

**IN THE FAIR WORK COMMISSION**

**AM2019/19**

**SECURITY SERVICES INDUSTRY AWARD 2010**

**UNITED WORKERS UNION APPLICATION TO VARY A MODERN AWARD**

**NSWBC AND ABI SUBMISSIONS IN RESPONSE TO THE VARIATION PROPOSED BY  
THE UNITED WORKERS UNION**

**1. BACKGROUND**

- 1.1 These submissions are made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Limited (**NSWBC**).
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*, whilst the NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009*. Together, ABI and the NSWBC represent over 17,000 businesses, including businesses affected by the United Workers Union's application in this matter.
- 1.3 In its application to vary a modern award dated 21 August 2019 (**UWU Application**), the United Workers Union (the **Union**) proposed a variation to clause 21.1 of the *Security Services Industry Award 2010* (**Award**) which sought "*to ensure that an employer covered by the Award cannot arbitrarily allocate overtime within a roster cycle regularly and systematically to hours which would attract penalty rates*".
- 1.4 The UWU Application proposes to insert a new clause 21.1(b) into the Award (**the Proposed Variation**) as follows:

*"21.1(b) Overtime rates will be paid for any time in excess of the hours prescribed for each roster cycle in clause 21.1(a). For the avoidance of doubt the regular and systematic allocation of overtime hours to any time at which penalty rates are payable shall be unreasonable overtime as defined by s 62 of the Fair Work Act."*
- 1.5 These submissions are filed in accordance with Directions issued by Vice President Hatcher of the Fair Work Commission (**Commission**) on 28 October 2019 (noting the extension of time granted by the Commission on 15 April 2020) and outline ABI and NSWBC's opposition to the Union's proposed changes to clause 21.1 of the Award.

## **2. THE PROPOSED VARIATION AND THE PRACTICE IT SEEKS TO ADDRESS**

- 2.1 In the Union's submissions dated 24 January 2020 (**UWU Submissions**), the Union refers to a 'rostering practice' (defined in the UWU Submissions as '**the Practice**') undertaken by employers covered by the Award, in which hours worked by an employee on a Saturday or a Sunday are allocated by the employer as overtime hours where the roster requires an employee to work hours in excess of ordinary hours under the Award. The Union contends that the overtime penalty rate is "absorbed" by the existing Saturday and Sunday penalty rates and the employee receives a single penalty rate for time worked on those days, regardless of whether the hours are additional overtime hours under the Award.
- 2.2 The Union relies on:
- (a) an argument that the Practice (as defined in the UWU Submissions) is inconsistent with the operation of section 62 of the FW Act dealing with maximum weekly hours, and therefore it appears the UWU's argument is that because the Award permits the Practice to occur, the Award does not accord with the NES; and
  - (b) an argument that the Practice is inconsistent with the modern awards objective, therefore the Award as it currently stands, in permitting the Practice to take place, should be amended to meet the modern awards objective.
- 2.3 The Practice has been the subject of previous Federal Court proceedings in which the Court confirmed as follows:

*"The Award provides for ordinary hours (that is, 38 hours per week) to be averaged over two, three, four or eight week roster cycles "at the discretion of the employer": cl 21.1(a). It also provides for additional payments for the working of overtime hours: cl 23.3.*

*Rostering arrangements are within the discretion of the employer. Consistently with the existence of this discretion the Award does not contain any express restrictions on the exercise of that power. In particular it is open to an employer:*

- *to choose the day on which a roster is to begin;*
- *to decide whether overtime hours can be included in the roster at a point before which all ordinary hours have been worked;*
- *to decide on the number of days on which ordinary hours can be worked; and*
- *to fix the number of days of the week on which ordinary hours are to be worked (subject to the limitations prescribed by cl 21.3 and 21.4).*

*Absent such express restrictions, the ordinary and natural language of the Award, in my view, permits an employer to act in the manner in which the respondent has done in the present case.”<sup>1</sup>*

### **3. SUMMARY OF ABI/NSWBC POSITION**

- 3.1 ABI and NSWBC oppose the UWU Application on the following six grounds:

#### **Jurisdictional grounds**

**Ground 1** The Proposed Variation is inconsistent with section 55 and 136 of the FW Act

**Ground 2** The Proposed Variation is not a term otherwise permitted to be included in modern awards

#### **‘Merit’ grounds**

**Ground 3** The Proposed Variation is unnecessary, given the operation of section 62 of the FW Act

**Ground 4** Sufficient rostering protections already exist within the Award, complemented by penalty rates for working at times of disutility

**Ground 5** Modern awards generally permit overtime to be worked when other penalties apply without prohibition (or additional penalty) and no reason has been advanced why the security industry is different to other industries in this regard

**Ground 6** The Proposed Variation is inconsistent with the modern awards objective and accordingly does not satisfy the requirements of section 157 and 138 of the FW Act

### **4. GROUND 1: THE PROPOSED VARIATION IS INCONSISTENT WITH SECTIONS 55 AND 136 OF THE FW ACT**

- 4.1 Section 136 of the FW Act provides that a modern award must not include a term that contravenes section 55 of the FW Act.

