

Amusement, Events and Recreation Award 2010

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PLEASE NOTE:

This Modern Award is currently being reviewed by the Fair Work Commission (FWC) in the Award modernisation process. As of **1 July 2019**, the 4-yearly review of Modern Awards has not been completed by FWC. It is anticipated that the 4-yearly review process will be finalised in the ***later part of 2019***.

Once the Awards are finalised, Live Performance Australia (LPA) will issue the updated Award in its entirety.

Please note however that LPA has updated the minimum wages and expense related allowances to reflect the FWC Annual Wage Review Decision 2019.

The following part of the Award HAS been updated:

- Part 4 Minimum wages & related matters – Clause 14.1 Minimum wages and Clause 15.4 Meal allowance

*** From 1 July 2019, the high-income threshold in unfair dismissal cases has increased to \$148,700 (up from \$145,400).**

PART 1:
APPLICATION & OPERATION

LPA COMMENTARY

INTRODUCTION

This Modern Award replaces a number of Transitional Awards, and contains a common salary structure with relevant classifications in Schedule B.

CLAUSE 1 – TITLE

This award replaces the Exhibition Industry Award amongst others in the “amusement, events and recreation industry”, which is defined in clause 4.2 to include exhibition companies.

CLAUSE 2 – COMMENCEMENT & TRANSITIONAL

All provisions of the Amusement, Events & Recreation Award 2010 came into effect on 1 January 2010 except those relating to wages, loadings and penalties. These matters are subject to the transitional provisions as set out in Schedule A. The transitional arrangements provide for the phasing in (or out) of increases or decreases to minimum wages, penalties or loadings. The phasing in or out of these provisions will occur from 1 July each year until 2014.

An annual wage review will be conducted by the Fair Work Commission which will increase minimum wages and allowances from 1 July every year. LPA will provide new rates to Members prior to 1 July.

Date of effect: 1 January 2010

Part 1—Application and Operation

1. Title

This award is the *Amusement, Events and Recreation Award 2010*.

2. Commencement and transitional

2.1 This award commences on 1 January 2010.

2.2 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2.5 The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

2.6 The Fair Work Commission may review the transitional arrangements:

- (a) on its own initiative; or
- (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or

LPA COMMENTARY

CLAUSE 3 - DEFINITIONS

The Award contains specific provisions relating to “**exhibition employees**”; this term is defined in this clause to mean employees of employers engaged in the supply, preparation, marking out, fabrication, installation, erection or dismantling of exhibition stands or associated componentry for the trades and public promotions industry.

The definition of **standard rate** is required for calculating many allowances, which are now represented in the award as a percentage of the standard rate.

Date of effect: 1 January 2010

Amended: July 2014

- (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth)

adult apprentice means an apprentice who is 21 years of age or over at the commencement of their apprenticeship

agreement-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

all-up casual loading means the all up casual loading payable to casual employees under the terms of the Notional Agreement Preserving the Theatrical Employees Recreation & Leisure Industry (NSW) State Award

award-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

default fund employee means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

defined benefit member has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

Division 2B State award has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

Division 2B State employment agreement has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

enterprise award-based instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

LPA COMMENTARY

CLAUSE 4 - COVERAGE

The award covers all private sector employers throughout Australia in the amusement, events & recreation industry and their employees set out in the classifications in Schedule B of the Award. The **amusement, events and recreation industry** is defined in clause 4.2 – definitions. The award is not intended to extend award coverage except for occupations which have a similar nature of work to occupations that have been historically been regulated by awards in the past (including State awards).

Clerical and administrative employees are covered by the **Clerks – Private Sector Award 2010**. Previously these employees were covered by State common rule clerical awards.

Employees that are high income earners are not covered by an award. Only the National Employment Standards apply as their minimum conditions of employment. As of 1 July 2018, the rate of a high income earner is at least **\$145,400** per annum, which is indexed annually.

Date of effect: 1 January 2010

Amended: July 2018

exempt public sector superannuation scheme has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

exhibition employees means employees of employers engaged in the supply, preparation, marking out, fabrication, installation, erection or dismantling of exhibition stands or associated componentry for the trades and public promotions industry

MySuper product has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

standard rate means the minimum wage for a Grade 4 employee in clause 14.1

transitional minimum wage instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

- 3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

- 4.1 This industry award covers employers throughout Australia in the amusement, events and recreation industry and their employees in the classifications set out in this award to the exclusion of any other modern award.
- 4.2 Definition of amusement, events and recreation industry
- (a) **Amusement, events and recreation industry** means the operation of:
- (i) leisure and recreation facilities and centres;
 - (ii) sporting, exhibition, convention and amusement complexes;
 - (iii) theme parks;
 - (iv) heritage, tourism and cultural centres;
 - (v) museums and galleries;
 - (vi) zoos, animal parks and aquariums;

- (vii) agricultural and horticultural shows;
 - (viii) carnivals and amusement parks;
 - (ix) ten pin bowling venues;
 - (x) go-kart racing venues; and
 - (xi) amusement arcades, including video game and pinball parlours.
- (b) For the purposes of this clause, theme parks means locations or enterprises operating attractions or amusements (whether indoor or outdoor) open to the public through either paid or free admission.
- (c) For the purpose of this clause, the amusement, events and recreation industry also includes employers engaged in the supply, preparation, marking out, fabrication, installation, erection or dismantling of exhibition stands or associated componentry for the trades and public promotions industry.
- (d) For the purposes of this clause, the amusements, events and recreation industry also includes the provision of services within the primary venue such as photographic services, the sale of food, beverages and merchandising, and also activities undertaken by an employer covered by this Award which are ancillary to the conduct of the primary venue, such as road or water transport at, to or from, or away from, the primary venue, sightseeing tours, travel arrangements, and wildlife research, conservation and collection conducted away from the primary venue.

4.3 Exclusions

- (a) This award does not cover employees of employers where the major and substantial activity is the provision of health and fitness services and classes.
- (b) The award does not cover an employee excluded from award coverage by the Act.
- (c) The award does not cover an employer bound by the:
- (i) *Building and Construction General On-site Award 2010*;
 - (ii) *Electrical, Electronic and Communications Contracting Award 2010*;
 - (iii) *Joinery and Building Trades Award 2010*;
 - (iv) *Travelling Shows Award 2010*; or
 - (v) *Fitness Industry Award 2010*.

- (d) The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- (e) The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

4.4 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

4.5 This award covers employers which provide group training services for apprentices and trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

4.6 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

LPA COMMENTARY

CLAUSE 7 – AWARD FLEXIBILITY

If certain conditions of the Award do not meet the genuine individual needs of the employer and an individual employee, then they can enter into an individual flexibility arrangement after the employee has commenced employment with the employer. The agreement must be **genuinely made without coercion**, and must leave the employee **better off overall** compared to the Award. This can be quite a subjective test, particularly if it is the employee that is wanting to vary the Award conditions. The provisions of the Award that may be varied are limited to the following:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; and/or
- leave loading.

The agreement must be in writing, name the parties and be signed by the employer and the individual employee and, if the employee is under 18, their parent or guardian. It must state each term of the Award that is varied and detail how each term has been varied. The agreement must also detail how the agreement results in the individual employee being better off overall and state the date it commences. The employer must give the employee a copy of the agreement and keep a copy as a time and wages record.

