



FACT SHEET

Clause 24 from 1 September 2022

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From 1 September 2022, significant changes will be made to the annualised salary arrangements within:

- Clause 24 of the *Hospitality Industry (General) Award 2020* ('HIGA'); and
- Clause 20 of the *Restaurant Industry Award 2020* ('RIA').

As there are differences in the effect of the new annualised wage arrangement clauses in the HIGA and the RIA, members covered by the RIA are encouraged to contact the QHA's Employment Relations Department for advice.

For the purposes of this Fact Sheet, reference to 1 September 2022 throughout simply refers to the date that is determined to be the employee's first full pay period that starts on or after 1 September 2022.

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BACKGROUND TO THE CHANGES

- In 2018, as part of the Fair Work Commission's ('FWC') Four Yearly Review of modern awards, the annualised salary arrangements within the HIGA and RIA were identified as requiring the FWC's review.
- Through the FWC review process, the Australian Hotels Association ('AHA'), the national body of the QHA, made numerous submissions regarding the review and HIGA clause 24.
- On 5 May 2022, a Full Bench of the FWC released its decision and determination, varying the annualised salary arrangements clause at clause 24 of the HIGA and clause 20 of the RIA. Essentially, it is a new clause which replaces the existing wording (the 'Variation').

WHEN DOES THE VARIATION TAKE EFFECT?

The determinations (i.e. the new clauses in both the HIGA and RIA) will take effect in relation to a particular employee (to whom an annualised salary arrangement applies to) from the employee's first full pay period that starts on or after 1 September 2022. This means, if your pay cycle starts on Thursday, 1 September, or after that date, the changes to clause 24 will apply from that pay cycle.

WHO DOES THE VARIATION APPLY TO?

The changes to HIGA clause 24 will apply to an employer who currently pays employees an annualised salary in accordance with clause 24. As a reminder, clause 24 currently applies to employees who:

- Have agreed to be paid an annualised salary;
- Are paid at least 125% of the minimum weekly rate (at clause 18) that would otherwise be applicable under the HIGA; and
- Are not casual employees or employees within the *Managerial Staff (Hotels)* classification level of the HIGA.

Employers requiring further assistance for determining whether these changes apply to an employee, are encouraged to refer to the QHA's ***Identifying Clause 24 Employees Fact Sheet***.

Members are reminded that these changes do not apply to employees classified as *Managerial Staff (Hotels)*, paid a salary per HIGA clause 25. These changes also do not impact annualisation clauses in existing Collective or Enterprise Agreements.

WHAT CHANGES ARE PART OF THE VARIATION?

Outlined below are the main changes and new requirements of the amended clause 24.

1. ANNUALISED WAGE ARRANGEMENTS

Clause 24 will, from 1 September 2022 be called 'Annualised wage arrangements'. This is a change from its current title of 'Annualised salary arrangements'.

2. PART-TIME EMPLOYMENT

Current Clause	New Clause 24
Clause 24 can apply to a part-time employee.	Clause 24.2(a) of the varied clause 24 specifies that only an employer and a full-time employee may enter into an agreement to be paid an annualised wage.

This means a part-time employee will no longer be able to be paid an annualised wage arrangement per clause 24. As such, employers must issue part-time employees with a new Letter of Appointment ('LOA') reflecting new employment arrangements that are not based on clause 24. This is because after 1 September 2022, an LOA for a part-time employee reflecting clause 24 will not be lawful.

Changing from clause 24 to wages will have an impact on part-time employee's public holiday entitlements. A summary of this is provided in the QHA's Annualised Wage Arrangements Resources Kit ('KIT'), specifically, **Template C – Notification of Changes - Part-Time Employees**.

OPTIONS FOR PART-TIME EMPLOYEES

The QHA's **Clause 24 from 1 September 2021 Fact Sheet** provides recommendations for part-time employees currently paid in accordance with a clause 24 arrangement. As the employee can no longer be paid an annualised salary per clause 24, the QHA's **Clause 24 from 1 September 2021 Fact Sheet** and templates are based on the employee's pay arrangements changing to be paid wages plus HIGA entitlements (i.e. overtime and penalties when they fall due), instead of a salary.

Employers who want their part-time employee to continue to be paid a salary will need to implement either:

- An Individual Flexibility Agreement ('IFA'), however these agreements may only be implemented with existing employees (as they cannot be used at the commencement of employment); or
- An LOA with detailed offsetting clause which notes which HIGA entitlements the salary compensates for.

