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# FACT SHEET

## HIGA: Schedule L

On Tuesday, 24 March 2020 the *Hospitality Industry (General) Award 2010* ('HIGA') was varied to include a new Schedule L. The variation arose as a result of the Australian Hotels Association's application, as consented to by the United Workers Union, to seek flexibilities with some parts of the HIGA – as a result of the COVID-19 pandemic and state and federal government bio-security measures.

Schedule L took effect from the first full pay period on or after 24 March 2020, and operates until 30 June 2020, unless extended by the Fair Work Commission.

This Fact Sheet highlights the major aspects of Schedule L.

### CLASSIFICATIONS AND DUTIES

L.2.1 of the Schedule provides that an employer can direct an employee to perform other tasks / duties that are within their skill set and competency.

The proviso to this is that these alternate duties must be safe and the employee is licensed and qualified to perform them.

For example:

#### ***Where a direction would be reasonable***

*Henry is a Head Chef at a hotel. His duties involve overseeing and managing the hotel kitchen. Typically, the junior casual staff would be required to clean the stock fridge. As there are no longer any casual staff in the kitchen, Henry's employer can ask him to clean the stock fridge.*

#### ***Where a direction would not be reasonable***

*Greg is handyman at a tavern's garden bar. His duties include watering the plants, and providing general maintenance to the venue. Greg's employer decides that maintenance work will no longer be performed and directs Greg to work in the bottle shop. As Greg does not have an RSA, he cannot be directed to work in the bottle shop.*

### **HIGHER DUTIES**

The higher duties allowance at HIGA clause 25 still applies despite Schedule L. This means that employees who are engaged in duties carrying a higher rate are entitled to the Higher Duties allowance.

#### **NOTE** **LOWER DUTIES**

In the event an employee is engaged in duties carrying a lower rate of pay, their rate of pay remains as it is for their substantive position – it does not drop.

## **CHANGES TO ORDINARY HOURS OF WORK**

Schedule L enables employers to vary:

- A full time employee's working hours from an average of 38 hours per week to "an average of between 22.8 and 38 hours per week"; and
- A part time employee's guaranteed hours of work to "an average of between 60% and 100% [of the employee's] guaranteed hours of work per week".

This means that in the absence of agreement being reached between an employer and an employee to vary the employee's ordinary hours of work in light of the COVID-19 pandemic, an employer can direct an employee to reduce their ordinary hours, as provided for above.

The proviso to such a direction is that an employer must comply with L.2.2(c). This section of the Schedule is explained below.

Please note that during the period a full time employee's or a part time employee's hours have been reduced under this Schedule, the employee continues to accrue annual leave and personal/carer's leave on the basis of the pre-reduction contracted or guaranteed hours.

### **Full Time Employee**

Should such a direction occur, for a full time employee, the employee's ordinary hours of work may vary week to week in accordance with trading requirements, however, the ordinary hours the employee is rostered for cannot be less than 22.8 hours per week.

### **Part Time Employee**

For a part time employee, an employer may direct the employee to work an average of between 60% and 100% of their guaranteed hours per week, or as per any averaging arrangement in place.

Accordingly, the hours of work per week available to staff will largely be based on the operational requirements of the business during this time.

## **SCHEDULE L.2.2(C)**

In accordance with Schedule L, prior to issuing a direction to full time or part time employees, an employer MUST:

- Consult with the affected employee/s in accordance with HIGA clause 8A, providing as much notice as practicable; and
- If an affected employee is a member of the United Workers Union, notify the United Workers Union of the intention to implement changes to the employee's hours of work.

*Refer: QHA's Consultation Provisions Under HIGA and RIA Fact Sheet.*

## **UNLITERALLY CHANGING AN EMPLOYEE'S HOURS OF WORK**

It is unlawful for an employer to unilaterally alter the terms and conditions of an employee's employment.

Attempting to do so may constitute a repudiation of the employment agreement, which has the potential to open the employer to a raft of legal claims including:

- Unfair dismissal claims;
- Adverse actions claims; and

- Breach of contract claims.

Schedule L gives employers the ability to vary an employee's hours of work in a manner which does not expose the business to the above claims.

### **DIRECTING EMPLOYEES TO TAKE ANNUAL LEAVE**

In accordance with Schedule L.2.3, an employer can now direct an employee to take annual leave by only providing 24 hours' notice in the circumstances highlighted below:

1. The business is closing down its operations (clause 34.3); or
2. An employee has an excessive leave accrual (clauses 34.7-34.9).