The agreement can be terminated by 13 weeks' notice on either side, with the agreement ceasing to operate at the end of the notice period or by agreement between the parties.

The **Fair Work Ombudsman (FWO)** has published a Best Practice Guide for the use of individual flexibility arrangements, which can be downloaded here:

<http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/use-of-individual-flexibility-arrangements>

Date of effect: 1 January 2010

7. Award flexibility

- 7.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:
- (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances; and
 - (e) leave loading.
- 7.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 7.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
 - (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.
- 7.4** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.

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- 7.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.6** Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 7.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8** The agreement may be terminated:
- (a)** by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b)** at any time, by written agreement between the employer and the individual employee.
- Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).
- 7.9** The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.
- 7.10** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

PART 2:
CONSULTATION & DISPUTE
RESOLUTION

LPA COMMENTARY

CLAUSE 8 – CONSULTATION REGARDING MAJOR WORK CHANGE

Where an employer has made a definite decision to introduce major changes in the workplace, the employees and their representatives (if any) must be notified. The employer must discuss the changes with the employees affected and their representatives, and must provide in writing all relevant information about the changes.

The FWO has developed a Best Practice Guide for consultation and co-operation in the workplace, which can be downloaded here: <https://www.fairwork.gov.au/resources/best-practice-guides/pages/consultation-and-cooperation-in-the-workplace.aspx>

CLAUSE 9 – DISPUTE RESOLUTION

Where a dispute is being resolved, work should continue as usual so long as it does not breach occupational health and safety provisions. The parties must try to resolve the matter with discussions between the employee/s and their supervisor. An employer and employee may have a representative in these discussions. If the matter cannot be resolved, discussions should be held between the employee/s and more senior levels of management.

If the dispute is still unresolved, a party may refer it to the Fair Work Commission (FWC). The parties may agree to the process to be used by FWC such as mediation, conciliation or consent arbitration. If the dispute still remains unresolved, FWC may use any method of dispute resolution permitted by the Act.

The FWO has developed a Best Practice Guide for dispute resolution, which can be downloaded here: <http://www.fairwork.gov.au/BestPracticeGuides/10-Effective-dispute-resolution.pdf>

Date of effect: 1 January 2010

Part 2—Consultation and Dispute Resolution

8. Consultation

8.1 Consultation regarding major workplace change

(a) Employer to notify

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employer to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

8.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

9. Dispute resolution

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 9.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.

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- 9.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

PART 3:
TYPES OF EMPLOYMENT &
TERMINATION OF EMPLOYMENT

LPA COMMENTARY

CLAUSE 10.2 – FULL-TIME EMPLOYEES

Although this provision states that full-time employees are engaged to work for an average of 38 hours per week, this is overridden for Exhibition employees by clause 21.5. This states that Exhibition employees can work 76 hours over a 2 week roster. Full-time employees can work between 4 and 12 hours per day, with a maximum of 56 hours per week.

CLAUSE 10.3 – PART-TIME EMPLOYEES

Part-time employees work less than full-time hours, have reasonably predictable hours of work and receive pay and conditions to equivalent full-time employees pro rata. The employer and the part-time employee must agree in writing on a regular pattern of work, and any variation of this must be recorded in writing. Part-time employees must be rostered on for at least 3 hours on any shift.

Although this clause states that hours worked by a part-time employee in excess of those agreed are overtime, this is overridden by clause 23.4 which states that for exhibition employees overtime is payable after the completion of 76 hours in a 2 week roster cycle

Date of effect: 1 January 2010

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 Employees may be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

10.2 Full-time employees

A full-time employee is an employee who is engaged to work an average of 38 hours per week.

10.3 Part-time employees

- (a) An employer may employ part-time employees in any classification in this award.
- (b) A part-time employee is an employee who:
 - (i) works less than full-time hours of 38 per week;
 - (ii) has reasonably predictable hours of work; and
 - (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (c) At the time of engagement, the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
- (d) Any agreed variation to the regular pattern of work will be recorded in writing.
- (e) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- (f) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.4.
- (g) All time worked in excess of the ordinary hours as prescribed in clause 21—Ordinary hours of work and rostering will be overtime and paid for at the rates prescribed in clause 23—Overtime and penalty rates.

LPA COMMENTARY

CLAUSE 10.4 – CASUAL EMPLOYEES

Employers should provide casual employees with a letter of engagement that states that they are casual, who their employer is, what their ordinary hours of work will be, their classification and their rate of pay. Because the Award states that casual employees must be paid at the end of each shift except by agreement, the letter of engagement should state whether they will be paid weekly or fortnightly, which will be according to the employer’s pay role period.

Whilst this provision prescribes a minimum 3 hour call, it is overridden by clause 21.5 which states that casual Exhibition employees are paid by the hour and are engaged for a minimum 4 hour call to a maximum of 12 hours per day. They are paid at the hourly rate of a full-time employee plus an additional 25% casual loading. Casuals can work no more than 38 hours in a week without being paid overtime.

CLAUSE 11 – TERMINATION OF EMPLOYMENT

In accordance with the provisions of the National Employment Standards (NES) an employer who terminates an employee’s employment must give the employee notice of termination. The amount of notice will be based on the employee’s continuous service as follows:

Period of Continuous Service	Period of Notice Required
Not more than 1 year	1 weeks’ notice
More than 1 year but less than 3 years	2 weeks’ notice
More than 3 years but less than 5 years	3 weeks’ notice
More than 5 years	4 weeks’ notice

Employees over 45 years old who have completed at least 2 years of continuous service with the employer are entitled to an additional week’s notice.

Notice of termination must be written, must specify the date of termination and must state the reason for the employee’s termination. An employer can make payment in lieu of notice, which should be based on the **full rate of pay** for hours the employee would have worked, including penalty rates, bonuses etc. during the period of notice. Notice is not required if the employee is being terminated for serious misconduct.

The Award also provides that an employee is required to give the employer the same amount of notice based on the employee’s continuous service with the employer as provided above. However there is no requirement for the employee to give additional notice based on the employee’s age.

Date of effect: 1 January 2010

Unfair Dismissal

If an employee is terminated then they may make a claim for unfair dismissal under the Fair Work Act 2009. A dismissal is unfair if it was harsh, unjust or unreasonable. However, in order to make an unfair dismissal claim the employee must first be an “eligible employee”. Eligible employees are those that are:

- covered by an award, enterprise agreement or are award-free but not a high income earner (earns less than **\$145,400** per annum as of 1 July 2018); and
- are full-time, part-time or a regular casual employee.

Continued...

- (h) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

10.4 Casual employees

Employees may be engaged as casual employees subject to the following conditions:

- (a) A casual employee is engaged by the hour for not more than 38 ordinary hours per week Monday to Sunday.
- (b) A casual employee may leave the employer's service or be discharged without notice.
- (c) Casual employees may be employed for up to 10 ordinary hours each day, provided that all time worked in excess of ordinary working hours on any one day or in excess of 38 hours in any one week will be overtime.
- (d) Casual employees will be paid the hourly rates prescribed for the appropriate classification in clause 14—Minimum wages, plus an ordinary time loading of 25%.
- (e) A casual employee will be engaged for a minimum period of three hours work or receive a minimum payment of three hours per engagement, except where the parties otherwise mutually agree.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

LPA COMMENTARY

CLAUSE 11 – TERMINATION OF EMPLOYMENT (CONTINUED)

Irregular casual employees, seasonal or specific period/task employees are not eligible to make an unfair dismissal claim, nor are those who have been made genuinely redundant (see clause 12).

