

FACT SHEET

Hospitality Industry (General) Award 2010



Australian Government

AWARD MODERNISATION

In accordance with Part 10A of the *Workplace Relations Act 1996*, the federal Minister for Employment and Workplace Relations issued a request to the Australian Industrial Relations Commission (“AIRC”) to commence the Award Modernisation process on 28 March 2008.

The Award Modernisation process involves the creation of modern awards covering particular industries and occupations that will operate in conjunction with the legislated minimum conditions proposed by the federal government.

For hospitality employers, the new modern award that will apply is the *Hospitality Industry (General) Award 2010*.

Stage 1 of the Award Modernisation process involved the review of Awards and NAPSAs for a number of industries, including hospitality. The process commenced in mid 2008 with consultations with key industry organisations and other interested parties. QHA, both as an individual organisation, and as part of the national AHA group, made written and verbal submissions during the consultation stages.

On 19 December 2008 the modern [Hospitality Industry \(General\) Award 2010](#) was released by the AIRC.

This Award will commence operation on 1 January 2010, and will replace currently used NAPSAs and Awards.

APPLICATION

The *Hospitality Industry (General) Award 2010* (“Award”) will apply throughout Australia to employers engaged in the hospitality industry.

This includes:

- Hotels
- Motor inns
- Motels
- Serviced apartments
- Ski Lodges
- Holiday flats/units
- Wine saloons
- Wine bars
- Taverns
- Resorts
- Casinos,
- Function areas and
- Convention centers.

Coverage also extends to contract operators (for example cleaning, security) providing the contractor's primary business is in the hospitality sector.

The Award does not cover clubs or restaurants.

WHO THE AWARD DOES NOT APPLY TO

The proposed new fair work legislation provides that modern Awards, such as the Hospitality Industry (General) Award 2010 will not cover employees earning over \$100,000 per annum (as indexed). Such employees will be free to agree to their own pay and employment conditions that apply above and beyond the legislated minimum.

The rationale behind this exclusion from Award cover is that employees earning over the indexed amount are in a better, and perhaps stronger, position to negotiate conditions with their employer, and do not need the same level of safety net protections as other employees.

NATIONAL EMPLOYMENT STANDARDS

The National Employment Standards ("NES") form part of the Award and are referred to throughout the Award. The NES will take effect on 1 January 2010 as the new minimum conditions and will be enshrined in the new fair work legislation.

The NES will replace the Australian Fair Pay and Conditions Standard. The ten NES are:

1. Maximum Hours of Work – 38 ordinary hours per week for full time employees, plus reasonable additional hours.
2. Flexible Working Arrangements – The ability for an employee with parental or guardian responsibilities to request a change to working arrangements to assist with the care of the child. The child must:
 - Be under school age or
 - Be a child who is under 18 years of age with a disability.
3. Parental Leave – The entitlement to 12 months unpaid parental leave entitlements, plus an additional 12 months to extend leave to 24 months, with the consent of the employer.
4. Annual Leave – The same quantum as the Australian Fair Pay and Conditions Standard with amendments to the calculation of service. A new provision provides that annual leave is exclusive of other forms of leave, including personal leave and public holidays.
5. Personal / Carer's Leave (including Compassionate Leave) - The same quantum as the Australian Fair Pay and Conditions Standard with the 10 day capping for Carer's Leave accessed per year removed.
6. Community Service Leave – Unpaid leave to undertake eligible community service such as jury service or voluntary emergency management activities.
7. Long Service Leave – This entitlement will reflect state and territory entitlements. In Queensland, long service leave is provided for in the Industrial Relations Act 1999.
8. Public Holidays – Holidays that are recognised and working arrangements.
9. Notice of Termination and Redundancy Pay – Requirements for the giving of notice by an employer and for severance payments in the case of a position being made redundant.
10. Fair Work Statement – A requirement for employers to provide all new employees with this Statement.

Please note there is substantially more detail to each of the NES. Where they relate to a term in the Award that is noted in this Guide, some, but not all, detail is provided at that section.

Several of the NES are not included in the Award. This includes the NES numbered 2, 3, 7 and 10 above. The NES will represent minimum conditions, therefore, where the Award is silent on the NES listed above, the NES will still apply as a legislated minimum conditions for all employees, whether they are covered by an Award or otherwise.

AWARD CONTENT

The main (but not all) provisions of the modern Award are detailed, in alphabetical order, in this section of the Fact Sheet. They include:

1. Accommodation and Meals (Clause 39)

When an employer provides their employees with accommodation, meals, or both, the award allows an employer to deduct an amount of money from the employee's wages in accordance with the award clause.

