



# HIA Modern Award Guide



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# HIA Modern Award Guide

## INTRODUCTION

The Australian Government has recently overhauled our industrial relations and award system. This Guide has been prepared to assist small and medium sized businesses in the residential building and construction industry who directly employ their workers.

In this Guide, we provide a summary of the new onsite building and construction award whilst also highlighting other key areas which have changed under the new laws.

## WHAT IS AN AWARD?

Awards are made by industrial tribunals and commissions usually after an application is made by a union or employer organisation on behalf of their members.

An award sets out the minimum terms and conditions of employment, including rates of pay, for particular industries and occupations.

Historically there have been thousands of different awards applying at federal level and state level.

## WHAT ARE THE MODERN AWARDS?

Modern awards are a part of the Australian Government's industrial relations overhaul.

The key objective is to reduce the number of awards, by creating awards with national coverage across industry and occupational lines.

Modern awards will replace existing federal awards and notional agreements preserving state awards (NAPSAs). There are minimal state and territory differences.

Together with the National Employment Standards (NES), modern awards will set out new minimum conditions of employment.

## WHO DO MODERN AWARDS APPLY TO?

Modern awards will apply to all businesses that operate under the federal industrial relations system.

These include:

- constitutional corporations/companies (eg, Pty Ltd or Ltd);
- all employers in Victoria, the ACT and Northern Territory; and
- private sector employers in South Australia and Tasmania and Queensland (from 1 January 2010).

At this stage, all employers in Western Australia and New South Wales who operate as sole traders or partnerships will continue to be bound to their state or territory's award system.

Modern awards will not apply to "high income" employees - employees who are not covered by an enterprise agreement and who have a written guarantee of base annual earnings of more than \$108,300 (pro-rata for part-time employees).

## WHEN DO THE MODERN AWARDS START?

Most aspects of the modern awards, such as classifications and hours of work, will commence on 1 **January 2010**. Modern award matters affecting pay rates do not kick in until 6 months later.

From 1 July 2010 the following matters affecting pay will be phased in:

- minimum wages, including wages for junior employees, employees to whom training arrangements apply and employees with a disability;
- casual and part-time loadings;
- Saturday, Sunday, public holiday, evening and other penalties; and
- shift allowances for shift workers.

### NUMBERS TO RING

HIA memberline: 1300 650 620

Fair Work Australia: 1300 799 675

### WEBSITES

[www.hia.com.au](http://www.hia.com.au)

[www.fairwork.gov.au](http://www.fairwork.gov.au)

## WHAT ABOUT CURRENT EMPLOYMENT AGREEMENTS?

If you currently have an employee on an Australian Workplace Agreement (AWA), Individual Transitional Employee Agreement (ITEA) or Employee Collective Agreements (ECA) which is yet to pass its Nominal Expiry Date (NED), this agreement will continue to operate until the agreement is mutually terminated or is replaced with another agreement.

As the modern award operates as a safety net – your employees are entitled to be paid at the greater of the base rate in their employment agreement or the modern award. Just remember that certain matters under the award (such as pay rates) will be phased in from 1 July 2010. The National Employment Standards will also apply to your employees from 1 January 2010 (despite what the award or agreement might state).

## FAIR WORK AUSTRALIA

Fair Work Australia (FWA) is the new single agency created to oversee the federal workplace relations system. Amongst many responsibilities, FWA Australia is responsible for reviewing modern awards and minimum wages and handling unfair dismissal and termination disputes. FWA also polices compliance with industrial relations laws. Fair Work Australia inspectors have the duty to investigate complaints and have the power to audit businesses.

## WHAT DO I NEED TO TELL MY EMPLOYEES?

You must make sure your employees have access to a copy of the relevant modern awards and the National Employment Standards (NES). You can provide access in an electronic format (e.g. by emailing the award and NES to your employees), by posting a copy in areas which are readily available to all employees, or by providing them with a hard copy.

## MODERN AWARDS FOR THE BUILDING INDUSTRY

### Building and Construction General On-Site Award 2010 (“the modern onsite building award”)

Is a single award applying to both commercial and residential sites and applies to all on-site construction work.

The modern onsite building award incorporates classes of work that were previously covered by separate awards, including:

- plant operation and earthmoving;
- landscaping;
- civil construction; and
- metal and engineering construction.

Other modern awards that might be applicable to employees in the building industry include:

### Joinery and Building Trades Award 2010

Applies to joinery work, shop fitting, prefabricated building, stone masonry and glazing.

### Electrical, Electronic and Communications Contracting Award 2010

Covers electricians and electrical tradespeople and the installation and repairs of security alarms, fire alarms and telephone systems.

### Plumbing and Fire Sprinklers Award 2010

Separate modern award covering all plumbing and mechanical services and fire sprinkler contractors.

### Clerks - Private Sector Award 2010

Covers clerical and administrative employees engaged wholly or principally in clerical work including administrative duties of a clerical nature, such as receptionists.

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# Engaging Employees

## Premixed Concreted Award 2010

Covers pre-mixed concrete batch plants. Those onsite builders who operate their own pre-mixed concrete batch plant will remain covered by the onsite construction award.

## Cement and Lime Award 2010

Covers the manufacture and handling of cement and lime.

## Concrete Products Award 2010

Covers fabrication or manufacture of cement products or concrete products including concrete panels, concrete pipes, monier or concrete tubs, baths, sinks, tiles, pavers, slabs, gutter bridges, plates, pile armours, bridge piles as well as reinforcement of steel or wire for use in making such articles.

## Timber Award 2010

Applies to furniture manufacturing as well as frames, trusses, doors, windows and other building products or components from wood or timber.

## Manufacturing and Associated Industries and Occupations Award 2010

Applies to the manufacture of most building materials and products (other than wood) including insulation materials, steel and cabling, bricks and tiles, gypsum and plasterboard and in some circumstances glazing.

You can get wage rate summaries and further information about these awards from the HIA InfoCentre by calling 1300 650 620.

## WHAT ARE MY OPTIONS?

From 1 January 2010 year there will be 2 options:

1. Employing under the appropriate modern award; or
2. employing under an enterprise agreement.

## CAN I USE COMMON LAW CONTRACTS?

A common law employment contract can be a formal written document, a letter of offer and acceptance or a verbal agreement.

If you offer an employee who is covered by a modern award (or enterprise agreement) a common law contract, that contract must be based on the modern award (or enterprise agreement) that applies to them. While you may provide more favourable conditions than what is provided for under the award, you cannot "contract out of" any minimum entitlements. You may however use an Individual Flexibility Agreement (discussed below) to vary certain award entitlements.

## HOW MUCH DO I NEED TO PAY?

Wage rates are provided by means of a minimum weekly or hourly rate for all types of employment and classification levels ranging from unskilled labourers to trade qualified employees.

Please go to Schedule A for a summary of minimum wage rates in the modern onsite building award alongside the relevant employment classification.

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## TRANSITIONAL PROVISIONS

### *Enterprise agreements*

If you are making an enterprise agreement between now and 1 January 2010, this agreement will continue to be assessed against the current relevant NAPSA or federal award.

### *Delayed commencement of pay rates*

Even though the modern awards commence on 1 January 2010 for the first 6 months, you will be required to continuing paying in accordance with the employee's current relevant award or NAPSA as if nothing has changed.

