



Fair Work Commission
Section 156 – Fair Work Act 2009
4 Yearly Review of Modern Awards

(AM2016/8) – Payment of Wages

Full Bench Decision [2016] FWCFB 8463 (1 December 2016)
Full Bench Statement and Directions (19 September 2017)

Submission of the
Textile Clothing and Footwear Union of Australia
31 October 2017

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2014 AWARD REVIEW
(AM2016/8)
PAYMENT OF WAGES

Full Bench Decision [2016] FWCFB 8463 (1 December 2016)
Full Bench Statement and Directions (19 September 2017)

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Textile, Clothing and Footwear Union of Australia
(31 October 2017)**

1. BACKGROUND

1.1 The Textile, Clothing and Footwear Union of Australia ('TCFUA') files these submissions in response to the Statement and Directions issued by the *Payment of Wages* Full Bench on 19 September 2017¹.

1.2 The Directions provide an opportunity for interested parties to file submissions by 30 October 2017, and Reply submissions by 4 December 2017 in relation to the following matters:

- (i) *The provisional 'payment of wages and other amounts' model term set out at paragraph [34] of the Full Bench decision dated 1 December 2016 ([2016] FWCFB 8436) (Decision):*
- (ii) *The provisional 'payment on termination of employment' model term at paragraph [117] of the Decision; and*
- (iii) *The issue related to the accrual of payments referred to at paragraphs [19] to [22] of the Statement of the Full Bench issued on 19 May 2017.*²

1.3 The TCFUA confirms that these submissions filed pursuant to the above directions are to be read *in conjunction* with previous submissions filed by the TCFUA.

1.4 For completeness, the TCFUA relies on its previous written and oral submissions outlined as follows:

- (a) TCFUA submission (14 October 2016)³
- (b) TCFUA oral submissions, Full Bench hearing (21 October 2016)⁴

¹ 4 yearly review of modern awards – Payment of Wages (AM2016/8) [2017] FWCFB 4517 (19 September 2017)

² [2017] FWCFB 4517 – Attachment A (Directions)

³ (AM2016/8) Payment of Wages – TCFUA submission in relation to proposed variations to payment of wages terms in modern awards (14 October 2016)

⁴ (AM2016/8) Payment of Wages, Full Bench hearing – Transcript (21 October 2016) at PN414 – PN444

- (c) TCFUA submission in response to Full Bench Decision (1 December 2016) (23 December 2016)⁵
- (d) TCFUA submission in reply (3 February 2016)⁶
- (e) TCFUA comments on the FWC's Draft Summary of Submissions (16 March 2017)⁷

1.5 The TCFUA also appeared at the FWC Conference held on 4 May 2017.

1.6 At the Mention held on 11 September 2017, there was general agreement that the outstanding issues would be determined on the papers, in the absence of any party seeking an oral hearing for a particular reason.⁸

1.7 In these proceedings, the TCFUA has a primary interest in the *Textile, Clothing, Footwear and Associated Industries Award 2010*⁹ ('TCF Award') and the *Dry Cleaning and laundry Industries Award 2010* ('Dry Cleaning Award')¹⁰.

2. THE DEVELOPMENT OF MODEL TERMS AND AWARD SPECIFIC CONSIDERATIONS

2.1 By way of general application, the TCFUA adopts the observations made by the ACTU in its submissions at paragraphs [7] – [18].¹¹

2.2 It is acknowledged that the Payment of Wages common issues proceedings have become enlarged over time, moving from specific (and relatively narrow) employer claims with respect to 10 modern awards to the development of proposed model terms (payment of wages and other amounts and payment on termination) more generally.

2.3 The TCFUA's previous written and oral submissions have addressed both the development of the model terms and, in part, the implications of the insertion of such model terms into the TCF Award and Dry Cleaning Award respectively. An issue faced by all interested parties in these proceedings is the framing of a response to proposed provisional model terms in the absence of a clear process as to how those model terms are to be adopted, adapted or translated to the circumstances of individual awards.

