



DECISION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Annual leave (AM2014/47)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT KOVACIC
COMMISSIONER HAMPTON

MELBOURNE, 27 MARCH 2017

4 yearly review of modern awards - common issue - annual leave – timing of taking leave - shutdown provision – Black Coal Mining Industry Award 2010.

1. Introduction

[1] This decision deals with a number of outstanding matters in relation to the variation of annual leave terms in the *Black Coal Mining Industry Award 2010* (the *Black Coal Award*). It arises in the context of a review of annual leave provisions in modern awards more generally and should be read in conjunction with previous decisions issued on 11 June 2015¹ (the *June 2015 decision*), 15 September 2015² (the *September 2015 decision*), 23 May 2016³ (the *May 2016 decision*), 24 June 2016⁴ (the *June 2016 decision*), 22 September 2016⁵ (the *September 2016 decision*) and 19 December 2016⁶ (the *December 2016 decision*).

[2] The outstanding issues concern the finalisation of the Determination varying the *Black Coal Award*, in particular:

- the form of shutdown provision to be included as part of the annual leave arrangements; and
- some minor editorial issues that arise from a draft determination issued by the Fair Work Commission.

[3] The editorial issues are uncontroversial and we will deal with those later.

[4] The Construction, Forestry, Mining and Energy Union, Mining and Energy Division (CFMEU), the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) and The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) (collectively, the Unions) oppose an amendment to the shutdown provision now being proposed by the Coal Mining Industry Employer Group (CMIEG).

[5] Following a conference of the parties conducted by Commissioner Hampton on 25 November 2016, the Full Bench provided a further opportunity for interested parties to

make additional submissions.⁷ The CMIEG, CFMEU and AMWU made additional submissions consistent with the positions advanced at the November conference. We propose to now express some provisional views in relation to this matter based upon the submissions and material now before the Commission.

2. The history to the ‘shutdown issue’

[6] In the *June 2015 decision* and the *September 2015 decision* the Commission determined model clauses in respect of ‘excessive annual leave’; ‘cashing out of annual leave’; ‘electronic funds transfer and paid annual leave’; and ‘granting leave in advance’. In the *June 2015 decision* the Commission rejected the Employer Group’s claim⁸ which sought to insert a standard annual close-down term into a large number of modern awards, on the basis that the proponents of the claim had not established a merit case sufficient to warrant granting the claim. Relevantly for present purposes, the Commission was not satisfied that the proposed model term was ‘reasonable’ in the sense contemplated by s.93(3). The Commission left open the capacity for interested parties to apply to vary a particular modern award, to either vary an existing close-down provision or to insert an appropriate provision, during the Award stage of the Review.⁹

[7] In the *September 2016 decision*, the Commission dealt with an objection from the CMIEG to the insertion of the model excessive leave provision into the *Black Coal Award*.

[8] Clause 25 of the *Black Coal Award* deals with annual leave. The relevant provisions at the time of the *September 2016 decision* were subclauses 25.3, 25.4 and 25.10. Subclause 25.3 dealt with the accrual of annual leave and provided as follows:

‘25.3 Accrual of annual leave

Employees, other than casual employees, accrue annual leave at the following rate:

For employees who would be entitled to annual leave of:	Hours of annual leave for each completed week of employment:
175 hours (5 weeks)	3.3654
210 hours (6 weeks)	4.0385

[9] Clause 25.4 dealt with the taking of annual leave, it stated:

‘25.4 When annual leave can be taken

- (a) An employee with an annual leave entitlement, who wishes to take all or part of that entitlement will, unless otherwise agreed between the employee and the employer, 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.
- (b) Unless otherwise agreed, annual leave will be taken within 12 months of the date the employee received the annual leave entitlement.
- (c) 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.’

[10] Subclause 25.10 dealt with the taking of annual leave during the shutdown of all or part of an employer's operations; it provided as follows:

'25.10 Shutdown'

- (a) An employer that 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 employees affected.
- (b) 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.
- (c) 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 25.8.'

[11] In the *September 2016 decision*, we considered the terms of the *Black Coal Award*, the context of the model provisions and our earlier findings which led to the adoption of those model terms. We found, in effect, that the broad right for the employer to direct the taking of annual leave under clause 25.4(c), without more, was not consistent with s.93(3) of the *Fair Work Act 2009 (Cth)* (the FW Act). As a result, we decided to remove clause 25.4 and insert the model excess leave provision.

[12] As a result, the draft determination issued by the Commission included the new model excessive leave provision and, in effect, noted the additional provision for shutdown in clause 25.10 (which was to be re-numbered) but left the existing shutdown provision in its original form.

3. The shutdown provision now proposed by the CMIEG

[13] The CMIEG have proposed the following revised shutdown clause (with variations marked-up):

'25.10 Shutdown'

- (a) When an employer shuts down all or part of its operation, clauses 25.4 and 25.6 do not apply to employees directly affected by the shutdown and this clause will apply.
- (b) An employer that 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 employees affected.
- (c) Subject to (d), employees directly affected by the shutdown who have an entitlement to annual leave may be required by the employer to take a period of paid annual leave during the period of the shutdown.
- (d) Employees who are directly affected by the shutdown:
 - (i) may elect to take all or only part of that the employee's entitlement to annual leave during the shutdown period, with the balance of the shutdown period being unpaid leave; or

(ii) Employees who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave may, during the shutdown period, elect to take any annual leave in advance accrued in accordance with clause 25.9 25.8, or otherwise be placed onto unpaid leave.¹⁰

[14] In support of that proposal, the CMIEG contend¹¹ that:

- The deletion of clause 25.4 in its entirety has led to uncertainty about the operation of clause 25.10 concerning shutdowns.
- In the case of a shutdown, employers covered by the *Black Coal Award* would rely upon the operation of both clauses 25.10 and 25.4(c) to direct employees to take annual leave for the period of the shutdown, in order to avoid possible disputation.
- The deletion of clause 25.4(c) makes unclear the ability of the employer to require, or direct, the taking of paid annual leave during the period of a shutdown. While a construction is available that an employer who 'shuts down or all or any part of its operation' and gives notice to its employees of 28 days of that shutdown, is consequently giving those employees notice of the requirement to take annual leave, it is desirable that this requirement to take leave be made express in the clause.
- The amendments are necessary to ensure that the construction of clause 25, as a whole, is clear and operates in the manner intended once the existing clause 25.4 is removed and the new clauses 25.4, 25.5 and 25.6 are inserted into the *Black Coal Award*.
- The amendment also makes express what is otherwise implicit in that clause, that employees who do not 'elect' to take annual leave that is accrued, or if they have insufficient leave accrued to take annual leave in advance, would otherwise be on unpaid leave.
- It is orthodox for shutdown clauses to expressly provide for the requirement of employees affected by a shutdown to take annual leave accrued, or in advance, or otherwise be on unpaid leave. For example, modern awards in comparable industries to the black coal mining industry provide shutdown clauses that include an ability for the employer to "direct" or "require" the taking of annual leave (see clause 23.6, *Mining Industry Award 2010*; clause 19.7, *Coal Export Terminals Award 2010*; and clause 29.4, *Quarrying Award 2010*).
- Such a clause is also consistent with section 93(3) of the FW Act, which permits the inclusion in modern awards of terms that require an employee, or allow for an employee to be required to take paid leave in particular circumstances, but only if the requirement is reasonable. 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.
- The amendment to clause 25.10 will make the clause 'simple' and 'easy to understand' in accordance with the modern awards objective (section 134(1)(g), FW Act) and the amendment would lessen the likelihood of disputation between parties covered by the award, in instances of shutdowns.

