



Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSION

**PLAIN LANGUAGE RE-DRAFTING - VARIOUS
ISSUES
(AM2016/15)**

1 APRIL 2019

**AUSTRALIAN BUSINESS INDUSTRIAL
- and -
THE NSW BUSINESS CHAMBER LTD**

1. BACKGROUND

1.1 This submission is filed by Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relates to the Statement issued by the Fair Work Commission (**Commission**) on 28 February 2019 in respect of various outstanding issues which have been referred to the Plain Language Full Bench (**Full Bench**).

1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and the NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth).

1.3 In the sections that follow, ABI and NSWBC address each of the matters about which the Full Bench invited comment or submissions in the Statement.

2. FURTHER AWARDS IDENTIFIED FOR PLAIN LANGUAGE RE-DRAFTING

2.1 ABI and NSWBC do not oppose the provisional view expressed by the Full Bench at [13] that the *Vehicle Manufacturing, Repair, Services and Retail Award*, the *Manufacturing and Associated Industries and Occupations Award* and the *Building and Construction General On-Site Award* not be re-drafted in plain language at this time.

3. REFERENCE TO ‘FULL-TIME EMPLOYEE’ IN MINIMUM RATE TABLES

3.1 ABI and NSWBC do not oppose the insertion of the reference to ‘full-time employee’ in minimum rates tables as a general proposition.

3.2 However, in some Awards (such as the *Clerks-Private Sector Award*) this change may result in some confusion due to the interaction of the operative part of the clause with the wage table.

3.3 For example, in the current exposure draft of the *Clerks-Private Sector Award*, clause 16.1 specifies that Column 2 is applicable to a “full-time employee” (clause 16.1(a)) and Column 3 to a “part-time employee” (clause 16.1(b)).

3.4 The proposed amendment means that there is a reference now in the heading of Column 2 to it being applicable to a “full-time employee”, but Column 3 has not been similarly amended to refer to a “part-time employee”.

3.5 It may be appropriate for this issue to be considered by the Commission during the amendment of each individual Award to see whether any confusion may arise.

4. **COVERAGE CLAUSES**

4.1 ABI and NSWBC do not oppose the proposed amendments set out at [33] and [34] of the Statement.

5. **TERMINOLOGY OF RATES**

5.1 Our clients support the Full Bench’s view expressed at [65] that confusion arises from the utilisation of different terminology across awards in determining an employee’s entitlement to either penalties or annual leave loading (but not both).

5.2 The wording proposed by the AiG and outlined by the Full Bench at [67] addresses this issue in a legal sense but our clients support the view of the Bench expressed at [68] that the outcome is a clause which “*may make the award more complex and difficult for users to apply*”.

5.3 In an effort to resolve this issue, our clients propose the following drafting (based on clause 32.3 of the *Clerks - Private Sector Award* plain language exposure draft):

*(a) During a period of paid annual leave an employer must pay an employee an additional payment **calculated** in accordance with clause 16—Minimum rates for the employee’s ordinary hours of work in the period.*

(b) The additional payment is payable on leave accrued.

(c) *For an employee who would have worked on day work only had they not been on leave, the additional payment is the greater of:*

(i) *17.5% of the minimum hourly rate for the employee’s ordinary hours of work in the period; or*

(ii) *The **difference between the** minimum hourly rate for the employee’s ordinary hours of work in the period inclusive of weekend penalty rates as specified in clause 21— Penalty rates (employees other than shiftworkers) **and the minimum hourly rate payable to the employee in accordance with clause 16—Minimum rates for the employee’s ordinary hours of work in the period.***

(d) *For an employee who would have worked on shiftwork had they not been on leave, the additional payment is the greater of:*

(i) *17.5% of the minimum hourly rate for the employee’s ordinary hours of work in the period; or*

(ii) *The **difference between the** minimum hourly rate for the employee’s ordinary hours of work in the period inclusive of shift and weekend penalty rates for shiftwork as specified in clause 28— Penalty rates for shiftwork **and the minimum hourly rate payable to the employee in accordance with clause 16—Minimum rates for the employee’s ordinary hours of work in the period.***

6. SHUTDOWN PROVISIONS

6.1 As the Full Bench identifies at [80]-[81], 81 modern awards contain annual leave provisions pertaining to the shutdown of a business or part of an employer’s business.

