

PAY AND CONDITIONS GUIDE

Horticulture Award 2010 [MA000028] ('modern award')
replacing terms and conditions in or derived from

Horticultural Industry (State) Award [AN120247] ('pre-modern
award')

(NSW)

Effective from 01 July 2013.

Published 20 June 2013 

Background

This guide was developed by the Fair Work Ombudsman to assist employers and employees covered by this modern award, pre-modern award and pay scales derived from this pre-modern award to identify minimum wages, penalties, loadings and allowances.

Transitional arrangements

Modern awards commenced operation on 01 January 2010. However, minimum wage, loading and penalty entitlements commence from 01 July 2010. Almost all modern awards include provisions to 'transition' employers and employees from their pre-modern award to the modern award system.

This modern award includes transitional provisions that provide for the 'phasing in' of increases or decreases in minimum wages, penalties and loadings in the modern award in 5 increments over 4 years from 01 July 2010. All other terms and conditions in this modern award apply in full from 01 January 2010.

The rates in this guide are current from the first pay period on or after 01 July 2013. The rates set out in this guide will change from the first full period on or after 01 July each year to take account of Fair Work Australia's annual wage review and transitional arrangements. The rates may also change as a result of a Fair Work Australia decision to vary the modern award or pay and condition entitlements of the modern award from time to time.

Transitional arrangements for Division 2B State awards

Division 2B State awards (other than Division 2B enterprise awards) terminate at the end of 31 December 2010 and, from 1 January 2011, employers and employees are covered by the relevant modern award. However, most modern awards provide that all the terms of Division 2B State awards continue to apply until the end of the full pay period which started before 1 February 2011.

The employers affected include sole traders, partnerships, other unincorporated entities and non-trading corporations in New South Wales, Queensland, South Australia and Tasmania who are covered by a Division 2B State award.

From the first full pay period starting on or after 1 February 2011, an employer who was covered by a Division 2B State award, must comply with all of the terms and conditions contained in their relevant modern award, and any transitional arrangements that apply. Transitional arrangements in most modern awards for Division 2B State award employers provide that from the first full pay period starting on or after 1 February 2011, they must pay at least the same minimum wage rates, penalties and loadings as national system employers who are transitioning from the equivalent NAPSA. There are some exceptions and special transitional arrangements that apply in certain situations. If you require help determining whether these exceptions or special transitional arrangements apply to you, please contact the Fair Work Infoline on 13 13 94.

Note: Modern awards are not intended to reduce an employee's take-home pay. An employee or his/her union can apply to Fair Work Australia for a take-home pay order to remedy any reduction in his/her overall take-home pay.

Who should use the guide?

Employees and employers who were entitled to terms and conditions in or derived from this pre-modern award and who are now covered by this modern award.

A guide that has an AP (Pre-reform award) code typically applies to employees employed by a constitutional corporation. Usually these are companies that engage in trading or financial activities. Private companies are often identified by the 'Pty Ltd' in their name. It applies to employers in those categories who were bound by the award immediately prior to 01 January 2010.

A guide that has an AN (Notional agreement preserving State awards) code also typically applies to employees employed by a constitutional corporation. However, unlike pre-reform awards these are notional federal agreements that were created on 27 March 2006. Generally, they preserved the terms and conditions of employment (not including wage rates) in state awards and/or state legislation that applied immediately before 27 March 2006 to employees of constitutional corporations in NSW, QLD, SA, WA and TAS where State award/laws applied to those employers prior to 27 March 2006.

A guide that has an AT code typically applies to employees employed by non-constitutional corporations immediately before 27 March 2007 where the employer was bound by a Federal award. These will be sole traders, partnerships, other unincorporated entities or non-trading/financial corporations.

The guide contains information from this modern award about:

- who the modern award covers;
- wage rates, including rates for casual employees, junior employees, trainees and apprentices;
- penalty rates for working at particular times or under particular arrangements;
- allowances; and
- other conditions of employment.

What if an agreement applies to employees covered by the modern award?

Minimum wage entitlements in a modern award override lesser wage entitlements in an agreement or contract of employment at all times, including agreements and contracts that were made before the commencement of the *Fair Work Act 2009*. All employees covered by the modern award must not be paid less than the rate of pay in the modern award.