- 4.2 Section 55 of the FW Act relevantly provides as follows:

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<sup>1</sup> *United Voice v Wilson Security Pty Ltd* [2018] FCA 1215 per Tracey J at [49] to [51]. This decision was upheld on appeal to the Full Court of the Federal Court. See *United Voice v Wilson Security Pty Ltd* [2019] FCAFC 66.

*"National Employment Standards must not be excluded*

*(1) A modern award or enterprise agreement must not exclude the National Employment Standards or any provision of the National Employment Standards...*

*Ancillary and supplementary terms may be included*

*(4) A modern award or enterprise agreement may also include the following kinds of terms:*

- (a) terms that are ancillary or incidental to the operation of an entitlement of an employee under the National Employment Standards;*
- (b) terms that supplement the National Employment Standards;*

*but only to the extent that the effect of those terms is not detrimental to an employee in any respect, when compared to the National Employment Standards.*

*Note 1: Ancillary or incidental terms permitted by paragraph (a) include (for example) terms:*

- (a) under which, instead of taking paid annual leave at the rate of pay required by section 90, an employee may take twice as much leave at half that rate of pay; or*
- (b) that specify when payment under section 90 for paid annual leave must be made.*

*Note 2: Supplementary terms permitted by paragraph (b) include (for example) terms:*

- (a) that increase the amount of paid annual leave to which an employee is entitled beyond the number of weeks that applies under section 87; or*
- (b) that provide for an employee to be paid for taking a period of paid annual leave or paid/personal carer's leave at a rate of pay that is higher than the employee's base rate of pay (which is the rate required by sections 90 and 99).*

*Note 3: Terms that would not be permitted by paragraph (a) or (b) include (for example) terms requiring an employee to give more notice of the taking of unpaid parental leave than is required by section 74.*

- 4.3 The Proposed Variation clearly interacts and impacts upon the NES, as it seeks to define what constitutes reasonable overtime for the purposes of section 62.

#### **Does the Proposed Variation exclude the NES?**

- 4.4 Whether or not a provision of the NES is excluded by an industrial instrument was considered in *Canavan Building Pty Ltd [2014] FWCFB 3202* where at [36] the Full Bench held:

[36] Section 55(1) of the Act relevantly provides that an enterprise agreement “must not exclude” the NES or any provision thereof. It is not necessary that an exclusion for the purpose of s.55(1) must be constituted by a provision in the agreement ousting the operation of an NES provision in express terms. On the ordinary meaning of the language used in s.55(1), we consider that if the provisions of an agreement would in their operation result in an outcome whereby employees do not receive (in full or at all) a benefit provided for by the NES, that constitutes a prohibited exclusion of the NES. That was the approach taken by the Full Bench in Hull-Moody. The correctness of that approach is also confirmed by the Explanatory Memorandum for the Fair Work Bill 2009 as follows:

“209. This prohibition extends both to statements that purport to exclude the operation of the NES or a part of it, and to provisions that purport to provide lesser entitlements than those provided by the NES. For example, a clause in an enterprise agreement that purported to provide three weeks' annual leave would be contrary to subclause 55(1). Such a clause would be inoperative ....”

- 4.5 This finding was then applied in the *Alleged NES Inconsistencies Decision* [2015] FWCFB 3023 at [37]:

Section 55(1) requires, relevantly, that a modern award “not exclude the National Employment Standards or any provision of the National Employment Standards”. Section 91(1) is a provision of the NES (being contained within Division 6, Annual Leave, of Part 2-2, The National Employment Standards), and the modern award provision excludes s.91(1) **in the sense that in their operation they negate the effect of the subsection. A provision which operates to exclude the NES will not be an incidental, ancillary or supplementary provision authorised by s.55(4).** (emphasis added)

- 4.6 Adopting the above approach, a proposed variation will be inconsistent with section 55(1) if its operation changes (and negates) the effect of section 62.
- 4.7 In the present case, section 62 of the FW Act defines what constitutes “reasonable” overtime for the purposes of the FW Act.
- 4.8 The Full Federal Court confirmed in *CFMEU v BHP Coal Pty Ltd* (2015) 230 FCR 298 that the term “reasonable” as it appears in subsection 62 is:

“necessarily assessed on a case-by-case basis, by reference to the employee's circumstances and the employer's business in accordance with the terms of s 62(3) of the Act.”

- 4.9 This approach also been adopted in Fair Work Commission decisions such as *ALDI Foods Pty Ltd v Transport Workers' Union of Australia and another* [2012] FWAFB 9398, where a Full Bench upheld the decision to not approve an enterprise

agreement which provided uniform or general obligations to work overtime (which might not cater for personal circumstances that arise in specific cases). The general obligation to work overtime in the relevant enterprise agreement was found to be inconsistent with section 62 of the NES.<sup>2</sup> The Full Bench upheld the Commissioner's concerns at first instance that the inability to reduce hours by reference to:

*"dynamic considerations such as an employee's changeable health and personal circumstances, including family responsibilities"<sup>3</sup>*

rendered the relevant agreement inconsistent with section 62 of the FW Act.