The history of existing shutdown award provisions and practices

- 6.2 The 30 May 2014 Background Paper published by the Fair Work Commission in Proceedings *AM2014/47 - 4 Yearly Review of Modern Awards - Annual Leave Common Issue (Background Paper)* identifies that annual leave shutdown provisions have been a part of the Federal industrial relations landscape for some time.
- 6.3 The Background Paper identifies that:
- (a) From 26 March 2006 onwards, section 236 of the *Workplace Relations Act 1996* conferred a power on employers to direct employees to take a period of annual leave if:
 - (i) directed to do so by the employer because, during that period, the employer shuts down the business, or any part of the business, in which the employee works; and
 - (ii) at least that amount of annual leave is credited to the employee.
 - (b) Annual leave shutdown provisions had also appeared in a number of Federal awards prior to appearing in the *Workplace Relations Act 1996*. The Background Paper identifies, as an example, provisions contained in the *Metal Industry Award 1971* which conferred an ability to direct employees to take annual leave during shutdowns.
- 6.4 Importantly, prior to the ‘federalisation’ of workplace relations laws in 2006, the vast majority of State and Territory legislation contained provisions enabling annual shutdowns: see for example, section 12 *Annual Leave Act 1973* (ACT), section 4A *Annual Holidays Act 1944* (NSW), section 12 *Annual Leave Act* (NT) and Schedule 4 *Fair Work Act 1994* (SA).

Award modernisation

6.5 During the award-modernisation process, the Australian Industrial Relations Commission acknowledged the variety of existing annual shut down provisions in pre-reform awards and expressed a preference to not alter the annual leave shutdown provisions that were specifically developed for particular industries. The Commission held that:

“It is preferable that we do not alter provisions which have been specifically developed for particular industries. We have adopted the approach of attempting to identify an industry standard in each case. This means there may be some variation in the close-down provisions.”¹

6.6 Accordingly, the annual shutdown provisions that were prevalent in particular industries were preserved by the award-modernisation process and codified in the 81 modern awards that now contain shutdown provisions.

Industry practice

6.7 In *AM2014/47 - 4 Yearly Review of Modern Awards - Annual Leave Common Issue*, the Australian Chamber and Ai Group filed a Joint Employer Survey containing responses regarding employer practices with respect to the management of annual leave (including annual shutdowns).

6.8 A copy of the survey data was filed as Exhibit B to the Australian Chamber’s submissions and can be accessed on the Commission’s website for the 4 Yearly Review of Modern awards:

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/am201447-acci-exhibit-b.pdf>

6.9 A summary of the survey results was filed by Ai Group by way of a Statement of Ben Waugh dated 20 June 2014. A copy of that summary can be accessed on the

¹ [2008] AIRCFB 1000 at para 97.

Commission's website for the 4 Yearly Review of Modern awards: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201447-sub-aig-230614.pdf>

- 6.10 In its decision, *4 yearly review of modern awards—Annual leave* [2015] FWCFB 3406, the Commission found that the results of the Joint Employer Survey provided valuable insights into industry practices regarding the management and taking of annual leave:

[47] Taking account of all these issues we are satisfied that the Employer Survey provides a valuable insight into the practical issues facing employers in the management of the existing annual leave arrangements and we will take the Employer Survey responses into account. The Employer Survey utilised the available databases in order to maximise the number of responses. A substantial number of responses were received (relative to other employment surveys) and the respondents were reasonably representative of the population of employers in each state and territory. The methodological limitations with the survey (i.e. it was not a random stratified sample) mean that the results cannot be extrapolated such that they can be said to be representative of all employers.

- 6.11 Relevantly, for present purposes, the Joint Employer Survey found that 46.6% of respondents (which was comprised of 1928 employers) had closed down all or part of their operations since 2010 to allow employees to take leave.²

- 6.12 Furthermore, only 1.62% (which was comprised of 67 employers) identified that they were unable to close down their businesses because a shutdown was not permitted by their relevant award or enterprise agreement. This supports a

² Statement of Ben Waugh dated 20 June 2014
<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201447-sub-aig-230614.pdf> (see page 88 of the pdf document)

conclusion that the existing shutdown provisions have largely been helpful for employers in implementing annual shutdowns.