2.4 The TCFUA reiterates the position it outlined in its submission (23 December 2016) such that:

⁵ (AM2016/8) Payment of Wages – TCFUA submission in response to Full Bench Decision [2016] FWCFB 8463 (23 December 2016)

⁶ (AM2016/8) Payment of Wages – TCFUA submission in Reply (3 February 2016)

⁷ (AM2016/8) Payment of Wages – TCFUA comments on the FWC's Draft Summary of Submissions

⁸ [2017] FWCFB 4517 – Statement at [[9]

⁹ Textile, Clothing, Footwear and Associated Industries Award 2010 [MA000017]

¹⁰ Dry Cleaning and Laundry Industry Award 2010 [MA000096]

¹¹ (AM2016/8) Payment of Wages – ACTU submission (30 October 2017)

“As a general point, the TCFUA acknowledges that although there may be some utility in the development of a model term dealing with payment of wages generally and payment on termination in order to clarify rights and obligations, however this should not have the effect of reducing existing conditions for employees on a ‘one size fits all basis’ across all awards. The specific terms for each award should be dealt with on a case by case basis consistent with the suggestion in paragraph [49] of the December 2016 Decision, that ‘awards should contain a version of the model term appropriately adapted to the existing award payment arrangements’.”¹²

2.5 That is, the wholesale adoption of finalised model payment of wages terms may not be appropriate for all modern awards. Indeed, the Full Bench in the exercise of its powers under the 4 yearly review must review each award in its own right and determine whether each modern award achieves the modern award objective. The TCFUA understands that once the terms of the model terms are settled, a further process will be provided for parties to make submissions in regard to individual modern awards.

2.6 In context of existing provisions in the TCF Award and the Dry Cleaning Award, we have not addressed those in these submissions given the additional award by award process to occur after the finalisation of the model term.

3. PROVISIONAL MODEL TERM: PAYMENT OF WAGES AND OTHER AMOUNTS

3.1 The Full Bench’s provisional model term ‘Payment of wages and other amounts’ is contained at paragraph [33] of the *December Decision*.¹³

3.2 In its 20 October 2017 submission, the ACTU has provided an alternative form of model term.¹⁴

3.3 The TCFUA’s previous written submissions regarding the provisional term are contained at:

- paragraphs 3.1 – 3.21, TCFUA submission (23 December 2016); and
- paragraphs 2.2 – 2.22, TCFUA submission in reply (3 February 2017)

3.4 Both the TCF Award (clause 21) and the Dry Cleaning Award (clause 19) contain specific industry terms in relation to payment of wages. We note that various elements of the provisional model term, if implemented into these awards would constitute a significant diminution of current conditions.

¹² TCFUA submission (23 December 2016); op cit at [2.3]

¹³ [2016] FWCFB 8463 at [33]

¹⁴ ACTU submission (30 October 2017); op cit at Schedule 2

3.5 In its previous submissions, the TCFUA has submitted that the provision model term (in its current form) is problematic, both with respect to certain individual elements and when certain clauses are considered in combination. In summary, the TCFUA's concerns centre on the following matters:

- **Clause x.1(a)** – payment of wages and other amounts no later than 7 days after the end of each pay period
- **Clause x.1(b)** – pay period may be one or two weeks, or one month (the latter subject to qualification in x.1(e))
- **Clause x.1(c)** – employer must notify each employee in writing of their pay day and their pay period.
- **Clause x.1(d)** – employer capacity to change an employee's pay day or pay period after giving 4 weeks' written notice
- **Clause x.1(e)** – employer capacity to change pay period from a one or two week pay period to one month by agreement with affected employees
- **Clause x.2** – method of payment (capacity to pay by cheque)

3.6 These concerns are discussed further below.

Clause x.1(a) – payment of wages and other amounts no later than 7 days after the end of each pay period

3.7 The TCFUA's previous written submissions regarding clause x.1(a) are contained at:

- paragraphs 3.4 – 3.6, TCFUA submission (23 December 2016)

3.8 The TCFUA is generally supportive of enhancing clarity in awards as to when an employer is required to pay wages and other amounts due to employees. As a general principle, we remain of the view that employees should receive their wages and other monetary entitlements at the end of the relevant pay period or shortly after.

