

**FAIR WORK COMMISSION**

***Four yearly review of modern awards – Annual leave  
AM2014/47***

**Submissions - Coal Mining Industry Employer Group  
Annual leave shutdown clause – *Black Coal Mining Industry Award 2010***

1. These submissions are made on behalf of the Coal Mining Industry Employer Group (**CMIEG**) in accordance with the Directions issued by Justice Ross on 4 August 2017.
2. The Directions provide that the interested parties are directed to consider the revised draft clause 25.10 of the Black Coal Mining Industry Award 2010 (**BCMI Award**) attached to the directions as "Attachment A".
3. At the outset, the CMIEG confirms that, as set out in its submissions of 11 and 26 April 2017,<sup>1</sup> and 18 May 2017,<sup>2</sup> it supports the insertion of a revised shutdown clause. For clarity, the text of the revised shutdown clause, as amended, that is supported by the CMIEG is set out in **Annexure A** of these submissions. That clause is based on the clause in Attachment A to the directions issued on 4 August 2017, with certain amendments.
4. The CMIEG refers to and relies, in particular, upon its submissions of 26 April 2017. These submissions should be read together with those submissions.

**Issues for consideration by the Full Bench**

5. The CMIEG understands that the interested union parties, namely the CFMEU, APESMA and AMWU, each oppose any shutdown clause that:
  - (a) provides an ability for an employer to direct the taking of paid annual leave (*the **Directed Leave issue***); and
  - (b) that has, as its consequence, an employee being unpaid for any part of a period of a shutdown where the employee is not either on a form of paid leave or has not voluntary taken leave without pay (*the **Leave Without Pay issue***).
6. Each of the *Directed Leave* and *Leave Without Pay* issues are addressed in the submissions below.
7. In short, the CMIEG supports an amended shutdown clause that provides, as its features, that for a period of a shutdown:

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<sup>1</sup> [CMIEG submissions dated 11 April 2017](#); [CMIEG submissions dated 26 April 2017](#)

<sup>2</sup> [CMIEG submissions dated 18 May 2017](#)

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- (a) an employee may elect to take accrued annual leave, annual leave in advance, or leave without pay, to cover the period of the shutdown;
- (b) an employee who does not make an election to take one of the aforementioned forms of leave, may be required or directed to take a relevant amount of accrued paid annual leave for the whole or a part of the shutdown; and
- (c) an employee who does not take paid annual leave, or has not elected to take unpaid leave, for the whole or a part of the shutdown, will be on leave without pay for the relevant period.

Those features are included in the clause set out in Annexure A.

8. In summary, the CMIEG submits:

- (a) a revised shutdown clause that provides for an ability of an employer to direct or require the taking of paid annual leave, and that provides for employees who are not taking paid annual leave to be placed on leave without pay, will meet the modern awards objective in section 134 of the *Fair Work Act 2009* (Cth) (**FW Act**), namely, because such a clause would provide a fair and relevant safety net, would be simple and easy to understand, and would ensure the clause will operate in a practical way;
- (b) a varied clause in the form of Annexure A is permissible to be inserted into the BCMI Award under section 156(1), and would be compliant with sections 93(3), 139(1)(h) and 55(4) of the FW Act; and
- (c) such a clause would be consistent with shutdown provisions in other modern awards, legislative regimes for annual leave, and enterprise agreements in the black coal mining industry, as well as historical awards that have operated in the black coal mining industry.

### **History of proceedings AM2014/47 in respect of the BCMI Award**

- 9. It is relevant to briefly consider the history of the present proceedings concerning clause 25 – "Annual leave" in the BCMI Award. That history, as it relates to the "shutdown issue" in the BCMI Award is set out in some detail in the *March 2017 decision* ([2017] FWCFB 959) at [6] – [12], and it is accordingly not necessary to set the entirety of that history again here.
- 10. Relevant to that history, however, is the origin of the "common issue" on annual leave as part of the four yearly review. The present proceedings were effectively initiated by applications of certain employer groups, namely the AiGroup, ACCI and a number of other employer associations, seeking a common "close-down" clause to be inserted into 65 modern awards. Critically, the application did not seek any variation to the BCMI Award,<sup>3</sup> because the BCMI Award already included a shutdown clause. Accordingly, the CMIEG and did not play a role in that aspect of the proceedings.<sup>4</sup>

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<sup>3</sup> See [AiGroup correspondence dated 21 May 2014](#) (Schedules 4 and 5 – which do not refer to the BCMI Award); see also Attachment G to the *June 2015 decision*

<sup>4</sup> It is noted that the CMIEG made a brief submission in support of terms on cashing out and EFT, but that there was not a need to otherwise amend the annual leave clause in the BCMI Award. See [CMIEG submission dated 9 July 2014](#)

11. The claim for a common close down clause was rejected in the *June 2015 decision* ([2015] FWCFB 3406). It was noted by the Full Bench that close-down provisions warrant consideration on an award-by-award basis.<sup>5</sup>
12. Another aspect of the claims of the employer groups was the insertion of a common term concerning excessive annual leave. Following the *June 2015 decision*, the Full Bench determined to delete clause 25.4 of the BCMI Award in its entirety, and to insert the revised excessive annual leave model term (*September 2016 decision* ([2016] FWCFB 6836 at [84])). Clause 25.4 had provided the ability for an employer to direct employees to take leave upon 28 days' notice.
13. As a consequence of that determination, and as had been earlier foreshadowed, the CMIEG then sought an amendment to the shutdown clause of the BCMI Award (clause 25.10), because the deletion of clause 25.4 had left unclear the ability of an employer to require or direct the taking of paid annual leave during a period of a shutdown.<sup>6</sup>
14. Subsequent to the application by the CMIEG and having invited submissions from the interested parties, in its *March 2017 decision* ([2017] FWCFB 959) the Full Bench reached the provisional view that a revised shutdown clause should be included in the BCMI Award (at [34]-[38]). The provisional shutdown clause provided:

25.10 Shutdown

- (a) Clause 25.10 applies if an employer intends to shutdown all or part of its operation for a particular period (temporary shutdown period); and 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 shutdown period.
- (c) The employer must give immediate written notice of a temporary shutdown period to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period.
- (d) The following applies to any affected employee during a temporary shutdown period:
  - (i) if the employee has accrued an entitlement to paid annual leave the employee may elect to take some or all of the leave during the temporary shutdown period and may also elect to take unpaid leave to cover any part of the temporary shutdown period;
  - (ii) if the employee does not elect to take paid annual leave or unpaid leave to cover the whole of the temporary shutdown period, then the employer may direct the employee to take a period of accrued paid annual leave or unpaid leave to cover the whole of the temporary shutdown period;
  - (iii) if the employee has not accrued an entitlement to any paid annual leave, the employer may direct the employee to take leave without pay to cover the whole of the temporary shutdown period.
- (e) A direction by the employer under clause 25.10(d)(ii):
  - (i) must be in writing; and
  - (ii) must be reasonable.
- (f) The employee must take paid annual leave or unpaid annual leave in accordance with a direction under clause 25.10(d)(ii)
- (g) 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

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<sup>5</sup> [2015] FWCFB 3406 at [374]

<sup>6</sup> [CMIEG Submission dated 21 October 2016](#); [CMIEG Submissions dated 31 January 2017](#)

accordance with an agreement under clause 25.9, to which an entitlement has not been accrued is to be taken into account.

- (h) When an employer shuts down all or part of its operation under this provision, clauses 25.4 to 25.6 do not apply to employees directly affected by the shutdown and this clause will apply.

15. The provisional shutdown clause expressly provided the ability of an employer to direct the taking of paid annual leave (25.10(d)(ii)) and required that such a direction "must be reasonable" (25.10(f)); and also provided that employees be placed on leave without pay if they had insufficient accrued paid annual leave to cover the whole of the shutdown period (25.10(d)(iii)).

16. In the *March 2017 decision*, the Full Bench stated (at [31]-[32]):

[31] In our view, the terms of clause 25.10, when considered in the context of the Black Coal Award as varied, means that in the event of a shutdown, where the employer had given notice, employees could take all or part of their annual leave entitlement, or if there is not a sufficient entitlement to cover the shutdown period they could (by agreement with the employer) take leave in advance under clause 25.9. However there does not appear to be any capacity for the employer to direct that annual leave be taken during the shutdown and no capacity for employees to be placed on leave without pay – save that notice to take annual leave could be given by the employer in circumstances where the requirements of the model excessive leave provision have been met.

[32] There is significant potential for uncertainty and inconsistency arising from the present provisions in the context of the model annual leave terms. While there is capacity for some flexibility through the pursuit of enterprise agreements, the shutdown clause should be clear and serve its evident purpose. For this reason, and having regard to how the shutdown clause operated prior to the impending insertion of the model excessive leave provision, we consider that there is some merit in the proposal now advanced by the CMIEG.

(citations omitted, emphasis added)

17. The provisional shutdown clause was supported (with a minor amendment) by the CMIEG<sup>7</sup> but was opposed by the CFMEU,<sup>8</sup> AMWU<sup>9</sup> and APESMA.<sup>10</sup>

18. Arising from a brief hearing on 5 May 2016 concerning the proposed provisional shutdown clause, an alternate clause was subsequently proposed by the CMIEG<sup>11</sup> in an attempt to reach a consent position between the interested parties, however this proposed clause was opposed by the CFMEU and APESMA.<sup>12</sup> The CMIEG then confirmed its support for the provisional shutdown clause in the *March 2017 decision* (as amended).<sup>13</sup>

19. The positions of the parties remains as they stood at (or immediately) prior to the hearing on 5 May 2017. Those positions were confirmed at a directions hearing of the interested parties on 4 August 2017.

20. Subsequent to that directions hearing the Full Bench issued the revised provisional shutdown clause set out as "Attachment A" to the directions issued on 4 August 2017.

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<sup>7</sup> [CMIEG submission dated 11 April 2017](#)

<sup>8</sup> [CFMEU submission dated 11 April 2017](#)

<sup>9</sup> [AMWU submission dated 11 April 2017 \(as revised on 13 April 2017\)](#)

<sup>10</sup> [APESMA submission dated 26 April 2017](#)

<sup>11</sup> [CMIEG correspondence dated 12 May 2017](#)

<sup>12</sup> [APESMA and CFMEU correspondence dated 15 May 2017](#)

<sup>13</sup> [CMIEG submission dated 18 May 2017](#)

That revised provisional shutdown clause provides an ability for an employer to direct the taking of paid annual leave (25.10(d)(ii)) and similarly required that such a direction "must be reasonable" (25.10(f)); however the previous clause 25.10(d)(iii) dealing with employees with insufficient leave was omitted in the revised provisional clause.

21. As may be seen in the text of the clause supported by the CMIEG at Annexure A to these submissions, the CMIEG supports the include of clause 25.10(d)(iii) in an amended shutdown clause for inserted into the BCMI Award.

### **Predecessor awards shutdown clauses in the black coal mining industry**

22. The historical context of each modern award is relevant to the contested Directed Leave and Leave Without Pay issues in the present proceedings.<sup>14</sup> In the *2008 Award Modernisation decision* ([2008] AIRCFB 1000) the Full Bench there stated as follows in respect of annual leave shut-down provisions:

[97] The provisions in awards and NAPSAs governing annual close-downs vary significantly. It is preferable that we do not alter provisions which have been specifically developed for particular industries. We have adopted the approach of attempting to identify an industry standard in each case. This means there may be some variation in the close-down provisions.

23. The terms of the present clause 25.10 reflect, in large part, the terms in the Federal awards applying the black coal mining industry immediate prior to the making of the BCMI Award. Shutdown clauses were included in *The Coal Mining Industry (Production and Engineering) Consolidated Award 1997* (AP774609) (**1997 P&E Award**) (clause 29.11),<sup>15</sup> the *Coal Mining Industry (Staff) Award 2004* (AP835164) (**2004 Staff Award**) (clause 26.11), and *The Coal Mining Industry Award (Deputies and Shotfirers), 2002* (AP813783) (**2002 Deputies Award**) (clause 17(k)).
24. Set out in **Annexure B** to these submissions is the text of the predecessor provisions in those pre-modernisation Federal awards, relevant reference NAPSAs (taken into account in making the BCMI Award) and also the terms of historical Federal awards made by the Coal Industry Tribunal.
25. It may be seen from those pre-modernisation Federal awards that:
- (a) the ability of an employer to direct the taking of annual leave was expressly provided for, upon 28 days/four weeks' notice (1997 P&E Award, clause 29.3.1; 2004 Staff Award, clause 26.3.2);
  - (b) shutdowns were expressly provided for (1997 P&E Award, clause 29.11; 2004 Staff Award, clause 17(k); 2004 Deputies Award, clause 26.11); and
  - (c) for employees who did not have sufficient leave for the period of the shutdown, leave was to be taken on a proportionate basis (1997 P&E Award, clause 29.11.3 and 29.9; 2004 Staff Award, clause 17(k); 2004 Deputies Award, clause 26.11.3 and 26.9)

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<sup>14</sup> *Preliminary Jurisdictional Issues Decision* [2014] FWCFB 1788; 241 IR 189 at [24] and [60](Item 3)

<sup>15</sup> Noting clause 29.3.3 also provided the ability of an employer to direct the taking of leave

26. It is, accordingly, clear that the ability to direct the taking on annual leave during a shutdown was a feature of such clauses. That position was, of course, reflected in the combined operation of clauses 25.4(c)<sup>16</sup> and 25.10 in the BCMI Award.
27. Each of the clauses also provided for "proportionate leave" for employees with an insufficient amount of leave to cover the period of the shutdown. The necessary consequence of employees taking proportionate leave is that such employees will have a period of the shutdown for which they will have no paid leave, and would be on leave without pay. It may be accepted that the clauses do not expressly state this consequence, however it follows when regard is had to the history of the development of these clauses, and also the manner in which they have operated in practice in the industry.<sup>17</sup>
28. The annual leave clauses in the Federal awards in the black coal mining industry have a substantial history. The pre-modernisation Federal awards have their antecedence in decisions of the Coal Industry Tribunal, most notably the decision in 1988 granting a claim by employers for production to be permitted during 52 weeks of the year and correspondingly providing a grant of additional annual leave.<sup>18</sup> The text of the relevant clause in the *Coal Mining Industry (Miners) Award, 1982, Queensland* and *Coal Mining Industry (Engine Drivers & Firemen's) Award, 1982, Queensland* are set out in Annexure B to these submissions.
29. Prior to that time, since the granting of annual leave provisions in black coal mining awards commencing in 1938 by the Commonwealth Court of Conciliation and Arbitration,<sup>19</sup> for the period through to 1988, annual leave was only permitted under award provisions to be taken during a "time to be fixed by the management". In practice, this was for periods of shutdowns which were arranged for at Christmas, Easter and in August/September.<sup>20</sup>
30. It was, accordingly, completely common place that employees would be directed to take annual leave by an employer during a "shutdown" because this was the only time at which leave was permissible to be taken under the terms of the relevant awards. It may be also be accepted that as operations were, until 1988, not permissible to be conducted during the entirety of the year that employees would be put onto paid leave (either for the whole of the period or proportionate part of the period of the shutdown).

### **The practice of shutdowns in the black coal mining industry**

31. The Commission may also have regard to the manner in which shutdown clauses have operated in the black coal mining industry. In that regard, a survey has been conducted of

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<sup>16</sup> As it presently stands, noting that in the *September 2016 decision* the Full Bench has determined to remove clause 25.2 in its entirety

<sup>17</sup> See the Statement of David Gunzburg dated 11 September 2017 (dealt with in further detail below)

<sup>18</sup> [The Australasian Coal and Shale Employees Federation and Queensland Coal Association \[1988\] ACIndT 4076](#) and see also [Federated Engine Drivers & Firemen's Association of Australasia and Queensland Coal Association \[1988\] ACIndT 4080](#)

<sup>19</sup> See *The Australasian Coal and Shale Employees Federation and Ors v J&A Brown and Abermain Seaham Collieries Ltd and Ors* [1938] 40 CAR 367 at 386-9 per Drake-Brockman J; and subsequent decisions making the Miners' Award ([1939] 40 CAR 411 (29 June 1939); Engine Drivers' and Firemen's Award ([1939] 40 CAR 437, 29 June 1939); and Mechanics' Award ([1939] 40 CAR 448, 29 June 1939)

<sup>20</sup> See [The Australian Coal and Shale Employees' Federation and others and the New South Wales Combined Colliery Proprietors' Association and others \[1968\] ACIndT 1888 \(29 August 1968\)](#) and [The Australian Coal and Shale Employees' Federation and the Queensland Coal Owners' Association \[1968\] ACIndT 1903 \(21 October 1968\)](#); and prior to that [The Australian Coal and Shale Employees' Federation; the Federated Engine Drivers' and Firemen's Association of Australasia and NSW Combined Colliery Proprietors' Association \[1963\] ACIndT 1604 \(4 December 1963\)](#); and [The Australasian Coal and Shale Employees' Federation and J & A Brown and Abermain Seaham Collieries Limited \[1947\] ACIndT 426 \(2 June 1947\)](#)

the company groups that participate in the CMIEG, in respect of annual leave shutdowns (see Statement of David Gunzburg dated 11 September 2017 (**Gunzburg Statement**)).

32. The results of that survey are from nine company groups representing major operators in the black coal mining industry in New South Wales and Queensland, which collectively operate 55 mines employing approximately 28,000 workers (Gunzburg Statement at [10]).
33. The results of the survey demonstrate the following:
- (a) Since 2010, seven of the nine company groups have had occasion to utilise annual leave shutdowns.
  - (b) None of the company groups have adopted any change in approach to annual leave shutdowns due to the introduction of the BCMI Award.
  - (c) Annual leave shutdowns have been utilised for a variety of reasons by the company groups, including for the purpose of managing annual leave balances/provisioning; as a result of market or economic considerations; due to stockpiles reaching or nearing full capacity; as an alternative to standing-down employees; for the purpose of undertaking maintenance shutdowns (eg. for major repairs and overhauls) and also because of successive public holidays or peak requests for annual leave.
  - (d) The company groups have implemented shutdowns in a variety of ways, such as across the whole of an operation (five respondents) and part of the operation (four respondents), correspondingly affecting the whole of the workforce at the operation (five respondents) or only part (four respondents).
  - (e) For employees who could not be usefully employed and who were not on a form of leave, employees were on unpaid leave (three respondents) they were eventually found work to perform in non-standard duties (one respondent), and for two of the respondents the issue had never arisen as a form of paid leave was able to be taken (including utilising annual leave in advance or employees performing swapped shifts and work days in advance (ie. accruing TOIL to cover the period)).
  - (f) There has been no reported disputation over annual leave shutdown from any of the respondents.

(Gunzburg Statement, Annexure DG-2).

34. While it may be accepted that employees of each of the company groups who responded to the survey have enterprise agreements that cover certain employees, because the shutdowns are being undertaken across the whole of operations there will also be employees to whom the BCMI Award applies who are affected by such shutdowns.
35. The results of the survey demonstrate that shutdowns remain a feature of the black coal mining industry, are taken for a variety of circumstances,<sup>21</sup> and that where they are implemented employees take paid annual leave for the period of the shutdown or unpaid leave. The proposed shutdown clause supported by the CMIEG (in Annexure A) would reflect this practice in the industry.

### **Proposed shutdown clause is permissible under the FW Act**

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<sup>21</sup> Noting those circumstances reflect the ones set out in submissions previously made by the CMIEG (See [CMIEG submissions dated 26 April 2017](#) at [18]-[22])

36. The Commission is clearly able to make the proposed shutdown clause (as amended) that is supported by the CMIEG under the provisions of the FW Act. The Commission is clearly empowered to make variations under section 156(2) of the FW Act (*Preliminary Jurisdictional Issues decision*).<sup>22</sup>

Requirement must be reasonable (section 93(3))

37. Further, annual leave shut down provisions may be included in modern awards and enterprise agreements pursuant to section 93(3) of the FW Act, which provides:

*Terms about requirements to take paid annual leave*

(3) A modern award or enterprise agreement may include terms requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable.

38. The proposed shutdown clause in Annexure A provides the following proposed paragraph:

- (e) A direction by the employer to take paid annual leave under clause 25.10(d)(ii):
- (i) must be in writing; and
  - (ii) must be reasonable

39. In the *March 2017 decision* the Full Bench expressed the view that such a paragraph would not be inconsistent with section 93(3) of the FW Act (at [25]-[39]). At [38] the Full Bench stated:

In that light, our provisional view is that there are two means by which a shutdown term may be framed such as to ensure compliance with s.93(3). Such a term may either include a range of procedural and substantive safeguards (eg as is the case with the excessive leave model term), or it may simply require that any direction to take leave be reasonable. As is evident from the provisional shutdown term set out above (at [35]), our provisional view is that the latter approach is preferable. It recognises that shutdown terms have been a feature of award regulation for a long time and it results in a term which is simple and easy to understand.

(emphasis added)

40. The inclusion of such a term makes clear, on the face of the clause, that a direction to take paid annual leave "must be reasonable". Further, the circumstances in which a shutdown clause is invoked places an inherent limitation on their use, that is, where the employer "*intends to shutdown all or part of its operation for a particular period*" (clause 25.10(a)).

41. Such a clause may be distinguished from the previous terms of clause 25.4(c) that provided that the employer "may direct an employee to take all or part of an annual leave entitlement provided at least 28 days' notice in writing is given to the employee." In the *September 2016 decision* ([2016] FWCFB 6836) the Full Bench determined (at [76]) that:

An award term whereby an employee can be directed to take all or part of their accrued paid annual leave on the provision of 28 days' notice in writing without other considerations and requirements is not 'reasonable' within the meaning of s.93(3).

As was noted by the Full Bench in the *March 2017 decision* (at [35]):

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<sup>22</sup> [\[2014\] FWCFB 1788](#) at [60]



42. It is trite that requiring employees to take annual leave for a period of a shutdown is reasonable. In that regard, the circumstance of a shutdown is included in the "Note" to section 94(5), as an example of an instance in which an employer requiring an award/agreement free employee to take a period of paid leave would be reasonable.

Permissible terms (sections 93(4), 139(1)(h), 55(4) and 142(1))

43. The features of the proposed shutdown clause set out in Annexure A are also permissible pursuant to section 93(4), 139(1)(h), 142 and/or 55(4) or of the FW Act.

44. Section 93(4) provides:

A modern award or enterprise agreement may include terms otherwise dealing with the taking of paid annual leave.

Section 139(1)(h) provides for modern awards to include terms about:

- (h) leave, leave loading and arrangements for taking leave;

It is clear that a shutdown clause dealing with a requirement to take leave would be a matter about "taking of paid leave", "leave" and/or "arrangements for taking leave".

45. Other aspects of the proposed shutdown clause in Annexure A are similarly capable of being considered terms about "leave" or "arrangements for taking leave", or are incidental to such matters and therefore permissible under sections 142 and/or 55(4).

46. In particular, a term providing for employees who have insufficient leave to be on leave without pay is similarly capable of coming within section 139(1)(h) as a matter concerning "leave". To the extent there may be any doubt about that, such a clause is an "incidental" term within the meaning of section 55(4) and 142(1).

47. Section 142 of the FW Act provides that a modern award may include terms that are:

- (a) incidental to a term that is permitted or required to be in the modern award;

In addition, section 55(4) of the FW Act permits a modern award to include:

- (a) terms that are ancillary or incidental to the operation of an entitlement of an employee under the National Employment Standards;
- (b) terms that supplement the National Employment Standards;

The proposed shutdown clause clearly comes within the description of these provisions.<sup>23</sup>

48. Section 142(1) was considered during the Two Year Review of Modern Awards<sup>24</sup> with respect to apprentices, trainees and juniors. In its decision, the Full Bench observed the following (emphasis added):

[101] We should, however, say something about s.142(1), which allows terms to be included in an award that are incidental to a term that is permitted or required to be in an award and which is essential to make the particular term operate in a practical way. The terms of this section are to be contrasted with s.89A(6) of the WR Act. That section provided that the AIRC "may include in an award provisions that are incidental to the matters in subsection (2) and

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<sup>23</sup> See the *June 2015 Decision* [2015] FWCFB 3406 at [350]; see also the AMWU submissions dated 11 April 2017 at [12], [28]-[30] where this is conceded

<sup>24</sup> *Modern Awards Review 2012 – Apprentices, Trainees and Juniors* [2013] FWCFB 5411 at [101]; *Consultation Clause in Modern Awards* [2013] FWCFB 10165 (Ross J, Watson SDP, Wilson C) at [86], [88]

necessary for the effective operation of the award". We agree with the submission of the employers that s.142(1) provides only a relatively narrow basis for the inclusion of award terms. It is not in itself an additional power for the inclusion of any terms that cannot be appropriately linked back to a term that is permitted by s.139(1). **The use of the word "essential" suggests that the term needs to be "absolutely indispensable or necessary" for the permitted term to operate in a practical way.** The wording of the section suggests that it provides a more limited power to include terms than that of its earlier counterpart in s.89A(6).