- The CMIEG notes that in its *December 2016 decision*, the Full Bench decided to include a shutdown clause in the *Aquaculture Industry Award 2010* (the *Aquaculture Award*) and 17 other modern awards, that includes a requirement for employees to take annual leave upon notice by an employer. By parity of the reasoning in respect of the amendments made to the shutdown clause considered by the Full Bench in respect of those awards, the CMIEG submits that the amendments it proposed are appropriate and necessary to be made to clause 25.10 of the *Black Coal Award*.

[15] In the alternative, the CMIEG indicated that it would ‘be content’ for the form of provision contained in the shutdown clause recently inserted into the *Aquaculture Award* to be inserted in the *Black Coal Award*.¹² The terms of that provision are as follows:

‘23.3 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.

- (a) Where an employee has been given notice pursuant to clause 23.3 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.
- (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.¹³

4. The position of the Unions

[16] The CFMEU and AMWU oppose the proposed shutdown clause. The CFMEU contends¹⁴ that the CMIEG proposal to vary the shutdown clause in the *Black Coal Award* should be rejected because:

- it is inconsistent with the Full Bench’s decision dealing with the excessive leave model term (see [2016] FWCFB 6838 at [76]) and seeks to give employers covered by the *Black Coal Award* – through the mechanism of broadening their entitlement during a shutdown – with a power which has just been removed by the Commission; and
- the CMIEG proposal is inconsistent with the ‘reasonableness’ requirement in s.93(3) of the FW Act.

[17] In terms of the impact of the NES, the CFMEU contends¹⁵ that:

- section 93(3) of the FW Act contemplates a focus upon the individual circumstances of the employee and a consideration as to whether the direction to take annual leave in those circumstances is reasonable;
- the note in s.94(5) does not form part of the FW Act and does not mean that a shutdown will, by definition, be reasonable; and
- although a number of modern awards contained shutdown (or close-down) provisions, the Commission had not considered these in the context of the need for consistency with the NES.

[18] The AMWU also opposes the proposed provision and contends that it would be inconsistent with earlier decisions of the Full Bench and with the NES. In particular, the AMWU submits¹⁶ that:

- the model excessive leave term contains procedural requirements and broad constraints on the quantum and timing of directed leave that are important in terms of the requirement that any capacity for leave to be directed must be reasonable;
- the proposed shutdown clause does not meet the reasonableness test criteria set by the Full Bench; and
- the note in s.94(5) illustrates a circumstance where a direction to take leave **may** be reasonable and confirms that the reasonableness test under s.93(3) applies.

[19] The AMWU also relied upon the *September 2016 decision* in removing the existing clause 25.4(c) and what it saw as confirmation that circumstances, such as the need for a mine operation to cease, could be dealt with through negotiations or the terms of an enterprise agreement. In that regard, the AMWU contends that the shutdown clause being proposed by the CMIEG would add to confusion and discourage the parties from negotiating when unforeseen circumstances arise.¹⁷

5. Consideration

[20] The existing shutdown clause (clause 25.10, see [10] above) provides that employees must be given a period of notice (at least 28 days or an agreed shorter period) of the shutdown and that an employee who is directly affected *may* take accrued annual leave or leave in advance. However, with the removal of the general right to direct the taking of annual leave under the former clause 25.4(c), there appears to be no capacity to direct that annual leave be taken during a shutdown period, other than potentially in relation to excessive leave.

[21] In general terms, the shutdown provisions that are contained within the annual leave arrangements found in many modern awards are intended to permit annual leave to be managed at such times. Against that background, it is appropriate to consider the concerns raised by the Unions.

[22] In essence, the Unions raise two principal concerns about the CMIEG proposal. First, that a provision permitting the employer to direct the taking of leave is not reasonable, and is contrary to the NES requirements of s.93(3) of the FW Act. Second, the proposal would, in effect, reintroduce the power for the employer to direct the taking of leave, which the

Commission itself had removed by inserting the model excessive leave provision in lieu of clause 25.4(c).

[23] Sections 93 and 94 of the FW Act provide as follows:

'93 Modern awards and enterprise agreements may include terms relating to cashing out and taking paid annual leave

Terms about cashing out paid annual leave

- (1) A modern award or enterprise agreement may include terms providing for the cashing out of paid annual leave by an employee.
- (2) The terms must require that:
 - (a) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
 - (b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and
 - (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

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.

Terms about taking paid annual leave

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

94 Cashing out and taking paid annual leave for award/agreement free employees

Agreements to cash out paid annual leave

- (1) An employer and an award/agreement free employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave.
- (2) The employer and the employee must not agree to the employee cashing out an amount of paid annual leave if the agreement would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (3) Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.
- (4) The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Requirements to take paid annual leave

- (5) An employer may require an award/agreement free employee to take a period of paid annual leave, but only if the requirement is reasonable.

Note: A requirement to take paid annual leave may be reasonable if, for example:

- (a) the employee has accrued an excessive amount of paid annual leave; or

- (b) the employer's enterprise is being shut down for a period (for example, between Christmas and New Year).

Agreements about taking paid annual leave

- (6) An employer and an award/agreement free employee may agree on when and how paid annual leave may be taken by the employee.

Note: Matters that could be agreed include, for example, the following:

- (a) that paid annual leave may be taken in advance of accrual;
- (b) that paid annual leave must be taken within a fixed period of time after it is accrued;
- (c) the form of application for paid annual leave;
- (d) that a specified period of notice must be given before taking paid annual leave.'

[24] In the *June 2015 decision* the Commission dealt with the Employer Groups' claim for a standard shutdown or closedown provision to be inserted into a range of modern awards. The Commission said (at [347]–[350]):

'At present, 81 modern awards contain provisions for close-down and 41 modern awards do not.

The Act does not contain a specific provision in relation to "shut downs" or "close-downs", but s.93(3) provides that a close-down provision may be included in modern awards and enterprise agreements; it reads:

"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."