However, the penalty rates and allowances in the modern award do not apply to agreement-covered employees, unless the agreement is read in conjunction with the

modern award (e.g. a pre-reform certified agreement (a type of collective agreement made before 27 March 2006)).

If you require assistance with any provisions of this guide please contact the **Fair Work Infoline** on **13 13 94**.

Coverage

This industry award covers employers throughout Australia in the horticulture industry and their employees in the classifications listed in Schedule B— Classification Structure and Definitions, to the exclusion of any other modern award.

Horticulture industry means:

- agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations, or
- clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.

Horticulture industry does not mean:

- the wine industry
- silviculture and afforestation
- sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals
- any work in or in connection with cotton growing or harvesting
- cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed
- plant nurseries, or
- a broadacre mixed farming enterprise as defined in the Pastoral Award 2010.

The award does not cover an employee excluded from award coverage by the Act.

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.

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.

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

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

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

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

Wages

This modern award includes transitional arrangements that apply to minimum wage entitlements from the first pay period on or after 01 July 2010 until the first pay period on or after 01 July 2014 (when modern award wages commence in full).

The following wage tables set out base rates of pay for classifications under the modern award.

It also sets out how the modern award classification matches up with pre-modern award classification. If there is no classification match the employee may be covered by another pre-modern award, or another modern award, such as a modern award that covers the employee's occupation rather than the industry.

The base rates of pay in this guide include any applicable industry allowance. The base rates of pay also include any increase from Fair Work Australia's annual wage review. For more information about transitional arrangements for minimum wage entitlements, please visit www.fairwork.gov.au

Casual employees

The rates for casual employees set in the table below are minimum rates for **ordinary hours** only.

Please visit www.fairwork.gov.au for information about penalty entitlements for casual employees.

*Post 26 March 2006 employer

Wage rates for casual employees of employers that became part of the national system after 26 March 2006 do not include annual leave loading because those employees did not have a pre-modern award entitlement to annual leave loading.

Adult

The rates in this guide are current from the first pay period on or after 01 July 2013 until the final pay period before 01 July 2014 only.

Full & Part Time

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
Level 1	Farm employee level 1	\$16.37
Level 2	Farm employee level 2	\$16.85
Level 3	Farm employee level 3	\$17.48
Level 4	Farm employee level 4	\$17.99
Level 5	Farm employee level 5	\$19.07
Level 5	Farm employee level 6	\$19.07

Casual

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)	Post 26 March 2006 employer*
Level 1	Farm employee level 1	\$20.45 (24.92%)	\$20.14 (23%)
Level 2	Farm employee level 2	\$21.05 (24.92%)	\$20.72 (23%)
Level 3	Farm employee level 3	\$21.84 (24.92%)	\$21.50 (23%)
Level 4	Farm employee level 4	\$22.47 (24.92%)	\$22.12 (23%)
Level 5	Farm employee level 5	\$23.82 (24.92%)	\$23.45 (23%)
Level 5	Farm employee level 6	\$23.82 (24.92%)	\$23.45 (23%)

Pieceworkers

A full-time, part-time or casual employee may enter into an agreement to be paid piecework rates instead of the ordinary hourly rates of pay.

Work may only be paid for at piecework rates where the piecework rates agreed to enable the average employee working the ordinary hours of work to earn at least 15% more than the minimum hourly rate prescribed by this award for the type of employment and the work to be performed.

For further details on the piecework arrangements, see clause 15 of the award.

Junior

The rates in this guide are current from the first pay period on or after 01 July 2013 until the final pay period before 01 July 2014 only.

