

Broadcasting, Recorded Entertainment and Cinemas 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 2018**, the 4 yearly review of modern awards has not been completed by FWC.

As such, some parts of this award have not been updated. Live Performance Australia (LPA) will update the award once FWC has completed their review process.

Please note however that LPA has updated the minimum wages and expense related allowances to reflect the FWC Annual Wage Review Decision 2018. Only parts relevant to our Members have been updated.

The following parts of the Award HAVE been updated:

- **Part 4 – Minimum Wages and Related Matters; Clause 14.3 (Adult wages), a new Clause 22A (Time off instead of payment for overtime) has been inserted and Part 5 – Leave and Public Holidays; Clause 23 (Annual Leave).**

***References to the high income threshold have also been updated to reflect the increase to the *high income threshold* which from 1 July 2018 is \$145,400.**

PART 1: APPLICATION & OPERATION

LPA COMMENTARY

INTRODUCTION

This Modern Award replaces a number of Transitional Awards, and contains a common salary structure in Clause 14, with relevant Cinema Classifications in Schedule E. The Award is divided into different Parts as follows:

- Parts 1 – 5, which apply to all employees;
- Part 9 – Cinemas

CLAUSE 1 – TITLE

This award replaces the Cinema Award 1998 and the Theatre Managers – Cinema – Award amongst others in the broadcasting and recorded entertainment industry.

CLAUSE 2 – COMMENCEMENT & TRANSITIONAL

All provisions of the Broadcasting, Recorded Entertainment and Cinemas 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.

On 2 November 2012 Fair Work Australia handed down a decision affecting cinema operations. The changes contained in the Decision do not affect the phasing provisions.

An annual wage review will be conducted by Fair Work Australia 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

Amended: 2 November 2012

Part 1—Application and Operation

1. Title

This award is the *Broadcasting, Recorded Entertainment and Cinemas 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
- (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.

LPA COMMENTARY

CLAUSE 3 - DEFINITIONS

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

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

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

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

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

broadcasting, recorded entertainment and cinema industry means the production (including pre-production and post-production), broadcasting, distribution, showing, making available, and/or sale of audio and audio/visual content including but not limited to feature films, television programs (including series, serials, telemovies and mini-series), news, current affairs, sport, documentaries, video clips, digital video discs, television commercials, training films and the like whether for television exhibition, theatrical exhibition, sale to the public, digital media release or release in any other medium

cadet means an employee who is constantly or regularly in training in the collection of and/or preparation of matter for television or radio news services and current affairs programs

call means a performance or rehearsal or recording session or a combination of any of these for a minimum of three hours' duration

cinema means any building or structure used for the purpose of exhibiting films commercially and includes a drive-in

daylight shifts mean all on-air shifts starting between 4.00 am and 5.59 pm Monday to Friday

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

LPA COMMENTARY

CLAUSE 4 - COVERAGE

The award covers all private sector employers throughout Australia in the broadcasting and recorded entertainment industry and their employees set out in the classifications in Schedule B of the Award. The **broadcasting, recorded entertainment and cinemas industry** is defined in clause 3 – 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).

In Part 9 – Cinemas, Clause 53 of the Award specifically provides that no employer covered by this Part 9 and not otherwise covered by Part 6, 7, 8, 10, 11 or 12 shall be covered by the *Hospitality Industry (General) Award 2010* or the *Restaurant Industry Award 2010*.

The **Media, Entertainment and Arts Alliance (MEAA)** has representational rights for all cinema employees.

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** which is indexed annually.

Date of effect: 1 January 2010

Amended: July 2018

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

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

indigenous employee means an Aboriginal or Torres Strait Islander person

journalist means an employee engaged in the gathering, writing or preparing of news matter or news commentaries

juvenile means an artist who is less than 16 years of age

metropolitan television station means a station that is operated by a metropolitan commercial television broadcasting licensee in accordance with the *Broadcasting Services Act 1992* (Cth)

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 Act

non metropolitan television station means a station other than a metropolitan television station

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

orchestra and/or band means a combination of musicians engaged to perform together

standard rate means the minimum weekly wage for a Grade 5 entertainment employee in clause 14—Classifications and minimum wages

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 award covers employers throughout Australia in the broadcasting and recorded entertainment industry and their employees in the classifications set out in this award to the exclusion of any other modern award.

4.2 This award does not cover employers covered by the following awards with respect to employees covered by the:

(a) *Clerks—Private Sector Award 2010*;

(b) *Journalists Published Media Award 2010*;

- (c) *Air Pilots Award 2010*; or
 - (d) *Commercial Sales Award 2010*.
- 4.3** This award does not apply to news editors employed by a metropolitan television station.
- 4.4** The provisions of Part 3—Types of Employment and Termination of Employment and Part 8—Journalists (except for clauses 45.2, 49.2 and 49.3) of award will not apply to any journalist who would otherwise be covered by this award where:
- (a) the employee is employed on a fixed term contract; and
 - (b) in the case of metropolitan television station, the employee is paid an annual salary not less than \$93,198; or
 - (c) in the case of non metropolitan television station, the employee is paid an annual salary not less than \$75,605.
- 4.5** The award does not cover an employee excluded from award coverage by the Act.
- 4.6** 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.
- 4.7** 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.
- 4.8** 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.
- 4.9** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those 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.
- 4.10** 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 employee are covered by an award with occupational coverage.

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 with regard to 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: 4 December 2013

Note: An Award Flexibility Agreement which was entered into **prior to 4 December 2013** only requires **4 weeks'** notice of termination.

Updated: July 2014

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.

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.

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 AND 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.

If Members are considering restructuring and/or introducing new procedures, please contact LPA's Workplace Relations section for advice.

Date of effect: 1 January 2010

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 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.

If Members are involved in a dispute then Members should advise LPA as soon as practicable after documentation from FWC is received.

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.
- 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 AND
TERMINATION OF EMPLOYMENT

LPA COMMENTARY

CLAUSE 10 – TYPES OF EMPLOYMENT

Apart from Clause 10.1, this clause does not apply to employees in Cinemas. Refer to Clause 54 in Part 9.

Date of effect: 2 November 2012

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 At the time of engagement an employer will inform each employee in writing of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.

10.2 Full-time employment

- (a) Except as specified elsewhere in this award a full-time employee is an employee who is engaged to work 38 hours per week.
- (b) A full-time employee must be provided with a written statement setting out their classification, applicable pay scale and terms of engagement.

10.3 Part-time employment

- (a) A part-time employee is an employee who works less than 38 hours; has regular, reasonably predictable and continuous employment; and receives, on a pro rata basis at the rate of 1/38th of the weekly rate, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) An employer is required to roster a part-time employee for a minimum of four consecutive hours on any day or shift.
- (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 including the starting and finishing time and which days of the week the employee will work. A copy of the agreement must be provided to the employee.
- (d) The terms of the engagement may be varied by consent. Any agreed variation to the pattern of work will be recorded in writing, with a copy of the variation provided to the employee.
- (e) All hours worked in excess of the hours as mutually arranged will be overtime and will be paid as such.

10.4 Despite clause 10.3(c), the hours of a television journalist may be altered by the employer giving the employee seven days' notice in writing, provided that there is no change to the total agreed number of ordinary hours of work.

10.5 Casual employment

- (a) A casual employee is an employee engaged as such and paid by the hour. An employer when engaging a casual must inform the employee that they are employed as a casual, of their hours of work, classification level and rate of pay.

LPA COMMENTARY

CLAUSE 11 - CADETS

This clause does not apply to Cinemas.

Date of effect: 1 January 2010

- (b) A casual employee must be paid at the relevant minimum hourly wage plus a loading of 25%. Such loading is paid instead of all paid leave including annual leave, personal/carer's leave and public holidays not worked whether prescribed in this award or the NES.
- (c) Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- (d) Subject to the provisions of clause 14.7, casual employees are entitled to a minimum payment of four hours' pay on each occasion they are required to attend for work.