The *Explanatory Memorandum to the Fair Work Bill 2008* makes it clear that the subsection was intended to encompass close-down provisions. One of the examples provided in the Explanatory Memorandum was a term which enabled an employer to require an employee to take a period of leave in circumstances where the employer decided to "shut down the workplace over the Christmas/New Year period" (see paragraph [91] above). We return to s.93(3) shortly.

We also note that s.139(1)(h) provides that a modern award may include terms about "leave, leave loadings and arrangements for taking leave".'

[25] And later; (at [370]–[374]):

'We are not persuaded to grant the Employer Group's claim for three reasons.

First, while we accept that a close-down provision may be included in modern awards, it is clear from the terms of s.93(3) that an award provision requiring an employee to take paid annual leave in such circumstances is only permitted "if the requirement is reasonable". We are not satisfied that the model term proposed is "reasonable" in the sense contemplated by s.93(3).

The model term is very broadly expressed and is capable of being applied in a manner not contemplated in the type of annual close-down provisions traditionally provided in awards, in particular:

- (i) there is no restriction on the number of times a close-down can occur in a 12 month period; and
- (ii) there is no restriction on the duration of the close-down—it could be for a single day, a week or a number of weeks.

Further, given the breadth of the model term we are not persuaded that a four week notice period is reasonable.

Second, while we generally agree with the proposition that it is desirable that provisions dealing with the taking of annual leave be uniform across modern awards, it seems to us that close-down provisions are an exception to this general proposition and warrant consideration on an award-by-award basis.¹⁷

[26] Importantly for present purposes, the Full Bench did not conclude that close-down (or shutdown) provisions were not contemplated by the scheme of the FW Act. Rather, it considered that they should be considered in the particular context of each modern award and be included where appropriate having regard to the circumstances pertaining to that award and the relevant statutory considerations.

[27] In our *September 2015 decision* (at [95]), we explained the basis for the model excessive leave provision in the following terms:

'The better approach, it seems to us, is the one adopted in the provisional model term. The model term establishes a number of procedural requirements for any direction to take leave (that the parties first seek to confer, that the direction be in writing etc.) and broad constraints on the quantum and timing of the directed leave. These procedural requirements and constraints go some way to ensuring that any direction to an employee to take excessive accrued leave will be reasonable in terms of s.93(3), but they will not necessarily ensure proper consideration of the individual needs and circumstances of the employee so far as the timing of the directed leave is concerned. In order to address that issue, the model term enables the employee to make a subsequent request to take some or all of the leave covered by the direction at a different time or times (and the employer may not unreasonably refuse such a request). This approach provides greater certainty than the alternative approach outlined above as it minimises the scope for disputes as to the reasonableness of the direction. This is because, pursuant to the model term, the employee must comply with a direction to take excessive accrued leave meeting the requisite procedural requirements and constraints unless:

- the employee makes a subsequent request for leave;
- that request is agreed to by the employer; and
- taking both the directed leave and the agreed leave would at any time reduce the employee's accrued leave balance below six weeks (taking into account any other leave that is also to be taken).¹⁸

[28] The *September 2016 decision* also dealt directly with the annual leave provisions of the *Black Coal Award*. As outlined earlier, in deciding to insert the model excessive annual leave term, and to remove the existing clause 25.4, we observed that the broad right for the employer to direct the taking of annual leave, without other considerations and requirements, was not consistent with s.93(3) of the FW Act. We also considered that the CMIEG proposal

at the time, to leave clause 25.4 in place with access to the relevant dispute resolution procedure, was not appropriate. The basis for those conclusions is set out at [61] – [86], as follows:

‘The modern awards objective is to ‘ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions’. Clause 25.4(b) is neither fair nor relevant and should be deleted from the *BCMI* Award. It is a vestige of past methods of annual leave accrual and does not sit conformably with the NES. Further, we see very little utility in varying clause 25.4(b) in the manner proposed by the CMIEG. An award clause in the terms proposed would be rightly seen as merely aspirational and would have little or no work to do. In our view the most appropriate course is to simply delete clause 25.4(b).

We now turn to subclause 25.4(c) which provides that the employer ‘may direct an employee to take all or part’ of their annual leave entitlement on the giving of 28 days’ notice in writing.

As mentioned earlier, s.93(3) provides the jurisdictional basis for a modern award term requiring an employee to take paid annual leave in particular circumstances. Clause 25.4(c) of the *BCMI* Award is such a term and no party contended otherwise. Importantly, this type of term is subject to the legislative direction that any such requirement to take paid annual leave ‘is reasonable’ and the assessment of whether such a requirement is ‘reasonable’ within the meaning of s.93(3) is not viewed solely through the perspective of the employer.

The CMIEG submits that it could be inferred that in exercising any rights under a modern award a party would act reasonably in doing so, even in the absence of express words to that effect. In the alternative, it submits that some additional words could be added to the end of the subclause such as: ‘and the direction to the employee is reasonable’. The CMIEG submits that with the addition of these words subclause 25.4(c) would meet the requirements of s.93(3) and that in the event of a dispute as to whether a direction was reasonable the employee concerned could utilise the dispute settlement process in the award.

The CMIEG’s first point would require the importation of a general obligation to act reasonably when exercising an award right. Reference was made to the implied good faith obligations in respect of exercising rights under commercial contracts, in support of the proposition advanced.

It may be accepted that some courts have held that there is a duty of good faith in the performance of employment contracts reflecting the obligation found in commercial contracts, while other courts have held no such duty is implied. We note in this context that in *Commonwealth Bank of Australia v Barker* the plurality left open the question whether there is a general obligation to act in good faith in the performance of contracts and the related questions whether contractual powers and discretions may be limited by good faith and rationality requirements analogous to those applicable in the sphere of public law. As observed by Irving in ‘*The Contract of Employment*’ the law in this area is ‘currently in a state of flux’.

In any event it is not immediately obvious how the debate on implied contractual terms assists in the interpretation of the terms of a modern award. The general approach to the construction of instruments such as modern awards was set out in the judgement of French J, as he then was, in *City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union*:

‘The construction of an award, like that of a statute, begins with a consideration of the ordinary meaning of its words. As with the task of statutory construction regard must be paid to the context and purpose of the provision or expression being construed. Context may appear from the text of the instrument taken as a whole, its arrangement

and the place in it of the provision under construction. It is not confined to the words of the relevant Act or instrument surrounding the expression to be construed. It may extend to "...the entire document of which it is a part or to other documents with which there is an association". It may also include "... ideas that gave rise to an expression in a document from which it has been taken" - *Short v FW Hercus Pty Ltd (1993) 40 FCR 511 at 518* (Burchett J); *Australian Municipal, Clerical and Services Union v Treasurer of the Commonwealth of Australia [1998] FCA 249; (1998)80 IR 345* (Marshall J).'