Conclusion regarding applicability of existing award provisions and practices to the current proceedings

6.13 Having regard to the above, it should be concluded that:

- (a) annual leave shutdown provisions have been commonplace for a significant period of time across a large number of industrial relations jurisdictions;
- (b) the existing shutdown provisions contained in 81 modern awards reflect the broad industrial standards applicable in the relevant industries prior to 2009;
- (c) upon being made in 2010, the specific shutdown provisions contained in each of the 81 modern awards satisfied the modern awards objective;³ and
- (d) the annual shutdown provisions are regularly used by businesses.

6.14 In this context, it is submitted that substantive changes should only be made to the existing shutdown provisions if there is a cogent basis to do so (which would likely include evidence supporting the merit for such changes).

6.15 This is a view that was echoed by the Full Bench in *4 yearly review of modern awards—Annual leave* [2015] FWCFB 3406:

[382] We leave open the capacity for interested parties to seek a variation to a modern award to either vary an existing close-down provision or to insert an appropriate provision. Such applications should be made during the Award stage of the Review on an individual award basis. Any proposed

³ This is a principle derived from *4 Yearly Review of modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [60.3]

variation will need to be supported by cogent evidence of industry circumstances requiring such a provision or variation.

6.16 In the sections that follow, ABI and NSWBC address the nature of the changes introduced by the model term and ABI and NSWBC's position with respect to whether the model term should be introduced into modern awards.

The model term

6.17 The model term outlined in Attachment D differs from the existing 81 award annual shutdown provisions in certain material respects.

6.18 Most relevantly:⁴

- (a) None of the existing award provisions contain a requirement that the direction be reasonable in the circumstances. This is in contrast to Attachment D, which requires any direction to take annual leave to be reasonable.
- (b) None of the existing award provisions presently contain a term similar to that contained in the model term, whereby employees *elect* to take annual leave, unpaid leave or annual leave in advance before the employer is empowered to issue a direction pertaining to the taking of leave during a shutdown.
- (c) 14 awards permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction. This contrasts with Attachment D, which compels employers to provide at least 28 days notice of any annual shutdown.
- (d) 55 awards permit employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in

⁴ See Annexure A to these submissions for an award-by-award analysis of these various differences

relation to the taking of the annual leave. Attachment D requires written notice for all directions to take leave pertaining to shutdowns.

- (e) 52 awards permit an employer to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period. This contrasts with Attachment D, which does not confer any power on employers to direct the taking of unpaid leave.

6.19 We address each of these matters separately below:

The requirement that the direction to take leave be reasonable

6.20 It is uncontroversial that any award term which provides for requirements to take annual leave may only be included in a modern award if the requirement to take annual leave is reasonable. This is mandated by subsection 93(3) of the FW Act.

6.21 ABI and NSWBC acknowledge and accept the provisional view expressed by the Full Bench in *4 Yearly Review of Modern Awards - Annual leave* [2017] FWCFB 959, regarding the types of modern award clauses that would satisfy this type of jurisdictional prerequisite:

“[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.”

6.22 The model term seeks to take the latter approach identified above, which simply requires that any direction pertaining to a shutdown must be reasonable in the circumstances.

6.23 This approach has some attraction because it is a simple means of complying with the requirements imposed by subsection 93(3) of the FW Act and does not require the Commission to implement a variety of procedural safeguards that take into account the myriad of hypothetical scenarios that might arise in the workplace – in order to ensure any directions issued are reasonable.

6.24 However, it is important to note that this express requirement is not present in any of the existing 81 annual shutdown award provisions and accordingly constitutes a substantive change to the existing provisions.

6.25 If this change is adopted, it will likely impact upon whether it is necessary to retain other types of existing award or model term procedural safeguards regarding the direction to take annual leave - given that in all cases the model term requires the direction to take leave to be reasonable.

The model term entitles employees to *elect* to take types of leave before the employer may issue any direction

6.26 The model term currently only permits employers to direct employees to take annual leave after the employee has first had the opportunity to make an election as to whether to take annual leave, annual leave in advance or unpaid leave.

6.27 Whilst, on face value, the notion of providing the employees with the opportunity to elect how they take leave during the shutdown might appear inoffensive, it gives rise to two significant difficulties. Each are addressed separately below:

Allowing unpaid leave to be taken instead of annual leave

6.28 The model term contemplates employees being entitled to elect to take unpaid leave even where they have annual leave accrued.