- 4.10 These authorities demonstrate that whether a direction to work overtime is reasonable is necessarily determined by all of the relevant circumstances in each particular case.
- 4.11 Furthermore, in determining whether additional hours are reasonable or unreasonable, section 62(3) sets out a number of objective factors that "*must be taken*" into account including, but not limited to:
  - (a) the employee's family responsibilities;
  - (b) health and safety risks;
  - (c) the needs of the workplace;
  - (d) the entitlement to overtime payments, penalty rates, or other compensation; and
  - (e) the usual patterns of work in the industry in which the employee works.
- 4.12 The Proposed Variation changes this operation of section 62, by automatically mandating that all overtime regularly/systematically rostered on certain hours that otherwise attract a penalty under the Award is unreasonable.
- 4.13 The inclusion of such a provision in the Award displaces the operation of section 62 for two reasons:
  - (a) Firstly, it does not permit for the determination of what is reasonable overtime to be conducted by reference to the circumstances of each particular case, as contemplated by the authorities.

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<sup>2</sup> See in particular [31] to [42]

<sup>3</sup> At [31]

- (b) Secondly, it does not provide any mechanism for the factors outlined in section 62(3) to be taken into account, notwithstanding that the FW Act mandates that such factors must be taken into account.

- 4.14 The Proposed Variation accordingly excludes section 62 of the NES.
- 4.15 Alternatively, it is submitted that the proposed variation excludes provisions within section 62 (such as 62(3)) thereby also offending section 55(1) of the FW Act.

**Is the Proposed Variation supplementary, incidental or ancillary?**

- 4.16 The combined operation of subsections 55(4) and 55(7) of the FW Act is that terms that are supplementary, incidental or ancillary to the NES and that are not detrimental to employees in any respect are not taken to exclude the NES, notwithstanding the operation of section 55(1) of the FW Act.

Supplementary terms

- 4.17 The Macquarie Dictionary (3<sup>rd</sup> ed.) relevantly defines the term “*supplement*” as follows:
- “1. something added to complete a thing, supply a deficiency, or reinforce or extend a whole...5. To complete, add to, or extend by a supplement; form a supplement or addition to...”*

- 4.18 The concept of supplementing the NES in the second limb of s 55(4) accordingly connotes the notion of building upon, increasing or extending rather than detracting, substitution, changing or replacing. Had the Parliament intended to adopt one of these latter phrases it could have done so.
- 4.19 This is reinforced by the examples that follow in the legislative note appearing below section 55(4), identifying the ways in which NES provisions may be affected when parties choose to supplement terms of the NES:

*Note 2: Supplementary terms permitted by paragraph (b) include (for example) terms:*

*(a) that increase the amount of paid annual leave to which an employee is entitled beyond the number of weeks that applies under section 87; or*

*(b) that provide for an employee to be paid for taking a period of paid annual leave or paid/personal carer's leave at a rate of pay that is higher than the employee's base rate of pay (which is the rate required by sections 90 and 99).*

- 4.20 All of these examples suggest that supplementing the NES may involve building upon existing entitlements.

- 4.21 This is the very approach that appears to have been adopted by the Full Bench of the Fair Work Commission in *Four Yearly Review of Modern Awards - Family Friendly Work Arrangements Case* [2015] FWCFB 5585, where the Bench identified that a provision granting additional rights to return to work following parental leave might be supplementary:

*[23] Secondly, we consider that it is reasonably arguable that clause X.1 is supplementary to the right in s.84, in **that it builds upon** the employee's right to return to work after taking parental leave to the employee's pre-parental leave position or another available position for which the employee is qualified and suited and which is nearest in status and pay to the pre-parental leave position by adding a right to return to such a position on part-time hours or reduced hours.* (emphasis added)

#### Incidental terms

- 4.22 The words “*incidental*” and “*ancillary*” as they appear in section 55 of the FW Act are used as adjectives.
- 4.23 The Macquarie Dictionary (3<sup>rd</sup> ed.) defines the adjective “*incidental*” as follows:

*“adj. 1. Happening or likely to happen in fortuitous or subordinate conjunction with something else. 2. Incurred casually and in addition to the regular or main amount: incidental expenses... [phrase] 4. Incidental to, liable to happen in connection with naturally appertaining to.”*

- 4.24 In the present context, it appears that a term will be incidental if it naturally follows on or happens in connection with the relevant provision in the FW Act.

#### Ancillary terms

- 4.25 The Macquarie Dictionary (3<sup>rd</sup> ed.) defines the adjective “*ancillary*” as follows:

*“accessory; auxiliary”*

- 4.26 “Accessory” and “auxiliary” are in turn relevantly defined as follows:

*“accessory: a subordinate part or object; something added or attached for convenience... 4. Contributing to a general effect; subsidiary”*

*“auxiliary: 1. Giving support; helping; aiding; assisting. 2. Subsidiary; additional...”*

#### The Proposed Variation is not supplementary, incidental or ancillary

- 4.27 Having regard to the above terms and their natural and ordinary meaning, the Proposed Variation cannot be said to be supplementary, incidental or ancillary to section 62 of the FW Act.