The QHA's Employment Relations team can draft these templates on a fee for service basis.

3. NUMBER OF DAYS OFF DUTY

Current Clause 24	New Clause 24
Clause 24.7 currently provides that an employee who has entered into an agreement under clause 24.2 must be rostered to have a minimum of 8 days off duty during each 4 week cycle of work.	The new clause 24 does not include this provision.

As outlined above, clause 24 no longer provides that an employee paid an annualised salary must receive a minimum of 8 days off duty during each 4 week cycle of work. This means once the new clause 24 takes effect, the following HIGA provisions must be complied with:

- Part-Time Employee – clause 10.7(b) provides that a part-time employee must have 2 days off per week;
- Full-Time Employee – the number of days off will be based on the agreed averaging arrangement, per clause 15.1(b) of the HIGA. For example,
 - 76 hours over a 2 week period with a minimum of 4 days off each 2 week period;
 - 152 hours each 4 week period with a minimum of 8 days off each 4 week period.

Employers are encouraged to check whether this change will result in the employer needing to alter an employee's regular roster or ordinary hours of work. If this is required, details of this should be included in the applicable notification and appendix template issued to the employee, such as:

- Template A – Notification of Changes – Full-Time Employee; and
- Template B – Appendix for Full-Time Employee; OR

- Template C – Notification of Changes – Part-Time Employee; and
- Template D – Appendix for Part-Time Employee.

This is to ensure the business complies with the consultation requirements under the HIGA.

Where a change to hours is likely to be significant, please contact the QHA for advice.

4. CLARIFICATION OF WHICH ENTITLEMENTS THE ANNUALISED WAGE CAN COVER

Current Clause 24	New Clause 24
<p>Clause 24.5 currently provides that an annualised salary, which must include a 25% loading, may compensate for the following HIGA entitlements:</p> <ul style="list-style-type: none"> • clause 28 – Overtime; • clause 29 – Penalty rates; and • by agreement, other monetary entitlements provided by the HIGA. 	<p>Clause 24.2(a) will provide that through written agreement, it may be agreed that the annualised wage, which must include at least a 25% loading, compensates the employee for any or all of the following provisions of the HIGA:</p> <ul style="list-style-type: none"> • clause 18—Minimum rates; • clause 26—Allowances; • clause 28—Overtime; • clause 29—Penalty rates; • clause 30.3—Payment for annual leave loading; and • clause 35.3(a)—Additional public holiday arrangements for full-time employees.

This change is not significant, however it does restrict what the annualised wage can cover (compensate for) to a defined list.

The QHA advises employers to not use this change as an opportunity to amend existing employee’s salaried arrangements by adding extra entitlements (per new clause 24) in addition to what was originally agreed. To do so could represent a material change to the employment contract and be viewed as a termination.

The above change with new clause 24.2(a) will primarily apply to new full-time employees when negotiating conditions during the recruitment stage, or to existing employees who mutually agree to change their arrangement, for example, where their salary is increased to compensate for additional entitlements allowed in new clause 24.

Importantly, new clause 24 is explicit in that an agreement to pay an annualised wage to an employee can only be made via written agreement.

Reconciliation:

The HIGA provisions which are agreed to be compensated for by the (at least) 25% loading must be taken into consideration for the reconciliation process. This process requires the employer to ensure:

- That over a period of 12 months (or over the pro-rata period of employment if terminated before the anniversary (year) ends) the employee has, through their annualised wage,

- Received at least what they would have been paid if they were not paid an annualised salary and were paid as per the HIGA (non annualised).

If the employee has been paid less via payment of an annualised salary per clause 24, the employer must pay the employee the difference. For more information, see point 7 of this Fact Sheet, titled *Reconciliation Payment*.

5. CLARIFICATION THAT ANNUALISED WAGE CAN COVER FOR CLAUSE 35.3(A) – ADDITIONAL PUBLIC HOLIDAY ARRANGEMENTS FOR FULL-TIME EMPLOYEES

As outlined above at point 4 above, new clause 24 provides that an employer and employee may agree in writing that the annualised wage arrangement compensates for the entitlements provided by clause 35.3(a)—*Additional public holiday arrangements for full-time employees*.

