

**ACCI DRAFT GENERAL (CLAUSE 4A) AWARD
WITHOUT PREJUDICE**

Part 1—Application and Operation

1. Title

This award is the *General Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Fair Work Act (Cth)*

award has the meaning in the T&C Act.

employee has the meaning in the Act

employees with a disability has the meaning in the Act

employer has the meaning in the Act

enterprise award based instrument has the meaning in Schedule 6, Item 2 of the T&C Act.

high income employee has the meaning in the Act

high income threshold has the meaning in the Act

junior employees has the meaning in the Act

NAPSA means a notional agreement preserving a State award and has the meaning in the T&C Act

NES means the National Employment Standards

national minimum wage order has the meaning in the Act

piecemaker has the meaning in the Act

training arrangements has the meaning in the Act

T&C Act means the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

4.1 This award covers employers throughout Australia and their employees.

4.2 It is not intended that this award extend award coverage into areas of work that has not been previously regulated by awards or NAPSAs.

4.3 Exclusions

This award does not cover:

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- (a) an employee excluded from award coverage by the Act;
- (b) employees who perform work that has traditionally or historically not been regulated by an award or NAPSA as of 31 December 2009.
- (c) managerial or executive employees;
- (d) an employee who is a high income employee or earning above the high income threshold;
- (e) an employer bound by an enterprise award based instrument with respect to any employee who is covered by the enterprise award based instrument;
- (f) an employee of an employer that is covered by another modern award;
- (g) an employee who is a pieceworker.

2. The National Employment Standards and this award

The NES and this award contain the minimum conditions of employment for employees covered by this award.

3. Award flexibility

3.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

3.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

3.3 The agreement between the employer and the individual employee must:

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- (a) be confined to a variation in the application of one or more of the terms listed in clause 3.1; and
 - (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.
- 3.4** The agreement between the employer and the individual employee must also:
 - (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 3.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 3.6** Except as provided in clause 3.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 3.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 3.8** The agreement may be terminated:
 - (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 3.9** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between

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an employer and an individual employee contained in any other term of this award.

4. Dispute resolution

- 4.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 4.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 4.1 have been taken, a party to the dispute may refer the dispute to Fair Work Australia
- 4.3** The parties may agree on the process to be utilised by Fair Work Australia including mediation, conciliation and consent arbitration.
- 4.4** Where the matter in dispute remains unresolved, Fair Work Australia may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 4.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 4.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 2—Types of Employment and Termination of Employment

5. Types of employment

An employee may be engaged on a full-time, part-time or casual basis.

5.1 Full-time employment

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A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

5.2 Part-time employment

- (a) A part-time employee is an employee who:
 - (i) is engaged to work an average of fewer than 38 ordinary hours per week; and
 - (ii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees.
- (b) For each ordinary hour worked, a part-time employee will be paid no less than 1/38th of the minimum weekly rate of pay for the relevant classification in clause 8—Classifications and minimum wage rates.

5.3 Casual employment

- (a) A casual employee is one engaged and paid as such.
- (b) For each hour worked, a casual employee will be paid no less than 1/38th of the minimum weekly rate of pay for their classification in clause 8—Classifications and minimum wage rates, plus a casual loading of 20%.
- (c) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

6. Termination of Employment

6.1 Notice of termination is provided in the NES

6.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by the clause less any period of notice actually given by the employee.

7. Redundancy

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7.1 Redundancy pay is provided in the NES.

7.2 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice

Part 3—Minimum Wages and Related Matters

8. Classifications and minimum wage rates

8.1 Adult employees

(a) Adult employees must be paid the minimum wage rate equivalent to the national minimum wage order which is:

Minimum Hourly rate	Minimum weekly rate
\$14.31	\$543.78

(b) An employee who performs work in excess of 38 hours per week must be paid 1/38th for each hour worked.

(c) Clause 8.1 does not apply to employees to whom training arrangements apply, employees with a disability or junior employees.

9. Junior rates

9.1 Junior employees will be paid the following percentage of the adult minimum wage rate in clause 8.1:

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

10. School-based apprentices

See Schedule X

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11. Supported wage system

See Schedule X

12. National training wage

See Schedule X

13. Payment of Wages

13.1 Frequency of payment

Wages must be paid at least monthly.