The employee must also have completed the minimum period of continuous service, as follows:

- if the employer is “small business”, then the employee must have been employed for at least 12 months to be eligible;
- if the employer is a larger employer (ie. not a small business), then the employee must have been employed for at least 6 months to be eligible.

From 1 January, 2011 a national system employer will be a small business employer if the employer's number of employees is less than 15. This is based on a simple headcount and includes casual employees.

There is a **Small Business Fair Dismissal Code**, which is a set of procedures a small business must comply with when terminating an employee, whether it be summary dismissal or other types of dismissal. It contains a checklist that small business employers should complete before dismissing an employee. The checklist would be used as evidence before Fair Work Australia if the employee were to make a claim for unfair dismissal. The Code and checklist can be downloaded at: <https://www.fwc.gov.au/about-us/legislation-regulations/small-business-fair-dismissal-code>

A small business employer can only dismiss an employee without notice or warning (ie. summarily) “fairly” if the employer believes on reasonable grounds that an employee's conduct is sufficiently serious to justify immediate dismissal, and would include conduct such as theft, fraud, violence or serious breaches of occupational health and safety.

In all other cases, a small business employer must give one warning (preferably written) of poor performance. The warning should provide a valid reason for the warning, eg. diminished work performance, unsatisfactory conduct and provide an opportunity for the employee to rectify the situation. A Best Practice Guide for Small Businesses is available via the Fair Work Ombudsman's website here: <http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/small-business-and-the-fair-work-act>

If a larger employer is dismissing an employee other than summarily, they will need to do so via a disciplinary procedure. This requires a process of 2 or more (but a maximum of 3) written warnings and:

- gives the employee a reasonable opportunity to respond to the warning and a reasonable chance to rectify the problem;
- the ability for the employee to be represented in discussions; and
- the employee must be advised that any further indiscretions could lead to the termination of their employment.

There is a Best Practice Guide for Managing Underperformance published by the Fair Work Ombudsman: <http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/managing-underperformance>

Continued...

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 11.3.

12.5 Transitional provisions – NAPSA employees

This clause was deleted March 2015

12.6 Transitional provisions – Division 2B State employees

This clause was deleted March 2015

LPA COMMENTARY

CLAUSE 11 – TERMINATION OF EMPLOYMENT (CONTINUED)

Casual employees are not treated any differently from permanent employees unless they are engaged on an irregular and non-systematic basis. If a casual employee had an expectation that work would be available then they cannot be terminated without due process. Casual employees who are regularly employed for a specific number of shifts (or even 1 shift) per week and there is a continuing expectation that such work will be provided will have to be treated as though they are a weekly employee. Therefore, casual employees will need to go through the disciplinary procedure process should you wish to terminate their services. They cannot just be left off the roster.

Date of effect: 1 January 2010

Amended: June 2012

CLAUSE 12 - REDUNDANCY

A redundancy is where the employer does not want the job to be done by the employee anymore and does not want the job to be done by anyone else because of the operational requirements of the workplace. This may be due to a downturn in business, the implementation of machinery to perform the employee's job, or the position is over-resourced and too many people are performing the same function.

Under the Fair Work Act 2009, a "genuine redundancy" makes an employee ineligible for a claim of unfair dismissal. A "genuine redundancy" is where:

- 1) the employer no longer requires the employee's job to be performed by anyone because of the operational requirements of the employer's enterprise; and
- 2) the employer has complied with any obligations in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

The employer must consult with and to notify the affected employees (and their representative, which may be the union) of coming terminations once the decision has been made. The employer may have to discuss the changes with their employees and provide written information to them about the changes, although they do not have to reveal confidential information. There is a Best Practice Guide for consultation and co-operation in the workplace that has been published by the Fair Work Ombudsman: <http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/consultation-and-cooperation-in-the-workplace>

A redundancy is not genuine if it would have been reasonable in all the circumstances for the person to be redeployed within the employer's enterprise or the enterprise of an associated entity of the employer. This requires a consideration of the employee's skills and the available positions with the employer's enterprise or an associated enterprise.

Certain situations are not terminations or redundancies, such as the expiry of a specified period or task or the demotion of an employee.

Continued...

LPA COMMENTARY

CLAUSE 12 – REDUNDANCY (CONTINUED)

Employees including high income earners are entitled to redundancy pay except for casuals, seasonal, trainees, specific task/period employees or employees of a small business. To be eligible, the employee must have at least 12 months service, which excludes periods of unpaid leave. Where an employee is made redundant, the employee is entitled to:

- 1) notice of termination (or payment in lieu thereof); and
- 2) an amount of redundancy pay based on the employee’s period of continuous service with the employer using the following table. Redundancy pay is paid at the employee’s base rate of pay.

Period of Service	Amount of Redundancy Pay
At least 1 year but less than 2 years	4 weeks’ pay
At least 2 years but less than 3 years	6 weeks’ pay
At least 3 years but less than 4 years	7 weeks’ pay
At least 4 years but less than 5 years	8 weeks’ pay
At least 5 years but less than 6 years	10 weeks’ pay
At least 6 years but less than 7 years	11 weeks’ pay
At least 7 years but less than 8 years	13 weeks’ pay
At least 8 years but less than 9 years	14 weeks’ pay
At least 9 years but less than 10 years	16 weeks’ pay
At least 10 years	12 weeks’ pay

Redundancy pay does not need to be paid for the transmission of a business or if FWA makes an order exempting the employer due to the employer’s incapacity to pay or if acceptable alternative employment has been obtained for the employee.

Date of effect: 1 January 2010

Amended July 2015

PART 4:
MINIMUM WAGES &
RELATED MATTERS

LPA COMMENTARY

CLAUSE 14 – MINIMUM WAGES

The relevant Exhibition employee classifications are as follows:

Grade 2 (General Hand)

Grade 4 (Exhibition Technician)

Grade 5 (Supervisory Exhibition Technician)

Certain Exhibition employees also receive the all purpose allowance prescribed in clause 15.11.

CLAUSE 14.2 – JUNIORS

Clause 14.2 assigns new junior rates to Exhibition employees under the age of 21. Please refer to the Wages and Allowances Summaries for the current rates for juniors.

Date of effect: 1 July 2010

Updated July 2014

Part 4—Minimum Wages and Related Matters

13. Classifications

All employees covered by this award must be classified according to the structure and definitions set out in Schedule B—Classification Structure. Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

14. Minimum wages

14.1 Adults

Employees are entitled to the minimum wage prescribed for the classification in which they are employed as follows:

Classification	Weekly	Hourly
	\$	\$
Introductory level employee	740.80	19.49
Grade 1	762.10	20.06
Grade 2	791.30	20.82
Grade 3	818.50	21.54
Grade 4	862.50	22.70
Grade 5	889.50	23.41
Grade 6	916.50	24.12
Grade 7	941.10	24.77
Grade 8	988.80	26.02
Grade 9	1094.90	28.81

14.2 Juniors

The minimum wages for unapprenticed junior employees will be the following percentages of the adult rates prescribed for the classification appropriate to the work performed:

Age	% of minimum adult rate
Under 17 years	55
17 and under 18	65

LPA COMMENTARY

CLAUSE 14.3 – APPRENTICES

These rates only apply to employees that are registered as apprentices; they cannot be paid to any other type of employee. Please refer to the Wages and Allowances Summary for the current rates.