3.9 Consequently, we submit that a period of 7 days is too great given the economic position of employees governed solely by modern awards. Award dependent employees are generally acknowledged to be low paid relative to median average earnings within Australia. Delays in receiving minimum safety net wages has the real potential to cause financial hardship for award workers who may not have any, or minimal savings to act as a financial buffer against non-timely receipt of wages and other amounts.

3.10 In addition, significant numbers of award covered employees are not employed on a full time basis, but instead are required to survive on part-time or casual hours. The TCFUA is concerned that the introduction of a standard model

7 day rule may have different practical effects depending on whether the employee is full time, part time or casual. To give an example of the potentially differential effect – a casual or part time employee may undertake work on Monday and/or Tuesday of each week. The set pay period ends on Friday with the actual pay day the following Friday. The operation of the proposed 7 day rule would mean that an employee in such a case would not receive their (casual or part time) wages until the following Friday, a period of 9-10 days from when they performed the work. In the TCFUA's submission such a delay is unacceptably long for low paid workers in often precarious employment.

3.11 The point has been made by a number of union submitters that it has never been easier for employers to operationally process wages and leave etc. given the advance in on-line payroll systems and prevalence of EFT etc. We strongly agree. As a result the purported difficulties and regulatory burden on employers associated with payroll functions has significantly reduced over time. There should no longer be any real practical barriers to employers processing wages and other amounts in a timely and effective manner once a pay period ends. It should, and does not take 7 days to implement these processes.

3.12 The more fundamental issue is that the introduction of a standard 7 day rule ensures that employers obtain the benefits of the delay in payment of wages etc, particularly in terms of cash flow. In the balancing of the interests between employers and employees, we submit that the balance should favour employees in context that the payments are typically for work already undertaken and for leave already accrued.

Clause x.1(b) – employee's pay period may be one week, two weeks, or one month (as qualified by clause.1.(e))

3.13 The TCFUA's previous written submissions regarding clause x.1(b) are contained at:

- paragraphs 3.14 – 3.17, TCFUA submission (23 December 2016); and
- paragraphs 2.19 – 2.22, TCFUA submission in reply (3 February 2017)

3.14 The TCFUA strongly opposes the introduction of a model term which allows for the monthly payment of wages and other amounts. Whilst the capacity for monthly pay periods is qualified by the requirement in clause x.1(e) for the employer to obtain agreement of affected employees, we consider that such a qualification would be an inadequate safeguard against potential abuse of the provision in multiple sectors.

- 3.15 We reiterate the point that no interested party in these common issues proceedings has sought a monthly payment term to be included in a particular modern award. Whilst the TCFUA acknowledges that in undertaking its task, the Full Bench is not limited to the claims of the parties, there is no evidence or merit based case before the Commission which would reasonably and necessarily ground the inclusion of such a model term.
- 3.16 Currently, a significant majority of modern awards do not expressly provide for monthly pay periods (either with or without qualification).¹⁵
- 3.17 In our view, the inclusion of a model term allowing monthly payment unacceptably shifts the risk to be borne by employees in terms of late or delayed payment of wages and other amounts, and provides a significant cash flow benefit to employers. Such an outcome, we submit, is inappropriate for an award safety net system which governs the wages and conditions of low paid workers.
- 3.18 In relation to the issue of monthly pay and the operation of section 323 of the *Fair Work Act 2009* we further support the submissions of United Voice (23 August 2017).¹⁶

Clause x.1(c) – employer must notify each employee in writing of their pay day and their pay period

