



2024 changes to the Shop and Warehouse (Wholesale and Retail Establishments) Award

Introduction

This document is an overview of the changes to the state Shop and Warehouse (Wholesale and Retail Establishments) Award that commenced from the first full pay period on or after 5 June 2024. These changes to the WA award result from an order issued by the Western Australian Industrial Relations Commission (WAIRC) on 17 April 2024.

This is a summary only and does not contain information on all the changes.

The current WA award summary, available at www.demirs.wa.gov.au/awardsummaries outlines the conditions that apply from the first full pay period on or after 5 June 2024.

Overview of key changes

Clause 1 - Title

Clause 1 is the title. The title remains unchanged, except the year of the award has been removed.

Clause 2 - Arrangement

Clause 2 is the arrangement clause. As is common practice in updated awards, like clauses have been grouped together under functional headings in a standard arrangements clause. The clause headings have also been hyperlinked for ease of navigation.

Clause 3 – Scope and Clause 4 - Area

Clause 3 and Clause 4 of the award deal with the scope of coverage of the Shop and Warehouse Award and the areas of WA in which the award applies. The WAIRC has indicated it intends to review these clauses in future, in a separate matter to the current updates to the award content.

Clause 5 - Definitions

Clause 5 deals with definitions, and replaces Clause 6 of the existing award, as well as various definitions found in other parts of the existing award. A variety of definitions have been updated in the process, while several new definitions have been added.

Definitions that have been updated include:

- The definitions of “General Retail Shop”, “Small Retail Shop” and “Special Retail Shop” have all been updated to align with the current definitions of those establishments in the *Retail Trading Hours Act 1987*.
- The definition of “Casual employee” (replacing the definition of “Casual Worker” currently in Clause 7 of the award) has been updated, to simply mean a person employed by the hour. *Note: provisions regarding notice of termination and working hours for casual employees are dealt with elsewhere in the award.*

A variety of new definitions have also been added to the award, to help define key terms. These include:

- Commission
- Non-working day
- Ordinary time earnings
- Rostered day off
- Member of the employee’s family or household
- Standard hourly rate
- Standard weekly rate
- Standard meal allowance
- Standard motor vehicle allowance

Some definitions have been deleted, as they are either obsolete or are not used in the updated award. Definitions that have been deleted include:

- “Section 42 Shop” (as this type of establishment no longer exists and references to it have been removed from the award).
- The definitions of “Shop Assistant”, “Storeman”, “Storeman Operator Grade I”, “Storeman Operator Grade II”, “Storeman working singly”, “Despatch hand”, “Packer”, “Collector”, “Wholesale Salesman” “Window Dresser / Visual Merchandiser” and “Ticket Writer” have been deleted, as these positions have been incorporated into a new classification structure in Appendix A to the award that streamlines the existing classifications in the award.

Minor miscellaneous updates have been made to some other definitions to ensure they remain contemporary (without changing the meaning) e.g. replacing “worker” with “employee”, removing gendered language etc.

Clause 6 – Contract of employment and termination

Clause 6 replaces clause 20 of the existing award, as well as other provisions in the award that deal with the contract of employment including Clause 37 – Stand down and Clause 31(2) (dealing with employee duties).

The main changes to this clause concern the termination of employment provisions, which have been updated to sure consistency with the relevant parts of the *Fair Work Act 2009* that are applicable to all employers and employees throughout Australia (including state system employers and employees).

Relevant provisions from the 2005 Termination, Change and Redundancy General Order (**TCR General Order**) issued by the WAIRC have also been included in the updated clause.

Clause 7 – Introduction of Change

Clause 7 deals with the introduction of change and replaces Clause 44 in the existing award. There is little change between the old and new versions of the clause, although minor miscellaneous updates have been made to the wording to ensure consistency with the TCR General Order.

Clause 8 – Redundancy

Clause 8 deals with redundancy and replaces Clause 51 in the existing award. There is minimal change between the old and new versions of the clause, except minor miscellaneous updates have been made to the wording to ensure consistency with the TCR General Order.

The new clause also applies to all employers - not just those who engage 15 or more employees at the time of any redundancies. This reflects the fact that many provisions in the TCR General Order currently apply to all employers and employees, regardless of business size.