Full & Part Time

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
Level 1		
Under 16 years of age	Farm employee level 1	\$9.73
16 years of age	Farm employee level 1	\$11.08
17 years of age	Farm employee level 1	\$12.43
18 years of age	Farm employee level 1	\$13.78
19 years of age	Farm employee level 1	\$15.13
Level 2		
Under 16 years of age	Farm employee level 2	\$10.03
16 years of age	Farm employee level 2	\$11.42
17 years of age	Farm employee level 2	\$12.81
18 years of age	Farm employee level 2	\$14.20
19 years of age	Farm employee level 2	\$15.59
20 years of age	Farm employee level 2	\$16.85
Level 3		
Under 16 years of age	Farm employee level 3	\$10.34
16 years of age	Farm employee level 3	\$11.76
17 years of age	Farm employee level 3	\$13.19

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
18 years of age	Farm employee level 3	\$14.62
19 years of age	Farm employee level 3	\$16.05
20 years of age	Farm employee level 3	\$17.48
Level 4		
Under 16 years of age	Farm employee level 4	\$10.65
16 years of age	Farm employee level 4	\$12.13
17 years of age	Farm employee level 4	\$13.61
18 years of age	Farm employee level 4	\$15.10
19 years of age	Farm employee level 4	\$16.58
20 years of age	Farm employee level 4	\$17.99
Level 5		
Under 16 years of age	Farm employee level 5	\$11.21
16 years of age	Farm employee level 5	\$12.78
17 years of age	Farm employee level 5	\$14.35
18 years of age	Farm employee level 5	\$15.92
19 years of age	Farm employee level 5	\$17.49
20 years of age	Farm employee level 5	\$19.07

Casual

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)	Post 26 March 2006 employer*
Level 1			
Under 16 years of age	Farm employee level 1	\$12.15 (24.92%)	\$11.97 (23%)
16 years of age	Farm employee level 1	\$13.84 (24.92%)	\$13.63 (23%)
17 years of age	Farm employee level 1	\$15.53 (24.92%)	\$15.29 (23%)
18 years of age	Farm employee level 1	\$17.22 (24.92%)	\$16.95 (23%)
19 years of age	Farm employee level 1	\$18.90 (24.92%)	\$18.61 (23%)
Level 2			
Under 16 years of age	Farm employee level 2	\$12.53 (24.92%)	\$12.34 (23%)
16 years of age	Farm employee level 2	\$14.27 (24.92%)	\$14.05 (23%)
17 years of age	Farm employee level 2	\$16.00 (24.92%)	\$15.76 (23%)
18 years of age	Farm employee level 2	\$17.74 (24.92%)	\$17.47 (23%)
19 years of age	Farm employee level 2	\$19.47 (24.92%)	\$19.18 (23%)
20 years of age	Farm employee level 2	\$21.05 (24.92%)	\$20.72 (23%)
Level 3			
Under 16 years of age	Farm employee level 3	\$12.91 (24.92%)	\$12.71 (23%)
16 years of age	Farm employee level 3	\$14.70 (24.92%)	\$14.47 (23%)

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)	Post 26 March 2006 employer*
17 years of age	Farm employee level 3	\$16.48 (24.92%)	\$16.23 (23%)
18 years of age	Farm employee level 3	\$18.27 (24.92%)	\$17.99 (23%)
19 years of age	Farm employee level 3	\$20.05 (24.92%)	\$19.74 (23%)
20 years of age	Farm employee level 3	\$21.84 (24.92%)	\$21.50 (23%)
Level 4			
Under 16 years of age	Farm employee level 4	\$13.30 (24.92%)	\$13.10 (23%)
16 years of age	Farm employee level 4	\$15.15 (24.92%)	\$14.92 (23%)
17 years of age	Farm employee level 4	\$17.01 (24.92%)	\$16.75 (23%)
18 years of age	Farm employee level 4	\$18.86 (24.92%)	\$18.57 (23%)
19 years of age	Farm employee level 4	\$20.71 (24.92%)	\$20.39 (23%)
20 years of age	Farm employee level 4	\$22.47 (24.92%)	\$22.12 (23%)
Level 5			
Under 16 years of age	Farm employee level 5	\$14.00 (24.92%)	\$13.79 (23%)
16 years of age	Farm employee level 5	\$15.97 (24.92%)	\$15.72 (23%)
17 years of age	Farm employee level 5	\$17.93 (24.92%)	\$17.65 (23%)
18 years of age	Farm employee level 5	\$19.89 (24.92%)	\$19.59 (23%)
19 years of age	Farm employee level 5	\$21.85 (24.92%)	\$21.52 (23%)
20 years of age	Farm employee level 5	\$23.82 (24.92%)	\$23.45 (23%)

Apprentice

Apprentice employees are not covered by this guide for the modern award and pre-modern award.