Any new employees will be engaged under the modern award but will be paid under the pay scale for the relevant award or NAPSA that would have applied before 1 January 2010 until 1 July 2010 when they also become subject to the phasing in provisions described below.

## MODERN AWARD PAY RATES START ON 1 JULY 2010.

Any differences between the pre-modernisation rate and the modern award rate will be phased in via an instalment of 20% every twelve months. The phase in arrangements applies to both increases and decreases. At **Schedule B** we have provided a worked example.

Model phasing arrangements	
First full pay period on or after	
1 July 2010	80% (of the difference between the old rate and new rate)
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

The calculations need to include the industry allowance, but the model transitional provisions do not apply to most allowances – such travel or tool allowances.

Starting 1 January 2010 these allowances will need to be paid as per the modern award (see below).

## ARE THERE ANY ADDITIONAL ALLOWANCES?

Allowances under the modern onsite building award are provided in compensation for a range of circumstances. Examples of allowances include:

- expense related allowances;
- tool allowances;
- site and general wage allowances;
- special rates, fares and travel patterns allowances;
- district allowances.

Allowances are regarded as condition of employment and apply on top of the standard minimum rate of pay.

Allowances are commonly expressed as an amount to be paid either per hour, per day, or per week.

All employees are entitled to the industry and a special allowance. These allowances are considered to compensate construction employees for the physical, climatic and travelling conditions associated with the nature of the building industry.

Employees also have the general entitlement to a daily travel allowance, in circumstances where the employee is responsible for using their own mode of transport to and from work.

Most other allowances depend on the employee's classification or the work they are undertaking, i.e. - a carpenter has an entitlement to a tool allowance whilst a labourer does not.

Other allowances contained within the award are situational based i.e. - hot work, or confined space. A full list of the modern onsite building award allowances is provided in **Schedule C**.

## TAKE HOME PAY ORDERS

Separate from the transitional provisions, employees can also apply to Fair Work Australia for Take Home Pay Orders if the move to a modern award means they suffer a reduction in their take home pay.

There is no equivalent right for employers to apply to Fair Work Australia for orders to limit any wage increases.

## TYPES OF EMPLOYMENT

Under the modern onsite building award, employees can be engaged on a:

- daily hire;
- full-time;
- part-time; or
- casual basis.

When hiring new employees, depending on your organisational needs and requirements, you have the discretion to determine the type of employment offered. You must confirm with each employee in writing their terms of engagement.

Below is a summary of the differences:

### Daily Hire Employees

Daily Hire employees are tradespersons or labourers engaged on a day to day basis. When calculating the hourly rate for a daily hire employee, the rate takes into account a factor of eights days to compensate for loss of wages for periods of unemployment between jobs.

### Full time employees

Full-time employees ordinarily work 38 hours per week (plus reasonable additional hours). They are employed on an ongoing basis and are entitled to the full suite of benefits including redundancy, paid personal leave, long service leave, and paid holiday leave.

### Part-time employees

Part-time employees work an average of fewer than 38 ordinary hours per week but have reasonably predictable hours of work. Part time employees are entitled to pro-rata leave entitlements for the number of hours worked each week.

### Casual employees

Casual employees are engaged on an hourly basis with no set or predictable hours. Casuals are not entitled to annual leave, paid personal leave, paid community service leave, notice of termination or redundancy benefits. In place of these entitlements a casual employee is paid a 25% loading on ordinary hours and additional loadings for overtime and weekend work.

At **Schedule D** we have examples of calculations of hourly rates for each mode of employment.

## CASUAL EMPLOYEES (KEY CHANGE!)

Casual employees who have been working for a particular employer for a regular sequence during a period of six months, have the right to elect to convert to full-time or part-time if the employment relationship is to continue beyond six months.

The modern onsite building award requires that:

- employers must give an employee written notice of this option within four weeks of the employee having reached six months employment (ie after 5 months). The right to make an election will run until the employee receives this written notice.;
- an employee has 4 weeks to provide written acceptance or refusal of the employer's offer. If the employee fails to provide written acceptance of the offer, that employee is deemed to have elected to remain a casual;
- if an employee elects to have their employment mode converted, the employer and employee must discuss and agree on which form of employment to convert to and, if it is agreed the employee will be engaged on a part-time basis, the number of hours and pattern of hours that will be worked; and
- where an employer refuses to provide a casual employee the right to convert their employment, the reasons for doing so must be fully stated to and discussed with the employee and a genuine attempt must be made to reach agreement.

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# Apprentices

Apprentices are employees who are undertaking a system of structured on the job training with an employer, and off the job training with an approved training provider through a contract of training registered with the appropriate State or Territory training authority.

## WAGES AND CONDITIONS

A construction apprentice's wages and conditions are set in accordance with the award, any legislation, and regulations made by any State or Territory training authority with responsibility for apprenticeships.

An apprentice is paid a percentage of the relative tradespersons qualified rate as set out in the award. The relative percentage is also dependant on the length of the apprenticeship as prescribed by the State/Territory training authority. The relative percentages under the modern onsite building award are:

<i>Four year apprenticeship</i>	<i>% of standard rate</i>
First year	45
Second year	55
Third year	75
Fourth year	90

  

<i>Three year apprenticeship</i>	<i>% of standard rate</i>
First year	55
Second year	75
Third year	90

Some restrictions apply to apprentices that do not apply to fully qualified employees:

- **Restrictions on overtime and shiftwork**  
Overtime or shiftwork cannot be worked unless it is to enable the requirements of the training plan to be met. Apprentices under the age of 18 years do not have to work overtime/shiftwork unless they would like to.

Overtime or shiftwork that interferes with their requirements to attend technical school can only be excused in circumstances of an emergency.

- **No payment by results**  
Apprentices cannot work under piecework rates and must be paid the award wage rates.
- **Annual service requirements**  
Apprentices must work a minimum number of days each year of service. If they have been absent for too many days without the employers consent, the next calendar year for service will not begin until the remaining day or days have been served. When determining the additional days to be served, employers must ensure they credit any hours worked by the employee in the calendar year which were in excess of their ordinary hours.
- **Reimbursement of training school costs**  
All fees paid by apprentices in respect of their apprentice training at technical colleges/schools, must be reimbursed when satisfactory reports are presented.

## What are the entitlements for adult apprentices?

Adult apprentices are employees who are 21 years of age or over at the time of signing the contract of training. If you employ an adult apprentice, there are a few additional things that need to be considered when signing the apprenticeship contract.

The modern onsite building award sets out the following conditions regarding payment of an adult apprentice:

- a person who was employed by an employer in the metal and engineering on-site construction industry immediately prior to becoming an adult apprentice with that employer, will not suffer a reduction in the rate of pay by becoming an indentured apprentice;
- a person who is employed by an employer and then undertakes an apprenticeship (as an adult apprentice) with that same employer, will continue to receive the rate of pay set for the award classification in which the adult apprentice was engaged immediately prior to entering into the contract of indenture; and

- a person who had not, prior to the signing of the contract of indenture, been engaged by the same employer, shall receive the rate prescribed in the award for the lowest paid adult classification, or the rate prescribed for the relevant year of apprenticeship, whichever is the greater.

### School based apprenticeships

A school-based apprentice is a person who is undertaking an apprenticeship while also undertaking a course of secondary education. Like an ordinary apprenticeship, the contract of training is registered through the relevant State or Territory authority.