10.6 Special provisions for employees in cinemas

Clauses 10.2 to 10.5 will not apply to employees in cinemas.

11. Cadets

11.1 A journalist can be employed on a cadetship in accordance with this clause.

11.2 Subject to the provisions of this clause, the period of cadetship is as follows:

- (a) For a cadet other than a graduate of an approved tertiary course the period of cadetship must not exceed three years, provided that cadet training requirements are met.
- (b) For a cadet who commenced cadetship as a graduate of an approved tertiary course, the period of cadetship must not exceed one year during which the cadet is to be paid at the appropriate percentage for a final year cadet.
- (c) A cadet who after 12 months or more employment completes an approved tertiary course is to be advanced to the final year of cadetship.
- (d) Provided that periods of training in journalism on any newspaper or in any radio or television station are to be taken into account in calculating the period of cadetship.

11.3 Cadet training requirements and related matters

- (a) Cadets must be instructed progressively throughout their cadetship in practical journalism and a responsible person will supervise that training. Cadets must also be given the opportunity to acquire a full knowledge of the handling of news/current affairs from its collection to its broadcast/televising.
- (b) A cadet must be given instruction and practical demonstrations in matters such as news presentation and sub-editing.
- (c) A cadet must retain copies of material prepared by the cadet for checking by, and discussion with, the person responsible for cadet training.

- (d) A cadet may be given explanations concerning changes to the material prepared by the cadet.
- (e) A cadet is required to attend or study a series of lectures by senior journalists and/or other authorities on the theory and practices of journalism, such as lectures on the laws or practices currently in force on the subjects of libel, contempt of court, parliamentary and court privilege and also lectures on political and economic or other subjects of value to the cadet.
- (f) Lectures given during study for a diploma of journalism course are deemed to be lectures for purposes of these requirements.
- (g) A cadet must be tested from time to time to ascertain the level of knowledge of news and/or current affairs.
- (h) A cadet must learn shorthand and typewriting and must be examined from time to time to determine the progress being made, subject to the following.
 - (i) A cadet is not entitled to become a second year cadet without having attained a minimum standard of 60 words per minute in shorthand.
 - (ii) A cadet who commenced cadetship pursuant to clauses 11.2(a) or (b) is not entitled to be classified as a journalist without having obtained a minimum standard of 80 words per minute in shorthand.
 - (iii) Provided that, an employer is in a particular case able to waive the attainment of such standards as a condition of promotion to the next higher year of cadetship or to the classified staff.
 - (iv) Tuition in shorthand will be arranged by the employer either within or outside the office. Whether or not such tuition is given within the office, the person responsible for supervising that part of the training of a cadet must regularly monitor the progress being made by each cadet, and particularly whether or not the cadet's record of attendance at classes is satisfactory.
 - (v) A cadet must be given wide practical experience in reporting work. To this end a cadet will, so far as practicable, be required to gain experience in as many sections as possible.
 - (vi) Cadets will from time to time accompany classified journalists on assignments to receive practical instruction.
 - (vii) A cadet must be permitted by the employer to be absent during ordinary working hours for periods not exceeding a total of four hours in any week to attend instruction in shorthand and typewriting.

LPA COMMENTARY

CLAUSE 12 – 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.

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.

Continued... Amended July 2018

LPA COMMENTARY

CLAUSE 12 – TERMINATION OF EMPLOYMENT (CONTINUED)

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:

http://www.fwa.gov.au/documents/dismissals/Small_Business_Fair_Dismissal_Code.pdf

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>

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

LPA COMMENTARY

CLAUSE 13 - 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.

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.

(viii) In addition a cadet may apply for leave of absence to attend at an Australian university or college of advanced education for a course of the diploma of journalism or other courses approved by the employer.

(ix) All lectures and other fees for the studies prescribed in clause 11.3(h)(viii) will be made available by the employer, provided that reports of the cadet's conduct and progress are satisfactory.

12. Termination of employment

12.1 Notice of termination is provided for in the NES.

12.2 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.

12.3 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.

13. Redundancy

13.1 Redundancy pay is provided for in the NES.

13.2 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.

13.3 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.

13.4 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 12.3.

13.5 Transitional provisions – NAPSA employees

Deleted March 2015

13.6 Transitional provisions – Division 2B State employees

Deleted March 2015

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PART 4:
MINIMUM WAGES AND RELATED
MATTERS

LPA COMMENTARY

CLAUSE 14 – CLASSIFICATIONS – CHANGES FROM 2 NOVEMBER 2012

The new classification structure took effect from the first pay period on or from 2 November 2012. The new structure incorporates a new training classification (CW1) and more coherent supervisory/management classifications (CW3 to CW6). With the move to digital, the position of “projectionist” has been replaced with “technician” to better reflect the changes occurring in the cinema industry.

The new structure will require you to advise employees of any changes to their cinema classification (ie. CW1, 2, 3 etc.) and update their contracts of employment. The new structure is as follows:

Cinema Worker Level	BREA Grade	Overview of Position
Cinema Worker Level 1	= BREA Grade 2	100 hours of training, no cash handling (new classification)
Cinema Worker Level 2	= BREA Grade 3	Previous CW1 (same BREA Grade)
Cinema Worker Level 3	= BREA Grade 5	Previous CW2 (same BREA Grade)
Cinema Worker Level 4	= BREA Grade 7	Previous CW3/Supervisor/Technician (previously BREA Grade 9)
Cinema Worker Level 5	= BREA Grade 8	Assistant Manager (new classification)
Cinema Worker Level 6	= BREA Grade 9	Manager (new classification)

NOTE:

- The old CW3s (now CW4s) have moved down 2 levels in the overall Award classification structure from Grade 9 to Grade 7
- The change in CW classification does not mean a change in the rate of pay for an existing employee unless you promote an employee into a higher Award Grade. **Any existing employee should not have their pay reduced as a result of these changes; they should remain on the same rate of pay until the new Award classification rates catch-up**
- Any new employees engaged on or from 2 November 2012 can be classified in the appropriate classification and paid at the new rates of pay provided overleaf.

New Training Classification: Cinema Worker 1

The new CW1 (Grade 2) is now a training classification. New employees can be engaged on this level for a training period of 100 hours. The training level can only be used for those employees who do not handle cash whilst at work. Where an employee has completed the 100 hours’ training, the employee can then request to be trained in cash handling procedures and the Employer cannot unreasonably refuse such a request. Cash handling training can be for a maximum of 30 hours. At the conclusion of such cash handling training, the employee shall be classified as a CW2 (Grade 3).

NOTE:

- Should an employee not request cash handling training, then the employee will remain classified as a CW1 (Grade 2) employee
- There is no requirement for an employee to complete 100 hours of training before cash handling training is undertaken
- An Employer may provide 30 hours of training inclusive of cash handling and then classify the employee as a CW2

There is no impediment for an Employer to appoint a new employee at CW2 (Grade 3) from the beginning of the appointment (as per past practice)

Date of effect: 1 January 2010

Amended: 2 November 2012

Part 4—Minimum Wages and Related Matters

14. Classifications and minimum wages

14.1 All employees covered by this award must be classified according to the structures set out in Schedule B—Television Broadcasting to Schedule H—Motion Picture Production and paid the minimum wages set out in this clause for their classification. Employers must advise their employees in writing of their classification and of any change to their classification.

14.2 Common salary structure

For the purposes of this clause only, a common salary structure is adopted for the purposes of establishing minimum rates of pay. This structure is as follows:

(a) Grade 1 entertainment employee includes the following classifications:

No classifications.

(b) Grade 2 entertainment employee includes the following classifications:

Motion Picture Production Employee Level 1; Cinema Worker Level 1.

(c) Grade 3 entertainment employee includes the following classifications:

Motion Picture Production Employee Level 2; Cinema Worker Level 2.

