

## **Annual leave shutdown**

**AM2016/15**

### **Submission by the Australasian Meat Industry Employees Union (AMIEU)**

1. This submission is in reply to the submission of the Australian Industry Group (**Ai Group Submission**) dated 18 April 2019.<sup>1</sup>
2. The AMIEU seeks leave to have this submission accepted for filing.

#### **General proposition**

3. Where Modern Awards contain conditions or safeguards that are tailored to the industry and go beyond the model term, these should be retained.

#### **Meat Industry Award 2010**

4. The AMIEU relies on its submission dated 22 March 2019 (**AMIEU Earlier Submission**) and responds to the Ai Group Submission as follows.
5. In paragraph 32 of the Ai Group Submission, opposition is expressed to retention of the words “stand down”. The Ai Group Submission suggests that those words may give rise to a misunderstanding that leave taken pursuant to an annual close-down is of the same as a stand down under s.524 of the *Fair Work Act 2009*.
6. The AMIEU accepts that proposition and is, accordingly, agreeable to an amendment.
7. In paragraph 33 of the Ai Group Submission, issue is taken with the duration of the notice period, the retention of which (in addition to a requirement for “written notice”) is said to constitute a substantive amendment.
8. The AMIEU respectfully opposes the Ai Group submission, and submits as follows.
  - a. The duration of the notice period – being not less than three (3) months where possible – reflects the Meat Industry Award 2010 and its predecessor Awards. It is a long-standing condition of the meat industry.
  - b. With respect, it is difficult to see how a requirement for notice to be provided in writing can be said to constitute a substantive amendment. This is particularly the case in circumstances in which it is already normal industry practice for employers to display notices, in writing, on noticeboards.
9. In paragraph 34 of the Ai Group Submission, opposition is taken to “the AMIEU’s contention that the *Meat Industry Award 2010* does not currently permit a close-down

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<sup>1</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-aigroup-180419.pdf>

period to exceed the annual leave accruals available to employees.” The Ai Group Submission goes on to highlight a clause that allows leave without pay.

10. The AMIEU respectfully suggests that the Ai Group Submission has misunderstood the intention of the AMIEU Earlier Submission. By way of clarification, the AMIEU’s contention is not that an individual worker cannot be unpaid during a close-down. The AMIEU’s contention is that a close-down is “for the purpose of allowing annual leave to all or the bulk of employees in the plant or sections concerned”. This represents an important limitation on the duration of an annual close-down. For day workers, a close-down for the purposes of allowing access to annual leave cannot exceed four (4) weeks. For shiftworkers, a close-down for the purposes of allowing access to annual leave cannot exceed five (5) weeks. The AMIEU agrees that clause 37.8(b) contemplates the period of leave taken pursuant to clause 37.8 may extend further than an annual leave entitlement accrued by an *individual worker*. This, however, does not have the effect of permitting an annual close-down – the sole purpose of which is to allow workers to access their annual leave – to extend beyond the duration of the annual leave entitlement of the *greater workforce*.

### **Poultry Processing Award**

11. In paragraph 35 of the Ai Group Submission, it is submitted that the “relevant provisions in the Model Shutdown Term should be retained instead of the AMIEU’s proposed provisions”.
12. The AMIEU respectfully disagrees and submits that the Model Shutdown Term should be amended to retain certain conditions currently contained within the Poultry Processing Award 2010.
13. In paragraph 36 of the Ai Group Submission, opposition is expressed to the proposal to retain the words “annual close-down” on the basis of potential confusion if agreement is reached for a close-down more than once in a year.
14. The AMIEU respectfully disagrees and submits that the words “annual close-down” should be retained. Those words, and the ability to reach agreement to a second or subsequent close-down, are long-standing. There is no apparent basis for the concern that readers may be confused.
15. In paragraphs 37 and 38 of the Ai Group Submission, opposition is taken to including a provision that unpaid leave taken under the annual close-down provisions counts as service.

16. The AMIEU respectfully disagrees with the Ai Group Submission. The AMIEU endorses and adopts paragraphs [7] through [20] inclusive of the submissions of the CFMMEU – Mining and Energy Division dated 22 March 2019<sup>2</sup> and paragraphs [10], [120] and [121] of the submissions of the CFMEU – Mining and Energy Division dated October 2017 concerning the reasons that unpaid leave taken under the annual close-down provisions ought to count as service.<sup>3</sup>

**Australasian Meat Industry Employees Union**

**17 May 2019**

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<sup>2</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-cfmmeu-220319.pdf>

<sup>3</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201447-sub-ws-cfmeu-031017.pdf>