To this we add the oft-quoted observations of Madgwick J in *Kucks v CSR Limited*, that a narrow pedantic approach to interpretation should be avoided, a search of the evident purpose is permissible and meanings which avoid inconvenience or injustice may reasonably be strained for, but:

'... the task remains one of interpreting a document produced by another or others. A court is not free to give effect to some interiorly derived notion of what would be fair or just, regardless of what has been written into the award. Deciding what an existing award means is a process quite different from deciding, as an arbitral body does, what might fairly be put into an award. So, for example, ordinary or well-understood words are in general to be accorded their ordinary or usual meaning.'

The observation of Madgwick J in *Kucks* tells against the general proposition put by the CMIEG in these proceedings and we were not referred to any authority in support of the proposition advanced. Further, as a contextual point, various terms of the *BCMI* Award expressly condition the exercise of particular award rights. For example, clause 12.1(a) provides that an employee 'must perform work as reasonably required by the employer' (emphasis added). The express conditions on the exercise of certain award rights also tells against the implication of such conditions elsewhere in the award. On the basis of the limited argument put we are not persuaded by the CMIEG's primary submission.

In support of its alternate proposition the CMIEG relied on the following observation in the *September 2015 decision*:

'It seems to us that two different approaches might be taken in crafting an award term to deal with requirements to take leave in a way that satisfies s.93(3).

The first and perhaps most obvious approach would be to expressly require in the award term itself that any employer direction to take leave must be reasonable, taking into account all relevant considerations, including those identified in the Explanatory Memorandum...'

The above observation needs to be placed in context. Importantly, the Full Bench went on to say:

'... However, that approach would give rise to significant uncertainty and potential disputation, as the status of any employer direction would be open to challenge on the basis that the individual needs and circumstances of the employee had not properly been considered and that the direction was not reasonable.

The better approach, it seems to us, is the one adopted in the provisional model term. The model term establishes a number of procedural requirements for any direction to take leave (that the parties first seek to confer, that the direction be in writing etc.) and broad constraints on the quantum and timing of the directed leave. These procedural requirements and constraints go some way to ensuring that any direction to an employee to take excessive accrued leave will be reasonable in terms of s.93(3), but they will not necessarily ensure proper consideration of the individual needs and

circumstances of the employee so far as the timing of the directed leave is concerned. In order to address that issue, the model term enables the employee to make a subsequent request to take some or all of the leave covered by the direction at a different time or times (and the employer may not unreasonably refuse such a request). This approach provides greater certainty than the alternative approach outlined above as it minimises the scope for disputes as to the reasonableness of the direction. This is because, pursuant to the model term, the employee must comply with a direction to take excessive accrued leave meeting the requisite procedural requirements and constraints unless:

- the employee makes a subsequent request for leave;
- that request is agreed to by the employer; and
- taking both the directed leave and the agreed leave would at any time reduce the employee's accrued leave balance below six weeks (taking into account any other leave that is also to be taken).

Under the terms of the provisional model term, an employee to whom a direction has been given may make a request to take paid annual leave as if the direction had not been given, and if that leave is agreed and the direction would then result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks, the direction will be deemed to have been withdrawn. Giving primacy to the right of an employee to request to take accrued annual leave (and not to have that request unreasonably refused by the employer) over the right of an employer to direct that leave be taken, provides a means of ensuring that the personal needs and circumstances of the employee are taken into account. ...'

Similarly, in the context of the *BCMI* Award the adoption of the approach proposed by the CMIEG would give rise to significant uncertainty and potential disputation. The status of any employer direction would be open to challenge on the basis that the individual needs and circumstances of the employee had not properly been considered and that the direction was not reasonable. Nor would utilising the dispute resolution term in the *BCMI* Award (clause 9) necessarily provide a mechanism for conclusively determining such disputes. The Commission may only deal with a dispute by arbitration if expressly authorised to do so (see ss.595 and 739) and clause 9.3 of the *BCMI* Award contains no such express authorisation. Subclause 9.3 simply says:

'The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.'

It is apparent from a comparison of clause 25.4(c) with the model term that the existing award term differs from the model term in a number of respects, in particular:

- (i) The existing award term does not provide a mechanism, subject to appropriate limitations, for employees to ultimately require that their employer give them a period of paid annual leave. It makes no provision for the circumstance where an employee accrues excessive paid annual leave but no employer direction is made.
- (ii) The existing award term does not contain a requirement that the minimum length of any period of employer directed paid annual leave be one week. Such a provision would avoid the circumstance where an employee may be required to take their paid annual leave in a series of single days or small clusters of single days – thereby denying the employee the benefits associated with taking a longer period of leave. As the Full Bench said in the *September 2015 decision*:

'It is desirable that some minimum period of leave be prescribed in circumstances where the employee concerned has an excessive leave accrual and may not have had the benefit of any paid annual leave for a period of more than two years.'

We note that clause 25.6 provides that absent agreement annual leave is to be 'given and taken in not more than three periods, one of which must be at least three weeks' duration'. The intended interaction between clauses 25.4(c) and 25.6 is unclear.

(iii) The existing award term provides that an employer can direct an employee to take a period of accrued paid annual leave by giving the employee 28 days' notice in writing. The model term requires that employees be given 8 weeks' notice of the commencement of employer directed leave. The provision of 8 weeks' notice ensures that the employee has a reasonable amount of time to make arrangements for activities during the leave period and/or to coordinate their leave with family members.

(iv) The existing award term does not place any limitation on the amount of accrued paid annual leave that an employer may direct an employee to take. The model term provides that an employer direction must not result in the employees' remaining accrued entitlement to paid annual leave being less than 6 weeks. As the Full Bench said in the *June 2015 decision*:

'Maintenance of a six week minimum is consistent with s.236(6) of the former WR Act and with the majority of current modern award clauses which limit the amount of accrued paid annual leave that an employer can direct an employee to take. It also accommodates the circumstance of an employee seeking to accrue leave so that he or she can take a reasonable extended holiday.'

Further, the existing award term provides that an employer may direct an employer take 'all or part of an annual leave entitlement'. The model term provides that a direction can only be made where an employee has accrued 8 weeks' paid annual leave. The adoption of a lower threshold unfairly limits the capacity for employees to accrue leave for a later, longer, holiday.

(v) The existing term does not require an employer to enter into any dialogue with an employee before directing them to take part of their annual leave. The employer is under no obligation to discuss the issue of excessive annual leave accrual with the employee or to seek to reach an agreement with the employee about the time when such leave will be taken. The model term includes such a provision on the basis that it is plainly preferable that these matters be resolved by agreement between the employer and employee, without the need for a direction.

The above comparison reinforces the deficiencies in the existing award term.

In support of the retention of clause 25.4(c) the CMIEG also submits that the utility of the clause extends beyond the management of excessive leave accruals:

'There are a number of practical operational exigencies affecting black coal mines that are met by the current clauses 25.4 and 25.10 of the BCMI Award.'