(d) Grade 4 entertainment employee includes the following classifications:

Trainee (other than trainee director), Assistant Technician, Assistant Maser Control Operator, Assistant Hair or Make-up Artist, Carpenter's Assistant, Wardrobe Assistant/Keeper, Assistant Still Photographer (non-trade), Set and Prop Painter (non-trade) and Property Assistant/Studio Hand/Prop and Scenery Storeperson/Set Dresser—Television Broadcasting; Broadcast operator—Radio; Motion Picture Production Employee Level 3.

(e) Grade 5 entertainment employee includes the following classifications:

Technician B, Audio Operator B, Lighting Operator B, Master Control B, Videotape Operator, Camera Operator B, Producer/Director's Assistant/VCG Operator, Assistant Floor Manager, Hair or Makeup Artist, Carpenter—Trade level, Wardrobe Person, Still Photographer (trade level), Set and Property Painter (trade) and Studio Hand A/Set Dresser A—Television Broadcasting; Extra/Stand-in, double—Television Programs and Feature Films etc.; Cinema Worker Level 3; Technician—Radio; Motion Picture Production Employee Level 4.

(f) Grade 6 entertainment employee includes the following classifications:

Technician B+, Audio Operator B+, Lighting Operator B+, Master Control B+, Production Videotape Operator B, Vision Switcher, Assistant Presentation Co-ordinator, Music/Video Librarian, ENG Camera Assistant, Graphic Artist, Hair and Makeup Artist, Carpenter Trade Level—Television, Set Designer, Scenic Artist and Property Person/Senior Studioperson—Television Broadcasting.

(g) Grade 7 entertainment employee includes the following classifications:

Technician A, Audio Operator A, Lighting Operator A, Master Control Operator A, Camera Operator A, Senior ENG Camera Assistant, Floor Manager, Senior Make-Up Artist—Television Broadcasting; Production Videotape Operator A/Editor B; Announcer Class 2 and Senior Technician—Radio; Bit Player—Feature Films; Cinema Worker Level 4; Motion Picture Production Employee Level 5; Broadcaster/Journalist Class 2.

(h) Grade 8 entertainment employee includes the following classifications:

Technician A+, Audio Operator A/Audio Director, Lighting Operator A/Lighting Director, Master Control A+, Vision Switcher Major Production, Editor A and ENG Camera Operator B, Senior/Specialist Graphic Artist, Trainee Director, Trainee Producer, Producer/Director's Assistant/VCG Operator Major Production, Make-Up Supervisor/Hairdresser Supervisor, Senior Carpenter and Wardrobe Supervisor—Television Broadcasting; Announcer Grade 1—Radio; Performer Grade 1—Feature Films; Broadcaster/Journalist Class 1, Cinema Worker Level 5.

(i) Grade 9 entertainment employee includes the following classifications:

Senior Technician B, Senior Audio Director B, Senior Lighting Director B, Senior MC Operator B, Senior Production Videotape Operator/Post-Production Editor B, Music/Video Library Supervisor, Senior Camera Operator B, Director, Floor Manager Major Production and Senior Set Designer—Television Broadcasting; Cinema Worker Level 6; Motion Picture Production Employee Level 6.

(j) Grade 10 entertainment employee includes the following classifications:

Presentation Co-ordinator—Television Broadcasting; Performer Grade 2—Television Programs and Feature Films Etc.; Engineer—Radio.

(k) Grade 11 entertainment employee includes the following classifications:

Senior Technician A, Senior Audio Director A, Senior Lighting Director A, Senior MC Operator A, Post-Production Editor A, Senior Camera Operator A, Senior Photographer, ENG Camera Operator A—Television Broadcasting, Motion Picture Production Employee Level 7; Chief Engineer—Radio.

- (l) Grade 12 entertainment employee includes the following classifications:**
Senior Director, Senior ENG Camera Operator—Television Broadcasting.
- (m) Grade 13 entertainment employee includes the following classifications:**
Supervisor Audio, Supervisor Lighting, Supervising Presentation Co-ordinator, Supervisor Camera, Supervising Graphic Artist, Set Designer Supervisor—Television Broadcasting.
- (n) Grade 14 entertainment employee includes the following classifications:**
Supervising Technician B, Master Control Supervisor, Video Supervisor/Post-Production Senior Editor and Director Major Production/Specialist—Television Broadcasting.
- (o) Grade 15 entertainment employee includes the following classifications:**
Supervising Technician A and Specialist ENG Camera Operator—Television Broadcasting.
- (p) Grade 16 entertainment employee includes the following classifications:**
Supervising Technician A+, Supervising ENG Camera Operator, Supervising Director—Television Broadcasting; Motion Picture Production Employee Level 8.
- (q) Grade 17 entertainment employee includes the following classifications:**
Motion Picture Production Employee Level 9.
- (r) Grade 18 entertainment employee includes the following classifications:**
Motion Picture Production Employee Level 10.

LPA COMMENTARY

CLAUSE 14.3 – ADULT WAGES

The new Cinema classifications transpose into the BRECA classification structure as follows:

ADULT EMPLOYEES: from 1 July 2018

ENTERTAINMENT EMPLOYEE CLASSIFICATION	BASE WEEKLY RATE	WEEKLY RATE WITH PAC	HOURLY RATE	CASUAL HOURLY RATE (25% Loading)
Grade 2 (Cinema Worker 1) Trainee for 100 hours (no cash handling duties) – ushering, cleaning	\$739.90	\$799.09	\$21.03	\$26.29
Grade 3 (Cinema Worker 2) As for CW1 plus cash handling duties	\$768.30	\$829.76	\$21.84	\$27.30
Grade 5 (Cinema Worker 3) Supervisor, Trainee Manager, Technician	\$837.40	\$904.39	\$23.80	\$29.75
Grade 7 (Cinema Worker 4) Supervisor, Technical Supervisor, programming, bio-box administration, training	\$889.90	\$961.09	\$25.29	\$31.61
Grade 8 (Cinema Worker 5) Assistant Cinema Manager, Technical Manager	\$913.70	\$986.80	\$25.97	\$32.46
Grade 9 (Cinema Worker 6) Cinema Manager	\$939.30	\$1014.44	\$26.70	\$33.38

The 8% penalty averaging component is contained in clause 14.12 and must be added on to the minimum weekly rate. This buys out Sunday penalties and reduces Public Holiday penalties, and the rates above and those in the Wages and Allowances Summaries include this loading.

Junior employees can be engaged as full-time, part-time or casual employees. The appropriate rate of pay can be determined by dividing the appropriate adult weekly rate of pay by the divisor set out in clause 14.4 for the appropriate age of the employee. These percentages are different to those that were contained in the Cinema Award, with different percentages for each age level as opposed to just the two junior rates.

JUNIOR RATES: From 1 July 2018

Date of effect: 1 January 2010

Amended: July 2018

14.3 Adult wages

The minimum wages for employees in the classifications in clause 14.2, subject to the provisions of clause 14.7 and clause 14.12, are:

Classification level	Minimum weekly wage \$	Minimum hourly wage \$
Grade 1	719.20	18.93
Grade 2	739.90	19.47
Grade 3	768.30	20.22
Grade 4	794.70	20.91
Grade 5	837.40	22.04
Grade 6	863.60	22.73
Grade 7	889.90	23.42
Grade 8	913.70	24.04
Grade 9	939.30	24.72
Grade 10	960.00	25.26
Grade 11	979.60	25.78
Grade 12	1005.90	26.47
Grade 13	1032.10	27.16
Grade 14	1045.40	27.51
Grade 15	1085.00	28.55
Grade 16	1132.40	29.80
Grade 17	1158.70	30.49
Grade 18	1211.60	31.88

14.4 Junior employees

(a) The minimum wages of junior employees are the following percentages of the minimum wage for an entertainment employee Grade 5:

Years of age	%
16	45
17	55
18	65
19	75
20	85

(b) Provided that a junior engaged in putting a television station to air working as the only operator and without supervision must be paid the adult minimum wage for the appropriate classification.