The scale of severance payments (which does only apply to businesses employing more than 15 employees) has been extended to be consistent with the TCR General Order, as it is currently less favourable for some employees at present.

Provisions regarding Superannuation Benefits have been deleted from the clause, as they are obsolete (employees being made redundant are not currently entitled to receive superannuation benefits for a redundancy).

References to the “transmission of business” for continuity of service have been amended to the “transfer of business”¹, consistent with 2022 amendments to the *Long Service Leave Act 1958* (which now refers to the “Transfer of business”). References to the Long Service Leave General Order have also been updated to refer to the *Long Service Leave Act*, reflecting the fact the Long Service Leave General Order was repealed in 2006.

Clause 9 – Full time employment

Clause 9 of the updated award is a new clause that defines full time employment as an average of 38 ordinary hours per week. The inclusion of such a provision complements similar clauses dealing with part time and casual employment, but will not have any practical impact on how the award operates.

Clause 10 – Part time employment

Clause 10 deals with part time employment and replaces Clause 8 of the existing award.

The main change that has been made to the part time clause is the inclusion of a provision that allows a part time employee to request to work more than 64 hours per fortnight, which the employer may agree to.

This is intended to facilitate requests for flexible working arrangements, where an employee may wish to work slightly less than full time hours for a variety of personal reasons.

Some provisions regarding rates of pay, meal breaks, rest breaks and rostering for part time employees have been removed from the clause, as these provisions are now dealt with elsewhere in the award.

Clause 11 – Casual employment

Clause 11 deals with casual employment and replaces Clause 7 in the existing award. Several substantive changes have been made to the clause, including:

- The definition of “casual worker” has been moved to Clause 5 (Definitions) and updated.
- The casual loading has been standardised at 25% for all casual engagements (whether they be a full day or part day).

¹ The term “Transfer of Business” is broader than the term “Transmission of Business”.

- The method for applying the casual loading to penalty rates has been included in the clause for clarity. Penalty rates are calculated separately on the unloaded hourly rate (excluding the casual loading), and the casual loading is then added to, but not compounded on, that amount to determine the total amount payable.
- The exception to the 3 hour minimum engagement for school students engaged solely to collect trolleys in or about a shopping complex has been amended, so that the 2 hour minimum now only applies between 4.00pm and 6.00pm Monday to Friday, rather than 4.00pm to 6.00pm Monday to Saturday (on the basis that school students do not have school on Saturdays).
- The formula for calculating hourly rates of pay for casual employees has been removed (as casual rates of pay are dealt with elsewhere in the award).
- Restrictions on how long an employee can be employed as a casual have been deleted and instead a casual conversion clause has been included.

Clause 12 - Ordinary hours of work and rostering arrangements

Clause 12 deals with ordinary hours of work and rostering and replaces Clause 9 of the existing award. The main changes that have been made to this clause are outlined below.

Span of ordinary hours

The span of ordinary hours for **General Retail Shops** has been updated. The span of ordinary hours has been extended for Monday to Friday to finish at 9.00pm on all evenings, reflecting current retail trading hours legislation. The span of ordinary hours for Saturdays is unchanged, while for Sundays, the new span of ordinary hours is 9:00am to 6:00pm, reflecting the fact that General Retail Shops can now trade on Sundays in Perth.

The span of ordinary hours for **Small Retail Shops** is unchanged.

The span of ordinary hours for **Special Retail Shops** and **Special Retail Shops (Pharmacies)** have been combined as current retail trading laws allow all Special Retail Shops to trade between 6.00am and 11.30pm, 7 days a week.

Reference to **Section 42 Shops** has been removed, as this type of establishment no longer operates.

The span of ordinary hours for **Other Establishments** is unchanged.

Work performed on Sunday

The award currently provides for Sunday work to be voluntary, and requires an employee to consent to working on Sundays each and every time. The award changes continue to make Sunday work voluntary but remove the requirement an employee must consent to working on Sunday each and every time. Instead, an employee can give ongoing consent to Sunday work. A provision has been added enabling an employee to withdraw their consent to being rostered on Sundays by giving 4 weeks' notice.