(emphasis added)

49. The following may be said about the nature of term providing employees with insufficient leave to be on leave without pay during a shutdown. Simply stated, such a clause is "necessary" for the clause to operate practically, for the following reasons.
50. *First*, it may be accepted that the policy reasons underpinning annual leave shutdown provisions are two-fold. For employees, a shutdown permits the taking of a break from work which is indisputably beneficial to employees and their families by providing them rest and recreation, and will have other benefits for work health and safety and morale.<sup>25</sup> That annual leave shutdowns are traditionally arranged for the Christmas/New Year and Easter period (although not exclusively) also has a benefit for employees to participate in these holiday seasons with family and friends. For employers, there is an obvious benefit in dealing with annual leave provisioning, however there may be a range of other financial or operational benefits, as has been referred to previously by the CMIEG.<sup>26</sup>
51. The benefits for both employers and employees would be rendered nugatory if the clause does not provide for, first, an ability to direct or require the taking of paid annual leave, and, second, employees who have insufficient paid annual leave
52. If the shutdown clause does not include these features, an ability of the employer to shutdown its operations is unlikely to be able to be practically achieved. Put simply, in the absence of such provisions in a shutdown clause, it might reasonably be expected that employees simply would not choose to take paid annual leave (or elect to take unpaid leave) where they could expect to continue receive pay regardless if the employer shutdown its operations and they did not voluntarily elect to take the options. The employer would, accordingly be required to either provide some form of work, which may well be of little value to either party where operations are ceased, or permit the employee to not attend at the workplace and continue to receive pay. If a clause was to operate in that way, it would reasonably be expected that the purpose of the shutdown would be defeated, and would simply not be utilised by employers.
53. It may be added that, to the extent the union parties contend that this is the way in which the current clause 25.10 is, both, properly construed and operates in practice (which is denied, and does not accord with the evidence submitted by the CMIEG), that construction is absurd, and such an operation is without foundation or evidence.<sup>27</sup>
54. *Second*, it is apparent that the Commission has, at least historically, proceeded on the basis that inclusion of terms in modern awards dealing with "leave without pay" / "unpaid leave" are permissible. By way of example, the Commission has made a significant number of modern awards containing annual leave shutdown clauses that provide for

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<sup>25</sup> See *June 2015 decision* [2015] FWCFB 3406 at [66]-[69] (citing submissions), [117]ff, [138(iii)], [215], [358]

<sup>26</sup> See [CMIEG submissions dated 26 April 2017](#) at [18]-[22], and the various circumstances set out

<sup>27</sup> See Gunzburg Statement (see paragraph [33] above)

unpaid leave.<sup>28</sup> It may be accepted that, prima facie, those modern awards met the modern awards objective at the time they were made.<sup>29</sup>

55. Further, a majority of a Full Bench have come to a provisional view that unpaid family and domestic violence leave ought to be provided for in modern awards.<sup>30</sup> This would appear to proceed on the same basis of the implicit acceptance that paid domestic violence leave was permissible to be included in modern awards, because they were matters under section 139(1)(h) concerning "leave".<sup>31</sup>

### Modern awards objective

56. Pursuant to sections 134 and 138(1) of the FW Act, it is necessary to make the amendment to clause 25.10 to meet the modern award awards objective.
57. While the Commission may, of course, proceed on the basis that *prima facie* that clause 25 of the BCMI Award achieved the modern awards objective at the time that it was made,<sup>32</sup> a fundamental feature of the clause has now been (or has been decided to be) changed, namely the deletion of clause 25.4 providing for the ability of an employer to direct the taking of annual leave on 28 days' notice. That may be considered to be a "significant change in circumstances" warranting a variation to be made to a modern award (*Restaurant and Catering Association of Victoria* (2014) 243 IR 132; [2014] FWCFB 1996 at [90]).
58. Further, as has been set out above, the history of the shutdown clause and its operation in the BCMI Award is a relevant consideration in respect of the contested issues. As confirmed recently by the Full Court of the Federal Court in *Construction, Forestry, Mining and Energy Union v Anglo American Metallurgical Coal Pty Ltd* [2017] FCAFC 123, however, the task of the Commission is to consider whether the proposed term (rather than the current term) meets the modern awards objective. As stated by the Full Court:

[28] The terms of s 156(2)(a) require the Commission to review all modern awards every four years. That is the task upon which the Commission was engaged. The statutory task is, in this context, not limited to focusing upon any posited variation as necessary to achieve the modern awards objective, as it is under s 157(1)(a). Rather, it is a review of the modern award as a whole. The review is at large, to ensure that the modern awards objective is being met: that the award, together with the National Employment Standards, provides a fair and relevant minimum safety net of terms and conditions. This is to be achieved by s 138 – terms may and must be included only to the extent necessary to achieve such an objective.

[29] Viewing the statutory task in this way reveals that it is not necessary for the Commission to conclude that the award, or a term of it as it currently stands, does not meet the modern award objective. Rather, it is necessary for the Commission to review the award and, by reference to the matters in s 134(1) and any other consideration consistent with the purpose of the objective, come to an evaluative judgment about the objective and what terms should be included only to the extent necessary to achieve the objective of a fair and relevant minimum safety net.

...

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<sup>28</sup> Also see further paragraph [61] and Annexure A concerning annual leave shutdown clauses containing unpaid leave

<sup>29</sup> *Preliminary Jurisdictional Issues* decision ([\[2014\] FWCFB 1788](#)) at [24]

<sup>30</sup> [2017] FWCFB 3494 at [116]-[119] (Gooley DP and Spencer C)

<sup>31</sup> [2015] FWCFB 5585 (Hatcher VP, Acton SDP and Spencer C) at [19], [21], [26]

<sup>32</sup> *Preliminary Jurisdictional Issues* decision ([\[2014\] FWCFB 1788](#)) at [24]

[46] ...the task [of the Commission] was not to address a jurisdictional fact about the need for change, but to review the award and evaluate whether the posited terms with a variation met the [modern awards] objective.

(emphasis added)

59. In assessing whether a proposed clause meets the modern awards objective, it is of course, not necessary to make a finding that a modern award fails to satisfy one or more of the section 134 considerations before an award may be varied in the Review. As the Full Court of the Federal Court said in *National Retail Association v Fair Work Commission* [2014] FCAFC 118; 225 FCR 154:

[109] It is apparent from the terms of s 134(1) that the factors listed in (a) to (h) are broad considerations which the FWC must take into account in considering whether a modern award meets the objective set by s 134(1), that is to say, whether it provides a fair and relevant minimum safety net of terms and conditions. The listed factors do not, in themselves, however, pose any questions or set any standard against which a modern award could be evaluated. Many of them are broad social objectives. What, for example, was the finding called for in relation to the first factor ("relative living standards and the needs of the low paid")? Furthermore, it was common ground that some of the factors were inapplicable to the SDA's claim.

[110] The relevant finding the FWC is called upon to make is that the modern award either achieves or does not achieve the modern awards objective. The NRA's contention that it was necessary for the FWC to have made a finding that the Retail Award failed to satisfy at least one of the s 134(1) factors must be rejected.

(emphasis added)

60. The relevant aspects of the modern awards objective in respect of the proposed shutdown clause are dealt with below.

**(A) Fair and relevant safety net**

61. The chapeau of section 134 of the FW Act provides:

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions...

62. In assessing whether the proposed shutdown clause provides a fair and relevant minimum safety net, it is submitted that the Commission may have regard to the terms of other modern awards, legislative provisions providing for annual leave (both in the FW Act and also in State and Territory regimes) as well as in enterprise agreements in the black coal mining industry.

63. *First*, while it is accepted that the Commission has determined that annual leave shutdown clauses ought to be considered on an award-by-award basis, it is submitted that in considering what constitutes a "fair and relevant safety net" suited to contemporary circumstances.<sup>33</sup>, that it may also be appropriate for the Commission to consider the terms of other modern awards in similar or related industries to the black coal industry, and across other modern awards more generally. (It may also be relevant for the purpose of considering the simplification and standardisation language across modern awards and make them simpler to understand.<sup>34</sup>)

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<sup>33</sup> Section 134(1); *Penalty Rates* decision [2017] FWCFB 1001 at [37]

<sup>34</sup> (2015) FWCFB 4658 at [6]

64. It is apparent from the summary of shutdown clauses contained in other modern awards, as set out in **Annexure C** to these submissions, that directing or requiring employees to taking leave, and placing employees onto leave without pay leave are completely orthodox in shutdown clauses.<sup>35</sup> Of the 81 modern awards that include shutdown clauses, 76 of them include an ability by an employer to direct the taking of annual leave during the period of the shutdown; and 43 provide for employees to be on unpaid leave or leave without pay if they do not have a sufficient entitlement to paid annual leave.
65. Narrowing the focus to modern awards in comparable industries to the black coal mining industry, namely the Mining Industry Award 2010 (clause 23.6), Coal Export Terminals Award 2010 (clause 19.7) and Quarrying Award 2010 (clause 29.4), such awards include an ability for the employer to direct or require the taking of annual leave, and employees being placed on unpaid leave or leave without pay if they do not have a sufficient entitlement to paid annual leave.
66. *Second*, it is also relevant that the Full Bench has recently determined that a shutdown clause providing for an ability for the employer to direct or require the taking of annual leave, and employees being placed on unpaid leave where they do not have sufficient paid annual leave, ought to be inserted into 18 modern awards.
67. In the *September 2016 decision* the Full Bench considered the shutdown clause in the *Aquaculture Industry Award* and stated:

[120] We raise one final matter in concluding. As we have mentioned, clause 23.3 of the Aquaculture Award provides a means by which employers may direct employees to take a period of paid annual leave during a partial or full closedown of the employer's business. It appears that the provision is not widely utilised in practice. One reason for the limited use of the clause may be the manner in which it is drafted. We propose to redraft clause 23.3 – in plain language and to make it clear that it operates where seasonal factors reduce labour requirements – in order to make the provision more accessible for small business operators.

[121] The variation to clause 23.3 will be included as part of the draft variation determination giving effect to our decision and interested parties will have an opportunity to comment.

68. Subsequently, on 13 October 2016, the Full Bench published a draft determination setting out the revised shutdown clause in the *Aquaculture Industry Award*.<sup>36</sup> The clause provided as follows:

23.3 Close down

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<sup>35</sup> In respect of "unpaid leave"/"leave without pay" see the following 43 modern awards: Ambulance and Patient Transport Industry Award 2010, Aquaculture Industry Award 2010, Asphalt Industry Award 2010, Broadcasting and Recorded Entertainment Award 2010, Building and Construction General On-site Award 2010, Cement and Lime Award 2010, Children's Services Award 2010, Cleaning Services Award 2010, Coal Export Terminals Award 2010, Concrete Products Award 2010, Contract Call Centre Award 2010, Electrical Power Industry Award 2010, Food, Beverage and Tobacco Manufacturing Award 2010, Gardening and Landscaping Services Award 2010, Gas Industry Award 2010, Graphic Arts, Printing and Publishing Award 2010, Higher Education Industry—General Staff—Award 2010, Hydrocarbons Industry (Upstream) Award 2010, Joinery and Building Trades Award 2010, Journalists Published Media Award 2010, Manufacturing and Associated Industries and Occupations Award 2010, Mining Industry Award 2010, Miscellaneous Award 2010, Oil Refining and Manufacturing Award 2010, Pest Control Industry Award 2010, Plumbing and Fire Sprinklers Award 2010, Pharmaceutical Industry Award 2010, Poultry Processing Award 2010, Premixed Concrete Award 2010, Racing Clubs Events Award 2010, Racing Industry Ground Maintenance Award 2010, Road Transport (Long Distance Operations) Award 2010, Road Transport and Distribution Award 2010, Salt Industry Award 2010, Seafood Processing Award 2010, Security Services Industry Award 2010, Storage Services and Wholesale Award 2010, Surveying Award 2010, Telecommunications Services Award 2010, Timber Industry Award 2010, Vehicle Manufacturing, Repair, Services and Retail Award 2010, Wine Industry Award 2010, Wool Storage, Sampling and Testing Award 2010

<sup>36</sup> [Aquaculture Industry Award proposed determination issued 13 October 2017](#)

- (a) An employer may temporarily close down all or part of a workplace or reduce staffing levels to a minimum.
- (b) An employer must give an employee one month's notice in writing of an intention to close down. If an employee starts working for the employer after the notice has been given, the employer must notify the employee on engagement.
- (c) An employee must take annual leave if they have accrued an entitlement to annual leave that covers all or part of the close down.
- (d) An employee who has not accrued an entitlement to annual leave for all or part of the period of close down must take any annual leave they have accrued and leave without pay for the rest of the close down.

69. In the *December 2016 decision* the Full Bench then determined (at [19]-[25]) to include a redrafted shutdown clause in the *Aquaculture Industry Award*, stating:

[23] We agree with Ai Group, there is a degree of ambiguity in the redrafted clause 23.3. Ai Group propose the amendment of paragraphs 23.3(c) and 23.3(d) of the draft determination as follows:

'23.3(c) An employee who has accrued sufficient annual leave to cover all of the close down must take annual leave for all of the close down.

23.3(d) An employee who has not accrued sufficient annual leave to cover all of the close down must take any annual leave they have accrued and leave without pay or leave in advance for the rest of the close down.'

[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*. ...<sup>37</sup>

70. The Full Bench then published a further draft determination in respect of the *Aquaculture Industry Award* on 23 December 2016, reflecting the amended clause.<sup>38</sup>

71. Although not expressly stated, it may be expected that in forming its provisional view, the Full Bench was satisfied (even if provisionally) that a shutdown clause providing an ability to, both, direct or require the taking of leave and providing for leave without pay, was both necessary to meet the modern awards objective in accordance with section 138 (and was permissible under section 139).

72. It is to be further noted that the annual leave shutdown clause in the same 18 awards were the subject of the modern awards review in 2012. In *Re Modern Awards Review 2012—Annual leave – January 2014* ([2014] FWCFB 255) a Full Bench of the Commission.<sup>39</sup> The clauses in each of the awards under review provided as follows:

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<sup>37</sup> The 18 relevant awards referred to are: *Aquaculture Industry Award 2010* (clause 23.3); *Asphalt Industry Award 2010* (clause 25.4); *Car Parking Award 2010* (clause 25.4); *Cement and Lime Award 2010* (clause 24.4); *Cleaning Services Award 2010* (clause 29.6); *Concrete Products Award 2010* (clause 26.4); *Gardening and Landscaping Services Award 2010* (clause 24.7); *Gas Industry Award 2010* (clause 25.3); *Horse and Greyhound Training Award 2010* (clause 23.3); *Miscellaneous Award 2010* (clause 23.4); *Pest Control Industry Award 2010* (clause 24.9); *Premixed Concrete Award 2010* (clause 24.4); *Quarrying Award 2010* (clause 29.4); *Racing Clubs Events Award 2010* (clause 30.3); *Racing Industry Ground Maintenance Award 2010* (clause 24.2); *Security Services Industry Award 2010* (clause 24.7); *Silviculture Award 2010* (clause 29.3) and *Surveying Award 2010* (clause 24.3)

<sup>38</sup> [Aquaculture Industry Award determined issued 23 December 2016](#)

<sup>39</sup> The matter had been dealt with, in part, but not decided in an earlier decision *Modern Awards Review 2012—Annual Leave – September 2013* [2013] FWCFB 6266

#### 24.4 Close-down

- (a) Where an employer intends temporarily to close (or reduce to nucleus) during the Christmas/New Year period for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.
- (b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.
- (c) An employee who has accrued sufficient annual leave at the date of closing in accordance with clause 24.4(a) must be:
  - (i) given annual leave commencing from the date of closing; and
  - (ii) paid 1/12th of their ordinary pay for any period of employment between accrual of the employee's right to the annual leave and the date of closing.
- (d) Any employee who has not accrued sufficient annual leave at the date of closing must be:
  - (i) given leave without pay from the date of closing; and
  - (ii) paid for any public holiday during such leave for which the employee is entitled to payment.

73. In respect of those clauses, that Full Bench stated:

[9] It appears clear from the historical material provided by the parties that the clauses in question were transposed from other instruments that contemplated a scheme for accruing annual leave on an annual basis and the payment of pro rata annual leave accruals where an employee had insufficient accrued leave accrued for the period of an annual shutdown. These schemes included the *Annual Holidays Act 1944* (NSW) and the *Labour and Industry Act 1958* (Vic). By operation of the previous award and legislative provisions the clause had the effect of providing the maximum payment of accrued annual leave to employees during a shutdown and a corresponding minimisation of leave without pay. There was no notion of an additional payment over and above the ordinary annual leave payments due.

74. The Full Bench then went on to make determinations<sup>40</sup> that deleted clause (d) and inserted the following:

- (c) Where an employee has been given notice pursuant to clauses 25.4(a) or (b) and the employee has:
  - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
  - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
  - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.

75. Again, as set out in paragraph 71, while not expressly stated in the decision, that Full Bench must have been satisfied that in determining to vary those 18 awards, that such variations met the modern awards objective, as was required by Item 6 of Schedule 5 of

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<sup>40</sup> [Schedule of Determinations issued 24 January 2014](#)

the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), and the content requirements concerning modern awards.<sup>41</sup>

76. *Third*, shutdown provisions in enterprise agreements in the black coal mining industry (a sample of which is set out in **Annexure D**<sup>42</sup> to these submissions) commonly include both an ability to direct or require employees to take leave, and placing employees onto leave without pay leave. These may be seen to be features of shutdown clauses to ensure that they operate in a practical way.
77. It may be accepted that such clauses have been included by the parties in those enterprise agreements having regard to clause 25.10 of the BCMI Award (being the reference modern award), and that having been approved by the Commission that each of the enterprise agreements passed the Better Off Overall Test.<sup>43</sup>
78. *Fourth*, it is also a common feature of legislative regimes dealing with annual leave, that there be an ability for employers to direct the taking of annual leave, and in the case of a shutdown provisions in legislative regimes, that employees with insufficient paid leave accruals take leave on a proportionate basis/rate or leave without pay. A copy extract of relevant annual leave legislation<sup>44</sup> is attached to these submissions at **Annexure E**.
79. By way of example, in New South Wales, the *Annual Holidays Act 1944* (NSW) provides under section 4A a provisions dealing with shutdowns. Relevantly, the provisions include an ability of the employer to give notice of one month to an employee of the shutdown (section 4A(2)-(3)), and requires employees with sufficient leave to take the whole of the period as paid leave (unless agreed otherwise with the employer) (section 4A(6)) or where the employee has no or insufficient leave, the employee is to take leave without pay (section 4A(3)-(5)).
80. Further, the FW Act provides for an ability for an employer to require award/agreement free employees to take annual leave, if that requirement is reasonable, under section 94(5). In that regard, the circumstance of a shutdown is included in the "Note" to section 94(5), as an example of an instance in which an employer requiring an award/agreement free employee to take a period of paid leave would be reasonable.
81. Prior to the FW Act, the Australian Fair Pay and Conditions Standard under the former *Workplace Relations Act* (1996) (**WR Act**) similarly provided a right to an employer to direct the taking of leave for the purpose of a shutdown. Section 236(5) of the WR Act provided:

Shut downs

- (5) An employee must take an amount of annual leave during a particular period if:
- (a) the employee is directed to do so by the employee's employer because, during that period, the employer shuts down the business, or any part of the business, in which the employee works; and

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<sup>41</sup> See also *Modern Awards Review 2012 - Penalty Rates* [2013] FWCFB 1635 at [5]-[18] (and in particular [14]-[17])

<sup>42</sup> It is noted that this is not a complete list of all enterprise agreements that are in operation in the black coal mining industry, but may be considered be broadly representative having been taken from a range of operations in NSW, Queensland and WA, both in open cut and underground mines, and in respect of various employers and, correspondingly, employees

<sup>43</sup> It is accepted that the BOOT is applied on the basis of a consideration of terms within enterprise agreement assessed on an overall basis as against the BCMI Award

<sup>44</sup> Including the now repealed Victorian legislation, and the legislation in place in Queensland prior to the most recent legislative amendments in that State



(b) at least that amount of annual leave is credited to the employee.

82. Each of the above matters demonstrate that a shutdown clause providing for an ability of an employer to direct the taking of annual leave, and employees with insufficient leave being on leave without pay, is both orthodox and may be seen to reflect what may be considered as prevailing safety net entitlements across industries.

**(B) Simple to understand**

83. The amendment to clause 25.10 is necessary to "ensure a simple easy to understand stable and sustainable modern award system" (section 134(1)(g)).

84. As has been noted by a Full Bench ([2015] FWCFB 4658 at [7]):

An award should be able to be read by an employer or employee without needing a history lesson or paid advocate to interpret how it is to apply in the workplace.

85. Simply put, clause 25.10 in its current form is not simple and easy to understand. So much was recognised in the *March 2017 decision* (at [32]). The proposed clause set out in Annexure A will be easy to understand.

86. In the *March 2017 decision* the Full Bench noted at [31]-[32] that "[t]here is significant potential for uncertainty and inconsistency arising from the present provisions" following the determination to delete clause 24.5, and that "*the shutdown clause should be clear and serve its evident purpose*". The amended proposed clause in Annexure A will ensure that the clause is clear and serves its purpose, as explained further below.

87. The CMIEG submits that if the Full Bench was minded to insert the proposed clause 25.10 without making express the circumstances of employees with insufficient leave, then the clause would be apt to cause confusion and disputation.

**Conclusion**

88. The CMIEG submits that, having regard to the above submissions, the amended clause set out in Annexure A should be inserted into the BCMI Award as a revised clause 25.10 by the Full Bench. Such a clause is both permissible under the FW Act, and for the reasons set out, is necessary to meet the modern awards objective pursuant to sections 134 and 138 of the FW Act.

**Ashurst Australia  
Solicitors for the CMIEG**

11 September 2017

## **ANNEXURE A – FURTHER PROVISIONAL REVISED SHUTDOWN CLAUSE (AS AMENDED)**

### **25.10 Shutdown**

- (a) Clause 25.10 applies if an employer intends to shutdown all or part of its operation for a particular period (temporary shutdown period); and wishes to require affected employees to take leave during that period.
- (b) The employer must give the affected employees 28 days' written notice of a temporary shutdown period or such shorter period as agreed between the employer and the employees affected.
- (c) The employer must give written notice of a temporary shutdown period to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.
- (d) The following applies to any affected employee during a temporary shutdown period:
  - (i) if the employee has accrued an entitlement to paid annual leave the employee may elect to take some or all of the leave during the temporary shutdown period, and may also elect to take leave without pay to cover any part of the temporary shutdown period, or annual leave in advance in accordance with clause 25.9 (or a combination of accrued annual leave, annual leave in advance or leave without pay);
  - (ii) if the employee does not elect to take paid annual leave or leave without pay to cover the whole of the temporary shutdown period, then the employer may direct the employee to take a period of accrued paid annual leave;
  - (iii) if the employee has not accrued an entitlement to any paid annual leave sufficient to cover any part of the temporary shutdown period, then the employee is taken to be on leave without pay for the relevant period.
- (e) A direction by the employer to take paid annual leave under clause 25.10(d):
  - (i) must be in writing; and
  - (ii) must be reasonable.
- (f) The employee must take paid annual leave in accordance with a direction under clause 25.10(d)(ii).
- (g) 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 25.9, to which an entitlement has not been accrued is to be taken into account.
- (h) When an employer shuts down all or part of its operation under this provision, clauses 25.4 to 25.6 do not apply to employees directly affected by the shutdown and this clause will apply.

