

IN THE FAIR WORK COMMISSION

Section 156 - 4 Yearly Review of Modern Awards

(AM2016/18)
PAYMENT OF WAGES

**SUBMISSION IN REPLY OF THE
CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION
(MANUFACTURING DIVISION)**

***Dry Cleaning and Laundry Industry Award 2010
Manufacturing and Associated Industries and Occupations Award
2010***

(30 September 2019)

CFMEU – Manufacturing Division	Contact Person: Vivienne Wiles Senior National Industrial Officer	Address: 165 Bouverie Street, Carlton VIC, 3053	Tel: Email:	0419 334 102 vwiles@cfmeumd.org industriamd@cfmeu.org.au
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BACKGROUND

1. On 26 July 2019, the Full Bench issued a decision [2019] FWCFB 5146¹ (*July 2019 Decision*) regarding the process for the finalisation of the common issue proceedings (AM2016/8) Payment of Wages and Payment on Termination.
2. Following the inclusion of the settled model term into multiple modern awards which were silent regarding payment on termination, 33 modern awards remained outstanding (Attachment A to the *July 2019 Decision*).² The majority of these awards currently contain an existing payment on termination provision. The Commission received applications to insert the model term into 17 modern awards, all of which were opposed.³
3. At paragraph [33] of the *July 2019 Decision* the applicants seeking variations were given the opportunity to file submissions and evidence in support of the applications by 21 August 2019, with submissions and any evidence in reply by 25 September 2019.⁴
4. The Full Bench issued a further decision on 23 August 2019, [2019] FWCFB 5868.⁵
5. In the group of remaining awards in which applications to insert the model term has been made, the Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (“CFMMEU – MD”) has an interest in the following modern awards:
 - *Dry Cleaning and Laundry Industry Award 2010 (“Dry Cleaning Award”)*

¹ 4 yearly review of modern awards – Payment of Wages (AM2016/8) Decision [2019] FWCFB 5146 (26 July 2019)

² [2019] FWCFB 5145 (Attachment A – list of awards)

³ [2019] FWCFB 5145 at paragraphs [8], [30]

⁴ [2019] FWCFB 5145 at paragraph [33]

⁵ 4 yearly review of modern awards – Payment of Wages (AM2016/8) Decision [2019] FWCFB 5868 (23 August 2019).

- *Manufacturing and Associated Industries and Occupations Award 2010* (“*Manufacturing Award*”).
6. The ABI & NSWBC has made application to insert the model term into the *Dry Cleaning Award* and the *Manufacturing Award*. The ABI & NSWBC filed submissions in support on 21 August 2019.⁶
 7. The AI Group has made an application to insert the model term into the *Manufacturing Award*. The Ai Group filed submissions in support on 21 August 2019.⁷
 8. The CFMMEU – MD opposes the applications of the ABI & NSWBC and Ai Group to vary the *Dry Cleaning Award* and the *Manufacturing Award* to insert the model term.

PREVIOUS SUBMISSIONS OF THE TCFUA, CFMEU (FFPD) & CFMMEU (MANUFACTURING DIVISION)

9. Prior to its amalgamation with the CFMEU and MUA in March 2018, to form the CFMMEU, the former Textile, Clothing and Footwear Union of Australia (“TCFUA”) provided the following submissions (written and oral) in these proceedings:
 - (a) TCFUA written submissions (14 October 2016)⁸
 - (b) TCFUA oral submissions (21 October 2016)⁹
 - (c) TCFUA written submissions (23 December 2016)¹⁰
 - (d) TCFUA written submissions (3 February 2017)¹¹

⁶ (AM2016/8) Payment of Wages; ABI & NSWBC Submission (21 August 2019)

⁷ (AM2016/8) Payment of Wages; AI Group Submission (21 August 2019)

⁸ (AM2016/8) Payment of Wages; TCFUA Submission (14 October 2019)

⁹ (AM2016/8) Payment of Wages; Transcript (21 October 2019) at PN [414] [PN444]

¹⁰ (AM2016/8) Payment of Wages; TCFUA Submission (23 December 2016) in Response to Full Bench Decision [2016] FWCFB 8463

¹¹ (AM2016/8) Payment of Wages; TCFUA Submission in Reply (3 February 2017)

(e) TCFUA written submissions (16 March 2017)¹²

(f) TCFUA written submissions (31 October 2017)¹³

10. The TCFUA submission (14 October 2016) set out in detail the union's response to early variation proposals by the ABI & NSWBC and the AI Group. Many of those submissions are equally relevant to the current variation proposals by ABI & NSWBC and AI Group to insert the model term into various awards which currently contain a payment on termination provision.

