

Horticulture Award 2020

The [Horticulture Award 2020](#) is an industry Award which covers many different types of roles contained within the Horticulture industry in general. The following are some key items of this Award, please refer to the Award for full references of clauses.

Coverage – Clause 4

This industry award covers employers throughout Australia in the horticulture industry and their employees in the classifications listed in [Schedule A – Classification Definitions](#), to the exclusions of any other modern award.

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

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

<p>The Horticulture industry means:</p> <ul style="list-style-type: none"> a) The sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops in connection with a horticultural enterprise; or b) clearing, fencing, trenching, draining or otherwise preparing or treating land or property in connection with the activities listed above 	<p>The Horticulture industry does not mean:</p> <ul style="list-style-type: none"> a) the wine industry; b) silviculture and afforestation; c) sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals; d) any work in or in connection with cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed; or e) plant nurseries.
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Individual Flexibility Arrangements – Clause 5

<p>An employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:</p> <ul style="list-style-type: none"> a) arrangements for when work is performed; or b) overtime rates; or c) penalty rates; or d) allowances; or e) annual leave loading. <p>An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.</p>	<p>An agreement may only be made after the individual employee has commenced employment with the employer.</p> <p>NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65A(3) of the Act).</p> <p>Refer to the Award for further provisions relation to Individual flexibility arrangements.</p>
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Request for flexibly working arrangements – clause 6

<p>An employee may request a change in working arrangements. As set out in Clause 65 of the Fair Work Act 2009 (the Act), the request must be in writing and set out details of the change sought and of the reasons for the change.</p> <p>Where an employee makes a request to their employer for a change in working arrangements relating to circumstances that apply to the employee, the employer must give the employee a written response to the request within 21 days.</p>	<p>NOTE: The employer may only refuse the request on reasonable business grounds (see section 65A(3) of the Fair Work Act 2009).</p> <p>Refer to the Act for further provisions relation to Request for flexible work arrangements.</p>
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Facilitative Provisions – Clause 7

A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned. Refer to the clause within the Award.

Types of Employment – Clause 8

<u>Full Time Employment</u>	A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.	At the time of engagement an employer will inform each employee of the terms of their engagement and whether they are to be full-time, part-time or casual.
<u>Part Time Employment</u>	A part-time employee is an employee who: <ul style="list-style-type: none"> a) is engaged to work an average of less than 38 ordinary hours per week; and b) receives, on a pro-rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work. 	Some specific provisions for part-time employees include: <ul style="list-style-type: none"> o a part-time employee is entitled to annual leave and personal/carer's leave on a pro-rata basis. o an employer must inform a part-time employee of their ordinary hours of work and starting and finishing times. o All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate in accordance with the overtime clause.
<u>Casual Employment</u>	A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours the employer requires the employee to work. A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.	For each hour worked, a casual employee must be paid: <ul style="list-style-type: none"> a) the ordinary hourly rate; and b) a loading of 25% of the hourly rate, for the classification in which they are employed. The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment under this award.

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		<p>An employer engaging a casual employee, must adhere to the casual definition contained within Fair Work Act 2009 s15A and comply with the provisions of the <i>Horticulture Award 2020</i>.</p> <p>Offers and requests for casual conversion are in accordance with the NES.</p>
Junior Employment	A junior employee is aged under 20 years of age.	The rate payable to a junior will, in the case of a weekly employee, be calculated to the nearest \$0.10 , and in the case of an hourly employee, be calculated to the nearest cent.
Piecemaker	<p>An employer and a full-time, part-time, or casual employee may enter into an agreement for the employee to be paid a piecework rate.</p> <p>An employee on a piecework rate is a piecemaker.</p> <p>Refer clause 15.2 for further details of a piecemaker.</p>	The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.

Ordinary hours of work – Clause 13

Ordinary hours and rostering arrangements	<p>Full-time and part-time employees (other than shift workers)</p> <p>The ordinary hours will not exceed 152 hours over a 4-week period and will be worked between 6.00am and 6.00pm (unless varied between employer and majority of employees) provided that:</p> <p>a) the ordinary hours will be worked:</p> <ul style="list-style-type: none"> o between Monday and Friday inclusive; or o between Monday and Saturday inclusive by arrangement between employer and majority of employees. <p>The ordinary hours will not exceed 8 hours per day, except by arrangement in which case the ordinary hours should not exceed 12 hours on any day.</p>	<p>Casual employees (other than shift workers)</p> <p>The ordinary hours will not exceed 304 ordinary hours over an 8 week period (average of 38 hours per week), provided that:</p> <p>a) ordinary hours can be worked at any time</p> <p>b) each ordinary hours of work worked by a casual employee on any day of the week (excluding public holidays) between 5.00am to 8.30pm will be paid at ordinary hourly rate plus casual loading of 25%</p> <ul style="list-style-type: none"> o for states and territories not observing daylight saving, by agreement between the employer and a majority of affected casual employees, the daily spread of hours can be 4.00am to 7.30pm for the period of daylight saving time in other States and Territories. <p>The maximum number of ordinary hours per engagement, or on any day, is 12 ordinary hours.</p> <p>All time worked in excess of 12 hours per engagement, 12 hours in a single day, or 304 ordinary hours over an 8 week period, will be deemed and paid overtime.</p>
Ordinary hours for shift workers	A shift worker will not exceed 152 hours over a 4-week period provided that:	The employer has the right to decide before the commencement of such shiftwork which of the shifts will be the day shift and will notify each employee accordingly.