The same hourly rate for full time apprentices is applied for the purposes of calculating a school based apprentice's wages, however there are some different conditions that apply including:

- it is deemed that 25% of the time spent on the site is spent on off the job training. So an additional 25% must be paid to school based apprentices on top of all hours worked, in recognition of the time spent in off the job training;
- other award conditions such as leave and allowance entitlements are paid on a pro rata basis;
- the apprentice is to be allowed the same amount of time to attend off the job training equivalent to that of a fulltime apprentice over the duration of the apprenticeship;
- the duration of the apprenticeship must be stated in the training contract and must not be more than six years;
- progression through the relevant wage scale at the rate of 12 months for each two years of employment as a school based apprentice; and
- if the apprentice converts from school based to full time, time spent as school based apprentice will count for the purposes of progression through the relevant wage scale.

# Key Minimum Award Conditions

In conjunction with the introduction of the modern awards, the new industrial relations regime provides for new National Employment Standards (NES). The NES creates ten minimum conditions for all employees, including managerial employees, award, and non award employees. The NES and the modern onsite building award combine to set the minimum conditions of employment for employees covered by the award.

## HOURS OF WORK

The ordinary hours of work under the modern onsite building award allow for a maximum of 38 hours per week, plus 'reasonable additional hours'. Ordinary hours are worked between 7.00am and 6.00pm Monday to Friday .

## ROSTERED DAYS OFF

Although the award allows for 38 hours per week, the modern onsite award provides for a system for rostered days off (RDO's). The RDO system operates on the basis that an employee works eight hours each day (40 hour week) and is paid 7.6 hours (38 hours per week). The accumulated difference results the employee being entitled to a paid day off every 20 days worked. This day is taken as a paid day off at a time rostered by you.

If you do not want to pay in accordance with an RDO system or you want more flexible working hours you can exclude or modify the RDO system under an enterprise agreement or with individual employees through an Individual Flexibility Agreement (IFA).

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## OVERTIME

Employees have the right to refuse to work overtime in circumstances where it would result in the employee working hours which are 'unreasonable'. In determining whether additional hours are unreasonable, regard must be given to:

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

Under the modern onsite building award, all hours worked beyond ordinary time, must be paid for at the rate of time and a half for the first two hours and double time thereafter. Employees who work overtime on a Saturday must be engaged for a minimum of three hours, and be paid at the rate of time and a half for the first two hours and double time thereafter, with any time worked after 12 noon paid at double time. Any time worked on a Sunday must be for a minimum of four hours, and be paid at the rate of double time.

The modern onsite building award also requires employees to be provided with an unpaid work break of 30 minutes between noon and 1.00pm each working day (unless otherwise agreed by a majority of employees). Employees are also entitled to a rest period of 10 minutes between 9.00am and 11.00am without deduction of pay.

Different requirements apply for the purposes of work breaks during overtime, shift work and distant work. See the full award for applicable clauses (Parts 4 and 5).

## SUPERANNUATION

You must make superannuation contributions for all of your employees. This contribution is in addition to the ordinary wages. The current minimum percentage contribution is nine per cent of Ordinary Time Earnings (OTE).

Superannuation payments must be made at least once each quarter. You must also give your employees details of the contributions made on payslips. The details are to include the amount paid and to which super fund. You must also keep a separate detailed record for each employee of contributions made.

Under the award, if the employee does not nominate a fund you must pay it into one of the following funds:

- (a) Construction and Building Industry Super (Cbus);
- (b) Building Unions Superannuation (Queensland) (BUSS(Q));
- (c) QUEST Super;
- (d) AUST(Q);
- (e) Australian Super
- (f) ASSET Super
- (g) Tasplan;
- (h) Westscheme;
- (i) Building Employers Superannuation Trust;
- (j) CCFST;
- (k) SunSuper;
- (l) Statewude Superannuation trust; or
- (m) Any super fund to which you were making super contributions into for your employees before 12 September 2008, provided it is an eligible choice fund.

## FLEXIBLE HOURS (KEY CHANGE!)

An employee who is a parent or has a responsibility for the care of a child under school age may request a change in working arrangements for the purpose of caring for the child. The employee is not entitled to make the request unless they have completed at least 12 months of continuous service with the employer immediately before making the request.

Different rules apply for casual employees. A casual employee can only make such request if they have been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately before making the request; and has a reasonable expectation of continuing the engagement.

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A request for flexible hours must be in writing; and set out details of the change sought and reasons for the change. As the employer, you must give the employee a written response to the request within 21 days, stating whether you will grant or refuse the request. A request may only be denied on reasonable business grounds. If you refuse the request, the written response must include reasons as to why the request was denied.

## PARENTAL LEAVE

All employees, other than casual employees, are entitled to 12 months unpaid parental leave, upon completion of 12 months continuous service with the employer. The right to parental leave arises where the leave is associated with the birth of a child (that being a child who is born to the employee or the employee's spouse or de facto partner), or where the employee adopts a child and has or will have a responsibility for the care of the child.

## ANNUAL LEAVE

All employees, other than casual employees, are entitled to 4 weeks annual leave per year with an annual leave loading of 17.5% calculated on the appropriate rates, loadings and allowances. An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work;

## PERSONAL LEAVE

All employees, other than casual employees, are entitled to 10 days of paid personal/carer's leave for each year of service with their employer. An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work.

An employee may take paid personal/carer's leave if the employee is unfit for work because:

- they have a personal illness/injury;
- they need to provide care or support to a member of the their immediate family or household who requires care or support because of a personal illness/injury;
- there is an unexpected emergency affecting the immediate family/household member.

## COMMUNITY SERVICE LEAVE

Employees have the right to take (mostly) unpaid leave for services such as volunteer bushfire fighting and jury service. The option to take leave is available to employees if they provide the employer with notice as soon as reasonably practicable (setting out the intended amount of absence) and provide evidence to the employer's satisfaction that the employee is taking part in such community service.

## PUBLIC HOLIDAYS

Employees (other than casual or daily hire) are entitled to payment of wages for public holidays and substitute days as gazetted under State laws which ordinarily are working days. Employers may only request an employee to work on a public holiday if it is a reasonable request, and employees have the right to refuse working on a public holiday if the request is unreasonable or if their reasons for refusal are reasonable.

## ANNUAL SHUTDOWN

You may direct your employees to take paid or unpaid annual leave when you shut down your business, (e.g. at Christmas and over Easter). However you must first give your employees 2 months written notice.

## TERMINATION AND REDUNDANCY (KEY CHANGE!)

While redundancy pay is normally paid where employee's position is ended due to economic, operational or technological changes within a business, under the modern onsite building award there is an extended definition for redundancy for non casual and non apprenticed employees. The award states:

redundancy means a situation where an employee ceases to be employed by the employer.... other than for reasons of misconduct or refusal of duty.

Under this expansive definition, redundancy payments apply not only to employees who are let go because your business can no longer afford to employ them but also to employees who quit and resign. The only exception is for employees dismissed for misconduct or refusal of duty.

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As an employer, you will need to give minimum notice period for termination of employment and redundancy. The notice period is based on the employee's period of continuous service.

Period of continuous service	Notice period*
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

\*The relevant notice period also increases by 1 week if the employee is over 45 years old and has completed at least 2 years' continuous service with the employer.

In conjunction with notice of termination, the employee is entitled to severance payment. The amount of the severance payment depends on the employee's period of continuous service with payment based on the employee's ordinary time rate of pay.