6.29 Such an arrangement is at odds with many employer practices, which often require employees to take paid annual leave before seeking to take unpaid leave.

6.30 This arrangement also increases the regulatory burden on employers, as it takes away a legitimate means by which employers have traditionally been able to reduce existing annual leave liabilities. Indeed, in the Joint Employer Survey, it was identified that:

- (a) almost half of employers engage some employees with more than 6 weeks of annual leave accrued;
- (b) 17.5% of employers engage workforces where more than 21% of employees have accrued annual leave of 6 weeks or more; and
- (c) 49% of employers do not like employers accruing more than 6 weeks leave⁵, with 62.5% citing the cost impact of large leave accruals as the primary reason behind this view.⁶

6.31 By allowing employers to direct employees to take a period of annual leave during a shutdown as opposed to allowing them to elect to take unpaid leave, the existing 81 award provisions reduce the regulatory burden on employers. The existing provisions allow employers to reduce leave liabilities and positively impact their finances, allowing for investment in other profit-generating aspects of a business.

6.32 This advantage is reversed in the model term, and by allowing unpaid leave to be taken in lieu of annual leave, the model term adversely affects the objectives of section 134(1)(f) of the FW Act - which requires the Commission to consider the regulatory burden on employers when exercising modern award powers.

New procedures required which are not simple or easy to implement

6.33 The model term also contemplates employees being given an unspecified period to elect to take unpaid leave, annual leave or annual leave in advance before any employer direction is issued.

⁵ Joint Employer Survey, page 27

⁶ ACCI Exhibit B. The figure of 62.5% of responses indicates 62.5% of employers who provided a reason as to why they disliked employees accruing in addition to 6 weeks leave mentioned cost as a factor.

- 6.34 This is a substantial departure from existing practices, where employers do regularly issue directions to take annual leave (or unpaid leave) during a shutdown.
- 6.35 The new term would require employers to devise a system for:
- (a) initially, identifying the proposed shutdown period;
 - (b) obtaining employee feedback regarding preferences for arrangements during the shutdown period. These employees may be situated in diverse geographical locations and might work at different times or under different shift structures – rendering it difficult to obtain such feedback;
 - (c) process any feedback in an orderly way; and
 - (d) ultimately, communicate into payroll, human resources or other business areas the process that is to be adopted with respect to each individual employee during the shutdown.
- 6.36 Furthermore, under the model term, employees are provided with no timeframe within which to elect to take their leave. This could significantly impair an employer's ability to efficiently direct the taking of annual leave, particularly with respect to workforces which are located in diverse geographical locations and across varying working patterns.
- 6.37 This approach substantively increases the regulatory burden on employers to confer what in many cases will be an immaterial benefit on employees. ABI and NSWBC describe the benefit choice between types of leave as immaterial because, one way or another, even under the model term employers can require employees to ultimately be on some kind of leave during the shutdown.
- 6.38 Accordingly, it is submitted that the current provisions of the model term conferring rights on employees to elect which form of leave they take prior to a direction being issued are inconsistent with:

- (a) 134(1)(f) of the FW Act - which requires the Commission to consider the regulatory burden on employers when exercising modern award powers; and
- (b) S134(1)(g) of the FW Act - which requires the Commission to ensure a simple, easy to understand and stable and sustainable modern award system.

6.39 It should additionally be recognised that these adverse impacts are particularly unnecessary in circumstances where the model term elsewhere requires any direction to take annual leave to be **reasonable**.

The model term imposes a minimum notice period to be applied to any shutdown

6.40 14 modern awards do not impose the requirement that employers provide a minimum notice period before implementing a shutdown.

6.41 The imposition of a minimum notice period into the model term is a substantive change to these awards.

6.42 Nevertheless, provided the minimum notice period imposed by the model term is maintained at 28 days, ABI and NSWBC do not oppose the inclusion of this minimum notice period into the model term.

The model term imposes a requirement to provide a written direction

6.43 55 modern awards do not impose the requirement that employers provide a written direction before implementing a shutdown.

6.44 The imposition of a requirement to provide a written direction into the model term is a substantive change to these awards.

6.45 Nevertheless, provided the minimum notice period imposed by the model term is maintained at 28 days, ABI and NSWBC do not oppose the requirement for any direction to be written being included in the model term.