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	<ul style="list-style-type: none"> The ordinary hours will be worked between Monday and Friday inclusive and may include day, afternoon and/or night shifts An employee directed to work on shifts, the shift must not exceed 8 hours without the payment of overtime. 	<p>The employer will keep a roster at the workplace that specifies the times which each shift will commence and finish and, which shifts are deemed to be day shift.</p> <p>All time worked in excess of the ordinary hours will be deemed overtime and paid in accordance with the overtime clause.</p>
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Breaks – Clause 14

<u>Meal Break</u>	<p>An unpaid meal break of 30 mins and not more than 60 mins will be allowed each day.</p> <p>The meal break is to be taken no later than 5 hours after commencing ordinary hours, or at a time mutually agreed.</p>	<p>All work performed on the instruction of the employer during a recognised meal break will be paid for at 200% of the appropriate ordinary hourly rate. Such payment will continue until the employee is released for a meal break of not less than 30 minutes.</p>
<u>Rest Break</u>	<p>All employees will be allowed a paid rest break of 10 minutes each day or shift.</p>	<p>Where agreement is reached between the employer and employee for an additional rest break, such rest break will be unpaid and in addition to the employee's ordinary hours of work.</p>
<u>10-hour break after ceasing work for the day</u>	<p>An employee is entitled to a break of 10 hours between finishing work on one day and commencing work on the next day or shift.</p>	<p>Overtime rates will be paid for work required to be performed where an employee has not had the 10 hour break until such time as the employee is released and able to take the 10 hour break.</p>

Annualised Wage Arrangements – Clause 17

<u>Annualised wage instead of award provisions</u>	<p>An employer and a full-time employee may enter into a written agreement for the employee to be paid an annualised wage in satisfaction, subject to this clause, of any or all of the following provisions of the award:</p> <ul style="list-style-type: none"> Minimum rates (clause 15) Allowances (clause 18) Overtime (clause 21) Annual leave loading (clause 22.6) Public holiday rates (clause 27) Ordinary hours of work loading for shift workers (clause 13.3) 	<p>The agreement may be terminated:</p> <ol style="list-style-type: none"> by the employer or the employee giving 12 months 'notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or at any time, by written agreement between the employer and the individual employee.
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Overtime – Clause 21

Please refer to this clause for information on what is considered reasonable overtime and the factors to be considered.

	Day overtime is worked	% of ordinary hourly rate
<u>Full-time and part-time employees</u>	Monday to Saturday	150%
	Sunday (except during harvest period) – minimum 3 hours	200%
	Harvest period <ul style="list-style-type: none"> • first 8 hours of overtime in a week may include 5 hours' work on a Sunday • all Sunday work in excess of the 8th overtime hour worked in the week or in excess of 5 hours on a Sunday 	150%
	Public holiday rates, clause <u>27.3</u>	200%
<u>Casual employees</u>	Each hour worked in excess of 12 hours per engagement, 12 hours in a single day or 304 ordinary hours over an 8 week period	175%
	Public holiday rates, clause <u>27.4</u>	225%
<u>Time off instead of payment for overtime</u>	An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee. For example, if the employee who worked 2 hours overtime is entitled to 2 hours time off. Refer to the Award for further details.	

Penalty Rates

Within this Award, there is not a specific penalty rate clause, details are provided within other clauses with the details outlined below.

<u>Casual employee</u>	Each ordinary hour worked by a casual employee on any day of the week (excluding public holidays) between 8.31 pm and 4.59 am (or 7.31 pm and 3.59 am in accordance with clause <u>13.2(c)</u>) will attract a loading of 15% of the employee's ordinary hourly rate for his or her classification (in addition to the casual loading of 25%).
<u>Shift workers</u>	Shift workers whilst on afternoon and night shifts will be paid 115% of the ordinary hourly rate. <ul style="list-style-type: none"> a) afternoon shift means any shift finishing after 6.00 pm and at or before midnight; and b) night shift means any shift finishing after midnight and at or before 8.00 am

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Accident Pay – Clause 19

<u>Definitions</u>	Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.	Injury will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.
<u>Entitlement to accident pay</u>	The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 26 weeks.	
<u>Calculation of the period</u>	<p>a) The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.</p> <p>b) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.</p> <p>b) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.</p>	
<u>When not entitled to payment</u>	An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.	
<u>Return to Work</u>	If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.	
<u>Redemptions</u>	In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the employer to pay accident pay will cease from the date the employee receives that payment.	
<u>Damages independent of the Acts</u>	Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.	
<u>Casual employees</u>	For a casual employee, the weekly payment referred to in clause 19.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over-award payments.	