Period of continuous service	Amount of Severance Payment
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

\*An employee employed for less than 12 months is entitled to severance payment of 1.75 hours per week of service, if and only if the redundancy is occasioned by the employer.

The final amount payable to the employee can be offset by any amounts you pay on their behalf into a redundancy scheme.

## CONSULTATION ON SIGNIFICANT WORKPLACE CHANGES

The modern onsite building award contains a standard consultation clause dealing with the requirements for employers to consult with employees (and their representatives) where the employer intends to implement significant changes at the workplace.

A significant change includes a decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees.

In these cases, you must:

- notify your employees and their unions (if they happen to be a member of a union) who may be affected by the proposed changes
- discuss the changes with the employees and their unions, and provide information in writing to them, as soon as practicable after a definite decision has been made about:
  - the nature of the changes
  - effect the changes are likely to have on employees, and
  - measures to prevent or reduce the adverse effects of such changes on employees
- then give prompt consideration to matters raised by the employees and their unions in relation to the changes.

While you do not need to obtain the consent of your employees or their unions to implement changes to the business you should try to adopt a cooperative approach.

## REQUIREMENT TO PROVIDE INFORMATION STATEMENT

You must give each employee the Fair Work Information Statement before or as soon as practicable after the employee commences employment. The Fair Work Information Statement as published by Fair Work Australia, includes information for employees regarding the NES, modern awards, agreement making under the Fair Work Act 2009 ('FW Act'), the right to freedom of association, and the role of Fair Work Australia.

# Providing Employment Conditions

There is a duty to provide employees with entitlements that are the same as or better than the entitlements under their applicable award. As noted in the engagement section of the modern onsite building award, you have the duty to inform an employee in writing of their terms of engagement. There are several ways to do this:

## WHAT DOCUMENTS WOULD BE INVOLVED IN ENGAGING SOMEONE UNDER THE MODERN AWARD?

- letter of appointment;
- copy, or access to a copy, of the modern award for new employees;
- fair work information statement (this document is yet to be published);
- any other company documents – handbooks, company policies etc.

## LETTER OF APPOINTMENT

A letter of appointment can set out the minimum conditions of employment in accordance with the award. To view sample letters of appointment refer to **Schedule E**.

## INDIVIDUAL FLEXIBILITY AGREEMENTS

Individual flexibility agreements ('IFA's') enable a change to the way certain award terms apply to individual employees. IFA's provide some of the flexibility employers and employees used to obtain under Australian Workplace Agreements (AWAs) without the red tape and delay of a registration process.

IFA's need to be made in writing but do not need to be lodged with Fair Work Australia. However the employee must be placed in a position such that they are better off overall.

Under the modern onsite building award, through IFA's you can alter:

- when work is performed, by adjusting working hours, RDO arrangements and inclement weather obligations;
- provide for flexible overtime and penalty rate arrangements such as a higher rate of pay in lieu of separate payment for some overtime;
- allowances (including payment of all in rates); and
- annual leave loading.

You cannot coerce an employee to sign an IFA, or make an IFA a condition of employment. Either party can end an IFA at anytime after giving four weeks notice, in which case the employee returns to award conditions. For a sample IFA for a new employee refer to **Schedule F**, for an existing employee refer to **Schedule G**.

## ENTERPRISE AGREEMENTS

The FW Act introduces new rules for Enterprise agreements. Enterprise agreements are legally binding agreements between one or more employers and a group of employees to set out pay and working conditions for all employees covered by the agreement. An enterprise agreement is an alternative to engaging an employee under the relevant modern award and, if implemented properly, can be mutually beneficial to both you and your workers by enabling greater productivity, flexibility and reward.

There is a detailed process for setting up an enterprise agreement involving notification, negotiation, preparation, voting, and approval by Fair Work Australia. For further information about making an enterprise agreement, refer to **Schedule H**.

## WHAT NOW?

HIA's Infocentre and national team of workplace advisers is happy to assist you with any further queries you may on award modernisation and the impact on your business.

For further information contact HIA Workplace Services on 1300 650 620.

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### WEBSITES

[www.hia.com.au](http://www.hia.com.au)

[www.fairwork.gov.au](http://www.fairwork.gov.au)

### Useful links for more information are:

Fair Work Australia:	<a href="http://www.fwa.gov.au">http://www.fwa.gov.au</a>
NES:	<a href="http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf">http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf</a>
HIA fair work booklet:	<a href="http://hia.com.au/hia/channel/Trade%20Contractor/region/National/classification/Workplace%20Services/Fair%20Work.aspx">http://hia.com.au/hia/channel/Trade%20Contractor/region/National/classification/Workplace%20Services/Fair%20Work.aspx</a>
Full award:	<a href="http://www.airc.gov.au/awardmod/awards/building.pdf">http://www.airc.gov.au/awardmod/awards/building.pdf</a>

## SCHEDULES

- A** Wages summary & classifications for the modern onsite building award
- B** Worked example of phase in arrangements
- C** Allowances
- D** Hourly rate calculations
- E** Sample letter of appointment- new employee
- F** Sample IFA (new employee)
- G** Sample IFA (existing employee)
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## SCHEDULE A Wages summary & classifications for the modern onsite building award

Level	Weekly wage	Ordinary hourly rate	Casual hourly rate
Level 9 (ECW9)	750.40	19.75	24.69
Level 8 (CW/ECW 8)	737.00	19.40	24.25
Level 7 (CW/ECW 7)	719.10	18.92	23.65
Level 6 (CW/ECW 6)	698.30	18.38	22.98
Level 5 (CW/ECW 5)	679.40	17.88	22.35
Level 4 (CW/ECW 4)	658.60	17.33	21.66
Level 3 (CW/ECW 3)	637.60	16.78	20.98
Level 2 (CW/ECW 2)	619.00	16.29	20.36
Level 1 (CW/ECW 1):			
CW/ECW 1 (level d) - upon filling requirements of CW1/ ECW1	605.60	15.94	19.93
CW/ECW 1 (level c) - after 12 months in industry	594.00	15.63	19.54
CW/ECW 1 (level b) - after 3 months in industry	585.50	15.41	19.26
CW/ECW 1 (level a) - commencement in the industry	573.00	15.08	18.85

The above rates are the minimum classification rates and exclude applicable allowances payable under the modern onsite building award.