13.2 Method of payment

13.2 Wages must be paid either by one, or a combination, of the following

hods:

- (a) cash;
- (b) cheque, money order, postal order or similar order, payable to the employee; or
- (c) electronic funds transfer into the bank or financial institution account nominated by the employee.


Part 4 - Hours of Work and Related Matters

14. Ordinary hours of work

14.1 Weekly hours of work

14.2 The ordinary hours of work are the hours agreed by the employee and employer as the ordinary hours of work.

14.3 If there is no agreement about ordinary hours of work, the ordinary hours of work of the employee in a week are:

- (a) for a full time employee—38 hours; or
-  (b) for an employee who is not a full-time employee—the lesser of:
 - (i) 38 hours; and

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(ii) the employee's usual weekly hours of work.

14.4 If, for an employee who is not a full-time employee, there is an agreement between the employee and employer under clause 14.3, but the agreed ordinary hours of work are less than the employee's usual weekly hours of work, the ordinary hours of work of the employee in a week are the lesser of:

(a) 38 hours; and

(b) the employee's usual weekly hours of work.

14.5 For the purposes of clause 14.4(b), to work out the usual weekly hours of work for an employee who has been employed by the employer for at least 4 weeks:

(a) identify the total number of hours that the employee has worked during the previous 4 completed weeks; and

(b) divide the result by 4.

14.2 Averaging of hours of work

14.3 An employer and employee may agree in writing to an averaging arrangement under which hours of work over a specified period of not more than 26 weeks are averaged.

14.4 The average weekly hours over the specified period must not exceed:

(a) for a full-time employee—38 hours unless those additional hours are reasonable; or

(b) for an employee who is not a full-time employee—the lesser of:

(i) 38 hours; and

(ii) the employee's ordinary hours of work in a week

15. Meal Breaks

An employee is entitled to an unpaid meal break of not less than 30 minutes after five hours of continuous work.



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Part 5 - Leave and Public Holidays

16. Annual leave

16.1 Annual leave is provided for in the NES.

16.2 Paid leave in advance of accrued entitlement

An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued. Where paid leave has been granted to an employee in excess of the employee's accrued entitlement, and the employee subsequently leaves or is discharged from the service of the employer before completing the required amount of service to account for the leave provided in advance, the employer is entitled to deduct the amount of leave in advance still owing from any remuneration payable to the employee upon termination of employment.

16.3 Requirement to take leave

An employer may require an employee to take a period of annual leave, but only if the requirement is reasonable.

Note: A requirement to take paid annual leave may be reasonable if, for example:

- (a) *the employee has accrued an excessive amount of paid annual leave;*
- (b) *the employer's enterprise is being shut down for a period (for example, between Christmas and New Year).*

16.3 Agreements about taking paid annual leave

An employer and an employee may agree on when and how paid annual leave may be taken by the employee.

Note: Matters that could be agreed include, for example, the following:

- (a) *that paid annual leave may be taken in advance of accrual*
- (b) *that paid annual leave must be taken within a fixed period of time after it is accrued;*
- (c) *the form of application for paid annual leave*

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(d) *that a specified period of notice must be given before taking paid annual leave.*

16.4 Additional leave for shiftworkers

16.5 A shiftworker is entitled to 5 weeks of paid annual leave.

16.6 An employee qualifies for this leave if the employee:

(a) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and

 is regularly rostered to work those shifts; and

(c) regularly works on Sundays and public holidays

16.6 Agreements to cash out paid annual leave

(a) An employer and employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave.

(b) The employee must maintain an accrued entitlement of at least 4 weeks annual leave.

(c) Each cashing out of leave must be by a separate agreement in writing between the employee and employer.

(d) The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

17. Personal/carer's leave and compassionate leave

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

17.2 Cashing out paid personal/carer's leave

(a) An employer and employee may agree to the employee cashing out a particular amount of the employee's accrued paid personal/carer's leave.

(b) The employee must maintain an accrued entitlement of at least 15 days leave.



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- (c) Each cashing out of leave must be by a separate agreement in writing between the employee and employer.
- (d) The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

18. Community service leave

Community service leave is provided for in the NES.

19. Public Holidays

19.1 Employees are entitled to public holidays in accordance with the NES.

19.2 Substitution of public holidays

An employer and an employee may reach agreement to substitute a day or part-day for a day or part-day that would otherwise be a public holiday.