Deductions for adult employees are:

Service provided	Deduction per week*
Single room and 3 meals a day	\$159.40
Shared room and 3 meals a day	\$155.40
Single room only, no meals	\$151.40
Shared room only, no meals	\$147.40
A meal	\$6.40

* as at 19 December 2008

2. Annual Leave (Clause 34)

The annual leave entitlement in this Award is in accordance with the NES. It provides 4 weeks of paid annual leave per year for permanent employees.

The Award provides the following additional annual leave arrangements:

- Permanent employees who are shiftworkers receive 5 weeks paid annual leave per year. A shiftworker is defined as "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 hours a shift".
- An annual leave loading of 17.5% is payable on all annual leave taken.
- An employer may require an employee to take an amount (as determined by the employer) of annual leave by giving at least four weeks notice in the following circumstances:
 - (a) To take annual leave as part of a close-down of its operations; or
 - (b) To take annual leave where more than eight weeks leave has been accrued by the employee.

Casual employees do not accrue paid annual leave.

3. Annualised Salary (Clause 27)

This provision applies to non-managerial staff. A manager is defined in Schedule A (A.1.9) of the Award.

An employee may be paid an annual salary that represents at least 25% above their classification rate. This is an annualised salary arrangement.

The arrangement must be agreed to between the employer and the employee and must not provide any disadvantage to the employee (ie having regard to normal work patterns).

Payment of a salary means:

- Clauses 32 (Penalty Rates) and 33 (Overtime) do not apply.
- An annualised salary employee is entitled to 8 days off per 4 week cycle.
- Where an annualised salary employee works on a public holiday, they are entitled to a day off in lieu or a day added to their annual leave entitlement.

The employer must keep daily records of working hours with this to be countersigned weekly by the employee. Those records must be kept for a period of 6 years.

4. Award Flexibility Clause (Clause 7)

The Award has the AIRC's model 'award flexibility' clause allowing for the employer and employee to agree, in writing, to individual arrangements covering:

- Work arrangements
- Overtime rates
- Penalty rates
- Allowances; and
- Leave loading.

The clause represents an opportunity for employers and employees to reach more flexible, practical and specific arrangements for their workplace..

The Agreement must:

- Be in writing
- Name the parties to the Agreement
- 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
- State each term of the Award that the employer and the individual employee have agreed to vary
- Detail how the application of each term has been varied by Agreement between the employer and the individual employee
- Detail how the Agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
- State the date the Agreement commences to operate.

A copy of an agreed Flexibility Agreement is to be provided to the employee, with a copy kept as part of the employee record. The Agreement may be terminated on 4 weeks notice.

This is a new provision for hospitality employers and is not contained in existing hospitality Awards and NAPSAs.

5. Breaks (Clause 31)

Unpaid breaks of no less than 30 minutes are provided for in the Award. The Award provides:

- No employee can work for 5 or more hours without an unpaid meal break of at least 30 minutes
- Where the break is rostered to be taken more than 5 hours after the commencement of shift the employee must receive a 20 minute paid break
- Where the break is not taken as rostered, a 50% penalty on the employee's ordinary rate applies until the break is taken or the shift ends
- If the break is not rostered and no break is provided, the employer must pay a 50% penalty on the employee's ordinary rate from the end of 6 working hours to end of the shift
- If 2 hours overtime is worked, an additional 20 minute paid break must be provided.

6. Casual Conversion (Clause 13.4)

The Award provides that a casual who has worked regular and systematic hours for a period of at least 12 months may elect to have their employment converted to permanent employment.

An employer can refuse the request for permanent employment on "reasonable grounds" which may be determined having regard to:

- The size and needs of the workplace or enterprise
- The nature of the work the employee has been doing
- The qualifications, skills, and training of the employee
- The trading patterns of the workplace or enterprise
- The employee's personal circumstances, including any family responsibilities; and
- Any other relevant matter.

Once a casual employee has converted to permanent employment, they may only revert back to casual

employment with the written agreement of the employer.

The casual conversion clause does not oblige a casual employee to convert to permanent employment, nor does it require an employer to agree to it (ie having regard to the dot points above).

7. Community Service Leave (Clause 36)

The Award refers to the NES for this entitlement – the concept of Community Service Leave is new.

Community Service Leave includes jury service as well as other voluntary emergency management activities.

8. Consultation Over Changes (Clause 8)

The Award outlines a requirement to consult if the employer is introducing 'major change' that may have 'significant effects'. In such cases the employer must notify and consult with the affected employee/s and their representative (if any).

9. Dispute Resolution (Clause 9)

The Award's dispute resolution procedure requires parties to attempt to resolve disputes at the workplace in the first instance. If not resolved, a party may refer the dispute to Fair Work Australia ("FWA").