Maximum daily hours

The maximum daily hours that can be worked have been standardised for all types of establishments, capping ordinary hours at a maximum of 9.5 per day, except for one day per week where ordinary hours may be rostered for up to 11.5 hours. The revised provision reflects the fact there is no longer a single "day of late night trading" for general retail shops in the metropolitan area.

Rostering provisions for full time employees

The core tenets of the rostering provisions for full time employees are largely unchanged and maintain the existing requirement that an employee cannot be rostered to work ordinary hours on more than 10 days per fortnight, with a safeguard for all employees that ordinary hours cannot be rostered on more than 6 consecutive days.

The prescriptive provisions in Part III of clause 9 of the existing award have been removed, as they are out-of-date and align with retail trading legislation as it existed in the early 1990s.

Clause 13 – Shift work

Clause 13 deals with shift work and replaces Clauses 7A (Nightfill Duty) and 34 (Shift Work) of the existing award, bringing all shift work provisions within the one clause.

The updated shift work provisions are largely based on the provisions currently applying in Clause 34. However, in order to cater for all workplaces, the updated clause applies to wholesale and retail establishments, and also provides for work to be performed on weekends (shift workers would receive the same weekend penalty rates applicable to non-shift workers, with any higher weekend rate replacing the weekday shift penalty).

Clause 7A has been deleted, and most of its provisions have not been replicated in the updated clause. The existing Nightfill penalty rates are flat dollar amounts (expressed as allowances) which were not adjusted for a number of years.

The definitions of what constitutes “shift work” has been updated for clarity, and definitions of “day shift”, “afternoon shift” and “night shift” have been modified to cover all 24 hours of the day.

Ordinary hours of work are to be rostered in one of the methods prescribed in Clause 12.4 (which applies to non-shift workers).

A variety of other miscellaneous references have been included in the clause, to clarify various provisions.

Clause 14 – Display of rosters

Clause 14 deals with the display of rosters and replaces Clause 10 of the existing award. Apart from some minor updating of terminology, the only changes of substance are:

- A roster would need to cover the period Monday to Sunday (rather than Monday to Saturday) to ensure rostering arrangements for businesses that operate on Sundays are accounted for. *Note: this does not require a business to open on Sunday.*
- A proper definition of a “rostered day off” has been included in the award, and defined to mean an accrued day off (e.g. for an employee working 19 days per 4 week cycle), to reduce confusion as to which provisions apply on accrued days off and not other non-working days.

Clause 15 – Meal breaks and rest periods

Clause 15 deals with meal breaks and rest periods and replaces Clause 11 in the existing award.

The core tenets of the existing clause have been retained, however as hours and rosters can be worked in a variety of flexible ways nowadays and this clause will also apply to shift workers, some minor modifications have been made to enable meal and rest periods to be taken during the times the employee is working (e.g. removing references to “lunch”, and references to tea breaks being taken in the “morning” and “afternoon”).

For ease of reference, a table has been included that lists the ordinary hours in the shift and the corresponding meal break and rest break entitlements.

Clause 16 – Overtime

Clause 16 deals with overtime and replaces Clause 13 in the existing award. The key provisions of this clause are largely unchanged, although some of the wording has been updated for clarity. The main changes are:

- The clause explicitly clarifies that casual employees are entitled to overtime and outlines how overtime is calculated for casual employees.
- The calculation of overtime has been standardised for all types of establishments - i.e. each day stands alone.

- Minimum engagement provisions regarding overtime being worked on a rostered day off have been standardised for all workers (there is a 4 hour minimum engagement period in this situation).
- A paragraph has been included clarifying the circumstances an employee may refuse to work overtime where it would involve unreasonable hours, consistent with section 9B of the *Minimum Conditions of Employment Act 1993 (MCE Act)*.

Clause 17 – Public holidays

Clause 17 deals with public holidays and replaces Clause 14 and Clause 20(3) of the existing award. The key provisions of this clause are largely unchanged, although some of the wording has been updated for clarity. The main changes of note are:

- Easter Sunday has been included as a public holiday in the award, reflecting the provisions of the *Public and Bank Holidays Act 1972*. To achieve consistency with that Act, it is necessary to stipulate Easter Sunday is not substituted to another day because it falls on a weekend.
- The provision regarding special public holidays has been amended, so that all special public holidays are recognised under the award (regardless of whether they apply throughout the State or to a particular district or locality). This ensures the clause is consistent with the MCE Act, as well as a General Order of the WAIRC concerning special public holidays.
- Provisions enabling an employee to forfeit wages where the employee has been absent without leave on the day before or after a public holiday have been removed as they are inconsistent with, and less favourable than, the MCE Act.