- 4.28 This is because the Proposed Variation is not building upon, adding to, supporting, subsidiary, subordinate or otherwise naturally arising from the operation of section 62. Nor does it operate as a machinery provision to give effect to section 62.
- 4.29 Rather, the Proposed Variation is changing the meaning of a term appearing within section 62 (the term “*reasonable*”) and replacing the operation of section 62 as a whole with the Award’s own process for determining whether overtime hours are reasonable or not.

### **Conclusion regarding section 55**

- 4.30 Given that the Proposed Variation:
- (a) excludes the operation of section 62 of the FW Act (or a provision within section 62); and
  - (b) is not supplementary, incidental or ancillary to section 62 of the FW Act, the Variation is not permitted by sections 55(1) and 136 of the FW Act.

## **5. GROUND 2: PROPOSED VARIATION IS NOT OTHERWISE PERMITTED TO BE INCLUDED IN A MODERN AWARD**

- 5.1 In order for the Proposed Variation to be inserted into the Award, the prerequisites outlined in Part 2-3 of the FW Act must be satisfied.
- 5.2 Section 136 of the FW Act prescribes that terms may only be included in a modern award if they are permitted or required by:
- (a) Subdivision B or C of Part 2-3 of the FW Act;
  - (b) section 55 of the FW Act (which deals with interaction rules pertaining to the NES); or
  - (c) Part 2-2 of the FW Act (which deals with the NES).
- 5.3 Although the Union has not articulated the power upon which the Commission may rely to include the new clause 21.1(b) into the Award, it appears uncontroversial that Subdivision C and Part 2-2 of the Act cannot be relied upon to ground the Commission’s jurisdiction for the proposed new clause 21.1(b).
- 5.4 These submissions have already outlined that the Proposed Variation is not a supplementary, incidental or ancillary term permitted to be included in modern awards pursuant to section 55.

- 5.5 This means that the power to insert the proposed new clause 21.1(b) into the Award must be derived from Subdivision B of Part 2-3 of the FW Act, if it is to be included in the Award at all.

### **Section 139**

5.6 Section 139 of the FW Act is the opening provision in Subdivision B of Part 2-3.

5.7 Section 139 of the FW Act empowers the Commission with a discretion to insert terms into modern awards that are “about” any of the following matters:

“(a) *minimum wages (including wage rates for junior employees, employees with a disability and employees to whom training arrangements apply), and:*

(i) *skill-based classifications and career structures; and*

(ii) *incentive-based payments, piece rates and bonuses;*

(b) *type of employment, such as full-time employment, casual employment, regular part-time employment and shift work, and the facilitation of flexible working arrangements, particularly for employees with family responsibilities;*

(c) *arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours;*

(d) *overtime rates;*

(e) *penalty rates, including for any of the following:*

(i) *employees working unsocial, irregular or unpredictable hours;*

(ii) *employees working on weekends or public holidays;*

(iii) *shift workers;*

(f) *annualised wage arrangements that:*

(i) *have regard to the patterns of work in an occupation, industry or enterprise; and*

(ii) *provide an alternative to the separate payment of wages and other monetary entitlements; and*

(iii) *include appropriate safeguards to ensure that individual employees are not disadvantaged;*

(g) *allowances, including for any of the following:*

(i) *expenses incurred in the course of employment;*

(ii) *responsibilities or skills that are not taken into account in rates of pay;*

- (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
- (h) leave, leave loadings and arrangements for taking leave;
- (i) superannuation;
- (j) procedures for consultation, representation and dispute settlement."

- 5.8 The initial question that arises for consideration is whether a term being considered is "about" any of the subject matters prescribed above.
- 5.9 The word "about" is a preposition which is defined by the Macquarie Dictionary (3<sup>rd</sup> ed) as meaning:
- "1. Of, concerning, in regard to... 2. connected with..."<sup>4</sup>
- 5.10 Judicial analysis regarding the meaning of the term "about" simply notes that the term is no broader than the term "with respect to".<sup>5</sup>
- 5.11 When determining the extent to which a preposition such as "about" operates, the context within which it appears will be critical, just as has been held to be the case with phrases such as "in relation to".<sup>6</sup>

**Does the proposed new clause 21.1(b) fall within the scope of section 139?**

- 5.12 It is acknowledged that the first sentence of clause 21.1(b) appears to prescribe for the payment of overtime rates. The first sentence accordingly falls within the scope of section 139(1)(d) and is therefore permitted to be included in a modern award.
- 5.13 However, the second sentence of the Proposed Variation goes on to state:
- "For the avoidance of doubt the regular and systematic allocation of overtime hours to any time at which penalty rates are payable shall be unreasonable overtime as defined by s 62 of the Fair Work Act."*
- 5.14 This second sentence of this clause is not about "overtime rates".
- 5.15 It might be contended that the second sentence of clause 21.1(b) falls within the scope of section 139(1)(c):
- "arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variation to working hours."*
- 5.16 However, this argument also does not bear scrutiny.

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<sup>4</sup> Macquarie Concise Dictionary, 3<sup>rd</sup> edition, page 3

<sup>5</sup> See *Electrolux Home Products Pty Ltd v Australian Workers' Union* (2004) 221 CLR 309 per Gleeson CJ at [11].

