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# VPS Enterprise Agreement Common Policies

## CHRISTMAS CLOSEDOWN

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## Authority and Application

Clause 38 of the Victorian Public Service Enterprise Agreement 2016 (Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their employees covered by the Agreement.

## Overview

Clause 38 enables an Employer to affect a closedown between the first working day after Christmas Day to the first working day after New Year's Day by facilitating Employee leave arrangements during the closedown period.

An Employer must first request that relevant Employees take time off during the closedown period using accrued annual leave or time in lieu, substitute leave for public holidays (see clause 35.4) or additional hours accrued under a flexible working arrangement.

Where an insufficient number of Employees indicate a preparedness to take time off to give effect to the closedown, an Employer may direct an Employee who has excessive annual leave accrual to take annual leave during the closedown period. Excessive annual leave accrual is defined at clause 41.6(b)(i) of the Agreement.

If there are an insufficient number of Employees with excessive annual leave balances to give effect to the closedown, the Employer may then direct any Employees with accrued time in lieu or substitute leave to take leave during the closedown period.

An Employee who has insufficient accrued annual leave, time in lieu or substitute leave for public holidays to cover the duration of the closedown period should discuss the matter with their manager.

## Relevant provisions of the VPS Enterprise Agreement

### Clause 38. Christmas Closedown

**38.1** The purpose of this clause is to enable the Employer to closedown part or all of its operations from the first working day after Christmas Day to the first working day after New Year's Day (closedown period).

**38.2** Where the Employer intends to closedown part or all of its operations for the closedown period, the Employer:

- (a) will notify relevant Employees in writing of this intention no later than 1 October of the year in which the closedown is to take place;

- (b) will request relevant Employees to utilise any accrued time in lieu, annual leave, substitute leave or additional hours accrued under a flexible working arrangement; and
  - (c) may require a minimum level of staffing to meet the operational requirements of the workplace.
- 38.3** If there are insufficient expressions of interest from relevant Employees to give effect to the closedown period, the following process will be applied, in order:
- (a) the Employer may direct an Employee who has excessive annual leave (as defined in **clause 41.6(b)(i)**) to take annual leave during the closedown period;
  - (b) the Employer may then direct an Employee with accrued time in lieu or substitute leave to take that leave during the closedown period.
- 38.4** The Employer will provide at least 4 weeks' notice of any direction to take leave, under **clause 38.3**.
- 38.5** Where an Employee has insufficient leave or time in lieu, the Employer may agree to temporarily alter the ordinary working arrangements of the Employee to allow the Employee to bank sufficient time to cover their absence. This clause also applies to Employees classified at VPS Grade 5 or higher and the equivalent classifications in an adaptive structure.

## Supplementary Guidance Information

### 1. Employer must give written notice of intention to closedown

- 1.1. The Employer must give written notice of the intention to closedown no later than 1 October of the year in which the closedown is to take place.
- 1.2. An Employee who commences after 1 October in the year in which the closedown is to take place, must be provided with the notice as soon as reasonably practicable after the commencement of their employment.
- 1.3. Employees will be requested to take leave during the closedown period. Accrued annual leave, time in lieu or substituted leave for public holidays may be used. Applications for leave are to be made through the Employer's system.
- 1.4. The notice should also invite Employees who may not wish to take leave during the closedown period or who may not have sufficient accrued leave to cover the duration of the closedown period to discuss the possibility of temporarily altering their ordinary working arrangements to allow the Employee to bank sufficient time to cover their absence in accordance with clause 38.5 of the Agreement.
- 1.5. If the Employer requires minimum staffing levels during the closedown period, the notice must indicate the minimum staffing levels and invite Employees who may prefer to work through the closedown period to communicate that preference to their Employer.

- 1.6. Employers should be mindful of operational and occupational, health and safety requirements when determining minimum staffing requirements and when approving requests for leave. Clause 38.3(b) of the Agreement provides for Employees to be directed to take annual leave in circumstances where the Employee has an excessive annual leave balance (see also clause 41.6 of the Agreement).
- 1.7. It is recommended that the Employer require Employees who may prefer to work through the closedown period to meet minimum staffing requirements to indicate their preference by 1 November of the year in which the closedown is to take place to enable the Employer to assess whether the minimum staffing requirements will be met (and whether a sufficient number of Employees will take leave to give effect to the closedown period).

## **2. Leave arrangements**

- 2.1. The written notice of intention to close down should request that Employees take leave during the closedown period.
- 2.2. It is recommended that the Employer require Employees to notify their manager of what type of leave they intend to take during the closedown period by 1 November of the year in which the closedown is to take place to enable the Employer to assess whether it will be necessary to direct any Employees with excessive annual leave accrual to take leave during the closedown period in order to give effect to the closedown period.

## **3. Directing an employee with excessive annual leave accruals to take annual leave**

- 3.1. An Employer may only direct an Employee with excessive annual leave accruals to take annual leave during the closedown period if:
  - 3.1.1. an insufficient number of Employees choose to take leave during the closedown period to give effect to the closedown period;
  - 3.1.2. the Employee has excessive annual leave accrual within the meaning of clause 41.6(b)(i) of the Agreement – that is, the Employee has more than eight weeks accrued annual leave or if the Employee is a shift worker and is entitled to an additional week of annual leave in accordance with clause 41.2(a) of the Agreement, more than ten weeks' accrued annual leave;
  - 3.1.3. notice of the direction to take the leave is given at least four weeks before the period of leave is to commence.

## **4. Directing an employee with accrued time in lieu or substituted leave to take leave**

- 4.1. If there are insufficient number of Employees with excessive annual leave accrual to effect the closedown period, the Employer may direct an Employee who has accrued time in lieu or substituted leave for public holidays to use that leave during the close down period. Note that there is

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no requirement that the accrued time in lieu or substituted leave for public holidays accrual be excessive.

## Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

## Dispute resolution

An employee who is directly affected by a decision made or action taken pursuant to clause 38 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 12 of the Agreement.

## Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

## Related policies or documents

### VPS Enterprise Agreement Common Policies

- Annual Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpssc.vic.gov.au/vps-enterprise-agreement-common-policies/>