

Clerks—Private Sector 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.

The following parts of the Award HAVE been updated:

- Parts 4 Minimum Wages, Classifications and Related Matters – Clause 16 (Minimum weekly wages) and Clause 19.3(a) Meal allowance.
- Part 6 – Leave and Public Holidays; Clause 29 (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 16, with relevant classifications in Schedule B.

CLAUSE 1 – TITLE

This award provides minimum terms and conditions of employment for all award-covered clerical or administrative employees in the private sector, except for those that are covered by the Live Performance Award 2010.

CLAUSE 2 – COMMENCEMENT & TRANSITIONAL

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

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

Part 1—Application and Operation of Award

1. Title

This award is the *Clerks—Private Sector 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

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

Amended: June 2013

- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

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

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)

clerical work includes recording, typing, calculating, invoicing, billing, charging, checking, receiving and answering calls, cash handling, operating a telephone switchboard and attending a reception desk

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

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

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

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

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

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

LPA COMMENTARY

CLAUSE 4 - COVERAGE

The Award covers all clerical work performed by employees of private sector employers engaged in the Exhibition and Cinema Industries. **Clerical work** 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).

Clerical and administrative employees can be represented by anyone or any union, but are excluded from MEAA's coverage. Technically such employees are covered by the Australian Services Union.

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

Date of effect: 1 January 2010

Amended: July 2018

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

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

standard rate means the minimum weekly wage for a Level 2, Year 1 in clause 16—Minimum weekly 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 in the private sector throughout Australia with respect to their employees engaged wholly or principally in clerical work, including administrative duties of a clerical nature, and to those employees. However, the award does not cover:

- (a) an employer bound by a modern award that contains clerical classifications; or
- (b) an employee excluded from award coverage by the Act.

- 4.2** 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.

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

- 4.4** This award covers any employer which supplies on-hire employees in classifications set out in 0Schedule B —Classifications and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. This subclause operates subject to the exclusions from coverage in this award.

- 4.5** This award covers employers which provide group training services for trainees engaged in any of the occupations set out at 0Schedule B —Classifications 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.

4.6 Without limiting the generality of the foregoing this award does not cover employers covered by the following industry awards with respect to employees covered by the awards:

- the *Aged Care Award 2010*;
- the *Airline Operations—Ground Staff Award 2010*;
- the *Airport Employees Award 2010*;
- the *Alpine Resorts Award 2010*;
- the *Animal Care and Veterinary Services Award 2010*;
- the *Banking, Finance and Insurance Award 2010*;
- the *Black Coal Mining Industry Award 2010*;
- the *Business Equipment Award 2010*;
- the *Contract Call Centres Award 2010*;
- the *Educational Services (Post-Secondary Education) Award 2010*;
- the *Educational Services (Schools) General Staff Award 2010*;
- the *Fitness Industry Award 2010*;
- the *General Retail Industry Award 2010*;
- the *Health Professionals and Support Services Award 2010*;
- the *Higher Education Industry—General Staff—Award 2010*;
- the *Hospitality Industry (General) Award 2010*;
- the *Legal Services Award 2010*;
- the *Market and Social Research Award 2010*;
- the *Rail Industry Award 2010*;
- the *Restaurant Industry Award 2010*;
- the *Sporting Organisations Award 2010*; or
- the *Telecommunications Services Award 2010*.

4.7 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.

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 & DISPUTE
RESOLUTION

LPA COMMENTARY

CLAUSE 8 – CONSULTATION REGARDING MAJOR WORK CHANGE

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

The FWO has developed a Best Practice Guide for consultation and co-operation in the workplace, which can be downloaded here:

<http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/consultation-and-cooperation-in-the-workplace>

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.

LPA COMMENTARY

CLAUSE 9 – DISPUTE RESOLUTION

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

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

The FWO has developed a Best Practice Guide for dispute resolution, which can be downloaded here: <http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/effective-dispute-resolution>

Date of effect: 1 January 2010

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 – FULL-TIME EMPLOYMENT

Full-time clerical employees are engaged to work 38 hours per week; if they work more than this, then they should receive penalty rates in accordance with clause 25. However, clause 23.1 allows clerical employees that are not shiftworkers (ie. that are not working 24/7) to work an **average** of 38 hours a week. This can be calculated over a 4 week period, or over an agreed roster cycle. According to clause 22.4, the Employee accrues a credit for each 1 day the Employee works more than the daily average of ordinary hours and a debit for each absence from work that is not a form of paid leave (annual, personal/carer's, public holiday, jury service etc.) or part thereof.

CLAUSE 11 – PART-TIME EMPLOYMENT

Part-time employees are engaged to work less than full-time hours and should have reasonably predictable hours of work which are agreed up on at the commencement of the engagement. Any variation to the regular pattern of work should be agreed between the Employer and the Employee and recorded in writing. They should receive equivalent pay and conditions to those of full-time employees on a pro rata basis. Any hours worked by a part-time employee in excess of those agreed upon (in writing) constitute overtime and should be paid as such in accordance with clause 25.

Part-time employees should be rostered on for **at least 3 hours for each shift**.

CLAUSE 12 – CASUAL EMPLOYMENT

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

The casual loading in the Award is 25%.

The Award also provides for a **minimum casual call** of 3 hours

Date of effect: 1 January 2010

Updated July 2014

Part 3—Types of Employment and Termination of Employment

10. Full-time employment

A full-time employee is an employee who is engaged to work the number of hours regarded as the full-time hours at the particular workplace. The full-time hours must be 38 or less per week.

11. Part-time employment

- 11.1** A part-time employee is an employee who is engaged to perform less than the full-time hours at the workplace on a reasonably predictable basis.
- 11.2** Part-time employees are entitled on a pro rata basis to equivalent pay and conditions to those of full-time employees.
- 11.3** 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 numbers of hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
- 11.4** Changes in hours may only be made by agreement in writing between the employer and employee. Changes in days can be made by the employer giving one week's notice in advance of the changed hours.
- 11.5** An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- 11.6** All time worked in excess of the hours as agreed under clause 11.3 or varied under clause 11.4 will be overtime and paid for at the rates prescribed in clause 27—Overtime rates and penalties (other than shiftworkers).
- 11.7** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

12. Casual employment

- 12.1** A casual employee is an employee engaged as such.