<sup>6</sup> *Workers' Compensation Board of Queensland v Technical Products Pty Ltd* (1988) 165 CLR 642 per Deane, Dawson and Toohey JJ at 653.

- 5.17 The provision does not purport to regulate whether work may or may not be performed during certain periods. It also does not have as its focus the imposition of some condition regarding the rostering of hours.
- 5.18 Rather, the second sentence has as its purpose and sole focus the goal of defining what constitutes “*reasonable overtime*” for the purposes of section 62 of the FW Act.
- 5.19 This is not a matter that is contemplated by section 139 and accordingly is not permitted to be included in a modern award by section 139.

## **6. CAN THE PROPOSED NEW CLAUSE 21.1(B) FALL WITHIN THE SCOPE OF SECTION 142 OF THE ACT?**

- 6.1 If the Commission accepts that the Proposed Variation is not about one of the subject matters outlined in section 139 of the Act, the Union must establish that the term can be included in the Award pursuant to section 142 of the Act.
- 6.2 Section 142 allows a term to be included in modern awards if the term is:
  - (a) incidental to a term that is permitted to be included in a modern award; and
  - (b) essential for the purpose of making a particular term operate in a practical way.
- 6.3 The requirement to establish that the clause is essential for the purpose of making another provision of the award operate in a practical way is a self-evidently high threshold.
- 6.4 “*Essential*” is defined by the Macquarie Dictionary to mean:

“1. *Absolutely necessary; indispensable...*”<sup>7</sup>
- 6.5 Section 142 accordingly requires the Union to establish that the Award cannot operate in a practical way without the term sought by the Union, if the Union is to successfully establish that the term should be included in the Award pursuant to section 142.
- 6.6 To satisfy the Commission of such a matter, a substantial and probative evidentiary case would need to be advanced, outlining the impracticalities associated with the current Award provisions and demonstrating that no other arrangements could be adopted to address such practical problems.

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<sup>7</sup> Macquarie Concise Dictionary, 3<sup>rd</sup> ed, p.377.

- 6.7 Such a substantive case has not been filed by the Union. Indeed, the Union has not advanced any case to articulate how the requirements of section 142 of the Act have been met.

**7. GROUND 3: THE PROPOSED VARIATION IS UNNECESSARY, GIVEN THE OPERATION OF SECTION 62 OF THE FW ACT**

- 7.1 The Union contends that the regular rostering of overtime at times when penalties already apply to work has the effect of improperly and unreasonably diminishing the penalties applicable for working excessive hours.
- 7.2 The apparent purpose and effect of the proposed new clause 21.1(b) is to prevent overtime being rostered in this manner, because the Practice has unreasonable consequences for employees.
- 7.3 Whilst this proposition is not accepted, even if the Union could establish that the rostering of overtime at times when penalties already apply to work has the potential of creating unreasonable outcomes, there already exists within the NES the right for an employee to refuse to work unreasonable additional hours. That framework is set out in section 62 of the FW Act.
- 7.4 As the Full Federal Court noted in *United Voice v Wilson Security Pty Ltd* [2019] FCAFC 66:

*“Once that characteristic of an excess over ordinary hours is present, the obligation on an employee to perform those extras hours, whenever they are rostered to take place, is qualified, rather than absolute: the requirement to work the extra hours, whenever they might be required, must be reasonable in the circumstances dictated by s 62 of the Fair Work Act. Reasonableness is to be ascertained in context, including the total number of hours to be worked.”<sup>8</sup>*

- 7.5 In relation to the Practice, the protective function of section 62, is “not rendered otiose.”<sup>9</sup>
- 7.6 The Proposed Variations are accordingly unnecessary.

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<sup>8</sup> *United Voice v Wilson Security Pty Ltd* [2019] FCAFC 66 per Collier, Bromwich and Wheelahan JJ at [39].

<sup>9</sup> *United Voice v Wilson Security Pty Ltd* [2019] FCAFC 66 per Collier, Bromwich and Wheelahan JJ at [39].

**8. GROUND 4: SUFFICIENT ROSTERING PROTECTIONS ALREADY EXIST WITHIN THE AWARD, COMPLEMENTED BY PENALTY RATES FOR WORKING AT TIMES OF DISUTILITY**

- 8.1 It is uncontroversial that clause 21.1(a) of the Award permits an employer to operate a roster whereby the ordinary hours of work are an average of 38 hours per week to be worked in one of four different ways “*at the discretion of the employer.*”
- 8.2 However, this does not mean that an employer’s discretion to roster work is unconstrained by any limitations that seek to minimise the impact of working additional hours or long hours.
- 8.3 There are other specific requirements in the Award in relation to rostering including:
- (a) maximum shift length (clause 21.2);
  - (b) breaks between successive shifts of not less than eight hours (clause 21.3);
  - (c) long breaks of continuous time off work in each roster cycle (clause 21.4);
  - (d) meal and crib breaks (clause 21.4); and
  - (e) display of roster and notice requirements (clauses 21.11 and 21.12).
- 8.4 These provisions offer material protections.
- 8.5 For example, clause 21.2(a) of the Award provides for maximum shift lengths of 10 hours. Clause 21.2(b) allows for 12 hour shifts only *by agreement* with employees and subject to certain protective measures including:
- (a) proper health monitoring procedures being introduced;
  - (b) suitable roster arrangements being made; and
  - (c) adequate breaks being provided.
- 8.6 Clauses 21.3 and 23.5 of the Award provides for an employee to have a break of at least eight hours between the conclusion of a shift (or the conclusion of overtime) and the commencement of work on the next shift. An overtime penalty applies for work performed without the employee having taken such a break.
- 8.7 Importantly, clause 21.4 of the Award provides for long breaks of continuous time off work depending on the roster cycle. For example, a 4-week roster cycle must provide for a minimum of either 3 breaks of 3 days, or 4 breaks of 2 days. An 8-week roster cycle must provide for a minimum of 6 breaks of 3 days or 9 breaks of 2 days. These Award provisions ensure that employees are receiving long breaks of contiguous