Clause 35.3 of the HIGA is copied below with 35.3(a) highlighted in yellow:

35.3 Additional public holiday arrangements for full-time employees

An employer must, if the rostered day off or accrued day off of a full-time employee falls on a public holiday, do one of the following:

(a) pay the employee an extra day's pay; or

(b) give the employee an alternative day off within 28 days; or

(c) give the employee an additional day's annual leave.

As a result, from 1 September 2022, it can be agreed in writing that an employee's annualised wage compensates for the entitlement to an extra days pay per clause 35.3(a) if the full-time employee's rostered day off or accrued day off falls on a public holiday.

As stated, employers should not use new clause 24.2(a) to unilaterally amend existing employee's salaried arrangements by stating their salary compensates for entitlements that are additional to those that were originally agreed to. To do this could represent a material change which could be viewed as a termination.

This change will primarily apply to new full-time employees, or existing employees who mutually agree to change their arrangement, for example, where their salary is increased.

6. OUTER LIMITS

Current Clause 24	New Clause 24
<p>Clause 24 currently contains no limit on the number of overtime or penalty hours the annualised salary compensates for.</p> <p>However, the employer must ensure the employee has not been paid less over a year (or over the period of employment if terminated before the year ends) through their annualised salary, than what they would have been paid if they were paid their weekly rate and applicable overtime and penalty rates per the HIGA.</p> <p>If the employee has been paid less the employer must pay the employee the difference.</p>	<p>Clause 24 contains outer limits, which restrict the number of overtime and penalty hours the annualised salary can cover in a roster period.</p> <p>Where an employee works outside the outer limit of overtime or penalty rate hours, those additional hours will not be covered by the annualised wage. Instead, the employee must be paid for this work (in addition to the annualised wage), in accordance with the applicable provisions of the HIGA.</p>

As outlined in the above table, the new clause 24 contains outer limits, which restrict the number of overtime and penalty hours the annualised salary can cover in a roster period. Clause 24.2(b) of the new clause 24 provides that the outer limits are work performed in any roster cycle in excess of:

✓ **PENALTY RATE OUTER LIMIT**

an average of 18 ordinary hours which would attract a penalty rate under clause 29.2(a) of this award per week, excluding hours worked between 7.00pm to midnight.

Taking into account clause 29.2(a), and the exclusion of 7.00pm to midnight, the following hours will count towards this outer limit:

- Work performed Monday to Friday from midnight to 7am;
- Work performed on Saturday;
- Work performed on Sunday;
- Work performed on Public Holidays.

✓ **OVERTIME OUTER LIMIT**

an average of 12 overtime hours per week in excess of ordinary hours

For full-time employees, there are numerous ways which an employee is entitled to overtime rates in the HIGA, which would count towards this outer limit, such as:

- Hours worked in excess of the agreed averaging arrangement in clause 15.1(b);
- Hours worked in excess of maximum ordinary hours prescribed at clause 15.1(c)-(e); and
- Hours worked on an rostered day off or accrued day off per clause 28.2(d)-(f).

Clause 15.1(a) of the HIGA provides that an employer and a full-time employee must agree on the arrangement for working the average of 38 ordinary hours per week required for full-time employment. Options for the averaging arrangement are provided by clause 15.1(b).

ROSTER CYCLE

The outer limits are averaged across the roster cycle (e.g. weekly, fortnightly) that is in place at an employer's workplace.

For example, the Glorious Hotel has a fortnightly roster. This means the outer limits are:

- Penalty Rates - 36 hours across the fortnight.
 - This is made up of the average of 18 ordinary hours per week, excluding hours worked between 7.00pm to midnight.
- Overtime Hours - 24 overtime hours across the fortnight.
 - This is made up of an average of 12 overtime hours per week in excess of ordinary hours.

WORK ABOVE OUTER LIMIT

Where an employee works more than either of the outer limits within the roster cycle, as stated, those hours will not be covered by the annualised wage. The employer must pay the employee for these hours in accordance with the applicable provisions of the HIGA.

This means if the employee works in excess of the:

- Penalty rates outer limit, the employee must be paid their base rate plus the applicable penalty rate, per clause 29.2(a)
- Overtime outer limit, the employee must be paid their base rate plus the applicable overtime penalty, per the clause 28.4.

WHAT IS THE BASE RATE?

For employees paid an annualised wage per HIGA clause 24 that is at least 125% of the minimum HIGA weekly rate for their classification, the base rate is the relevant rate of pay provided by clause 18-Minimum Rates of the HIGA, excluding any:

- Incentive-based payments;
- Bonuses;
- Loadings;
- Monetary allowances;
- Overtime; and
- Penalties.

