



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Annual leave

(AM2014/47)

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

[MA000077]

Educational services

JUSTICE ROSS, PRESIDENT
SENIOR DEPUTY PRESIDENT HARRISON
COMMISSIONER HAMPTON

MELBOURNE, XX JULY 2015

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

A. Further to the decision issued by the Fair Work Commission on 11 June 2015 [\[2015\] FWCFB 3406](#), the above award is varied as follows:

1. By inserting clause 21.4 as follows:

21.4 Annual leave in advance

- (a) An employer and employee may agree to the employee taking a period of paid annual leave in advance of the employee accruing an entitlement to such leave provided that the agreement meets the following requirements:
 - (i) it is in writing and signed by the employee and employer;
 - (ii) it states the amount of leave to be taken in advance and the date on which the leave is to commence; and
 - (iii) it is retained as an employee record.
- (b) Clause 21.4(b) applies if an employee takes a period of paid annual leave in advance pursuant to an agreement made in accordance with clause 21.4(a). If the employee's employment is terminated before they have accrued all of the entitlement to paid annual leave which they have taken then the employer may deduct an amount equal to the difference between the employee's accrued annual leave entitlement and the leave taken in advance, from any monies due to the employee on termination.

2. By inserting clause 21.5 as follows:

21.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with this clause.
- (b) An employer and an employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave provided that the following requirements are met:
 - (i) each cashing out of a particular amount of accrued paid annual leave must be by a separate agreement between the employer and the employee which must:
 - be in writing and retained as an employee record;
 - state the amount of accrued leave to be cashed out and the payment to be made to the employee;
 - state the date on which the payment is to be made, and
 - be signed by the employer and employee and, if the employee is under 18 years of age, the employees' parent or guardian;
 - (ii) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave at the time that it is cashed out;
 - (iii) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than four weeks; and
 - (iv) employees may not cash out more than two weeks' accrued annual leave in any 12 month period.

Note 1: Under s.344 of the *Fair Work Act 2009*, an employer must not exert undue influence or undue pressure on an employee to make an agreement to cash out paid annual leave under this award clause.

Note 2: Under s.345 of the *Fair Work Act 2009*, a person must not knowingly or recklessly make a false or misleading representation about an employee's workplace rights under this award clause.

B. This determination comes into operation from xx July 2015. 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 xx July 2015.

PRESIDENT