Clause 18 – Annual leave

Clause 18 deals with annual leave and replaces Clause 15 of the existing award. The provisions of this clause have been closely modelled on the MCE Act, to ensure none of the provisions are less favourable than the statutory entitlements currently applying. The key amendments made to the existing clause are:

- Annual leave accrues on all forms of paid leave.
- Annual leave is to be taken at a time/s agreed between the employer and employee, which may be in multiple periods (reflecting the MCE Act).
- A provision has been included outlining the rights of employees to take annual leave at a time of their choosing, where the employer and employee have not agreed when outstanding leave is to be taken (this reflects the MCE Act).
- A provision regarding when payment for annual leave is to be made has been included (this also reflects the MCE Act).

Clause 19 – Personal leave

Clause 19 deals with personal leave and replaces Clause 27 of the existing award. References to “sick leave” have been replaced with “personal leave”, reflecting the provisions of the MCE Act.

The updated clause has been closely modelled on the MCE Act, to ensure none of the provisions are less favourable than the statutory entitlements currently applying. The key amendments made to the existing clause are:

- Carer’s leave entitlements have been included in the award (including for casual employees), reflecting the MCE Act.
- The cap of 10 weeks’ sick leave in any year of service has been removed (as it is less favourable than the MCE Act, which contains no such cap).
- Provisions regarding the crediting of sick leave on the transmission of business have been updated so that personal leave credits are carried over on the “transfer of business”, consistent with the terminology that now applies in the *Long Service Leave Act*

Clause 20 – Long service leave

Clause 20 deals with long service leave and replaces Clause 33 of the existing award. There is essentially no change to this clause, except the reference to “the long service provisions” has been updated to the “*Long Service Leave Act 1958*”, reflecting the repeal of the long service leave provisions in 2006. *Note: there is no change to the actual entitlement as a reference to the long service leave provisions is now taken to be a reference to the LSL Act.*

Clause 21 – Bereavement leave

Clause 21 deals with bereavement leave and replaces Clause 38 of the existing award. The clause has been updated to reflect those provisions of the MCE Act that are currently more favourable than what is contained in the award, including:

- updating the range of family or household members an employee may take bereavement leave for; and
- clarifying that the 2 days of bereavement leave need not be consecutive.

Clause 22 – Parental leave

Clause 22 deals with parental leave and replaces Schedule 1 of the existing award which is significantly out of date.

The provisions of the new clause have been simplified to refer to parental leave being provided in accordance with the *Fair Work Act 2009* and the MCE Act, on the basis that state system employers and employees are covered by the parental leave provisions in the *Fair Work Act*, as well as any more favourable provisions currently contained in the MCE Act.

Clause 23 – Trade union training leave

Clause 23 deals with trade union training leave and replaces Clause 49 of the existing award. The provisions of this clause are essentially unchanged, however references to courses needing to be approved under the *Commonwealth Trade Union Training Authority Act* (repealed in 1996) and qualifying for the purposes of the *Training Guarantee Act* (also repealed in 1996) have been removed. The updated clause simply refers to “union training courses”.

Clause 24 – Wages

Clause 24 deals with award wage rates and replaces Clause 28 of the existing award. The main change to this clause is the introduction of a broad based classification schedule, whereby a range of positions that were previously all listed separately but subject to the same base rate of pay have been grouped together in levels.

There is no change to the base weekly rate of pay applying to any of the positions, however grouping them together in functional classifications helps to streamline the operation of the award.

The wages clause has been simplified so it only expresses base rates of pay (in weekly and hourly terms). Any penalty rates in the existing Wages clause have been moved to new Clause 26 (Penalty rates), while relevant allowances have been moved to new Clause 31 (Allowances).

Base weekly rates of pay (for work performed between Monday and Friday) are unchanged in the new wages clause, as are the junior percentages payable under the award and the additional amounts payable for employees in charge of a shop, store, warehouse or other employees.