## **ANNEXURE B – HISTORICAL SHUTDOWN CLAUSES IN BLACK COAL INDUSTRY AWARDS**

### **Pre-modernisation Federal awards**

#### **The Coal Mining Industry (Production and Engineering) Consolidated Award 1997 (AP774609)**

##### **29.3 When annual leave can be taken**

29.3.1 Unless otherwise agreed between the employee and the employer, an employee with annual leave credits will give the employer at least 28 days notice in writing of the amount of leave to be taken. The employer will grant that leave unless in the employer's opinion the operations of the mine will be affected.

29.3.2 Annual leave will be taken within twelve months from the date it was credited to the employee.

29.3.3 The employer may direct an employee to take annual leave or part leave provided at least 28 days notice in writing is given to the employee.

...

##### **29.9 Leave for less than a full year's entitlement**

The formula for calculating leave when an employee has less than a full year's entitlement or has not yet reached an anniversary of employment:-

<b>For employees who would be entitled to Annual Leave of:</b>	<b>Hours of Annual Leave for each completed week of Employment:</b>
5 weeks	3.3654
6 weeks or 30 working days	4.0385

...

##### **29.11 Shutdown**

29.11.1 An employer who shuts down all or any part of its operation must give employees at least 28 days notice of the shutdown or such shorter period as agreed between the employer and the affected employees.

29.11.2 Employees directly affected by the shutdown who have annual leave credits may take all or part of those credits during the shutdown period.

29.11.3 Employees directly affected by the shutdown who are not yet entitled to annual leave, may take leave during the shutdown period calculated using the formula in 29.9.

29.11.4 Payment for the leave will be at the employee's classification rate immediately prior to commencing such leave.

#### **The Coal Mining Industry Award (Deputies and Shotfirers), 2002 (AP813783)**

##### **17 - ANNUAL LEAVE**

(f) Time of Taking

- (1) In the absence of agreement to the contrary, annual leave shall be given and taken in not more than three periods, one of which will be of three weeks duration.
- (2) An employee wishing to proceed on annual leave pursuant to this clause shall give his/her employer not less than four weeks notice in writing of the time at which the employee desires to take his/her leave and the employer will allow the employee to take his/her leave at that time subject to operational needs at the mine. Annual leave shall be granted within a period not exceeding twelve months from the date when the right to annual leave accrued.

...

(k) Shutdowns

Where an employer decides to shut down the mine, or a section or sections thereof, the employer, at its discretion, pay leave on a proportionate basis to those employees who have not qualified for a full entitlement of leave. An employer who decides to shut down the mine or a section or sections thereof shall give four weeks notice.

...

(n) Proportionate Leave - Calculation

Annual leave shall accrue at the rate of 3.3654 hours for each completed week of service except where six weeks or thirty days annual leave is granted then leave shall accrue at the rate of 4.0385 hours for each completed week of service.

**Coal Mining Industry (Staff) Award, 2004 (AP835164)**

**26. ANNUAL LEAVE**

**26.3 When annual leave can be taken**

26.3.1 Unless otherwise agreed between the employee and the employer, an employee with an entitlement to annual leave must give the employer at least 28 days notice in writing of the amount of leave to be taken. The employer must grant that leave unless in the employer’s opinion the operations of the mine will be affected.

26.3.2 The employer may direct an employee to take annual leave or part leave provided at least 28 days notice in writing is given to the employee.

...

**26.9 Leave for less than a full year’s entitlement**

The formula for calculating leave when an employee has less than a full year’s entitlement or has not yet reached an employment anniversary is:

<b>For employees on a 35 hour week who would be entitled to annual leave of:</b>	<b>Hours of annual leave for each completed week of employment</b>
Five weeks	3.3654
Six weeks or 30 working days	4.0385

**For employees on a 37.5 hour week, until that**      **Hours of annual leave for**

employee makes the transition to a 35 hour week in accordance with Clause 21.1.2, <b>who would be entitled to annual leave of:</b>	<b>each completed week of employment</b>
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Five weeks	3.6058
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Six weeks or 30 working days	4.3269
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<b>For employees on a 40 hour week, until that employee makes the transition to a 35 hour week in accordance with Clause 21.1.2, who would be entitled to annual leave of:</b>	<b>Hours of annual leave for each completed week of employment</b>
--	--

Five weeks	3.8462
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Six weeks or 30 working days	4.6154
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...

**26.11 Shutdown at a mine**

26.11.1 An employer who shuts down a mine or a section of a mine must give employees four weeks' notice of the shutdown or such shorter period as agreed between the employer and the affected employees.

26.11.2 Employees directly affected by the shutdown who have annual leave credits may take all or part of those credits during the shutdown period

26.11.3 Employees directly affected by the shutdown who are not yet entitled to annual leave may take leave during the shutdown period calculated using the formula in 26.9.

**NAPSAs**

**Coal Mining Industry (Engineers) Award 1990 (AN160741) (Western Australia)**

- (4) Except as hereinafter provided, the leave prescribed in subclause (1) hereof, shall be taken-
  - (a) in a period of four weeks commencing on and from the Monday immediately preceding Christmas Day, provided that in the years when Christmas Day falls on a Saturday or Sunday the period shall commence on and from the next succeeding Monday and in the years that Christmas Day falls on a Monday, the period shall commence on and from that day.
  - (b) in a period of one week commencing on Easter Monday.
  - (c) in a period of one week commencing at an agreed date or a date determined by the Tribunal, in September or October of each year.
- (5) The Union party to this award will provide at least one-third (1/3) of the work force on production if required during the recognised Christmas vacation and production will be permitted during other annual leave periods by volunteer labour as required.
- (6) Employees engaged during the period or periods referred to in subclause (4) hereof, shall be allowed equivalent time off with a maximum of thirty days, or 6 weeks, at such time as may be mutually agreed upon between the employer and the employee but in any case before the subsequent Christmas stand-down period. Provided that the operations of the mine at which the employee works will not, in the opinion of the manager, be affected by the granting of the leave at that time. The employer is under no obligation to provide work on the days known as

Christmas Day, Boxing Day, New Year's Day and Easter Monday and, if no work is provided, the employee may claim payment for that day with a reduction in annual leave entitlement. Provided also that any employee who works on Christmas Day or New Year's Day shall be paid at the rate of time and a half.

- (7) In the event of an employee being employed for a portion of a year only, the employee shall be entitled to such paid leave as is proportionate to the length of employment with the employer up to the date when annual leave is taken in accordance with the leave roster or as required by any general leave arrangements. In the latter case the employee shall not be entitled to work or pay whilst the other employees of such employer are on paid leave.

**Coal Mining Industry (Miners) Award 1990 (AN160720)** (and the substantially identical terms of the **Coal Mining Industry (Staff) Award 1990 (AN160742)**)

## **11. - ANNUAL LEAVE**

### **PART A - Western Collieries Limited Only:**

- (4) (a) Subject to 4(b) leave shall be taken following application of the employee, subject to the convenience of the employer and unless by approval of the employer no later than in the 12 months following the date the leave accrues. Leave may be taken by agreement between the employee and the employer in accordance with (1)(a) and (1)(b) hereof in periods other than 210 or 215 continuous ordinary hours.
- (b) Subject to a reasonable balance of skills being retained, a minimum of fifty per cent of employees in each department will be approved to take leave as set out hereunder:
- (i) in a period of four weeks commencing on and from the Monday immediately preceding Christmas Day, provided that in the years when Christmas Day falls on a Saturday or Sunday the period shall commence on and from the next succeeding Monday and in the years that Christmas Day falls on a Monday, the period shall commence on and from that day;
  - (ii) in a period of one week commencing on Easter Monday.
  - (iii) in a period of one week commencing on the Monday following pay day during the school holiday period of September/October.

...

### **PART B - Griffin Coal Mining Co Only:**

- (1) Entitlement
- (a) Subject to the provisions of this clause employees under this Award shall be entitled to annual leave of 5 consecutive weeks at the ordinary rate of pay in respect of each completed period of 12 months continuous employment.
  - (b) Continuous shift employees rostered to work on a rotational basis on Sundays and holidays, shall be entitled to 1 weeks additional leave to that otherwise prescribed by paragraph (a) hereof.

- (2) Taking Leave

Annual leave shall be given and taken in one or two continuous periods within twelve (12) months from the date when the right to annual leave accrued. If the annual leave is given in two continuous periods then one of those two periods must

be at least three (3) consecutive weeks. Provided that if the employer and an employee so agree then the employee's annual leave entitlement may be given and taken in two separate periods, neither of which is of at least three (3) consecutive weeks, or in three separate periods.

Provided further that an employee may, with the consent of his/her employer, take short term annual leave not exceeding five days in any calendar year, at a time or times separate from any of the periods determined in accordance with this sub-clause.

### **Coal Industry Tribunal awards**

#### **Coal Mining Industry (Production & Engineering) Interim Consent Award, September 1990 (CR print No 4414) (as varied and consolidated on 27 June 1995)**

##### **15 - ANNUAL LEAVE**

...

(f) Time of Taking

- (1) In the absence of agreement to the contrary, annual leave shall be given and taken in not more than three periods, one of which will be of three weeks duration.
- (2) An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which the employee desires to take leave and shall be allowed to take leave at that time unless the operations of the mine at which the employee works will, in the opinion of the management of the mine, be affected by the granting of leave at that time. Annual leave shall be taken within a period not exceeding twelve months from the date when the right to annual leave accrued.

...

(k) Shutdowns

Where an employer decides to shut down the mine, or a section or sections thereof, the employer may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown, paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave. An employer who decides to shut down the mine or a section or sections thereof shall give four weeks notice.

...

(n) Proportionate Leave – Calculation

Annual leave shall accrue at the rate of 3.3654 hours for each completed week of service except where six weeks or thirty days annual leave is granted then leave shall accrue at the rate of 4.0385 hours for each completed week of service.

**Coal Mining Industry Interim Consent Award (Deputies & Shotfirers), 1990, (CR print No 4402)** (as varied consolidated and republished, 27 June 1995)

14-ANNUALLEAVE

...

(f) Time of Taking

(1) In the absence of agreement to the contrary, annual leave shall be given and taken in not more than three periods, one of which will be of three weeks duration.

(2) An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which the employee desires to take his leave and shall be allowed

...

(k) Shutdowns

Where an employer decides to shut down the mine, or a section or sections thereof, the employer may allow paid leave on a proportionate basis to those employees who have not qualified for a full entitlement of leave. An employer who decides to shut down the mine or a section or sections thereof shall give four weeks notice.

...

(n) Proportionate Leave – Calculation

Annual leave shall accrue at the rate of 3.3654 hours for each completed week of service except where six weeks or thirty days annual leave is granted then leave shall accrue at the rate of 4.0385 hours for each completed week of service.

**Coal Mining Industry (Supervision & Administration) Interim Consent Award, September 1990, New South Wales and Tasmania (CR print No 4419)** (as varied is Coal Industry consolidated and republished 27 June 1995) (and the substantially identical terms of the **Coal Mining Industry (Supervision & Administration) Interim Consent Award 1990, Queensland**, (CR print No 4418) (as varied is Coal Industry consolidated and republished 27 June 1995))

17 - ANNUAL LEAVE

...

(f) Time of Taking

(1) In the absence of agreement to the contrary, annual leave shall be given and taken in not more than three periods, one of which will be of three weeks duration provided that an employee who so elects shall have his full accumulation granted in one period.

(2) An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which the employee desires to take leave and shall be allowed to take leave at that time unless the operations of the mine at which the employee works will, in the opinion of the



management of the mine, be affected by the granting of leave at that time.

(k) Shutdowns

Where an employer decides to shut down the mine, or a section or sections thereof, the employer may allow paid leave on a proportionate basis to those employees who have not qualified for a full entitlement of leave. An employer who decides to shut down the mine or a section or sections thereof shall give four weeks notice.

...

(n) Proportionate Leave – Calculation

Annual leave shall accrue at the rate of 3.3654 hours for each completed week of service except where six weeks or thirty days annual leave is granted then leave shall accrue at the rate of 4.0385 hours for each completed week of service.

**Coal Mining Industry (Miners) Award, 1982, Queensland** (CR print No. 3101) (as amended 1988) (and the substantially identical provisions of the **Coal Mining Industry (Engine Drivers & Firemen's) Award, 1982, Queensland** (C.R. print No. 3103) (as amended))

- (h) (i) Subject to clause 9 (f) hereof an employer shall have the right to carry out any or all operations of a mine (production and ancillary) for the 52 weeks of the year.
- (ii) Where an employer decides to shut down the mine, or a section or sections thereof, the employer may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave. An employer who decides to shut down the mine or a section or sections thereof shall give 4 weeks notice of the intention so to do.
- (i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.
- (ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of a shutdown, the employee shall be paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.
- (iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of a shutdown and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.
- (iv) For each ordinary day of paid annual leave which is taken when the mine is available for production, the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

...

- (j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five day annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service except in the case of 7 day workers where leave shall accrue at the rate of 4.0385 hours for each completed week of service.

## ANNEXURE C – MODERN AWARDS WITH SHUTDOWN PROVISIONS

The Full Bench decision [\[2017\] FWCFB 959](#) issued on 27 March 2017 (**March 2017 decision**) states that there are 81 modern awards that include shut down provisions and sets out the provisions.<sup>45</sup> These award provisions clauses are replicated here and sorted into the following categories:

- Awards which provide for a direction by an employer to an employee (or a "requirement) to take annual leave;
- Awards which provide for a direction by an employer to an employee (or a "requirement) to take annual leave, and expressly provide for annual leave in advance;
- Awards which provide for a direction by an employer to an employee (or a "requirement) to take annual leave, and provide an employee who does not have leave accrued the employee is on leave without pay; and
- Awards which are unclear in their operation.

Award	Clause
<i>Awards which provide for a direction by an employer to an employee (or a "requirement) to take annual leave</i>	
1. <a href="#">Aboriginal Community Controlled Health Services Award 2010</a>	<b>26.3 Close-down</b> An employer may require an employee to take annual leave as part of a close-down of its operations by giving at least four weeks' notice.
2. <a href="#">Aircraft Cabin Crew Award 2010</a>	<b>25.4 Requirement to take leave notwithstanding terms of the NES</b> An employer may require an employee to take annual leave by giving at least four weeks' notice in the following circumstances: (a) as part of a close-down of its operations; or (b) where more than eight weeks' leave is accrued the employer may direct an employee member to take 25% of the accrued leave.
3. <a href="#">Alpine Resorts Award 2010</a>	<b>26.3 Close-down</b> An employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close-down of its operations.

<sup>45</sup> We note that the decision states that 81 awards are listed in Attachment A to the decision; however, only 79 awards are extracted in the Attachment. The March 2017 decision refers to [347] of the decision issued on 11 June 2015 by the Full Bench ([\[2015\] FWCFB 3406](#)), which cites the [Fair Work Commission Background paper—Annual leave common issue, 30 May 2014](#), at Attachment C, p.33. The complete list of 81 awards are included in this table, other than the BCMI Award

	Award	Clause
4.	<a href="#"><i>Animal Care and Veterinary Services Award 2010</i></a>	<p><b>26.5 Requirement to take leave notwithstanding terms of the NES</b></p> <p>An employer may require an employee to take annual leave by giving at least four weeks' notice where such leave is required as part of a close-down of its operations.</p>
5.	<a href="#"><i>Banking, Finance and Insurance Award 2010</i></a>	<p><b>24.5 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice</p>
6.	<a href="#"><i>Business Equipment Award 2010</i></a>	<p><b>31.4 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>
7.	<a href="#"><i>Cemetery Industry Award 2010</i></a>	<p><b>24.3</b></p> <p>An employee must take a period of annual leave when directed by the employer to do so during a period when the employer's operations are closed or partially closed.</p>
8.	<a href="#"><i>Clerks—Private Sector Award 2010</i></a>	<p><b>29.5 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>
9.	<a href="#"><i>Commercial Sales Award 2010</i></a>	<p><b>24.5 Close-down</b></p> <p>An employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close-down of its operations.</p>
10.	<a href="#"><i>Educational Services (Post-Secondary Education) Award 2010</i></a>	<p><b>25.5 Annual close-down</b></p> <p>An employer may specify up to two close-down periods each year, during which the employer will be closing down its operations. For these periods an employer may require an employee to take annual leave subject to the requirement that the employee is given notice as soon as practicable of the employer's intention to close down.</p>
11.	<a href="#"><i>Educational Services (Schools) General Staff Award 2010</i></a>	<p><b>28.2</b></p> <p>An employer may require an employee to take their annual leave during non-term weeks.</p>
12.	<a href="#"><i>Educational Services (Teachers) Award 2010</i></a>	<p><b>21.2</b></p> <p>An employee in a school, preschool or kindergarten must take annual leave during non-term weeks. Leave must generally be taken, in the case of an employee whose employment with the employer is continuing into the next school or preschool year, in the four-week period immediately following the final term week of the current school or preschool year, unless otherwise agreed with the employer.</p>

	Award	Clause
13.	<a href="#"><i>General Retail Industry Award 2010</i></a>	<p><b>32.5 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>
14.	<a href="#"><i>Hair and Beauty Industry Award 2010</i></a>	<p><b>33.5 Requirement to take leave notwithstanding terms of the NES</b></p> <p>An employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close-down of its operations.</p>
15.	<a href="#"><i>Hospitality Industry (General) Award 2010</i></a>	<p><b>34.3 Close-down</b></p> <p>An employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close-down of its operations.</p>
16.	<a href="#"><i>Legal Services Award 2010</i></a>	<p><b>35.6 Close-down</b></p> <p>Annual leave is to be taken at a time agreed between the employer and employee. However, an employer may require an employee to take annual leave as part of a close down of its operations, or part of its operations, where the request is reasonable, by giving at least four weeks' notice.</p>
17.	<a href="#"><i>Local Government Industry Award 2010</i></a>	<p><b>25.5 Annual close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations by giving at least four weeks' notice.</p>
18.	<a href="#"><i>Nursery Award 2010</i></a>	<p><b>27.11 Time of taking leave</b></p> <p>The employer may require annual leave to be taken during periods of business close-down or when the business cannot open due to restrictions on opening hours due to State or Federal legislation. The employer may also require leave to be taken at certain times of the year because of particular seasonal requirements.</p>
19.	<a href="#"><i>Registered and Licensed Clubs Award 2010</i></a>	<p><b>30.4 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>
20.	<a href="#"><i>Restaurant Industry Award 2010</i></a>	<p><b>35.3 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>
21.	<a href="#"><i>Sugar Industry Award 2010</i></a>	<p><b>33.5 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>

Award	Clause
22. <a href="#">Supported Employment Services Award 2010</a>	<p><b>22.3 Close-down</b></p> <p>An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.</p>
23. <a href="#">Water Industry Award 2010</a>	<p><b>27.4 Annual close-down</b></p> <p>An employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close-down of its operations.</p>
<i>Ability to direct an employee to take annual leave, and provide for annual leave in advance</i>	
24. <a href="#">Health Professionals and Support Services Award 2010</a>	<p><b>31.4 Close down periods—dental and medical practices</b></p> <p>Where an employer temporarily closes a dental or medical practice, an employee may be directed to take paid annual leave during part or all of this period provided such direction is reasonable. Where an employee does not have sufficient accrued annual leave for this period, they may be required to take annual leave in advance where such requirement is reasonable.</p>
25. <a href="#">Nurses Award 2010</a>	<p><b>31.9 Close down periods—medical practices</b></p> <p>Where an employer temporarily closes a medical practice, an employee may be directed to take paid annual leave during part or all of this period. Where an employee does not have sufficient accrued annual leave for this period, they may be required to take annual leave in advance.</p>
26. <a href="#">Real Estate Industry Award 2010</a>	<p><b>25.2 Taking leave</b></p> <p>(a) The employer and employee may agree when and for what period the employee is to take the employee's accrued annual leave, having regard to the personal circumstances of the employee and the operational requirements of the employer. Provided that the employer must not unreasonably refuse to agree to a request by the employee to take accrued annual leave.</p> <p>(b) Annual leave should be taken by the employee in the employee's anniversary year in which the entitlement accrues, except if agreed otherwise.</p> <p>(c) If the employer has a business shut-down (which may include a partial shut-down) during the year, the employer may require the employee to take any or all accrued annual leave during the period of the shut-down.</p> <p>(d) In the event that the employee has insufficient accrued annual leave for the period of the shut-down, the employee may be granted annual leave in advance by the employer.</p>
<i>Ability to direct to paid annual leave, and provide an employee who does not have leave accrued the employee is on leave without pay</i>	
27. <a href="#">Aluminium Industry Award 2010</a>	<p><b>22.5</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works provided the employer gives not less than four weeks' notice of intention to do so. If an</p>

Award	Clause	
		employee does not have sufficient accrued annual leave for the period of the shut down, then the employee may be required to take leave without pay for the balance of the period.
28.	<a href="#">Ambulance and Patient Transport Industry Award 2010</a>	<p><b>30.12 Annual close-down</b></p> <p>Where an employer temporarily closes an enterprise or reduces the operations of the enterprise to allow annual leave to all or a majority of employees in the enterprise or part concerned, the following provisions apply:</p> <ul style="list-style-type: none"> <li>(a) the employer must give one month's notice in writing of the proposed close-down;</li> <li>(b) an employee who has accrued sufficient leave to cover the close-down period will be given leave and will be paid for that leave in accordance with clauses 30.3 and 30.4 of this award; and</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down.</li> </ul>
29.	<a href="#">Aquaculture Industry Award 2010</a>	<p><b>23.3</b></p> <p>Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <ul style="list-style-type: none"> <li>(a) Where an employee has been given notice pursuant to clause 23.3 and the employee has: <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> </li> <li>(b) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</li> </ul>
30.	<a href="#">Asphalt Industry Award 2010</a>	<p><b>25.4 Close-down</b></p> <ul style="list-style-type: none"> <li>(a) Where an employer intends temporarily to close (or reduce to nucleus) during the Christmas/New Year period for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.</li> <li>(b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.</li> <li>(c) Where an employee has been given notice pursuant to clauses 25.4(a) or (b) and the employee has: <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> </ul> </li> </ul>

Award	Clause	
		<p>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</p> <p>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</p> <p>(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
31.	<a href="#">Building and Construction General On-site Award 2010</a>	<p><b>38.3</b></p> <p>(a) An employer may direct an employee to take paid annual leave during all or part of a period in conjunction with the Christmas/New Year holidays, where the employer shuts down the business, part of the business, or a site where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shutdown, then the employee may be required to take leave without pay for the balance of the shutdown period for which leave is not accrued.</p> <p>(b) Where an employer decides to utilise the provisions of clause 38.3(a) in respect of the Christmas/New Year period for the purpose of giving the whole of the annual leave due to all or the majority of their employees then qualified for such leave, the employer must give at least two months' notice to the affected employees.</p>
32.	<a href="#">Broadcasting and Recorded Entertainment Award 2010</a>	<p><b>23.4</b></p> <p>Notwithstanding the NES, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <p>(a) the employer gives not less than four weeks' notice in writing of intention to do so;</p> <p>(b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and is also paid for that leave at the appropriate wage in accordance with Part 4—Minimum Wages and Related Matters;</p> <p>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down;</p> <p>(d) any leave taken by an employee as a result of a close-down pursuant to this clause also counts as service by the employee with their employer;</p> <p>(e) the employer may only close down the enterprise or part of it pursuant to this clause for one or two separate periods in a year;</p> <p>(f) if the employer closes down the enterprise or part of it pursuant to this clause in two separate periods, one of the periods must be at least 14 consecutive days including non-working days; and</p> <p>(g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to this clause for three separate periods in a year provided that one of the periods is at least 14 days including non-working days.</p>
33.	<a href="#">Car Parking Award 2010</a>	<p><b>25.4 Annual close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the establishment or a section for the purpose, among others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.</p>