CLAUSE 15 - ALLOWANCES

A majority of the allowances are expressed as a percentage of the standard rate. The **standard rate** is defined in clause 3 – Definitions as Grade 4. Therefore, when the minimum wages are increased, those allowances that are expressed as a percentage of the standard rate will increase automatically as well.

Date of effect: 1 January 2010

Age	% of minimum adult rate
18 and under 19	75
19 and under 20	85
20 years	100

14.3 Apprentices

- (a) An apprentice who commenced before 1 January 2014 must receive the following percentage of the minimum wage for Grade 4:

Year	%
1st year	47.5
2nd year	60
3rd year	75
4th year	95

- (b) An apprentice who commenced on or after 1 January 2014 must receive the following percentage of the minimum wage for Grade 4:

Year	% for apprentices who have not completed Year 12	% for apprentices who have completed Year 12
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	95	95

- (c) The minimum rate for an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the minimum wage for Grade 4, or the rate prescribed by clause 14.3(b) for the relevant year of the apprenticeship, whichever is the greater.
- (d) The minimum rate for an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 14.1—Adults or the rate prescribed by clause 14.3(b) for the relevant year of the apprenticeship, whichever is the greater.

- (e) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 14.1—Adults in which the adult apprentice was engaged immediately prior to entering into the training agreement.
- (f) Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- (g) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that this clause will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- (h) For the purposes of clause 14.3(g) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (i) The amount payable by an employer under clause 14.3(g) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
- (j) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

- (k) An employer may meet its obligations under clause 14.3(j) by paying any fees and/or cost of textbooks directly to the RTO.
- (l) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- (m) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This subclause operates subject to the provisions of Schedule E-School-Based Apprentices.
- (n) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

14.4 Supported wage system

See Schedule C

14.5 National training wage

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2018. Provided that any reference to "this award" in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Amusement, Events and Recreation Award 2010* and not the *Miscellaneous Award 2010*.

14.6 School-based apprentices

See Schedule E

15. Allowances

15.1 Tractor plant

An employee in charge of a tractor plant must receive an additional payment of 3% of the [standard rate](#), weekly or hourly as the case may be.

15.2 Protective clothing and equipment

Where an employee is required to wear protective clothing (e.g. oilskins, gumboots, overalls, goggles, safety boots, bowling shoes, etc.), the employer must reimburse the employee on proof of purchase for the cost of purchasing such special clothing and equipment. The employee is responsible for maintaining these items in a serviceable condition. The provisions of this subclause do not apply where the clothing and/or equipment is paid for by the employer.

LPA COMMENTARY

CLAUSE 15.5 – FIRST AID ALLOWANCE

The first aid allowance is only payable to an employee who is **appointed** as a first aid attendant by the employer. An employee so appointed should hold a first aid certificate.

CLAUSE 15.6 – UNIFORM ALLOWANCE

The employer is required to reimburse the employee for the cost of purchasing a uniform unless the employer provides the uniform. A uniform is comprised of clothing that bears the employer's logo.

CLAUSE 15.7 – TRANSPORT ALLOWANCE

Travel time is counted as time worked where an employee is required to work away from the usual place of employment.

An employee who uses his/her own motor vehicle on official employer business, will be paid an allowance as provided in clause 15.7.

Date of effect: 1 January 2010

15.3 Accommodation

Where an employee is required by the employer to live on the premises and is required to act as caretaker, the employee must be paid an allowance equal to the amount of the rental charged by the employer for the accommodation at the said premises.

15.4 Meal allowance

An employee who is required to work overtime for two or more hours immediately after the completion of their ordinary hours of work on an ordinary working day must be paid a meal allowance of \$11.69 unless the employer provides a meal.

15.5 First aid allowance

Any employee holding a first aid qualification from St John Ambulance or a similar body and who is appointed by the employer to perform first aid duties must be paid for ordinary hours an allowance of 2% of the [standard rate](#) calculated weekly or hourly as the case may be.

15.6 Uniform allowance

- (a) Where the employer requires an employee to wear a uniform, the employer must reimburse the employee the cost of purchasing the uniform. The provisions of this clause do not apply where the uniform is supplied by the employer at the employer's expense. Where the uniform is supplied by the employer, it will remain the property of the employer and must be returned to the employer on the termination of the employee's employment.
- (b) If an employee is required to launder any garments that are part of a uniform, the employer will pay an allowance of \$1.32 per day up to \$6.62 per week. The provisions of this clause do not apply where the employer launders such garments.

15.7 Transport allowance

Where an employee agrees to a request from their employer to use the employee's own motor vehicle for the purpose of travelling on the employer's business, the employer will pay the employee an allowance of \$0.78 per kilometre travelled.

LPA COMMENTARY

CLAUSE 15.11 - ALL PURPOSE ALLOWANCE

Full time and part time employees are to be paid the all purpose allowance applicable to the classification for all purposes of the Award. The allowances are added to the weekly minimum rate of pay and the total pay rate is to be used to calculate overtime, superannuation, annual leave, sick leave and long service leave. This allowance does not apply to casual employees.

Date of effect: 1 January 2010

15.8 Tool allowance

- (a) Employees who are required to provide hand tools at their own expense will receive an allowance as follows:

	\$ per week
Tradesperson (other than Carpenters)	\$13.52
Carpenters	\$26.37

- (b) The above allowance will not apply where the employer supplies all tools without cost to the employee.

15.9 Cancellation allowance—casual employees

A casual employee who reports for work and is not allowed to start will be paid for three hours at the minimum wage for the relevant classification.

15.10 Employee in charge

Where an employee is in charge of golf links with more than 18 holes or bowling greens or lawn tennis courts in an establishment covered by this award they will receive an extra 5.33% of the standard weekly rate per week.

15.11 Special all purpose allowances for exhibition employees

Full-time and part-time employees will be paid the following weekly allowances for all purposes of the award:

Classification	Flexible loading allowance	Supervisory loading allowance
	% of <u>standard rate</u>	% of <u>standard rate</u>
General hand	6.6	N/A
Exhibition technician	7.1	3.2
Supervisory exhibition technician	7.5	6.4

15.12 Adjustment of expense related allowances

- (a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

LPA COMMENTARY

CLAUSE 18 – HIGHER DUTIES

If an employee is required to work in a classification that is higher than the one that they have been engaged for more than half a day, then they must be paid at the higher classification's rate of pay for the whole day. If they perform those duties for less than half the day then they are only entitled to be paid at their ordinary rate of pay.

CLAUSE 19 – PAYMENT OF WAGES

The employee's letter of engagement or contract should state whether they are being paid weekly or fortnightly. This will be determined by the employer's pay role cycle.

Date of effect: 1 January 2010

- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Laundry allowance	Clothing and footwear group
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Transport allowance	Private motoring sub-group

16. District allowances

This clause has been deleted March 2015

17. Accident pay

This clause has been deleted March 2015.