days at various points in the roster cycle and assist to mitigate against the disutility of long durations of work.

- 8.8 Together with an unpaid meal break of not less than 30 minutes for a shift exceeding 5 hours, clause 21.6 of the Award provides for *paid* crib breaks as follows:
  - (a) not less than 10 minutes on a shift of more than four hours;
  - (b) not less than 20 minutes on an eight-hour shift;
  - (c) not less than 25 minutes on a 10-hour shift; and
  - (d) not less than 30 minutes on a 12-hour shift.
- 8.9 Advance notice of the roster must be provided to the employees and the roster can only be changed by giving 7 days' notice (or payment of overtime where less than 7 days' notice is given).
- 8.10 The above provisions represent inbuilt Award protections for employees in order to manage fatigue across the roster cycle and provides for advance notice of the hours and overtime to be worked within a roster cycle.

#### **Addressing health consequences associated with overtime**

- 8.11 Longer breaks of more contiguous days is discussed in the evidence of Associate Professor Muurlink.
- 8.12 In his report titled '*Impact of intra-day or intra-week overtime on physical and psychological health*' at Annexure C to his statement dated 29 February 2016 (provided for the casual employment proceedings AM2015/197), Associate Professor Muurlink states that:

*"Some of the negative impacts of long working hours in a single working week can be offset by having fewer but longer shifts (a "compressed" working week) involving fewer commutes, fewer 'warm up' periods at work, and breaks of more contiguous days."*
- 8.13 These concerns are all addressed by the Award provisions referenced at paragraphs 8.3 to 8.8 above.
- 8.14 Indeed, in the evidence of the Union's two witnesses, Robert Nikic and Grant Robinson, each of these employees identify that they work a 4 on/4 off roster and receive 4 consecutive days off in between each 4 day period of work.
- 8.15 This roster pattern is likely to improve safety outcomes and is facilitated by the Award. The Practice clearly does not interfere with important rest breaks being accommodated to offset the negative health impacts possibly associated with overtime work.

### **Compensating for disutility**

- 8.16 Finally, the Award provides for a range of penalty rates that apply to compensate for employees working at times of disutility.
- 8.17 Shift penalty rates are set out in clause 22 and include shift penalties for night work falling within the ‘night span’ of hours, Saturday, Sunday, and Public Holiday work. Overtime penalty rates are set out in clause 23.3 and are comparable with overtime penalty rates in modern awards more generally.

### **Comprehensive suite of protections**

- 8.18 When the Award’s rostering and break provisions and penalty rate are combined with the already existing protection within section 62 of the FW Act, a comprehensive regime of protections is in place to ensure a fair, relevant and appropriate framework applies to the rostering of work and the payment of shift and overtime penalties.

## **9. GROUND 5: THE MODERN AWARD FRAMEWORK GENERALLY PERMITS OVERTIME TO BE WORKED WHEN OTHER PENALTIES APPLY WITHOUT PROHIBITION (OR ADDITIONAL PENALTY).**

- 9.1 The UWU Submissions correctly note that the Award does not provide for payment of a ‘penalty on a penalty’.
- 9.2 Ordinary night time and weekend penalties which usually apply to work at times which involve some disutility are replaced by the more generous overtime penalty.
- 9.3 However, the Union’s evidence does not establish that when an employee is required to work additional hours at times that generally involve some disutility, the level of detriment is compounded and the compensation required to address the working hours on the relevant shift necessitates the payment of double penalties.
- 9.4 This is particularly the case given that the health consequences generally discussed by Associate Professor Muurlink are long-term health consequences, as opposed to acute short-term consequences suffered on a particular day. Working overtime on some occasions where a penalty applies is not necessarily going to give rise to any increased level or risk that specifically needs to be discouraged or compensated for.
- 9.5 Indeed, the notion that employees should not earn a ‘penalty on a penalty’ is a common feature of modern awards generally.
- 9.6 An analysis of 50 commonly used modern awards demonstrates that penalty rates for work at unsociable times and overtime rates are overwhelmingly not taken to operate cumulatively.