Award	Clause	
		<p>(b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.</p> <p>(c) Where an employee has been given notice pursuant to clauses 25.4(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
34.	<a href="#">Cement and Lime Award 2010</a>	<p><b>24.4 Close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the enterprise, operation or a section of the operation for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.</p> <p>(b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.</p> <p>(c) Where an employee has been given notice pursuant to clauses 24.4(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay</p>

	Award	Clause
35.	<a href="#">Children's Services Award 2010</a>	<p><b>24.4 Taking annual leave</b></p> <p>(a) Where a workplace is closed during a vacation period, other than Christmas vacation, and no work is available, an employee will be paid the ordinary rate of pay during such a period.</p> <p>(b) During the Christmas vacation only, an employee may be directed to take annual leave. An employee without sufficient accrued leave to maintain their ordinary rate of pay during the vacation period may be required to take leave without pay for a maximum of four weeks.</p> <p>(c) Notwithstanding clause 24.4(a) in establishments which operate for more than 48 weeks per year, an employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close-down of its operations.</p>
36.	<a href="#">Cleaning Services Award 2010</a>	<p><b>29.6 Annual close-down</b></p> <p>Where the client of an employer in the contract cleaning industry intends temporarily to 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 the following provisions may apply:</p> <p>(a) The employer may give in writing to such employees one month's notice (or in the case of an employee engaged after the giving of such notice, on engagement) of their intention to apply the provisions of this clause.</p> <p>(b) Where an employee has been given notice pursuant to clause 29.6(a) and the employee has:</p> <p>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</p> <p>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</p> <p>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</p> <p>(c) Where practicable an employee with insufficient or no accrued annual leave will be employed at another of the employer's sites for the period that would otherwise be a period of leave without pay.</p> <p>(d) The close-down period will be limited to four weeks, plus any public holidays that fall during the period of the close down.</p> <p>(e) Public holidays that fall within the period of close-down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p> <p>(f) In this clause date of closing in relation to each employee means the first day of the employees annual leave pursuant to this clause.</p>
37.	<a href="#">Coal Export Terminals Award 2010</a>	<p><b>Clause 19.7</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period, then the employee may be required to take leave without pay. A minimum of four weeks notice will be given for a shutdown under this clause.</p>

	Award	Clause
38.	<a href="#">Concrete Products Award 2010</a>	<p><b>Clause 26.4</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause.</p> <p>(b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.</p> <p>(c) Where an employee has been given notice pursuant to clauses 26.4(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
39.	<a href="#">Contract Call Centre Award 2010</a>	<p><b>27.9 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act, an employer may close down an establishment or section or sections, for the purpose of allowing annual leave to all or the majority of the employees concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives at least one month's notice to the affected employees. The notice must advise employees of the commencement date and duration of the close-down;</li> <li>(b) an employer may close down for one or two periods;</li> <li>(c) an employer and the majority of employees concerned may agree to close down for more than two periods;</li> <li>(d) an employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 27.3 and 27.4; and</li> <li>(e) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down.</li> </ul>
40.	<a href="#">Electrical Power Industry Award 2010</a>	<p><b>Clause 27.8</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shut-down then the employee may be required to take leave without pay.</p>

Award	Clause
41. <a href="#">Electrical, Electronic and Communications Contracting Award 2010</a>	<p><b>28.5 Taking of annual leave during close-downs etc.</b></p> <p>(a) An employer may, by two months' notice in writing, declare that the establishment, project or business will observe a complete Christmas-New Year close-down. An employee will, provided that the employee has been employed continuously for one week or more, be entitled to leave on a pro rata basis for each week of continuous service and such an employee may be stood down for the duration of the close-down period, provided that any such employee must be paid for all public holidays occurring during the close-down period.</p> <p>(b) Employees will be entitled to be paid for public holidays during the close-down.</p> <p>(c) Unpaid leave taken does not break service of an employee and is not an excepted period as per the NES.</p> <p>(d) An employee who has been employed continuously for one week or more will be entitled to leave on a pro rata basis for each week of continuous service and such an employee may be stood down for the duration of the close-down period, provided that any such employee must be paid for all public holidays occurring during the close-down period.</p> <p>(e) Close-down means a period of not less than two consecutive weeks and not more than four consecutive weeks, inclusive of public holidays.</p>
42. <a href="#">Food, Beverage and Tobacco Manufacturing Award 2010</a>	<p><b>34.11 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act and clause 34.6, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <p>(a) the employer gives not less than four weeks' notice of intention to do so; and</p> <p>(b) an employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 34.4 and 34.5; and</p> <p>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and</p> <p>(d) any leave taken by an employee as a result of a close-down pursuant to clause 34.11 also counts as service by the employee with their employer; and</p> <p>(e) the employer may only close down the enterprise or part of it pursuant to clause 34.11 for one or two separate periods in a year; and</p> <p>(f) if the employer closes down the enterprise or part of it pursuant to clause 34.11 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days; and</p> <p>(g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 34.11 for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and</p> <p>(h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.</p>

	Award	Clause
43.	<a href="#">Gardening and Landscaping Services Award 2010</a>	<p><b>24.9 Annual close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, among others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(b) Where an employee has been given notice pursuant to clause 24.9(a) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
44.	<a href="#">Gas Industry Award 2010</a>	<p><b>25.3 Taking of annual leave during shut-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(b) Where an employee has been given notice pursuant to clause 25.3(a) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay</p>

Award	Clause
45. <a href="#">Graphic Arts, Printing and Publishing Award 2010</a>	<p><b>37.12 Annual close-down</b></p> <p>Notwithstanding the NES and clause 37.8, an employer may close-down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than four weeks' notice of intention to do so;</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and is also paid for that leave at the appropriate wage in accordance with clauses 37.5 and 37.7;</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down.</li> <li>(d) any leave taken by an employee as a result of a close-down pursuant to clause 37.12 also counts as service by the employee with their employer;</li> <li>(e) the employer may only close down the enterprise or part of it pursuant to clause 37.12 for one or two separate periods in a year;</li> <li>(f) if the employer closes down the enterprise or part of it pursuant to clause 37.12 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days;</li> <li>(g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 37.12 for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and</li> <li>(h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.</li> </ul>
46. <a href="#">Higher Education Industry—General Staff—Award 2010</a>	<p><b>30.4 Close down</b></p> <p><b>(a) Christmas/New Year close down</b></p> <p>Employees may be required to take annual leave during a period of Christmas/New Year close down, for days other than public holidays (including any substituted days) falling during that period. Employees with insufficient accrued annual leave will take leave without pay.</p> <p><b>(b) Seasonal stand down of residential colleges staff</b></p> <p>Employees engaged in domestic work in, or in connection with, residential colleges may be stood down without pay during official term breaks, semester breaks and the Christmas/Summer vacation, provided that:</p> <ul style="list-style-type: none"> <li>(i) an employee will be given as much notice as practicable of the start and finish of any stand down period; notice must be at least one week and be in writing. Once notice is given, the stand down period must not be varied unless by mutual consent between the employer and the employee;</li> <li>(ii) an employee may take accrued annual leave or long service leave during term breaks, semester breaks and the Christmas/Summer vacation;</li> <li>(iii) all periods of stand down must count for the purpose of accrual of sick leave, annual leave and long service leave;</li> </ul>

Award	Clause	
		<p>(iv) if appropriate work is available for an employee during any period of stand down, the existing employee will be offered such employment (whether on a full-time or casual basis) before any additional employee is employed; the employee who has been stood down may refuse an offer of employment without prejudice to their normal employment relationship;</p> <p>(v) for the purpose of this clause appropriate work will mean such work as is available that is capable of being performed by the employee. Remuneration for such work will be at the rate of pay applicable to the work being performed; and</p> <p>(vi) no employee will have their employment terminated on the grounds of work not being available due to a term break, semester break or Christmas/Summer vacation.</p> <p>(c) This clause does not confer any right to stand down any employee employed before 1 January 2010 who was not subject to a stand down provision in an award before 1 January 2010.</p>
47.	<a href="#">Horse and Greyhound Training Award 2010</a>	<p><b>23.3</b></p> <p>Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(a) Where an employee has been given notice pursuant to clause 23.2 and the employee has:</p> <p>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</p> <p>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</p> <p>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</p> <p>(b) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
48.	<a href="#">Hydrocarbons Industry (Upstream) Award 2010</a>	<p><b>Clause 27.7</b></p> <p>(a) An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shut-down, then the employee may be required to take leave without pay.</p> <p>(b) Where it is necessary for a drilling rig to lay up for repairs, survey or maintenance or where the rig cannot be usefully employed for any cause beyond the employer's control, the employer may require an employee to take accrued annual leave by giving not less than one week's notice (or where agreed, leave in advance).</p>

Award	Clause
49. <a href="#">Joinery and Building Trades Award 2010</a>	<p><b>32.9 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act and clause 32.5, an employer may close down an enterprise or part of it during the Christmas–New Year period for the purpose of giving the whole of the annual leave owing to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than two months’ notice of intention to do so;</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 32.2 and 32.3;</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and</li> <li>(d) any leave taken by an employee as a result of a close-down pursuant to clause 32.9 also counts as service by the employee with their employer.</li> </ul>
50. <a href="#">Journalists Published Media Award 2010</a>	<p><b>24.8 Annual close-down</b></p> <p>Notwithstanding the NES, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than four weeks’ notice of intention to do so;</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and is also paid for that leave at the appropriate wage;</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down;</li> <li>(d) any leave taken by an employee as a result of a close-down pursuant to this clause also counts as service by the employee with their employer;</li> <li>(e) the employer may only close down the enterprise or part of it pursuant to this clause for one or two separate periods in a year; and</li> <li>(f) if the employer closes down the enterprise or part of it pursuant to this clause in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days.</li> </ul>
51. <a href="#">Manufacturing and Associated Industries and Occupations Award 2010</a>	<p><b>41.10 Annual close down</b></p> <p>Notwithstanding s.88 of the Act and clause 41.6, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than four weeks notice of intention to do so; and</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 41.4 and 41.5; and</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close down, is allowed paid leave for the period for</li> </ul>



	Award	Clause
		<p>which they have accrued sufficient leave and given unpaid leave for the remainder of the closedown; and</p> <p>(d) any leave taken by an employee as a result of a close down pursuant to clause 41.10 also counts as service by the employee with their employer; and</p> <p>(e) the employer may only close down the enterprise or part of it pursuant to clause 41.10 for one or two separate periods in a year; and</p> <p>(f) if the employer closes down the enterprise or part of it pursuant to clause 41.10 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days; and</p> <p>(g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 41.10 for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and</p> <p>(h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.</p>
52.	<a href="#">Meat Industry Award 2010</a>	<p><b>37.8 Annual close-down</b></p> <p>(a) Where an employer closes down a plant or a sections of a plant for the purpose of allowing annual leave to all or the bulk of the employees in the plant or sections concerned, the employer should, where possible, give the employees concerned not less than three months' notice of the employer's intention to stand down for the duration of the close-down all employees in the plant or sections concerned.</p> <p>(b) For those employees who have not qualified for annual leave in accordance with clause 37—Annual leave, paid leave on a proportionate basis at the appropriate rate of wage and loading prescribed by clauses 37.3 and 37.5 will be granted.</p> <p>(c) An employee who has then qualified for annual leave in accordance with clauses 37.1 or 37.2 and has also completed a further month or more of continuous service will be allowed leave and will also be paid leave on a proportionate basis for the period worked since the close of the employee's last 12 monthly qualifying period.</p> <p>(d) The next 12 month qualifying period for each employee affected by the close-down will commence from the day on which the plant or section concerned is reopened for work. Provided that all time during which an employee is stood off without pay for the purposes of this clause will be deemed to be time of service in the next 12 monthly qualifying period.</p> <p>(e) If in the first year of service with an employer an employee is allowed proportionate annual leave under clause 37.8(b), and subsequently within such year leaves employment or employment is terminated by the employer through no fault of the employee, the employee will be entitled to the benefit of clause 37.6 subject to the adjustment for any proportionate leave which may have been allowed.</p>
53.	<a href="#">Mining Industry Award 2010</a>	<p><b>23.6</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shut down, then the employee may be required to take leave without pay.</p>

Award	Clause
54. <a href="#">Miscellaneous Award 2010</a>	<p><b>23.4 Annual close down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(b) Where an employee has been given notice pursuant to clause 23.4(a) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
55. <a href="#">Mobile Crane Hiring Award 2010</a>	<p><b>25.5 Annual close-down</b></p> <p>(a) Where an employer closes down the depot or a section thereof, for the purposes of allowing annual leave to all or the bulk of employees in the depot or section concerned:</p> <ul style="list-style-type: none"> <li>(i) The employer will give not less than four weeks notice of the close-down.</li> <li>(ii) An employer may stand off for the duration of the close-down all employees in the depot, or section concerned, and allow to those who are not then qualified for a full entitlement to annual leave paid leave on a proportionate basis.</li> <li>(iii) An employee who has qualified for a full entitlement to annual leave will be allowed paid leave.</li> <li>(iv) All time during which an employee is stood off without pay for the purposes of this subclause will be deemed to be time of service for the purpose of annual leave accrual.</li> <li>(v) An employer may close down the depot for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the employer closes down the depot in two separate periods, one of those periods will be for a period of at least 21 consecutive days including non-working days.</li> <li>(vi) Where the majority of the employees in the depot or section concerned agree, the employer may close down the depot in accordance with this subclause in two separate periods either of which is of at least 21 consecutive days including non-working days, or in three separate periods. In such cases the employer will advise the employees concerned of the proposed dates of each close-down before asking them for their agreement.</li> </ul> <p><b>25.6 Part close-down and part rostered leave</b></p> <ul style="list-style-type: none"> <li>(a) An employer may close down the depot, or a section thereof, for a period of at least 21 consecutive days including non-working days and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.</li> <li>(b) An employer may close down the depot, or a section thereof for a period of less than 21 consecutive days including non-working</li> </ul>

Award	Clause	
		<p>days and allow the balance of the annual leave due to an employee in one or two continuous periods either of which may be in accordance with a roster. In such a case the granting and taking of annual leave will be subject to the agreement of the employer and the majority of employees in the depot, or a section thereof, and before asking the employees concerned for their agreement the employer will advise them of the proposed date of the close-down or close-downs and the details of the annual leave roster.</p>
56.	<a href="#">Oil Refining and Manufacturing Award 2010</a>	<p><b>26.6</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shut-down, then the employee may be required to take leave without pay.</p>
57.	<a href="#">Pest Control Industry Award 2010</a>	<p><b>24.9 Close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, among others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.</p> <p>(b) In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(c) Where an employee has been given notice pursuant to clauses 24.9(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>

Award	Clause
58. <a href="#">Pharmaceutical Industry Award 2010</a>	<p><b>26.10 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act and clause 26.6, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than four weeks' notice of intention to do so; and</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 26.2 and 26.5; and</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down is allowed paid annual leave for the period for which they have accrued sufficient annual leave and given unpaid leave for the remainder of the close-down; and</li> <li>(d) any leave taken by an employee as a result of a close-down pursuant to clause 26.9 also counts as service by the employee with their employer; and</li> <li>(e) the employer may only close down the enterprise or part of it pursuant to clause 26.9 for one period in a year.</li> </ul>
59. <a href="#">Plumbing and Fire Sprinklers Award 2010</a>	<p><b>34.3 Annual close-down</b></p> <ul style="list-style-type: none"> <li>(a) An employer giving any leave in conjunction with the Christmas and New Year holidays may either: <ul style="list-style-type: none"> <li>(i) stand off without pay during the period of leave any employee who has not yet qualified under the NES for the full period of leave; or</li> <li>(ii) stand off for the period of leave any employee who has not qualified for the full period of leave under the NES and pay them to the extent that the employee has qualified for paid leave under the NES.</li> </ul> </li> <li>(b) Where an employer decides to close down their establishment at the Christmas and New Year period for the purpose of giving the whole of the annual leave due to all, or the majority of their employees qualified for such leave, the employer will give at least two months notice to their employees of their intention so to do.</li> </ul>
60. <a href="#">Poultry Processing Award 2010</a>	<p><b>27.9 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act and clause 27.5 an employer may close down an enterprise or part of it during any period of pre-planned maintenance or the installation of machinery, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than one month's notice of the intention to do so; and</li> <li>(b) the close-down occurs on not more than one occasion per year, unless otherwise agreed between an employer and the majority of employees concerned; and</li> <li>(c) an employee who has accrued sufficient annual leave to cover the period of the close-down is allowed annual leave and also paid for that leave at the appropriate wage in accordance with clauses 27.3 and 27.4; and</li> <li>(d) an employee who has not accrued sufficient annual leave to cover part or all of the close-down is allowed paid annual leave for the period for which they have accrued sufficient leave, and given unpaid leave for the remainder of the close-down; and</li> <li>(e) any annual leave taken by an employee as a result of a close-down pursuant to clause 27.8 also counts as service by the employee</li> </ul>

Award	Clause	
		with their employer.
61.	<a href="#">Premixed Concrete Award 2010</a>	<p><b>24.4 Close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.</p> <p>(b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.</p> <p>(c) Where an employee has been given notice pursuant to clauses 24.4(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
62.	<a href="#">Quarrying Industry Award 2010</a>	<p><b>29.4 Close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the quarry, operation or a section of the quarry or operation for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.</p> <p>(b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.</p> <p>(c) Where an employee has been given notice pursuant to clauses 29.4(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul>
63.	<a href="#">Racing Clubs Events Award 2010</a>	<p><b>30.3 Temporary close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p>

Award	Clause	
		<p>(b) Where an employee has been given notice pursuant to clause 30.3(a) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
64.	<a href="#">Racing Industry Ground Maintenance Award 2010</a>	<p><b>24.2 Close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(b) Where an employee has been given notice pursuant to clause 24.2(a) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
65.	<a href="#">Road Transport (Long Distance Operations) Award 2010</a>	<p><b>23.8 Annual close-down</b></p> <p>An employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than one month's notice of its intention to do so;</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and also paid for that leave at the appropriate wage;</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and</li> <li>(d) any leave taken by an employee as a result of a close-down pursuant to this clause also counts as service by the employee with their employer.</li> </ul>

Award	Clause
66. <a href="#">Road Transport and Distribution Award 2010</a>	<p><b>29.7 Annual close-down</b></p> <p>An employer may close down an enterprise or part of the enterprise for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than one month's notice of its intention to do so;</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close down, is allowed leave and also paid for that leave at the appropriate wage;</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and</li> <li>(d) any leave taken by an employee as a result of a close down pursuant to this clause also counts as service by the employee with their employer.</li> </ul>
67. <a href="#">Salt Industry Award 2010</a>	<p><b>25.6 Taking of annual leave during shut-downs</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shut-down, then the employee may be required to take leave without pay.</p>

Award	Clause
68. <a href="#">Seafood Processing Award 2010</a>	<p><b>27.11 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act and clause 27.6, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <ul style="list-style-type: none"> <li>(a) the employer gives not less than four weeks' notice of intention to do so; and</li> <li>(b) an employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 27.4 and 27.5; and</li> <li>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and</li> <li>(d) any leave taken by an employee as a result of a close-down pursuant to clause 27.10(a) also counts as service by the employee with their employer; and</li> <li>(e) the employer may only close down the enterprise or part of it pursuant to clause 27.10(a) for one or two separate periods in a year; and</li> <li>(f) if the employer closes down the enterprise or part of it pursuant to clause 27.10(a) in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days; and</li> <li>(g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 27.10(a) for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and</li> <li>(h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.</li> </ul>
69. <a href="#">Security Services Industry Award 2010</a>	<p><b>24.9 Annual close down</b></p> <ul style="list-style-type: none"> <li>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</li> <li>(b) Where an employee has been given notice pursuant to clause 24.9(a) and the employee has: <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> </li> <li>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</li> </ul>



Award	Clause
70. <a href="#">Silviculture Award 2010</a>	<p><b>29.3 Shut-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.</p> <p>(b) Where an employee has been given notice pursuant to clause 29.3(a) and the employee has:</p> <p>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</p> <p>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</p> <p>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</p> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
71. <a href="#">Storage Services and Wholesale Award 2010</a>	<p><b>26.6 Annual close down</b></p> <p>Where an employer intends temporarily to close (or reduce to nucleus) any establishment or a section thereof for the purpose of allowing annual leave to the employees concerned or a majority of them, the employer may give one month's notice in writing to such employees (or, in the case of any employee engaged after giving of such notice, notice on the date of the employee's engagement) that the employer elects to apply the provisions of this clause; and thereupon:</p> <p>(a) any employee who at the date of closing is entitled to annual leave for the period of the closure will be given annual leave for the period of the closure;</p> <p>(b) any employee who at the date of closing is not entitled to annual leave will be given leave without pay from the date of closure, together with pay for any period for which the employee is entitled to payment; and</p> <p>(c) the next 12 monthly qualifying period of employment for every such employee will commence from the date of closing.</p> <p>In this clause date of closing in relation to each employee means the first day of annual leave or leave pursuant to this clause.</p>

Award	Clause
72. <a href="#">Surveying Award 2010</a>	<p><b>24.3 Annual leave close-down</b></p> <p>(a) Where an employer intends temporarily to close (or reduce to nucleus) their establishment or a section of it for the purposes, among other things, of allowing annual leave to the employees concerned or a majority of them, they may give in writing to such employees one month's notice (or, in the case of any employee engaged after giving of such notice, notice on the date of the employee's engagement) that the employer elects to apply the provisions of this clause.</p> <p>(b) Where an employee has been given notice pursuant to clause 24.3(a) and the employee has:</p> <ul style="list-style-type: none"> <li>(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;</li> <li>(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or</li> <li>(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.</li> </ul> <p>(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.</p>
73. <a href="#">Telecommunications Services Award 2010</a>	<p><b>23.9 Annual close-down</b></p> <p>(a) An employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that the employer gives at least one month's notice to the affected employees. The notice will advise employees of the commencement date and duration of the close-down.</p> <p>(b) An employer may close down for one or two periods. Where there is agreement between the employer and the majority of employees concerned, an employer may close down for more than two periods.</p> <p>(c) An employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clause 14—Classifications and minimum wage rates. An employee who has not accrued sufficient leave to cover part or all of the close-down is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down.</p>

Award	Clause
74. <a href="#">Textile, Clothing, Footwear and Associated Industries Award 2010</a>	<p><b>41.5 Close-down</b></p> <p>(a) An employer may close-down the plant, or a section or sections of it, in order to allow all or the bulk of employees their annual leave.</p> <p>(b) The employer must give all affected employees at least three months notice of the intention to close the plant or section(s).</p> <p>(c) The employer may stand off all employees in the plant or section(s) affected by the close-down.</p> <p>(d) Any employee who has not qualified for a full entitlement to annual leave must be paid annual leave on a proportionate basis for 2.923 hours for each completed week of continuous service, provided that the employee has at least one months' continuous service.</p> <p>(e) Any employee who has qualified for a full entitlement to annual leave in accordance with the NES must be paid 2.923 hours for each completed week of continuous service performed in excess of 12 months' continuous service, in addition to being allowed their annual leave.</p> <p>(f) The employer and a majority of employees may agree to extend the period of close-down by no more than two days, and all employees stood down without pay, provided that agreement is in accordance with clause 8.3.</p> <p>(g) Any period during which an employee is stood off without pay will count as service in calculating 12 months' continuous service.</p>
75. <a href="#">Timber Industry Award 2010</a>	<p><b>33.11 Annual close-down</b></p> <p>Notwithstanding s.88 of the Act and clauses 33.7 to 33.9, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:</p> <p>(a) the employer gives not less than four weeks' notice of intention to do so;</p> <p>(b) an employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 33.4 and 33.6;</p> <p>(c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down;</p> <p>(d) any leave taken by an employee as a result of a close-down pursuant to clause 33.10 also counts as service by the employee with their employer;</p> <p>(e) the employer may only close down the enterprise or part of it pursuant to clause 33.10 for one or two separate periods in a year;</p> <p>(f) if the employer closes down the enterprise or part of it pursuant to clause 33.10 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days;</p> <p>(g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 33.10 for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and</p> <p>(h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.</p>