With regard to excessive leave accruals this will be an annual leave accrual of more than eight (8) weeks annual leave, or ten (10) weeks in the case of a shift worker.

Schedule L removes the notice requirements of HIGA clauses 34.3, 34.7, 34.8 and 34.9 and reduces the notice period an employer must give when directing an employee to take annual leave to **24 hours' notice**.

### **NO EXCESSIVE ACCRUALS?**

Schedule L does not negate an employer's ability to reach agreement with employees to take any period of annual leave.

### **HOW THE ANNUAL LEAVE CAN BE TAKEN**

L.2.3(c) enables an employer and an employee to agree for the to "take twice as much annual leave at half the rate of pay for all or part of any period of annual leave".

The *Fair Work Act 2009* at section 90 is very prescriptive on how annual leave is to be taken – the ability to agree as per Schedule L, creates an alternative to having to stand down an employee's employment.

Section 90 states:

#### ***"Payment for annual leave***

*(1) If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.*

*(2) If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave."*

Refer: QHA's Stand Down Fact Sheet

For example:

#### ***Three weeks of annual leave becomes six weeks***

*Jenny has 3 weeks of annual leave accrued. Jenny's weekly rate of pay is \$500.00. Jenny enters an agreement with her employer, as per Schedule L, agreeing that rather than taking 3 weeks annual leave at \$500.00 per week, she will take 6 weeks of annual leave at \$250.00 per week.*

## **DOCUMENT, DOCUMENT, DOCUMENT!**

The QHA recommends that all arrangements agreed to, or directed as per Schedule L be documented. This includes actions in accordance with L.2.2(c).

Refer to the Attachments provided at the end of this Fact Sheet to assist:

- Attachment A for a template consultation letter (as per L.2.2(c)).
- Attachment B for a template letter to assist with notifying the United Workers Union (as per L.2.2(c)).
- Attachment C for a template direction to take annual leave due to excessive accruals letter (as per L.2.3).
- Attachment D for a template direction to take annual leave for a closedown letter (as per L.2.3).

Documented agreement with employees (preferably with the employees signature / email confirming consent to the agreement) regarding hours of work and annual leave are also valuable for confirming agreements that have been reached – in the event of dispute at a later stage.

### **Further Assistance**

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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31 March 2020

## ATTACHMENT A

### SAMPLE CONSULTATION REGARDING HOURS OF WORK DOCUMENT

<Place on company letterhead>

<Insert date>

<Insert employee name and address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <Insert employee's name>

#### **Consultation regarding changes to hours of work**

The purpose of this letter is to invite you to attend a meeting at <insert Venue Name> with <insert attendee names eg the representatives of the employer> at <insert time and date>, to consult with <insert company name> in accordance with clause 8A of the *Hospitality Industry (General) Award 2010* ('HIGA'), regarding proposed changes to your hours of work.

These proposed changes are in light of the deteriorating effect Coronavirus (COVID-19) is having on <insert company name> at <insert Venue Name>.

We are inviting you to this meeting to give you an opportunity to express your views about the impact the proposed change will have on you. <Insert company name> will consider any views you have regarding the proposed change during this consultation process.

*Proposed change*

**[Pick which option is most appropriate for the employee]**

#### **FOR FULL TIME EMPLOYEES:**

Your contract of employment outlines you are required to work <insert employee's contracted hours> per week (**Contracted Hours**).

Pursuant to Schedule L of the HIGA, <insert company name> proposes to vary your Contracted Hours to an average of between 22.8 hours and 38 hours per week.

This means that your hours of work will vary between 22.8 and 38 hours per week depending on <insert company name>'s operational requirements. You will be paid on a pro-rata basis based on the number of hours you work each week.

Please note that you will continue to accrue annual leave and personal leave, and any other applicable accruals under the HIGA, based on your full time Contracted Hours of work.

**FOR PART TIME EMPLOYEES:**

Your contract of employment outlines your guaranteed hours of work per week as **<insert employee's guaranteed hours> (Guaranteed Hours)**.

Pursuant to Schedule L of the HIGA, **<insert company name>** proposes to vary your hours of work to an average of between 60% and 100% of your Guaranteed Hours.

This means that your hours of work will be between 60% and 100% of your Guaranteed Hours depending on **<insert company name>**'s operational requirements. You will be paid on a pro-rata basis based on the number of hours you work each week.

Please note that you will continue to accrue annual leave and personal leave, and any other applicable accruals under the HIGA, based on your part time Guaranteed Hours of work.

