



MODERN AWARDS REVIEW 2014

PAYMENT OF WAGES (AM2016/8)

**SUBMISSION IN RELATION TO INSERTION OF
MODEL TERM IN *RESTAURANT INDUSTRY AWARD*,
HOSPITALITY INDUSTRY AWARD AND
*REGISTERED AND LICENCED CLUBS AWARD***

ABI & NSWBC

7 SEPTEMBER 2017

1. BACKGROUND

- 1.1 On 21 August 2018, the Fair Work Commission (**FWC**) issued a Statement dealing with the insertion of the model term into a number of Modern Awards, including the *Restaurant Industry Award 2010*, *Hospitality Industry Award 2010* and *Registered and Licenced Clubs Award 2010* (**the Relevant Awards**).¹
- 1.2 The Statement noted that, during the proceedings, the United Voice had raised a concern about the interaction between the model term and the existing provisions in the Relevant Awards which deal with the payment of wages to casual employees. The parties were encouraged to have discussions and attempt to reach an agreed position with respect to the insertion of the model term in the Relevant Awards.
- 1.3 Interested parties were also directed to confirm whether they oppose the variation of the remaining 22 awards to include the model term.

2. THE RELEVANT AWARDS

- 2.1 We have consulted with various parties with an interest in the Relevant Awards, namely:
- (a) the Australian Hotels Association;
 - (b) the Restaurant & Catering Industry Association;
 - (c) Clubs Australia; and
 - (d) the United Voice.
- 2.2 To address the United Voice's concern regarding the interaction between the model term and the existing casual employment provisions, we have proposed the following variation to the model term:

(a) Subject to clause (b), 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) Where a casual employee is paid at the end of each engagement pursuant to clause [XX] of this Award, and that employee's employment is terminated, the employer must pay the employee their wages due under the award at the end of their last engagement.

(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

¹ [2018] FWC 4935.

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.

2.3 The proposed term, as set out above, is supported by the Restaurant & Catering Industry Association, Clubs Australia and the Australian Hotels Association. We are hopeful that the United Voice will also support the proposed term. We understand that the United Voice will confirm its position on this issue on Monday, 10 September 2018.

3. OTHER AWARDS

3.1 We do not oppose the insertion of the model term into the remaining 22 awards to include the model term. Indeed, we intend to make application to insert the model term into most of those awards.

Yours sincerely



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