18. Higher duties

An employee who is required to do work for which a higher rate is fixed than that provided for their ordinary duties must, if such work exceeds a total of four hours on any day, be paid at the higher rate for all work done on such day. In all other cases the employee must be paid the higher rate for the actual time worked.

19. Payment of wages

19.1 Period of payment

- (a) Wages may be paid weekly or fortnightly.
- (b) Wages will be paid no later than Thursday of the agreed pay period, unless the employer and the majority of employees agree to later payment.

LPA COMMENTARY

CLAUSE 20.1 – SUPERANNUATION LEGISLATION

As of 1 July 2014, the Superannuation Guarantee legislation requires that all employers contribute 9.5% superannuation where employees are earning more than \$450.00 a month.

Date of effect: 1 January 2010

Updated July 2014

19.2 Method of payment

Wages may be paid by cash, cheque or into a bank or financial institution account nominated by the employee. If payment is by cash or cheque, wages must be paid during ordinary working hours.

20. Superannuation

20.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

20.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

20.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 20.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 20.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or (b) was made.

20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) HOSTPLUS;
- (c) AMP Superannuation Savings Trust;
- (d) Sunsuper;
- (e) CareSuper; or
- (f) MTAA Superannuation Fund; or
- (g) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or
- (h) a superannuation fund or scheme which the employee is a defined benefit member of.

PART 5:
HOURS OF WORK AND RELATED
MATTERS

LPA COMMENTARY

CLAUSE 21.5 – SPECIAL PROVISIONS FOR EXHIBITION EMPLOYEES

This clause overrides the general provisions in clause 10 with regard to Exhibition employees.

(a) Full-time and part-time employees

These employees can work 38 ordinary hours a week or 76 hours over a 2 week roster period. On each day they are to be engaged for a minimum call of 4 hours, but can work up to 12 hours in the day. Full-time and part-time employees can work a maximum of 56 hours in one week before overtime is payable. Where possible employees should be given 2 consecutive days off in any one week.

Date of effect: 1 January 2010

Part 5—Hours of Work and Related Matters

21. Ordinary hours of work and rostering

- 21.1** The ordinary working hours for a full-time employee will not exceed an average of 38 hours per week in accordance with a roster that conforms with one of the following:
- (a) 38 hours in one week;
 - (b) 76 hours in two weeks;
 - (c) 114 hours in three weeks; or
 - (d) 152 hours in four weeks.
- 21.2** The ordinary hours of work for full-time and part-time employees will not exceed eight on any one day, provided that:
- (a) the ordinary working hours may exceed eight up to a maximum of 10 on any one day by mutual agreement between the employer and the majority of employees involved; and
 - (b) the employer and an individual employee may agree in writing to work shifts of up to 12 hours on any one day.
- 21.3** Ordinary working hours for full-time employees will be worked continuously, except for meal breaks, on not more than 20 days in a 28 day period on any day Monday to Sunday inclusive.
- 21.4 Rosters**
- (a) All employees must be notified by their employer of their working shifts. At least seven days' notice will be given to the employee should any alteration of the rostered shift be made.
 - (b) Subject to the approval of the employer, employees may mutually arrange to temporarily change rosters. Rosters so changed will be paid for at the rates applicable to the original roster.
- 21.5 Special provisions for exhibition employees**
- (a) **Full-time and part-time employees**
 - (i) Ordinary hours may be worked on any day of the week subject to the provisions of this clause.

LPA COMMENTARY

CLAUSE 21.5 – SPECIAL PROVISIONS FOR EXHIBITION EMPLOYEES

(b) Casual employees

Employees that are not engaged as a full-time or part-time employee are casual employees. The minimum call for such an employee is 4 hours. There is also a new cancellation allowance for casual Exhibition employees prescribed in clause 15.9. This allowance would be payable even if the employee has only just left their place of residence to make their way to work.

Casual employees are paid by the hour; this rate is calculated by dividing by 38 and adding the 25% to casual loading.

(c) All employees

All employees should be notified of their roster in advance unless circumstances preclude such notification. An employer must use their best endeavours to grant employees a ten hour break between the cessation of work on one day and the commencement of work on the next day. Should an employee not receive a ten hour break, there is no penalty payable to the employee.

Date of effect: 1 January 2010

- (ii) The ordinary hours of work will be 76 worked over a two week roster period.
- (iii) The ordinary hours of work on a shift will be a minimum of four and a maximum of 12 hours, to be worked continuously except for meal breaks.
- (iv) The maximum ordinary hours of work for full-time and part-time employees in any week will be 56.
- (v) Each full-time and part-time employee will have two consecutive days off in any week if such is reasonably possible to arrange.

(b) Casual employees

The ordinary hours of work for casual employees will be a minimum of four consecutive hours per shift to be worked continuously except for meal breaks, to be worked on any day of the week.

(c) All employees

- (i) Where possible, all employees will be notified of their roster in advance. Except in the case of circumstances outside the control of the employer, all employees will be notified prior to the conclusion of work on the previous shift of any change in the roster.
- (ii) Employees will, except where circumstances outside the control of the employer make it impracticable, be granted a 10 hour break without loss of pay from cessation of work on the one day and the commencement of work on the next day.

22. Breaks

22.1 Meal breaks—other than casual employees

- (a) An employee other than a casual employee must be allowed a meal break of not less than 30 minutes and not more than 60 minutes, not later than five hours after commencing work.

(b) Special meal break provisions

Where an employee is instructed by their employer to remain on call during their meal period, that period will be paid for at the ordinary rate of pay.

22.2 Rest breaks—casual employees

- (a) Casual employees engaged for a minimum of five hours must be allowed a rest break of 20 minutes without deduction of pay.
- (b) Casual employees required to continue working for a further five hours must be allowed a further rest break of 20 minutes without deduction of pay.

LPA COMMENTARY

CLAUSE 22.3 – MEAL BREAKS

All employees, including full-time, part-time and casuals, should not be required to work continuously for more than 5 hours without a suitable meal break. The meal break should be between half an hour and an hour and half in length. Meal breaks are not counted as time worked.

CLAUSE 23.4 – OVERTIME AND PENALTY RATES

- (a) This clause overrides the overtime provisions contained in clauses 23.1-23.3.
- (b) All employees that work for more than 12 hours in a day, or 56 hours in a week, should be paid overtime at the rate of double time.
- (c) The first 24 hours worked in excess of 76 hours in a fortnight (excluding those hours already paid as overtime above in clause 23.4(b)) are paid at time and a half and then the overtime hours after that are paid at double time.
- (d) A time off in lieu of overtime system can be implemented in a workplace if there is an agreement to do so between the employer and majority of employees. Any such agreement should be recorded in writing in accordance with Schedule I.

CLAUSE 23.4 – OVERTIME AND PENALTY RATES

- (e) If a **casual employee** works more than 12 hours in a day, they should be paid at the rate of double time to the nearest 15 minutes for those hours in excess of 12.

Date of effect: 1 January 2010

- (c) Both of the above rest breaks must be taken at a time convenient to the employer but not at the beginning or the end of the period of duty.