- 3.19 The TCFUA's previous written submissions regarding clause x.1(c) are contained at:
- paragraph 3.10, TCFUA submission (23 December 2016); and
 - paragraphs 2.2 – 2.10, TCFUA submission in reply (3 December 2017)
- 3.20 The TCFUA supports in principle the intent of clause x.1(c) on the basis that that term would:
- ensure that award dependent workers have certainty as to when they will receive their wages and other award and NES entitlements and in relation to which pay particular pay period. This element is relevant to the considerations in s.134(1)(a) *the relative living standards and needs of the low paid*, and s.134(1)(b), *the need to ensure a simple, easy to understand, stable award system*; and
 - assist in maximising award compliance by reducing disputation regarding what is an employee's pay day and/or pay period.
- 3.21 However, as currently drafted, there is no express obligation in clause x.1(c) as to *when* the employer obligation to provide the written notice is triggered.

¹⁵ See lists of awards in [2016] FWCFB 8463 at [5] – [9]

¹⁶ (AM2016/8) Payment of Wages – United Voice submission (23 August 2017)

The absence of a temporal element in clause x.1(c) may lead to uncertainty in the application of the term.

- 3.22 The TCFUA submits, that at a minimum, the obligation should be triggered at, or around the time of the commencement of employment.
- 3.23 Further, if the model term ultimately contains a term which provides for the change of a pay period and/or pay day (which is opposed by the TCFUA) the obligation should also be triggered prior to the change of period and/or pay day.
- 3.24 Thirdly, we submit that there should also be a requirement in clause x.1(c) for an employer to keep the written notice as employee record. We submit that this would facilitate quick and easy verification as to whether a particular employer has complied with clause x.1(c). It is not necessarily apparent from the *Fair Work Regulations 2009* in relation to the making and retention of employee records,¹⁷ as to whether the written notice required under clause x.1(c) would be captured by the provisions. From the TCFUA's review, it would appear not to be the case.

Proposed reformulation of clause x.1(c)

- 3.25 For the reasons outlined above, the TCFUA proposes the following reformulation of clause x.1(c):

x.1(c) *'The employer must notify each employee in writing of their pay day and their pay period prior to, or at the commencement of employment [optional] [and prior to any subsequent change in an employee's pay day or pay period]. The employer must retain as an employee record the written notification/s provided to the employee.'*

Clause x.1(d) – employer may change an employee's pay day or pay period after giving 4 weeks' notice in writing to the employee (subject to qualification in clause x.1(e))

- 3.26 The TCFUA's previous written submissions regarding clause x.1(b) are contained at:
- paragraphs 3.11 – 3.13 TCFUA submission (23 December 2016).
- 3.27 The TCFUA opposes clause x.1(d) of the proposed model term. The TCFUA's primary position remains that there should be no capacity for an employer to unilaterally change an employee's pay day and/or pay period, and that any such change must only be made with the genuine written consent of the employees concerned.

¹⁷ See Fair Work Regulations 2009 – Subdivisions 1 and 2, Part 3-6

- 3.28 We submit that consistency and reliability in the payment of wages and other amounts is an important safety net provision for award dependent employees, many of whom have very little discretionary income.
- 3.29 The proposed model term giving an employer a unilateral right to alter a pay period/pay day (albeit on 4 weeks written notice) has the potential to create major financial issues for some employees as regards payroll deductions, direct debit payments, penalty payments, impacts on credit worthiness and general financial budgeting and management.
- 3.30 In our submission, the qualifier of 4 weeks written notice to an employee is a grossly inadequate safeguard against employers abusing such a provision more broadly.
- 3.31 This invariably raises the issue of enforceability options available to employees in circumstances where the model term is contravened. What are the consequences if no written notice is given, or less than 4 weeks written notice is provided by a particular employer? Many award dependent workers now work in workplaces which are effectively union free. Even if a dispute is raised in the FWC, the Commission has no jurisdiction to arbitrate the matter. That then leaves potential court action regarding the breach. The myriad issues associated with initiating court proceedings for award breaches (cost and delay being the 2 biggest) practically militate against effective enforcement.
- 3.32 Apart from the inclusion of such a significant unilateral right, there is also no limit or constraint on the *number* of times in a year an employer could seek to change an employee's pay day and/or pay period under clause x.1(d). That is, an employer could use the model term to manage their cash flow at certain times of the production cycle, at the expense of certainty and reliability of payment of wages and leave for award workers.
- 3.33 With respect to the operation of the additional qualifier in clause x.1(d) regarding changes to a monthly pay period (i.e. by agreement with affected employees), we reiterate our previous submissions that the TCFUA does not support the inclusion of a model term providing for monthly pay periods.
- 3.34 We further support and adopt the written submissions of the CFMEU (Mining and Energy)) (30 October 2017) filed in this matter.¹⁸