LPA COMMENTARY

CLAUSE 13 – 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...

- 12.2 A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.
- 12.3 Casual employees must be paid at the termination of each engagement, or weekly or fortnightly in accordance with usual payment methods for full-time employees.
- 12.4 Casual employees are entitled to a minimum payment of three hours' work at the appropriate rate.

13. Termination of employment

- 13.1 Notice of termination is provided for in the NES.

13.2 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.

13.3 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.

14. Redundancy

- 14.1 Redundancy pay is provided for in the NES.

14.2 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.

LPA COMMENTARY

CLAUSE 13 – 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 Commission if the employee were to make a claim for unfair dismissal. The Code and checklist can be downloaded at: [:https://www.fwc.gov.au/about-us/legislation-regulations/small-business-fair-dismissal-code](https://www.fwc.gov.au/about-us/legislation-regulations/small-business-fair-dismissal-code)

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

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

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

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

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

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

14.3 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.

14.4 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 13.3.

14.5 Transitional provisions – NAPSA employees

This clause has been deleted March 2015.

LPA COMMENTARY

CLAUSE 14 - 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 FWC 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.

14.6 Transitional provisions – Division 2B State employees

This clause has been deleted March 2015.

PART 4:
MINIMUM WAGES,
CLASSIFICATIONS & RELATED
MATTERS

Part 4—Minimum Wages, Classifications and Related Matters

15. Classifications

- 15.1** All employees covered by this award must be classified according to the structure set out in Schedule B —Classifications and paid the minimum wage in clause 16— Minimum weekly wages. Employers must advise their employees in writing of their classification and of any changes to their classification.
- 15.2** The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.
- 15.3** ‘Year’ in respect to the minimum weekly wages in clause 16 shall mean any service within the classification level of clerical work, including administrative duties of a clerical nature. The onus is on the employee to provide reasonable evidence to verify their service within the industry.

16. Minimum weekly wages

Classification	Per week \$
Level 1—Year 1	764.70
Level 1—Year 2	802.50
Level 1—Year 3	827.60
Level 2—Year 1	837.40
Level 2—Year 2	852.90
Level 3	884.50
Call centre principal customer contact specialist	890.70
Level 4	928.80
Level 5	966.50
Call centre technical associate	1058.70

LPA COMMENTARY

CLAUSE 17 – ANNUALISED SALARIES

This clause allows an employer to pay an employee an annual salary instead of a weekly salary. However, the annual salary must at least meet the entitlements that the employee would receive if they were paid a weekly wage, including the minimum rate set out in clause 16, allowances, annual leave loading and any overtime or penalty rates. Employers may choose to “buy-out” a certain amount of overtime in the annual salary, but if they choose to do so the amount that is bought out should be specifically identified so that there are clear employee records available for the employer, the employee and any inspectors. For instance, the employer may buy-out 6 hours of overtime paid at time and a half per week. The employee is paid this amount whether they work the overtime or not, but if they work more overtime than has been bought-out then they should be paid the additional amount in accordance with the relevant provision of the Award.

Date of effect: 1 January 2010

17. Annualised salaries

17.1 Annual salary instead of award provisions

- (a) An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:
 - (i) clause 16—Minimum weekly wages;
 - (ii) clause 19—Allowances;
 - (iii) clauses 27 and 28—Overtime and penalty rates; and
 - (iv) clause 29.3—Annual leave loading.
- (b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.

17.2 Annual salary not to disadvantage employees

- (a) The annual salary must be no less than the amount the employee would have received under this award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (b) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

17.3 Base rate of pay for employees on annual salary arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 16—Minimum weekly wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

LPA COMMENTARY

CLAUSE 18 – JUNIORS

AGE	Percentage of Adult Wage
Under 16 years	45%
16 years	50%
17 years	60%
18 years	70%
19 years	80%
20 years	90%

Updated July 2014

CLAUSE 19.1 – TRANSPORT OF EMPLOYEES – SHIFTWORKERS

This allowance would most likely not be applicable for LPA Members, as it only applies to “shiftworkers” who work over 24 hours a day, 7 days a week.

CLAUSE 19.2 – CLOTHING AND FOOTWEAR

This allowance only applies to employees that are required to wear a uniform, ie. clothing that has the employer’s name or logo on it, and are required to launder their own uniform. If the employer provides the uniform, then they do not need to reimburse the employee for the cost of it. If the employer cleans the uniform for the employee, then no allowance is payable.

Date of effect: 1 January 2010

18. Juniors

Junior employees must be paid the following percentage of the appropriate wage rate in clause 16.

Age	%
Under 16 years of age	45
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

19. Allowances

19.1 Transport of employees—shiftworkers

When an employee working shiftwork commences or finishes work at a time other than the employee's normal time of commencing or finishing and when reasonable means of transport is not available, the employer will reimburse the employee an amount equal to the cost of any transport which allows the employee to reach the employee's home by other means of transport, unless the employer provides suitable transport.

19.2 Clothing and footwear

- (a) The employer will reimburse employees engaged in work damaging to clothing (for example, the use, maintenance or running repairs of office machines or in the receiving and/or despatch of goods) an amount equal to the cost of uniforms and/or protective clothing, except where uniforms and/or protective clothing are provided free of charge by the employer.
- (b) The employer will reimburse employees who are constantly required to work under conditions which are wet and damaging to footwear, (e.g. on surfaces periodically hosed down or in wet or muddy conditions) an amount equal to the cost of appropriate protective footwear, except where appropriate protective footwear is provided free of charge by the employer.