11. Prior to amalgamation, the CFMEU – FFPD filed the following submissions in these proceedings:

(g) CFMEU – FFPD submission (13 October 2016)¹⁴

(h) CFMEU – FFPD submission (21 December 2016)¹⁵

(i) CFMEU – FFPD submission (30 October 2017)¹⁶

12. Post amalgamation the following written submission was filed by the CFMMEU – Manufacturing Division:

(j) CFMMEU – Manufacturing Division submission (10 September 2019)¹⁷

13. We continue to rely on the submissions above.

SUBMISSIONS OF OTHER UNIONS

14. We further rely on the submissions and witness evidence of various other unions as follows:

¹² (AM2016/8) Payment of Wages; TCFUA Submission (16 March 2017) re: FWC Draft Summary of Submissions – Model Clause – 8 March 2017

¹³ (AM2016/8) Payment of Wages; TCFUA Submission (31 October 2017) re: Full Bench Statement and Directions (19 September 2017)

¹⁴ (AM2016/8) Payment of Wages; CFMEU (Forestry, Furnishing, Building Products and Manufacturing Division) Submission (13 October 2016)

¹⁵ (AM2016/8) Payment of Wages; CFMEU (Forestry, Furnishing, Building Products and Manufacturing Division) Submission (23 December 2016)

¹⁶ (AM2016/8) Payment of Wages; CFMEU (Forestry, Furnishing, Building Products and Manufacturing Division) Submission (30 October 2017)

¹⁷ (AM2016/8) Payment of Wages; CFMMEU (Manufacturing Division) Submission (10 September 2018)

- (a) CFMMEU – Construction and General Division (“CFMMEU – C&G”) specifically in relation to the *Manufacturing Award*, and by way of general application;¹⁸
- (b) CFMMEU – Mining and Energy Division (“CFMMEU – M&E) by way of general application;¹⁹
- (c) AMWU specifically in relation to the *Manufacturing Award*, and by way of general application.²⁰

PROPOSED VARIATION TO THE DRY CLEANING AWARD

15. The *Dry Cleaning Award* currently provides for payment on termination (19.3) as follows (Clause 19 extracted in full for context):

19. Payment of Wages

19.1 *Wages are to be paid weekly or fortnightly.*

19.2 *Method of payment*

By no later than payday, wages must be paid by cash or electronic funds transfer, the latter into the back or financial institutional account nominated by the employee.

19.3 Termination

When notice of termination of employment has been given by an employee or an employee’s services have been terminated by an employer, payment of all wages and other money owing to an employee will be made to the employee by no later than the last day of the formal notice period. [emphasis added]

¹⁸ (AM2106/8) Payment of Wages; CFMMEU (Construction & General Division) Submission (25 September 2019)

¹⁹ (AM2016/8) Payment of Wages; CFMMEU (Mining & Energy Division) Submission (25 September 2019)

²⁰ (AM2016/8) Payment of Wages, AMWU Submission (26 September 2019)

16. ABI & NSWBC has made application to vary clause 19 by deleting clause 19.3 and inserting the model payment on termination clause in its place.²¹ The model term is:

X. Payment on termination of employment

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee under this award and the NES.

(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.

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.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under clause X. For example, the employer could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120

²¹ See ABI & NSWBC Draft Determination for the Dry Cleaning and Laundry Industry Award 2010 – Annexure D to ABI&NSWBC Application (filed 21 September 2018)

of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to receive under the NES.

Note 3: State and Territory long service leave laws or long service 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.