Trainee

This modern award incorporates trainee rates derived from the National Training Wage Schedule (NTW Sch.), as adjusted from time to time.

Supported Wage

Please refer to clause 14.2 of the modern award.

For detail of the supported wage provisions see the full version of the modern award.

Penalties and Loadings (other than casual or part-time loadings for ordinary hours)

Where an employee had an entitlement to a loading/penalty rate before 01 January 2010 that is exactly the same as the modern award loading/penalty entitlement the modern award loading/penalty applies in full from 01 January 2010.

Transitional arrangements

This modern award includes transitional arrangements that apply to loading/penalty entitlements where there is a difference in modern award and pre-modern award loading/penalty entitlements. Transitional arrangements apply from the first pay period on or after 01 July 2010 until the first pay period on or after 01 July 2014 (when modern award loadings/penalties apply in full).

Different arrangements apply depending on whether the entitlements are "equivalent" or not.

- A pre-modern award loading/penalty will be "equivalent" to a modern award entitlement where the loading/penalty applies:
 - for the same purpose (e.g. Saturday penalty);
 - for the same time periods; and
 - in the same way#.
 - #A pre-modern award and modern award loading/penalty applies in the same way if the entitlements are both:
 - paid at the same frequency, such as per hour or per shift; and
 - paid as a percentage of the same amount (e.g. both penalties are paid as a percentage of the employee's classification rate, rather than as a percentage of a different amount or paid as a flat dollar amount).

Casual loadings and penalties also need to interact with each other in the same way in the pre-modern award and modern award to be equivalent (e.g. the loading and penalty rate are calculated on the base hourly rate in both instruments).

Equivalent entitlements

If the pre-modern award loading/penalty rate is "equivalent" to the modern award loading/penalty rate the penalty rate is calculated as follows:

1. The difference between the two loading/penalty rates is referred to as a "transitional percentage". The transitional percentage stays the same every year.
2. A proportion of the transitional percentage is calculated each year as follows:

First full pay period on or after	Proportion of transitional percentage
01 July 2010	80%
01 July 2011	60%
01 July 2012	40%
01 July 2013	20%
01 July 2014	0%

3. Where the modern award loading/penalty is higher, the penalty rate is obtained by subtracting the proportion of the transitional percentage.

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements are equivalent and the modern award penalty is higher.

1/01/2010	1/07/2014	1/07/2010
Pre-modern award penalty	Modern award penalty	Penalty rate (phased)
25%	50%	30%
50%	75%	55%
50%	100%	60%
75%	100%	80%

4. Where the modern award loading/penalty is lower, the penalty rate is obtained by adding the proportion of the transitional percentage.

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements are equivalent and the modern award penalty is lower.

1/01/2010	1/07/2014	1/07/2010
Pre-modern award penalty	Modern award penalty	Penalty rate (phased)
50%	25%	45%
75%	50%	70%
100%	50%	90%
100%	75%	95%

Entitlements that are not equivalent

If pre-modern award and modern award penalty rates are not "equivalent", the following approach applies:

1. Loadings/penalty rates from a modern award are phased in from zero in five instalments of 20% by multiplying the penalty rate by the following percentage:

First full pay period on or after	Percent of modern award loading / penalty
01 July 2010	20%
01 July 2011	40%
01 July 2012	60%
01 July 2013	80%
01 July 2014	100%

2. Pre-modern award loadings/penalty rates are phased out to zero in five instalments of 20% by multiplying the penalty rate by the following percentage:

First full pay period on or after	Percent of pre-modern award loading/ penalty
01 July 2010	80%
01 July 2011	60%
01 July 2012	40%
01 July 2013	20%
01 July 2014	0%

Please note that a pre-modern award penalty rate can be 'phased out' at the same time that a modern award penalty is 'phasing in' (i.e. where different entitlements apply in the same time period). This means that two different rates may apply for the same time period.

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements are not equivalent.

