



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Annual leave

(AM2014/47)

AQUACULTURE INDUSTRY AWARD 2010

[MA000114]

Aquaculture

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT KOVACIC
COMMISSIONER HAMPTON

MELBOURNE, XX FEBRUARY 2017

4 yearly review of modern awards - annual leave common issue – close down.

A. Further to the Full Bench decision issued by the Fair Work Commission on 19 December 2016¹, the above award is varied as follows:

1. By deleting clause 23.3 and inserting the following:

23.3 Temporary close down

- (a) Clause 23.3 applies if an employer:
 - (i) intends to close down, or reduce staffing levels in, all or part of a workplace for a particular period (**temporary close down period**); and
 - (ii) wishes to require affected employees to take leave during that period.
- (b) The employer must give the affected employees one month's written notice of a temporary close down period.
- (c) The employer must give immediate written notice of a temporary close down period to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period.

¹ [\[2016\] FWCFB 9074](#); see also [\[2016\] FWCFB 6836](#).

- (d) The following applies to any affected employee during a temporary close down period:
- (i) if the employee has accrued an entitlement to sufficient paid annual leave to cover the whole of the temporary close down period, the employee must take that leave to cover the whole of the temporary close down period;
 - (ii) if the employee has accrued an entitlement to paid annual leave but the amount accrued is insufficient to cover the whole of the temporary close down period, the employee must take all the paid annual leave to which they have accrued an entitlement and also take leave without pay to cover the balance of the temporary close down period;
 - (iii) if the employee has not accrued an entitlement to any paid annual leave, the employee must take leave without pay to cover the whole of the temporary close down period.
- (e) In determining how many days leave an employee must take to cover a temporary close down period, any day during that period that is a public holiday is to be disregarded.

NOTE: Public holiday entitlements are provided for in the NES.

- (f) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause 23.2, to which an entitlement has not been accrued is to be taken into account.

B. This determination come into operation from XX February 2017. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after XX February 2017.

PRESIDENT