17. The variation proposed by ABI & NSWBC (if accepted by the Full Bench) would be a substantive change to the *Dry Cleaning Award*. It would represent a significant diminution to the current safety net of award terms and conditions for low paid employees in the dry cleaning and laundry industry.
18. In essence, ABI & NSWBC seek to advance a generalised case (the insertion of the model term) in order to achieve a standardised outcome across multiple awards, including the *Dry Cleaning Award*. Such a case should be resisted by the Commission. No cogent basis has been made out by the ABI & NSWBC for the proposed variation to the *Dry Cleaning Award*.
19. Relevantly, the ABI & NSWBC has not filed any evidence at all in support of its proposed variations (by the insertion of the model term) to 12 awards²² including the *Dry Cleaning Award*. On this basis alone, we submit that the proposed variation should be dismissed.
20. The absence of evidence occurs both generally in relation to the group of 12 awards and specifically in relation to the *Dry Cleaning Award*. ABI & NSWBC has made no attempt to mount a genuine merit-based case (again either generally, or specifically in

²² (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 4.3

relation to the dry cleaning and laundry industry) which could reasonably support a finding that the proposed variation to the *Dry Cleaning Award* should be acceded to.

21. The ABI & NSWBC has not provided one statement from one employer in the dry cleaning or laundry industry which attests that the practical operation of clause 19.3, or any aspect of clause 19.3, is problematic to their business operations in any way. This is despite ABI & NSWBC contending that the current provisions in the group of 12 awards [including the *Dry Cleaning Award*] ‘are impractical and inconsistent with the modern awards objective.’²³

22. In the *Preliminary Issues Decision* the Full Bench held:

[33] ...The need to balance the competing considerations in s.134(1) and the diversity in the characteristics of the employers and employees covered by different modern awards means that the application of the modern awards objective may result in different outcomes between different modern awards.

*[34] Given the broadly expressed nature of the modern awards objective and the range of considerations which the Commission must take into account there may be no one set of provisions in a particular award which can be said to provide a fair and relevant safety net of terms and conditions. Different combinations of permutations of provisions may meet the modern awards objective.*²⁴

23. Even if the Commission did come to a conclusion that the variation proposed has some merit (which is opposed), we submit the proposed variation is not necessary to achieve the modern awards objective as contemplated by section 138.

²³ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 6.1

²⁴ 4 yearly review of modern awards: Preliminary Jurisdictional Issues [2014] FWCFB 1788 at paragraph

24. In context of the current proceedings, the Full Bench in the period since 2016 has abandoned its provisional view (expressed in the October 2016 Statement) that the model term should replace payment on termination provisions in modern awards which currently contain them.²⁵In taking this position, the Full Bench concluded:

*'The review of the remaining 36 awards will proceed on an award by award basis and any variation will have to be justified on its merits. We do not think it is appropriate to proceed from the prima facie position that existing provisions in respect of payments on termination should be replaced by the model term.'*²⁶

25. The CFMMEU – MD submits that the ABI & NSWBC has not presented a merit based, proposed variation with respect to the *Dry Cleaning Award* and its application should be dismissed.

Contentions of ABI & NSWBC

26. ABI & NSWBC submit that that the variation to the group of 12 awards, including the *Dry Cleaning Award* is supported by 5 grounds²⁷:

- (a) The growth in EFT transactions has changed the way employees receive termination payments;
- (b) The provisions in the Proposed Awards currently apply to all terminations including those which arise summarily – which is inherent [sic] unexpected given the nature of the dismissal;
- (c) Employers can have difficulty promptly obtaining wage information necessary to process payments instantly;
- (d) Employers sometimes need time to make funds available for payment and

²⁵ (AM2016/8) Payment of Wages, Decision [2018] FWCFB 3566 at paragraph [156]

²⁶ (AM2016/8) Payment of Wages, Decision [2018] FWCFB 3566 at paragraph [156]

²⁷ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 4.4

- (e) Processing terminations manually in order to comply with current award provisions imposes a time and administrative cost on employers.²⁸

27. On its face, the grounds for variation contended by ABI & NSWBC above appear to be little more than a re-statement of its position as outlined in their previous submissions.