Some examples of these are as follows:

(a) Geological or geotechnical circumstances may require that one or more sections of a mine cease operation for a period. As a result, if coal is not being produced, part of

the mining workforce and the employees operating the coal handling and preparation plant at the mine may have no useful work for a period. In these circumstances, the employer or the employee may sensibly see the taking of annual leave as the best course. The alternative of standing down employees without pay may be available but would be onerous and reasonably avoided by the granting and taking of annual leave.

(b) There have been instances where mines have had to stop because of a underground longwall shearing machine being put out of action by being buried due to the collapse of the strata in the coal seam. This is another circumstance in which the taking of leave in accordance with clause 25.4 of the BCMI Award, at the instance of the employee or employer, is reasonable and practicable while the longwall shearing machine is recovered.

(c) Market considerations including the cyclical nature of black coal markets, may cause a mine operator to choose to shut down all or part of an operation for a period. A prime recent example of this was the shutting down of a number of Glencore group mines for a three week period in December 2014 and January 2015, due to oversupply of coal in the market. Such action can be distinctly beneficial to employees, in so far as it may mitigate the need for an employer to reduce workforce numbers through retrenchment.

(d) Another circumstance that can arise is that the product coal stockpile at a mine reaches full capacity, and the extraction of coal therefore needs to be stopped or slowed. In these circumstances, an employee or employer may exercise rights under clause 25.4 (or clause 25.10).

In each example situation, clauses 25.4 and 25.10 meet the reasonable needs of employees and employers in the black coal mining industry. Inclusion of the model term and removal of either clause 25.4 or 25.10, would be less beneficial. These terms of the BCMI Award are already "mutually beneficial" (see June 2015 decision [2015] FWCFB 3406 at [214]; September 2015 decision [2015] FWCFB 5771 at [175]).'

We make two points in relation to this aspect of the CMIEG's submission. First, we acknowledge that clause 25.4(c) could be utilised in the circumstances described – but that misses the point. Clause 25.4(c) is a term allowing for an employee to be required to take annual leave. The power to include such a term in a modern award is s.93(3), which provides that the requirement to take paid annual leave must be 'reasonable'. An award term whereby an employee can be directed to take all of 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).

The second point is that the circumstances identified in the CMIEG's submission could also be addressed by utilising clause 25.10 of the BCMI Award and we note the uncontested assertion by the CFMEU's advocate that in such circumstances:

'the parties get together, they sit down and they sort it out. That's what has happened in the past. That is what happened when Glencore, I think last year, shut down for a week. Presumably, that is what will happen in the future.'

It would also be open to the parties to address these issues in enterprise bargaining and we note the following submission contained in the CMIEG's written submission of 26 October 2015, at paragraph 37:

'There is a high incidence of enterprise agreements in the black coal mining industry and, to the extent that there are concerns that the provisions of the BCMI Award are not appropriate or sufficient in dealing with the taking of leave, those concerns can be addressed by an enterprise agreement.'

We would make a similar observation – to the extent that a particular employer or enterprise is concerned that the award as varied will not provide sufficient flexibility to address the range of unforeseen events identified by the CMIEG, those concerns can be addressed by an enterprise agreement.

We have considered the submissions advanced by the CMIEG but we have decided to delete clause 25.4(c) and to insert the model excessive leave term.

We conclude our consideration of clause 25.4 by turning to subclause 25.4(a), which provides that on giving the requisite notice an employee request to take a period of paid annual leave will be granted ‘unless in the employer’s opinion the operations of the mine will be affected’. The CMIEG characterised clause 25.4 in general terms as providing a ‘fair balance of rights of both the employee and the employer to cause the taking of annual leave’ (see above at [38]). We take this submission to mean that clause 25.4(a) is the part of clause 25.4 which provides employees with rights to take annual leave.

To the extent that clause 25.4 as a whole reflects a balance between the rights of employers and employees the deletion of two of the elements of the term (clauses 25.4(b) and (c)) is a factor favouring the deletion of clause 25.4(a). Further, the CFMEU pointed to circumstances where the right conferred by clause 25.4(a) had not operated effectively (from their perspective) in practice and was ambivalent as to whether the terms of clause 25.4 were varied conformably with the NES or simply deleted. We also note that s.88(2) will continue to apply to employee requests to take paid annual leave, despite the deletion of clause 25.4(a). In all the circumstances we have decided to delete clause 25.4(a), we are not satisfied that the term is necessary to achieve the modern awards objective.

On the basis of the matters set out above we have concluded that the excessive leave term in the *BCMI* Award (i.e. clause 25.4(b) and (c)) does not provide a fair and relevant minimum safety net of terms and conditions of employment. On that basis the term does not meet the modern awards objective. We are also satisfied that the existing excessive leave term does not meet the requirements of s.93(3) of the FW Act. The existing award term provides that an employee may be required to take paid annual leave in particular circumstances and, having considered the terms of clause 25.4(c) that requirement is not reasonable. As that term in the *BCMI* Award does not meet the requirements of s.93(3) it follows it is not a term which may be included in a modern award. As to clause 25.4(a), we are not satisfied that it is necessary to meet the modern awards objective.

We have concluded that clause 25.4 should be deleted in its entirety and that the award should be varied to insert the revised excessive leave model term, subject to a modification to the definition of ‘excessive leave’ having regard to the level of annual leave entitlements under the award. We rely on the findings set out in the *September 2015 decision* and the matters to which we have referred in this decision.

In concluding, we note that one of the issues raised by the CMIEG – in the event we decided to insert the model term in the *BCMI* Award – concerned the interaction between the model term and clause 25.10 ‘shutdown’. Counsel for the CMIEG referred to this issue during the course of oral argument, as follows:

‘... there might also be a question that arises if the excessive leave clause was to be inserted whether or not the provision in 25.10 shutdown was to be read in a particular way, that is, whether or not there ought to be catered for an interaction of, if an employee had, for example, given a direction they wished to take leave under the excessive leave clause, was that to be superseded in some way if the employer gave a direction about a shutdown...’

While not conceding that there was an interaction issue between clause 25.10 and the model term, the CFMEU acknowledged that any potential problem could be addressed by the insertion of some introductory words in clause 25.10 to make it clear that the shutdown term operates despite the terms of the excessive leave term. We propose to add some introductory words to clause 25.10 to make it clear that the shutdown term operates independently of the excessive leave term. Interested parties will have an opportunity to comment on the draft variation determination.' (endnotes omitted)

[29] As the above extract from the *September 2016* decision makes clear, a general provision that permits the employers under the *Black Coal Award* to direct that annual leave be taken on notice, without other considerations and requirements, is not consistent with the scheme of the FW Act and with s.93(3) in particular. However, a term permitting different arrangements for annual leave during a period of shutdown or close-down may be consistent with statutory framework, depending on the terms of such a provision.