LPA COMMENTARY

CLAUSE 19.3 – MEAL ALLOWANCE

If an employee is not given 24 hours' notice of being required to work overtime, and the Employee then works more than 1.5 hours of overtime, the Employee should be paid a meal allowance of \$15.45.

CLAUSE 19.4 – 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.

CLAUSE 19.5 – LIVING AWAY FROM HOME

If the Employee is required to travel away from their home and temporarily work away from their usual place of residence, then the Employer should either provide transport, accommodation and cover reasonable expenses OR the Employee is to be reimbursed for these costs.

Date of effect: 1 January 2010

Updated July 2018

- (c) When an employee is required to wear and launder a uniform any cost of the uniform must be reimbursed and the employee must be paid the following applicable allowance:
 - (i) For a full-time employee - \$3.55 for laundry expenses per week;
 - (ii) For a part-time or casual employee – \$0.71 per shift.

19.3 Meal allowance

- (a) An employee required to work for more than one and a half hours of overtime without being given 24 hours' notice after the employee's ordinary time of ending work will be either provided with a meal or paid a meal allowance of \$15.45. Where such overtime work exceeds four hours a further meal allowance of \$12.37 will be paid.

19.4 Vehicle allowance

- (a) An employee required by the employer to use the employee's motor vehicle in the performance of duties must be paid the following allowances:
 - (i) **Motor cars**
\$0.78 per kilometre with a maximum payment as for 400 kilometres per week.
 - (ii) **Motorcycles**
\$0.26 per kilometre with a maximum payment as for 400 kilometres per week.
- (b) The employer must pay all expenses including registration, running and maintenance where an employer provides a motor vehicle which is used by an employee in the performance of the employee's duties.

19.5 Living away from home allowance

- (a) An employee, required by the employer to work temporarily for the employer away from the employee's usual place of employment, and who is required thereby to sleep away from the employee's usual place of residence, is entitled to the following:
 - (i) the payment of an allowance to cover all fares to and from the place at which the employer requires the employee to work; and
 - (ii) the payment of an allowance to cover all reasonable expenses incurred for board and lodging.
- (b) The allowances referred to in this clause are not payable where the fares and the board and lodging are provided by the employer.

LPA COMMENTARY

CLAUSE 19.6 – FIRST AID ALLOWANCE

If the Employee is appropriately qualified, and the Employer appoints them to perform first aid duty, then this allowance should be paid.

Date of effect: 1 January 2010

- (c) In addition to the above, the employee must receive payment at ordinary rates of pay for all time spent in travelling between the employee's usual place of employment and the temporary location, such paid time not to exceed eight hours in 24 hours.

19.6 First aid allowance

An employee who has been trained to render first aid, is the current holder of appropriate first aid qualifications such as a certificate from St John Ambulance Australia or a similar body and is appointed by an employer to perform first aid duty must be paid a weekly allowance of 1.5% of the [standard rate](#).

19.7 Higher duties allowance

An employee, when required to perform any of the duties in a classification higher than their usual classification for more than one day must be paid at least the rate which would be applicable if such duties were performed on a permanent basis.

19.8 District allowances

This clause has been deleted March 2015.

19.9 Adjustment of expense related allowances

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.

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Laundry allowance	Clothing and footwear group
Vehicle allowance	Private motoring sub-group

20. Accident make-up pay

This clause has been deleted March 2015

21. Supported wage system

See Schedule C

22. National training wage

- 22.1** Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- 22.2** 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 *Clerks—Private Sector Award 2010* and not the *Miscellaneous Award 2010*.

23. Payment of wages

- 23.1** Employees must be paid their wages weekly or fortnightly as determined by the employer or monthly if mutually agreed. Where payment is made monthly it must be on the basis of two weeks in advance and two weeks in arrears.

23.2 Method of payment

Wages must either be paid by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the employee.

23.3 Day off coinciding with payday

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with payday, such employee must be paid no later than the working day immediately following payday. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding payday.

23.4 Absences from duty under an averaging system

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following applies:

- (a) The employee will accrue a credit for each day the employee works ordinary hours in excess of the daily average.

LPA COMMENTARY

CLAUSE 24.1 – SUPERANNUATION LEGISLATION

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

- (b) The employee will incur a debit for each day of absence from duty other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service.
- (c) An employee absent for part of a day (other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service) will incur a proportion of the debit for the day, based upon the proportion of the working day that the employee was in attendance.

24. Superannuation

24.1 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, the superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

24.2 Employer contributions

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

24.3 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 24.2.
- (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 24.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 24.3(a) or (b) was made.

24.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 24.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) CareSuper;
- (b) AustralianSuper;
- (c) SunSuper;
- (d) HESTA;
- (e) Statewide Superannuation;
- (f) Tasplan;
- (g) REI Super;
- (h) 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
- (i) a superannuation fund or scheme which the employee is a defined benefit member of.

24.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.3(a) or (b) in the following circumstances:

- (a) Paid leave—while the employee is on any paid leave.
- (b) Work related injury or illness—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

PART 5:
HOURS OF WORK & RELATED
MATTERS

LPA COMMENTARY

CLAUSE 25 – ORDINARY HOURS OF WORK

Clerical employees can work up to 10 ordinary hours a day exclusive of unpaid meal breaks without being paid overtime. They can work:

- up to 38 ordinary hours in a week;
- an average of 38 ordinary hours per week with no more than 152 hours in 28 days; or
- an average of 38 ordinary hours per week over the period of an agreed roster cycle.

Please see clause 23.4 for how to calculate extra days or fewer days than the normal amount when averaging hours for the purposes of paying wages.

The spread of ordinary hours are Monday to Friday between 7.00 am and 7.00 pm and on Saturday from 7.00 am to 12.30 pm. Any hours in excess of the daily or weekly maximum, or outside the ordinary hours of work, are to be paid as overtime under clause 27.

For work performed on a **Saturday during ordinary hours** (7.00 am to 12.30 pm) the employee is entitled to be paid at the rate of time and a quarter (clause 27.2(a)).