- (c) Provided also that a junior with three years' full-time experience, or equivalent, in a television station, must be paid the adult minimum wage for the appropriate classification.
- (d) Service as a junior will count as service in a trainee adult classification.
- (e) Junior rates are not applicable to performer (including extras, double bit players) classifications. In these classifications a juvenile, as defined, is to be paid at a rate of 50% of the adult minimum wage rate of the appropriate classification.
- (f) Neither junior rates nor juvenile rates are applicable to motion picture production or musician classifications. Juniors and juveniles employed under these classifications will be paid the adult rates.

14.5 Journalists

Grade	Minimum weekly wage \$
Band One	
Journalist Grade 1	913.70
Journalist Grade 2	979.60
Journalist Grade 3	1085.00
Journalist Grade 4	1132.40
Band Two	
Journalist Grade 5	1185.20
Journalist Grade 6	1264.00
Journalist Grade 7	1343.00
Band Three	
Journalist Grade 8	1382.70

14.6 Cadets

The minimum weekly wages of cadets are calculated by applying the following percentages to the minimum wage rate for a Journalist Grade 1, provided that an adult cadet will not be paid less than an entertainment employee Grade 1.

Year of cadetship	%
First	60
Second	75
Third	90

14.7 Artists

Notwithstanding the provision of clause 14.3, and subject to clause 60.3, the minimum rates for performers are as follows.

(a) Engaged casually by the hour (with a minimum call of four hours)

Classifications	Hourly rate \$
Extra (advertising films)	33.62
Extra (feature film)	30.14
Extra/Stand-In Double (other content)	27.47
Bit Player (content other than feature films and advertising films)	29.27
Performer not required to speak more than two lines of dialogue (feature film)	40.31
Performer (advertising films)	40.80

(b) Engaged by the day

Classifications	Daily rate \$
Extra/Stand-In/Double	200.96
Performer Class 1 (content other than feature film and advertising films)	219.32
Performer Class 1 (feature film)	255.86
Performer Class 2 (content other than feature film and advertising films)	230.43
Performer Class 2 (feature film)	268.82

(c) Engaged by the week

Classifications	Weekly rate
	\$
Stand-In/Double	837.40
Bit Player	889.90
Performer Class 1	913.70
Performer Class 2	960.00

(d) Engaged by the week in a serial drama or serial comedy

Classifications	No. of episodes in which work is performed in a week			
	1 or 2	3	4	5
	\$	\$	\$	\$
Double	837.40	1203.80	1570.10	1936.50
Bit Player	889.90	1279.20	1668.60	2057.90
Performer Class 1	913.70	1313.40	1713.20	2112.90
Performer Class 2	960.00	1380.00	1800.00	2220.00

14.8 Interviews, auditions and screen tests

- (a) None of the provisions of this award apart from this clause will apply to an employee engaged solely for an interview, audition or screen test for a role in television or a feature film.
- (b) No payment need be made for the first interview or audition or screen test.
- (c) Minimum rates of pay for screen tests for television will be 8.25% of the [standard rate](#) or 6.85% of the [standard rate](#) if visual only.
- (d) Minimum rates of pay for any other audition and/or screen test will be 3.76% of the [standard rate](#) per hour or part thereof with a minimum payment of one hour. For the purpose of calculating payment under this provision the artist will be deemed to have commenced the audition or screen test at the time of the artist's call or the artist's arrival time whichever is the later.
- (e) Artists will be given the specific times of attendance required for an audition, screen test or interview.

14.9 Post-synchronisation or additional dialogue

- (a) A performer post-synchronising their own voice unless such work is carried out during the period of their engagement will be paid at the hourly rate, with a minimum call of two and a half hours.

Broadcasting, Recorded Entertainment and Cinemas Award 2010

- (b) A performer revoicing another artist's voice, engaged by the hour for a minimum of two and a half hours will be paid per hour 6.3% of the relevant minimum weekly actor's rate set out in clause 14.7(c).

14.10 Musicians (other than session singers)

For a minimum call of three hours duration the minimum payment is:

	\$
(a) for a musician working in television broadcasting	
(i) performance	115.37
(ii) rehearsal	87.27
(b) for a musician working in records for sale to the public	124.23
(c) for a musician working in feature films, documentaries, telemovies or television mini-series	169.17

LPA COMMENTARY

CLAUSE 14.12 – PENALTY AVERAGING COMPONENT

This retains the provision from the old Cinema Award 1998 such that all cinema workers receive an 8% penalty averaging component in lieu of Sunday penalty payments and reduced Public Holiday payments.

CLAUSE 15 – 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. The employer and employee can also agree that wages be paid monthly, but there needs to be a written agreement as evidence of this that should be kept with the employee's records.

CLAUSE 18 – ALLOWANCES

These allowances apply to all Cinema employees. Where allowances are expressed as a percentage of the standard rate (Entertainment Employee Grade 5), they will automatically increase when wage rates increase.

CLAUSE 18.1 – VEHICLE ALLOWANCE

This allowance is payable to employees are required to use their own vehicle during the performance of their duties. This does not include travel to and from work, but it does apply to travel during the working day or shift.

Date of effect: 1 January 2010

14.11 Musicians (session singers)

For a minimum call of three hours' duration the minimum payment is \$205.29.

14.12 Employees in cinemas

All employees in cinemas will receive an 8% penalty averaging component instead of Sunday penalty payments and reduced public holiday penalties.

15. Payment of wages

15.1 All employees must be paid weekly or fortnightly by cash, cheque or electronic funds transfer, except where the employer is currently paying monthly in which case that system may continue. Provided also that by written agreement between an employer and an individual employee in the relevant enterprise, wages may be paid monthly.

15.2 All amounts due to an employee in respect of work carried out during a week or fortnight must be paid to the employee within the succeeding seven days.

16. Supported wage system

See Schedule I

17. National training wage

17.1 Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.

17.2 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 *Broadcasting and Recorded Entertainment Award 2010* and not the *Miscellaneous Award 2010*.

18. Allowances

18.1 Vehicle allowance

(a) Where the employer requires an employee to use their own vehicle in the course of their employment the employer must pay the employee an allowance of \$0.78 per kilometre.

(b) Where the employer requires an employee to use their own motorcycle in the course of their employment the employer must pay the employee an allowance of \$0.40 per kilometre.

LPA COMMENTARY

CLAUSE 18.2 – FIRST AID ALLOWANCE

The first aid allowance is only payable if the employer **appoints** an employee as a first aid attendant.

CLAUSE 18.4 – UNIFORM ALLOWANCE

This allowance only applies to employees who are required to wear a uniform, such as a t-shirt with the company logo on it, and who are required to wash their uniform. If employees wear a uniform but the employer launders it, then the allowance does not apply. If employees are required to wear their own clothing, such as blacks, then this allowance does not apply.

Date of effect: 1 January 2010

18.2 First aid allowance

Where an employer appoints an appropriately qualified employee as a first aid attendant the employee will be paid an allowance of 2% of the [standard rate](#) calculated weekly or hourly as the case may be.

18.3 Working late and working early

If an employee not permanently employed on night work is engaged until such an hour that the ordinary means of public transport are not available, or is required to start work before their normal means of transport are available, they will be allowed the necessary expense of transport to or from their home, or transport will be provided by the employer. This clause does not apply to an employee to whom the provisions of clause 32.8 applies.

18.4 Uniform allowance

The employer will pay an employee an allowance of \$1.51 per rostered day up to a maximum of \$7.41 per week, where the employee is responsible for the laundering and/or cleaning of a uniform.

18.5 Telephone rental allowance

If the employer requires an employee to have a telephone the employer must meet the rental cost.

18.6 Language allowance

(a) Where an Indigenous employee is required to have a recognised proficiency in English as well as that employee's traditional Aboriginal and Torres Strait Islander language for the performance of the employee's duty, the employer will pay the employee an allowance as follows:

(i) Level 1—159.66% of the [standard rate](#) per annum

Level 1 is an elementary level. This level is appropriate for employees who are capable of using a minimal knowledge of language for general communication.