22.3 Special provisions for exhibition employees

- (a) All employees will not, except where circumstances outside the control of the employer make it impracticable, be required to work continuously in excess of five hours without a meal break.
- (b) Meal breaks will be at least half an hour, but no more than one and a half hours.
- (c) No part of the time that should be allowed as a meal break will be counted as part of the ordinary hours of work within the meaning of clause 21—Ordinary hours of work and rostering.

23. Overtime and penalty rates

23.1 All time worked by any full-time, part-time or casual employee in excess of the rostered working hours as provided on any one day, or in excess of an average of 38 hours per week in any rostered workcycle as provided for in clause 21.1, will be deemed to be overtime and will be paid for at the rate of time and a half for the first three hours and at the rate of double time after that.

23.2 Employees will be entitled to a minimum period of 10 hours break between shifts. Should an employee be required by the employer to resume work without having a break of at least 10 hours between rostered shifts, they will be paid at the rate of double time for all time worked until they have had a break from work of at least 10 hours, or eight hours by agreement.

23.3 Sundays and public holidays

- (a) All time worked on a Sunday will be paid for at time and a half.
- (b) All time worked on a public holiday will be paid for at double time and a half.
- (c) The minimum payment for work performed on a Sunday or a public holiday will be as for four hours worked.

23.4 Special provisions for exhibition employees

- (a) Clauses 23.1, 23.2 and 23.3 will not apply to exhibition employees.
- (b) For all work performed in excess of 12 hours in a shift, or 56 hours in a week, the employee will be paid double the ordinary rate of pay.
- (c) All hours worked in excess of 76 in a two week roster cycle will be paid at the rate of one and a half times the ordinary rate of pay for the first 24 hours so worked and double the ordinary rate of pay for all such hours thereafter.

(d) Casual employees

Casual employees will receive overtime for all work performed in excess of 12 hours on a shift, paid at the rate of double the ordinary rate of pay for such hours worked (calculated to the nearest quarter of an hour).

23.5 Time off instead of payment for overtime

- (a)** An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b)** Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 23.5.
- (c)** An agreement must state each of the following:
 - (i)** the number of overtime hours to which it applies and when those hours were worked;
 - (ii)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii)** that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv)** that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at 0. There is no requirement to use the form of agreement set out at 0. An agreement under clause 23.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d)** The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 23.5 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e)** Time off must be taken:
 - (i)** within the period of 6 months after the overtime is worked; and
 - (ii)** at a time or times within that period of 6 months agreed by the employee and employer.
- (f)** If the employee requests at any time, to be paid for overtime covered by an agreement under clause 23.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g)** If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for

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- (h) the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (i) The employer must keep a copy of any agreement under clause 23.5 as an employee record.
- (j) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (k) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 23.5 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (l) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 23.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 23.5.

PART 6: LEAVE AND PUBLIC HOLIDAYS

LPA COMMENTARY

CLAUSE 24 – ANNUAL LEAVE

All employees except casual employees accrue 4 weeks annual leave “progressively” (1.667 days per month) per annum under the National Employment Standards. Annual leave is to be recredited if the employee takes any other type of leave during their period of annual leave. Therefore, if an employee provides a medical certificate to state that they were ill for 2 days during their period of annual leave, those 2 days are deducted from the employee’s personal/carer’s leave instead of their annual leave.

Changes to Annual Leave Provisions as part of 4-yearly review

As part of the 4 yearly review of the modern awards, a Full Bench of the Fair Work Commission has handed down a decision replacing or inserting new annual leave provisions in many of the modern awards.

The changes provide for taking annual leave in advance and cashing out of some annual leave accruals. Further commentary will be provided at the completion of the 4 year review.

Date of effect: 1 January 2010

Updated: July 2018

Part 6—Leave and Public Holidays

24. Annual leave

24.1 Annual leave is provided for in the NES.

24.2 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 24.2 is set out at 0. There is no requirement to use the form of agreement set out at 0.

- (c) The employer must keep a copy of any agreement under clause 24.2 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 24.2, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

24.3 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.3.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.3.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 24.3 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 24.3 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

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- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 24.3 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.3.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.3.

Note 3: An example of the type of agreement required by clause 24.3 is set out at 0. There is no requirement to use the form of agreement set out at 0.

24.4 Excessive leave accruals: general provision

Note: Clauses 24.4 to 24.6 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 24.5 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 24.6 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

24.5 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 24.4(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):

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- (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause
 - (ii) 24.4, 24.5 or 24.6 or otherwise agreed by the employer and employee) are taken into account; and
 - (iii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iv) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (v) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
 - (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 24.5(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

24.6 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 24.4(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 24.5(a) that, when any other paid annual leave arrangements (whether made under clause 24.4, 24.5 or 24.5(a) or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:

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- (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 24.4, 24.5 or 24.5(a) or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

CLAUSE 25 – PERSONAL/CARER’S LEAVE

All employees other than casuals are entitled to 10 days paid personal/carer’s (sick) leave per year and 2 days paid compassionate leave for each permissible occasion. There is no 10 day cap on the amount of carer’s leave that can be taken at one time, so if an employee has accrued 20 days of personal/carer’s leave and are required to look after an immediate family member, they can take those 20 days all at once.

All employees, including casuals, are entitled to 2 days unpaid carer’s leave and 2 days unpaid compassionate leave for each permissible occasion. However, an employee cannot take unpaid leave if they have paid leave available.

CLAUSE 26 – COMMUNITY SERVICE LEAVE

Eligible community service activities include jury service & voluntary emergency service duties. Community service leave may be taken for these activities and includes reasonable travelling & rest time. However, only jury service taken by weekly employees is paid upon the presentation of sufficient evidence. The entitlement requires the employer to make up the difference between the employee’s base rate for ordinary hours for up to 10 days.

CLAUSE 27 – PUBLIC HOLIDAYS

Employees are entitled to be paid and have the day off for Public Holidays, however “reasonable” requests to work can be made. Considerations include if the employee would receive a penalty, the nature of the work/workplace, the amount of notice given to the employee and whether the employee could reasonably expect to be asked to work. The employee can refuse if the request is not reasonable or if refusal is reasonable with regard to such factors as family obligations.

The National Employment Standards prescribe the following Public Holidays:

- 1 January (New Year’s Day);
- 26 January (Australia Day);
- Good Friday
- Easter Monday
- 25 April (Anzac Day);
- The Queen’s birthday holiday (on the day on which it is celebrated in a State/Territory);
- 25 December (Christmas Day);
- 26 December (Boxing Day);
- Days declared by a State/Territory law, eg. Easter Saturday; and
- Days substituted by a State/Territory law or award, eg. if the holiday falls on a weekend

Casual employees who work on a public holiday are paid at double the full time rate (ie no casual loading) for all hours worked.

Updated July 2014

25. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

26. Community service leave

Community service leave is provided for in the NES.

27. Public holidays

27.1 Public holidays are provided for in the NES.

27.2 Special provisions for exhibition employees

(a) Work on a public holiday

- (i)** If a full-time or part-time employee is required to work on a day to be observed as a public holiday, the employee will be paid at the rate of double time for the hours worked.
- (ii)** At the election of the employer, a full-time or part-time employee who works on a public holiday may be paid the ordinary rate of pay for the hours worked on that public holiday, and in addition be granted time off on the basis of one hour off for each hour worked, without loss of pay.