Any other work performed on a Saturday outside ordinary hours is to be paid at the applicable overtime rate.

CLAUSE 25.4(A) – SUBSTITUTED ROSTERED DAYS OFF

An employee may substitute one rostered day off (RDO) for another. An employer may also substitute an RDO due to:

- a break down in machinery;
- a failure or shortage of electric power;
- to meet the requirements of the business in the event of rush orders; or
- some other emergency situation.

Date of effect: 1 January 2010

Part 5—Hours of Work and Related Matters

25. Ordinary hours of work (other than shiftworkers)

25.1 Weekly hours of work—day workers

- (a) The ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days, or an average of 38 over the period of an agreed roster cycle.
- (b) The ordinary hours of work may be worked from 7.00 am to 7.00 pm Monday to Friday and from 7.00 am to 12.30 pm Saturday. Provided that where an employee works in association with other classes of employees who work ordinary hours outside the spread prescribed by this clause, the hours during which ordinary hours may be worked are as prescribed by the modern award applying to the majority of the employees in the workplace.
- (c) Not more than 10 hours exclusive of meal breaks (except if paid for at overtime rates) are to be worked in any one day.

25.2 Altering spread of hours

The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or in appropriate circumstances, between the employer and an individual employee.

25.3 Notice of rostered days off

Where an employee is entitled to a rostered day off during the employee's work cycle, the employer must give the employee four weeks' notice in advance of the weekday the employee is to take off.

25.4 Substitute days

- (a) An employer may substitute the day an employee is to take off for another day in case of a break down in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.
- (b) An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.

LPA COMMENTARY

CLAUSE 25.4(c)-(d) – BANKING ROSTERED DAYS OFF

An employer and employee can agree (in writing) to establish a system of banking rostered days off (RDOs) which are to be taken at a later, mutually convenient, time with 5 days notice. Up to a maximum of 5 RDOs can be banked at a time. No penalties accrue on a substitute banked RDO, but the employer must keep a record (in the employee's time and wages record) of the banked RDOs and apply the average pay system during the weeks when a banked RDO is taken. If an employee terminates their employment before they take an RDO/s that has been banked, these days should be paid out at the rate of 1/5th of the average weekly pay over the past 6 months for each banked RDO that is untaken.

CLAUSE 26.1 – MEAL BREAKS

Clerical employees should have an unpaid meal break of 30-60 minutes, which should be taken no later than 4 hours after they start work for the day. If the employee misses their meal break, they should be paid at the rate of double time for the missed meal until the meal break is taken.

CLAUSE 26.2 – REST BREAKS

Clerical employees are entitled to 2 x 10 minute paid rest breaks during their shift each day. For example, a morning tea break and an afternoon tea break.

Date of effect: 1 January 2010

- (c) Where the working of the 38 hour week is agreed to in accordance with this clause, an employee and the employer may agree to a banking system of up to a maximum of five rostered days off. An employee would therefore work on what would normally have been the employee's rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employee and the employer, provided not less than five days' notice is given before taking the banked rostered day(s) off.
- (d) No payments or penalty payments are to be made to employees working under this substitute banked rostered day off. However the employer will maintain a record of the number of rostered days banked and will apply the average pay system during the weeks when an employee elects to take a banked rostered day off.
- (e) Employees terminating prior to taking any banked rostered day(s) off must receive one fifth of average weekly pay over the previous six months multiplied by the number of banked substitute days.
- (f) Employees who work on a rostered day off basis each 20 day cycle are entitled to 12 rostered days off in a 12 month period.

26. Breaks

26.1 Meal break

Subject to the provisions of clause 28—Shiftwork of this award, a meal period of not less than 30 minutes and not more than 60 minutes must be allowed to each employee. Such meal period must be taken not later than five hours after commencing work and after the resumption of work from a previous meal break. Employees required to work through meal breaks must be paid double time for all time so worked until a meal break is allowed.

26.2 Rest break

- (a) An employee must be allowed two 10 minute rest intervals to be counted as time worked on each day that the employee is required to work not less than eight ordinary hours. Each rest interval should be taken at a time suitable to the employer taking into account the needs of the business. If suitable to business operations, the first rest interval should be allowed between the time of commencing work and the usual meal interval and the second rest interval should be allowed between the usual meal and the time of ceasing work for the day.
- (b) An employee must be allowed one 10 minute rest interval to be counted as time worked on each day that the employee is required to work more than three but less than eight ordinary hours. The rest interval should be taken at a time suitable to the employer taking into account the needs of the business.

LPA COMMENTARY

CLAUSE 27 – OVERTIME RATES AND PENALTIES (OTHER THAN SHIFTWORKERS)

This clause applies to those employees that do not work 24/7.

CLAUSE 27.1 – PAYMENT FOR WORKING OVERTIME

Clerical employees are entitled to be paid overtime at the rate of time and a half for the first two hours and double time thereafter if they work more than:

- 10 hours in any one day;
- 38 hours in any one week, 152 hours in 28 days or an average of 38 hours a week (depending on the arrangements of the particular employer);
- For any work on a rostered day off that is not banked (clause 23.4(c)) or substituted (clause 23.4(a));
- If an employer requires the employee to return to the place of employment and work again after they have already left, then overtime is payable for a minimum of 3 hours;
- For work on a Saturday outside the ordinary working hours (ie. before 7.00am or after 12.30pm); or
- For part-time employees only, if they are required to work more than the agreed hours of work and there is no written agreement varying the hours of work.

CLAUSE 27.2 – PAYMENT FOR SATURDAYS AND SUNDAYS

For **any work on a Saturday**, even if it is performed during ordinary hours (7.00 am – 12.30 pm), a clerical employee is entitled to be paid at the rate of time and a quarter for such hours worked. Other work outside the ordinary working hours are to be paid as overtime in accordance with clause 25.1.

