



# REPORT

*Fair Work Act 2009*  
s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards—Payment of wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 17 JULY 2020

*4 yearly review of modern awards – common issue – payment of wages – payments on termination model term - draft variation determination – Building and Construction General On-site Award 2020.*

[1] On 16 June 2020 a Statement was issued<sup>1</sup> stating that a number of conferences would be convened in respect of the following awards:

- *Aged Care Award 2010;*
- *Building and Construction General On-site Award 2010;*
- *Business Equipment Award 2020;*<sup>2</sup>
- *Electrical, Electronic and Communications Contracting Award 2010;*
- *Graphic Arts, Printing and Publishing Award 2010;*
- *Food, Beverage and Tobacco Manufacturing Award 2010;* and
- *Manufacturing and Associated Industries and Occupations Award 2020.*

[2] A conference for the *Building and Construction General On-site Award 2010* (Building On-site Award) was held on 10 July 2020 and was attended by Ai Group, the Electrical Trades Union of Australia (also representing the Australian Manufacturing Workers' Union), the Housing Industry Association (HIA); the CFMMEU-Construction & General Division and Master Builders Australia (MBA). The transcript of the conference is available [here](#).

[3] The relevant provision in the Building On-site Award provides as follows:

31.4 When notice is given, all monies due to the employee must be paid at the time of termination of employment. Where this is not practicable, the employer will have two working days to send monies due to the employee by registered post (or where paid by EFT the monies are transferred into the employee's account).

[4] Ai Group seeks to delete clause 31.4 and replace it with the model term.

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<sup>1</sup> [2020] FWC 3157

<sup>2</sup> The *Business Equipment Award 2010* became the *Business Equipment Award 2020* effective 18 June 2020.

[5] The CFMMEU (C & G) opposes the insertion of the model term and proposes that the Building On-site Award be varied in accordance with the draft clause set out in Appendix B of its submission (see below).

#### **31.4 Payment on termination of employment**

(a) ~~If the employment of an employee terminates, the employer must pay an employee the following amounts in accordance with this clause 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 amounts described at clause 31.4(a) must be paid to the employee at the time of termination of employment, provided that where this is not practicable, the employer will have two working days to send monies due to an employee by registered post or, where the employee is paid by EFT, transfer the monies into the employee's account.~~

(c) ~~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 Commission 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 under the NES.~~

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

[6] In correspondence dated 10 July 2020, the Ai Group provided a draft determination which reflected the outcome of discussions between the parties. A copy of the draft determination is at **Attachment A**.

[7] Arising out of the conference on 10 July 2020, Ai Group and the CFMMEU (C&G) agreed to confer in an effort to reach a resolution in relation to the two draft proposals. The parties had until Friday 17 July 2020 to report back on the outcome of those discussions. The proposal is at **Attachment B**.

[8] Interested parties are to comment on the draft proposal set out at **Attachment B**. Comments are to be sent to [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au) by **4pm Friday, 24 July 2020**.

PRESIDENT

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*Hearing*

2020.  
10 July.  
by telephone.

*Appearances*

*Mr B. Ferguson* for Ai Group

*Ms Y. Abousleiman* for the Electrical Trades Union of Australia (also representing the Australian Manufacturing Workers' Union)

*Ms. L. Regan* for Housing Industry Association

*Mr. S. Maxwell* for the CFMMEU-Construction & General Division

*Ms R. Sostarko* for Master Builders Australia

## ATTACHMENT A

MA000020 [insert print number]



# DRAFT DETERMINATION

*Fair Work  
Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Building and Construction General On-site Award 2010.*

A. Further to the decision issued on [insert date]<sup>3</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Building and Construction General On-site Award 2010*<sup>4</sup> be varied by:

1. Deleting clause 31.4 and inserting in lieu:

### **31.4 Payment on termination of employment**

- (a) When notice of termination of employment is given in accordance with the terms of this award or the NES, an employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination must be paid at the time of termination of employment. Where this is not practicable, the employer will have two working days to send monies due to the employee by registered post (or where paid by EFT the monies are transferred into the employee's account).
- (b) When an employee's employment terminates without the provision of notice in accordance with this award or the NES, an employer must pay an employee their wages under this award for any complete or incomplete pay period up to the end

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<sup>3</sup> [insert citation].

<sup>4</sup> MA000020.

of the day of termination in accordance with this clause by no later than 7 days after the day on which the employee's employment terminates:

- (c) Following termination of employment an employer must pay all amounts other than wages that are due to the employee under this award or the NES (including any entitlements to redundancy pay or annual leave) within 7 days after the day on which the employee's employment terminates.
- (d) The requirement to pay wages and other amounts under paragraphs (a), (b) and (c) is subject to 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 required minimum period of notice or "has paid" to the employee payment instead of giving them notice.

Note 2: State and Territory long service leave laws or long service leave 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

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. 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 [insert date].

PRESIDENT

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## ATTACHMENT B

MA000020 [insert print number]



# DRAFT DETERMINATION

*Fair Work  
Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Payment of Wages** (AM2016/8)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE  
COMMISSIONER HUNT

SYDNEY, [INSERT DATE]

*4 yearly review of modern awards – payment of wages common issue – payment on termination – Building and Construction General On-site Award 2010.*

A. Further to the decision issued on [insert date]<sup>5</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Building and Construction General On-site Award 2010*<sup>6</sup> be varied by:

1. Deleting clause 31.4 and inserting in lieu:

### 31.4 Payment on termination of employment

(a) If the employment of an employee terminates, the employer must pay the employee the following amounts in accordance with this clause:

(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) Where notice of termination is given by an employer or employee in accordance with the terms of this award or the NES the amounts described at clause 31.4(a)(i) must be paid to the employee:

(i) on the day of termination; or

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<sup>5</sup> [insert citation].

<sup>6</sup> MA000020.

(ii) where this is not practicable the employer will have two working days to send monies due to an employee by registered post or, where the employee is paid by EFT, transfer the monies into the employee's account.

(c) The amounts described at clause 31.4(a)(ii), and where notice is not given by an employer or employee in accordance with the terms of this award or the NES the amounts described at clause 31.4(a)(i), must be paid to the employee:

(i) on the day of termination; or

(ii) forwarded by electronic funds transfer by no later than 7 days after the day on which the employee's employment terminates.

(d) The requirement to pay wages and other amounts under clause 31.4(a) is subject to 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: State and Territory long service leave laws or long service leave 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.

2. Updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [insert date]. 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 [insert date].

PRESIDENT

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