

## INSTRUCTION GUIDE

### FOR ASSESSING EXISTING AGREEMENTS AGAINST THE NATIONAL EMPLOYMENT STANDARDS AND THE *HOSPITALITY INDUSTRY (GENERAL) AWARD 2020*

***EFFECTIVE: 1 November 2021***

#### BASE RATES OF PAY/NES COMPARISON EXERCISE

This Instruction Guide provides guidance to those employers with an existing workplace agreement in operation. Existing workplace agreements will include the following:

- Australian Workplace Agreement (AWA);
- Individual Transitional Employment Agreement (ITEA);
- Certified Agreement;
- Union Collective Agreement;
- Employee Collective Agreement;
- Union Greenfields Agreement;
- Employee Greenfields Agreement; and
- Enterprise Agreement. (hereinafter collectively referred to as 'Agreement')

From 1 January 2010, due to the provisions of the fair work legislation, employers must ensure two sets of minimum conditions apply despite the minimum entitlements already stated in the Agreement. These are:

- the base rates of pay in an Agreement must be no less than the applicable base rates of pay in a relevant Modern Award (such as the *Hospitality Industry (General) Award 2020* (HIGA)), and
- the National Employment Standards of the *Fair Work Act 2009* (Cth) ('NES') must apply as a minimum standard.

The NES entitlements are as follows:

1. maximum weekly hours;
2. requests for flexible working arrangements;
3. parental leave and related entitlements;
4. annual leave;
5. personal/carer's leave;
6. community service leave;
7. long service leave; (Note: In the Queensland hospitality industry, this entitlement will derive from the *Industrial Relations Act 2016* (Qld) and not the NES)
8. public holidays;
9. notice of termination and redundancy pay; and
10. Fair Work Information Statement.

## COMPLYING INSTRUCTIONS

In order to make an assessment of whether or not an Agreement complies with the minimum base rates of pay and the NES entitlements that took effect from 1 January 2010, please follow the steps below.

### 1. National Employment Standards

From 1 January 2010, the NES applied to all employees, including those covered by an Agreement. A term of an Agreement has no effect where the term is detrimental to an employee when compared to an entitlement provided by the NES. In other words, a term of an Agreement must be equal to or better than an equivalent NES entitlement in order to prevail.

The steps to make this assessment are as follows:

#### **Step 1**

Review the 10 NES entitlements.

#### **Step 2**

Review the Agreement to determine whether all of the NES entitlements are provided for in the Agreement:

- Where the Agreement is silent on an entitlement provided by the NES (ie. the Agreement does not provide for it) the entitlement of the NES is taken to apply to the Agreement;
- Where the Agreement provides for an entitlement which is less beneficial to an employee than a corresponding entitlement provided by the NES, the NES will override the Agreement in relation to that entitlement. An employer will effectively cross out the entitlement in the Agreement and replace it with the NES entitlement;
- A term of an Agreement that provides an entitlement that is at least as beneficial to an employee as a corresponding entitlement under the NES (ie. equal to or more beneficial), the term of the Agreement will continue to have effect.

It is likely that an Agreement made prior to 1 January 2010 (excluding an Enterprise Agreement) which was subject to the Australian Fair Pay and Conditions Standard (which the NES replaced) may not have made provision for NES entitlements such as Flexible Work Arrangements, Community Service Leave and Redundancy Pay.

#### **Step 3**

Keep a copy of the NES and the Agreement available at the workplace for employees to access as these two documents will collectively outline an employee's terms and conditions of employment.

### 2. Hospitality Industry (General) Award 2020

From 1 January 2010, employers subject to an Agreement are required to ensure that the base rates of pay under the Agreement are not less than the relevant modern award base rates of pay. This is the case for all Agreements, regardless of the fact that an Agreement has previously passed a formal government/tribunal assessment such as the Fairness Test, No Disadvantage Test or Better Off Overall Test.

It is important to note that the comparison applies to base rates of pay only. The *Fair Work Act 2009* (Cth) defines 'base rate of pay' as the rate payable to the employee for their ordinary hours of work, but does not include any of the following:

- (a) Incentive-based payments and bonuses;
- (b) Loadings;
- (c) Monetary allowances;
- (d) Overtime or penalty rates;
- (e) Any other separately identifiable amounts.

The steps to make this assessment are as follows:

### **Step 1**

Determine the current base rates of pay in the Agreement.

When undertaking the comparison, consideration should be given to whether the rate of pay in the Agreement includes a 'loading' to compensate for entitlements such as but not limited to early/late night work allowances and weekend penalties. In this case the loading will have to be deducted in order to arrive at the base rate of pay for the Agreement. This base rate of pay for the Agreement will then be used for comparison with the corresponding base rate of pay under the relevant modern award.

By way of example, if a casual employee covered by an Agreement is paid a casual loading of 30% to compensate for penalties and allowances giving a total hourly rate of pay of \$21, then the base rate of pay for the agreement will be \$16.15 (i.e.  $\$21 / 1.3 = \$16.15$ ).

Please note that with some Agreements, an employee may be classified at a different level than the level in the relevant modern award. In this instance, an assessment will need to be made of the appropriate corresponding classification. For example, although an employee is classified at Food and Beverage Grade 2 under an Agreement, the relevant modern award may classify the employee at Food and Beverage Grade 3.