Where the dispute is unresolved FWA may "exercise any method of dispute resolution permitted by the Act". This includes:

- Mediation,
- Conciliation,
- Providing recommendations or opinions, and,
- Where the parties agree, arbitration.

A party to the dispute may appoint someone to represent them during the dispute resolution process.

10. District Allowances (Clause 21.4)

District allowances provided for in the Award only apply to Western Australia and the Northern Territory.

11. Employment Types (Clause 10)

On commencement of the engagement, the employer must inform the employee of their employment status as either a full time, part time or casual employee:

(a) Full time employee (Clause 11)

The Award provides the following with regard to full time employees -

- They are "engaged to work an average of 38 ordinary hours per week"
- Hours of work are a minimum of 6 hours and a maximum of 11.5 hours per day (exclusive of meal breaks)
- They cannot be rostered for more than 10 hours on 3 consecutive days without a 48 hour break
- They cannot work more than 8 days of 10 hours in a 4 week period
- They must have a break of 10 hours between working days
- Where subject to a rostered day off ("RDO") arrangement - 160 hours per 4 week period with a minimum of 8 days off plus a paid RDO. If a RDO falls on a public holiday the next day is taken to be the RDO.

(b) Part time employee (Clause 12)

The Award provides the following with regard to part time employees -

- They work less than 38 hours a week and have "reasonably predictable" hours of work
- On engagement the employer needs to agree, in writing, with the employee on a regular pattern of work (ie hours worked each day, days of work and starting and finishing times)
- Any changes to hours must be agreed to in writing
- They are to be rostered for / paid a minimum shift of 3 hours
- All time worked in excess of contracted hours are to be paid as Overtime.

An employee who does not meet the part time definition, and who is not a full time employee, is a casual employee.

(c) Casual employee (Clause 13)

The Award provides the following with regard to casual employees -

- A casual employee must be paid a 25% casual loading
- A casual employee is paid an additional loading on Saturdays, Sundays and Public Holidays (refer clause 32 of the Award)
- Each occasion a casual attends work they are to be paid for a minimum of 2 hours work
- A casual must be paid at the end of each engagement (shift) unless otherwise agreed to.

12. Make Up Time (Clause 29.9)

An employer and employee may agree that an employee may take time off during their normal duties and make up those hours of work later.

The employer may also agree with the majority of employees to enter into formal make up time arrangements for the workplace. This is subject to certain conditions, as specified in the Award.

13. Mixed Functions (Clause 25)

The Award provides that an employee engaged for two or more hours on one day on duties carrying a higher rate than their ordinary classification must be paid the higher rate for such day. If rostered for less than two hours the employee must be paid the higher rate for the time so worked.

This clause does not apply to food and beverage attendant level 2 due to the training requirements of level 3 and above - as defined in Schedule A.

13. Overtime (Clause 33)

In accordance with the Award, an employer may require a permanent employee to work "reasonable" overtime at overtime rates.

An employee may refuse to work the additional hours if that would result in the employee working unreasonable hours. When determining if the requested additional hours are unreasonable, the employer and employee should have regard to –

- (i) Any risk to the employee's health and safety
- (ii) The employee's personal circumstances including any family responsibilities
- (iii) The needs of the workplace or enterprise
- (iv) The notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
- (v) Any other relevant matter.

The following overtime rates are payable to an employee, depending on the time at which the overtime is worked:

- For full time employees – for work done outside of hours set out in the Hours of Work clause
- For part time employees – for work done outside of hours set in accordance with the Part Time Employees clause in the Award.

Overtime does not apply to casual employees.

Overtime rates paid to permanent employees are:

- Monday to Friday: 150% of their ordinary hourly rate for the first two hours of overtime and 200% of their normal rate of pay for the rest of the overtime
- Between midnight Friday and midnight Sunday: 200% of their ordinary hourly rate for any work done
- On a rostered day off: 200% of their ordinary hourly rate for any work done with a minimum payment of four hours (even if they work less than four hours).

Overtime worked on any day stands alone.

14. Payment Of Wages (Clause 26)

Wages will be paid weekly or fortnightly by cash, cheque or EFT.

15. Personal/Carer's Leave And Compassionate Leave (Clause 35)

This leave is accrued and paid in accordance with the NES.

16. Public Holidays (Clause 37)

Public holiday arrangements in this Award refer back to that provided for in the NES. The NES recognises the following gazetted public holidays:

- 1 January
- 26 January
- Good Friday
- Easter Monday
- 25 April
- Queen's Birthday Holiday (as the day gazetted in the relevant state public holiday legislation)
- 25 December
- 26 December
- Any other day that is declared under state or territory public holiday legislation as a public holiday, except where the Regulation excludes a day as a public holiday (this will be known around mid year).