Award	Clause
76. <a href="#">Vehicle Manufacturing, Repair, Services and Retail Award 2010</a>	<p><b>29.12 Annual close-down</b></p> <p>Where an employer closes down a plant, or a section or sections thereof, for the purpose of allowing annual leave to all or the bulk of the employees in the workplace or section or sections concerned, the following provisions apply:</p> <p>(a) An employer may by giving not less than four weeks' notice of their intention to do so, stand off for the duration of the close-down all employees in the workplace or section or sections concerned. In such event the employer may allow to those who are not qualified for the full entitlement to annual leave for the total close-down period paid leave up to the total amount of leave accrued as at the commencement of the close-down. Such leave will be at the appropriate rate of wage as prescribed in clause 29.9. The balance of the close-down for which the employee does not have sufficient accrued leave to cover such period will be leave without pay.</p> <p>(b) An employee who has accrued enough leave for the close-down period must be allowed the leave, and be paid at the appropriate wage rate in clause 29.9.</p> <p>(c) An employer may close-down for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the employer closes down in two separate periods one of those periods must be for a period of at least 21 consecutive days.</p> <p>(d) Provided that where the majority of the employees in the workplace or section or sections concerned agree, the employer may close down in accordance with this subclause in two separate periods neither of which is of at least 21 consecutive days or in three separate periods. In such cases the employer must advise the employees concerned of the proposed dates of each close-down before asking them for their agreement.</p>
77. <a href="#">Wine Industry Award 2010</a>	<p><b>31.9 Annual close down</b></p> <p>Notwithstanding s.88 of the Act and clause 31.5 an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the relevant workplace or the section or sections of it, provided that:</p> <p>(a) the employer gives not less than four weeks' notice of the intention to do so; and</p> <p>(b) an employee who has accrued sufficient leave to cover the period of the close down, is allowed leave and also paid for that leave at the appropriate rate in accordance with s.90(1) of the Act and clause 31.4; and</p> <p>(c) an employee who has not accrued sufficient leave to cover part or all of the close down, is allowed paid annual leave for the period for which they have accrued sufficient annual leave and given untaken accrued rostered days off, time off instead of unpaid accrued overtime or unpaid leave for the remainder of the closedown; and</p> <p>(d) any leave taken by an employee as a result of a close down pursuant to clause 31.8 also counts as service by the employee with their employer; and</p> <p>(e) the employer may only close down the relevant workplace or the section or sections of it pursuant to clause 31.8 for one or two separate periods in a year; and</p> <p>(f) if the employer closes down the relevant workplace or the section or sections of it pursuant to clause 31.8 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days; and</p> <p>(g) the employer may close down the relevant workplace or the section or sections of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.</p>

	Award	Clause
78.	<a href="#"><u>Wool Storage, Sampling and Testing Award 2010</u></a>	<p><b>26.3 Taking of annual leave during shut downs etc.</b></p> <p>An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shut down, then the employee may be required to take leave without pay.</p>
<i>Uncertain as to how shutdown operates</i>		
79.	<a href="#"><u>Airline Operations—Ground Staff Award 2010</u></a>	<p><b>34.9</b></p> <p>An employer may apply a system of annual close-down with respect to all or the bulk of employees in a plant or section thereof in which case at least three months' notice will be given.</p>
80.	<a href="#"><u>Professional Employees Award 2010</u></a>	<p><b>19.4 Annual close-down</b></p> <p>Where an employer closes down the enterprise, or a section or sections thereof, for the purposes of allowing annual leave to all or the majority of employees in the enterprise, section, or sections concerned, the same conditions which apply to the other employees of the enterprise, section or sections may also apply to employees covered by this award.</p>

## ANNEXURE D - EXAMPLES OF SHUTDOWN CLAUSES IN BLACK COAL MINING INDUSTRY ENTERPRISE AGREEMENTS

Enterprise Agreement		Clause
<i>Clauses including an ability to direct or require the taking of annual leave</i>		
1.	<a href="#">Austar Coal Mine Workplace Agreement 2011</a>	<p><b>35.2 Taking Annual Leave</b></p> <p>b) The Company may direct an Employee to take all or part of an annual leave entitlement provided at least twenty-eight (28) days' notice in writing is given to the Employee. Where the Company gives notice for the need to take annual leave and reasonable notice cannot be given due to unforeseen circumstances, the Company will discuss the matter with the Employees concerned and seek to reach agreement on the taking of such leave.</p>
2.	<a href="#">Bengalla Enterprise Agreement 2010</a>	<p><b>13.2 Taking Annual Leave</b></p> <p>(2) Bengalla may require a technician to take annual leave to meet operational requirements.</p>
3.	<a href="#">Callide Mine Union Enterprise Agreement 2012</a>	<p><b>18.1.7 Shutdowns</b></p> <p>Where the Company decides to shut down all or part of the mine operation and requires an Employee to take annual leave, a minimum of four weeks notice of this requirement will be given to each Employee. An Employee who receives such notice will take annual leave.</p>
4.	<a href="#">Centennial Northern Coal Services Enterprise Agreement 2016</a>	<p><b>Shutdown at the Plant/s</b></p> <p>20.9 If the Company shuts down the Plant/s or a section of the Plant/s which results in employees not being required to work during the shutdown period, the Company will endeavour to give employees at least four (4) weeks' notice of that shutdown. The Company will whenever possible maintain four (4) weeks' notice for scheduled shutdown periods.</p> <p>20.10 Payment for the leave will be as per clause 20.6.</p> <p>20.11 During shutdowns all employees will be required to complete intrusive maintenance. Application for leave during these periods will be reviewed and considered case by case by the Site Supervisor. Pre-approved leave that falls during a shut down period will not be revoked without prior agreement with the employee.</p>
5.	<a href="#">Curragh Mine Operations Enterprise Agreement 2015</a>	<p><b>12.1 Annual Leave</b></p> <p>.....</p> <p>The Company may direct an Employee to take annual leave in the following circumstances:</p> <p>a) Where the operation or part of the operation is, or is to be shut down for a period. In the event of a shutdown, the Company will give Employees as much notice as possible, which in normal circumstances would be four (4) weeks; or</p> <p>b) Where an Employee's annual leave balance is in excess of two (2) years entitlement. In this event an Employee may be directed</p>

Enterprise Agreement		Clause
		<p>to take up to 25% of their outstanding leave balance on each such occasion</p> <p><b>21.3 Access to the Mine from Blackwater Affected</b></p> <p>f) If a weather event or natural disaster condition results in a shutdown, of all or part of the operation by the Company, Employees will be able to access annual or LSL accruals during this time.</p>
6.	<a href="#">Dendrobium Mine Enterprise Agreement 2015</a>	<p><b>11. Annual Leave</b></p> <p>11.4 The Company may require an Employee to take Annual Leave to suit the needs of the business (e.g. where there is a slow-down or partial or full temporary cessation of work at part or all of the operation) or where the Employees accrued Annual Leave entitlement exceeds six (6) weeks.</p>
7.	<a href="#">Donaldson Coal Pty Ltd Abel and Tasman Underground Mining Operations Enterprise Agreement 2011</a>	<p><b>4.1 Annual Leave</b></p> <p>(j) <i>Shutdown</i> - The Company can shut down all or any part of its operation providing it gives employees 28 days notice of the shutdown or such shorter period as agreed with the affected employees.</p> <p>Employees directly affected by the Shutdown who have annual leave credits may take all or part of those credits during the shutdown period.</p> <p>Employees directly affected by the Shutdown who are not yet entitled to annual leave may take leave during the shutdown period calculated using the formula in Clause 4.1 (h), (if entitled) or leave without pay.</p> <p>Payment for the leave will be at the rate immediately prior to commencing such leave.</p>
8.	<a href="#">Foxleigh Mine Enterprise Agreement 2015</a>	<p><b>4.1 Annual Leave</b></p> <p><b>(h) Shutdown</b></p> <p>If Foxleigh shuts down all or any part of its operation it must given employees at least 28 days notice of the shutdown or such shorter period as agreed with the affected employees.</p> <p>Employees directly affected by the shutdown who have annual leave credits may take all or part of those credits during the shutdown period.</p> <p>Employees directly affected by the shutdown who are not yet entitled to annual leave may take leave during the shutdown period calculated using the formula in (f) [leave for less than a full year's entitlement].</p> <p>Payment for the leave will be at the employee's classification rate immediately prior to commencing the leave.</p>

	Enterprise Agreement	Clause
9.	<a href="#">Grasree Mine Deputies Enterprise Agreement 2013</a>	<p><b>5.3 Shutdown Provision</b></p> <p>We may shutdown all or part of the Mine and require you to take you available annual leave. In the event of a shutdown we will give you at least 28 days“ notice of the shutdown or such shorter period as agreed with the affected employees.</p>
10.	<a href="#">Mangoola Coal Greenfield Enterprise Agreement 2010</a>	<p><b>9.1 Annual Leave</b></p> <p>(c) Mangoola encourages employees to take accrued annual leave each year. Due to operational needs or when it decides to shut down all or part of its operation, Mangoola may direct employees to take annual leave. Where a shutdown is necessary employees will be given 28 days notice.</p>
11.	<a href="#">Middlemount Coal Enterprise Agreement 2016</a>	<p><b>13.1 Annual Leave</b></p> <p>...</p> <p>The employer may direct an employee to take leave, where reasonable e.g. excessive accruals, shutdown or partial shutdown of the mine, by providing the employee with 28 days' notice.</p>
12.	<a href="#">Mt Arthur Coal Mine Enterprise Agreement 2016</a>	<p><b>16.5 SHUTDOWN</b></p> <p>If the Company shuts down all or any part of its operations it must give employees at least 28 days’ notice of the shutdown or such shorter period as agreed between the Company and the employees affected.</p> <p>During this time the Company will attempt to find temporary/alternative work in the first instance. If there isn’t alternative work available, any contractors and/or supplementary labour personnel undertaking work will, have their services discontinued for the duration of the shutdown except for Liebherr and specialist contractors where there will be consultation between the Company and the Employee Representatives to identify their scope of work and the time period required to perform these tasks, during the shutdown period.</p> <p>Employees directly affected by the shutdown who have an entitlement to annual leave may take all or part of that entitlement during the shutdown period.</p> <p>Employees who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave, may, during the shutdown period, take any annual leave in accordance with Clause 16.4 - TAKING OF LEAVE BEFORE ACCRUED.</p>



Enterprise Agreement	Clause
13.	<p data-bbox="259 252 533 363"><a href="#">Muswellbrook Coal Company Limited Open Cut Operation Enterprise Agreement 2016</a></p> <p data-bbox="562 252 775 276"><b>7.2 Annual Leave</b></p> <p data-bbox="562 308 1200 331"><b>(I) What happens if there is a shutdown at the mine?</b></p> <p data-bbox="667 363 2078 467">If MCC shuts down all or part of the operation it must give employees 4 weeks notice of the shutdown. Employees directly affected by the shutdown who are not yet entitled to a full annual leave entitlement may take that amount of leave accrued up to that time calculated using the calculation in clause 7.2(k)</p>
14.	<p data-bbox="259 507 533 587"><a href="#">Oak Creek Coal Surface Reclaim Enterprise Agreement 2016</a></p> <p data-bbox="562 507 757 531"><b>6.8 Stand Down</b></p> <p data-bbox="656 555 2078 635">Oak Creek Coal shall have the right to refuse payment to any Employee for any part day or day(s) for which an Employee is stood down as a result of refusal of duty, neglect of duty or misconduct of the Employee, or when an Employee is on strike or cannot be usefully employed because of a strike.</p> <p data-bbox="656 655 2078 735">Oak Creek Coal shall also have the right to stand down Employees where there is a stoppage of work for any cause for which the Company cannot reasonably be held responsible or where a breakdown of supply or machinery results in being unable to provide productive work to the Employees for a period of four (4) consecutive days.</p> <p data-bbox="656 756 2078 804">Where an Employee, other than an Employee who has been stood down for refusal of duty, neglect of duty, misconduct or where an Employee is on strike, has been stood down in accordance with this sub clause, they may elect to either:</p> <ul data-bbox="656 825 1155 936" style="list-style-type: none"> <li>(a) take accrued annual leave, or</li> <li>(b) take leave without pay, or</li> <li>(c) any combination of the above two options.</li> </ul> <p data-bbox="656 957 2078 1069">Where circumstances other than those above occur, that result in a total or partial shutdown of the operation and Oak Creek Coal are unable to provide any productive work to the Employees for a period of more than four (4) consecutive days, Oak Creek Coal may reduce the notification period for total and I or partial mine shut down from twenty eight (28) days to six (6) days (inclusive of the initial four (4) days).</p> <p data-bbox="656 1090 1697 1114">In these circumstances the Employees affected may, at their absolute discretion, elect to either:</p> <ul data-bbox="656 1134 1155 1246" style="list-style-type: none"> <li>(a) take accrued annual leave, or</li> <li>(b) take leave without pay, or</li> <li>(c) any combination of the above two options.</li> </ul> <p data-bbox="656 1267 2018 1315">The number of Employees granted leave in these circumstances will be dependent upon the number of Employees required to remain on site to conduct statutory and essential services.</p> <p data-bbox="656 1335 1989 1383">Where the Employee elects to take unpaid leave in any of the circumstances above, the period taken shall be recognised as continuation of service.</p> <p data-bbox="562 1404 1059 1428"><b>22.3 Shutdown / Direction to Take Leave</b></p>

Enterprise Agreement		Clause
		<p>The Company may direct an Employee to take annual leave in the following circumstances:</p> <p>(a) Where the operation or part of the operation is, or is to be shut down for a period, the Company may direct Employees to take annual leave provided that four (4) weeks notice in writing is provided.</p> <p>(b) Unless otherwise agreed, where an Employee's annual leave balance is in excess of two (2) years entitlement, an Employee may be directed to take up to 25% of their outstanding leave balance on each such occasion.</p>
15.	<a href="#">Oak Creek No.1 Mine Enterprise Agreement 2015</a>	<p><b>23.3 Shutdown / Direction to Take Leave</b></p> <p>The Company may direct an employee to take annual leave in the following circumstances:</p> <p>a) Where the operation or part of the operation is, or is to be shut down for a period, the Company may direct employees to take annual leave provided that four (4) week's notice in writing is provided.</p> <p>b) Unless otherwise agreed, where an employee's annual leave balance is in excess of two (2) year's entitlement. an employee may be directed to take up to 25% of their outstanding leave balance on each such occasion.</p>
16.	<a href="#">Peabody Energy Australia Coppabella Enterprise Agreement 2013</a>	<p><b>9.7 Shut Down</b></p> <p>If the Company shuts down all or any part of the Mine it will give employees at least 28 days' notice of the shutdown or such shorter period as agreed between the Company and the employees affected.</p> <p>Employees directly affected by the shutdown who have an entitlement to annual leave may take all or part of that entitlement during the shutdown period.</p> <p>Employees who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave, may, during the shutdown period, take any annual leave accrued, in accordance with clause 12 [annual leave clause, which does not provide for leave in advance].</p>
17.	<a href="#">Peabody Energy Australia Moorvale Enterprise Agreement 2014</a>	<p>Pages 10-11</p> <p><b>Shutdown</b></p> <p>The Company has the right to shutdown the operations or any section or part thereof for genuine operational reasons, severe climate events (i.e. floods, cyclones etc.) or safety reasons by giving no less than four (4) weeks written notice to the employees affected by the proposed shutdown.</p> <p>The Company may require you to take annual leave or leave without pay, during the period of any shutdown.</p> <p>Should the Company require you to work during a shutdown period. The Company will notify you with no less than four (4) weeks written notice of the classification and number, per shift, of employees required to attend work.</p> <p>Noting that the undertaking provided by Peabody was as follows (at page 9):</p> <p><b>Unpaid leave clause</b></p> <p>Peabody undertakes not to direct employees to take unpaid leave other than where this is required by reason of a shutdown (referred to in the shutdown clause on page 10 of the Agreement).</p>

	Enterprise Agreement	Clause
18.	<a href="#">Peabody Energy Australia Wambo Open Cut Enterprise Agreement 2015</a>	<p><b>14. SHUTDOWN OF OPERATIONS</b></p> <p>In the event that the Company shuts down all or any part of its operation, it must give Employees at least 28 days' notice of the shutdown or such shorter period as agreed between the Company and the affected Employees.</p> <p>Employees directly affected by the shutdown who have accrued annual leave may use their accrued annual leave during the shutdown period.</p> <p>Employees who do not have sufficient accrued annual leave will thereafter be on special leave with pay unless validly stood down pursuant to clause .13.</p> <p>This clause is for the purposes of shutting down for a specific purpose with a defined time frame being identified based on the requirement being reasonable. Employees will not be stood down indefinitely due to shutdown and any shutdown period will not impact on Employees' redundancy entitlements.</p>
19.	<a href="#">Premier Coal Limited Enterprise Agreement 2012-2016</a>	<p><b>18. Annual Leave</b></p> <p><b>j) Direction to take Annual Leave</b></p> <p>i. Continuous Roster</p> <p>Premier Coal may direct an Employee who has accrued more than 42 shifts (504 hours) of annual leave to take some or all of that leave, up to a maximum of 10 shifts (120 hours).</p> <p>ii. Non Continuous Roster</p> <p>Premier Coal may direct an Employee:</p> <p style="padding-left: 40px;">A. working the B1 roster who has accrued more than 40 shifts (336 hours) of annual leave to take some or all of that leave, up to a maximum of 10 shifts (84 hours); or</p> <p style="padding-left: 40px;">B. working the B2 roster who has accrued more than 41 shifts (430) hours of annual leave to take some or all of that leave, up to a maximum of 10 shifts (105 hours).</p> <p>iii. Provided that Premier Coal will always retain the discretion to direct an Employee to take annual leave in accordance with this clause, Premier Coal will manage the taking of annual leave in accordance with this clause in consultation with the Employee concerned and their chosen representative (if any).</p>

Enterprise Agreement		Clause
20.	<a href="#">Tahmoor Colliery Site Enterprise Agreement 2010</a>	<p><b>32.14 Shutdown</b></p> <p>32.14.1 Where the Company shuts down all or any part of its operation, it must give employee's at least 28 days notice of the shutdown or such shorter period as agreed between the employer and the employees affected.</p> <p>32.14.2 Employees directly affected by the shutdown who have an entitlement to annual leave may take all or part of that entitlement during the shutdown period.</p> <p>32.14.3 Employees who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave, may, during the shutdown period, take any annual leave accrued in accordance with this clause [ie, the ability to take annual leave on a proportionate basis].</p>
21.	<a href="#">Tahmoor Colliery Deputies Enterprise Agreement 2015</a>	<p><b>12.2 Shutdown</b></p> <p>12.2.1 Where the Company shuts down all or any part of its operation, it must give Deputies at least 28 days notice of the shutdown or such shorter period as agreed between the Company and the Deputies affected.</p> <p>12.2.2 Deputies directly affected by the shutdown who have an entitlement to annual leave may take all or part of that entitlement during the shutdown period. Average bonus will be paid for each day of paid leave taken.</p> <p>12.2.3 Deputies who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave, may, during the shutdown period, take any annual leave accrued in accordance with this clause [ie, the ability to take annual leave on a proportionate basis].</p>
22.	<a href="#">Ulan Coal Mines Limited Underground Mine Enterprise Agreement 2010</a>	<p><b>21. Annual Leave</b></p> <p>21.6 Where the Company decides to shut down the Mine, or a section or sections thereof, the Company may direct the taking of annual leave and allow those employees who are not then qualified for a full entitlement of leave to cover the period of shutdown, paid leave on a proportionate basis at the ordinary rate for the employee's classification immediately prior to the commencement of such leave. In such a circumstance a call will be made for the voluntary taking of annual leave first followed by those employees with the most leave accrued.</p>
23.	<a href="#">Ulan West Enterprise Agreement 2011</a>	<p><b>19. Annual leave</b></p> <p><b>19.4</b> The Company encourages employees to take accrued annual leave each year. Due to operational needs or when it decides to shut down all or part of its operation, the Company may direct affected employees to take annual leave. Where a shutdown is necessary employees will be given 28 days notice.</p>

**Enterprise Agreement Clause**

*Clauses that expressly provide for unpaid leave*

24.	<a href="#">Airly Mine Enterprise Agreement 2015</a>	<p><b>17.1.3 Shutdown at the Mine</b></p> <p>(a) If the Company shuts down the Mine or a section of the Mine it will endeavour to give employees at least four weeks notice of that shutdown. The Company will whenever possible maintain four (4) weeks notice for scheduled shutdown periods.</p> <p>(b) If there is to be a shutdown, affected employees who do not have sufficient annual leave to cover the period of the shutdown, will not be paid annual leave for this period.</p> <p>(c) Payment for the leave will be as per clause 17 .1.1.</p> <p>(d) During shutdowns a number of employees will be required to work during the shutdown that will be determined on each occasion by the Company.</p> <p>(e) Shift length will be eight (8) hours during shut down periods, unless otherwise agreed.</p>
25.	<a href="#">Centennial Mandalong Mine Enterprise Agreement 2015</a>	<p><b>Shutdown at the Mine</b></p> <p>19.8 The Company can shut down or partially shut down Mandalong, on the giving of four weeks notice. If such a shut down or partial shut down is declared, the Company advises the numbers of employees that are required to work during the shut down. Employees, other than the numbers required to work, are to be on annual leave or long service leave during the shut down/partial shut down.</p> <p>19.9 If there is to be a shutdown, affected employees who do not have sufficient accrued annual leave or long service leave to cover the period of the shutdown may be granted leave without pay.</p>
26.	<a href="#">Centennial Myuna Enterprise Agreement 2016</a>	<p><b>Shutdown at the Mine</b></p> <p>18.10 If the Company shuts down the Mine or a section of the Mine which results in employees not being required to work during the shutdown period, the Company will provide employees with at least four (4) weeks' notice of that shutdown. The Company will whenever possible maintain four (4) weeks' notice for scheduled shutdown periods.</p> <p>18.11 If there is to be a shutdown, affected employees who are not required to work will be given the opportunity to access any accrued annual leave or long service leave to cover the period of the shutdown. Employees who do not have sufficient accrued leave to cover the period may be required to take leave without pay.</p> <p>18.12 During shutdowns the number and required skills of employees to work during the shutdown will be determined by the Company</p>

Enterprise Agreement		Clause
27.	<a href="#">Clarence Colliery Enterprise Agreement 2016</a>	<p><b>14.9 Shutdown at the mine:</b></p> <p>(a) If the Company shuts down the mine or a section of the mine it must give employees four (4) weeks notice of that shutdown. The Company will whenever possible maintain eight (8) weeks notice for scheduled shutdown periods.</p> <p>(b) If there is to be a shutdown, affected employees who do not have sufficient Annual Leave to cover the period of the shutdown, will use any accrued Annual Leave first and then will receive leave without pay for the remainder of the shutdown.</p>
28.	<a href="#">Springvale Coal Pty Ltd Enterprise Agreement 2016</a>	<p><b>16.7 Annual Leave for Declared Shutdown</b></p> <p>If management declare a shutdown of the Mine, affected employees who do not have sufficient annual leave entitlement to cover the period of shutdown; will not be paid annual leave for this period. Employees shall be given at least four weeks notice of a shutdown, where reasonably practical.</p>
<i>Clauses that provide for annual leave in advance where an employee has insufficient leave</i>		
29.	<a href="#">Ashton Coal Operations Pty Limited – Ashton Coal Handling and Preparation Plant Enterprise Agreement 2013</a>	<p><b>2.6 Annual Leave</b></p> <p>2.6.7 The company may shutdown all or a section of the operation by giving not less than 4 weeks' notice. During such shutdowns employees may be directed to take annual leave or the company may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>
30.	<a href="#">Ashton Coal Operations Pty Limited – Ashton Underground Mine Enterprise Agreement 2012</a>	<p><b>2.5 Annual Leave</b></p> <p>(h) The company may shutdown all or a section of the operation by giving not less than one months' notice. During such shutdowns employees may be directed to take annual leave or the company may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. If a shutdown is required , wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>
31.	<a href="#">Beltana Workplace Enterprise Agreement 2010</a>	<p><b>18. Annual Leave</b></p> <p>18.4 The Company may shutdown a part or the entire site and require the taking of annual leave. In the event of a shutdown the Company will give the Employees a minimum of four (4) weeks written notice. Unless otherwise agreed, Employees without sufficient entitlement to leave for the period of the shutdown may receive annual leave pro-rata in advance. The company will endeavor to communicate planned shutdowns for the Christmas period, if they are to occur, such that 2 months notice is provided.</p>