A: The growth in EFT transactions has changed the way employees received termination payments

28. In summary, the ABI & NSWBC contend:

- The Commission is able to infer that over the last two decades there has been an overall increase in the reliance on EFT transactions as a means of processing wage payments by employers;
- There has been a marked decrease in the usage of cheques by employers as a means of paying employee wages;
- EFT means that employees can receive their entitlements with minimal effort; and
- There is no detriment to employees receiving their payments when the correct payment can be made as soon as practicable, within 7 days.²⁹

29. The submissions of the ABI & NSWBC on this ground effectively go to the *method* of payment by which employees receive their termination payments. They do not logically support its proposed variation that the model term should be inserted into

²⁸ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 4.4

²⁹ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 6.4 – 6.5

the *Dry Cleaning Award*, including an extension for the period in which a termination payment is required to be made.

30. By ABI & NSWBC's own submission, the growth in EFT transactions has been underway for decades. It is not a new phenomenon. It was certainly in progress at the time modern awards were made, including the *Dry Cleaning Award*. This is evidenced by the fact that the Award Modernisation Full Bench determined the form of payment of wages clauses in multiple modern awards (including the *Dry Cleaning Award*) to include the option of EFT payments.
31. In fact, the payment of wages clauses of many pre-reform awards also included the option of EFT payments. That is, at the time the modern awards were made, the Award Modernisation Full Bench was clearly alert to the option of EFT payments and this was reflected in the payment of wages terms in multiple awards.
32. The decrease in the use of cheques by employers in paying employee wages is uncontroversial, given the growth in EFT payments. In terms of the *Dry Cleaning Award*, the issue of use of payments by cheque has no relevance at all given that clause 19 only permits payment of wages to employees by either cash or EFT.
33. It is unclear from its submissions, what conclusion ABI & NSWBC seeks the Commission to draw regarding the impact of EFT with respect to payment on termination provisions. However, it is evident that the progressive growth of EFT payments, the development and use of highly sophisticated pay roll systems (for example, MYOB, Xero and other digital based and/or and cloud based programs) and capacity to access employee wages and accrual date in real time has provided enormous productivity benefits to employers across Australia. There has also been the introduction of the ATO's Single Touch Payroll system.

34. Rather than providing justification for employers to have more time in which to arrange, and make, termination payments, the opposite is true – these developments mean that employers have multiple tools available to them to determine and calculate very quickly employee termination entitlements, including on the day of termination.
35. ABI and NSWBC's contention that *'there is no detriment to employees receiving their payments when the correct payment can be made as soon as practicable, within 7 days'* is simply incorrect.
36. For low paid, award dependent workers in the dry cleaning and laundry industry, any additional delay in receiving their termination wages and entitlements is clearly and objectively, detrimental. It potentially impacts on workers' capacity to pay for food, bills, utilities, rent or mortgage payments at the time these needs, and liabilities arise. Failure to make payments for bills, rent or mortgage on time, can adversely affect an employee's credit rating and effect their eligibility for loans in the future.
37. Delays in termination payments may also affect an employee's capacity to access Centrelink benefits and payments, entrenching the negative impact of loss of employment and the regularity of wages.

B. The provisions apply to all terminations, including those which arise summarily

38. In summary, ABI & NSWBC contend:
- In some cases, employers have the benefit of substantive notice in relation to the termination of an employee's employment (e.g. 4-5 weeks' notice);
 - However, in cases of serious misconduct, employees are not entitled to notice of termination and may be summarily dismissed;
 - In cases of resignation of termination with notice, it is also not uncommon for employees to be receive payment of lieu of notice; and

- The timing of the decision to terminate an employee is critical to determining whether an employee is physically able to process a payment on the day of termination.³⁰

39. It is self-evident that a termination of employment by notice (either at the employer's or employee's initiative) requires the giving of prescribed periods of notice, either under the NES (s.117 for employer notice) or under award provisions (where an employee gives notice).