(b) Rostered day off falls on a public holiday

A full-time or part-time employee whose rostered time off falls on a public holiday will be allowed an additional day off at a time to be agreed upon by the employer and the employee or the employee will be paid an additional day's pay instead within seven days of the said public holiday.

(c) Casual employees

Casual employees who work on a public holiday will be paid at double the minimum full-time rate for such hours worked (calculated to the nearest quarter of an hour).

SCHEDULES:

SCHEDULE A – DELETED

SCHEDULE B – CLASSIFICATION STRUCTURE

SCHEDULE C – SUPPORTED WAGE SYSTEM

SCHEDULE D – DELETED

SCHEDULE E – SCHOOL-BASED APPRENTICES

SCHEDULE F – 2017 PART-DAY PUBLIC HOLIDAYS

**SCHEDULE G – AGREEMENT TO TAKE ANNUAL LEAVE IN
ADVANCE**

**SCHEDULE H – AGREEMENT TO CASH OUT ANNUAL
LEAVE**

**SCHEDULE I – AGREEMENT FOR TIME OFF INSTEAD OF
PAYMENT FOR OVERTIME**

LPA COMMENTARY

SCHEDULE B

The relevant Exhibition employee classifications are as follows:

Grade 2 (General Hand)

Grade 4 (Exhibition Technician)

Grade 5 (Supervisory Exhibition Technician)

Date of effect: 1 January 2010

Schedule B—Classification Structure

B.1 Introductory level employee

Introductory level employee means an employee who enters the industry and who has not demonstrated the competency requirements of a Grade 1 employee. An employee at this level will undergo training for up to three months before progressing to Grade 1.

Grade 1

- B.1.1** An employee at this level is an employee who has completed at least three months training which will include successfully undertaking accredited courses of study or on-the-job training in all of the relevant day-to-day operating processes so as to enable the employee to perform work within the scope of this level.
- B.1.2** An employee at this level performs work above and beyond the skills of an employee at Introductory level and to the level of their skills, competence and training.
- B.1.3** An employee at this level may include a Cleaner, Maintenance person, Gardener, Handyperson, Animal attendant, Ride attendant, Tour guide, Customer Service Officer, Meet and Greet/Concierge, Photography Attendant, Host/Presenter, Car park attendant, Parking attendant (not handling cash), Door attendant, General attendant, Admissions/Entrance attendant level 1, Gateperson (not on major gates), Bowling attendant, Usher and Event day attendant.
- B.1.4** Such an employee will possess the following skills and may be required to perform the following duties:
- (a) Performs tasks under direct supervision or in accordance with strictly defined procedures.
 - (b) Is trained in and applies basic customer service skills as required by the section/department.
 - (c) Is required to show minimal judgment.
 - (d) Performs routine functions requiring an understanding of clear procedures or guidelines and may require basic manual skills across work areas within the business.
 - (e) Applies basic communication and interpersonal skills in dealing with customers and other workers.
 - (f) Requires basic health and safety knowledge.
 - (g) Generally performs a limited range of tasks of limited complexity and skill.

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- (h) Undertakes general cleaning duties, issuing costumes, grooming, cleaning of animal enclosures, mowing lawns, basic gardening and labouring tasks including operation of simple machinery, laundry duties, brush-cutting, basic labouring including assisting with animal care, basic repairs to clothing, food preparation, ushering, basic preparation of ingredients, assisting employees who are cooking, basic cooking and kitchen attending.

B.2 Grade 2

B.2.1 An employee at this level is an employee who has completed an appropriate level of training so as to enable the employee to perform work within the scope of this level.

B.2.2 An employee at this level performs work above and beyond the skills of an employee at Grade One and to the level of their skills, competence and training. An employee at this level may in addition to the roles in Grade 1 may also include an Assistant to construction technician and/or erector (including persons engaged in maintenance and utility duty) Ticket seller, Counter attendant, Security Officer, Receptionist, Programme seller, Cashier, General hand (exhibition employees) and Game warden.

B.2.3 Such an employee will possess the following skills and may be required to perform the following duties:

- (a) Is responsible for the quality of their own work subject to routine supervision.
- (b) Works under routine supervision either individually or in a team environment.
- (c) Performs tasks under general supervision, exercising limited discretion within defined procedures.
- (d) Performs work which is subject to final checking and, as required, progress checking.
- (e) Is trained in and applies basic quality/service requirements relating to own work and may be required to give general inquiry assistance to the customer.
- (f) Applies good interpersonal and communication skills in dealing with customers and other workers.
- (g) Has a good working knowledge of health and safety at this level.
- (h) May assist in on-the-job training of employees of a lower level.
- (i) May require basic technical skills to perform the work.
- (j) A person not qualified in any trade, engaged in or in connection with the in-house preparation, loading or unloading, marking out, carpet laying, fabrication, installation, erection or dismantling of exhibition stands.
- (k) Food preparation, attending counter, handling cash, specific cleaning duties, animal care, ordering stock, hosting duties, operate rides, EFTPOS transactions, basic record keeping, taking bookings and reservations, telephone and switchboard operations, grooming, handling and feeding animals, presentations, operate cash register, beer reticulation, general gardening including operation of machinery, process invoices, drive forklift, stock control, pruning, irrigation, bar attending, waitering, attending snack bar, non-specialised cooking duties, operate games/amusement rides, ground

controller/basic security and general park maintenance including maintenance of enclosures.

B.3 Grade 3

B.3.1 An employee at this level is an employee who has completed an appropriate level of training so as to enable the employee to perform work within the scope of this level.

B.3.2 An employee at this level performs work above and beyond the skills of a Grade 2 employee to the level of their skills, competence and training.

B.3.3 An employee at this level includes Supervisors and Operators (where four or more are employed).

B.3.4 Such an employee will possess the following skills and may be required to perform the following duties:

- (a) Works from complex instructions and procedures.
- (b) Assists in the provision of on-the-job training.
- (c) Can perform a greater variety of tasks competently in accordance with the established procedures within their work classification.
- (d) Can provide assistance for problem solving and work direction.
- (e) Is trained in and can apply a higher level of quality control and customer service.
- (f) Performs work which is the subject of final checking only.
- (g) Has good health and safety knowledge.
- (h) Works individually under general supervision while having the ability to co-ordinate work within a small team environment.
- (i) Communicates effectively with other workers in their work section.
- (j) Rigs steel or timber components and/or erects or dismantles same on any site or location either as a temporary or permanent structure and includes the preparation, painting and greasing or otherwise lubricating any structural part either fixed or moving either in the employer's workshops or on the site where the stand or fixture or structure is to be erected, dismantled and/or operated.
- (k) Operates a passenger vehicle, handles animals, grades garments, maintenance, pattern making, animal health management, basic stable/animal compound management, operate games/amusement rides, specialised animal care, assistance with animal training, preparation of animal feed and animal care, animal management, maintenance of enclosures and gardens including pruning and irrigation, tour guide duties and presentations to the public, international host required to speak a second language, cocktail or specialised waiter, non-trade cooking, operate a food outlet, bookings and reservations, ordering stock and stock control, basic lifeguarding, security officer monitoring and operating CCTV systems.

B.4 Grade 4

B.4.1 An employee at this level is an employee who has completed appropriate training or has acquired equivalent competency so as to perform work within the scope of this level. Work performed at this level will be trade level or equivalent.