¹⁸ (AM2016/8) Payment of Wages – CFMEU (Mining and Energy) (30 October 2017) – see paras [3] – [5] in particular regarding changes to pay day and/or pay periods.

Clause x.1(e) and (f) – changes to pay monthly pay periods and payment rule (in advance and arrears)

3.35 The TCFUA's previous written submissions regarding clause x.1(b) are contained at:

- paragraphs 3.14 – 3.17, TCFUA submission (23 December 2016); and
- paragraphs 2.19 - 2.23, TCFUA submission in reply (3 February 2017)

3.36 We refer to, and rely on our previous submissions above and previously that the TCFUA does not support the inclusion of a model term providing for monthly pay periods.

When pay days fall on a public holiday

3.37 The TCFUA's previous written submissions regarding circumstances when a pay day falls on a public holiday are contained at:

- Paragraphs 2.11 – 2.18, TCFUA submission in reply (3 February 2017)

3.38 In summary, the TCFUA submitted:

- It was preferable for an award to provide clarity as to what occurs where a pay day falls on a public holiday, rather than relying on a Note;¹⁹
- If the Full Bench is minded to include a term about payment of wages/other amounts and public holidays, it should be informed by the principle of earlier payment, rather than later payment to avoid unfairness;²⁰
- That it opposed the submissions of the Ai Group that award terms should provide for a payment to occur after a public holiday on the grounds of the detrimental impact on employees caused by the delay in payment;²¹
- That it was inherently unfair and prejudicial to award dependent employees for them to have to wait until after a public holiday, or a period of public holidays, to be paid wages and other amounts and provided an example of the impact in relation to Easter public holiday period;²²
- The delay in payment until after a public holiday/s was exacerbated if the provisional model term provided for employees to be paid by cheque (as one of the payment methods);²³
- Public holidays are prescribed by awards and the NES which identify the actual dates of public holidays, together with public holidays being

¹⁹ TCFUA submission in reply (3 February 2017) at [2.13]

²⁰ Ibid; at [2.18]

²¹ Ibid; at [2.12], [2.14]

²² Ibid; at [2.14], [2.15]

²³ Ibid; at [2.15]

declared by state and territory governments well in advance. Therefore, employers have significant notice of the dates of public holidays and time to plan for alternative payment of wages and other amounts prior to the public holiday/s;²⁴

- That some pre-reform awards expressly addressed the issue of what should occur about this issue, including providing payment in advance of the public holiday e.g. *Textile Industry Award 2000*.²⁵

3.39 We continue to rely on these submissions.

3.40 We note that in relation to employees currently subject to a monthly pay period, in circumstances where the last day of the pay period was a public holiday, the operation of s.323 would mean that such employees would be required to be paid prior to the public holiday in any event.²⁶

X.2 – Method of payment

3.41 The TCFUA's previous written submissions regarding method of payment are contained at:

- Paragraphs 3.18 – 3.21, TCFUA submission (23 December 2016)

3.42 In summary, the TCFUA submitted it is opposed to payment of wages and other amounts by cheque on the grounds as follows:

