Statement of 14 October 2016.
4. The NFF supports the provisional default term set out by the Commission in the Statement of 14 October 2016.

Response to Question 1: Parties are invited to comment on the terms of the provisions default term

5. The provisional default term set out by the Commission is

1. 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.
6. The NFF supports the provisional default term, which deals with concerns raised in our submission of 20 September 2016 about the need to reflect procedures prevailing in the contemporary workplace.

7. The NFF understands that the provisional default term would replace existing terms in modern awards that deal with both the method of payment and the timing of payments to be made on termination.
8. The NFF further understands that existing award terms that deal with how wages are to be paid periodically during employment (for example, weekly, fortnightly or otherwise) would remain unaltered in each modern award.

Response to Question 2: Parties are invited to comment on the provisionally expressed view that the default term be inserted into all modern awards

9. In these proceedings, the NFF has an interest in the following awards:
 - a. *Pastoral Award 2010*;
 - b. *Horticulture Award 2010*;
 - c. *Wine Industry Award 2010*; and
 - d. *Silviculture Award 2010*.
10. The insertion of the default term in respect of each of the above awards would be consistent with the modern award objective.
11. In a submission of 17 October 2016, the Australian Workers Union expressed concern about the potential for employees engaged under the *Silviculture Award 2010* to fall under an agreement for a monthly pay cycle.¹
12. We note that payment of wages under the *Silviculture Award 2010* must occur “each week or fortnight” (clause 21.2(b)). While this can be varied by mutual arrangement (clause 21.2(d)), such arrangements only operate for such time as they are mutually agreed. In the absence of a mutual arrangement, the default requirement to pay wages each week or fortnight applies.

Response to Question 3: If any party would seek to retain a current award provision, the Full Bench requests that the party provide an explanation as to the purpose of the provision and how this particular provision meets the modern award objective.

13. The NFF does not seek to retain a current award provision, other than to note our understanding above that the provisional default term would not displace existing

¹ Paragraph 7.

award terms dealing with when payment of wages must occur during the period of employment.

Response to Question 4: Parties are asked to consider how s 117(2)(b) might interact with the proposed default term and whether the clause should include reference to s 117(2)(b)

14. The NFF does not consider that there is any conflict between the provisional default term and subsection 117(2)(b) of the *Fair Work Act 2009*. Subsection 117(2)(b) deals with the fact that a minimum period of notice, or payment in lieu of notice, must be provided. It does not deal with when such notice or payment in lieu of notice must be made.
15. In contrast, the provisional default term deals with when payment in lieu of notice must be paid in circumstances of termination of employment.
16. To the extent that it deals with payment in lieu of notice on termination of employment, the provisional default term supplements subsection 117(2)(b).
17. However, it does not deal exclusively with payment in lieu of notice of termination, The provisional default term also deals with other categories of payment on termination (for example, accrued annual leave, long service leave and outstanding wages).
18. As subsection 117(2)(b) deals with a broader range of payments than payment in lieu of notice, and in the absence of any conflict of terms, in our submission it is not necessary to cross-reference the legislative section in modern awards.

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