Unpaid leave

- 6.46 52 modern awards permit employers to direct employees to take a period of unpaid leave during a shutdown.
- 6.47 This is an essential clause in these industries because it enables employers to actually close down their businesses.
- 6.48 If there is no ability to direct employees to take unpaid leave, employers would either need to:
- (a) permit some (but not all) employees to present to work during the shutdown, notwithstanding that there may be a lack of supervision or appropriate manning in place for safety purposes (in safety critical environments); or
 - (b) direct employees to stay away from the workplace but pay such employees during the entirety of the period notwithstanding that the employees are doing no work.
- 6.49 Both outcomes impose practical and financial imposts on employers.
- 6.50 They effectively serve to defeat one of the primary benefits of a shutdown, which is to provide a uniform basis upon which to ensure employees regularly take their accrued leave. This benefit of the shutdown is ameliorated because the above mentioned outcomes result in:
- (a) employees attending work when there is little productive work to be performed; or
 - (b) employees receiving a windfall gain in terms of being entitled to payments not historically made in these industries where no leave has been accrued.
- 6.51 Having regard to the above, it is submitted that this element of the model clause is inconsistent with:

- (a) 134(1)(f) of the FW Act - which requires the Commission to consider the regulatory burden on employers when exercising modern award powers; and
- (b) S134(1)(g) of the FW Act - which requires the Commission to ensure a simple, easy to understand and stable and sustainable modern award system.

6.52 This element of the model clause is firmly opposed to the extent it is inconsistent with existing award provisions which currently allow for employers to direct the taking of unpaid leave.

Should the model term be adopted?

6.53 Having regard to the matters raised at paragraphs 6.13 to 6.15 above and the additional concerns identified with respect to the individual elements of the model term, ABI and NSWBC's primary position is that the model term should not be inserted into the existing award provisions that contain a shutdown clause.

6.54 To the extent that the Commission is nevertheless minded to insert a model clause, ABI and NSWBC submit that the model term should be amended as follows:

Election to take forms of leave

- (a) The provisions regarding employees electing to take a period of leave are either removed (ABI/NSWBC's primary position) or, alternatively, varied so that:
 - (i) employees cannot elect to take unpaid leave instead of accrued annual leave during the period of shutdown (where the employees have accrued annual leave available); and
 - (ii) if a period of election is to be conferred on employees, the period in which employee may elect to take a form of leave must be limited

to 7 days, after which employers are able to direct the taking of leave where no election has occurred for the whole of the period of the shutdown.

Directions to take unpaid leave

- (b) Existing provisions in industry awards which entitle employers to direct employees to take unpaid leave should be retained.

7. AWARD SPECIFIC VARIATIONS

- 7.1 ABI and NSWBC adopt the submissions made at paragraph 6.54 in relation to the Commission's query regarding award specific variations to the model term.

8. SHOULD A PERIOD OF UNPAID LEAVE TAKEN DURING A SHUTDOWN COUNT AS SERVICE?

- 8.1 The period of an employee's service determines an employee's eligibility for a number of entitlements under the FW Act, including:

- (a) paid leave entitlements;
- (b) unpaid leave entitlements (such as parental leave);
- (c) notice of termination;
- (d) requests for flexible working arrangements;
- (e) redundancy; and
- (f) the ability to make unfair dismissal applications.

- 8.2 A period of an employee's service for the purposes of the above FW Act entitlements is determined by section 22 of the FW Act.

- 8.3 Section 22 relevantly provides as follows (original bold emphasis retained):

*(1) A period of **service by** a national system employee with his or her national system employer is a period during which the employee is*

*employed by the employer, but does not include any period (an **excluded period**) that does not count as service because of [subsection](#) (2).*

(2) The following periods do not count as service:

(a) any period of unauthorised absence;

(b) any period of unpaid leave or unpaid authorised absence, other than:

(i) a period of absence under Division 8 of Part 2-2 (which deals with community service leave); or

(ii) a period of stand down under Part 3-5, under an enterprise agreement that applies to the employee, or under the employee's contract of employment; or

(iii) a period of leave or absence of a kind prescribed by the regulations;

(c) any other period of a kind prescribed by the regulations.