Superannuation – Clause 20

An employer is required to comply with Superannuation legislation and make relevant employer contributions as determined by the legislation. An employee can make voluntary contributions as well.

Leave and Public Holidays – Part 6

<u>Annual Leave</u>	<p>Annual leave is provided for in the <u>NES</u>.</p> <p>Instead of the base rate of pay as referred to in section 90(1) of the <u>Act</u>, an employee under this Award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.</p> <p>NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the <u>Act</u>).</p>	<p>Annual leave carries over year to year.</p> <p>During a period of annual leave an employee must also be paid an annual leave loading equal to 17.5% of the wages the employee would ordinarily receive.</p> <p>Refer to the Award for <u>Excessive Leave accruals</u>.</p> <p>Refer to the Award for <u>Annual leave in advance</u>.</p> <p>Refer to the Award for <u>Cashing out of annual leave</u>.</p>
<u>Personal/carer's leave and compassionate leave</u>	<ul style="list-style-type: none"> ○ A full-time employee is entitled to 10 days personal/carer's leave per year. ○ A part-time employee receives a pro-rata amount of personal/carer's leave based on ordinary hours of work. ○ A casual employee may only be absent from work due to personal/carer's leave for up to 48 hours unpaid. 	<p>Personal/carer's leave rolls over year to year.</p> <p>For details of when an employee can be absent from work due to personal/carer's leave, refer to the Award and the National Employment Standards (NES) within the <i>Fair Work Act 2009</i>.</p> <p>Refer to the Award and the NES for further information relating to compassionate leave, <u>parental leave</u>, <u>community service leave</u>.</p>
<u>Family and domestic violence leave</u>	<p>All (including full-time, part-time, casual) employees are entitled to 10 days paid leave in a 12 months period of the employee's employment. This leave does not accumulate from year to year</p>	<p>The employee may take paid family and domestic violence leave if:</p> <ol style="list-style-type: none"> a) the employee is experiencing family and domestic violence; and b) the employee needs to do something to deal with the impact of the family and domestic violence; and c) it is impractical for the employee to do that thing outside the employee's work hours. <p>For example, attending court hearings, accessing counselling services, attending appointments with medical, financial or legal professionals.</p>
<u>Public Holidays</u>	<p>Public holidays are provided for in the <u>NES</u>.</p>	<p>Refer to the Award for specifics on <u>part-day</u> public holidays and <u>substitute days</u>.</p>

Workplace Delegates, Consultation and Dispute Resolution – Part 7

Workplace Rights – Clause 27A - Please note this is a new clause – please refer to the Award for further provisions.

A workplace delegate (a person appointed or elected in accordance with the rules of an employee organisation, to be a delegate or representative) must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election. An employee who ceases to be a workplace delegate Right of representation must give written notice to the employer within 14 days.

A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:

- a. consultation about major workplace change;
- b. consultation about changes to rosters or hours of work;
- c. resolution of disputes;
- d. disciplinary processes;
- e. enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and
- f. any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.

Please refer to the Award for specific details on:

- [consultation about a major workplace change](#),
- [consultation about changes to rosters or hours of work](#),
- [dispute resolution](#)

Termination of Employment and Redundancy – Part 8

Termination

The National Employment Standards ([NES](#)) set out the requirements for notice of termination by an employer S117 and S123 of the *Fair Work Act 2009*.

Employee's period of continuous service with the Employer at the end of the day the notice is given	Period of Notice
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

- If the employee is over 45 years old and has completed at least 2 years of continuous service with the employer at the end of the day the notice is given, then the employee receives an additional 1 week notice if the employee is terminated or made redundant.
- The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.
 - PLEASE NOTE: If an employee who is at least 18 years old does not give the period of notice required, then the employer may deduct from wages (not leave) due to the employee under this award an amount that is no more than one week's wages for the employee.

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[Payment on Termination of employment](#)

Final payments on termination must be made within 7 days to the employee via electronic funds transfer. For Cash or Cheque payments, these need to be made on the next working day after the termination.

The employer must pay the employee:

- (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of the termination; and
- (ii) all other amounts that are due to the employee under this award and the [NES](#).

[Redundancy](#)

Redundancy is provided for in accordance with the [NES](#), see S119-123 of the *Fair Work Act 2009*.

Amount of redundancy pay as per Section 120 of *Fair Work Act 2009*:

Employee's period of continuous service* with the employer on termination		Redundancy pay period (at employees current rate of pay)
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

*A reference in this section to continuous service with the employer does not include periods of employment as a casual employee of the employer.

[Classifications Definitions – Schedule A](#)

Refer to Schedule A for information about duties of each different level within the Award.