(ii) Level 2—319.64% of the [standard rate](#) per annum

Level 2 represents a level of ability for the ordinary purpose of general business, conversation, reading, writing and production.

(b) The employee is required to obtain bilingual accreditation through a recognised Aboriginal and Torres Strait Islander Language Centre/Group or an alternative agency agreed to between the employer and the employee. This proof of language proficiency must be obtained before the employee is entitled to this allowance.

18.7 Tools of trade

- (a) Where the employer requires the employee to provide any tools for the performance of their work, the employer must reimburse the employee the cost of purchasing such tools.
- (b) Where any tools supplied or paid for by the employer are lost through the negligence of the employee the cost of their replacement may be deducted from the employee's wage.

18.8 Protective clothing

Where an employee is required by law to wear protective clothing and the employee purchases the clothing the employer must reimburse the employee for the cost of purchase.

18.9 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.
- (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
Clothing, equipment and tools allowance	Clothing and footwear group
Meal allowance	Take away and fast foods sub-group
Vehicle/travel allowance	Private motoring sub-group

19. District allowances

Deleted March 2015

LPA COMMENTARY

CLAUSE 21 – 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.

Date of effect: 1 January 2010


Amended: July 2014

20. Accident pay

Deleted March 2015

21. Higher duties

An employee (other than a journalist) engaged for half or more of one day on the duties of a higher classification must be paid the higher rate for the whole day.



LPA COMMENTARY

CLAUSE 22.1 – SUPERANNUATION LEGISLATION

From 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

Amended: July 2014

22. Superannuation

22.1 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.

22.2 Employer contributions

- (a) An employer must make such superannuation contributions at their ordinary rate 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.
- (b) Despite the provisions of clause 22.2(a) an employer must also make superannuation contributions to a superannuation fund on behalf of a performer (excluding extras, doubles and stand-ins) between the ages of 16 and 18 as if the performer were 18 if:
 - (i) the juvenile is engaged on a 12 week contract or longer;
 - (ii) the juvenile has been employed in the broadcasting and recorded entertainment industry for a minimum of six professional engagements; or
 - (iii) the juvenile has been employed in the entertainment industry for a minimum of 30 days.

22.3 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 22.2.
- (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 22.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 22.3(a) or (b) was made.

22.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 22.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) Media Super;
- (c) 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
- (d) a superannuation fund or scheme which the employee is a defined benefit member of.

22A Time off instead of payment for overtime

22A.1 An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

22A.2 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 22A.

22A.3 For employees other than cinema workers (where the relevant overtime is performed on a Sunday or public holidays) an agreement under clause 22A must be made in writing and must state each of the following:

- (a) the number of overtime hours to which it applies and when those hours were worked;
- (b) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
- (c) 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;
- (d) that any payment mentioned in paragraph (c) 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 Schedule N. There is no requirement to use the form of agreement set out at Schedule N. An agreement under clause 22A can also be made by an exchange of emails between the employee and employer, or by other electronic means.

22A.4 The period of time off that an employee is entitled to take is:

- (a) for cinema workers (where the relevant overtime is performed on a Sunday or public holidays) and radio broadcasting technical staff—equivalent to the overtime payment that would have been made; and

EXAMPLE: By making an agreement under clause 22A an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

- (b) for all other employees and cinema workers (where the relevant overtime is performed other than on a Sunday or public holidays)—the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 22A an employee who worked 2 overtime hours is entitled to 2 hours' time off.

22A.5 Time off must be taken:

- (a) within the period of 6 months after the overtime is worked; and
- (b) at a time or times within that period of 6 months agreed by the employee and employer.

22A.6 If the employee requests at any time, to be paid for overtime covered by an agreement under clause 22A 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.

22A.7 If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 22A.5, the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

22A.8 The employer must keep a copy of any agreement under clause 22A as an employee record.

22A.9 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.

22A.10 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 22A will apply, including the requirement for separate written agreements under clause 22A.2 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).

22A.11 If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 22A 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 22A.

PART 5: LEAVE AND PUBLIC HOLIDAYS

LPA COMMENTARY

CLAUSE 23 – 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.

An annual leave loading of 17.5% is payable for any period of annual leave taken (except for annual leave granted in advance).

Since annual leave accrues progressively, any period of service that is less than 12 months are paid out in accordance with the amount of leave that has accrued. However, no annual leave loading applies to periods of service that are less than 12 months. Nonetheless, if annual leave is taken before the completion of 12 months (ie. in advance of the entitlement accruing) then no annual leave loading is paid until the employee completes that period of 12 months.

An employer has the option of closing down to allow employees to take annual leave, for instance over the Christmas and New Year period. The employer must give 4 weeks’ notice, and if employees do not have sufficient leave to cover the period then they are to be allowed to take unpaid leave the period that is not covered by leave. This may be done up to 3 times in a year, but at least one period must be for at least 14 consecutive days.

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 5—Leave and Public Holidays

23. Annual leave

23.1 Annual leave is provided for in the NES.

23.2 Where an employee, other than a journalist or a cinema worker, works on Sundays and/or public holidays as part of their ordinary rostered hours of work, the employee must be allowed additional annual leave as follows:

Number of days worked	Additional leave
Not less than 6 days or more than 8 days	1 day
Not less than 9 days or more than 11 days	2 days
Not less than 12 days or more than 14 days	3 days
Not less than 15 days or more than 17 days	4 days
18 days or more	5 days

NOTE: s.87(1)(b) of the Act does not apply.

23.3 Journalists are required to work on public holidays (other than Christmas Day and Good Friday) at ordinary rates of pay and are entitled to an extra two weeks' annual leave. If a journalist is not required to work on a particular public holiday, the employer must notify the employee at least 14 days prior to the public holiday and that day will be an annual leave day. Should Christmas Day or Good Friday fall during an employee's annual leave, the employee will be allowed an extra day's annual leave or be paid double time for one day.

NOTE: s.87(1)(b) of the Act does not apply.

23.4 Notwithstanding the NES, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:

- (a) the employer gives not less than four weeks' notice in writing of intention to do so;
- (b) an employee who has accrued sufficient leave to cover the period of the close-down is allowed leave and is also paid for that leave at the appropriate wage in accordance with Part 4—Minimum Wages and Related Matters;
- (c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down;

- (d) any leave taken by an employee as a result of a close-down pursuant to this clause also counts as service by the employee with their employer;
- (e) the employer may only close down the enterprise or part of it pursuant to this clause for one or two separate periods in a year;
- (f) if the employer closes down the enterprise or part of it pursuant to this clause in two separate periods, one of the periods must be at least 14 consecutive days including non-working days; and
- (g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to this clause for three separate periods in a year provided that one of the periods is at least 14 days including non-working days.

23.5 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 23.5 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 23.5 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 23.5, 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.

23.6 Excessive leave accruals: general provision

Note: Clauses 23.6 to 23.8 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 (other than a journalist required to work on public holidays) has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave. A journalist required to work on public holidays has an **excessive leave accrual** if the employee has accrued more than 12 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 23.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 23.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

23.7 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 23.6(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):
 - (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 23.6, 23.7 or 23.8 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) 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
 - (iv) 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 23.7(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.

23.8 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 23.6(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 23.7(a) that, when any other paid annual leave arrangements (whether made under clause 23.6, 23.7 or 23.8 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:
 - (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 23.6, 23.7 or 23.8 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).

- 23.9** Before the start of the employee's annual leave the employer must pay the employee:
- (a) subject to clause 30.8, instead of the base rate of pay referred to in s.90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime had they not been on leave; and
 - (b) an additional loading of 17.5% of the relevant minimum wage for their classification as set out in this award.

23.10 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in this clause, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

23.11 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 23.9.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 23.9.
- (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 23.9 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 23.9 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.
- (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 23.9 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 23.11.

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 23.11.

LPA COMMENTARY

CLAUSE 24 – 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 25 – 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 26 – 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.