\*Refer to the classifications as per below

\*\*need to add industry, special allowances, and tool allowances where applicable

### NUMBERS TO RING

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## Classifications

<p>Level 1 (CW/ECW1)</p>	<p>An employee at this level works under general supervision in one or more skill streams contained within this award. The employee will have successfully completed and obtained skills:</p> <ul style="list-style-type: none"> <li>- in accordance with RPL principles, a construction skills test equivalent to the required competency standards; or</li> <li>- in a relevant structured training program equivalent to the required competency standards; or</li> <li>- an Engineering Construction Industry Skills Certificate Level 1 consisting of 16 appropriate modules; or formally recognised equivalent accredited training so as to enable the employee to perform work within the scope of this level; or</li> <li>- through equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Adult trainee terrazzo worker;  Assistant powder monkey;  Builders' labourer group 4;  Cable jointer; Cement gun operator;  Concrete cutting or drilling machine operator;  Concrete floater;  Concrete formwork stripper;  Concrete gang worker;  Concrete gun or pump operator;  Demolition labourer;  Employee directly assisting a tradesperson;  Fencer;  General hand;  Insulator;</p> <p>Kerb and gutter layer;  Landscape labourer;  Painter brush hand;  Plasterer, terrazzo or stonemason's assistant;  Roof layer;  Sheetmetal worker 2nd class;  Spray painter;  Steel erector;  Stonemason assistant—factory (Qld and Tas);  Terrazzo assistant;  Tool/material storeman;  Tradesperson's labourer.</p>
<p>Level 2 (CW/ECW 2)</p>	<p>An employee at this level works under limited supervision in one or more skill streams contained within this award. The employee will have successfully completed and obtained skills:</p> <ul style="list-style-type: none"> <li>- in accordance with RPL principles a Construction Skills Test equivalent to the required competency standards; or</li> <li>- in relevant structured training equivalent to the required competency standards; or</li> <li>- in a Engineering Construction Industry Certificate Level 2 consisting of a total of 20 appropriate modules, or formally recognised equivalent accredited training so as to enable the employee to perform work within the scope of this level; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standard.</li> </ul> <p>Concrete finisher;  Landscape;er;  Powder monkey;  Scaffolder;</p> <p>Steelfixer;  Storeman;  Traffic controller.</p>

<p>Level 3 (CW/ECW 3)</p>	<p>An employee at this level works individually or in a team environment in one or more skill streams contained within this award. An employee at this level will have successfully completed:</p> <ul style="list-style-type: none"> <li>- a relevant trade apprenticeship or its AQF equivalent; or</li> <li>- Construction Skills Test in accordance with RPL principles; or</li> <li>- the required competency standards; or</li> <li>- an Engineering Construction Industry Certificate Level 3 consisting of a total of 24 appropriate modules or formally recognised equivalent accredited training so as to enable the employee to perform work within the scope of this level; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standard.</li> </ul> <p>Artificial stoneworker;  Boilermaker and/or structural steel tradesperson;  Bricklayer;  Bridge and wharf carpenter;  Carpenter;  Caster;  Fitter;  Fixer;  Floor layer specialist;  Floor sander;  Gardener;  Glazier;  Joiner;  Marble and slate worker;</p> <p>Machinist;  Painter;  Plasterer;  Roof fixer;  Roof tiler;  Shophand;  Stonemason;  Slate Ridge;  Tilelayer;  Timberperson;  Tradesperson (radio);  Tradesperson (precast concrete manufacture);  Tradesperson landscaper.</p>
<p>Level 4 (CW/ECW 4)</p>	<p>An employee at this level works in one or more skill streams contained within this award. An employee at this level will have successfully completed:</p> <ul style="list-style-type: none"> <li>- relevant structured training in addition to the requirements of level 3; or</li> <li>- Construction Skills Test in accordance with RPL principles; or is a</li> <li>- Engineering construction tradesperson (electrical/electronic/mechanical/fabrication) level II; or who has completed</li> <li>- three appropriate modules towards an Advanced Certificate/Diploma; or</li> <li>- any training which a registered provider or state training authority has recognised as equivalent; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Concrete paver;  Electrician special class;  Joiner special class;  Joiner-setter out;</p> <p>Marker or Setter Out;  Signwriter;  Specialist landscaper tradesperson.</p>
<p>Level 5 (CW/ECW 5)</p>	<p>An employee at this level works in one or more skill streams contained within this award. An employee at this level will have successfully completed:</p> <ul style="list-style-type: none"> <li>- relevant structured training in addition to the requirements of level 4; or</li> <li>- Construction Skills Test in accordance with RPL principles; or is a</li> <li>- Special Class Engineering construction tradesperson (electrical/electronic/mechanical/fabrication) level I; or who has completed</li> <li>- six appropriate modules towards an Advanced Certificate/Diploma; or</li> <li>- any training which a registered provider or state training authority has recognised as equivalent; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Refractory bricklayer;  Special class tradesman – carpenter, plasterer or stonemason;</p> <p>Special class bricklayer.</p>

Level 6 (CW/ECW 6)	<p>An employee at this level works in one or more skill streams contained within this award. An employee at this level will have successfully completed:</p> <ul style="list-style-type: none"> <li>- relevant structured training in addition to the requirements of level 5; or</li> <li>- Construction Skills Test in accordance with RPL principles; or is a</li> <li>- Special Class Engineering construction tradesperson (electrical/electronic/mechanical/fabrication) level II; or who has completed</li> <li>- nine appropriate modules towards an Advanced Certificate/Diploma; or</li> <li>- any training which a registered provider or state training authority has recognised as equivalent; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Electronics tradesperson.</p>
Level 7 (CW/ECW 7)	<p>An employee at this level works in one or more skill streams contained within this award. An employee at this level will have successfully completed:</p> <ul style="list-style-type: none"> <li>- relevant structured training in addition to the requirements of level 6; or</li> <li>- Construction Skills Test in accordance with RPL principles; or is a</li> <li>- Special Class Engineering construction tradesperson (electrical/electronic/mechanical/fabrication) level III; or who has completed</li> <li>- Ten and a half appropriate modules towards an Advanced Certificate/Diploma, or in addition to the requirements of ECW3; or</li> <li>- any training which a registered provider or state training authority has recognised as equivalent; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Sub-foreperson.</p>
Level 8 (CW/ECW 8)	<p>An employee at this level works in one or more skill streams contained within this award. An employee at this level will have successfully completed:</p> <ul style="list-style-type: none"> <li>- relevant structured training in addition to the requirements of level 7; or</li> <li>- Construction Skills Test in accordance with RPL principles; or is a</li> <li>- Advance engineering construction tradesperson (electrical/electronic/mechanical/fabrication) level I; or who has completed</li> <li>- twelve appropriate modules towards an Advanced Certificate/Diploma; or</li> <li>- any training which a registered provider or state training authority has recognised as equivalent; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Carpenter-diver or Foreperson (as defined).</p>
Level 9 (ECW 9)	<p>An Advanced engineering construction tradesperson level II is an</p> <ul style="list-style-type: none"> <li>- Advanced engineering construction tradesperson (mechanical/fabrication) level II, who has completed:</li> <li>- An Advanced Certificate; or</li> <li>- Fifteen appropriate modules of an Associate Diploma; or</li> <li>- Fifteen appropriate modules in addition to the requirements of CW/ECW 3; or</li> <li>- any training which a registered provider or state training authority has recognised as equivalent; or</li> <li>- equivalent work experience subject to competency testing to the prescribed standards.</li> </ul> <p>Advanced engineering construction tradesperson level II.</p>

## SCHEDULE B Worked example of phase in arrangements

### Phase in arrangements in circumstances where the modern award rate is more than the transitional rate

AB Builders Pty Ltd currently employ Tim under a state NAPSA.

- Current NAPSA rate: \$18.00/ hr
- Modern Award rate: \$20.00/ hr
- Difference: \$2.00 (transitional amount)

As the modern award rate is greater than the NPASA rate AB Builders Pty Ltd can phase in the transitional amount over the next 4 years:

First full pay period on or after	Percentage	Calculation
1 July 2010	80%	Tim will be paid \$18.40 being the modern award rate of \$20.00 less 80% of the transitional amount of \$2.00
1 July 2011	60%	Tim will be paid \$18.80 being the modern award rate of \$20.00 less 60% of the transitional amount of \$2.00.
1 July 2012	40%	Tim will be paid \$19.20 being the modern award rate of \$20.00 less 40% of the transitional amount of \$2.00.
1 July 2013	20%	Tim will be paid \$19.60 being the modern award rate of \$20.00 less 20% of the transitional amount of \$2.00
1 July 2014		Tim will be paid the full modern award rate with no adjustment.