Clause 25 – Minimum adult award wage

Clause 25 is the Minimum adult award wages clause and replaces Clause 1B in the existing award. No substantive changes have been made to the clause.

Clause 26 – Penalty rates

Clause 26 deals with penalty rates for non-shift workers, and replaces parts of Clause 7 (regarding casual rates for Saturdays), Clause 8 (regarding part time rates for Saturdays), Part IV of Clause 9 (regarding rates of pay for Sundays), Clause 28 (regarding rates of pay for Saturdays for full time workers, and rates of pay for weekday evenings and Saturday evenings in Small Retail Shops and Pharmacies), Clause 29 (regarding rates of pay for Easter Saturday) and Clause 48 (regarding rates of pay for “the day of late night trading” in General Retail Shops and Special Retail Shops).

There are currently a number of different penalty rates applicable to various employee groups under the award, depending on the type of shop or establishment an employee is working in, the day of the week, the time/s the employee is working, whether the employee finishes before or after 1pm on a Saturday (in the case of full time and part time employees) and whether the employee is working a full day or part day (in the case of casual employees).

The updated clause standardises the penalty rates applicable to all non-shift working employees, regardless of the type of establishment. It also standardises penalty rates for work performed on Saturdays (removing the distinction between work performed before 1pm and after 1pm) and on Sundays (removing the distinction between penalty rates for casual employees working a full day or a part day).

To ensure that no employee is disadvantaged by the comprehensive update to the award, a no-reduction provision has been included as an appendix at the end of the award, clarifying that an employee cannot receive less pay than they were prior to the updated award being issued.

Clause 27 – Payment of wages

Clause 27 deals with the payment of wages and replaces Clause 25 of the existing award. The provisions of this clause are largely unchanged, however, the option of payment by cheque has been removed, in line with contemporary practices. The reference to disputes being referred to a board of reference for determination has also been replaced with a reference to the dispute resolution clause.

Clause 28 – higher duties

Clause 28 deals with higher duties and replaces Clause 18 of the existing award. No substantive changes have been made to the clause.

Clause 29 – Supported wages employees

Clause 29 deals with supported wages employees and replaces Clause 24 of the existing award.

While there are no substantive changes, a variety of minor miscellaneous amendments have been made to the wording of the clause to make it consistent with the template provisions applying in the national industrial relations system.

The Supported Wage System is intended to operate in a uniform manner throughout Australia with regard to employees with a disability, and the updates to this clause will ensure it remains contemporary and reflects the current provisions applying in other jurisdictions.

Clause 30 - traineeships

Clause 30 deals with traineeships and replaces Clause 47 of the existing award. The traineeship clause in the existing award is considerably out of date, and reflects traineeship schemes and legislation that are now defunct. It also contains a number of obsolete references, and the minimum training wages are now well below the national standard.

To achieve consistency with the national training wage system, the new clause directly incorporates the minimum pay and conditions applying to trainees in the national industrial relations system. This will ensure that trainees working under the award are paid the appropriate national wage rate for the skill level that corresponds to the relevant traineeship.

Clause 31 - Allowances

Clause 31 brings all allowance provisions together in the one clause. The following outlines the key changes made to each allowance.

Meal allowance

The award now directly incorporates the standard meal allowances that are currently payable under the General Retail Industry Award 2020 (a national modern award). These amounts are regularly adjusted by the Fair Work Commission, and referring to them directly will ensure the meal allowances in the Shop and Warehouse Award are self-updating. An option has also been included for the employer to supply the employee with a meal, in lieu of paying a meal allowance.

Storeperson allowance

The dollar amounts for storeperson allowance have been replaced with a self-updating formula, using the methodology found in national modern awards.

Bicycle allowance

The dollar amount for bicycle allowance has been replaced with a self-updating formula, using the methodology found in national modern awards.

Cold chamber allowance

No change to the cold chamber allowances have been made, including how they are expressed.

Motor vehicle allowance

The award now directly incorporates the standard motor vehicle allowance that is currently payable under the General Retail Industry Award 2020. This amount is regularly adjusted by the Fair Work Commission, and referring to it directly will ensure the motor vehicle allowance in the Shop and Warehouse Award is self-updating.

Location allowance

No substantive changes have been made to the clause.