- 9.7 Even in the *Fast Food Industry Award 2010* and the *General Retail Industry Award 2010*, two industries in which employees are typically considered to be low paid, penalty rates are not calculated in such a way as to be cumulative. Both Awards permit overtime to be worked (at overtime rates only) at times where employees might otherwise have earned a penalty.
- 9.8 **Attached** to these submissions at Annexure A is an analysis of 50 common modern awards and the treatment of overtime and penalty rates where overtime happens to fall on days that usually attract a penalty rate. The overwhelming majority of these modern awards do not restrict overtime being rostered at times when penalties apply and do not require additional penalties to be imposed where overtime falls at a time that already attracts a penalty.
- 9.9 The Union has not explained what distinguishes the security industry from these other industries that are able to roster overtime at times where penalty rates might generally apply.

## **10. THE PROPOSED VARIATION IS INCONSISTENT WITH THE MODERN AWARDS OBJECTIVE**

- 10.1 In deciding whether a change to a modern award should be made, the Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net.
- 10.2 In the *Penalty Rates Case*, a Full Bench of the Commission held that:

*“...the obligation to take into account the s.134 considerations means that each of these matters, insofar as they are relevant, must be treated as a matter of significance in the decision making process. No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.”<sup>10</sup>*
- 10.3 The ultimate outcome is the creation of a "fair and relevant minimum safety net" having taken into account and weighed up the matters set out in section 134 (1) (a)-(h).
- 10.4 In relation to the concept of a fair and relevant minimum safety net of terms and conditions, the Full Bench further stated that:

*“...fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question. So much is clear from the s.134 considerations, a number of which focus on the perspective of the employees*

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<sup>10</sup> *Penalty Rates Decision [2017] FWCFB 1001 at [115].*

*(e.g. s.134(1)(a) and (da)) and others on the interests of the employers (e.g. s.134(1)(d) and (f)). Such a construction is also consistent with authority.”<sup>11</sup>*

- 10.5 In arriving at this fair and relevant minimum safety net, the Commission is to "take into account" those matters set out in section 134(l)(a)-(h) inclusive.
- 10.6 The final condition on the Commission's discretion in making modern awards is that the Commission must ensure that a modern award includes terms that it is permitted to include only to the extent necessary to achieve the modern awards objective and (to the extent applicable) minimum wages objective.
- 10.7 The Commission, in determining whether to insert the Proposed Variation, must undertake an analysis of whether the proposed clause actually meets the modern awards objective, and goes no further than is required to meet the modern awards objective.
- 10.8 The terms of the modern awards objective are well known to the Commission and are accordingly not replicated here.
- 10.9 Each of the limbs of the modern awards objective is addressed below, by reference to the Proposed Variation.

### **Section 134(1)(a) - Relative Living Standards and the Needs of the Low Paid**

- 10.10 The Union submits that the Practice and therefore the operation of the Award, means employees receive:
  - (a) less remuneration for the same roster pattern;
  - (b) a reduced rate of annual leave payment;
  - (c) a financial disincentive to take personal leave; and
  - (d) a reduced amount of superannuation paid on their behalf.
- 10.11 ABI and NSWBC submits it simply not correct to say that the Practice itself, and therefore the Award, directly has these impacts on employees covered by the Award.
- 10.12 Regardless of the Practice, clause 21.1 of the Award very clearly provides for employees to work 38 ordinary hours per week, over roster cycles of between one and eight weeks.
- 10.13 Payment for annual leave and personal leave is payable pursuant to the Award provisions at clauses 24.1 and 25 of the Award respectively, and paid at the base rate

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<sup>11</sup> *Penalty Rates Decision [2017] FWCFB 1001 at [117].*

of pay for ordinary hours of work (which does not include overtime or penalty rates as per section 16 of the FW Act).

- 10.14 This remains the case regardless of the Practice and it does not follow that the Practice causes these employees to receive less remuneration than they should otherwise receive under the Award when they take annual leave or personal leave.
- 10.15 Of course, there may be a financial disincentive for an employee to call in sick on a day they are rostered to work where a penalty rate applies, such as on a Sunday. However, this is the case for any employee under any other modern award who is rostered to work on a day in which a penalty rate applies to hours worked on that day. This is a product of the NES provisions governing payment for personal leave as opposed to being a disadvantage associated with the Practice.
- 10.16 A similar principle is applicable in relation to payment for superannuation, which is paid on the basis of an employee's ordinary time earnings, and which includes shift penalties, but not overtime.
- 10.17 The existence or otherwise of the Practice does not 'reduce' the amount of superannuation payable to employees. Pursuant to superannuation guarantee legislation, employees under the Award are paid superannuation on their ordinary time earnings. Shift penalties under the Award are included for the purposes of ordinary time earnings, but not overtime. This is the case for all employees, not just those covered by the Award.
- 10.18 Allocating overtime to a Saturday or a Sunday shift in a roster cycle will mean that employees are not being paid superannuation on that time worked, however employees will receive superannuation on their ordinary time earnings in that roster cycle.
- 10.19 To the extent that the Practice means employees do not receive superannuation for ordinary time worked on a Sunday (including the ordinary time penalty rate on this day), this consequence is minor and unlikely to materially affect employees. This is because the amount being talked about is 9.5% of the penalty rate of one shift in a week (at most).
- 10.20 Even on the Union's evidence, it is clear the Practice is not utilised by employers for the purposes of avoiding superannuation obligations, and employees otherwise receive their full entitlement to superannuation on their ordinary time earnings in accordance with the superannuation guarantee legislation.