Note: the modern award rate will change each year in accordance with any changes in the federal minimum wage set by Fair Work Australia so new calculations will be required each year.

Transitional arrangements also apply where the modern rate is less than the pre modernisation rate and for differences between the loading and penalty rates.

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## SCHEDULE C Allowances

Allowance type	Description	Per week \$
Tool and employee protection allowance – clause 20.1	<a href="#">Artificial stoneworker, carpenter and/or joiner, carpenter-diver, carver, bridge and wharf carpenter, floor sander, letter cutter, marble and slate worker, stonemason or tilelayer</a>	25.80
	<a href="#">Caster, fixer, floor layer specialist or plasterer</a>	21.30
	<a href="#">Refractory bricklayer or bricklayer</a>	18.30
	<a href="#">Roof tiler, slate-ridger or roof fixer, tradespersons in the metals and engineering construction sector</a>	13.50
	<a href="#">Signwriter, painter or glazier</a>	6.20
Meal allowance – clause 20.2	<a href="#">Payable when an employee is required to work at least 1.5 hours of overtime</a>	11.90
Special allowance – clause 21.1	<a href="#">Compensate for excess travelling time in the on-site building and construction industry</a>	7.70
Industry allowance – clause 21.2	<a href="#">Compensate for disabilities associated with construction work</a>	3.7% of weekly rate
Underground allowance – clause 21.3	<a href="#">Underground work</a>	1.8% of weekly rate
Multistorey allowances – clause 21.4	<a href="#">From the commencement of building to 15th floor level</a>	2.6% of hourly rate
	From the 16th floor level to 30th floor level	3.1% of hourly rate
	From the 31st floor level to 45th floor level	4.8% of hourly rate
	From the 46th floor level to 60th floor level	6.2% of hourly rate
	<a href="#">From the 61st floor level onward</a>	7.6% of hourly rate
Carpenter-diver allowance – clause 21.7		4.5% of hourly rate
Refractory bricklaying allowance – clause 21.8	<a href="#">Refractory bricklayer</a>	10% of hourly rate
	<a href="#">Refractory assistant</a>	8.5% of hourly rate
First aid allowance – clause 21.10	<a href="#">For the person appointed to carrying out first aid and has a recognised first aid qualification</a>	0.36% of weekly rate
Air-conditioning and refrigeration industry allowance – clause 21.11	<a href="#">To compensate for various disabilities and peculiarities within the industry</a>	7.9% of weekly rate
Electrician allowance – clause 21.12		3.2% of weekly rate
In charge of plant – clause 21.13	<a href="#">When in charge of two or more employee</a>	4.7% of weekly rate

## SCHEDULE C Allowances continued

Allowance type	Description	Per week \$
Special rates (all sectors) – clause 22.2	<a href="#">Insulation, hot work, confined spaces, swing scaffold, explosive power tools, wet work dirty work, toxic substances, fumes, asbestos, furnace work, acid work, heavy blocks, bitumen work, height work, suspended perimeter platform, carrying fuels, oils or greases, pile driving, dual lift allowance, and stone masons tools.</a>	Contact the InfoCentre
Special rates (general building and construction) – clause 22.3	<a href="#">Tower allowances, cleaning down brick work, bagging, slushing, dry polishing of tiles, cutting tiles, second-hand timber, roof repairs, computing quantities, grindstone allowance, brewery cylinder, certificate allowance, spray application – painters, pneumatic tools, bricklaying, operating cutting machine, hydraulic hammer, and waste disposal.</a>	Contact the InfoCentre
Special rates (civil construction) – clause 22.4	<a href="#">Pipe enamelling, powered lime dust, sand blasting, live sewer work, timbering, special work, compressed air work, and cutting stone.</a>	Contact the InfoCentre
Inclement weather – clause 23	<a href="#">Refer to clause or HIA information sheet.</a>	
Fares and travel patterns allowance – clause 25	<a href="#">Metropolitan radius areas – within 50 kms radius of GPO in capital city or principal post office for regional areas.</a>	16.50 per day
	<p><a href="#">(a) Travelling outside of radial areas – the allowance payable:</a></p> <p>(i) <a href="#">clause 25.2</a></p> <p>(ii) <a href="#">payment for time spent travelling from radial boundary to job and returning to the boundary– refer to (b)</a></p> <p>(iii) <a href="#">use of own vehicle</a></p> <p><a href="#">(b) time outside ordinary working hours – to minimum of 1.5 hours per day.</a></p>	16.50 per day  44c per km 25% of ordinary hourly rate
Fares and travel patterns allowance (apprentices) – clause 25.12	<p><a href="#">Calculated at % of clause 25.2:</a></p> <p>- <a href="#">First year</a></p> <p>- <a href="#">Second year</a></p> <p>- <a href="#">Third year</a></p> <p>- <a href="#">Fourth year</a></p>	75% 85% 90% 95%
District allowance – clause 26	Northern Territory – refer to <i>Workplace Relations Act 1996 (Cth)</i>	
	Western Australia - refer to <i>Workplace Relations Act 1996 (Cth)</i>	

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## SCHEDULE D Hourly Rate Calculations

The employee's rate of pay varies depending on their employment category. The following rates are calculated to the nearest cent:

(a) **Daily hire employees** – clause 19.3:

The sum of minimum wages; tool and employee protection allowance; industry allowance; and underground allowance (if applicable) – multiplied by 52 over 50.4 ( $52/50.4$ ) – add the special allowance – divide by 38 to calculate hourly rate. This calculation may be different if the employee is a carpenter-diver, refractory builder or their assistant. Please contact the InfoCentre for further information.

(b) **Fulltime/Part-time employees** – clause 19.3:

The sum of minimum wages; special allowance; industry allowance; underground allowance (if applicable); in charge of plant allowance (if applicable); tool and protection allowance; air-conditioning industry and refrigeration industry (if applicable); electrician allowance (if applicable) – divide by 38 to calculate hourly rate.

(c) **Casual employees** – clause 14:

Casual employment are employed at the ordinary hourly rate multiple by 25%.

Casuals are entitled to fares and travel allowance, other expenses under clause 24 – Living away from home and clause 25 – fares and travel patterns and penalty rates for clause 36 – Overtime and clause 37 – penalty rates.

## **SCHEDULE E** Sample letter of appointment

*(new employee commencing on modern onsite building award after 1 January 2010)*

[Date]

[Name and address of employee]

Dear [INSERT],

RE: OFFER OF EMPLOYMENT

It is with pleasure that we offer you the position of INSERT with us. If you accept, you will be employed pursuant to the and Fair Work Act 2009 and Building and Construction General On-site Award 2010 (Award) and while the industrial laws and Award govern your employment, they are not the entire terms of your employment contract. The terms of this offer of employment are set out more fully in this letter.

