

RESTAURANT & CATERING AUSTRALIA

STAND DOWN FACT SHEET

23 March 2020

Background:

Following the Federal Government's directive significantly restricting the operations of restaurants and cafes to takeaway and delivery only from 12.00pm today (23 March 2020), employers may now consider options to temporarily shut down their business, in full or part, for a period of time.

Stand Downs:

In the absence of a 'stand down' period contained in an enterprise agreement or a contract of employment, employers may rely on the 'stand down' provision contained in section 524 of the *Fair Work Act 2009* (Cth).

Section 524 of the Act provides that employers may stand down an employee as a result of industrial action, a breakdown of machinery or equipment, or a **stoppage of work for any cause for which the employer cannot reasonably be held responsible**. A restaurant and/or café may stand down the business, either in full or in part, by relying on this provision. These may include natural disasters and, in our view, the COVID-19 pandemic, particularly where there has been a government directive issued.

Generally, stand downs are a last resort as employees are generally not paid during the period of stand down. Employers, however, may wish to arrange with their employees to take annual leave and/or long service entitlements, in full or part, during this period. However, employers may wish to first consider if employees could **perform useful work** before they are stood down or agree to a reduction of hours.

It is important to note that employees who are stood down will **remain employees of that employer**. As such, employees have not had their employment contract terminated by way of dismissal or a redundancy. As employees remain to be employees of the employer during a period of stand down, employees will accrue entitlements during this period. However, as the length of any such stand down period is generally not known, employers may wish to advise any stood down employees that they are open to job search during this period.