See also Schedule K – Public Holiday in South Australia

CLAUSE 26.3 – SPECIAL PROVISIONS FOR EMPLOYEES IN CINEMAS

Because Cinema employees (including managers) are paid the penalty averaging component in accordance with clause 14.12, **all** Cinema employees are paid at the rate of double the full-time hourly rate (including casual employees) for work on a Public Holiday. Full-time and part-time employees are paid for the hours worked, and casual employees are paid for a minimum of 3 hours. The casual loading is not paid for work on a Public Holiday.

Date of effect: 1 January 2010

Amended July 2014

Note 3: An example of the type of agreement required by clause 23.9 is set out at Schedule M. There is no requirement to use the form of agreement set out at Schedule M.

24. Personal/carer's leave and compassionate leave

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

25. Community service leave

Community service leave is provided for in the NES.

26. Public holidays

26.1 Public holidays are provided for in the NES.

26.2 Except as otherwise provided for in this award:

- (a) an employee (other than a journalist) required to work on a public holiday will be paid double time and a half with a minimum payment of four hours or be provided with an additional day off work;
- (b) by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days; and
- (c) an employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.

26.3 Special provisions for employees in cinemas

- (a) Clause 26.2 will not apply to employees in cinemas.
- (b) If a weekly employee is required to work on a day to be observed as a public holiday, then, in addition to receiving the normal rate of pay for working ordinary hours, employees will be paid at the rate of single time additional for the hours worked.
- (c) Casual employees will be entitled to receive double the full time permanent hourly rate for work on a public holiday.
- (d) A weekly 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 holiday.

PART 9: CINEMAS

LPA COMMENTARY

CLAUSE 53 - COVERAGE

This clause was inserted on 2 November 2012 to exclude Cinema employers from coverage by the Hospitality Industry or Restaurant Industry Awards.

Date of effect: 2 November 2012

CLAUSE 54 – TYPES OF EMPLOYMENT

The Award has been varied to allow full-time employees to be engaged, rostered and work either 76 hours over a 14 day cycle or 152 hours over a 28 day cycle. Similar arrangements can be made for part-time employees. Where employees work 152 hours over a 28 day cycle, there must be a written agreement between the employer and employee. Part-time employees will work less than 152 hours over the 28 day cycle.

Date of effect: 2 November 2012

Part 6—Cinemas

53. Coverage

No employer covered by this Part 9 and not otherwise covered by Part 6, 7, 8, 10, 11 or 12 shall be covered by the *Hospitality Industry (General) Award 2010* or the *Restaurant Industry Award 2010*.

54. Types of employment

54.1 At the time of engagement an employer will inform each employee in writing of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.

54.2 Full-time employment

- (a) A full-time employee is an employee who is engaged to work 76 hours per fortnight (or 152 hours in a 28 day cycle by written agreement between the employer and the employee, which may be terminated as provided in clause 55.1(d));
- (b) A full-time employee must be provided with a written statement setting out their classification, applicable pay scale and terms of engagement.

54.3 Part-time employment

- (a) A part-time employee is an employee who works less than 76 ordinary hours in a 14 day cycle (or less than 152 hours in a 28 day cycle by written agreement between the employer and the employee, which may be terminated as provided in clause 55.1(d)); has regular, reasonably predictable and continuous employment; and receives, on a pro rata basis at the rate of 1/38th of the weekly rate, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) An employer is required to roster a part-time employee for a minimum of four consecutive hours on any day or shift. An employer will offer to roster a part-time employee for a minimum of 8 hours in any consecutive 7 day period commencing on a Thursday.
- (c) All hours worked in excess of full-time hours will be overtime and will be paid as such.

54.4 Casual employment

- (a) A casual employee is an employee engaged as such and paid by the hour. An employer when engaging a casual must inform the employee that they are employed as a casual, of their hours of work, classification level and rate of pay.

LPA COMMENTARY

CLAUSE 55.1 – HOURS OF WORK

Full-Time Employees

The ordinary hours of work shall be 76 per 14 day cycle (or 152 per 28 day cycle by agreement) and can be worked on any day Monday through to and including Sunday between the hours of 8.00 a.m. and 1.00 a.m. The minimum number of ordinary hours which may be worked shall be 4 hours and the maximum 8 hours (10 hours by agreement) on any day, which must be consecutive, except for meal breaks.

Part-time employees

Part time employees are engaged to work a set number of hours per each 14 day (or 28 day by agreement) work cycle (in writing, less than a full time employee), which can be worked on any day Monday through to and including Sunday between the hours of 8.00 a.m. and 1.00 a.m. This set number of hours can be varied by written agreement. The minimum number of ordinary hours which may be worked shall be 4 hours and the maximum 8 hours (10 hours by agreement) on any day, which must be consecutive, except for meal breaks. Part-time employees may agree to be employed full-time during school holidays.

Casual employees

The minimum number of ordinary hours which may be worked shall be 3 hours and the maximum 8 hours (10 hours by agreement) on any day, Monday through to and including Sunday, between the hours of 8.00 a.m. and 1.00 a.m., and such hours shall be consecutive, except for meal breaks.

Training Session or Meetings

The minimum call on full pay for a training session or meeting authorised by the employer will be 2 hours and not 3 hours (casual) or 4 hours (weekly employee).

CLAUSE 55.2 - ROSTERS

From 2 November 2012, a number of changes apply to rosters. The procedure is now as follows:

- A draft roster is to be posted on Friday
- A final roster is to be posted on Monday afternoon for the week starting on Thursday
- Changes to the final roster can be made by agreement between the employer and the individual employee affected
- Changes at short notice are allowed without penalty or agreement if they are due to **unforeseen operational requirements**
- Otherwise, changes to the roster require the employee to be paid double the ordinary rate for hours worked outside the roster

Date of effect: 1 January 2010

Amended: 2 November 2012

- (b) A casual employee must be paid at the relevant minimum hourly wage plus a loading of 25%. Such loading is paid instead of all paid leave including annual leave, personal/carers leave and public holidays not worked whether prescribed in this award or the NES.
- (c) Casual employees must be paid at the termination of each engagement but may agree to be paid weekly or fortnightly.
- (d) Casual employees are entitled to a minimum payment of three hours' pay on each occasion they are required to attend for work.

55. Ordinary hours of work and rostering

55.1 Hours of work

- (a) Ordinary hours of work can be any hours worked on any of the days Monday through to and including Sunday provided that ordinary hours worked between 1.00 am and 8.00 am on any day will be paid at the rate of double time.
- (b) Full-time employees must work 76 ordinary hours in a 14 day cycle (or 152 ordinary hours in a 28 day cycle by written agreement between the employer and employee). Ordinary hours must be worked in periods of rostered ordinary hours of not more than eight consecutive hours or 10 consecutive hours by agreement between the employer and employee, and not less than four hours which must be consecutive other than for meal breaks.
- (c) Part-time employees will be required to work an agreed number of ordinary hours in a 14 day cycle (or a 28 day cycle by written agreement). The agreement about ordinary hours to be worked will be in writing and may be changed at any time by agreement between the employer and employee which will also be in writing. Part-time employees may by agreement be employed as full-time employees during school holidays.
- (d) Where there is a written agreement to work ordinary hours in a 28 day cycle, the employer or the employee may, on 28 days' notice in writing to the other party, terminate the agreement and the employee will commence or resume working ordinary hours in a 14 day cycle from the next roster cycle commencing after the expiration of 28 days from the giving of notice.
- (e) Casual employees will work a minimum of three consecutive hours excluding meal breaks required by the award.
- (f) Any employee required to attend a meeting arranged or authorised by the employer or any structured training session shall be paid a minimum of two hours ordinary pay.

55.2 Rosters

- (a) The employer will post a draft roster on the Friday and will post a final roster on the Monday afternoon before the start of the week to be worked. The start of the week is a Thursday.