The QHA's ***Hospitality Industry (General) Award 2020 Wages Guide*** lists the clause 18-Minimum Rates of the HIGA.

For employees paid an annualised wage that is above 125% of the minimum HIGA weekly rate for their classification, their base rate of pay will depend on the wording in their LOA:

- If their LOA states that their base rate is per the HIGA, for example, the LOA states the classification of the employee's position (per Schedule A of the HIGA), refer to the QHA's ***Hospitality Industry (General) Award 2020 Wages Guide*** for the current hourly rate of pay;
- If their LOA does not state what the base rate is, the QHA can review the LOA and position description. If the employer has the current QHA's ***HR Manual*** or subscribes to it, this can be performed at no additional cost for the QHA member. Where a member is using a different template (i.e. not developed by the QHA), such a review will incur a consultancy fee.

HOW TO DETERMINE THE HIGA CLASSIFICATION

To determine the applicable base rate in clause 18-Minimum Rates of the HIGA, employers will need to determine the employee's classification under the HIGA.

Employers should:

- Check whether the employee's current LOA lists their classification; and
- Review the QHA's ***Classifications under the HIGA Fact Sheet*** to check the correct classification.

Members can also contact the QHA's ER Department for assistance.

NOTE: Clause 24 cannot apply to employees classified as *Managerial Staff (Hotels)* or to employees engaged on a part-time or casual basis.

WHEN DOES PAYMENT FOR WORK ABOVE THE OUTER LIMITS NEED TO BE PAID?

Payment will need to be made to the employee in the pay run for the applicable roster period that the excess time has been worked in.

TIME OFF INSTEAD OF PAYMENT FOR OVERTIME

Where an employer and employee have an agreed in writing to the employee taking time off ('TOIL') instead of being paid for a particular amount of overtime that has been worked by the employee, per clause 28.5 of the HIGA, the introduction of outer limits does not alter that TOIL agreement.

NOTE: TOIL will need to be taken into account for the reconciliation process.

7. RECONCILIATION PROCESS

New Clause 24
<p>Clause 24.3 (a)-(b) of new clause 24 provides that:</p> <p><i>The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases or the agreement terminates earlier over such lesser period as has been worked).</i></p> <p><i>The employer must each 12 months from the commencement of the annualised wage arrangement or, within any 12 month period upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. <u>Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.</u></i></p> <p style="text-align: right;"><i>*Emphasis added</i></p>

As outlined earlier in this Fact Sheet, clause 24 currently provides that if, as part of the reconciliation process calculations, an employee has been paid less on their annualised salary than what they have if they were paid their weekly rate and entitlements per the HIGA, the employer must pay the employee the shortfall.

As a result of the new clause taking effect from 1 September 2022, clause 24 will provide that where the employer determines that the employee has been paid less on their annualised wage, the employer must pay the shortfall within 14 days.

NOTE: As outlined in the above table, the employer needs to “*calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee*”. The amount of annualised wage actually paid to the employee should include any payments made for work in excess of the outer limits.

The QHA recommends that employers complete the reconciliation required at clause 23.4(b) within 14 days of the reconciliation requirement date being reached.

8. RECORD OF HOURS WORKED

New Clause 24
<p>Clause 24.3(c) of the varied clause 24 provides that:</p> <p><i>The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement agreement for the purpose of undertaking the comparison required by clause 24.3(b).</i></p>

This record must be signed by the employee or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.

This clause does not introduce significant changes to the existing requirement for employers to keep records for clause 24 employees, other than specifying that records will, from 1 September 2022, be required to include details of any unpaid breaks taken.

Employers will need to ensure their time and wage keeping software and protocols are updated to ensure unpaid break data is recorded in line with this requirement.

9. WRITTEN AGREEMENT

New Clause 24

Employers will need to ensure that their written agreement to pay an annualised wage arrangement specifies:

- (i) The annualised wage that is payable;
- (ii) The classification of the position so that the base rate value is identifiable;
- (iii) Which of the provisions of the HIGA will be satisfied by payment of the annualised wage; and
- (iv) The outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a roster cycle without being entitled to an amount in excess of the annualised wage.

Clause 24.2(e) will, when in effect, provide that:

The employer must give the employee a copy of the agreement and keep the agreement as a time and wages record.