1/01/2014	1/07/2010
Modern award penalty	Penalty rate (phased)
	(20.00%)
10.00%	2.00%
20.00%	4.00%
25.00%	5.00%
50.00%	10.00%
75.00%	15.00%
100.00%	20.00%
120.00%	24.00%
125.00%	25.00%
130.00%	26.00%
150.00%	30.00%

1/01/2010	1/07/2010
Pre-modern award penalty	Penalty rate (phased)
	(80.00%)
10.00%	8.00%
20.00%	16.00%
25.00%	20.00%
50.00%	40.00%
75.00%	60.00%
100.00%	80.00%
120.00%	96.00%
125.00%	100.00%
130.00%	104.00%
150.00%	120.00%

New entitlements

Where an employee did not have a particular loading/penalty entitlement before 01 January 2010, the modern award loading/penalty is phased in from zero as a new entitlement from the first pay period on or after 01 July 2010 by multiplying the penalty rate by the following percentage:

First full pay period on or after	Percent of modern award loading/ penalty
01 July 2010	20%
01 July 2011	40%
01 July 2012	60%
01 July 2013	80%
01 July 2014	100%

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements in the modern award are new.

1/07/2014	1/07/2010
Modern award penalty	Penalty rate (phased)
25%	5%
50%	10%
75%	15%
100%	20%

For more information about transitional arrangements for loading/penalty entitlements please visit www.fairwork.gov.au and/or contact the **Fair Work Infoline** on **13 13 94** for advice and assistance.

Allowances

Allowances in modern awards apply in full from 01 January 2010 (although the rates may change from time to time).

All states covered by this instrument Full Time, Part Time, Casual

Clause	Allowance Type	Description	Effective Date	Rate
17.1(a)	Leading hand allowance	All purpose allowance expressed as per week. A leading hand will be paid a leading hand allowance based on how many employees they are in charge of - 2 to 6 employees. This allowance is payable for all purposes of the award at the rate of 115% of the standard rate per week. (115/38=3.0263157% per hour rate)	1/07/2013	\$0.5099 per hour (3.03%)
17.1(a)	Leading hand allowance	All purpose allowance expressed as per week. 11 to 20 employees at the rate of 191% of the standard rate per week. (191/38=5.0263157% per hour rate)	1/07/2013	\$0.8468 per hour (5.03%)
17.1(a)	Leading hand allowance	All purpose allowance expressed as per week. More than 20 employees at the rate of 240% of the standard rate per week. (240/38=6.3157894% per hour rate)	1/07/2013	\$1.0640 per hour (6.32%)
17.1(b)	Wet work allowance	All purpose allowance expressed as per hour. An employee who, on any one day, is required to work in a wet place must be paid an amount allowance for each hour that they are required to work in the wet place, unless provided with adequate protection.	1/07/2013	\$1.6847 per hour (10.00%)

Clause	Allowance Type	Description	Effective Date	Rate
		<p>A wet place will mean a place where the clothing of the employee becomes saturated or a place where the employee has to stand in water or slush so that the employee's feet become wet.</p> <p>This allowance is payable for all purposes of the award.</p>		
17.1(d)	First aid allowance	<p>All purpose allowance expressed as per week.</p> <p>An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St John Ambulance or similar body must be paid an allowance if they are appointed by the employer to perform first aid duty.</p> <p>This allowance is payable for all purposes of the award at the rate of 51% of the standard rate per week extra. (51/38=1.3421052% per hour rate)</p>	1/07/2013	\$0.2261 per hour (1.34%)
24.3	Meal allowance	<p>An employee required to work overtime for more than two hours without having been notified before leaving work on the previous day that they will be required to work overtime, will be entitled to a meal allowance, or will be provided a suitable meal without cost.</p> <p>If the work extends into a second or subsequent meal break, this meal allowance will again apply.</p>	1/07/2013	\$11.3300 per meal
17.1(a)	Leading hand allowance	<p>All purpose allowance expressed as per week.</p> <p>7 to 10 employees at the rate of 134% of the standard rate per week. (134/38=3.526316% per hour)</p>	1/07/2013	\$0.5941 per hour. This weekly allowance has been converted to an hourly amount. It should be applied to all ordinary hours of work

Clause	Allowance Type	Description	Effective Date	Rate
				(up to a maximum of 38 hours per week). (3.53%)

Other Conditions

The following conditions in the modern award apply in full from 1 January 2010. Please note that the below table is a summary of commonly applicable entitlements in the modern award, there may be other entitlements in the modern award that are relevant to particular employers or employees. Please refer to the modern award for full details.