LPA COMMENTARY

CLAUSE 56 – MEAL BREAKS

An unpaid meal break of at least 30 minutes must be given to an employee for each period of 5 hours worked. If an employees' shift is longer than 5 hours, the meal break can be given at any time during the shift, as long as the employee does not work in excess of 5 continuous hours. If the employee works continuously for more than 5 hours, the period of the meal break is to be paid at double time after which they go back to being paid at their normal rate of pay. If an employee agrees, the meal break can be up to 1 hour in duration.

Date of effect: 1 January 2010

- (b) Where a change to the final roster is required to be made, an agreement between the employer and the employee is required.
- (c) The employer can change the roster at short notice without agreement due to unforeseen operational requirements. However if the employer changes the roster for other reasons, employees will be paid double the ordinary rate for hours worked outside the original roster.
- (d) To the extent practicable, the rostering process shall be undertaken in consultation with individual employees affected.

56. Meal Breaks

The employer must allow a meal break of 30 minutes or, if the employee and the employer agree, up to one hour when employees are working a rostered period of work in excess of five hours unless that rostered work period would end within that meal break. Employees required to work beyond five hours without a meal break will be paid double the ordinary rate for the period of the meal break.

57. Special allowances

57.1 Removal allowance

Where an employee is appointed or transferred to a theatre and the employer requires the employee to reside in a particular suburb, town or State, then the cost of removal necessarily incurred will be paid to the employee by the employer.

57.2 Working away from usual place of work

An employee engaged by the week who, while travelling away from home on duty, is required to provide their own board and lodging will be paid a travelling allowance of \$81.88 per day to a maximum of \$409.41 per week.

57.3 Zone managers—additional allowances

- (a) A zone manager will, in addition to the ordinary wage, be paid the following allowance for each additional theatre supervised:

	Allowance for each additional theatre supervised per week	Maximum allowance per week
	% of <u>standard rate</u>	% of <u>standard rate</u>
Zone 1	5.38	32.29
Zone 2	3.77	22.73

- (b) Zone 1 applies to cinemas in the central city areas of the capital cities of the States of the Commonwealth and the City of Newcastle or any cinemas regularly giving three or more performances daily.

LPA COMMENTARY

CLAUSE 58 – OVERTIME AND PENALTY RATES

Full-Time Employees

If an employee works more than 76 hours or 10 days in a 14 day work cycle (or 152 hours or 20 days in any 28 day cycle by written agreement), (exclusive on any overtime paid for on a daily basis), weekly overtime is to be paid at the rate of time and a half for the first 2 hours and double time thereafter. This situation would occur if you asked an employee to work on one of their days off, or where the employee has worked the 76 hours in 7.6 days (10 per day), and worked additional hours on the 9th and 10th days.

A weekly employee who works more than 8 hours per day (10 hours by agreement) shall be paid at the rate of time and a half for the first 2 hours and double time thereafter. Each day's work is counted separately for overtime purposes, and meal breaks are not included.

Casual Employees

As for weekly employees, a casual employee who works more than 8 hours per day (10 hours by agreement) shall be paid at the rate of time and a half for the first 2 hours and double time thereafter. Each day's work is counted separately for overtime purposes, and meal breaks are not included.

CLAUSE 58.3 – ALL CINEMA WORKERS

A 10 hour break is required between the finish of one shift (which could include overtime) and the start of ordinary work on the next day or shift. If this does not occur, then the employee should be paid at the rate of double time until they are released. However, **an employee may request that the break be reduced to 8 hours so long as this will not compromise work health and safety standards.**

This clause does not apply if the employee voluntarily swaps their shift, thereby curtailing their 10 hour break.

CLAUSE 58.4 – TIME OFF INSTEAD OF PAYMENT OF OVERTIME was deleted by the Fair Work Commission on 1 July 2018. See Clause 22A on page 67.

Date of effect: 1 January 2010

Amended: 12 July 2018

- (c) Zone 2 applies to drive-in theatres and all other cinemas other than those in the Zone 1.

58. Overtime and penalty rates

58.1 Full-time and part-time employees

- (a) Work for more than 76 ordinary hours, or on more than 10 days in any 14 day cycle (or more than 152 ordinary hours, or more than 20 days in any 28 day cycle, by written agreement between the employer and employee), is overtime. The employer will pay for this overtime at the rate of time and a half for the first two hours and double time after that.
- (b) Work for more than eight hours on any day or 10 hours by agreement between the employer and employee is overtime. The employer will pay for this overtime at the rate of time and a half for the first two hours and double time after that.

58.2 Casual employees

- (a) Work for more than eight consecutive hours on any day or 10 consecutive hours by agreement between the employer and employee is overtime. The employer will pay for this overtime at the rate of time and a half for the first two hours and double time after that.
- (b) Each day's work will be considered separately for the purposes of overtime. The employer will not count meal breaks when adding up hours of overtime.

58.3 All cinema employees

- (a) Employees must have at least 10 consecutive hours off duty between the end of each shift and starting ordinary work on the next day or shift. Where the employer is satisfied that occupational health and safety standards will be met, an employee may request and the employer may agree that a break of not less than 8 hours be substituted for the 10 hour break.
- (b) If the employer requires an employee to return to work before the employee has had 10 hours off duty (or 8 hours at the request of the employee), the employer will pay the employee double the actual ordinary rate until the employee is released from duty. Employees are then entitled to be absent until the completion of 10 consecutive hours off duty without loss of pay for ordinary working time during that absence.
- (c) An employee may voluntarily swap a work period or periods with another employee if the employer agrees. If this occurs, clause 58.3(d) will not apply.

- (d) Weekly employees will be free from duty for a minimum of two days each week and such days will be consecutive where reasonably possible. If any of the days are not given and taken, payment will be made at the rate of time and a half for the first two hours and double time after that for all hours so worked with a minimum payment for four hours.

SCHEDULES:

SCHEDULE A-DELETED

SCHEDULE E-CINEMAS

SCHEDULE I-SUPPORTED WAGE SYSTEM

SCHEDULE J-DELETED BY FWC

SCHEDULE K-2017 PART-DAY PUBLIC HOLIDAYS

**SCHEDULE L-AGREEMENT TO TAKE ANNUAL LEAVE IN
ADVANCE**

**SCHEDULE M-AGREEMENT TO CASH OUT ANNUAL
LEAVE**

**SCHEDULE N - AGREEMENT FOR TIME OFF INSTEAD OF
PAYMENT FOR OVERTIME**

LPA COMMENTARY

E.1 - CLASSIFICATIONS

Cinema Worker Level 1

The significant change is the new training classification for new employees. Training is for 100 hours and if the employee requests training in cash handling procedures, the employer cannot unreasonably refuse such request and will be required to provide an additional 30 hours training. Once such training is complete the employee is eligible to move to CW2 classification. If an employee does not want to be trained in cash handling procedures, the employee will remain on the CW1 classification. Typical duties include ticket taking, cleaning, ushering etc.

Cinema Worker Level 2

An employee engaged as a Cinema Worker Level 2 employee, is an employee who undertakes duties in a cinema which may include selling tickets, ushering, reception duties, candy bar attendant, cash handling duties etc. Such employees work under routine supervision either individually or in a team environment. Employees undergoing training in the bio-box will typically be supervised by an experienced bio-box operator who would usually be in attendance in the bio-box with the trainee.

Cinema Worker Level 3

An employee engaged as a Cinema Worker Level 3 employee, is an employee who usually supervises Level 1 employees, and may be required to undertake Level 2 duties whilst supervising. A Level 3 employee will also assist in training of Level 1 & 2 employees. Level 3 employees engaged in to work in the bio-box, will be supervised by a Level 4 employee, or an employee with Level 3 competencies. Such Level 3 employee does not have to be working in the bio-box. A Level 3 employee may also be appointed as a Trainee Manager for a period of not more than 6 months.

Cinema Worker Level 4

An employee engaged as a Cinema Worker Level 4 employee, is an employee who may supervise Levels 1, 2 and 3 employees, may be responsible for the bio-box administration of the Cinema. A Level 4 employee may be required to maintain technical equipment, lighting of the cinema and supervise general technical operations.

