

## **Annual leave shutdown**

**AM2016/15**

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

1. The Australasian Meat Industry Employees Union (**AMIEU**) makes the following Submissions to the Fair Work Commission (**Commission**) regarding the annual leave shutdown model clause.
2. The AMIEU has a material interest in the Meat Industry Award 2010 and Poultry Processing Award 2010, and appreciates the opportunity to provide submissions.
3. These submissions are made pursuant to paragraphs [77] through [86] inclusive in the Full Bench Statement [2019] FWCFB 1255 (**Statement**).

### **Meat Industry Award 2010**

4. The Meat Industry Award 2010 effectively represents a consolidation of the three (3) Federal pre-reform Awards; the Federal Meat Industry (Processing) Award 2000, the Federal Meat Industry (Retail and Wholesale) Award 2000 and the Federal Meat Industry (Smallgoods) Award 2000.
5. Each of the three (3) pre-reform Awards contained annual close-down provisions within their annual leave clauses.
6. The annual close-down clause within the Meat Industry Award 2010 reflects those clauses within the three (3) pre-reform Awards, without apparent regard to the annual leave provisions contained within the National Employment Standards (NES) of the *Fair Work Act 2009*.
7. In the AMIEU's respectful view, the annual leave shutdown model clause would remedy a number of the issues inherent in the annual close-down clause within the Meat Industry Award 2010. Variations to the annual leave shutdown model clause would, however, be necessary in order to protect particular conditions currently contained within the Meat Industry Award 2010.

8. In Table 1 below:

- a. Column 1 sets out the current Meat Industry Award 2010 provisions,
- b. Column 2 described the current conditions contained within the annual close-down clause within the Meat Industry Award 2010, and
- c. Column 3 sets out the current conditions the AMIEU seeks to retain.

<b>TABLE 1</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Current Meat Industry Award 2010 provisions</b>	<b>Description of current conditions</b>	<b>Current conditions to be retained</b>
37.8 Annual close-down	<p>The position and context of the ‘annual close-down’ clause is significant.</p> <p>It is positioned within <b>37–Annual leave</b>, making clear the intention is to</p> <ol style="list-style-type: none"> <li>1. provide employers with the ability to direct workers to take their annual leave accruals on an annual basis, and</li> <li>2. provide annual leave to workers.</li> </ol>	Name of clause.
(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	<p>The purpose of the ‘annual close-down’ clause is to allow all or the bulk of employees to take annual leave. The close-down cannot be for an ulterior purpose.</p> <p>No less than three months’ notification should be provided to employees, where possible.</p>	Purpose, notice and frequency.

<p>employer’s intention to stand down for the duration of the close-down all employees in the plant or sections concerned.</p>	<p>The close-down cannot exceed the annual leave accruals available to the workers.</p> <p>An annual close-down for the purposes of annual leave can occur only once a 12 month period.</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>This clause has been derived from the three pre-reform Awards, each of which provided an entitlement to annual leave <i>after</i> each period of 12 months continuous service.</p> <p>The purpose of this clause in the pre-reform Awards was to provide early access to annual leave in advance of leave accruals becoming available at the 12 month mark.</p> <p>A worker who had achieved 11 months continuous service would be able to access a reasonable proportion of leave.</p> <p>A worker who had only achieved 1 month of continuous service would receive a very small leave amount.</p> <p>The annual leave is not accessed in advance of accrual, per se. That is, the worker is not becoming indebted with a negative annual leave balance. In this way, it is distinct from taking leave in advance of accrual. Rather, the worker has early access to leave</p>	

	<p>that would ordinarily become available at the 12 month mark.</p> <p>Plainly, it is no longer the case that a worker has to complete 12 months continuous service before becoming eligible for annual leave. In accordance with the NES, an “employee's entitlement to paid annual leave accrues progressively during a year of service”.</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>Once a worker achieves 13 months continuous service, annual leave can be taken as though it accrues progressively according to service.</p>	
<p>(d) The next 12 month qualifying period for each employee affected by the closedown 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>The period of the annual close-down will count as service, notwithstanding some of that period may be unpaid.</p>	<p>Unpaid leave during an annual close-down counts as service.</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>	<p>In the three pre-reform Awards, a worker was entitled to annual leave <i>after</i> each period of 12 months continuous service. The 12 months continuous service counted and included any period of annual close-down.</p> <p>Subclause 37.8(b) effectively permitted a worker, who had not achieved 12 months continuous service, early access to annual leave on a proportionate basis.</p> <p>The early access of leave is to be deducted from the balance of annual leave paid at termination.</p> <p>This clause is distinct from subclause 37.7(d) in the <i>Meat Industry Award 2010</i>.</p>	
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9. Consistent with Table 1 above, the AMIEU respectfully proposes variations to the annual leave shutdown model clause in accordance with the following.

***37.8 Annual close-down***

*(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' written notice of the employer's intention to stand down for the duration of the close-down all employees in the plant or sections concerned.*

*(b) The employer must give written notice of **an annual close-down** to any employee who is engaged after the notice is given under paragraph (a) and*

who will be affected by that period, as soon as reasonable practicable after the employee is engaged.

