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1 February 2017

Justice IJK Ross, President  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

By email: [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au)

Dear Justice Ross,

**Re: AM2014/47 Annual Leave – close down provisions**

We refer to the above matter and a decision issued by a Full Bench of the Fair Work Commission (**Commission**) on 19 December 2016 ([2016] FWCFB 9074). Relevantly, the decision states:

**[25]** We also note that 17 other modern awards contain a close down provision in similar terms to clause 23.3 of the *Aquaculture Industry Award 2010*. A list of these modern awards are set out at Attachment 1. It is our *provisional* view that the close down provisions in the 18 modern awards set out in Attachment 1 should be varied in a similar manner to that proposed in respect of the *Aquaculture Industry Award 2010*. Interested parties will have until **4.00 pm on Tuesday 31 January 2017** to comment on our *provisional* view.

The Australian Industry Group has an interest in several of the 17 modern awards identified. We note that whilst the close down provisions contained in those awards are in broadly similar terms, they are not identical and may contain industry specific elements. For instance, clause 29.5 of the *Cleaning Services Award 2010* applies where “the client of an employer in the contract cleaning industry intends to temporarily close or reduce to a nucleus the establishment or a section thereof for the purposes of allowing annual leave to that client employer’s employees” (emphasis added). The Commission’s decision does not expressly deal with the manner in which such differences will be treated.

Accordingly, we consider that draft determinations giving effect to the Commission’s provisional view by setting out the precise terms of the proposed variations should be issued and interested parties should thereafter be granted an opportunity to provide comment. The Commission should, with respect, make a decision as to whether the relevant awards will be varied and if so, the specific terms of the variations, having regard to such any submissions.

Yours sincerely,

**Stephen Smith**  
Head of National Workplace Relations Policy