Please read carefully the terms of this offer of employment. If you agree to them please sign in the space provided at the foot of this letter, return the original to this office and keep a copy for your records. We also enclose the following forms for you to either read and familiar yourself with or complete, sign and return with the original signed letter:

- Fair Work Information Statement
- Tax file declaration form
- Choice of superannuation form
- Request for personal details
- Bank account details form
- [INSERT ANY OTHER RELEVANT DOCUMENTS SUCH AS COMPANY POLICIES/HANDBOOKS]

### **Contract Period**

Subject to signing this offer, your employment is to commence on [INSERT DATE]

### **Status**

You will be employed as a [INSERT CLASSIFICATION] on a [INSERT DAILY HIRE/FULL TIME/PART TIME] basis.

### **Wages**

You will be paid and hourly rate of [INSERT], including [INSERT] allowances where applicable. Your rate will be increased as necessary to meet the minimum guaranteed rate of pay in accordance with the National Employment Standards (NES). All other allowances will be payable in accordance with the Award. You will be paid .....(include the pay period, eg weekly or fortnightly) by electronic funds, transfer to your nominated account.

### **Specific duties and Responsibilities**

Summarise all duties of the position but in general terms only. (If appropriate refer to an attachment)

### **Hours of Work**

Include range of ordinary hours, start and finish times Monday to Friday, total weekly hours (eg 38), details of any rostered days off arrangements, daily meal break period and any overtime conditions.

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Where an award operates, reference can merely be made to the relevant clauses without the need to include too much detail.

### **Annual Leave Entitlements**

You will be entitled to annual leave in accordance with the NES.

The NES provides that employees (other than casuals) are entitled to 4 weeks paid annual leave for each year of service. An employee's entitlement to paid annual leave accrues progressively during a year of services according to the employee's ordinary hours of work.

The modern onsite award also provides that when a permanent employee takes paid annual leave, the employee will receive an annual leave loading of 17.5% of the employee's rate of pay.

### **Personal/carer's leave and compassionate leave**

You will be entitled to personal/carer's leave and compassionate leave in accordance with the NES.

The NES provides that employees (other than casuals) are entitled to 10 days paid personal/carer's leave for each year of service. An employee's entitlement to paid annual leave accrues progressively during a year of services according to the employee's ordinary hours of work. Employees (other than casuals) may take paid personal/carer's leave if the leave is taken:

- (a) because the employee is unfit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.

Employees are entitled to 2 days unpaid carer's leave for each permissible occasion if they are the primary care giver to an immediate family member or a member of their household who is sick, provided the employee has exhausted their paid personal/carer's leave entitlement.

Employees are entitled to 2 days compassionate leave for each permissible occasion where a member of the employee's immediate family, or a member of the employee's household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life; or
- (c) dies.

You must provide medical certificates or statutory declarations for absences of 2 or more consecutive days or where leave is taken before or after a public holiday or otherwise when we reasonably request you to do so.

### **Qualifying period**

Include reference to an initial qualifying period (generally 6 months but can be up to 12 months for small business employers with less than 15 employees) and that during this period the employee's work performance will be under review. At the end of this period there should be a formal review of the employee's performance and a formal decision recorded to confirm the employee, terminate the employee or to extend the probationary period.

It is important to include such a provision because, if the employer decides that the employment of the new employee should not be continued; termination during this probationary period can normally take place without the unfair dismissal provisions having any application. It should be noted that it is unlawful to terminate employment on certain specified grounds (ie. discrimination).

## Superannuation

We will make superannuation contributions for you in accordance with the Superannuation Guarantee Levy (currently 9% of ordinary time earnings) into your nominated super fund.

## Company practices

Include details of any special policies on such matters as medical requirements, dress standards, smoking, occupational health and safety, equal employment opportunity, training and confidentiality. The above may be referred to in a staff handbook where company policy is set out in full.

## Termination of employment

We may dismiss you without notice if you are guilty of serious misconduct.

Otherwise, in all other circumstances, we may dismiss you on giving the following period of notice or pay in lieu:

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

An employee over 45 years of age is entitled to one week's extra notice, in addition to the notice outlined above provided the employee has completed at least 2 years of continuous service.

The notice of termination required to be given by you is the same as that required of us, except that there is no requirement for you to give additional notice based on your age at the time of termination.

## Entire Agreement

The letter comprises the full terms and conditions of employment.

## Acceptance

I hereby accept the offer of employment on the terms and conditions as set out above

If you are satisfied with the contents of the offer please sign both letters and return one to us.

We look forward to receiving the signed document and welcome you to (Name of Company).

Yours truly,

(Name of author of letter and position)

## Acceptance of Employment

Full Name of (Employee)	Signature	Date
Signed on behalf of (Name of Employer)	Signature	Date

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## **SCHEDULE F** HIA Sample Individual Flexibility Agreement (new employee)

### OFFER OF EMPLOYMENT AND INDIVIDUAL FLEXIBILITY ARRANGEMENT

I am pleased to offer to employ you as a full time/part time/ casual <<insert classification>> on the following terms.

#### **Commencement and hours**

You start on <<insert commencement>>.

Ordinary start and finishing times are <<insert times>>.

#### **Pay**

Your pay will be \$x, unless you opt to sign the individual flexibility agreement overleaf, in which case it will be \$x

#### **Duties**

Your duties are as set out in the attached position description.

#### **General Conditions of employment**

Your conditions of employment will be as set out in the Building & Construction General On-site Award 2010.

You can choose to accept the individual flexibility arrangement which provides for higher pay and adjusted conditions.

You may accept the offer of employment - and be engaged at award rates and conditions - without accepting the individual flexibility agreement.

#### **Individual Flexibility Agreement**

Attached is an optional individual flexibility agreement. These are new agreements allowed under the Award. They provide flexibility to suit the needs of individual employees and employers.

We are able to offer higher rates of pay to employees who agree to the flexibilities.

The agreements must make you better off overall compared to the Award by providing higher pay and/or more suitable and beneficial employment conditions.

You cannot be forced to sign such an agreement.

You can terminate it any time on 4 weeks notice, after which you would revert to your lower pay and award conditions.

#### **Other Obligations - Company Policies**

You must comply with our company policies as amended from time to time, particularly in relation to occupational health and safety.

#### **Next Steps**

To confirm you accept the offer and/or the individual flexibility arrangement please tick the relevant box(es) and sign this letter in the space below.

To accept the individual flexibility agreement, sign and date it and return it to us with this letter. We will give you a copy of the agreement for your records.

I look forward to you joining our team.

Regards

**Yes, I accept the offer of employment**

**Yes, I accept the individual flexibility agreement overleaf**

**Signed by**

**Dated**

## SCHEDULE Agreement Details

<b>Item 1: The Employer</b>	<<insert name and address of employer>>
<b>Item 2: The Employee</b>	<<insert name and address of Employee>>
<b>Item 3: Agreement Start Date</b>	<<insert agreement start date>>
<b>Item 4: Award Classification</b>	<<insert classification>>
<b>Item 5: Award Pay Rate</b>	<<insert rate>>
<b>Item 6: New Pay Rate</b>	<<insert rate>>

### Parties and Effect

This individual flexibility agreement ('IFA') is made between the Employer ('us') specified in Schedule Item 1 and the Employee ('you') specified in Schedule Item 2 under the terms of clause <<x>> of the Building & Construction General On-site Award 2010.

### Start and End

This agreement starts on the date set out in Schedule Item 3 or the first day of your employment, whichever is sooner. Under the Award, either party may end this agreement at any time on giving the other party 4 weeks written notice. If this IFA ends and is not replaced by a new FIA, you will revert to award conditions and former rate of pay.