### **Step 2**

Compare the base rates of pay from the Agreement for each classification to the corresponding base rates of pay from the relevant modern award.

If the base rate of pay under the Agreement is lower than the corresponding base rate of pay under the relevant modern award, then the corresponding base rate of pay from that relevant modern award must be applied to the Agreement.

In other words, the base rate of pay for an employee under the Agreement must be increased to match the base rate of pay that would apply to the employee under the relevant classification of the modern award.

Any other penalties, allowances and loadings, etc, payable under the Agreement will then be added to the revised base rate of pay.

Appendix A outlines the relevant base rates of pay under the HIGA from 1 November 2021.

**NOTE:** If you would like base rates of pay prior to this time, please contact the QHA Employment Relations Department.

Where the HIGA does not cover an employer and an employee, there may be another award that applies. For example, in the case of a Beauty Therapist, the *Hair and Beauty Industry Award 2010* would apply. It is important to apply the correct modern award for this comparison exercise. If you are unsure of the correct modern award, please contact the QHA Employment Relations Department.

## **MORE INFORMATION AND ASSISTANCE**

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Financial QHA members\* with questions regarding a NES/base rate Agreement comparison exercise may contact the Employment Relations Department on 07 3221 6999 for a confidential discussion.

Alternatively, members can email their query to [er@gha.org.au](mailto:er@gha.org.au)

### ***NES/base rate Agreement Comparison Cost***

QHA members may engage the QHA to undertake a NES/base rate comparison Agreement exercise on a consultancy basis at an hourly rate of \$205.00 per hour plus GST.

Non-QHA members may seek the same assistance on a consultancy basis, but at the rate of \$275.00 per hour plus GST.

*\* Please note that Corporate Members are not able to access free advice and assistance from the QHA.*

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The information contained in this Instruction Guide is intended for general information only. Whilst due care has been taken in preparing this Guide, no responsibility is accepted by the author for the accuracy of the information therein contained.

All liability is expressly disclaimed for any damage which may arise from any person acting on any statement or information contained herein.

## APPENDIX A

The table below shows the adult base rates of pay under the HIGA from 1 November 2021:

<b>STREAM</b>	<b>CLASSIFICATION</b>	<b>MINIMUM HOURLY RATE</b>
<b>Introductory</b>		\$20.33
<b>Food &amp; Beverage Stream</b>	F&B Attendant Grade 1	\$20.92
	F&B Attendant Grade 2	\$21.72
	F&B Attendant Grade 3	\$22.46
	F&B Attendant Grade 4	\$23.67
	F&B Supervisor	\$25.16
<b>Kitchen Stream</b>	Kitchen Attendant Grade 1	\$20.92
	Kitchen Attendant Grade 2	\$21.72
	Kitchen Attendant Grade 3	\$22.46
	Cook Grade 1	\$21.72
	Cook Grade 2	\$22.46
	Cook (tradesperson) Grade 3	\$23.67
	Cook (tradesperson) Grade 4	\$25.16
	Cook (tradesperson) Grade 5	\$25.83
<b>Guest Services Stream</b>	Guest Services Grade 1	\$20.92
	Guest Services Grade 2	\$21.72
	Guest Services Grade 3	\$22.46
	Guest Services Grade 4	\$23.67
	Guest Services Supervisor	\$25.16
	Front Office Grade 1	\$21.72
	Front Office Grade 2	\$22.46
	Front Office Grade 3	\$23.67
	Front Office Supervisor	\$25.16
<b>Administration Stream</b>	Clerical Grade 1	\$21.72
	Clerical Grade 2	\$22.46
	Clerical Grade 3	\$23.67
	Clerical Supervisor	\$25.16
<b>Stores Stream</b>	Storeperson Grade 1	\$21.72
	Storeperson Grade 2	\$22.46
	Storeperson Grade 3	\$23.67
<b>Security Stream</b>	Doorperson/Security Officer Grade 1	\$21.72
	Timekeeper/Security officer	\$22.46

	Grade 2	
<b>Leisure Activities Stream</b>	Leisure Attendant Grade 1	\$21.72
	Leisure Attendant Grade 2	\$22.46
	Leisure Attendant Grade 3	\$23.67
	Handyperson	\$22.46
	Gardener Grade 1	\$21.72
	Gardener Grade 2	\$22.46
	Gardener Grade 3 (Tradesperson)	\$23.67
	Gardener Grade 4 (Tradesperson)	\$25.16

<b>Managerial Stream</b>	Manager	\$51,130 per annum <i>(Base salary as per clause 18.2)</i>
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**\*\* Clause 26.3 Fork-lift Driver Allowance:**

The fork-lift Driver allowance is an 'all purposes' allowance; it forms part of the base or ordinary rate of pay for the purposes of calculating penalty rates, overtime and other award entitlements.

In addition to the minimum hourly rate, an employer must pay an employee who is engaged to drive a fork-lift an all-purpose allowance of **\$0.36** per hour.

In addition to the minimum hourly rate, a part-time or casual fork-lift driver who was employed immediately prior to 23 January 2020 must be paid an additional allowance of **\$2.70** per day up to a maximum of **\$13.49** per week.

A part-time or casual employee in receipt of the daily fork-lift driver allowance may elect to receive the fork-lift driver allowance as an hourly amount of **\$0.36**.