*(3) An excluded period does not break a national system employee's **continuous service** with his or her national system employer, but does not count towards the length of the employee's continuous service.*

(3A) Regulations made for the purposes of [paragraph](#) (2)(c) may prescribe different kinds of periods for the purposes of different provisions of this Act (other than provisions to which [subsection](#) (4) applies). If they do so, [subsection](#) (3) applies accordingly.

Meaning for Divisions 4 and 5, and Subdivision A of Division 11, of Part 2-2

(4) For the purposes of Divisions 4 and 5, and Subdivision A of Division 11, of Part 2-2:

*(a) a period of **service** by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include:*

(i) any period of unauthorised absence; or

(ii) any other period of a kind prescribed by the regulations; and

*(b) a period referred to in subparagraph (a)(i) or (ii) does not break a national system employee's **continuous service** with his or her national system employer, but does not count towards the length of the employee's continuous service; and*

(c) [subsections](#) (1), (2) and (3) do not apply.

Note: Divisions 4 and 5, and Subdivision A of Division 11, of Part 2-2 deal, respectively, with requests for flexible working arrangements, parental leave and related entitlements, and notice of termination or payment in lieu of notice.

8.4 To date, no regulations have been made pursuant to section 22.

8.5 A broad summary of the effect of section 22 of the FW Act is that:

- (a) generally, unpaid leave periods do not count as service for the purposes of the FW Act;
- (b) however, periods of unpaid leave that are not unauthorised (this would include during annual shutdowns) do count as service for the purposes of determining entitlements to:
 - (i) flexible working arrangement requests;
 - (ii) unpaid parental leave; and
 - (iii) notice of termination.

9. CONCLUSION

9.1 ABI and NSWBC appreciate the opportunity to assist the Commission by making this submission to the Commission. Should further information be required, please contact Kate Thomson on (02) 4989 1003.

On behalf of Australian Business Industrial and the NSW Business Chamber Ltd



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ANNEXURE A

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
Aboriginal Community Controlled Health Services Award 2010 (clause 26.3)		x		x	
Aircraft Cabin Crew Award 2010 (clause 25.4)		x		x	
Airline Operations–Ground Staff Award 2010 (clause 34.9)		x		x	
Alpine Resorts Award 2010 (clause 26.3)		x		x	
Aluminium Industry Award 2010 (clause 22.5)	x	x			
Ambulance and Patient Transport Industry Award 2010 (clause 30.12)	x				
Animal Care and Veterinary Services Award 2010 (clause 26.5)		x		x	
Aquaculture Industry Award 2010 (clause 23.3)	x				
Asphalt Industry Award 2010 (clause 25.4)	x				
Banking, Finance and Insurance Award 2010 (clause 24.5)		x		x	

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
Broadcasting and Recorded Entertainment Award 2010 (clause 23.4)	x				
Building and Construction General On-site Award 2010 (clause 38.3)	x	x			
Business Equipment Award 2010 (clause 31.4)		x		x	
Car Parking Award 2010 (clause 25.4)	x				
Cemetery Industry Award 2010 (clause 24.3)		x	x	x	
Cement and Lime Award 2010 (clause 24.4)	x				
Children's Services Award 2010 (clause 24.4)	x	x	x		
Cleaning Services Award 2010 (clause 29.6)	x				
Clerks—Private Sector Award 2010 (clause 29.5)		x		x	
Coal Export Terminals Award 2010 (clause 19.7)	x	x			
Commercial Sales Award 2010		x		x	

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
(clause 24.5)					
Concrete Products Award 2010 (clause 26.4)	x				
Contract Call Centres Award 2010 (clause 27.9)	x	x			
Educational Services (Post-Secondary Education) Award 2010 (clause 25.5)		x	x	x	
Electrical Power Industry Award 2010 (clause 27.8)	x	x	x		
Electrical, Electronic and Communications Contracting Award 2010 (clause 28.5)	x				
Food, Beverage and Tobacco Manufacturing Award 2010 (clause 34.11)	x	x			
Gardening and Landscaping Services Award 2010 (clause 24.9)	x				
Gas Industry Award 2010 (clause 25.3)	x				
General Retail Industry Award 2010 (clause 32.5)		x		x	
Graphic Arts, Printing and Publishing Award 2010 (clause	x	x			