Employers will need to ensure their written agreement (e.g. their LOA) with employees paid an annualised wage reflects the above requirements.

In effect, this means that employers will need to re-issue updated LOAs to employees.

The QHA has developed an updated LOA template for clause 24 employees, which accurately reflects the new changes:

- QHA members who have subscribed to, or purchased, the QHA's 2022 **HR Manual** will be provided with a copy of the new template at no additional cost;
- For other members the template LOA is available for purchase as part of the QHA's 2022 **HR Manual** .

10. CEASING THE ANNUALISED WAGE ARRANGEMENT

Current Clause 24	New Clause 24
The written agreement to pay an annualised salary can only be changed through mutual agreement with the employee.	Clause 24.2(f) of new clause 24 provides that the agreement to be paid an annualised wage may be terminated: (i) <i>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</i>

	<i>of the notice period; or</i> (ii) <i>at any time, by written agreement between the employer and the individual employee.</i>
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New clause 24 expands the ways in which an annualised wage arrangement can be ceased, by providing a unilateral termination notice by either the employer or the employee. Please note that the notice period for this is 12 months, and it must be via a written notice.

If the annualised wage agreement is terminated per the new clause 24, the employee would revert to receiving HIGA entitlements such as the base rate for their classification, overtime and penalty rate payments, and any other HIGA entitlements when applicable.

NOTE: the 12 month notice requirement only applies once new clause 24 takes effect on 1 September 2022.

11. WORK ON A PUBLIC HOLIDAY

Current Clause	New Clause 24
Clause 24.8 provides that for work on a public holiday, the employee will receive the equivalent amount of time worked as time off.	This requirement does not appear in the new clause 24.

From 1 September 2022, work on a public holiday is work which attracts a penalty rate per clause 29.2(a) of the HIGA. Any hours worked on a public holiday will therefore count towards the penalty rate outer limit count.

This change means that employers will need to:

- Incorporate public holiday penalty rates for any public holidays worked per clause 29.2(a) when completing the annualised wage reconciliation process; and
- Ensure that work on a public holiday is incorporated when monitoring the employee’s penalty rate outer limit. If the employee’s work on a public holiday is in excess of the penalty rate outer limit, the employee must be paid their base rate plus the applicable penalty rate, per clause 29.2(a).

Employers need to be mindful of this change, particularly if the entitlement to equivalent time off for time worked is specifically stated in an existing LOA. Given public holiday hours that are worked will count for the purposes of the penalty rate outer limit count, employers can discuss this with relevant employees with a view to agreeing to amend the LOA to remove this stated entitlement – given that the time worked is counted for the penalty rate outer limit (i.e. it is compensated for via the reconciliation process now).

NOTE: Where an LOA entitlement post 1 September 2022 provides for equivalent time off for work performed on a public holiday, this is a contractual, not an industrial entitlement that an employer must continue to provide. In effect, an employee will have a contractual entitlement to time off for time worked on a public holiday, *in addition* to the time incurring the public holiday penalty rate for the outer limit count (per the HIGA industrial entitlement).

12. 125% LOADING

Current Clause	New Clause 24
<i>“must be at least 125% of the minimum weekly rate that would otherwise be applicable under Table 3—Minimum rates over the year”</i>	<i>“at least 25% more than the minimum wage prescribed in clause 18 multiplied by 52 for the work being performed in satisfaction”</i>

In calculating the annualised wage, employers must ensure that it is at least 25% more than the minimum weekly wage for an employee’s classification.

Given the reconciliation obligation of clause 24, employers should consider whether 25% is sufficient, given an employee’s expected roster and the entitlements to be included in the annualised wage. A shortfall must be paid to the employee, and an assessment of the appropriateness of the 25% loading, or whether it should be greater than 25% should be undertaken at the time of drafting an employee’s LOA (including when existing employee LOA’s are updated for 1 September 2022).

Members are reminded that the annualised wage cannot compensate for work in excess of the outer limits, unless this is outlined in an enforceable LOA:

EMPLOYEES PAID SIGNIFICANTLY ABOVE THE HIGA

The QHA can draft a tailored and bespoke clause 24 employment agreement for employers who are:

- Paying a salary which is significantly above the HIGA clause 24 annualised salary of at least 125% of the minimum HIGA weekly rate for their classification; and
- Who seek for this over-award component paid to the employee to be used to compensate for a defined amount of work in excess of outer limit.