Note: The National Employment Standards (**NES**) operate together with modern awards to provide minimum conditions of employment for employers and employees in the national system. The NES sets out ten minimum statutory entitlements that apply to all employees, including leave and termination of employment entitlements.

For more information about the NES, please visit www.fairwork.gov.au

All states covered by this instrument

Clause	Conditions Type	Description
7	Award flexibility (Instrument)	An employer and an individual employee may agree to vary the following terms of this award to meet the genuine needs of the employer and the individual employee with respect to: <ul style="list-style-type: none"> - arrangements for when work is performed - overtime rates - penalty rates - allowances - leave loading. <p>Other conditions concerning award flexibility are contained within the Fair Work Act 2009.</p>
8	Consultation (Instrument)	The award contains information on the employer's responsibility to consult regarding major workplace change including the:

Clause	Conditions Type	Description
		<ul style="list-style-type: none"> - duty to notify, and - duty to discuss change.
9	Dispute resolution (Instrument)	The award sets out a dispute resolution procedure for dealing with disputes in relation to a matter under the award or the National Employment Standards (NES).
10.3	Part-time conditions (Instrument)	<p>A part-time employee is an employee who is engaged to work an average of less than 38 hours per week and receives, on a pro rata basis, equal pay and conditions to those of full-time employees who do the same kind of work.</p> <p>An employer must inform a part-time employee of their ordinary hours of work and starting and finishing times.</p> <p>All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.</p>
10.4	Casual conditions (Instrument)	<p>A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.</p> <p>The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment provided for in this award.</p>
11.2	Termination of employment - notice of termination by an employee (Instrument)	The notice of termination required to be given by an employee is the same as an employer except there is no requirement to give additional notice based on age. If an employee fails to give the required notice the employer may withhold from any monies due on termination, the difference between the amount of notice required and the amount of notice actually given.
11.3	Termination of employment - job search entitlement (Instrument)	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.
12.2	Redundancy - 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.

Clause	Conditions Type	Description
	(Instrument)	Alternatively, the employer may choose to pay the employee the difference between the former ordinary time rate of pay and the new ordinary time rate of pay for the number of weeks of notice still owing.
12.3	Redundancy - employee leaving during notice period (Instrument)	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 had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.
12.4	Redundancy - job search entitlement (Instrument)	<p>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.</p> <p>If the employee has been allowed paid leave for more than one day, the employee must, by request, 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.</p>
12.5	Redundancy - transitional provisions (Instrument)	<p>An employee is entitled to redundancy pay in accordance with the NAPSA that would have applied immediately prior to 1 January 2010 and that would have entitled the employee to redundancy pay in excess of the employee's entitlement under the NES. This includes employees engaged after 1 January 2010.</p> <p>The entitlement to redundancy pay under the NAPSA is limited to the amount which exceeds the entitlement under the NES.</p> <p>This clause does not reduce an employee's entitlement to redundancy pay under any other instrument and ceases to operate on 31 December 2014.</p>
15	Piecework (Instrument)	<p>Piecoworkers</p> <p>An employer and a full-time, part-time or casual employee may enter into an agreement for the employee to be paid a piecework rate. An employee on a piecework rate is a pieceworker.</p> <p>The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.</p>

Clause	Conditions Type	Description
		<p>The calculation of piecework rates for casual employees will include the casual loading.</p> <p>An agreed piecework rate is paid instead of minimum wages.</p> <p>The following does not apply to an employee on a piecework rate:</p> <ul style="list-style-type: none"> - Ordinary hours of work and rostering - Overtime and - Meal allowance. <p>The employer and the individual employee must have genuinely made the piecework agreement without coercion or duress.</p> <p>The piecework agreement between the employer and the individual employee must be in writing and signed by the employer and the employee.</p> <p>The employer must give the individual employee a copy of the piecework agreement and keep it as a time and wages record.</p> <p>Nothing in this award guarantees an employee on a piecework rate will earn at least the minimum ordinary time weekly or hourly wage in this award for the type of employment and the classification level of the employee, as the employee's earnings are contingent on their productivity.</p> <p>For the purposes of the NES:</p> <ul style="list-style-type: none"> - The base rate of pay for a pieceworker is the base rate of pay as defined in the NES. - The full rate of pay for a pieceworker is the full rate of pay as defined in the NES.
17.2	District allowance (Instrument)	An employee in the Northern Territory or Western Australia is entitled to payment of a district allowance in accordance with the provisions of an award or NAPSA under the Workplace Relations Act 1996 that would have applied to the employee immediately prior to 1 January 2010, providing that employee was not bound by an agreement under that Act.