40. Relevantly, clause 11.2 of the *Dry Cleaning Award* currently provides:

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.³¹

41. Whether the termination by notice is at the initiative of the employer or the employee, the minimum notice required (either under the NES or the award) to be given is 1 week. In our submission, this is ample time for an employer to calculate and arrange for the payment of an employee's termination pay on the day of termination. This is particularly so in context of the significant advancement in the sophistication of

³⁰ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 6.6 – 6.10

³¹ Dry Cleaning and Laundry Industry Award 2010 (varied to 20 June 2019), clause 11.2

payroll and employee entitlement accrual systems available to employers which, in many instances, provide real time information.

42. It is disingenuous for ABI & NSWBC to submit that it is *'not uncommon for employees to be provided with payment of notice in lieu'* in support of its contention that it is *impractical* for employers to comply with an award provision requiring payment of termination entitlements on the day of termination or shortly thereafter.
43. In circumstances of termination by notice by the employer or the employee, it is entirely within the discretion of the employer whether it requires the employee to work out their notice.
44. In our submission, the circumstances of serious misconduct also does not materially change the position above. In the experience of the former TCFUA and the CFMMEU – MD, cases of serious misconduct are very rare in the dry cleaning and laundry industry. There is no evidence before the Commission as to the extent of terminations in the dry cleaning and laundry industry resulting from an allegation of serious misconduct.
45. Further, in the handful of terminations for serious misconduct in the dry cleaning and laundry industry, in the union's experience these are often contested by the terminated employee resulting in an unfair dismissal to be filed in the Commission.
46. Even where such terminations occur, the employer retains the discretion as to *when* to implement the dismissal. For example, typically an employer when considering terminating an employee for serious misconduct will have undertaken an investigation into the allegation/s and potentially have stood down the employee whilst the investigation is in process. An employee can potentially be stood down with pay for a number of days or even weeks whilst the employer determines whether the termination for serious misconduct proceeds, and if so, when it is to be implemented.

47. We submit that in all cases, the timing of the decision to terminate an employee is solely within the remit of the employer, including in cases of serious misconduct. As such, the arrangements for the calculation and payment of wages and/or entitlements on termination should always be able to be made on the day of termination.

C. Employers can have difficulty promptly obtaining wage information necessary to process payments immediately

48. In summary, ABI & NSWBC submit:

- When processing termination payments, payroll departments require up to date information regarding hours worked by the employee;
- Payroll also requires accurate leave accrual data;
- Accurate time keeping records relating to hours of work are not necessarily at hand for payroll officers; and
- The difficulty [for employers] in immediately obtaining timekeeping records.³²

49. We reiterate that the ABI & NSWBC has provided no evidence to the Commission in support of these contentions, either generally (with respect to the group of 12 awards subject to variation applications) or specifically as they relate to employers in the dry cleaning and laundry industry.

50. The submissions and evidence of various other unions filed in defence of both the variation proposals of both ABI & NSWBC and the AI Group highlight the unsustainability of these contentions.³³ We rely on these submissions and evidence by way of general application.

³² (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraph 6.11 – 6.14

³³ See:

- CFMMEU – M&E Division, Submission (25 September 2019) at paragraphs 24 – 27; 37 – 39 and Statement of Mark Watson (25 September 2019) at paragraphs 5 – 18

D. Employers sometimes need time to make funds available for payment

51. In summary, ABI & NSWBC submit:

- It should not automatically be assumed that employers have substantial cash-flow available to make termination payments on immediate notice; and
- Businesses may need to transfer funds from other accounts to process a termination payment and this particularly affects long serving employees who are due substantial termination entitlements such as long service leave.³⁴

52. The necessity of an employer transferring funds between accounts is neither unusual, time consuming or an administrative burden. The great majority of employers would likely operate more than one bank in the operation of their business. As any individual person who has multiple accounts is aware, the transfer of funds on-line between accounts can be done in less than a minute or two, with the funds available immediately after the transfer. In context of modern, on-line and phone banking facilities this is effectively a non-issue.

53. As outlined previously, we submit that the number of terminations which take effect 'immediately' would be extremely small in the dry cleaning and laundry industry. Even for circumstances purportedly involving a summary termination for serious misconduct, these employees may still not leave the employer's employment 'immediately' in the sense of the time required to process their final termination pay.