Cinema Worker Level 5

.An employee engaged as a Cinema Worker Level 5 is an employee appointed as an Assistant Manager or Technical Manager.

Cinema Worker Level 6

An employee engaged as a Cinema Worker Level 6 is an employee appointed as a Cinema Manager and is responsible for the general operations of the cinema.

Date of effect: 2 November 2012

Schedule E—Cinema

E.1 Classifications

E.1.1 Cinema Worker Level 1

- a) A Cinema Worker Level 1 is an employee who is undertaking the necessary induction and training to perform work within the scope of this level.
- b) Indicative of the tasks which an employee at this level may perform are the following:
 - (i) cleaning and hygiene;
 - (ii) policy and procedures knowledge;
 - (iii) food and beverage preparation for sale;
 - (iv) stock replenishment;
 - (v) ticket tearing and customer assistance;
 - (vi) product presentation and service knowledge;
 - (vii) telephone skills;
 - (viii) ensuring customer comfort is maintained;
 - (ix) undertaking minor maintenance or repairs as required.
- c) Provided that no Cinema Worker Level 1 employee shall be required to handle cash except in the course of supervised training in cash handling tasks and in such circumstances the employee shall not be responsible for a correct balance of that cash. An employee who has completed 100 hours of service at Cinema Worker Level 1 may request cash handling training. The employer will not unreasonably refuse such a request. After 30 hours of such training and upon achieving the required level of competency for a Cinema Worker Level 2, the employee shall be classified at Cinema Worker Level 2.

E.1.2 Cinema Worker Level 2

- a) A Cinema Worker Level 2 is an employee who has completed necessary induction and training or is undertaking such training or who possesses equivalent experience or expertise required to perform work within the scope of this level.
- (b) Consistent with the employee's training an employee at this level:
 - (i) is responsible for the quality of work allocated to the employee, subject to routine supervision;
 - (ii) works under routine supervision either individually or in a team environment on a range of tasks;
 - (iii) exercises discretion within the employee's level of skill and training; and

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- (iv) makes decisions in relation to routine matters within their area of work.
- (c) Indicative of the tasks which an employee at this level may perform are the following:
 - (i) subject to the award and these definitions, operates flexibly as required between work areas;
 - (ii) basic keyboard duties;
 - (iii) provision of customer service;
 - (iv) ushering;
 - (v) telephonist, receptionist, selling tickets, cashier and information services. Provided that no employee required to handle cash will be held responsible for a correct balance of that cash if another employee, supervisor or manager has access to it;
 - (vi) preparing for sale and selling food and drink items and where required prepare, cook and quality assure all food items in any of the food outlet preparation areas in the cinema complex;
 - (vii) assisting other workers in any of these tasks;
 - (viii) training as a bio-box operator subject to routine supervision. An employee undertaking training in the bio-box will undergo a performance appraisal at six months and, subject to fulfilling the employer requirements for level 3, be promoted to that level;
 - (ix) cleaning, when specifically engaged as such;
 - (x) general maintenance as required.

E.1.3 Cinema Worker Level 3

- a) A Cinema Worker Level 3 is an employee who performs work within the scope of this level using applied knowledge and necessary skills.
- b) Consistent with their training and in addition to the competencies and tasks performed by an employee at level 1, and level 2:
 - (i) solves straightforward problems using readily available information;
 - (ii) works to complex instructions and procedures;
 - (iii) provides supervision and assists with training levels 1 and 2 employees;
 - (iv) organises and allocates work, materials and equipment in an efficient and effective manner; and
 - (v) is responsible for work undertaken.
- c) Tasks which an employee at this level may perform are:
 - (i) indicative tasks for level 2 employees;
 - (ii) supervision of levels 1 and 2 employees;

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- (iii) assist in training of levels 1 and 2 employees; and
 - (iv) undertake bio-box duties consistent with level 3 competencies subject to direction by a level 4 employee or a cinema operator who possesses level 4 competencies. Such direction may not necessarily involve constant supervision in the bio-box.
- d) A Cinema Worker Level 3 is also a person appointed as a trainee manager, under the supervision of a manager or assistant manager for a period of not more than six months, engaged in training for the duties of an assistant manager or manager. A trainee manager will not be left in charge of a theatre, except in the case of an emergency. A part-time and/or casual trainee manager will complete the equivalent of six months full-time training before being eligible to be appointed as assistant manager and/or manager.

E.1.4 Cinema Worker Level 4

- a) A Cinema Worker Level 4 is an employee who applies knowledge and skills to enable the employee to perform work at this level.
- b) In addition to competencies and tasks performed by level 3 employees, and consistent with the employee's training, an employee at level 4:
- (i) is responsible for the projection area;
 - (ii) supervises work of employees at levels 1, 2 and 3;
 - (iii) understands and applies quality control techniques;
 - (iv) performs work under limited supervision either individually or in a team environment;
 - (v) exercises discretion within the scope of this level;
 - (vi) may be responsible as required for the administration of the cinema; and
 - (vii) may be operationally responsible for food preparation department covering day-to-day operations to ensure efficient delivery of food ensuring adherence to standard recipe cards and food hygiene requirements.
- c) Tasks which an employee at level 4 may perform are:
- (i) indicative tasks for level 3 employees;
 - (ii) machine setting, loading and preparation within the employee's levels of skill and training;
 - (iii) supervision of levels 1, 2 and 3 employees;
 - (iv) programming preparation and programming;
 - (v) bio-box administration and report preparation;
 - (vi) identifying technical problems;

- (vii) training level 1, 2 and 3 employees;
- (viii) maintenance of technical equipment;
- (ix) maintenance of lighting throughout the cinema; and
- (x) supervising and directing general technical operations throughout the cinema complex, including computer systems. This may include, but not be limited to local management of film content, including playlists and alternate content; identifying and resolving technical issues; maintenance of all projector lighting; completing local repairs and maintenance, or arranging for work to be completed.

E.1.5 Cinema Worker Level 5

A Cinema Worker Level 5 is a person appointed as an assistant manager or technical manager who assists a manager of a theatre in carrying out the duties of a manager as provided in this award and who is called upon to carry out the duties and responsibilities of a manager during the absence of a manager from the theatre.

E.1.6 Cinema Worker Level 6

A Cinema Worker Level 6 is a person who is appointed as a manager and:

- a) who is responsible for the general operations at the theatre; and
- b) who is responsible for one or more of the following:
 - (i) advertising;
 - (ii) supervision of maintenance and cinema staff;
 - (iii) employment;
 - (iv) training;
 - (v) checking, safekeeping and banking of cinema funds and receipts;
 - (vi) payment of salaries and wages and/or accounts;
 - (vii) preparation and keeping of records;
 - (viii) programming of films as directed;
 - (ix) supervising and directing the programming of films for the entertainment of the customer as required by their employer. In doing so, where the screening of a film classified as restricted under the relevant legislation governing the censorship classification of films results in a prosecution against a manager or assistant manager, the employer will pay all fines and costs resulting from such prosecution unless the prosecution results from the wilful default of such manager or assistant manager.

E.1.7 Zone Manager means a person who in addition to working in a theatre as a manager exercises supervision, control or direction over another manager or managers in another theatre or theatres.

Schedule I—Supported Wage System

I.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.

I.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 Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

I.3 Eligibility criteria

I.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.

I.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.

I.4 Supported wage rates

I.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 I.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

I.4.2 Provided that the minimum amount payable must be not less than \$78 per week.

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

I.5 Assessment of capacity

I.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.

I.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.

I.6 Lodgement of SWS wage assessment agreement

I.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.

I.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.

I.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.

I.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.

I.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.

I.10 Trial period

I.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.

I.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.

I.10.3 The minimum amount payable to the employee during the trial period must be no less than \$86 per week.

I.10.4 Work trials should include induction or training as appropriate to the job being trialled.

I.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 I.5.

Schedule K—2017 Part-day Public Holidays

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

K.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 NI.2(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.

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- (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 NI.2(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 L—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 M—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 N—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___