Clerical employees that are required to work on a Sunday should be paid at the rate of double time for a minimum of 4 hours, however they must also be available to work for 4 hours.

CLAUSE 27.3 & 27.4 – REST PERIOD AFTER OVERTIME & RETURN TO DUTY

After working any overtime, clerical employees are entitled to have a break of at least 10 hours before they commence work on the next day. If a full/part-time employee works so much overtime that there would not be a 10 hour break between finishing work on the overtime day and starting work at the normal hour the next day, then they are entitled to take the 10 hour break regardless of the fact that they would be missing ordinary working time and they are not to lose any pay for those ordinary working hours missed. If the employee does not receive the required 10 hour break, then they should be paid at the rate of double time until they are released from work and then they are entitled to a subsequent 10 hour break and are not to lose any pay for ordinary working time they may miss in taking that break.

Date of effect: 1 January 2010

- (c) An employee who works more than four hours overtime on a Saturday morning must be allowed a rest interval of 10 minutes without loss of pay between the time of commencing work and finishing work.

27. Overtime rates and penalties (other than shiftworkers)

27.1 Payment for working overtime

- (a) Employees working overtime:
 - (i) within the hours fixed in clause 25—Ordinary hours of work (other than shiftworkers), of this award but in excess of the hours fixed for an ordinary week's work; or
 - (ii) outside the hours fixed in clause 25 of this award;must be paid time and a half for the first two hours and double time thereafter calculated on a daily basis.
- (b) For the purposes of this clause hours fixed for an ordinary week's work means the hours of work fixed in an establishment in accordance with clause 25 of this award or varied in accordance with the relevant clauses of this award.
- (c) For the purposes of administering the provisions contained in this clause, the minimum period for which an employee must be paid overtime is one half hour per week.
- (d) An employee who works 38 hours Monday to Friday must be paid a minimum of three hours at overtime rates for work performed on a Saturday, provided that such employee is ready, willing and available to work such overtime.

27.2 Payment for working Saturdays and Sundays

- (a) Work within the spread of ordinary hours on Saturday will be paid at the rate of time and a quarter.
- (b) All work done on a Sunday must be paid for at the rate of double time.
- (c) An employee required to work on a Sunday is entitled to not less than four hours' pay at penalty rates provided the employee is available for work for four hours.

27.3 Rest period after overtime

- (a) When overtime work is necessary it must wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

LPA COMMENTARY

CLAUSE 27.5 – TIME OFF IN LIEU OF OVERTIME

Clerical employees may elect, with the consent of the employer, to take **time off in lieu** of payment for overtime. If taken during ordinary working hours, it is taken at the rate of one hour for each hour of overtime worked. If the time off in lieu is not taken within 4 weeks of it accruing, then the employer must pay out the employee that time at the applicable overtime rate.

Where the employee takes time off work during ordinary working hours, the employee may elect, with the consent of the employer, to work **make-up time**.

Any election by an employee to take time off in lieu or to make-up time should be **recorded on the employee's time and wages record in writing** and it should be **signed** by both the employer/employer's representative and the employee.

Date of effect: 1 January 2010

- (b) An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (d) Overtime worked in the circumstances specified in clause 27.4 must not be regarded as overtime for the purpose of this clause.
- (e) The provisions of this clause apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purposes of changing shift rosters;
 - (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace such shiftworker; or
 - (iii) where a shift is worked by arrangement between the employees themselves.
- (f) When an employee has not substituted nor banked the rostered day off and therefore works overtime on the rostered day off, the rate of pay must be calculated in accordance with the provisions of clause 27.1.

27.4 Return to duty

Where an employee is required to return to duty after the usual finishing hour of work for that day the employee must be paid at the overtime rates prescribed in clause 27.1(a) but must receive a minimum payment as for three hours' work. Provided that this clause does not apply where the work is continuous (subject to a meal break of not more than one hour) with the completion or commencement of ordinary working time.

27.5 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 27.5.

- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 27.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 27.5 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 27.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 27.5 as an employee record.
- (i) 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.

- (j) 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 27.5 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 27.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 27.5.

LPA COMMENTARY

CLAUSE 28 – SHIFTWORK

This clause does not apply unless employees are working over 24 hours, 7 days a week.

Date of effect: 1 January 2010

- (l) An employer must, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.

27.6 Make-up time

An employee may elect, with the consent of the employer, to work 'make-up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

28. Shiftwork

28.1 Definitions

In this clause:

- (a) **Afternoon shift** means any shift finishing after 7.00 pm and at or before midnight.
- (b) **Night shift** means any shift finishing after midnight, and at or before 7.00 am.
- (c) **Permanent night shift** means a night shift which does not rotate with another shift or shifts or day work and which continues for a period of not less than four consecutive weeks.

28.2 Altering span of hours

By agreement between the employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

28.3 Ordinary hours of work

- (a) The ordinary hours of work for shiftworkers are to be an average of 38 hours per week and must not exceed 152 hours in 28 consecutive days.
- (b) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (c) Not more than 10 ordinary hours are to be worked in any one day.

28.4 Hours, shift allowances, special rates, meal interval

- (a) Notwithstanding any other provisions of this award an employee may be employed on shifts, in which case the ordinary hours for a week's work are to be 38, and must be performed in shifts not exceeding six shifts of 10 hours each. A Sunday may be included.
- (b) Times of beginning and ending the shift of an employee may in any case be varied by agreement between the employer and the employee or in the absence of agreement may be varied by at least one week's notice given by the employer to the employee.
- (c) A shiftworker employed on an afternoon shift or a night shift must, for work done during the ordinary hours of any such shift, be paid ordinary rates plus an additional 15% for afternoon or night shift, or an additional 30% for a permanent night shift.
- (d) A shiftworker whose ordinary working period includes a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of the NES) as an ordinary working day must be paid at the rate of time and a half for such ordinary time as occurs on such Saturday, Sunday or public holiday.
- (e) Where ordinary shift hours commence between 11.00 pm and midnight on a Sunday or public holiday, the ordinary time so worked before midnight does not entitle the shiftworker to the Sunday or public holiday rate. Provided that the ordinary time worked by a shiftworker on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into a Sunday or public holiday is regarded as ordinary time worked on such Sunday or public holiday.
- (f) Twenty minutes must be allowed to a shiftworker for a meal during each shift before the expiration of five hours. Such meal break must be counted as time worked.