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- CFMMEU – C&G Division, Submission (25 September 2019) at paragraphs 27 – 46 and Statement of Hemal Patel (23 September 2019) at paragraphs 4 – 9
 - AMWU, Submission (26 September 2019) at paragraphs 13 – 25 and Statement of Warren Soos (23 September 2019) at paragraphs 5 - 15

³⁴ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraphs 6.6 – 6.10

54. In relation to the example referred to by ABI & NSWBC above i.e. long serving employees due substantial entitlements such as long service leave, such calculations are easily and quickly done using digital pay roll systems or other on-line LSL calculators. Further, as outlined above the transfer of funds from other accounts takes minimal time.
55. In addition, we note that under various state and territory laws, employers are already required to make payment for accrued but untaken long service leave at the time or termination, a fact acknowledged in the model term itself (Note 3).
56. In relation to the second contention raised by ABI & NSWBC, we submit it should not be given any weight by the Full Bench. To do so would be to give tacit acceptance to an argument that it is somehow at the employer's discretion, if and when, they make payment for employee wages and entitlements on termination.
57. An employer who is purportedly unable to meet an employee termination payment/s due to 'cash flow issues' raises issues of potential insolvency i.e. the employer is unable to meet a debt/s if and when it falls due. In our submission, the acceptance of ABI & NSWBC's proposed variation to the *Dry Cleaning Award*, should not be premised on an argument that an employer may have 'cash flow' issues, including circumstances where the employer may well be operating insolvently.

E. Processing termination payment manually in order to comply with award provisions takes time and administrative cost on employers.

58. In summary, ABI & NSWBC submit:
- there is an administrative cost associated with making termination payments outside of an employer's ordinary pay cycle as this requires a manual transaction to take place; and

- the additional time results in an efficient work process.³⁵

59. We reject these submissions as having very little, if any persuasive weight. As the TCFUA outlined previously in its first written submission (14 October 2016)³⁶:

“A cursory review of publicly available, bank charging policies identifies that the big four banks offer eligible businesses flat charges per month irrespective of how many electronic transactions are processed each month. For example:

- *NAB \$10.00 per month*
- *CBA \$15.00 per month*
- *Westpac \$20.00 per month*
- *ANZ \$20.00 per month*

Otherwise, bank fees per transaction, are generally very modest. For example, the NAB and CBA openly declare that their respective fee per transaction is NAB (\$0.22 cents) and CBA (\$0.50 cents).

In this context it is difficult to accept that the cost for employers additional pay runs for employee termination payments are significant or burdensome. Further, the time taken to prepare a termination payment (e.g. the calculations of wages and leave entitlements) is required (and is the same) whether the employee is paid in cash, cheque or EFT. The actual processing of an EFT payment is actually very short.”

60. In the period since those submissions, payroll systems have become more sophisticated and the ABI & NSWBC contentions arguably hold even less weight.

³⁵ (AM2016/8) Payment of Wages, ABI & NSWBC Submission (21 August 2019) at paragraphs 6.18 – 6.20

³⁶ (AM2016/8) Payment of Wages, TCFUA submission (14 October 2019)

S134 – MODERN AWARDS OBJECTIVE

61. In the Preliminary Issues Decision, the Full Bench held:

'[31] The modern awards objective is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant minimum safety net of terms and conditions' taking into account the particular considerations identified in paragraphs 134(1)(a) to (h) (the s134 considerations). The objective is very broadly expressed. The obligation to take into account the matters set out in paragraphs 134(1) (a) to (h) means that each of these matters must be treated as a matter of significance in the decision making process...'

*'[32] No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.'*³⁷

Section 134(1)(a) – relative living standards and the need of the low paid

62. The CFMMEU - MD submits that this a relevant factor to be taken into account in considering the ABI & NSWBC claim and its draft determination for the *Dry Cleaning Award*.

63. In the CFMMEU's experience, significant parts of the dry cleaning and laundry industry are award dependent and low paid. Even in workplaces where enterprise agreements exist in these sectors, wage rates are typically not significantly higher than the minimum rates of pay in the award.