- It is an obsolete form of payment for a modern award system;²⁷
- It is not a fair and reasonable term, consistent with the modern awards objective;²⁸
- It is problematic as an award model term due to range of factors inherent to payment by cheque, including:
 - that employees are necessarily required to bank the cheque in their own time;
 - the delay in employee's receiving cleared funds and the impact on an employee's capacity to budget and manage their finances;
 - the potential dishonouring of cheques if insufficient funds in the employer's account; and
 - the costs to the employee of dishonoured cheques.²⁹

3.43 We continue to rely on these submissions.

²⁴ Ibid; at [2.17]

²⁵ Ibid; at [2.16]

²⁶ S.323(1) of the *Fair Work Act 2009* provides, in part, that: 'An employer must pay an employee amounts payable to the employee in relation to performance of work....(c) at least monthly.'

²⁷ TCFUA submission (23 December 2016) at [3.21]

²⁸ Ibid; at [3.21]

²⁹ Ibid; at [3.20]

3.44 We also refer to various submissions of the employer parties to the effect that the great majority of employees in Australia are now primarily paid by EFT.

3.45 However, should the Full Bench determine to include payment by cheque as a method of payment in the model term, we continue to oppose the adoption of such method in the TCF Award and the Dry Cleaning Award and will provide further submission in relation to these awards at an appropriate time.

4. PROVISIONAL MODEL TERM: PAYMENT ON TERMINATION OF EMPLOYMENT

4.1 The TCFUA's previous written submissions regarding the provisional model term (payment on termination of employment), including the revised provisional term³⁰ are contained at:

- Paragraphs 3.1 – 7.15, TCFUA submission (14 October 2016)
- Paragraphs 4.1 – 4.3, TCFUA submission (23 December 2016); and
- Paragraphs 2.23 – 2.26, TCFUA submission in reply (3 December 2017)

4.2 The Full Bench in the *December Decision* confirmed:

[120] A further process will occur in relation to the questions of which modern awards should be varied to insert the model term. As we have noted, we have concluded that each modern award should provide for the payment of wages and other amounts owing to an employee on termination of employment. Such a term should also prescribe the timeframe within which such termination payments are to be made.

[121] We have also confirmed our provisional view that there is utility in a common payment on termination provision across all 122 awards. But we accept that each modern award is to be reviewed in its own right and that there may be sound reasons for departing from the model term in a particular modern award. A case by case assessment will be required.

[122] Accordingly, once the model term has been settled we will issue a Statement setting out the process for considering which modern awards are to be varied to insert the model term. Interested parties will be given an opportunity to comment on whether particular modern awards should be varied to insert the model term.³¹

³⁰ [2016] FWCFB 8463 at [115] – [122]

³¹ [2016] FWCFB 8463 at [120] – [122]

4.3 The Dry Cleaning Award currently contains a payment on termination clause. We will provide further submissions regarding the application of the model term (once settled) to the TCF Award and Dry Cleaning once that process is confirmed.

Clause 1(a) – 7 day period in which payment to be made

4.3 The revised provisional model term provides that an employer must pay an employee wages and other amounts due under the award and the NES, no later than 7 days after the employee's last day of employment (qualified by 2 exceptions – payment in lieu of notice under section 117(2)(b) and section 120 (application to vary redundancy pay)).

4.4 The TCFUA acknowledges that the Full Bench arrived at the 7 day outer limit as *'an appropriate balance'* taking into account the need for employees to receive their *'termination payments in a timely way while providing employers with sufficient time to calculate and pay the sums due.'*³²

4.5 However, the TCFUA remains of the view that a blanket 7 day period has capacity to cause financial hardship to employees in context where they are no longer employed with that employer. These detrimental impacts can include, for example, complications for an employee in accessing Centrelink benefits.