[30] In that light, we turn to the second objection raised by the Unions. We accept that the present shutdown provisions in the *Black Coal Award* do not directly provide a right for an employer to direct that annual leave be taken. However, prior to the insertion of the model clauses the provision had operated in conjunction with clause 25.4, which gave such a right simply by the giving of notice. The context in which the shutdown clause operated prior to the impending insertion of the model excessive leave provision has now changed significantly.

[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,¹⁹ 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.

[33] However we also accept that there is merit in the concerns by the Unions and that the provision as proposed by the CMIEG is capable of being applied in a manner which is inconsistent with s 93(3) of the FW Act. The imposition of some limitations upon the scope of the provision is appropriate.

[34] We have reached the *provisional* view that a revised shutdown provision be inserted into the *Black Coal Award* in the following terms:

‘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 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.’

[35] The proposed revised shutdown provision is consistent with the position put by the CMIEG earlier in these proceedings. As noted in the *September 2016 decision* (see [28] above), the CMIEG had submitted that the addition of the words ‘and the direction to the employee is reasonable’ to clause 25.4(c) would meet the requirements of s.93(3) and in the event of a dispute about the reasonableness of a direction the employee concerned would utilise the dispute settlement procedure in the award. We rejected the CMIEG submission at that time as it was advanced as an alternative to the excessive leave model term and we concluded that the model term provided a more appropriate means of ensuring that any directions to take excessive accrued leave will be reasonable in terms of s.93(3). Different

considerations apply in the present context. We are considering the terms of a shutdown provision and, importantly, a term which does not include any substantive constraints on the quantum and timing of the directed leave. In these circumstances it may be appropriate that any direction to take accrued paid annual leave, or unpaid leave, be subject to the requirement that such a direction be reasonable.

[36] As we have previously concluded, an award term that simply allows an employer to (upon the giving of a specified period of notice) direct an employee to take a period of accrued annual leave is not ‘reasonable’ in the sense contemplated by s.93(3). Such a provision does not require any consideration of the needs of the employee who would be subject to such a direction. As the *Explanatory Memorandum* to what is now s.93(3) states:

‘381. Subclause 93(3) permits terms to be included in an award or agreement that require an employee, or that enable an employer to require or direct an employee, to take paid annual leave in particular circumstances, but only if the requirement is reasonable. This may include the employer requiring an employee to take a period of annual leave to reduce the employee’s excessive level of accrual or if the employer decides to shut down the workplace over the Christmas/New Year period.

382. In assessing the reasonableness of a requirement or direction under this subclause it is envisaged that the following are all relevant considerations:

- the needs of both the employee and the employer’s business;
- any agreed arrangement with the employee;
- the custom and practice in the business;
- the timing of the requirement or direction to take leave; and
- the reasonableness of the period of notice given to the employee to take leave.’²⁰

[37] While the needs of the employer’s business is a relevant consideration favouring the reasonableness of a request to take leave during a shutdown (or closedown) period, it is apparent that the assessment of the reasonableness of such a requirement also requires a consideration of the impact of any such requirement on the affected employees. As the Full Bench in *Australian Federation of Air Pilots v HNZ Australia Pty Ltd*²¹ observed, in assessing the reasonableness of such a requirement, ‘all relevant considerations need to be taken into account including those which are set out in paragraph [382] of the Explanatory Memorandum’.²²

[38] 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.

[39] As observed by the CFMEU, this is the first occasion on which we have given detailed consideration to the need for a stand down term to be consistent with s.93(3) of the FW Act. It is for that reason that we have only expressed a provisional view in respect of this issue. We also acknowledge that the adoption of the provisional views expressed is likely to have implications for existing shutdown terms in other modern awards. There are some 81 modern awards which presently contain shutdown (or closedown provisions). The relevant provisions are set in Attachment A and we note that there are a variety of approaches including some modern awards where the provisions operate more narrowly than the clause under consideration here. We propose to invite submissions from the parties interested in the *Black Coal Award* and those interested in the other 80 modern awards which contain shutdown provisions.

6. Next Steps

[40] Interested parties are invited to file written submissions in relation to the *provisional* views set out above at [34]–[38]). Such submissions should be forwarded to amod@fwc.gov.au by **4pm on Tuesday 11 April 2017**. Written submissions in reply are to be filed by **4pm on Wednesday 26 April 2017**. A short oral hearing will be held at **9.30am on Friday 5 May 2017** in Sydney.

[41] As outlined earlier in this decision, a number of editorial changes to the draft determination have been agreed by the parties. These are set out in the original submissions²³ of the CMIEG and concern the consistent reference to both hours and weeks of annual leave in the definition of excess leave. We agree with the proposed changes.

[42] We consider that the revised annual leave arrangements to apply under the *Black Coal Award* should operate together. As a result, we will await the finalisation of the shutdown provision prior to issuing a final Determination varying the award.



PRESIDENT

Appearances:

T Sebbens and A Morris for the Coal Mining Industry Employer Group.

A Rivett for The Association of Professional Engineers, Scientists and Managers, Australia.

A Thomas and G South for the Construction, Forestry, Mining and Energy Union.

M Nguyen and H Arginella for the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU).

Hearing details (conference before Hampton C):

2016.

Sydney;

25 November.

Final written submissions:

CMIEG: 30 January 2017

CFMEU and AMWU: 31 January 2017

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¹ [2015] FWCFB 3406.

² [2015] FWCFB 5771.

³ [2016] FWCFB 3177.

⁴ [2016] FWCFB 3953.

⁵ [2016] FWCFB 6836.

⁶ [2016] FWCFB 9074.

⁷ Ibid at [30].

⁸ [2015] FWCFB 3406 at [381].

⁹ Ibid at [382].

¹⁰ CMIEG written submissions dated 21 October 2016.

¹¹ CMIEG written submissions dated 30 January 2017.

¹² Ibid at 16.

¹³ The background to this variation is discussed in [2016] FWCFB 6836 at para [120] and the final form confirmed in [2016] FWCFB 9074 at [19] – [24].

¹⁴ CFMEU written submissions dated 31 January 2017 at 3 – 17.

¹⁵ Ibid at 14 – 22.

¹⁶ AMWU written submissions filed 31 January 2017.

¹⁷ Ibid at 15.

¹⁸ [2015] FWCFB 5771.

¹⁹ [2016] FWCFB 6836 at [79].

²⁰ [2015] FWCFB 3406 AT [91]

²¹ [2015] FWCFB 3124

²² Ibid at para [25]; also see the *June 2015 decision* at [197] and [207]

²³ CMIEG written submission dated 21 October 2016.