Clause	Conditions Type	Description
		This clause ceases to operate on 31 December 2014.
18	Higher duties (Instrument)	An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift. If an employee is engaged for two hours or less on such higher duties during a day or shift, they must be paid the higher minimum wage for the time so worked.
19	Method of payment (Instrument)	<p>Method of payment</p> <p>Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account.</p> <p>Payment of wages on termination of employment</p> <p>On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.</p>
20	Accident pay (Instrument)	<p>An employee is entitled to accident pay in accordance with the terms of:</p> <ul style="list-style-type: none"> - a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the Workplace Relations Act 1996 (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the Workplace Relations Act 1996 (Cth) had applied to the employee, and - that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument. <p>The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.</p> <p>This clause does not reduce an employee's entitlement to accident pay under any other instrument and ceases to operate on 31 December 2014.</p>
21	Superannuation	The award contains information on:

Clause	Conditions Type	Description
	(Instrument)	<ul style="list-style-type: none"> - the employers responsibility to make superannuation contributions to a superannuation fund - the ability for an employee to authorise their employer to pay on their behalf contributions to a superannuation fund - the employers responsibility to make superannuation contributions to another superannuation fund that is chosen by the employee.
22	Hours of work (Instrument)	<p>Ordinary hours of work and rostering</p> <p>The ordinary hours of work for all full-time and part-time employees other than shiftworkers will not exceed 152 hours over a four week period provided that:</p> <ul style="list-style-type: none"> - The ordinary hours will be worked between Monday and Friday inclusive except by arrangement between the employer and the majority of employees in the section/s concerned that the ordinary hours will be worked between Monday and Saturday inclusive. - The ordinary hours will be worked between 6.00 am and 6.00 pm except if varied by arrangement between the employer and the majority of the employees in the section/s concerned. - The ordinary hours will not exceed eight hours per day except by arrangement between the employer and the majority of employees in the section/s concerned in which case ordinary hours should not exceed 12 hours on any day. - All time worked by full-time and part-time employees in excess of the ordinary hours will be deemed overtime. <p>The ordinary hours of work for a shiftworker will not exceed 152 hours over a four week period provided that:</p> <ul style="list-style-type: none"> - The ordinary hours will be worked between Monday and Friday inclusive. - For the purposes of this award: <p style="padding-left: 40px;">afternoon shift means any shift finishing after 6.00 pm and at or before midnight and</p>

Clause	Conditions Type	Description
		<p>night shift means any shift finishing after midnight and at or before 8.00 am.</p> <ul style="list-style-type: none"> - If an employee is directed to work on shifts the shift must not exceed eight hours without the payment of overtime. - Shiftworkers whilst on afternoon and night shifts will be paid 15% more than the ordinary rates for such shifts. - Where shiftwork is adopted, shifts will, as far as practicable, rotate regularly where two shifts are worked one will be regarded as day shift and the second the afternoon or night shift. Where three shifts are worked they will be divided into day, afternoon and night shifts. - The employer has the right to decide before the commencement of such shiftwork which of the shifts will be the day shift and will notify each employee accordingly. - The employer will keep a roster at the workplace that specifies the times which each shift will commence and finish and which shifts are deemed to be day shift. - All time worked in excess of the ordinary hours will be deemed overtime.
23.1	Breaks - meal (Instrument)	A meal break of 30 minutes to one hour will be allowed each day, to be taken not later than five hours after commencing work. Where there is agreement between the employer and an employee, the meal break may be taken at a time agreed.
23.2	Breaks - rest (Instrument)	Employees will be allowed a paid rest break of 10 minutes each morning. Where agreement is reached between the employer and employee for an additional rest break, such rest break will be unpaid and in addition to the employee's ordinary hours of work.
23.3(a)	Break between work periods (Instrument)	An employee is entitled to a break of 10 hours between finishing work on one day and commencing work on the next day.
24.1	Overtime – time off in lieu	Time off instead of payment for overtime

