

Our ref: JEL\KZS\02 3002 0550

19 April 2018

FAIR WORK COMMISSION

AM2014/252 – AIR PILOTS AWARD 2010

Submissions on behalf of the Qantas Group

1. We refer to the decision of the Full Bench regarding the Group 4 awards, [2018] FWCFB 1548 and to the revised exposure draft of the Air Pilots Award published on 23 March 2018 (**Exposure Draft**).
2. We refer to the example included at clause 9 of the Exposure Draft. The Qantas Group confirms it agrees with the inclusion of this example.
3. The Exposure Draft does not reflect the Qantas Group's understanding of the agreed position reached between interested stakeholders regarding clause 23, Annual leave, and how excessive annual leave should be dealt with. We have included at Annexure A proposed wording for clause 23 for comment by other interested stakeholders.
4. The Qantas Group does not otherwise have any further submissions to make in respect of the matters which have been resolved by the Fair Work Commission, as reflected in the Exposure Draft.
5. In the event other interested parties seek to advance further submissions or request a hearing, the Qantas Group will make further submissions at the appropriate time.

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ANNEXURE A**Clause 23 – Annual leave**

1. Include a new clause 23.5 as shown below:

23.5 Excessive Annual Leave Accruals

This clause contains provisions additional to the NES about taking paid annual leave, to deal with excessive paid annual leave accruals.

23.5.1 Definitions

An employee has an **excessive leave accrual** if the employee has accrued more than 84 days of annual leave (including Saturdays, Sundays and public holidays).

23.5.2 Eliminating excessive leave accruals**(a) Dealing with excessive leave accruals by agreement**

Before an employer can direct that leave be taken under subclause 23.5.2(b) or an employee can give notice of leave to be granted under subclause 23.5.2(c), the employer or employee must seek to confer and must genuinely try to agree upon steps that will be taken to reduce or eliminate the employee's excessive leave accrual.

(b) Employer may direct that leave be taken

- (i) This subclause applies if an employee has an excessive leave accrual.
- (ii) If agreement is not reached under subclause 18.5.2(a), the employer may give a written direction to the employee to take a period or periods of paid annual leave. Such a direction must not:
 - (A) result in the employee's remaining accrued entitlement to paid annual leave at any time being less than 63 days (inclusive of Saturdays, Sundays and public holidays and also taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has given notice of under subclause 23.5.2(c));
 - (B) require the employee to take any period of leave of less than one week;
 - (C) require the employee to take any period of leave commencing less than eight weeks after the day the direction is given to the employee;
 - (D) require the employee to take any period of leave commencing more than 12 months after the day the direction is given to the employee; or
 - (E) be inconsistent with any leave arrangement agreed between the employer and employee.

- (iii) An employee to whom a direction has been given under this subclause may make a request to take paid annual leave as if the direction had not been given.

Note: The NES state that the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

- (iv) If leave is agreed after a direction is issued and the direction would then result in the employee's remaining accrued entitlement to paid annual leave at any time being less than 63 days inclusive of Saturdays, Sundays and public holidays, the direction will be deemed to have been withdrawn.
- (v) The employee must take paid annual leave in accordance with a direction complying with this subclause.

(c) Employee may require that leave be granted

- (i) This subclause applies if an employee has had an excessive leave accrual for more than six months and the employer has not given a direction under subclause 23.5.2(b) that will eliminate the employee's excessive leave accrual.
- (ii) If agreement is not reached under subclause 23.5.2(a), the employee may give a written notice to the employer that the employee wishes to take a period or periods of paid annual leave. Such a notice must not:
 - (A) result in the employee's remaining accrued entitlement to paid annual leave at any time being less than 63 days (inclusive of Saturdays, Sundays and public holidays and also taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has given notice of under this subclause);
 - (B) provide for the employee to take any period of leave of less than one week;
 - (C) provide for the employee to take any period of leave commencing less than eight weeks after the day the notice is given to the employer;
 - (D) provide for the employee to take any period of leave commencing more than 12 months after the day the notice is given to the employer; or
 - (E) be inconsistent with any leave arrangement agreed between the employer and employee.
- (iii) The maximum amount of leave that an employee can give notice of under this subclause is 42 days' leave in any 12 month period.
- (iv) The employer must grant the employee paid annual leave in accordance with a notice complying with this subclause.

2. Renumber current clause 23.5 and following accordingly and update cross-references to reflect this.
3. Amend current clause 23.4 as shown below:

23.4 **When annual leave can be taken**

(a) A period of leave will commence on a Monday unless otherwise mutually agreed.

(b) Normally, annual leave will be granted and will be taken within 12 months from the date on which it falls due or alternatively 15 months from the date of commencement of the preceding period of leave.

(c) Annual leave will be allocated in no more than two periods unless otherwise mutually agreed between the employee and the employer.

(d) ~~Annual~~ [Subject to clause 23.5, annual](#) leave must be taken at a time mutually agreed between the employee and employer.