### Pay Rates

In return for you agreeing to the flexibilities listed below, we will pay you the higher rate set out in Item 6.

### Flexibility

Your Award conditions are adjusted as follows:

<<Insert award clauses and manner in which they are adjusted>>

### Why This Agreement Makes You Better Off

This arrangement makes you better off than the Award because the changes provide you with better choice and flexibility, and you are being paid significantly above award rates. In particular:

<<Insert reasons each clause makes employee better off>>

### Signatures

Signed by <<name>> (the Employer)

Signed by <<name>> (the Employee)

Date:

Date:

To be completed if Employee is under 18

#### SIGNED BY Parent/Guardian

Signature:

Name:

Address:

Date:

#### NUMBERS TO RING

HIA memberline: 1300 650 620

Fair Work Australia: 1300 799 675

#### WEBSITES

[www.hia.com.au](http://www.hia.com.au)

[www.fairwork.gov.au](http://www.fairwork.gov.au)

## **SCHEDULE G** HIA Sample Individual Flexibility Agreement (existing employee)

### OFFER OF INDIVIDUAL FLEXIBILITY ARRANGEMENT

I would like to offer you the opportunity of higher take home pay in return for agreeing to flexible working arrangements.

#### **Individual Flexibility Agreements**

Attached is an individual flexibility agreement that provides a higher rate of pay in return for more flexible working arrangements.

Individual flexibility agreements are new agreements allowed under the Award. They provide flexibility for individual employees and employers.

The agreement must make you better off overall compared to the Award.

You cannot be forced to sign such an agreement.

You can terminate it any time on 4 weeks notice, after which you would revert to your old pay and award conditions.

#### **The Agreement**

The agreement is self-explanatory, but includes the following key changes:

Increased Pay: Your pay would increase from \$x to \$y.

Tailored award conditions: This includes <<summarise changes>>

#### **Next Steps**

To accept the agreement, sign and date it and return it to us with this letter. We will give you a copy of the agreement for your records.

If you have any queries, please let me know.

Regards

## SCHEDULE Agreement Details

<b>Item 1: The Employer</b>	<<insert name and address of employer>>
<b>Item 2: The Employee</b>	<<insert name and address of Employee>>
<b>Item 3: Agreement Start Date</b>	<<insert agreement start date>>
<b>Item 4: Award Classification</b>	<<insert classification>>
<b>Item 5: Award Pay Rate</b>	<<insert rate>>
<b>Item 6: New Pay Rate</b>	<<insert rate>>

### Parties and Effect

This individual flexibility agreement ('IFA') is made between the Employer ('us') specified in Schedule Item 1 and the Employee ('you') specified in Schedule Item 2 under the terms of clause <<x>> of the Building & Construction General On-site Award 2010.

### Start and End

This agreement starts on the date set out in Schedule Item 3 or the first day of your employment, whichever is sooner. Under the Award, either party may end this agreement at any time on giving the other party 4 weeks written notice. If this IFA ends and is not replaced by a new FIA, you will revert to award conditions and former rate of pay.

### Pay Rates

In return for you agreeing to the flexibilities listed below, we will pay you the higher rate set out in Item 6.

### Flexibility

Your Award conditions are adjusted as follows:

<<Insert award clauses and manner in which they are adjusted>>

### Why This Agreement Makes You Better Off

This arrangement makes you better off than the Award because the changes provide you with better choice and flexibility, and you are being paid significantly above award rates. In particular:

<<Insert reasons each clause makes employee better off>>

### Signatures

Signed by <<name>> (the Employer)

Signed by <<name>> (the Employee)

Date:

Date:

To be completed if Employee is under 18

#### SIGNED BY Parent/Guardian

Signature:

Name:

Address:

Date:

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## **SCHEDULE H** A step by step guide to making an enterprise agreement

### **Step 1 – Notify employees**

- You must notify each employee who will be covered by the agreement of their right to be represented by a bargaining representative during negotiations.
- The notice must be given within 14 days from when you want to start bargaining and at least 21 days before any vote.
- The notice must include certain information (HIA have a template available for members).

### **Step 2 – Negotiate the terms**

- Both you and your employees can appoint bargaining agents to represent you.
- Unions are the automatic bargaining agents for employees who are members. (If your employee does not want union involvement in the process they can nominate someone else including themselves but this needs to be in writing)
- An employee can nominate another employee or person to bargain for them
- You have an obligation to bargain in “good faith” .This means you must attend and participate in meetings at reasonable times, respond and give genuine consideration to any proposals made by the employees/union and refrain from any capricious or unfair conduct .
- However there is no requirement to make concessions, or reach agreement, during bargaining.

### **Step 3 – Prepare the agreement**

There are some rules as to the content of what can go into the agreement:

- Agreements **must** contain:
  - a nominal expiry date (no more than 4 years);
  - dispute settlement by FWA or another independent person;
  - a clause that enables individual employees to enter into flexibility arrangements;
  - a requirement for employers to consult on major workplace changes;
  - rates of pay that are not less than the rates contained in the modern award.
- Agreements **may** contain :
  - matters pertaining to the relationship between the employer(s) and employees covered by the agreement and any unions covered by the agreement;
  - authorised deductions from wages of employees covered by the agreement (eg union dues) (If an employee is under 18 years of age the signature of a parent or guardian must be obtained.)
- Agreements **cannot** contain content that:
  - is discriminatory;
  - breaches freedom of association;
  - provides a bargaining service fee to unions;
  - sets out alternative remedies for unfair dismissal;
  - sets out right of entry provisions that are inconsistent with the law;
  - purports to authorise industrial action during the life of an agreement.

#### **Step 4 - Present proposed agreement to employees**

- Employees must be provided with a copy of the proposed enterprise agreement at least 7 days before they are asked to vote on it. This 7 day period cannot be waived.
- You must take all reasonable steps to explain the terms of the agreement to your employees. You must take into account the particular circumstances and needs of the relevant employees when explaining the agreement. As an initial step, it is recommended a written summary of the terms of the agreement is presented to your employees.

#### **Step 5 – Employees vote**

- You may then request that your employees approve the agreement by voting on it.
- You must notify them of a time and place at which the vote will occur and what voting method will be used (ie paper ballot etc).
- An enterprise agreement is made when a majority of employees (50% plus 1) who cast a valid vote approve the agreement.

#### **Step 6 – Approval by Fair Work Australia**

- Within 14 days of voting, the enterprise agreement must be lodged with Fair Work Australia ('FWA') for approval. The enterprise agreement must pass the 'better off overall test' (the 'BOOT') meaning they are better off overall under the agreement in comparison to modern award that applies to them.

To be approved, FWA must also be satisfied:

- That the agreement is genuinely agreed to
- That the terms of the agreement do not contravene the National Employment Standards (NES)
- There is no unlawful content.

The enterprise agreement will come into operation 7 days following FWA approval.

\*Note - the NES and Modern awards do not commence until 1 January 2010. In the bridging period between July and January, FWA will continue assess the enterprise agreement under the No Disadvantage Test and against the Fair Pay and Conditions Standard.

Please contact HIA's workplace advisor on 1300 650 620 for further information.

#### **NUMBERS TO RING**

HIA memberline: **1300 650 620**

Fair Work Australia: 1300 799 675

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