28.5 Overtime

A shiftworker for all time worked:

- (a) in excess of the ordinary weekly hours fixed in this clause must be paid time and a half for the first three hours and double time thereafter; or
- (b) in excess of ordinary daily hours on an ordinary shift must be paid time and a half for the first two hours and double time thereafter.

Clause 27.5—Time off instead of payment for overtime and clause 27.6—Make-up time, apply to shiftworkers as well as day workers.

28.6 Work on Saturday, Sunday or public holiday

A shiftworker whose ordinary working period does not include a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of the NES) as an ordinary working day must, if required to work on any such day be paid double time for work done with a minimum payment of four hours at double time if the employee is available for work during such four hours. This provision for minimum payment does not apply where the work on such day is continuous with the commencement or completion of the employee's ordinary shift.

28.7 Special rates not cumulative

The special rates prescribed are in substitution for and not in addition to the shift allowances prescribed.

PART 6:

LEAVE & PUBLIC HOLIDAYS

LPA COMMENTARY

CLAUSE 29 – 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% applies to any period of annual leave taken.

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.

The Fair Work Commission has developed new rules for the Clerks Private Sector Award 2010 regarding cashing out of annual leave, taking annual leave in advance and managing excessive annual leave balances.

New, model clauses have been inserted into this award with the goal of simplification and increased flexibility. **(See cl 29.4-29.9).**

Updated July 2018

Part 6—Leave and Public Holidays

29. Annual leave

29.1 Annual leave is provided for in the NES.

29.2 Definition of shiftworker

For the purpose of the additional week of annual leave provided for in the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.

29.3 Annual leave loading

(a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 16—Minimum weekly wages. Annual leave loading payment is payable on leave accrued.

(b) The loading is as follows:

(i) Day work

Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.

(ii) Shiftwork

Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.

29.4 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 29.4 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 29.4 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 29.4, 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.

29.5 Close-down

An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.

29.6 Excessive leave accruals: general provision

Note: Clauses 29.6 to 29.8 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 has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 29.2).
- (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 29.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 29.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

29.7 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 29.6(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 29.6, 29.7 or 29.8 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 29.7(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.

29.8 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 29.6(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 29.7(a) that, when any other paid annual leave arrangements (whether made under clause 29.6, 29.7 or 29.8 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 29.6, 29.7 or 29.8 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 (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 29.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

29.9 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 29.9.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 29.9.
- (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 29.9 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 29.9 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 29.9 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 29.9.

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 29.9.

Note 3: An example of the type of agreement required by clause 29.9 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

LPA COMMENTARY

CLAUSE 30 – 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 31 – 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 E – Part Day Public Holiday in South Australia

CLAUSE 32 – 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.

Date of effect: 1 January 2010

30. Personal/carer's leave and compassionate leave

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

30.2 Personal/carer's leave for casual employees

- (a) Casual employees are entitled to be not available for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency.
- (b) Such leave is unpaid. A maximum of 48 hours absence is allowed by right with additional absence by agreement.

31. Public holidays

31.1 Public holidays are provided for in the NES.

31.2 An employer and the employees may by agreement substitute another day for a public holiday.

31.3 Work on a public holiday or a substituted day must be paid at double time and a half. Where both a public holiday and substitute day are worked public holiday penalties are payable on one of those days at the election of the employee. An employee required to work on a public holiday is entitled to not less than four hours pay at penalty rates provided the employee is available to work for four hours.

32. Community service leave

Community service leave is provided for in the NES.

PART 7: SCHEDULES

SCHEDULE A – DELETED

SCHEDULE B – CLASSIFICATIONS

SCHEDULE C – SUPPORTED WAGE SYSTEM

SCHEDULE D – DELETED

SCHEDULE E – 2017 PART-DAY PUBLIC HOLIDAYS

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

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

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

Schedule B —Classifications

The classification criteria in this schedule provides guidelines to determine the appropriate classification level of persons employed pursuant to this award. In determining the appropriate level, consideration must be given to both the characteristics and typical duties/skills. The characteristics are the primary guide to classification as they indicate the level of basic knowledge, comprehension of issues, problems and procedures required and the level of supervision or accountability of the position. The totality of the characteristics must be read as a whole to obtain a clear understanding of the essential features of any particular level and the competency required. The typical duties/skills are a non-exhaustive list of duties/skills that may be comprehended within the particular level. They are an indicative guide only and at any particular level employees may be expected to undertake duties of any level lower than their own. Employees at any particular level may perform/utilise one such duty/skill, or many of them, depending on the particular work allocated.

The key issue to be looked at in properly classifying an employee is the level of competency and skill that the employee is required to exercise in the work they perform, not the duties they perform per se. It will be noted that some typical duties/skills appear in more than one level, however when assigning a classification to an employee this needs to be done by reference to the specific characteristics of the level. For example, whilst word processing and copy typing are first specifically mentioned at Level 2 in terms of typical duty/skill, it does not mean that as soon as an employee operates a word processor or typewriter they automatically become Level 2. They would achieve a Level 2 classification when they have achieved the level of skill and competency envisaged by the characteristics and the relevant indicative duty(ies)/skill(s) of a Level 2. Level 1 in this structure is to be viewed as the level at which employees learn and gain competence in the basic clerical skills required by the employer, which in most cases would lead to progression through the classification structure as their competency and skills increase and are utilised.

B.1 Level 1

B.1.1 Characteristics

Employees at this level may include the initial recruit who may have limited relevant experience. Initially work is performed under close direction using established practices, procedures and instructions.