**(c)** The following applies to any affected employee during *an annual close-down*:

**(i)** the employee may elect to cover the *annual close-down* by doing one, or a combination of 2 or more, of the following:

- taking paid annual leave if the employee has accrued an entitlement to such leave;
- taking leave without pay;
- taking annual leave in advance in accordance with an agreement under clause *37.7*;

**(ii)** if the employee does not make an election under subparagraph (i) that covers the whole of the *annual close-down*, then the employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement.

**(d)** A direction by the employer under clause *37.8(c)(ii)*:

- (i)** must be in writing; and
- (ii)** must be reasonable.

**(e)** The employee must take paid annual leave in accordance with a direction under clause *37.8(c)(ii)*.

**(f)** 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 *37.7*, to which an entitlement has not been accrued is to be taken into account.

**(g)** If *an annual close-down* includes a day or part-day that is a public holiday and would have been a working day for the employee had the employee not been on leave in accordance with clause *37.8*, the employee is taken not to be on leave on that day or part-day.

*(h) All time during which an employee is stood off without pay for the purposes of clause 37.8 will be counted as service.*

*(i) Clauses 37.10 to 37.12 do not apply to a period of annual leave that an employee is required to take during an annual close-down in accordance with clause 37.8.*

**Poultry Processing Award 2010**

10. The AMIEU is agreeable to the inclusion of the annual leave shutdown model clause in the Poultry Processing Award 2010 with a number of variations to protect existing conditions.

11. In Table 2 below:

- a. Column 1 sets out the current Poultry Processing Award 2010 provisions,
- b. Column 2 described the current conditions contained within the annual close-down clause within the Poultry Processing Award 2010, and
- c. Column 3 sets out the current conditions the AMIEU seeks to retain.

<b>TABLE 2</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Current Poultry Processing Award 2010 provisions</b>	<b>Description of current conditions</b>	<b>Current conditions to be retained</b>
27.9 Annual close-down	<p>The position and context of the ‘annual close-down’ clause is significant.</p> <p>It is positioned within <b>27–Annual leave</b>, making clear the intention is to</p> <p>3. provide employers with the ability to direct workers to take their annual leave accruals on an annual basis, and</p>	Name of clause.

	4. provide annual leave to workers.	
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:	The purpose of the 'annual close-down' clause is to allow pre-planned maintenance or the installation of machinery. The close-down cannot be for an ulterior purpose.	Purpose of annual close down.
(a) the employer gives not less than one month's notice of the intention to do so; and	No less than one month's notice is to be provided to employees.	Notice.
(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	An annual close-down for the purposes of pre-planned maintenance or the installation of machinery can occur only once a 12 month period, unless agreement is reached.	Frequency.
(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	Employees with sufficient accruals are allowed to take paid annual leave.	
(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	Employees without sufficient accruals are allowed a combination of paid annual leave and 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.	Any annual leave taken in advance for the purposes of the annual close-down is counted as service.	Service.

12. Consistent with Table 2 above, the AMIEU respectfully proposes variations to the annual leave shutdown model clause in accordance with the following.

***27.9 Annual close-down***

*(a) 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, subject to the provisions of this clause.*

*(b) The employer must give the affected employees not less than one month's written notice of an annual close-down, or any shorter period agreed between them and the employer.*

*(c) The employer must give written notice of an annual close-down to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period, as soon as reasonable practicable after the employee is engaged.*

*(d) A close-down must not occur on more than one occasion per year, unless otherwise agreed between an employer and the majority of employees concerned.*

*(e) The following applies to any affected employee during an annual close-down:*

*(i) the employee may elect to cover the annual close-down by doing one, or a combination of 2 or more, of the following:*

- *taking paid annual leave if the employee has accrued an entitlement to such leave;*
- *taking leave without pay;*
- *taking annual leave in advance in accordance with an agreement under clause 27.8;*

*(ii) if the employee does not make an election under subparagraph (i) that covers the whole of the **annual close-down**, then the employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement.*

*(f) A direction by the employer under clause 27.9(d)(ii):*

- (i) must be in writing; and*
- (ii) must be reasonable.*

*(g) The employee must take paid annual leave in accordance with a direction under clause 27.9(d)(ii).*

*(h) 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 27.8, to which an entitlement has not been accrued is to be taken into account.*

*(i) If **an annual close-down** includes a day or part-day that is a public holiday and would have been a working day for the employee had the employee not been on leave in accordance with clause 27.9, the employee is taken not to be on leave on that day or part-day.*

*(j) Any unpaid leave taken under 27.9(d)(i) counts as service.*

*(k) Clauses 27.3 to 27.5 do not apply to a period of annual leave that an employee is required to take during **an annual close-down** in accordance with clause 27.9.*

## **Summary**

13. The AMIEU is agreeable to the inclusion of the annual leave shutdown model clause in the Meat Industry Award 2010 and Poultry Processing Award 2010 with the variations outlined above.
  
14. The AMIEU respectfully proposes variations to the annual leave shutdown model clause to ensure that the Meat Industry Award 2010 and Poultry Processing Award 2010 retain long-standing industry conditions.
  
15. The proposed variations seek to maintain the integrity and intention of the annual leave shutdown model clause while acknowledging that the red and white meat industries have, for a long time, enjoyed specific conditions.

**Australasian Meat Industry Employees Union**

**22 March 2019**