4.6 In our view, a model payment on termination term should be framed to be beneficial in nature, such that employees can be assured that their final wages and entitlements are available to them at the time of the termination or shortly after. We reiterate that these are payments for work already undertaken for the profit of the employer, and for untaken leave already accrued.

4.7 In our submission, employer 'impracticality' and 'cost' arguments are significantly overstated and in the great majority of circumstances (for example, employer initiated terminations and employee resignations by notice), employers should be in a position to reasonably anticipate, and calculate relatively quickly, the quantum of termination payments owing to an employee. This is the case for several reasons:

- The statutory notice periods applying to employer initiated terminations and award notice terms for employee initiated terminations i.e. at a minimum usually one week's notice;
- Employers have statutory obligations to make provision progressively for the accrual of certain leave entitlements (e.g. annual leave);

³² [2016] FWCFB 8463 at [99] – [100]

- More generally, employers have legal obligations (as a function of employing workers) to ensure that there are sufficient funds in the business to meet liabilities for wages and entitlements as, and when they fall due;
- Employers now have access to a range of sophisticated time and wages, payroll management systems and banking services which mean that the calculation and payment of wages and other amounts has never been easier;
- Payment in lieu of notice (as per s117(2)) and payment of redundancy pay (as per s.199(2)) is required to be paid at, or prior to the termination;
- Employers are also obligated under a number of state and territory laws to pay an employee their accrued LSL at the time of termination.
- Therefore, employers already have statutory obligations to have made calculations in relation to payment in lieu of notice, redundancy pay and in some cases, LSL, in advance of the actual termination date; and to make those payments to terminated employees prior to or at the time of termination.

4.8 Even in circumstances where an employer determines to terminate an employee on a summary basis, the timing of such dismissal still remains in the purview of the employer. In many cases, employees are stood down prior to a summary dismissal. Summary dismissals may also be contested. It is also arguable that an employee terminated as a result of a summary dismissal may, in fact, be in greater need of timely access to wages for time worked and accrued entitlements, give the absence of notice provided by the employer and the implications of summary dismissal on eligibility for Centrelink payments.

4.9 In our view, it is appropriate that the model term provide for an outer limit of 3 days (for all circumstances) in which a termination payment must be made to a terminated employee. On this issue we support, and adopt the submission of the CFMEU (Mining and Energy) (30 October 2017),³³ to the effect that *'where payment is not made upon the actual termination of employment it should be made within 72 hours of the actual termination.'*³⁴ We note that the ACTU in its submission adopts a similar view in relation to terminations, other than those terminations initiated by the employee without notice.³⁵ We make this submission without any prejudice to the position we may take in relation to the inclusion, or adaption of the model term to the TCF Award and the Dry Cleaning Award.

³³ CFMEU (Mining and Energy Division) submission (30 October 2017) – see paragraphs [6] – [9]

³⁴ Ibid; at [6]

³⁵ ACTU submission (30 October 2017) at paras [64] – [69] and Schedule 3 [Alternative] payment on termination of employment term at clauses Y.1, Y.2 and Y.3;

Section 120 – application to vary redundancy pay

4.10 The TCFUA relies on its previous submissions as outlined at 4.1 above. In summary, the TCFUA submitted that it:

- does not consider a Note regarding the potential for an employer to make an application under section 120 is necessary (as required by s.138) and its inclusion may operate to incentivise non genuine applications by employers;³⁶ and
- strongly opposed the AI Group’s submissions and proposal whereby there would be no requirement for the Commission to make an order relieving an obligation of the obligations in clause x.1(a) in the provisional model term.³⁷

4.11 The TCFUA otherwise supports and adopts the submission of the ACTU (30 October 2017).³⁸

Filed on behalf of:

Textile, Clothing and Footwear Union of Australia

(31 October 2017).

³⁶ TCFUA submission in reply (3 February 2017) at [2.26]

³⁷ TCFUA submission in reply (3 February 2107) at [2.25]

³⁸ ACTU submission at paragraphs [70] – [72]