



# DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards—plain language re-drafting—standard clauses**

(AM2016/15)

### **SEAGOING INDUSTRY AWARD 2010**

[MA000122]

Maritime industry

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER HUNT

MELBOURNE, 20 AUGUST 2019

*4 yearly review of modern awards—plain language re-drafting—standard clauses—Seagoing Industry Award 2010.*

A. Further to the Full Bench decision [\[\[2019\] FWCFB 5409\]](#),<sup>1</sup> issued by the Fair Work Commission on 20 August 2019, the above award is varied as follows:

1. By deleting clause 12 and inserting the following:

### **12. Redundancy**

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119–123 of the [Act](#).

#### **12.1 Transfer to lower paid duties on redundancy**

- (a) Clause 12.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
  - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or

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<sup>1</sup> See also [\[2018\] FWCFB 7447](#), [\[2018\] FWCFB 4704](#), [\[2018\] FWCFB 4177](#), [\[2018\] FWCFB 3009](#), [\[2017\] FWCFB 5258](#), [\[2017\] FWCFB 4419](#)

- (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in paragraph (c).
- (c) If the employer acts as mentioned in paragraph (b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

## **12.2 Employee leaving during redundancy notice period**

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
  - (b) The employee is entitled to receive the benefits and payments they would have received under clause 12 or under sections 119–123 of the [Act](#) had they remained in employment until the expiry of the notice.
  - (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.
2. By updating the table of contents and cross-references accordingly.
- B. This determination comes into operation from 30 August 2019. 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 30 August 2019.

PRESIDENT