The NES addresses employer requests of employees to work on a public holiday – it is taken that an employee is entitled to a day free from work on a public holiday – and the circumstances where an employee may refuse to work on a public holiday because the request was unreasonable.

The Award provides, in addition to the provisions of the NES, that:

- By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday in lieu of a prescribed public holiday.
- For full time employees whose rostered day off falls on a public holiday they must either:
 - Be paid an extra days pay; or
 - Be provided with an alternative day off within 28 days; or
 - Receive an additional day of annual leave.

A rostered day off means any continuous 24 hour period between the completion of the last ordinary shift and the commencement of the next ordinary shift on which an employee is rostered for duty.

17. Redundancy (Clause 17)

With regard to redundancy, the Award refers back to the provisions of the NES for redundancy pay requirements, and the circumstances where the employee is entitled to such payment.

Those circumstances are that the:

- Termination was by the employer because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour, or
- Termination was by the employer because of the insolvency or bankruptcy of the employer.

In summary, the main elements of the redundancy provision in the NES are:

(a) Exemptions:

- Employers with fewer than 15 employees do not have to pay severance, and
- Employees with less than 12 months continuous service (regardless of the size of the employer) are not entitled to severance.

(b) Severance – the amount payable is based on length of service:

<i>Employee's period of continuous service with the employer on termination</i>	<i>Redundancy Pay</i>
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks

At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

The Award provides detail on the following additional redundancy elements:

- Transfer to lower paid duties arrangements
- The employee leaving during the notice period (notice as per the termination provision in the NES)
- The employee's entitlements with regard to job search
- Transitional provisions.

The transitional provisions in the award provide that where a NAPSA that applied prior to the operation of this Award provided a more beneficial severance payment, the more beneficial severance payments in that NAPSA will prevail until 31 December 2014. After then, all severance payments are in accordance with the NES.

18. Rostering (Clause 30)

The Award provides:

- The roster must show the start and finish times and name of each employee
- A roster may be altered by mutual consent, or by 7 days notice.
- Employees are to be provided 14 days notice of rostered days off where practicable.

19. Superannuation (Clause 28)

This clause is as per the relevant superannuation legislation with a number of funds listed as possible default funds – in the absence of the employee utilising Choice of Fund.

The Award provides that:

- Voluntary employee contributions are available when authorized by an employee
- The superannuation threshold for employer contributions is \$350.00 a month
- Employees are entitled to superannuation whilst on paid leave or receiving workers' compensation payments (while still employed).

20. Termination (Clause 16)

Notice Given By Employer

The notice of termination an employer is required to give to an employee is provided for in the NES, and is notice based on length of service.

The notice an employer must give an employee is:

<i>Period of Continuous Service</i>	<i>Period of Notice</i>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

In addition to the notice above, employees 45 years old or over and who have completed at least 2 years continuous service with the employer shall be entitled to an additional weeks notice.

The NES also provides that an employer cannot terminate an employee's employment unless they have given the employee written notice of the day of the termination (ie the day the termination of employment has effect).

The notice cannot be given after the termination date. This requirement represents a new obligation on employers, and members must comply with it.

Notice Given by Employee

The NES does not provide for employee notice requirements and defers to the Award for notice requirements. This Award provides that the notice an employee gives is the same as the notice an employer must give, except for the additional weeks notice based on the employee's age.

In addition, the Award provides that where an employee fails to give the required notice, the employer may withhold from any monies due to the employee on termination an amount not exceeding the amount the employee would have been paid under the Award if they had worked the period of notice required, less any period of notice actually given by the employee.

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day 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.

CLASSIFICATION STRUCTURE

Wage levels are linked to classifications that are defined in the Award. Classifications are:

- Introductory
- Level 1
- Level 2
- Level 3
- Level 4
- Level 5
- Level 6
- Hotel Manager (from the *Liquor and Accommodation Industry – Hotels, Resorts and Gaming (Managerial Staff) Award 2003*)

ALLOWANCES

Allowances provided for in the Award are:

- Meal allowance – where working more than 2 hours of overtime
- Clothing, equipment and tools
- Laundry allowance
- Vehicle allowance
- Forklift allowance
- First Aid allowance
- Broken period allowance
- Reimbursement for special clothing – when purchased by the employee
- Protective clothing provided at no cost
- Working late – provision of transport in certain circumstances
- Working early – provision of transport in certain circumstances
- Working away from usual place of work allowance – where more than 80kms

FURTHER ASSISTANCE

Please note that during the course of 2009 the Hospitality Industry (General) Award 2010 will be amended to include transitional arrangements as well as other arrangements specific to the industry. This Fact Sheet addresses the Award as it has been published as at 31 December 2008.

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