B.4.2 An employee at this level includes:

- (a) An employee who holds a trade certificate or tradespersons rights certificate as an:
 - Engineering tradesperson (electrical/electronic)—Level I;
 - Engineering tradesperson (mechanical)—Level I;
 - Engineering tradesperson (fabrication)—Level I,or equivalent;
- (b) Technical/ Trade Qualified maintenance person;
- (c) Craftsperson;
- (d) Exhibition technician; and
- (e) Interpreter.

B.4.3 Such an employee will possess the following skills and may be required to perform the following duties:

- (a) Is able to exercise the skills and knowledge of the engineering trade so as to enable the employee to perform work within the scope of this level or possesses the skills, experience, knowledge, responsibility, expertise and competency to perform work at the trade level.
- (b) Understands and applies quality control techniques.
- (c) Exercises good interpersonal and communications skills.
- (d) Exercises higher level keyboard skills.
- (e) Exercises discretion within the scope of this classification level.
- (f) Performs work under limited supervision either individually or in a team environment.
- (g) Performs non-trade tasks incidental to their work.
- (h) Performs work that while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.
- (i) A person qualified in a trade required by the employer engaged in or in connection with in-house preparation, loading or unloading, marking out, carpet laying, fabrication, installation, erection or dismantling.

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- (j) Works from complex instructions and procedures and has a thorough understanding of the employer's internal policies and procedures relating to their department.
- (k) Is able to provide training for other employees within their specific area of responsibility for skill development.
- (l) Is able to co-ordinate work in a team environment or work individually under general supervision.
- (m) Is accountable for their own work at trade level or equivalent.
- (n) Has a thorough knowledge of the health and safety procedures relating to work within their department.
- (o) Is able to exercise good interpersonal and communication skills in dealing with other workers.
- (p) Performs lower level tasks incidental to their work or which facilitate the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.
- (q) Has worked or studied in a relevant field for a significant time to ensure competence to undertake and advise on a full range of normal requirements for the work and has the ability to perform a variety of activities involving special or unusual features of the work.
- (r) Trade qualified cooking, food production, senior security officer, trade qualified maintenance (i.e. plumbing, spray painting, construction work) designs costumes and production, liaise with agencies, staff recruitment, menu planning, animal training, medication of animals, plantation management, animal education duties, management of a food outlet, cleaning operators, projectionist, bar supervisor, maitre d', greenkeeping, specialised performers and advanced lifeguarding.

B.5 Grade 5

An employee at this level is an employee who in addition to being a technician, tradesperson or equivalent is required to supervise staff, general hands technicians, and/or generally supervise projects including basic administration.

B.6 Grade 6

An employee at this level may include a Head technician maintenance person, Restoration officer, Museum technician, and Senior animal attendant or trainer.

B.7 Grade 7

B.7.1 An employee at this level is an employee who has completed appropriate training and is capable of applying skills learned to the work. An employee may have specific supervisory duties and the authority to direct other staff; however, the greater percentage of their time need not be spent on management functions.

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- B.7.2** An employee at this level performs work of a greater complexity because of one or more of the following factors:
- (a) Level of responsibility and/or management, e.g. administrative, financial, project coordination, technical or post trade, etc.
 - (b) Such an employee will possess the following skills and may be required to perform the following duties:
 - (i) Would have studied or worked in a relevant area to develop a specialised skill in a particular profession, technical or service field above trade level or its equivalent;
 - (ii) Is accountable and responsible for workplace output and can work under pressure;
 - (iii) Generally works without supervision;
 - (iv) Understands all operations relevant to their job role and department;
 - (v) Plans training and establishment development in conformity with employer guidelines;
 - (vi) Has excellent knowledge of health and safety requirements;
 - (vii) Co-ordinates, supervises and directs the work of others in a team environment.
 - (c) Financial reporting, operational reporting, specialised supervision/direction of five or more staff, specialised maintenance or technical skills.

B.8 Grade 8

An employee at this level is an employee who possesses qualifications or experience such as advanced engineering or technical skills or post trade or diploma level or who undertakes duties of a more advanced or complex level.

B.9 Grade 9

- B.9.1** An employee appointed to this level undertakes three or more of the following duties:
- (a) Responsible for implementation of all major turf projects for the facility according to the course architects design.
 - (b) Responsible for the development of an annual work program for all outdoor staff that incorporates both further development and continued maintenance.
 - (c) Responsible for supervision of all outdoor staff.
 - (d) Responsible for the operation and maintenance of all turf equipment.
 - (e) Responsible for all occupational health and safety management in outdoor areas.

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- (f) Responsible for purchasing within the limits imposed by policy and the budget.
- (g) Responsible for ensuring that all administrative systems are complied with by the staff under their direction.

Schedule C– Supported Wage System

C.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

C.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee’s productive capacity and agreed wage rate

C.3 Eligibility criteria

C.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

C.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

C.4 Supported wage rates

C.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
10	10
20	20

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
30	30
40	40
50	50
60	60
70	70
80	80
90	90

C.4.2 Provided that the minimum amount payable must be not less than \$86 per week.

C.4.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

C.5 Assessment of capacity

C.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

C.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

C.6 Lodgement of SWS wage assessment agreement

C.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

C.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

C.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

C.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

C.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

C.10 Trial period

- C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$86 per week.
- C.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

Schedule E—School-based Apprentices

- E.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- E.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- E.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- E.4** For the purposes of clause E.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- E.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- E.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- E.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- E.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency-based progression if provided for in this award.
- E.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration) or stages of competency based progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- E.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- E.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

LPA COMMENTARY

SCHEDULE F – 2017 PART DAY PUBLIC HOLIDAYS

This is an interim Schedule inserted as a result of legislative changes in South Australia. **It only affects Members operating in South Australia and will not affect any employee covered by an Enterprise Agreement unless that Agreement specifically provides for part-day public holidays.**

The new Schedule provides that where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December 2017) or New Year's Eve (31 December 2017), those hours on those days are to be observed as any other Public Holiday.

Therefore:

- An employee has a right to refuse work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable (as per the National Employment Standards).
- Part-time or full-time employees who are *usually rostered to work ordinary hours during one or both of those periods* are entitled to:
 - paid time off during one or both of those periods;
 - if they are on annual leave, they are taken to not be on annual leave for those hours;
 - if they have a rostered day off, are entitled to paid time off.
- An employee who works any hours between 7.00pm and midnight on Christmas Eve or New Year's Eve will be entitled to the appropriate public holiday penalty rate for those hours worked.

Date of effect: 21 December 2012

Schedule F—2017 Part-day Public Holidays

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

- F.1** Where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December 2017) or New Year's Eve (31 December 2017) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause Schedule CF.1(f) applies, where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00pm and midnight.
 - (g) An employee not rostered to work between 7.00pm and midnight, other than an employee who has exercised their right in accordance with clause Schedule CF.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

This schedule is not intended to detract from or supplement the NES.

This schedule is an interim provision and subject to further review.

Schedule G—Agreement to Take Annual Leave in Advance

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: ____ hours/days

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: ____ hours/days

The payment to be made to the employee for the leave is: \$_____ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule I—Agreement for Time Off Instead of Payment for Overtime

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___