Such employees perform routine clerical and office functions requiring an understanding of clear, straightforward rules or procedures and may be required to operate certain office equipment. Problems can usually be solved by reference to established practices, procedures and instructions.

Employees at this level are responsible and accountable for their own work within established routines, methods and procedures and the less experienced employees' work may be subject to checking at all stages. The more experienced employee may be required to give assistance to less experienced employees in the same classification.

B.1.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Reception/switchboard, e.g. directing telephone callers to appropriate staff, issuing and receiving standard forms, relaying internal information and initial greeting of visitors.
- (ii) Maintenance of basic records.
- (iii) Filing, collating, photocopying, etc.
- (iv) Handling or distributing mail including messenger service.
- (v) Recording, matching, checking and batching of accounts, invoices, orders, store requisitions, etc.
- (vi) The operation of keyboard and other allied equipment in order to achieve competency as prescribed in Level 2.
- (vii) Call centre customer contact trainee—customer contact functions with direct supervision.

B.2 Level 2

B.2.1 Characteristics

This level caters for the employees who have had sufficient experience and/or training to enable them to carry out their assigned duties under general direction.

Employees at this level are responsible and accountable for their own work which is performed within established guidelines. In some situations detailed instructions may be necessary. This may require the employee to exercise limited judgment and initiative within the range of their skills and knowledge.

The work of these employees may be subject to final checking and as required, progress checking. Such employees may be required to check the work and/or provide guidance to other employees at a lower level and/or provide assistance to less experienced employees at the same level.

B.2.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Reception/switchboard duties as in Level 1 and in addition responding to enquiries as appropriate, consistent with the acquired knowledge of the organisation's operations and services, and/or where presentation, and use of interpersonal skills are a key aspect of the position.
- (ii) Operation of computerised radio/telephone equipment, micro personal computer, printing devices attached to personal computer, dictaphone equipment, typewriter.

- (iii) Word processing, e.g. the use of a word processing software package to create, format, edit, correct, print and save text documents, e.g. standard correspondence and business documents.
- (iv) Stenographer/person solely employed to take shorthand and to transcribe by means of appropriate keyboard equipment.
- (v) Copy typing and audio typing.
- (vi) Maintenance of records and/or journals including initial processing and recording relating to the following:
 - reconciliation of accounts to balance;
 - incoming/outgoing cheques;
 - invoices;
 - debit/credit items;
 - payroll data;
 - petty cash imprest system; and
 - letters etc.
- (vii) Computer application involving use of a software package which may include one or more of the following functions:
 - create new files and records;
 - spreadsheet/worksheet;
 - graphics;
 - accounting/payroll file; and
 - following standard procedures and using existing models/fields of information.
- (viii) Arrange routine travel bookings and itineraries, make appointments.
- (ix) Provide general advice and information on the organisation's products and services, e.g. front counter/telephone.
- (x) Call centre customer contact officer grade 1 is employed to:
 - use known routines and procedures;
 - have some accountability for quality of outcomes;
 - receive calls;
 - use common call centre technology;
 - enter and retrieve data;
 - work in a team;

- manage own work under guidance; and
- provide at least one specialised service (sales and advice for products and services, complaints or fault enquiries or data collection surveys).

An employee who holds a Certificate II in Telecommunications (Customer Contact) or equivalent is to be classified at this level when employed to perform the functions defined.

B.3 Level 3

B.3.1 Characteristics

Employees at this level have achieved a standard to be able to perform specialised or non-routine tasks or features of the work. Employees require only general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgment in carrying out their assigned duties.

Such employees may be required to give assistance and/or guidance (including guidance in relation to quality of work and which may require some allocation of duties) to employees in Levels 1 and 2 and would be able to train such employees by means of personal instruction and demonstration.

B.3.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Prepare cash payment summaries, banking report and bank statements; calculate and maintain wage and salary records; follow credit referral procedures; apply purchasing and inventory control requirements; post journals to ledger.
- (ii) Provide specialised advice and information on the organisation's products and services; respond to client/public/supplier problems within own functional area utilising a high degree of interpersonal skills.
- (iii) * Apply one or more computer software packages developed for a micro personal computer or a central computer resource to either:
 - create new files and records;
 - maintain computer based records management systems;
 - identify and extract information from internal and external sources; or
 - use of advanced word processing/keyboard functions.
- (iv) Arrange travel bookings and itineraries; make appointments; screen telephone calls; respond to invitations; organise internal meetings on behalf of executive(s); establish and maintain reference lists/personal contact systems for executive(s).
- (v) Application of specialist terminology/processes in professional offices.
- (vi) Call centre customer contact office grade 2 is employed to:

- perform a broader range of skilled operations than grade 1;
- exercise some discretion and judgment in the selection of equipment, services or contingency measures;
- work within known time constraints;
- provide multiple specialised services to customers (including complex sales, service advice for a range of products or services, and difficult complaint and fault inquiries);
- deployment of service staff using multiple technologies; and
- exercise a limited amount of leadership over less experienced employees.

An employee who holds a Certificate III (Customer Contact) or equivalent is to be classified at this level when employed to perform the functions defined.

* Note: These typical duties/skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular level.

B.4 Call centre principal customer contact specialist

Employees at this level are employed to:

- perform a broad range of skilled applications;
- provide leadership as a coach, mentor or senior staff member, and provide guidance in the application and planning of skills;
- work with a high degree of autonomy with the authority to take decisions in relation to specific customer contact matters; and
- take responsibility for the outcomes of customer contact and resolve complex situations.

B.5 Level 4

B.5.1 Characteristics

Employees at this level will have achieved a level of organisation or industry specific knowledge sufficient for them to give advice and/or information to the organisation and clients in relation to specific areas of their responsibility. They would require only limited guidance or direction and would normally report to more senior staff as required. Whilst not a pre-requisite a principal feature of this level is supervision of employees in lower levels in terms of responsibility for the allocation of duties, co-ordinating work flow, checking progress, quality of work and resolving problems.