First aid allowance

The dollar amount for first aid allowance has been replaced with a self-updating formula, using the methodology found in national modern awards. References to the name of the first aid qualifications have also been updated.

Country work and travelling time

The core tenets of the clause for country work and travelling time have been retained, requiring employers to pay all reasonable travelling costs, including for accommodation and meals. However, some of the references have been modernised, and specific references to travelling by coastal boat have been removed.

Automotive spare parts and accessories salespersons

The dollar amount the allowance payable to automotive spare parts or accessories salespersons has been replaced with a self-updating formula, using the methodology found in national modern awards.

Clause 32 - Uniforms

Clause 32 deals with uniforms and replaces Clause 22 of the existing award. No substantive changes have been made to the clause, although references to disputes being referred to a board of reference have been removed (reflecting the fact the award now has a contemporary dispute resolution clause for such matters).

Clause 33 – Union notice board

Clause 33 deals with union notices and replaces Clause 43 of the existing award. No substantive changes have been made to the clause.

Clause 34 – Dispute resolution procedure

Clause 34 deals with the resolution of disputes and replaces the Appendix in the existing award titled “Resolution of Disputes Requirement”. No substantive changes have been made to the clause, although some of the historic references to various dates have been removed.

Clause 35 – Employment records and pay slips

Clause 35 deals with employment records and pay slips and replaces Clause 21 of the existing award, which did not reflect the statutory record keeping and pay slip requirements in the *Industrial Relations Act 1979*. To ensure consistency with the *Industrial Relations Act* the clause has been streamlined, referring directly to the relevant provisions in that Act.

Clause 36 – Right of entry

Clause 36 deals with right of entry and replaces Clause 30 of the existing award. To ensure consistency with the *Industrial Relations Act* the clause has been streamlined, referring directly to the relevant provisions in that Act.

Clause 37 – Named parties

Clause 37 deals with the named parties to the award and replaces Clause C and Clause D of the existing award. There are no changes to the parties to the award.

Schedule A – Classifications

Schedule A deals with classifications and replaces a range of definitions currently contained in Clause 6 of the existing award. Schedule A reflects a new classification schedule, in which a range of positions that were previously all listed separately but subject to the same base rate of pay have been grouped together in levels.

- **Level 1** groups together all of the positions that were previously paid the lowest base weekly rate of pay (Monday to Friday), including Shop Assistants, Sales Persons, Wholesale Sales Persons, Demonstrators, Canvassers, Collectors, Storepersons, Packers, Despatch Hands, Reserve Stock Hands and Ticket Writers.
- **Level 2** is the new classification for a Window Dresser / Visual Merchandiser.
- **Level 3** is the new classification for a Storeperson Operator Grade I
- **Level 4** is the new classification for a Storeperson Operator Grade II

There is no change to the base weekly rate of pay applying to any of the above positions, however grouping them together in functional classifications helps to streamline the operation of the award.

Schedule B – Summary of hourly rates of pay

Given the widespread usage of this award and the many different pay points it entails, a dedicated series of pay scales have been developed. The pay scales list many of the key hourly rates of pay that are applicable to employees working under the award, and operate in a similar manner to the pay scales that are now included as a schedule to most national modern awards.

The benefit of including pay scales is it reduces the chance of error occurring when parties are interpreting the award and calculating wage rates, as well as assisting with overall compliance.

Schedule C – No reduction

Given the complexity of the existing award and the many different loadings and allowances that are currently spread across multiple clauses, a no-reduction provision has been included as a safeguard mechanism, to ensure that an employee cannot receive less pay than they were prior to the updated award being issued.

Clauses and schedules deleted

A variety of clauses and appendixes in the existing award have been deleted, as they are either obsolete or their provisions are dealt with elsewhere in the updated award. Clauses that have been deleted are:

- Clause 2A – No Extra Claims
- Clause 5 – Term
- Clause 16 – Change rooms
- Clause 19 – Casual limitations
- Clause 23 – Board of reference
- Clause 26 – Junior workers' certificate
- Clause 28A – Structural efficiency agreement – cold storage industry
- Clause 31 – Other provisions
- Clause 36 – Posting of award
- Clause 41 – Liberty to apply
- Clause 45 - Superannuation
- Clause 50 - Enterprise level award change procedure
- Appendix – S.49B – Inspection of records requirements