Clause	Conditions Type	Description
	(Instrument)	<p>An employee will be allowed time off duty, with pay for a period equal to the overtime worked. Such time allowed off duty will be given and taken within the succeeding three weeks unless the employer and employee mutually agree that it be taken at some other time or</p> <p>Instead of taking time off duty the employee may elect to be paid for the overtime worked provided that this election is made clear to the employer or the employer's representative at the time that overtime is offered.</p>
24.2(c)	Overtime - other (Instrument)	Should employees be required to work on a Saturday and the majority of such employees choose not to work on the Saturday but rather on the Sunday, then such work performed on that Sunday will be paid for at the Saturday rate.
25.4	Annual leave (Instrument)	<p>Conversion to hourly entitlement</p> <p>An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in s.87 of the NES to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to four weeks annual leave).</p>
25.5	Annual leave (Instrument)	<p>Payment for period of annual leave</p> <p>Instead of the base rate of pay as referred to in s.90(1) of the NES, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.</p>
25.6	Annual leave loading (Instrument)	During a period of annual leave an employee must also be paid an annual leave loading equal to 17.5% of the base rate above.
25.7	Annual leave - excessive leave (Instrument)	<p>Notwithstanding s.88 of the NES, if an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take annual leave by giving not less than four weeks notice of the time when such leave is to be taken if:</p> <ul style="list-style-type: none"> - at the time the direction is given, the employee has eight weeks or more of annual leave accrued and - the amount of annual leave the employee is directed to take is less than or equal to a quarter of the amount of leave accrued.

Clause	Conditions Type	Description
25.8	Annual leave - paid leave in advance of accrued entitlement (Instrument)	By agreement between an employer and an employee a period of annual leave may be taken in advance of the entitlement accruing. However, if leave is taken in advance and the employment terminates before the entitlement has accrued, the employer can deduct the entitlement from any money due to the employee on termination.
25.9	Annual leave - transmission of business (Instrument)	Where a transfer of business occurs, an employee's continuous service with the transmitter must count as service with the transferee when calculating annual leave, excluding any leave already taken or paid for.
25.10	Annual leave - proportionate leave on termination (Instrument)	On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage rate.
27.2	Community service leave (Instrument)	<p>Reimbursement for jury service</p> <p>A full-time employee required to attend for jury service during their ordinary hours of work must be reimbursed by the employer an amount equal to the difference between the amount paid to the employee for attending for jury service and the wages they would have received.</p> <p>Where a part-time employee is required to attend for jury service and such attendance coincides with a day they would normally be required to work, payment must be made to the employee as above.</p>
28.2	Public holidays (Instrument)	<p>Substitution of certain public holidays by agreement at the enterprise</p> <p>By agreement between the employer and the majority of employees, an alternative day may be taken as the public holiday instead of any of the prescribed days.</p> <p>An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.</p>

Frequency of Payment

Wages must be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight, or according to the applicable piecework payment.

IMPORTANT NOTE: Disclaimer

The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The Pay and Conditions Guides are provided for that purpose.

There are factors that may affect the information contained in these Guides. These include:

- changes to pay rates, allowances, penalties or modern award provisions; eg after FWA's annual wage review which takes effect on 1 July each year
- changes to the Fair Work Act or other relevant legislation
- decisions of courts or Fair Work Australia, in particular regarding the effect of provisions in modern awards and pre-modern awards where those differ from the approach taken by the FWO.

The FWO will consider these matters and where appropriate update the Guides.

It is your responsibility to comply with workplace laws and industrial instruments that apply to you.

The information contained in these Pay and Conditions Guides is:

- general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and
- not legal advice.

Therefore you may wish to seek your own independent professional advice to ensure all the factors relevant to your circumstances are properly considered.