They exercise initiative, discretion and judgment at times in the performance of their duties.

They are able to train employees in Levels 1–3 by personal instruction and demonstration.

B.5.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Secretarial/executive support services which may include the following: maintaining executive diary; attending executive/organisational meetings and taking minutes; establishing and/or maintaining current working and personal filing systems for executive; answering executive correspondence from verbal or handwritten instructions.
- (ii) Able to prepare financial/tax schedules, calculating costings and/or wage and salary requirements; completing personnel/payroll data for authorisation; reconciliation of accounts to balance.
- (iii) Advising on/providing information on one or more of the following:
 - employment conditions;
 - workers compensation procedures and regulations; and
 - superannuation entitlements, procedures and regulations.
- (iv) *Applying one or more computer software packages, developed for a micro personal computer or a central computer resource to either:
 - creating new files and records;
 - maintaining computer based management systems;
 - identifying and extract information from internal and external sources;
or
 - using of advanced word processing/keyboard functions.
- (v) Call centre customer contact team leader is employed to:
 - perform a broad range of skilled applications;
 - evaluate and analyse current practices;
 - develop new criteria and procedures for performing current practices;
 - provide leadership in a team leader role and provide guidance to others in the application and planning of skills; and
 - work with a high degree of autonomy and exercise authority to take decisions in relation to specific customer contact matters.

An employee who holds a Certificate IV (Customer Contact) or equivalent is to be classified at this level when employed to perform the functions defined.

* Note: These typical duties/skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular level.

B.6 Level 5

B.6.1 Characteristics

Employees at this level are subject to broad guidance or direction and would report to more senior staff as required.

Such employees will typically have worked or studied in a relevant field and will have achieved a standard of relevant and/or specialist knowledge and experience sufficient to enable them to advise on a range of activities and features and contribute, as required, to the determination of objectives, within the relevant field(s) of their expertise.

They are responsible and accountable for their own work and may have delegated responsibility for the work under their control or supervision, including, scheduling workloads, resolving operations problems, monitoring the quality of work produced and counselling staff for performance and work related matters.

They would also be able to train and to supervise employees in lower levels by means of personal instruction and demonstration. They would also be able to assist in the delivery of training courses. They would often exercise initiative, discretion and judgment in the performance of their duties.

The possession of relevant post secondary qualifications may be appropriate but are not essential.

B.6.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Apply knowledge of organisation's objectives, performance, projected areas of growth, product trends and general industry conditions.
- (ii) Application of computer software packages within either a micro personal computer or a central computer resource including the integration of complex word processing/desktop publishing, text and data documents.
- (iii) Provide reports for management in any or all of the following areas:
 - account/financial;
 - staffing;
 - legislative requirements; and
 - other company activities.
- (iv) Administer individual executive salary packages, travel expenses, allowances and company transport; administer salary and payroll requirements of the organisation.
- (v) Call centre principal customer contact leader is employed to:
 - apply a significant range of fundamental principles and complex techniques across a wide and unpredictable variety of contexts in either varied or highly specialised functions;

- co-ordinate the work of a number of teams within a call centre environment; and
- have a number of specialists/supervisors reporting to them.

An employee who holds a Diploma—Front Line Management or equivalent is to be classified at this level when employed to perform the functions defined.

B.7 Call centre technical associate

A call centre technical associate is employed to:

- apply a significant range of fundamental principles and complex techniques across a wide and unpredictable variety of contexts in relation to either varied or highly specialised functions;
- contribute to the development of a broad plan, budget or strategy;
- work with a high degree of autonomy and be accountable and responsible for themselves and others in achieving outcomes (some supervision may be required);
- be involved in the design, installation and management of telecommunications computer equipment and system development;
- assess installation requirements;
- design systems;
- plan and perform installations; and
- install and manage data communications equipment and find faults.

LPA COMMENTARY

SCHEDULE C

The Supported Wage System scheme is a federal government scheme designed to assist jobseekers with a disability to find or retain ongoing work. Where a worker's disability limits their productive capacity, employers may pay a productivity-based wage following an independent assessment.

A person covered by the award is eligible to participate in the Supported Wage System if:

- They are an Australian citizen or is a person resident in Australia whose continued presence is not subject to a time limit imposed by Commonwealth law (eg a temporary visa), and
- They are at least 15 years of age, and
- They have no outstanding workers' compensation claim against the current employer, and
- They meet the impairment criteria for receiving the Disability Support Pension.

For further information, please contact Live Performance Australia.

Last updated 10 November 2016.

Schedule C—Supported Wage System

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

C.2 In this schedule:

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

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

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, 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 means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

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

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

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

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

C.7 Review of assessment

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

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

C.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

C.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

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

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

C.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

LPA COMMENTARY

SCHEDULE E – 2017 PART DAY PUBLIC HOLIDAYS

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

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

Therefore:

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

SCHEDULE F & G – TEMPLATE AGREEMENTS

Schedules F & G are template agreements relating to the changes to annual leave and time off in lieu provisions inserted in 2016, as part of the four-yearly review of the modern awards.

Whilst their use is not mandatory, members should ensure that if they use an alternative agreement, they meet the requirements set out in the relevant clause.

For further information, please contact Live Performance Australia.

Last updated 10 November 2016

Schedule E—2017 Part-day Public Holidays

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

E.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2014) or New Year's Eve (31 December 2014) 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 7.00 pm 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 7.00 pm 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 7.00 pm 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 7.00 pm 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 EE.1(f) applies, where an employee works any hours between 7.00 pm 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 7.00 pm and midnight.
- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause Schedule EE.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

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

Schedule F—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 G—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____

<p><i>Include if the employee is under 18 years of age:</i></p> <p>Name of parent/guardian: _____</p> <p>Signature of parent/guardian: _____</p> <p>Date signed: ____/____/20____</p>

Schedule H—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___