Enterprise Agreement		Clause
32.	<a href="#">Boggabri Coal Operations Pty Ltd CHPP 2016 Enterprise Agreement</a>	<p><b>3.5 Annual Leave</b></p> <p><b>(f) Shut Down</b></p> <p>BCO may shutdown all or a section of the operation by giving not less than four weeks' notice. During such shutdowns, Employees directly affected by the shutdown may be directed to take annual leave or BCO may agree to advance annual leave to an Employee who does not have sufficient accrued annual leave to cover the shutdown period.</p> <p>The conditions for directing an Employee to take annual leave contained in clause 3.5(b)(v) do not apply in the case of a shutdown under this clause.</p>
33.	<a href="#">Bulga Underground Operations Enterprise Agreement 2014</a>	<p><b>18. Annual Leave</b></p> <p>18.5 The Company may shutdown a part or the entire site and require the taking of annual leave. In the event of a shutdown the Company will give the Employees a minimum of four (4) weeks written notice. Unless otherwise agreed, Employees without sufficient entitlement to leave for the period of the shutdown may receive annual leave pro-rata in advance. The company will endeavor to communicate planned shutdowns for the Christmas period, if they are to occur, such that 2 months notice is provided.</p>
34.	<a href="#">Capcoal Surface Operations Trades Enterprise Agreement 2017</a>	<p><b>5.3 Shutdown Provision</b></p> <p>Capcoal may shutdown all or part of the open cut operations and require you to take annual leave or other leave as agreed to by Capcoal. In the event of a shutdown Capcoal will give you at least 28 days notice in writing. If you have insufficient annual leave entitlement for the period of the shutdown you may be granted annual leave in advance</p>
35.	<a href="#">LakeCoal Pty Ltd – Chain Valley Operations Enterprise Agreement 2016</a>	<p><b>2.6 Annual Leave</b></p> <p>2.6.6 When an employee's employment is terminated the employee's annual leave entitlements will be paid as if taken. LakeCoal may shutdown all or a section of the operation by giving not less than one month's notice. During such shutdowns employees may be directed to take annual leave or LakeCoal may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>

Enterprise Agreement		Clause
36.	<a href="#">LD Operations Pty Limited – Chain Valley Colliery – Greenfield Agreement 2016</a>	<p><b>2.5 Annual Leave</b></p> <p>2.5.9 The Company may shutdown all or sections of its operations by giving not less than one month’s notice. During such shutdowns Employees may be directed to take annual leave or the Company may agree to advance annual leave to an Employee who does not have sufficient accrued annual leave to cover the shutdown period. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>
37.	<a href="#">LD Operations Pty Limited – Narrabri Coal Operations – Enterprise Agreement 2009</a>	<p><b>2.5 Annual Leave</b></p> <p>(h) The company may shutdown all or a section of the operation by giving not less than one month's notice. During such shutdowns employees may be directed to take annual leave or the company may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>
38.	<a href="#">Moolarben Coal Operations Pty Limited – Moolarben Coal Handling and Preparation Plant (CHPP) Enterprise Agreement 2015</a>	<p><b>2.6.3 Shut Down</b></p> <p>a) The company may shutdown all or a section of the operation by giving not less than four weeks' notice. During such shutdowns employees may be directed to take annual leave or the company may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>
39.	<a href="#">Moolarben Coal Operations Pty Limited – Moolarben Open Cut Mine Enterprise Agreement 2015</a>	<p><b>2.5.3 Shut Down</b></p> <p>a) MCO may shutdown all or a section of the operation by giving not less than four weeks' notice. During such shutdowns employees directly affected by the shut down may be directed to take annual leave or MCO may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. The conditions for directing an employee to take annual leave contained in clause 2.5.2d) do not apply in the case of a shutdown under this clause 2.5.3. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.</p>
40.	<a href="#">Moolarben Coal Operations Pty Limited – Moolarben Underground Mine Enterprise Agreement 2017</a>	<p><b>2.5.2 Taking Annual Leave</b></p> <p>d) In normal circumstances, employees should take annual leave during the year in which it is accrued, however, where an employee has accrued annual leave of more than 315 hours (nine (9) weeks) MCO may direct an employee to take annual leave. Where such direction is given to an employee, the employee will be given a minimum of four (4) weeks' notice and the employee may be required to reduce their annual leave balance to 210 hours (six (6) weeks). The conditions for directing an employee to take annual leave under this clause 2.5.2d), do not apply in the case of a shutdown under clause 2.5.3.</p> <p><b>2.5.3 Shut Down</b></p>



Enterprise Agreement		Clause
		a) MCO may shutdown all or a section of the operation by giving not less than four (4) weeks' notice. During such shutdowns employees directly affected by the shut down may be directed to take annual leave or MCO may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shutdown period. The conditions for directing an employee to take annual leave contained in clause 2.5.2d) do not apply in the case of a shutdown under this clause 2.5.3. If a shutdown is required, wherever practical, it will be scheduled to coincide with a period of high leave demand.
41.	<a href="#">Moranbah North Mine Enterprise Agreement 2014</a>	<p><b>5.6 Shutdown</b></p> <p>MNM may shutdown all or part of the operation and require you to take annual leave. In the event of a shutdown MNM will give you at least 28 days notice in writing. If you have insufficient annual leave entitlement for the period of the shutdown you may be granted leave in advance.</p>
42.	<a href="#">Stratford CHPP Operations Enterprise Agreement 2014</a>	<p><b>30. SHUT DOWN OF OPERATIONS</b></p> <p>The Company may at its discretion declare either a partial or total shutdown of operations. Where the Company exercises its discretion to shut down operations, the Company may direct an employee to take paid annual leave. The Company will give employees four weeks' notice of a shutdown. Annual leave taken shall be paid in accordance with the employee's leave accrual if available. However, if an employee is not yet entitled to sufficient annual leave the Company may provide annual leave in advance during the shutdown period in accordance with 20.7.</p>
43.	<a href="#">Thiess Mt Owen Enterprise Agreement 2016</a>	<p><b>19.2 Taking Annual Leave and Long Service Leave</b></p> <p>12. If the Company decides to shutdown all or part of its operations, it will where possible, provide employees 28 days' notice. If 28 days' notice is not possible due to business requirements, the Company will make all reasonable attempts to communicate to employees the nature of the proposed shutdown prior to the date of the shutdown which will be no less than 14 days' notice. The Company will also attempt to coincide shutdown periods with high peak demand periods.</p> <p>The Company may require employees to take accrued annual leave for all or part of the shutdown period. Employees who do not have sufficient accrued annual leave may apply to take annual leave before the right thereto has accrued and leave accruals will be adjusted to account for such leave taken</p>
<i>Clause provides for annual leave in advance and/or long service leave and unpaid leave</i>		
44.	<a href="#">BHP Billiton Mitsui Coal Pty Ltd Poitrel Mine Enterprise Agreement 2015</a>	<p><b>18.2 Annual Leave</b></p> <p>(g) The company may shutdown a part of or the entire Mine site and require the taking of annual leave. The company will give four weeks notice of a shutdown which requires the taking of annual leave unless it is not reasonably practicable to do so. Where it is not reasonably practicable to do so, the company may give a shorter period of notice as agreed with affected employees, or in the event of a disagreement as determined by FWA. Employees who do not have an accrued annual leave entitlement may be required to take leave in advance where approved, or leave without pay. Approved leave without pay in accordance with this provision will not break an employee's continuity of service.</p>

Enterprise Agreement		Clause
45.	<a href="#">BMA Caval Ridge Mine Enterprise Agreement 2015</a>	<p><b>18.2 Annual Leave</b></p> <p>(f) The company may shutdown a part of or the entire Mine site and require the taking of annual leave. The company will give four weeks notice of a shutdown which requires the taking of annual leave unless it is not reasonably practicable to do so. Where it is not reasonably practicable to do so the company may give a shorter period of notice as agreed with affected employees, or in the event of a disagreement as determined by FWC. Employees who do not have an accrued annual leave entitlement may be required to take leave in advance where approved, or leave without pay. Approved leave without pay in accordance with this provision will not break an employee's continuity of service.</p>
46.	<a href="#">Broadmeadow Mine Enterprise Agreement 2016</a>	<p><b>17.4 Annual leave when site is shut down</b></p> <p>Broadmeadow may shutdown a part or the entire site and require the taking of annual leave. Broadmeadow will give four (4) weeks' notice of a shutdown which requires the taking of annual leave. Employees who do not have an accrued annual leave entitlement will be required to take leave without pay, or where there is agreement between the Employee and Broadmeadow, may take leave in advance.</p>
47.	<a href="#">Dawson Mines Collective Enterprise Agreement 2014</a>	<p><b>5.4 Shutdown Provision</b></p> <p>Dawson may shutdown all or part of its operations and require employees to take appropriate leave. In the event of a shutdown Dawson will give employees at least one (1) month's notice in writing. If an employee has insufficient annual leave entitlements for the period of the shutdown, the employee may be granted leave (long service leave or leave without pay). Dawson will consider on a case by case basis whether those employees, who have a genuine need to keep their annual leave or long service leave, have the ability to access unpaid leave in the event of a stand-down.</p>
48.	<a href="#">Grasstree Mine Operations Enterprise Agreement 2016</a>	<p><b>2.10 Shutdown</b></p> <p>2.10.1 Where an employee elects to take unpaid leave in any of the circumstances above, during the period Grasstree may shutdown a part or the entire site and require the taking of annual leave. In the event of a shutdown, Grasstree will give You a minimum of 28 days' notice in writing. By agreement, the period of notice may be reduced in the event of exceptional or emergency situations, but such agreement will be done in consultation with affected employees.</p> <p>2.10.2 If You have insufficient annual leave entitlement for the period of the shutdown, You may be granted annual leave in advance (provided that any period advanced and not subsequently accrued will be deducted from any payments otherwise due on termination), or designated as leave without pay.</p> <p>2.10.3 Where the shutdown occurs in accordance with clause 2.9, the provisions of that clause will prevail over those in this clause.</p>

	Enterprise Agreement	Clause
49.	<a href="#">Glendell Mine Operations Employee Enterprise Agreement 2013</a>	<p><b>16. SHUTDOWN</b></p> <p>In the event that the Company decides to shut down or partially shut down its operations it will give affected employees at least 28 days notice.</p> <p>The Company may require an Employee to access accrued annual leave or agree in lieu thereof to an employee taking long service leave (provided that the duration of the shutdown is two (2) weeks or more to cover the period.</p> <p>Where the Employee does not have a sufficient entitlement to annual leave (to cover this period or future periods already approved) the Company may either grant annual leave in advance or agree to unpaid leave for the period of the shutdown or the future leave period.</p>
50.	<a href="#">Helensburgh Coal Enterprise Agreement 2013</a>	<p><b>14. SHUTDOWN</b></p> <p>14.1 The Company has the right to shutdown the operations or any section or sections thereof for genuine operational or safety reasons by giving no less than four (4) weeks written notice to the employees affected by the proposed shutdown.</p> <p>14.2 Employees may take annual leave or long service leave if eligible during the period of any shutdown.</p> <p>14.3 Should the Company require a limited number of employees to work during a shutdown period. The Company will notify employees no less than four (4) weeks written notice the classification and number, per shift, of employees required to attend work.</p>
51.	<a href="#">Hunter Valley Operations Enterprise Agreement 2016</a>	<p><b>24. Annual Leave</b></p> <p>The company may shutdown all or a section of the operation by giving not less than one months notice. During such shutdowns employees may be directed to take annual leave. An employee who does not have leave entitlement sufficient for the shut down period will be allowed unpaid leave of absence. The Company may agree to advance annual leave to an employee who does not have sufficient accrued or pro-rata annual leave to cover the shut down period. If a shutdown is required, wherever practicable, it will be scheduled to coincide with a period of high leave demand.</p>
52.	<a href="#">Leighton Duralie Enterprise Agreement 2014</a>	<p><b>19.10. Shutdown</b></p> <p>a) If Leighton elects or receives Client direction to shut down all or any part of its operation, or an aspect of its operation, it must give Employees at least 28 days' notice of the shutdown or such shorter period as agreed between Leighton and Employees affected.</p> <p>b) Employees directly affected by the shutdown who have an entitlement to annual leave may take all or part of that entitlement</p>

Enterprise Agreement		Clause
		<p>during the shutdown period.</p> <p>c) Employees who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave may, during the shutdown period:</p> <ul style="list-style-type: none"> <li>i. Request to take annual leave in advance in accordance with the below Clause. Any such request will not be unreasonably refused by Leighton; or</li> <li>ii. Be directed to take unpaid leave</li> </ul> <p>Any annual leave which has been taken in advance of the Employee's accrual will be deducted from the Employee's entitlement as it accrues. Leighton may deduct from the Employee's termination pay the payment for any annual leave taken in advance which the Employee has not yet accrued.</p>
53.	<a href="#">Liddell Coal Preparation Plant Enterprise Agreement 2013</a>	<p><b>14.3 Annual Leave</b></p> <p>(f) The Company may shutdown all or part of its operations and give affected Employees at least twenty eight (28) days notice or a lesser period by agreement with the majority of affected Employees. During the shutdown period the company may agree to grant AIL, LSL or LWOP. Special circumstances for individual Employees will be assessed by the Company on an individual basis.</p>
54.	<a href="#">Liddell Open Cut Enterprise Agreement 2013</a>	<p><b>13.1 Annual Leave</b></p> <p><b>b) Taking Annual Leave</b></p> <p>vi. The Company may shutdown all or part of its operations and give affected Employees 28 days notice, or a lesser period, as agreed where it is practicable to do so. During the shutdown period the company may agree to grant annual leave, long service leave or leave without pay. Special circumstances for individual Employees will be assessed by the Company on an individual basis.</p>
55.	<a href="#">Maules Creek Mine Greenfields Agreement 2014</a>	<p><b>10.5 Annual leave shutdown</b></p> <p>(a) Where the Company decides to shutdown all or a section of the Mine, the Company may direct the taking of accrued annual leave on the giving of 28 days' notice to Employees (or such shorter period as agreed).</p> <p>(b) Employees with insufficient annual leave accruals to cover the period of the shutdown may access leave in advance or leave without pay to cover the period.</p>
56.	<a href="#">Mount Thorley/Warkworth Operations Enterprise Agreement 2014</a>	<p><b>23.6 Shutdown</b></p> <p>The Company may shut down all or a section of the operation by giving not less than one (1) months' notice. During such shutdowns employees may be directed to take annual leave. An employee who does not have leave entitlement sufficient for the shutdown period will be allowed unpaid leave of absence. The Company may agree to advance annual leave to an employee who does not have sufficient accrued or pro-rata annual leave to cover the shutdown period.</p>

	Enterprise Agreement	Clause
57.	<a href="#">Wambo Coal, Coal Handling &amp; Preparation Plant Enterprise Agreement 2015</a>	<p><b>21.6 Shutdown</b></p> <p>The Company has the right to shutdown the operations or any section or sections thereof for genuine operational or safety reasons by giving no less than four (4) weeks written notice to the Employees affected by the proposed shutdown.</p> <p>This clause is for the purposes of shutting down for a specific, reasonable purpose with a defined time frame. Employees will not be stood down indefinitely due to shutdown.</p> <p>Employees may take annual leave or long service leave if eligible during the period of any shutdown.</p> <p>Employees who do not have sufficient accrued annual leave will thereafter be on special leave with pay unless validly stood down pursuant to clause 12.</p> <p>Should the Company require a limited number of Employees to work during a shutdown period the Company will notify Employees no less than four (4) weeks prior to the shutdown by written notice of the classification and number, per shift, of Employees required to attend work.</p>
58.	<a href="#">Whitehaven Open Cut Operations (Tarrawonga) Enterprise Agreement 2013</a>	<p><b>20 SHUTDOWN</b></p> <p>(a) If the Company decides to shut down all or part of its operations it will give affected Employees as much notice as possible. A shutdown will not generally be for a period of less than 3 days.</p> <p>(b) In the event of a shutdown, the Company may:</p> <ul style="list-style-type: none"> <li>• require an Employee to take accrued annual leave for all or part of the shutdown period; or</li> <li>• where the Employee does not have a sufficient accrued annual leave entitlement, either grant annual leave in advance or require the Employee to take unpaid leave for all or part of the shutdown period.</li> <li>• Where the number of Employees required to be on leave cannot be covered in the first instance by volunteers, taking into consideration parts of the operations may still have to run then the leave required to be taken will be shared around evenly between the Employees.</li> </ul> <p>(c) During the shutdown period the Company will endeavour to look for alternative work for Employees and will not use contractors/supplementary labour doing work that is normally performed by Employees.</p>
59.	<a href="#">Whitehaven Coal Open Cut Operations (Werris Creek) Enterprise Agreement 2016</a>	<p><b>21. SHUTDOWN</b></p> <p>(a) If the Company decides to shut down all or part of its operations it will give affected Employees as much notice as possible &amp; where practicable 28 days' notice. A shutdown will not generally be for a period of less than 3 days.</p>

Enterprise Agreement	Clause
	<p>(b) In the event of a shutdown, the Company may:</p> <ul style="list-style-type: none"> <li>• require an Employee to take accrued annual leave for all or part of the shutdown period;</li> <li>• where the Employee does not have a sufficient accrued annual leave entitlement, either grant annual leave in advance or require the Employee to take unpaid leave for all or part of the shutdown period;</li> <li>• where the number of Employees required to be on leave cannot be covered in the first instance by volunteers, taking into consideration parts of the operations may still have to run, then the leave required to be taken will be shared around evenly between the Employees</li> </ul> <p>(c) During the shutdown period the Company will endeavour to look for alternative work for Employees and will not use contractors/supplementary labour to perform work that is normally performed by Employees.</p>

## ANNEXURE E - LEGISLATIVE PROVISIONS RELATING TO ANNUAL LEAVE SHUT DOWNS

No	Legislation	Shut down	Ability of an employer to direct or require the taking of paid annual leave
1.	<i>Workplace Relations Act 1996</i> (Cth) (repealed) (as at 6 January 2009)	See Section 236(5).	See Section 236(6).
2.	<i>Annual Holidays Act 1944</i> (NSW)	See sections 4A(2)-(7).	See section 3(6)(a).
3.	<i>Industrial Relations Act 1999</i> (Qld)	N/A	See sections 12(2) and 71EC(2).
4.	<i>Industrial Relations Act 2016</i> (Qld)	N/A	See section 33(3).
5.	<i>Fair Work Act 1994</i> (SA)	See Schedule 4, clause 4(2)(b).	See Schedule 4, clause 4(2)(a) and 4(3).
6.	<i>Minimum Conditions of Employment Act 1993</i> (WA)	N/A	N/A
7.	<i>Industrial Relations Act 1984</i> (Tas)	N/A	See section 47AE(7).
8.	<i>Industrial Relations Act 1979</i> (Vic) (repealed)	See section 58(1)(b).	See section 58(1)(d).
9.	<i>Annual Leave Act 1973</i> (ACT) (repealed)	See section 12.	See section 10.
10.	<i>Annual Leave Act</i> (NT)	See section 12.	See sections 6(9).

# 1.



## Workplace Relations Act 1996

### Act No. 86 of 1988 as amended

This compilation was prepared on 6 January 2009  
taking into account amendments up to Act No. 135 of 2008

**Volume 1** includes: Table of Contents  
Sections 1 – 919

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

**Volume 2** includes: Table of Contents  
Schedules 1 – 10

**Volume 3** includes: Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Repeal Table  
Note 2  
Table A  
Renumbering Table

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra



Section 235

to the employee an amount of annual leave accrued under that subsection.

- (3) Each year an employer must credit to an employee of the employer the amount (if any) of annual leave accrued by the employee under subsection 232(3) since the employer last credited to the employee an amount of annual leave accrued under that subsection.

*Accumulation*

- (4) Annual leave is cumulative.

**235 Annual leave—payment rules**

- (1) If an employee takes annual leave during a period, the employee must be paid a rate for each hour (pro-rated for part hours) of annual leave taken that is no less than the rate that, immediately before the period begins, is the employee's basic periodic rate of pay (expressed as an hourly rate).
- (2) If the employment of an employee who has not taken an amount of accrued annual leave ends at a particular time, the employee must be paid a rate for each hour (pro-rated for part hours) of the employee's untaken accrued annual leave that is no less than the rate that, immediately before that time, is the employee's basic periodic rate of pay (expressed as an hourly rate).

**236 Rules about taking annual leave**

*General rules*

- (1) Subject to this section and section 233, an employee is entitled to take an amount of annual leave during a particular period if:
  - (a) at least that amount of annual leave is credited to the employee; and
  - (b) the employee's employer has authorised the employee to take the annual leave during that period.
- (2) To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that an employer may authorise an employee to take.

Section 236

- (3) Any authorisation given by an employer enabling an employee to take annual leave during a particular period is subject to the operational requirements of the workplace or enterprise in respect of which the employee is employed.
- (4) An employer must not unreasonably:
  - (a) refuse to authorise an employee to take an amount of annual leave that is credited to the employee; or
  - (b) revoke an authorisation enabling an employee to take annual leave during a particular period.

*Shut downs*

- (5) An employee must take an amount of annual leave during a particular period if:
  - (a) the employee is directed to do so by the employee's employer because, during that period, the employer shuts down the business, or any part of the business, in which the employee works; and
  - (b) at least that amount of annual leave is credited to the employee.

*Extensive accumulated annual leave*

- (6) An employee must take an amount of annual leave during a particular period if:
  - (a) the employee is directed to do so by his or her employer; and
  - (b) at the time that the direction is given, the employee has annual leave credited to him or her of more than  $\frac{1}{13}$  of the number of nominal hours worked by the employee for the employer during the period of 104 weeks ending at the time that the direction is given; and
  - (c) the amount of annual leave that the employee is directed to take is less than, or equal to,  $\frac{1}{4}$  of the amount of credited annual leave of the employee at the time that the direction is given.

*Entitlement to leave for all nominal hours in a day also extends to other hours on that day*

- (7) If:

Section 236

- (a) an employee to whom subparagraph 229(1)(a)(ii) applies is entitled to take annual leave on a particular day; and
- (b) the entitlement covers all the hours (or part hours) on that day that would count towards the nominal hours worked by the employee in the week that includes that day;

the employer is taken to have authorised the employee to be absent from work for any other hours (or part hours) on that day that the employee would otherwise have worked.

**Example:** Bianca is employed by BBB Bakers Pty Ltd. She works 40 hours per week (consisting of 38 hours plus 2 reasonable additional hours).

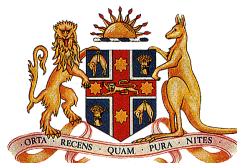
Under subsection 232(2), Bianca is entitled to accrue paid annual leave of 1/13 of her nominal hours worked for each completed 4 week period of continuous service with BBB Bakers. Because of subparagraph 229(1)(a)(ii), Bianca's nominal hours worked in a week are capped at 38 hours. If Bianca works her normal hours for a 12 month period, she will accrue 152 hours of paid annual leave.

The above subsection ensures that Bianca will be able to be absent from work for 4 full 40 hour weeks. Bianca's absence for the additional 8 hours will not be paid leave, and will not count as service, but it will not break her continuity of service (see subsection (8)).