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
37.12)					
Hair and Beauty Industry Award 2010 (clause 33.5)		x		x	
Health Professionals and Support Services Award 2010 (clause 31.4)		x	x	x	
Higher Education Industry— Academic Staff—Award 2010 (clause 27.2)				x	
Higher Education Industry— General Staff—Award 2010 (clause 30.4)*	x	x	x		
Horse and Greyhound Training Award 2010 (clause 23.3)	x				
Hospitality Industry (General) Award 2010 (clause 34.3)		x		x	
Hydrocarbons Industry (Upstream) Award 2010 (clause 27.7)	x	x	x		
Joinery and Building Trades Award 2010 (clause 32.9)	x	x			
Journalists Published Media Award 2010 (clause 24.8)	x	x			
Legal Services Award 2010 (clause 35.6)		x		x	

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
Local Government Industry Award 2010 (clause 25.5)		x		x	
Manufacturing and Associated Industries and Occupations Award 2010 (clause 41.10)	x	x			
Meat Industry Award 2010 (clause 37.8)	x	x			
Mining Industry Award 2010 (clause 23.6)	x	x	x		
Mobile Crane Hiring Award 2010 (clause 25.5)	x	x			
Miscellaneous Award 2010 (clause 23.4)	x				
Nursery Award 2010 (clause 28.11)		x	x	x	
Nurses Award 2010 (clause 31.9) (for medical practices)		x	x	x	
Oil Refining and Manufacturing Award 2010 (clause 26.6)	x	x	x		
Pest Control Industry Award 2010 (clause 24.9)	x				
Premixed Concrete Award 2010 (clause 24.4)	x				
Pharmaceutical Industry Award 2010 (clause 26.10)	x	x			
Plumbing and Fire Sprinklers	x	x			

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
Award 2010 (clause 34.3)					
Poultry Processing Award 2010 (clause 27.9)	x	x			
Premixed Concrete Award 2010 (clause 24.4)	x				
Professional Employees Award 2010 (clause 19.4)**					
Quarrying Award 2010 (clause 29.4)	x				
Racing Clubs Events Award 2010 (clause 30.3)	x				
Racing Industry Ground Maintenance Award 2010 (clause 24.2)	x				
Real Estate Industry Award 2010 (clause 25.2(c))		x	x	x	
Registered and Licensed Clubs Award 2010 (clause 30.4)		x		x	
Restaurant Industry Award 2010 (clause 35.3)		x		x	
Road Transport (Long Distance Operations) Award 2010 (clause 23.8)	x	x			
Road Transport and Distribution Award 2010 (clause 29.7)	x	x			

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
Salt Industry Award 2010 (clause 25.6)	x	x	x		
Seafood Processing Award 2010 (clause 27.11)	x	x			
Security Services Industry Award 2010 (clause 24.9)	x				
Silviculture Award 2010 (clause 29.3)	x				
Storage Services and Wholesale Award 2010 (clause 26.6)	x				
Sugar Industry Award 2010 (clause 33.5)		x		x	
Supported Employment Services Award 2010 (clause 22.3)		x		x	
Surveying Award 2010 (clause 24.3)	x				
Telecommunications Services Award 2010 (clause 23.9)	x	x			
Textile, Clothing, Footwear and Associated Industries Award 2010 (clause 41.7)		x		x	
Timber Industry Award 2010 (clause 33.11)	x	x			
Vehicle Manufacturing, Repair, Services and Retail Award 2010 (clause 29.12)	x	x			

Modern Award	Permits employers to direct employees to take a period of unpaid leave during a shutdown if the employee has insufficient annual leave to cover the shutdown period	Permits employers to direct employees to take leave during a period of shutdown without the need for a written direction to be made in relation to the taking of the annual leave	Permit employers to direct employees to take leave during a shutdown period without imposing a minimum period of notice that must be given with respect to the direction	Silent on unpaid leave during shutdown	Provides that employees with sufficient annual leave may elect to take paid or unpaid leave during shutdown
Water Industry Award 2010 (clause 27.4)		x		x	
Wine Industry Award 2010 (clause 31.9)	x	x			
Wool Storage, Sampling and Testing Award 2010 (clause 26.3)	x	x	x		

* This Award contains more prescriptive for employees engaged in domestic work in, or in connection with, residential colleges.

** This Award adopts rules that apply to the “other employees of the enterprise, section or sections”.