*Expected time frame for varied hours of work*

**<Insert company name>** expects these varied hours of work will be in effect until 30 June 2020.

However, this time frame may be extended if the deteriorating effect of COVID-19 continues, and accordingly, the provisions of the HIGA are extended. We will advise you of any changes as and when they become available.

If you have any queries, please do not hesitate to contact me.

Kind regards

**<Insert name>**

## **ATTACHMENT B**

### **SAMPLE NOTIFICATION DOCUMENT: TO UNITED WORKERS UNION**

<Place on company letterhead>

<Insert date>

By email: [Rosa.Fernandes@unitedworkers.org.au](mailto:Rosa.Fernandes@unitedworkers.org.au)

Attn: United Workers Union

#### **Notification to implement temporary changes under Schedule L of the HIGA**

The <insert name of employer> intends implement changes under Schedule L of the *Hospitality Industry (General) Award 2010* ('HIGA').

##### Consultation with employees

We are in the process of consulting with our employees in relation to these changes, in accordance with the HIGA, including by:

- Providing to employees information about the proposed change (including the nature of the change and when it is to begin);
- Inviting employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities).

##### Establishments / sites affected

These changes will be implemented at the following work locations:

- <list relevant work locations>

##### Employees affected

There are <insert number> full time employees who will receive a reduction of up to <insert number> hours.

There are <insert number> part time employees who will receive a reduction of up to <insert number eg 40%> of their guaranteed hours.

##### Contact details

If you have any views about these changes, please contact <insert contact person for the employer>.

## **ATTACHMENT C**

### **SAMPLE DIRECTION TO TAKE ANNUAL LEAVE DOCUMENT: EXCESSIVE ANNUAL LEAVE**

<Place on company letterhead>

<Insert date>

<Insert employee name and address>

Dear <Insert employee's name>

#### **Excessive annual leave accrual – direction to take annual leave**

Due to the recent business deterioration associated with the Coronavirus (COVID-19), <insert company name> is, in accordance with clause 34.8 of the *Hospitality Industry (General) Award 2010* ('HIGA') directing you to take one or more periods of paid annual leave.

As of <insert date of this letter>, you have accrued <insert number of weeks> of annual leave (the Annual Leave Amount). Your Annual Leave Amount is considered 'excessive' as defined at clause 34.7(a) of the HIGA because it is an accrual of more than eight (8) weeks.

Pursuant to Schedule L of the HIGA, <insert company name> is directing you to take a portion of your Annual Leave Amount. On that basis, you are being directed to take <insert number of weeks> of annual leave from <insert date> to <insert date>.

Please note, this direction will not result in your remaining accrued annual leave entitlement being less than six (6) weeks.

Accordingly, from <insert date –being no less than 24 hours from the date of the letter>, you will not be required to attend <insert Venue name>, as you will be taken to be on annual leave.

<Insert company name> expects this direction will remain in effect until **30 June 2020**. However, this time frame may be extended if the effects of COVID-19 continue, and accordingly, the provisions of the HIGA are extended. We will advise you of any changes as and when they become available.

If you have any queries, please do not hesitate to contact me.

Kind regards

<Insert name>

## ATTACHMENT D

### SAMPLE DIRECTION TO TAKE ANNUAL LEAVE DOCUMENT: CLOSE DOWN

<Place on company letterhead>

<Insert date>

<Insert employee name and address>

Dear <Insert employee's name>

#### **Close down – direction to take annual leave**

Due to the recent business deterioration associated with the Coronavirus (COVID-19), <insert company name> is, in accordance with clause 34.3 of the *Hospitality Industry (General) Award 2010* ('HIGA') closing down the <insert Venue Name> **OR** <insert Department Name of the Venue>.

<Insert company name> expects the close down will be in effect until 30 June 2020. However, this time frame may be extended if the effects of COVID-19 continue, and accordingly, the provisions of the HIGA are extended. We will advise you of any changes as and when they become available.

Pursuant to Schedule L of the HIGA, <insert company name> is directing you to take annual leave during this period of close down.

Accordingly, from <insert date –being no less than 24 hours from the date of the letter>, you will not be required to attend <insert Venue Name> as you will be taken to be on annual leave.

As of the date of this letter, you have accrued <insert hours/ weeks> of annual leave. Therefore, you will be taken to be on annual leave from <insert date> to <insert date>.

If you have any queries, please do not hesitate to contact me.

Kind regards

<Insert name>