- (8) An absence that is taken by subsection (7) to have been authorised:
  - (a) is not annual leave; and
  - (b) does not break the employee's continuity of service; and
  - (c) does not otherwise count as service.
- (9) For the purposes of subsection (7), if a shift (or other period of work) occurs partly on 1 day and partly on the next day, the shift (or other period of work) is taken to be a day and the remaining parts of the days are taken not to be part of the day.
- (10) For the purposes of subsection (7), the regulations may make provision for either or both of the following:
  - (a) determining what hours (or part hours) on a particular day would count towards the nominal hours worked by an employee in a week;
  - (b) determining what other hours (or part hours) on a particular day would be hours (or part hours) that an employee would otherwise have worked.

## 2.

### Annual Holidays Act 1944 No 31



New South Wales

#### Status Information

##### Currency of version

Current version for 8 December 2016 to date (accessed 7 September 2017 at 12:23).  
Legislation on this site is usually updated within 3 working days after a change to the legislation.

##### Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical notes](#)

##### Does not include amendments by:

*Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32* (amended by *Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 87*) (not commenced)

##### Responsible Minister

Minister for Industrial Relations

##### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

File last modified 8 December 2016.

- (c) shift allowances relating to ordinary time and weekend penalties relating to ordinary time the worker would have worked on days other than public holidays if the worker had not been on annual holiday, but excluding any other amounts paid to the worker in respect of shift work, overtime or penalty rates.
- (4) For the purposes of subsections (2) (a1), (2) (b) and (3), in computing the period actually worked by a worker no regard shall be had to any period during which, on account of illness or injury, the worker was temporarily assigned to duties or work entitling the worker to payment of wages lower than the wages the worker would have received had the worker not been assigned to those duties or that work on that account, unless the worker was assigned to those duties or that work during the whole of the period actually worked by the worker.
- (5) Notwithstanding the provisions of subsection (2) (a), (2) (a1) or (3), where by any award or agreement a worker is entitled to shift allowances relating to ordinary time or weekend penalties relating to ordinary time the worker would have worked on days other than public holidays if the worker had not been on annual holiday or to an annual holiday loading, whichever is the greater, the ordinary time rate of pay or the ordinary pay, as the case may be, of that worker shall not, in respect of any annual holiday to which the worker is entitled under this Act, include those allowances and penalties.
- (6) Despite anything to the contrary in this section, the ordinary pay of a worker is not to include or be increased by the amounts paid under any bonus, incentive or other similar scheme if the annual amount of the worker's ordinary pay (excluding any amounts so paid) exceeds the amount prescribed by the regulations for the purposes of this subsection.

### 3 Annual holidays with pay

- (1) Except as otherwise provided in this Act, every worker shall at the end of each year of the worker's employment by an employer become entitled to an annual holiday on ordinary pay.
- Such annual holiday shall:
- (a) where any such year of employment ends upon or before 30 November 1974, be of three weeks,
- (b) where any such year of employment ends after 30 November 1974, be of four weeks.
- (2) An annual holiday shall be given and taken either in one consecutive period or two periods which shall be of three weeks and one week respectively, or if the worker and the employer so agree, in either two, three or four separate periods and not otherwise.
- (3) If the worker and the employer so agree, the annual holiday or any of such separate periods may be taken wholly or partly in advance before the worker has become entitled to the annual holiday.
- (4) The annual holiday shall be given by the employer and shall be taken by the worker before the expiration of a period of six months after the date upon which the right to such holiday accrues: Provided that the giving and taking of the whole or any separate period of such annual holiday may, with the consent in writing of the Industrial Registrar, or Deputy Industrial Registrar appointed under the *Industrial Relations Act 1996*, be postponed for a period to be specified by such Registrar in any case where he or she is of opinion that circumstances render such postponement necessary or desirable.
- (5) Except as provided in section 4 or section 4A, payment shall not be made by an employer to a worker in lieu of any annual holiday or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by the worker.
- (6)
- (a) The employer shall give each worker at least one month's notice of the date from which the worker's annual holiday shall be taken.

- (b) The employer shall pay each worker in advance before the commencement of the worker's annual holiday, the worker's ordinary pay for the holiday period.
- (7) Where the annual holiday or any part thereof has been taken before the right to the annual holiday has accrued the right to a further annual holiday shall not commence to accrue until after the expiration of the year of employment in respect of which the annual holiday or part has been so taken.
- (8) Where any special or public holiday for which the worker is entitled to payment under any Act, award or agreement or under the worker's contract of employment, occurs during any period of an annual holiday taken by a worker under this section, the period of the holiday shall be increased by one day in respect of that special or public holiday.

#### **4 Holiday pay where holiday is not taken**

- (1) Where the employment of a worker who has become entitled to one or more annual holidays provided by this Act is terminated, the employer shall be deemed to have given the holiday or holidays (except so much, if any, as has already been taken) to the worker as from the date of termination of the employment, and shall forthwith pay to the worker, in addition to all other amounts due to the worker, the worker's ordinary pay for the period of the holiday or holidays.
- (2) Subsection (1) applies to and in respect of an annual holiday (except so much, if any, as has already been taken) whether or not the worker concerned continues to be entitled (apart from this section) to take it, and so applies as if the worker's right to take it had accrued immediately before the date of the termination of the worker's employment.
- (2A) Nothing in subsection (1) or (2) affects the obligation of an employer to give, or a worker to take, annual holidays in accordance with section 3.
- (3)
  - (a) This subsection applies with respect to every period of employment of a worker by any employer which is less than one year, such period being computed from the date of the commencement of the employment or (where the worker has during the employment become entitled to any annual holiday or holidays under section 3) computed from the date upon which the worker became entitled to that annual holiday, or to the last annual holiday, as the case may be.
  - (b) Where the employment of any worker by any employer is terminated at the end of a period of employment to which this subsection applies, the employer shall forthwith pay to the worker, in addition to all other amounts due to the worker, an amount:
    - (i) where that period of employment ends upon or before 30 November 1974, equal to three forty-ninths of the worker's ordinary pay for that period of employment,
    - (ii) where that period of employment ends after 30 November 1974, equal to one twelfth of the worker's ordinary pay for that period of employment.
- (4) Where the annual holiday under section 3 or any part thereof has been taken in advance by a worker pursuant to subsection (3) of that section, and
  - (a) the employment of the worker is terminated before the worker has completed the year of employment in respect of which such annual holiday or part was taken, and
  - (b) the sum paid by the employer to the worker as ordinary pay for the annual holiday or part so taken in advance exceeds the sum which the employer is required to pay to the worker under subsection (3) of this section,

the employer shall not be liable to make any payment to the worker under subsection (3) of this section, and shall be entitled to deduct the amount of such excess from any remuneration payable to the worker upon the termination of the employment.

#### 4A Annual close-down

(1)

(a) In this section:

*Period of employment* means the period during which a worker is employed by an employer referred to in subsection (2), being a period computed:

- (a) where the worker has not during the employment with that employer become entitled to any annual holiday under section 3, from the date of commencement of the employment with that employer, or
- (b) where the worker has during the employment with that employer become entitled to any annual holiday or holidays under section 3, from the date upon which the worker last became entitled to an annual holiday,

up to the commencement of the specified period affecting that worker.

*Specified period* means the period specified by an employer pursuant to subsection (2).

(b) This section, subsections (2) and (3) excepted, shall apply only to a worker to whom notice has been given pursuant to this section.

(c) Subsections (2) and (3) of section 3 shall not apply to a worker to whom notice has been given pursuant to this section.

(2) Subject to subsection (3), an employer may give notice to a worker employed in any part of the employer's establishment that, during a period specified when giving that notice, that establishment or part will be temporarily closed (or reduced to a nucleus) for the purposes of giving an annual holiday or leave without pay to the workers to whom such notice has been given.

(3) Notice pursuant to subsection (2):

(a) shall be given to a worker not less than one month before the commencement of the specified period or, in the case of a worker who commences employment less than one month before the commencement of the specified period, on the day the worker commences employment, and

(b) shall not be given by an employer more than once in any calendar year.

(4) Where, immediately before the commencement of the specified period, a worker is not entitled under section 3 to any holiday:

(a) the worker shall be given and shall take leave without pay for the specified period, and

(b) the worker shall, in addition, be paid:

(i) three forty-ninths of the worker's ordinary pay for the worker's period of employment where the specified period commences upon or before 30 November 1974, and one twelfth of the worker's ordinary pay where the specified period commences after that date, and

(ii) the worker's ordinary pay for any special or public holiday, during the period of the worker's leave without pay, for which the worker would be entitled to payment under any Act, award or agreement or under the worker's contract of employment.

- (5) Where, immediately before the commencement of the specified period, a worker is under section 3 entitled to a holiday of a duration less than that of the specified period:
- (a) the worker shall be given and shall take the whole of that holiday during the specified period,
  - (b) the worker shall be given and shall take leave without pay for the balance of the specified period, and
  - (c) the worker shall, in addition, be paid the amounts referred to in subsection (4) (b).
- (6) Where, immediately before the commencement of the specified period, a worker is under section 3 entitled to a holiday of a duration not less than that of the specified period:
- (a) the worker shall, on and from the commencement of the specified period, be given and shall take the whole of that holiday, or
  - (b) where the worker and the employer so agree, the worker shall, on and from the commencement of the specified period, be given and shall take part of his or her holiday for a period not less than the specified period and postpone the taking of the balance of his or her holiday until a time to be agreed upon between the worker and the employer.
- (7) Where payment has been made to a worker pursuant to subsection (4) or (5) the worker shall be deemed:
- (a) to have completed a year of employment for the purposes of this Act immediately before the commencement of the specified period, and
  - (b) to have been given the whole of the annual holiday to which the worker would be entitled for that year of employment.

#### **4B Protection of annual holiday entitlements on transfer of business**

Part 8 of Chapter 2 of the *Industrial Relations Act 1996* applies for the purposes of determining a worker's entitlements under this Act when the worker is employed by an employer as a result of the transfer of business (within the meaning of that Part) to that employer from another employer on or after the commencement of this section.

#### **5 Special provisions—annual holidays otherwise than under this Act**

- (1) The following provisions shall apply in every case where provision is made by an award, agreement or contract of employment for annual holidays or annual leave for any worker:
- (a) where the worker is entitled under such provision to any benefit that is more favourable to the worker than the benefits provided by section 3, section 4 or section 4A, as the case may be, that section shall not apply to the worker,
  - (b) where the worker is entitled under any such provision to any benefit that is not more favourable to the worker than the benefits provided by section 3, section 4 or section 4A, as the case may be, that section shall apply to the worker and no benefit shall be allowed to the worker under that provision in respect of any period of employment after the commencement of this Act in the case of a benefit not more favourable than that provided by section 3 or section 4 or, after the commencement of the *Annual Holidays (Amendment) Act 1967*, in the case of a benefit not more favourable than that provided by section 4A.
- (1A) Where provision is made by or under any Act, other than this Act or the *Industrial Relations Act 1996*, for annual holidays or annual leave for any worker, sections 3 and 4 shall not apply to such worker.
- (2) Where, under any award or agreement, provision is made for the granting to a worker who is a seven-day shift worker and is required to work regularly on Sundays and public holidays of a holiday in addition to that



### 3.



# Industrial Relations Act 1999

Current as at 2 December 2015

**Reprint note**

This is the last reprint before repeal. Repealed on 1 March 2017 by 2016 Act No. 63 s 991.

- (a) is employed in a calling in which shifts are worked 24 hours a day, 7 days a week; and
- (b) works a rotating roster that includes each of the shifts.

## **12 Taking annual leave**

- (1) An employee and employer may agree when the employee is to take annual leave.
- (2) If the employee and employer can not agree, the employer—
  - (a) may decide when the employee is to take leave; and
  - (b) must give the employee at least 14 days written notice of the starting date of the leave.
- (3) An employee and employer may agree that the employee take all or any part of the employee's annual leave before becoming entitled to it.
- (4) If the employee takes leave before becoming entitled to it, the employee is only entitled, at the end of the completed year of employment, to the balance of the leave that would be due at the end of the year.

## **13 Payment for annual leave**

- (1) Unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.
- (2) The employer must pay for the leave—
  - (a) at the ordinary rate being paid to the employee immediately before the leave is taken; or
  - (b) if, immediately before taking the leave, the employee is being paid at a higher rate than the ordinary rate—at the higher rate.
- (3) If an employee is entitled to receive an amount representing commission in the employee's annual leave payment, the employer must pay the default average commission unless—

not more than 3 months because of illness or injury certified to by a doctor.

## **Subdivision 2 Taking annual leave**

### **71EC When annual leave may be taken**

- (1) An employee and employer may agree when the employee is to take annual leave.
- (2) If the employee and employer can not agree, the employer—
  - (a) may decide when the employee is to take leave; and
  - (b) must give the employee at least 14 days written notice of the starting date of the leave.
- (3) An employee and employer may agree that the employee take all or any part of the employee's annual leave before becoming entitled to it.
- (4) If the employee takes leave before becoming entitled to it, the employee is only entitled, at the end of the completed year of employment, to the balance of the leave that would be due at the end of the year.

### **71ED Terms that may be included in modern industrial instruments**

A modern industrial instrument may include the following—

- (a) terms requiring an employee to take annual leave in particular circumstances, but only if the requirement is reasonable;
- (b) terms otherwise dealing with the taking of annual leave.

**4.**



# **Industrial Relations Act 2016**

**Current as at 1 March 2017**

not more than 3 months because of illness or injury that is certified by a doctor.

## **Subdivision 2 Taking annual leave**

### **33 When annual leave may be taken**

- (1) An employee and employer may agree when the employee is to take annual leave.
- (2) The employer must not unreasonably refuse to agree when the employee is to take the leave.
- (3) If the employee and employer can not agree, the employer—
  - (a) may decide when the employee is to take leave; and
  - (b) must give the employee at least 8 weeks written notice of the starting date of the leave.
- (4) An employee and employer may agree that the employee take all or any part of the employee's annual leave before becoming entitled to it.
- (5) If the employee takes leave before becoming entitled to it, the employee is only entitled, at the end of the completed year of employment, to the balance of the leave that would be due at the end of the year.

### **34 Terms that may be included in applicable industrial instruments**

An applicable industrial instrument may include the following—

- (a) terms requiring an employee to take annual leave in particular circumstances, but only if the requirement is reasonable;
- (b) terms otherwise dealing with the taking of annual leave.

## 5.

South Australia

# Fair Work Act 1994

An Act about the relationship of employer and employee; and other matters.

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- 
- (5) A part-time employee is entitled to pro-rata pay for a period of bereavement leave.

## **Schedule 4—Minimum standard for annual leave**

### **1—Definitions**

In this Schedule—

*continuous service* means continuous service under a contract of employment and includes a period of paid leave taken under this Act or under an award or enterprise agreement;

*full pay* means remuneration for ordinary hours of work (not including payments in the nature of penalty rates, overtime, allowances or loadings).

### **2—Application of standard**

This Schedule does not apply to a person who is engaged and paid as a casual employee.

### **3—Accrual of annual leave entitlement**

An employee's entitlement to annual leave accrues as follows—

- (a) an employee is entitled to 4 weeks' annual leave for each completed year of continuous service; and
- (b) if an employee's employment comes to an end and the period of service is not exactly divisible into complete years—the employee is entitled to  $\frac{1}{3}$  of one week's annual leave for each completed month of the remainder.

### **4—Taking annual leave**

- (1) Annual leave is to be taken at a time agreed between the employer and the employee.
- (2) However, an employer may require an employee to take annual leave by giving the employee notice of the requirement at least 2 weeks before the period of annual leave is to begin if—
  - (a) the employer and the employee fail to agree on the time for taking the annual leave; or
  - (b) the taking of the leave is necessary to facilitate a temporary shut-down of part or all of the employer's business operations.
- (3) If an employer determines the time for taking annual leave under subsection (2)(a), the leave must begin within 12 months after the entitlement to the leave accrues.

### **5—Annual leave to be on full pay**

- (1) A full-time employee is entitled to full pay for a period of annual leave.
- (2) A part-time employee is entitled to pro-rata pay for a period of annual leave.
- (3) If an employee's employment comes to an end before the employee has taken all the annual leave to which the employee is entitled, the employee (or the employee's estate) is entitled to the monetary equivalent of that leave.

**6.**

**There are no provisions in respect of shut downs or in respect of the right of an employer to direct the employer to take annual leave in the *Minimum Conditions of Employment Act 1993 (WA)*.**





TASMANIA

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### **Industrial Relations Act 1984**

**An Act to provide for the establishment of a Tasmanian Industrial Commission having a jurisdiction to hear and determine matters and things arising from, or relating to, industrial matters, including the making of awards, the conduct of hearings and the settling of disputes, to provide for the registration of employer and employee organisations, to encourage workplace bargaining, to determine salaries, allowances and benefits for members of Parliament, and to provide for related and other matters**

[Royal Assent 16 May 1984]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### 47. General provisions as to employment

- (1) Unless otherwise expressly agreed by the employer and employee, the wages payable in respect of employment to which this Division applies shall be deemed to be due and payable weekly.
- (1A) Where the wages of an employee are, pursuant to subsection (1), payable weekly or as otherwise expressly agreed by his employer, that employer is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units if he fails to pay to that employee those wages when they become payable.
- (1B) Where an employer is convicted of an offence under subsection (1A), the court by which he is convicted shall, in addition to imposing a penalty for the offence, order the employer to pay to the employee in respect of whom the offence was committed the amount of the wages that the employer has failed to pay to the employee.
- (2) Subject to subsection (3), a term or period of service of employment to which this Division applies that is of indefinite duration is terminable by either party by –
- (a) a week's notice, if the wages are payable weekly;
  - (b) a fortnight's notice, if the wages are payable fortnightly; or
  - (c) a month's notice in any other case.
- (3) Subsection (2) does not apply in relation to the termination of a term or period of service of employment of an employee on account of his serious and wilful misconduct.

#### *Division 2A - Minimum conditions of employment relating to all employees*

##### 47AA. Purpose and application of Division

- (1) The purpose of this Division is to establish a safety net of fair minimum conditions of employment.
- (2) The Commission may make an award or approve an agreement in excess of the minimum conditions prescribed by this Division, but must not make an award or approve an agreement that is less than those minimum conditions.
- (3) This Division does not apply in respect of a person granted an authority to work under section 79 or 81 or in respect of whom an order is made under section 80.

##### 47AB. Minimum weekly wage

The minimum weekly wage for an adult full-time employee is the Tasmanian minimum wage as determined annually by the Commission under section 35(10A).

##### 47AC. Maximum ordinary working hours

Unless prescribed otherwise in an Act, award or agreement, an employee's maximum number of ordinary working hours per week is not to exceed 38.

##### 47AD. Meal break

Unless prescribed otherwise in an Act, award or agreement, an employee is entitled to an unpaid meal break of at least 30 minutes after each period of 5 hours' continuous work.

##### 47AE. Annual leave

- (1) Unless prescribed otherwise in an Act, award or agreement, an employee, other than a casual employee or a part-time employee receiving a loading in lieu of annual leave, is entitled to a minimum of 4 weeks' paid annual leave, excluding statutory holidays within the meaning of the Statutory Holidays Act 2000, for each completed year of continuous employment.
- (2) Where an employee's length of employment is less than one year, the employee is entitled to *pro rata* paid annual leave upon termination of employment, provided that the employee has given the required period of notice.
- (3) After each completed year of continuous employment, a part-time employee is entitled to be paid annual leave calculated in the same proportion that his or her part-time hours bears to the ordinary hours of an equivalent full-time employee.
- (4) An employer must permit an employee to take annual leave due under subsection (1) or (3) within 6 months after the leave falls due.
- (5) Where an employee applies for leave, the employee must give the employer not less than 4 weeks' notice, or such other period of notice as may be agreed, of the employee's intention to take leave.
- (6) An employer must not unreasonably withhold approval of an application to take leave.
- (7) Where an employer requires an employee to take leave, the employer must give the employee not less than 4 weeks' notice, or such other period of notice as may be agreed, of the requirement to take leave.
- (8) Untaken annual leave accrues without limit.

##### 47AF. Personal leave

- (1) Unless prescribed otherwise in an Act, award or agreement, an employee, other than a casual employee or a part-time employee receiving a loading in lieu of sick leave, is entitled to a minimum of 10 days of paid personal leave for each completed year of employment.
- (2) In the first year of employment, an employee's entitlement to paid personal leave accrues at the rate of five-sixths of a day for each completed month of employment.
- (3) In the second year of employment and each subsequent year, an employee's entitlement to paid personal leave falls due on the day on which the second or subsequent year of employment commences.
- (4) A part-time employee is entitled to be paid personal leave calculated in the same proportion that his or her part-time hours bears to the ordinary hours of an equivalent full-time employee.
- (5) Unless prescribed otherwise in an Act, award or agreement, or by mutual consent between an employer and an employee, paid personal sick leave is subject to the employee providing adequate proof of illness to the employer in respect of each period of absence.
- (6) Untaken paid personal leave accrues without limit.
- (7) In this section, "paid personal leave" means personal sick leave, carer's leave and bereavement leave.

##### 47AG. Parental leave

The minimum entitlements to unpaid parental leave are set out in Schedule 2.

##### 47AH. Redundancy

- (1) Unless prescribed otherwise in an Act, award or agreement or determined otherwise by the Commission, an employee with more than one year's employment with an employer must be given not less than 4 weeks' notice of the employer's intention to terminate the employee's employment on account of redundancy or 4 weeks' pay in lieu of such notice.
- (2) Unless prescribed otherwise in an Act, award or agreement or determined otherwise by the Commission, if an employee's employment is terminated on account of redundancy, the employee is entitled to a redundancy severance payment calculated on the basis of 2 weeks' wages for each completed year of employment with the employer, up to a maximum of 12 weeks.

##### 47AI. Payments to be based on ordinary pay

For the purposes of this Division, a payment to an employee is to be based on his or her ordinary hourly or weekly rate of pay.

##### 47AJ. Offence provision



ANNO VICESIMO OCTAVO  
ELIZABETHAE SECUNDAE REGINAE

VICTORIA

## Industrial Relations Act 1979

No. 9365

An Act to constitute an Industrial Relations Commission of Victoria, to make Provision for the Constitution of Conciliation and Arbitration Boards, to make Provision with respect to the Recognition of Industrial Associations, to make Provision with respect to certain Conditions of Employment, to amend the *Labour and Industry Act 1958* and the *Industrial Training Act 1975* and the *Building Industry Long Service Leave Act 1975* and for other purposes.

[Assented to 20 December 1979]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

### PART I.—INTRODUCTION

Short title.

1. (1) This Act may be cited as the *Industrial Relations Act 1979*.

Commence-  
ment.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

(3) This

association shall be deemed not to be recognized and not entitled to exercise any of the rights or enjoy any of the privileges of a recognized association.

Rights, &c. of  
recognized  
association.

- (3) An association recognized under this Act shall be entitled—
- (a) to nominate persons for appointment to Boards established under this Act;
  - (b) to be kept informed of the proceedings of any Board with respect to which it is recognized under this Act;
  - (c) to appear by its representatives or agents before any Board in respect of which it is recognized under this Act in any matter affecting any interest of the members of the association; and
  - (d) to enter into an industrial agreement to be registered under Part IV.

#### PART VI.—ANNUAL HOLIDAYS

Interpretation.

57. In this Part unless inconsistent with the context or or subject-matter—

“Employer.”

“Employer” means any person employing any worker and includes the Crown.

“Worker”

No. 6283, 142.

“Worker” means any person employed by an employer to do any work for hire or reward and includes an apprentice and any other person whose contract of employment requires him to learn or to be taught an occupation.

Power to  
Commission to  
provide  
benefits to  
workers not  
otherwise  
provided for.  
No. 6283  
& 144A.

58. (1) The Commission may upon the application of a recognized association make an order with respect to the following matters:

- (a) The giving by employers of annual holidays to workers in respect of whom no provision for the giving of annual holidays or annual leave is made by or under any enactment other than this Part or by any award or agreement;
- (b) The giving of annual holidays and making of payments by employers to those workers where the establishment of an employer or a section thereof is temporarily closed (or reduced to nucleus for the purpose of giving annual holidays to workers entitled to them);
- (c) The payments to be made by employers to those workers on the termination of their employment in recognition of their having completed part of the qualifying period for annual holidays; and

(d) The

(d) The manner and time of the giving and taking of any such holidays or of the making of any such payments.