81 modern awards containing close down provisions

Award ID	Award title	Current close-down provision
MA000115	<i>Aboriginal Community Controlled Health Services Award 2010</i>	26.3 Close-down 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.
MA000047	<i>Aircraft Cabin Crew Award 2010</i>	25.4 Requirement to take leave notwithstanding terms of the NES 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.
MA000048	<i>Airline Operations—Ground Staff Award 2010</i>	34.9 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.
MA000092	<i>Alpine Resorts Award 2010</i>	26.3 Close-down 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.
MA000060	<i>Aluminium Industry Award 2010</i>	22.5 Taking of annual leave during shut-downs 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 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.
MA000098	<i>Ambulance and Patient Transport Industry Award 2010</i>	30.12 Annual close-down 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: (a) the employer must give one month's notice in writing of the proposed close-down; (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 (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.

Award ID	Award title	Current close-down provision
MA000118	<i>Animal Care and Veterinary Services Award 2010</i>	<p>26.5 Requirement to take leave notwithstanding terms of the NES</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>
MA000114	<i>Aquaculture Industry Award 2010</i>	<p>23.3 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 23.3 and the employee has:</p> <ul style="list-style-type: none"> (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. <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>

Award ID	Award title	Current close-down provision
MA000054	<i>Asphalt Industry Award 2010</i>	<p>25.4 Close-down</p> <p>(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.</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 25.4(a) or (b) and the employee has:</p> <ul style="list-style-type: none"> (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. <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>
MA000019	<i>Banking, Finance and Insurance Award 2010</i>	<p>24.5 Close-down</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>
MA000001	<i>Black Coal Mining Industry Award 2010</i>	<p>25.10 Shutdown</p> <p>(a) An employer that 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 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 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, take any annual leave accrued in accordance with clause 25.9.</p>

Award ID	Award title	Current close-down provision
<u>MA000091</u>	<i>Broadcasting and Recorded Entertainment Award 2010</i>	<p>23.4 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"> (a) the employer gives not less than four weeks' notice in writing of intention to do so; (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; (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; (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; (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; (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 (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.
<u>MA000020</u>	<i>Building and Construction General On-site Award 2010</i>	<p>38.3 Annual close down</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>
<u>MA000021</u>	<i>Business Equipment Award 2010</i>	<p>31.4 Close-down</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 ID	Award title	Current close-down provision
MA000095	<i>Car Parking Award 2010</i>	<p>25.4 Annual close-down</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> <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"> (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. <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 ID	Award title	Current close-down provision
MA000055	<i>Cement and Lime Award 2010</i>	<p>24.4 Close-down</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"> (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. <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>
MA000070	<i>Cemetery Industry Award 2010</i>	<p>24.3 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>
MA000120	<i>Children's Services Award 2010</i>	<p>24.4 Taking annual leave</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>

Award ID	Award title	Current close-down provision
MA000022	<i>Cleaning Services Award 2010</i>	<p>29.6 Annual close-down</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 class="list-item-l1">(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 class="list-item-l1">(b) Where an employee has been given notice pursuant to clause 29.6(a) and the employee has:</p> <ul style="list-style-type: none"> (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. <p class="list-item-l1">(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 class="list-item-l1">(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 class="list-item-l1">(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 class="list-item-l1">(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>
MA000002	<i>Clerks—Private Sector Award 2010</i>	<p>29.5 Close-down</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>
MA000045	<i>Coal Export Terminals Award 2010</i>	<p>19.7 Taking of annual leave during shut downs</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 ID	Award title	Current close-down provision
<u>MA000083</u>	<i>Commercial Sales Award 2010</i>	<p>24.5 Close-down</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>
<u>MA000056</u>	<i>Concrete Products Award 2010</i>	<p>26.4 Close-down</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"> (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. <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 ID	Award title	Current close-down provision
<u>MA000023</u>	<i>Contract Call Centre Award 2010</i>	<p>27.9 Annual close-down</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"> (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; (b) an employer may close down for one or two periods; (c) an employer and the majority of employees concerned may agree to close down for more than two periods; (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 (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.
<u>MA000075</u>	<i>Educational Services (Post-Secondary Education) Award 2010</i>	<p>25.5 Annual close-down</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>
<u>MA000077</u>	<i>Educational Services (Teachers) Award 2010</i>	<p>21.2 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>
<u>MA000088</u>	<i>Electrical Power Industry Award 2010</i>	<p>27.8 Taking of annual leave during shut-down</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 ID	Award title	Current close-down provision
MA000025	<i>Electrical, Electronic and Communications Contracting Award 2010</i>	<p>28.5 Taking of annual leave during close-downs etc.</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>

Award ID	Award title	Current close-down provision
MA000073	<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	<p>34.11 Annual close-down</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> <ul style="list-style-type: none"> (a) the employer gives not less than four weeks' notice of intention to do so; and (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 (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 (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 (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 (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 (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 (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.

Award ID	Award title	Current close-down provision
MA000101	<i>Gardening and Landscaping Services Award 2010</i>	<p>24.9 Annual close-down</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"> (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. <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 ID	Award title	Current close-down provision
MA000061	<i>Gas Industry Award 2010</i>	<p>25.3 Taking of annual leave during shut-down</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"> (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. <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>
MA000004	<i>General Retail Industry Award 2010</i>	<p>32.5 Close-down</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 ID	Award title	Current close-down provision
MA000026	<i>Graphic Arts, Printing and Publishing Award 2010</i>	<p>37.12 Annual close-down</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"> (a) the employer gives not less than four weeks' notice of intention to do so; (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; (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. (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; (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; (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; (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 (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.
MA000005	<i>Hair and Beauty Industry Award 2010</i>	<p>33.5 Requirement to take leave notwithstanding terms of the NES</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>
MA000027	<i>Health Professionals and Support Services Award 2010</i>	<p>31.4 Close down periods—dental and medical practices</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>

Award ID	Award title	Current close-down provision
MA000007	<i>Higher Education Industry—General Staff—Award 2010</i>	<p>30.4 Close down</p> <p>(a) Christmas/New Year close down 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) Seasonal stand down of residential colleges staff 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"> (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; (ii) an employee may take accrued annual leave or long service leave during term breaks, semester breaks and the Christmas/Summer vacation; (iii) all periods of stand down must count for the purpose of accrual of sick leave, annual leave and long service leave; (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; (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 (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>(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>
MA000008	<i>Horse and Greyhound Training Award 2010</i>	<p>23.3 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 ID	Award title	Current close-down provision
MA000009	<i>Hospitality Industry (General) Award 2010</i>	<p>34.3 Close-down</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>
MA000062	<i>Hydrocarbons Industry (Upstream) Award 2010</i>	<p>27.7 Taking of annual leave during shut-downs or lay-ups</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>
MA000029	<i>Joinery and Building Trades Award 2010</i>	<p>32.9 Annual close-down</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> <p>(a) the employer gives not less than two months' 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 32.2 and 32.3;</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 32.9 also counts as service by the employee with their employer.</p>

Award ID	Award title	Current close-down provision
<u>MA000067</u>	<i>Journalists Published Media Award 2010</i>	<p>24.8 Annual close-down</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"> (a) the employer gives not less than four weeks' notice of intention to do so; (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; (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; (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; (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 (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.
<u>MA000112</u>	<i>Local Government Industry Award 2010</i>	<p>25.5 Annual close-down</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 ID	Award title	Current close-down provision
MA000010	<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	<p>41.10 Annual close down</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"> (a) the employer gives not less than four weeks notice of intention to do so; and (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 (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 closedown; and (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 (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 (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 (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 (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.