NOTE: Employers will be able to compensate a full-time employee for a set amount of work in excess of the outer limits with the employee’s salary ONLY where the employee is:

- Paid an amount which is significantly above the HIGA;
- The over-award component is sufficient to provide some compensation for work in excess of the outer limits;
- The employment agreement has enforceable clauses to allow this arrangement;
- The employee agrees to it; and
- The employer ensures that the employee is adequately compensated for any time worked above the outer limits through the annualised wage or additional payments.

QHA’s assistance to develop a tailored employment agreement is available as on a fee for service consultancy basis. Contact the QHA’s Employment Relations team to discuss options for your workplace.

NOTE: This employment agreement is not included in the QHA’s HR Manual.

RECOMMENDATIONS

The QHA recommends that employers impacted by the changes arising from new HIGA clause 24 review the QHA's resources as contained in its Kit :

- ***Checklist – Full-Time***
- ***Checklist – Part-Time***

COMPLIANCE RISK

Non-compliance with a modern award, including the HIGA, poses significant risks to employers and any individuals involved.

The Fair Work Ombudsman (“FWO”) is an independent statutory agency that is responsible for monitoring compliance with modern awards. If an employer or individual is alleged to be in breach of an award, FWO has the power to investigate the allegation and commence civil proceedings against the employer or individual.

If an employer or individual is found to have contravened a modern award, they will be penalised for the contravention. Civil penalties can be up to \$133,200 per contravention for an individual and up to \$666,000 per contravention for companies. Multiple breaches over an extended period of time compounds the risk.

On top of these penalties, employers may be ordered to pay the employees their outstanding entitlements (plus interest) and compensation for loss suffered.

QHA reminds employers that paying over award rates **does not** ensure compliance with the HIGA.

VARIED CLAUSE 24 OF THE HIGA

New clause 24 takes effect from the employee's first full pay period that starts on or after 1 September 2022. A copy of the new clause is provided below:

24. Annualised wage arrangements

24.1 Clause 24 applies to all employees other than those within the Managerial Staff (Hotels) classification level as defined by Schedule A—Classification Structure and Definitions.

24.2 Annualised wage instead of award provisions

(a) An employer and a full-time employee may enter into a written agreement for the employee to be paid an annualised wage of an amount that is at least 25% more than the minimum wage prescribed in clause 18 multiplied by 52 for the work being performed in satisfaction, subject to clause 24.2(b), of any or all of the following provisions of the award:

- (i) clause 18—Minimum rates;*
- (ii) clause 26—Allowances;*
- (iii) clause 28—Overtime;*
- (iv) clause 29—Penalty rates;*
- (v) clause 30.3—Payment for annual leave loading; and*

- (vi) *clause 35.3(a)—Additional public holiday arrangements for full-time employees.*
- (b) *The employee must not be required by the employer in any roster cycle to work in excess of:*
 - (i) *an average of 18 ordinary hours which would attract a penalty rate under clause 29.2 (a) of this award per week, excluding hours worked between 7.00pm to midnight; or*
 - (ii) *an average of 12 overtime hours per week in excess of ordinary hours*
without being entitled to an amount in excess of the annualised wage in accordance with clause 24.2(c).
- (c) *If in a roster cycle an employee works any hours in excess of either of the outer limit amounts specified in clause 24.2(b), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.*
- (d) *Where a written agreement for an annualised wage arrangement is entered into, the agreement must specify:*
 - (i) *the annualised wage that is payable;*
 - (ii) *which of the provisions of this award will be satisfied by payment of the annualised wage;*
 - (iii) *the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a roster cycle under clause 24.2(b) without being entitled to an amount in excess of the annualised wage in accordance with clause 24.2(c).*
- (e) *The employer must give the employee a copy of the agreement and keep the agreement as a time and wages record.*
- (f) *The agreement may be terminated:*
 - (i) *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*
 - (ii) *at any time, by written agreement between the employer and the individual employee.*

24.3 Annualised wage not to disadvantage employees

- (a) *The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases or the agreement terminates earlier over such lesser period as has been worked).*
- (b) *The employer must each 12 months from the commencement of the annualised wage arrangement or, within any 12 month period upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant*

period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.

- (c) *The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement agreement for the purpose of undertaking the comparison required by clause 24.3(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.*

24.4 Base rate of pay for employees on annualised wage arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 18 – Minimum rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

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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