(2) Where before the coming into operation of an order made under this Part any rights have accrued to a worker of the class to which the order applies those rights shall continue as if the order had not been made.

(3) Where an order made under this Part makes provisions creating an entitlement at the end of a period of employment or on the happening of an event, the provisions shall operate to create the entitlement in respect of any period of employment which ends after the coming into operation of the order or in respect of any event which happens after the coming into operation of the order notwithstanding that—

(a) any period by reference to which the entitlement is fixed begins before the coming into operation of the order; or

(b) any annual holiday has been taken in advance.

59. (1) The following provisions shall apply in every case where provision is made by contract of employment for annual holidays or annual leave for any worker:

Workers to have benefit of more favourable provisions.

No. 6283 s. 145.

(a) Where the worker is entitled under the provision to benefits that are more favourable to the worker than the benefits provided by an order made under this Part, the order shall not apply to the worker and the worker shall be entitled to the benefits under the provision;

(b) Where the worker is entitled under the provision to benefits that are not more favourable to the worker than the benefits provided by the order the order shall apply to the worker and no benefit shall be allowed to the worker under that provision in respect of any period of employment to which the order applies.

(2) Where by virtue of sub-section (1) paragraph (a) a worker is entitled to annual holidays or annual leave under a contract of employment if the annual holiday or annual leave or any part thereof is taken by the worker before the end of a year of employment and—

(a) the employment of the worker is terminated before he completes the year of employment in respect of which the annual holiday or annual leave or part thereof was taken; and

(b) the amount paid by the employer to the worker as payment in respect of the annual holiday or annual leave or part thereof so taken exceeds the amount

which



Australian Capital Territory

## **Annual Leave Act 1973 (repealed)**

**A1973-46**

**Republication No 20**

**Effective: 15 June 2013**

Republication date: 15 June 2013

As repealed by [A2013-19](#) sch 4 pt 4.1

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Annual Leave Act 1973* (repealed) (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)). It also includes any commencement, amendment, repeal or expiry affecting this republished law to 15 June 2013.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (5) An employer commits an offence if, not later than 4 weeks before the day the employee becomes entitled to annual leave under this Act, the employer does not give to the employee a written notice setting out—
- (a) the date the employee will become entitled to the annual leave; and
  - (b) the date the 6-month period mentioned in subsection (2) ends.

Maximum penalty: 50 penalty units.

- (6) An offence against this section is a strict liability offence.
- (7) Subsection (2) does not apply to an employee if the employee's employer fails to give notice to the employee in accordance with subsection (5).

## **8 Payment of leave pay**

An amount to which an employee is entitled under section 6 is payable to the employee on the last day the employee is required to work before the start of the annual leave to which the payment relates.

## **9 Public holidays not to count as leave**

If a public holiday or an award holiday falls during the period of annual leave taken by an employee in accordance with this Act, the period of the annual leave is increased by 1 day in relation to each such public holiday or award holiday.

## **10 Employer may require employee to take annual leave**

- (1) If—
- (a) an employee is, or will be, at the end of the current year of employment, entitled under section 4 (1) to annual leave; and



- (b) the employer of the employee gives to the employee written notice that the employer requires the employee to take the annual leave from a date stated in the notice that is not earlier than 6 weeks after the day the notice is given to the employee;

the employee is not entitled to take the annual leave except in accordance with the requirement of the notice.

- (2) If—

- (a) an employee gives to the employee's employer written notice that the employee wishes to take annual leave at the end of a period stated in the notice, that is not earlier than 6 weeks after the day notice is given; and

- (b) the employee is, or will be, not later than the end of the period stated in the notice, entitled to annual leave;

the employee is entitled to take annual leave at the end of the period stated in the notice.

## **11 No payment instead of leave**

- (1) Subject to this section, an employer must not make a payment to an employee in relation to the employee's entitlement under this Act to annual leave unless—

- (a) the employer has given notice to the employee under section 10 (1); or

- (b) the employee has given notice to the employer under section 10 (2).

- (2) If the employment of a person is terminated when the person is entitled under this Act to annual leave, the person is entitled to receive from the employer an amount equal to the amount that would have been payable to the person under this Act if the person had been taking the annual leave from the date the employee's employment is terminated.

- 
- (3) If the employment of a person is terminated when the person has been employed by his or her employer—
- (a) for less than 12 months but not less than 1 month; or
  - (b) for not less than 1 month during a year of employment;
- the person is entitled to receive from the employer an amount equal to  $\frac{1}{12}$  or, for a shiftworker,  $\frac{5}{47}$ , of the ordinary remuneration paid or payable to the person during the period of the person's employment or during the current year of employment, as the case may be.
- (4) In this section:
- ordinary remuneration*—see section 6.
- (5) An amount payable to a person by under subsection (2) or (3) is payable to the person on the last day the person is required to work.

## 12 Close-down

- (1) Subject to this section, an employer may give to an employee written notice that the employer requires the employee, in common with 1 or more other employees, to take his or her annual leave from a date, and during the period, stated in the notice.
- (2) A notice given for subsection (1) is not effective for that subsection if it states a period longer than 4 weeks or, for a notice given to an employee who would be entitled, on the date stated in the notice, to annual leave of 5 weeks, a period of 5 weeks.
- (3) If, on the date stated in a notice given for subsection (1), the employee to whom the notice was given is entitled under this Act to annual leave, the employee must take that annual leave from the date stated in the notice.
- (4) If, on the date stated in a notice under subsection (1), the employee to whom the notice was given is not entitled to annual leave under this Act or is entitled to part of an annual leave, the employee—

- (a) must absent himself or herself from the employee's employment during the period stated in the notice; and
- (b) is entitled to payment from the employee's employer of an amount equal to the ordinary remuneration the employee would have received in relation to the part of the period mentioned in paragraph (a) that is equal to the total of—
  - (i) the part of an annual leave (if any) to which the employee is entitled; and
  - (ii) a period equal to—
    - (A)  $\frac{1}{12}$ ; or
    - (B) for a shiftworker— $\frac{5}{47}$ ;of the period of the employment of the employee during the current year of employment; and
- (iii) any public or award holidays that are observed during the period mentioned in paragraph (a); and
- (c) is entitled to receive from his or her employer an amount calculated in accordance with the formula—

$$\frac{AP \times SP}{AL}$$

where:

**AP** means the amount payable to the employee under section 6 (2) if the employee had been entitled to annual leave.

**SP** means the period equal to the total of the periods mentioned in paragraph (b) (i) and (ii).

**AL** means the period of the annual leave to which the employee would have been entitled if, immediately before the

date stated in the notice, the employee had completed a year of employment.

- (5) An amount to which an employee is entitled under subsection (4) is payable to the employee on the last day the employee is required to work before the date stated in the notice given to the employee for subsection (1).
- (6) If—
- (a) an employer gives notice for subsection (1) to an employee; and
  - (b) a payment is made to the employee in accordance with subsection (4); and
  - (c) the employee resumes his or her employment after the end of the period stated in the notice;

this Act applies to, and in relation to, the employee as if the employee's employment by the employer mentioned in paragraph (a) had started on the date stated in the notice given to the employee for subsection (1).

- (7) In this section:

*ordinary remuneration*—see section 6.

### **13 Annual leave records**

- (1) An employer must keep a record for each of the employer's employees that includes—
- (a) the name, occupation and classification of the employee; and
  - (b) whether the employee is full-time, part-time or casual; and
  - (c) the employee's ordinary remuneration (including the gross and net amounts paid), the base rate of pay and any loading payable to the employee, and the purpose of the loading; and
  - (d) the number of hours worked each week by the employee; and

# 10.

## NORTHERN TERRITORY OF AUSTRALIA

### ANNUAL LEAVE ACT

As in force at 14 October 2015

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ENDNOTES

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**6 Annual leave**

- (1) Subject to this Act, an employee is entitled to a period of 28 consecutive days leave annually after completing each 12 months continuous qualifying service.
- (2) Where an employee who is a shift worker is required to work ordinary hours regularly on a Sunday or a public holiday, that employee shall be entitled, in addition to the amount of annual leave referred to in subsection (1), to a further 7 consecutive days leave.
- (3) Where an employee with 12 months continuous qualifying service is engaged for part of the 12 months as a 7-day shift worker, the employee shall be entitled to, in addition to the period of 28 consecutive days annual leave prescribed by subsection (1), a further half day for each month during which the employee so continuously served.
- (4) Subject to sections 10 and 11, an employer shall not pay to an employee and an employee shall not accept any amount in lieu of leave to which the employee is or may become entitled under this Act.
- (5) Subject to subsection (6), a period of annual leave under this Act is to be calculated inclusive of days that are not working days but is not to include public holidays.
- (6) If, during the period of an employee's annual leave, a public holiday is observed on a day that would have been an ordinary working day for the employee, there shall be added to the period of the employee's annual leave time equal to the ordinary time that the employee would have worked if that day had not been a public holiday.
- (7) Where a public holiday falls within an employee's period of annual leave and an employee fails without reasonable cause to attend for work at the employee's ordinary starting time on the working day immediately following the last day of the period of the employee's annual leave, the employee shall not be entitled to be paid for such public holiday.
- (8) Where an employee is entitled to annual leave under this Act, the employer must grant the leave and the employee shall take the leave in one continuous period or, where the employer and employee agree, in separate periods, not exceeding 3.

- 
- (9) Annual leave shall be taken at a time agreed between an employer and employee or fixed by the employer within a period not exceeding 12 months after the date when the right to annual leave accrued and after not less than 28 days notice to the employee.

## **7 Qualifying service**

- (1) The period of qualifying service of an employee with an employer for the purposes of this Act is the period during which the employee has been employed continuously with the employer, including any period that commenced before the commencement of this Act, but not including any period of employment in respect of which annual leave has already been granted or payment in lieu of annual leave has already been made.
- (2) For the purposes of this Act, an employee shall be deemed not to break, or to have broken, continuity of service by reason of his or her absence from employment:
- (a) brought about by the action of his employer with the intention or result of avoiding an obligation imposed on the employer by this Act; or
  - (b) on account of leave granted to the employee by the employer for accident or illness to the employee or other reasonable cause.
- (3) The period during which an employee is or was absent from employment otherwise than on leave with pay granted by the employer or brought about by the action of the employer with the intention of avoiding an obligation imposed on the employer by this Act does not form part of the period of employment with that employer for the purposes of this Act.
- (4) Where an employee is absent from employment for a reason other than a reason referred to in subsection (2), the employer shall inform that employee in writing that such absence shall be regarded as having broken the continuity of that employee's service.
- (5) A notice under subsection (4) may be given by delivering the notice to the employee personally or by posting it to the last recorded address of the employee.
- (6) Where an employee is employed in a corporation and, at any time prior, has been employed in one or more related corporations and the periods for which the employee was so employed are continuous with one another within the meaning of this section, the sum of those periods of employment shall, subject to this Act, be included in the current period of employment for the purposes of this Act.

- 
- (3) Where an employee's hours worked in a week are less than 40 the number of hours referred to in subsection (2)(c) shall be calculated in accordance with the following formula:

$$\frac{4 \times B}{52}$$

where B is the average or normal number of hours worked per week.

## **11 Payment on death of employee**

Where an employee dies, the former employer of the deceased employee shall, on demand by the personal representative of the deceased employee, pay to that personal representative the amount that would have been payable to the deceased employee under this Act if the employment had been terminated otherwise than by death.

## **12 Close down**

- (1) Subject to this section, an employer may give not less than 4 weeks notice to an employee that the employer intends to close down the operation or establishment or sections of that operation or establishment from a specified date for a specified period and requires the employee, in common with one or more other employees, working in the operation or establishment or sections of that operation or establishment, as the case requires, to take leave from that date for that period.
- (2) Where, on the date specified in a notice given under subsection (1), the employee to whom the notice was given is entitled under this Act to an annual leave credit equal to or greater than the period of the close down specified in the notice, the employee shall take annual leave for the period specified in the notice.
- (3) Where, on the date specified in a notice given under subsection (1), the employee to whom the notice was given is not entitled under this Act to annual leave or is entitled to an annual leave credit for part only of the period of the close down specified in the notice:
- (a) the employer shall grant and the employee shall take leave of absence from employment for that period of the close down; and



- 
- (b) the employee is entitled to payment, at the employee's ordinary rate of pay, for:
    - (i) that part, if any, of the period of the close down equal to the period for which the employee is entitled to annual leave;
    - (ii) a period equal to one-twelfth of the part of the continuous qualifying period of employment in respect of which the employee has not accrued annual leave; and
    - (iii) any public holiday observed during the period of the close down.
  - (4) Any period which an employee takes as leave during a period of close down under this section shall be regarded as employment in the next following 12 monthly period of qualifying service for annual leave.

### **13 Calculation of payment due**

An amount payable to an employee upon entering a period of annual leave granted or taken under this Act or an amount payable under this Act to an employee on termination of employment or to the personal representative of a former employee following the death of the employee shall be calculated by reference to the ordinary rate of pay of the employee at the date of:

- (a) taking the period of annual leave;
- (b) termination of employment; or
- (c) death,

as the case may be.

### **14 When payment to be made**

Where an employer is required by this Act to pay an amount to an employee, he shall pay that amount in full on or before the last day on which the employee is required to work before the commencement of the annual leave, the termination of the employment, or the commencement of the period of close down referred to in section 12, as the case may be.

### **15 Exemptions**

The Minister may, subject to such conditions as he or she thinks fit, by instrument in writing, exempt an employer or class of employers from the operation of this Act or of a provision of this Act in respect

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2014/47  
**Title of Matter:** Four yearly review of modern awards – Annual leave common issue – shut down provisions – Black Coal Mining Industry Award 2010 – Clause 25.10

### STATEMENT OF DAVID GUNZBURG

On 11 September 2017, I, David Gunzburg, of 370 Highett Street, Richmond, Victoria, Consultant, say:

#### Background

1. I am the principal and Managing Director of DGHR Services Pty Ltd (**DGHR Services**). I have held this position since 2001.
2. DGHR Services provides human resources services and advice to a range of businesses across various industries, including mining, engineering, major projects, oil and gas, health and financial services, and recently to the NSW Minerals Council.
3. I have worked in the field of human resources for more than 30 years. Prior to starting DGHR Services in 2001, I was employed in senior human resources roles in several large Australian organisations including the Australian Mines and Metals Association, BHP Billiton and Orica.
4. I previously held the position of Director on the Board of Coal Services Pty Ltd, from September 2012 to November 2014. Coal Services is jointly owned, in equal shares, by the NSW Minerals Council and the Construction, Forestry, Mining and Energy Union. Coal Services is one of the "approved companies" under the *Coal Industry Act 2001* (NSW).
5. As a result of my work with DGHR Services and my previous experience within the coal mining industry (including, in particular, work performed for the NSW Minerals Council and on the Board of Coal Services), I have gained experience in, and an understanding of, the black coal mining industry in Australia.
6. I have been engaged by the Coal Mining Industry Employer Group (**CMIEG**) to provide advice and assistance in relation to the four yearly review process conducted by the Fair Work Commission, including in relation to the *Black Coal Mining Industry Award 2010*.

Lodged on behalf of the Coal Mining Industry  
Employer Group (CMIEG)

Address for service:

Ashurst Australia  
Level 11, 5 Martin Place  
Sydney NSW 2000

Telephone: (02) 9258 6313

Facsimile: (02) 9258 6999

Email: trent.sebbens@ashurst.com /  
adrian.morris@ashurst.com

## Survey of members of the CMIEG

7. On 8 August 2017, I circulated to relevant senior human resources/employee relations managers of the company groups that form part of the CMIEG, a list of questions for the purpose of conducting a survey concerning annual leave shutdowns in their company groups. Annexed to this statement and marked "**DG-1**" is a true copy of the survey questions circulated.
8. As at the date of this statement, I have received responses from nine of the company groups that form part of the CMIEG, namely:
  - (a) Anglo American Metallurgical Coal;
  - (b) BHP Coal;
  - (c) Centennial Coal;
  - (d) Glencore Coal;
  - (e) Idemitsu;
  - (f) Jellinbah Resources;
  - (g) Peabody Energy Australia;
  - (h) South32; and
  - (i) Wesfarmers.
9. I tabulated the responses I received. Annexed to this affidavit and marked as "**DG-2**" is a copy of the table that I prepared.
10. The company groups listed in paragraph 8 above represent approximately 28,000 workers in the black coal mining industry in New South Wales and Queensland, across 55 mines.
11. The contents of this statement are true and correct to the best of my knowledge and belief.



David Gunzburg

**IN THE FAIR WORK COMMISSION**

**Matter No.:** AM2014/47

**Title of Matter:** Four yearly review of modern awards – Annual leave common issue  
– shut down provisions – Black Coal Mining Industry Award 2010 – Clause 25.10

**ANNEXURE DG-1**

**TO THE STATEMENT OF DAVID GUNZBURG DATED 11 SEPTEMBER 2017**

STRICTLY CONFIDENTIAL & PRIVILEGED

AM2014/47

Shutdown clause

Black Coal Mining Industry Award 2010

SURVEY QUESTIONS FOR CMIEG MEMBERS

NAME: \_\_\_\_\_

BUSINESS/GROUP: \_\_\_\_\_

DATE: \_\_\_\_\_

**What is a shut down**

Employers are able to “stand down” employees without pay under the FW Act for reasons outside the control of the employer. Shut downs are generally understood to be some sort of planned or controlled closing of some section of operations and therefore within the control of the employer and include the ability to access paid leave if available. (N.B. Because employees cannot access paid leave during a “stand down” it is not uncommon for employers to offer to “shut down” to avoid getting to a stand down situation).

**Instructions**

Please tick the appropriate box and if necessary insert comments alongside.

**Have you had occasion to shut down operations**

1. Since the commencement of the Black Coal Mining Award on 1 January 2010

Yes	
No	

2. Before the commencement of the BCMI Award

Yes	
No	



3. Did the introduction of the BCMI Award cause you to make any changes to the way in which you would pay employees during a shut down

Yes	
No	

#### Reasons for shutting down

4. Please indicate which (if any) of the following have been a reason for you instituting a shut down in the past

tick if yes	
	Managing annual leave balances/provisioning
	Market or economic considerations
	Stockpile reaching, or nearing, full capacity
	As an alternative to standing-down employees (eg. caused by industrial action, breakdown for machinery or equipment, or stoppage of work for which the employer is not responsible)
	Undertaking a maintenance shutdown (eg. for major repairs or overhauls)
	Period of successive public holidays or peak request for leave
	Other (describe)

#### Type of shut downs

5. Please indicate which, or both, of these have applied where you have instituted a shut down in the past

tick if yes	Where has it applied?	tick if yes	Who has it applied to
	Whole of operation		All of workforce in the area affected
	Part of operation		Part of workforce in the area affected
Comments			

#### Payment during shutdowns

6. During a shutdown if an employee cannot be usefully employed<sup>1</sup> and they are not on some form of paid leave which of the following is your practice:

tick if yes	
	They must take unpaid leave
	They perform no work but are paid their normal wage (either base wage or as per roster)
	Has never arisen, employees have always been able to take paid leave of some type
Comments	

<sup>1</sup> For this purpose attending a training course is considered to be useful work



### Disputation over this issue

7. Have you had a dispute over the requirement to take unpaid leave during a shutdown if no paid leave is available? If so please provide details

Yes	
No	

### Use of unpaid leave more generally

8. Is unpaid leave a form of leave which is used for other purposes at your operations

Yes	
No	

Please return your Survey to David Gunzburg at [gunzburg@bigpond.net.au](mailto:gunzburg@bigpond.net.au) by Wednesday 31 August 2017.



**IN THE FAIR WORK COMMISSION**

**Matter No.: AM2014/47**

**Title of Matter: Four yearly review of modern awards – Annual leave common issue  
– shut down provisions – Black Coal Mining Industry Award 2010 – Clause 25.10**

**ANNEXURE DG-2**

**TO THE STATEMENT OF DAVID GUNZBURG DATED 11 SEPTEMBER 2017**



Survey of CMIEG Membes finalised 31/8/2017

	Total Count	Glencore	Centennial	Jellinbah	Idemitsu	BMA	Anglo American	Peabody Energy	South 32	Wesfarmers
<b>Have you had occasion to shut down operations</b>										
<b>1 Since the commencement of the Black Coal Mining Award on 1 January 2010</b>										
Yes	7	x	x	x			x	x	x	x
No	2				x	x				
<b>2 Before the commencement of the BCMI Award</b>										
Yes	4	x	x	x					x	
No	3				x	x		x		
<b>3 Did the introduction of the BCMI Award cause you to make any changes to the way in which you would pay employees during a shut down</b>										
Yes	0									
No	9	x	x	x	x	x	x	x	x	x

Reasons for shutting down

	Total Count	Glencore	Centennial	Jellinbah	Idemitsu	BMA	Anglo American	Peabody Energy	South 32	Wesfarmers
<b>4 Please indicate which (if any) of the following have been a reason for you instituting a shut down in the past</b>										
Managing annual leave balances/provisioning	1		x							
Market or economic considerations	2	x							x	
Stockpile reaching, or nearing, full capacity	1							x		
As an alternative to standing-down employees (eg. caused by industrial action, breakdown for machinery or equipment, or stoppage of work for which the employer is not responsible)	3						x	x	x	
Undertaking a maintenance shutdown (eg. for major repairs or overhauls)	2		x							x
Period of successive public holidays or peak request for leave	1			x						
Other (describe)	1								General operational requirements – maintenance / production continuity etc	

Type of shut downs

	Total Count	Glencore	Centennial	Jellinbah	Idemitsu	BMA	Anglo American	Peabody Energy	South 32	Wesfarmers
<b>5 Please indicate which, or both, of these have applied where you have instituted a shut down in the past</b>										
Whole of operation	5	x	x	x				x	x	
Part of operation	4			x			x		x	x
All of workforce in the area affected	5	x	x					x	x	x
Part of workforce in the area affected	2						x		x	
Comments	Nil									

Payment during shutdowns

	Total Count	Glencore	Centennial	Jellinbah	Idemitsu	BMA	Anglo American	Peabody Energy	South 32	Wesfarmers
<b>6 During a shutdown if an employee cannot be usefully employed and they are not on some form of paid leave which of the following is your practice</b>										
They must take unpaid leave	3	x	x					x		
They perform no work but are paid their normal wage (either base wage or as per roster)	1								See comments	
Has never arisen, employees have always been able to take paid leave of some type	2			x			x			
Comments		<p><b>Glencore:</b> General practice is to require the taking of accrued paid leave (A/L or LSL). However, if not sufficient A/L accrual then for these days, either A/L will be made available in advance or may elect to take unpaid leave.</p> <p><b>Jellinbah:</b> Some years the employees have elected to do shift swaps and work some days in advance to get the time off.</p> <p>Other years, some individuals have required paid leave to be advanced for part of the time off during the shutdown period when they need to take annual leave.</p> <p><b>Anglo American:</b> Must take paid leave or leave in advance providing Company gives appropriate notice (eg 4 weeks in advance). One of our EA's has a provision to consider leave without pay on a case by case basis (ie future A/L bookings)</p> <p><b>South32:</b> If no leave then required to work but work performed is often non-standard duties e.g. painting, cleaning etc. and often not meeting their full shift length. We sometime send them home early.</p> <p><b>Wesfarmers:</b> If no leave available then either utilised onsite in another section of the mine, or employee undertook training</p>								

Disputation over this issue

	Total Count	Glencore	Centennial	Jellinbah	Idemitsu	BMA	Anglo American	Peabody Energy	South 32	Wesfarmers
<b>7 Have you had a dispute over the requirement to take unpaid leave during a shutdown if no paid leave is available? If so please provide details</b>										
Yes	0									
No	6	x	x	x			x		x	x

Use of unpaid leave more generally

	Total Count	Glencore	Centennial	Jellinbah	Idemitsu	BMA	Anglo American	Peabody Energy	South 32	Wesfarmers
<b>8 Is unpaid leave a form of leave which is used for other purposes at your operations</b>										
Yes	6	x		x			x	x	x	x
No	2		x						x	