64. The variation proposal by ABI & NSWBC, if accepted, would impact the already precarious financial position of many award dependent employees in the dry cleaning

³⁷ Preliminary Issues Decision; op city; at [32] – [33]

and laundry industry, particularly the significant percentage of such workers employed on less than full time hours. Many employees reliant on award wages do live week to week and have little financial buffer to absorb unexpected interruptions to their income. To put it bluntly, a week or more without income is a serious and stressful situation for many award dependent workers.

65. In the case of the dry cleaning and laundry industry, the award allows for employees to be paid on a weekly or fortnightly basis. If ABI & NSWBC variation was to be adopted, the practical effect is that already low paid workers in the industry may be forced to wait up to at least a week to receive their termination pay (for work already undertaken and entitlements already accrued).

Section 134(1)(b) – the need to encourage collective bargaining

66. The current termination payment provisions are beneficial in nature and any diminution of them would constitute an unacceptable change to the minimum safety net for award dependent workers in the dry cleaning and laundry industry.

67. Whilst these types of provisions may well be the subject of bargaining, it is important to acknowledge that there are many dry cleaning and laundry workplace where, due to the relative low bargaining power of groups of workers, enterprise bargaining is unlikely to be achieved.

Section 134(1) (c) - the need to promote social inclusion through increased workforce participation

68. The impact on an employee being forced to wait for their final termination wages and entitlements can be significant, including in terms of paying for necessities, budgeting, looking for other work and/or accessing government benefits.

Section 134(1)(d) – the need to promote flexible modern work practices and the efficient and productive performance of work

69. It is inarguable that the payment of employees by EFT is a modern payroll practice. However, the question in the current proceedings is whether removing a current award benefit which requires employers to pay termination payments at the time of termination would promote ‘modern work practices’ more generally. In the CFMMEU – MD’s submission, it would not.

Section 134(1)(da) – the need to provide additional remuneration

Section 134(1)(e) – the principle of equal remuneration for work of equal or comparable value

70. These factors would appear to be neutral considerations.

Section 134(1)(f) – the likely impact on business including productivity, employment costs and regulatory burden

71. The CFMMEU - MD relies on its submissions above regarding ABI & NSWBC’s contentions in respect to additional pay run, costs and time imposts. We consider that ABI & NSWBC has completely overstated these effects and has not presented a merits-based case underpinned by probative evidence in support.

Section 134(1)(g) – the need to ensure a simple, easy to understand, stable and sustainable modern award system that avoids unnecessary overlap of modern awards

72. The CFMMEU - MD submits that the current award provision in the *Dry Cleaning Award* is easy to understand and has operated within the dry cleaning and laundry industry for decades without major disputation.

Section 134(1)(h) – the likely impact on employment growth, inflation and sustainability, performance and competitiveness of the national economy

73. The CFMMEU - MD submits that this is a neutral consideration.

CONCLUSION

74. For the reasons outlined above the CFMMEU – MD submits that the application by the ABI & NSWBC should be dismissed and clause 19.3 of the *Dry Cleaning Award* be retained.

75. In the alternative, if the submissions of the CFMMEU – MD are not accepted, we propose a modified form of the model term for the *Dry Cleaning Award* as follows (modifications in red):

19.3 Payment on termination of employment

(a) When notice of termination has been given by an employee or an employee’s services have been terminated by an employer, the employer must pay an employee no later than the last day on which the employee’s employment terminates:

*(i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination;
and*

(ii) all other amounts that are due to the employee under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph 19.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

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.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under clause 19.3. For example, the employer 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 receive under the NES.

Note 3: State and Territory long service leave laws or long service 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.

MANUFACTURING AWARD

76. Both the ABI & NSWBC and AI Group propose a variation to the Manufacturing Award.

77. With respect to the Manufacturing Award, the CFMMEU – MD supports and adopts the submissions of the CFMMEU – C&G Division and the AMWU.

Filed on behalf of:

**Construction Forestry Maritime Mining and Energy Union
(Manufacturing Division)**

Vivienne Wiles
Senior National Industrial Officer and Co-ordinator
30 September 2019