Award ID	Award title	Current close-down provision
<u>MA000059</u>	<i>Meat Industry Award 2010</i>	<p>37.8 Annual close-down</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>
<u>MA000011</u>	<i>Mining Industry Award 2010</i>	<p>23.6 Taking of annual leave during shut downs</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 ID	Award title	Current close-down provision
MA000104	<i>Miscellaneous Award 2010</i>	<p>23.4 Annual close down</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"> (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. <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 ID	Award title	Current close-down provision
MA000032	<i>Mobile Crane Hiring Award 2010</i>	<p>25.5 Annual close-down</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"> (i) The employer will give not less than four weeks notice of the close-down. (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. (iii) An employee who has qualified for a full entitlement to annual leave will be allowed paid leave. (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. (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. (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. <p>25.6 Part close-down and part rostered leave</p> <p>(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.</p> <p>(b) An employer may close down the depot, or a section thereof for a period of less than 21 consecutive days including non-working 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>

Award ID	Award title	Current close-down provision
<u>MA000033</u>	<i>Nursery Award 2010</i>	<p>27.11 Time of taking leave</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>
<u>MA000034</u>	<i>Nurses Award 2010</i>	<p>31.9 Close down periods—medical practices</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>
<u>MA000072</u>	<i>Oil Refining and Manufacturing Award 2010</i>	<p>26.6 Taking of annual leave during shut-downs</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>
<u>MA000097</u>	<i>Pest Control Industry Award 2010</i>	<p>24.9 Close-down</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"> (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. <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 ID	Award title	Current close-down provision
MA000069	<i>Pharmaceutical Industry Award 2010</i>	<p>26.10 Annual close-down</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"> (a) the employer gives not less than four weeks' notice of intention to do so; and (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 (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 (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 (e) the employer may only close down the enterprise or part of it pursuant to clause 26.9 for one period in a year.
MA000036	<i>Plumbing and Fire Sprinklers Award 2010</i>	<p>34.3 Annual close-down</p> <ul style="list-style-type: none"> (a) An employer giving any leave in conjunction with the Christmas and New Year holidays may either: <ul style="list-style-type: none"> (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 (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. (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.

Award ID	Award title	Current close-down provision
<u>MA000074</u>	<i>Poultry Processing Award 2010</i>	<p>27.9 Annual close-down</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"> (a) the employer gives not less than one month's notice of the intention to do so; and (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 (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 (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 (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 with their employer.

Award ID	Award title	Current close-down provision
MA000057	<i>Premixed Concrete Award 2010</i>	<p>24.4 Close-down</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"> (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. <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>
MA000065	<i>Professional Employees Award 2010</i>	<p>19.4 Annual close-down</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>
MA000037	<i>Quarrying Award 2010</i>	<p>29.4 Close-down</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>

Award ID	Award title	Current close-down provision
MA000013	<i>Racing Clubs Events Award 2010</i>	<p>30.3 Temporary close-down</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 30.3(a) and the employee has:</p> <ul style="list-style-type: none"> (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. <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 ID	Award title	Current close-down provision
MA000014	<i>Racing Industry Ground Maintenance Award 2010</i>	<p>24.2 Close-down</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"> (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. <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>
MA000106	<i>Real Estate Industry Award 2010</i>	<p>25.2 Taking leave</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>
MA000058	<i>Registered and Licensed Clubs Award 2010</i>	<p>30.4 Close-down</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 ID	Award title	Current close-down provision
<u>MA000119</u>	<i>Restaurant Industry Award 2010</i>	<p>35.3 Close-down</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>
<u>MA000039</u>	<i>Road Transport (Long Distance Operations) Award 2010</i>	<p>23.8 Annual close-down</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"> (a) the employer gives not less than one month's notice of its intention to do so; (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; (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 (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.
<u>MA000038</u>	<i>Road Transport and Distribution Award 2010</i>	<p>29.7 Annual close-down</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"> (a) the employer gives not less than one month's notice of its intention to do so; (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; (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 (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.

Award ID	Award title	Current close-down provision
MA000107	<i>Salt Industry Award 2010</i>	<p>25.6 Taking of annual leave during shut-downs</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>
MA000068	<i>Seafood Processing Award 2010</i>	<p>27.11 Annual close-down</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"> (a) the employer gives not less than four weeks' notice of intention to do so; and (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 (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 (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 (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 (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 (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 (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.

Award ID	Award title	Current close-down provision
MA000016	<i>Security Services Industry Award 2010</i>	<p>24.9 Annual close down</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 24.9(a) and the employee has:</p> <ul style="list-style-type: none"> (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. <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>
MA000040	<i>Silviculture Award 2010</i>	<p>29.3 Shut-down</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 ID	Award title	Current close-down provision
MA000084	<i>Storage Services and Wholesale Award 2010</i>	<p>26.6 Annual close down</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> <ul style="list-style-type: none"> (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; (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 (c) the next 12 monthly qualifying period of employment for every such employee will commence from the date of closing. <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>
MA000087	<i>Sugar Industry Award 2010</i>	<p>33.5 Close-down</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>
MA000103	<i>Supported Employment Services Award 2010</i>	<p>22.3 Close-down</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 ID	Award title	Current close-down provision
<u>MA000066</u>	<i>Surveying Award 2010</i>	<p>24.3 Annual leave close-down</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"> (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. <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>
<u>MA000041</u>	<i>Telecommunications Services Award 2010</i>	<p>23.9 Annual close-down</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 ID	Award title	Current close-down provision
<u>MA000017</u>	<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	<p>41.5 Close-down</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>

Award ID	Award title	Current close-down provision
MA000071	<i>Timber Industry Award 2010</i>	<p>33.11 Annual close-down</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> <ul style="list-style-type: none"> (a) the employer gives not less than four weeks' notice of intention to do so; (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; (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; (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; (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; (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; (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 (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.

Award ID	Award title	Current close-down provision
MA000089	<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	<p>29.12 Annual close-down</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>
MA000113	<i>Water Industry Award 2010</i>	<p>27.4 Annual close-down</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>

Award ID	Award title	Current close-down provision
<u>MA000090</u>	<i>Wine Industry Award 2010</i>	<p>31.9 Annual close down</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> <ul style="list-style-type: none"> (a) the employer gives not less than four weeks' notice of the intention to do so; and (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 (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 (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 (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 (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 (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.
<u>MA000044</u>	<i>Wool Storage, Sampling and Testing Award 2010</i>	<p>26.3 Taking of annual leave during shut downs etc.</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>