10.21 Finally, as highlighted and discussed earlier in these submissions at paragraphs 8.1 to 8.18, low paid employees covered by the Award clearly have the benefit of other protections in the form of rostering requirements, breaks of contiguous days, paid breaks during shifts, breaks between shifts, shift penalties, and overtime penalties.

**134(1)(b) - The Need to Encourage Collective Bargaining**

10.22 This modern awards objective does not appear to be relevant to the proposed new clause 21.1(b).

**134(1)(c) - The Need to Promote Social Inclusion through Increase Workforce Participation**

10.23 This modern awards objective does not appear to be relevant to the proposed new clause 21.1(b).

**134(1)(d) - The Need to Promote Flexible Modern Work Practices and the Efficient and Productive Performance of Work**

10.24 The security services industry is one that requires flexible and efficient work practices in order for employers to meet the needs of their clients. This flexibility of course must be balanced by the protections for employees that currently exist within the Award.

10.25 The security industry is one in which security services are often provided to clients on a 24 hours a day, seven days a week basis. This was the case for the employer, Wilson Security, in the recent Federal Court proceedings.<sup>12</sup>

10.26 During the award modernisation process, the Full Bench of the Industrial Relations Commission recognised that the security industry operates on a 24/7 basis when it provided for 12 hour ordinary time shifts when the Award was first made. The Full Bench observed as follows:

*"We have been persuaded by the submissions of ASIAL that provision should be made for 12 hour ordinary time shifts. We recognise that the security services industry operates 24 hours a day, seven days a week and that 12 hour shifts are a ubiquitous feature of the industry throughout Australia. The exposure draft provided for 12 hour shifts but only on the basis of 10 hours of ordinary time and two hours of rostered overtime. The absence of provision for 12 hour ordinary time shifts would result in increased costs to many employers and result in many employees working more overtime than they may wish to work. The pre-reform awards in NSW, Victoria and Western Australia contain facilitative clauses that allow for 12 hour ordinary time shifts to be worked by agreement with a majority of employees, as does the relevant NSW*

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<sup>12</sup> See *United Voice v Wilson Security Pty Ltd* [2018] FCA 1215 at [12].

*NAPSA. We have included such a clause based on the clause in the Victorian pre-reform award.”<sup>13</sup>*

- 10.27 In circumstances where the security industry traditionally operates 24 hours a day, seven days a week, flexibility of rostering in an efficient manner (as is currently provided under the Award) is necessary for employers to provide efficient security services to clients and is consistent with the modern awards objective. This flexibility is balanced as against the employee protections that already exist within the Award.
- 10.28 Acceding to the Proposed Variation unnecessarily impedes the efficient and flexible rostering of employees and does not further this modern awards objective.

#### **134(1)(da) - The Need to Provide Additional Remuneration**

- 10.29 The Union argues that the Practice is inconsistent with this objective and that:
  - (a) employees should be compensated for the disutility of working excessive hours; and
  - (b) employers should be subject to a disincentive to require employees to work long hours.
- 10.30 It is unclear how the proposed new clause 21.1(b) will lead to employees receiving additional remuneration for hours worked in excess of ordinary hours.
- 10.31 Under the proposed new clause, overtime rates will be paid for any time in excess of the ordinary hours prescribed for each roster cycle in clause 21.1(a). This is already the case under the Award.
- 10.32 The clause then goes on to provide for the automatic characterisation as “*unreasonable overtime*”, the allocation of overtime hours to a day on which penalty rates are already payable.
- 10.33 However, employees already have the protection of section 62 of the FW Act and any employee covered by the Award may lawfully refuse to work additional hours on top of the 38 ordinary hours per week, where those hours are unreasonable.
- 10.34 All four matters specified in subsections (i)-(iv) of section 134 (1) (da), begin with the words “*employees working*”. That is, the additional remuneration is provided in exchange for work at particular times.
- 10.35 However, the addition of the Union’s proposed new clause 21.1(b) does not mean that somehow the penalty applicable to work on a Sunday will be increased.

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<sup>13</sup> *Award Modernisation - Decision - Full Bench - [2008] AIRC 1000 at [296].*

Regardless of whether the Proposed Variation proceeds, employees will receive 200% of their base rate of pay whenever working a Sunday.

- 10.36 Accordingly, section 134(1)(da) does not appear to be relevant or support the UWA Application.

**134(1)(e) - The Principle of Equal Remuneration for Work of Equal or Comparable Value**

- 10.37 This modern awards objective does not appear to be relevant to the proposed new clause 21.1(b).

**134(1)(f) - The likely impact of Exercising Modern Award Powers on Business Including on Productivity, Employment Costs and the Regulatory Burden**

- 10.38 This limb of section 134(1) requires the Commission to consider the likely impact of exercising its power on business, whether positive or negative.
- 10.39 For an employer in this industry, the Union's proposed change can only result in an artificial restraining of an employer's ability to arrange its rosters, at its discretion and in accordance with the Award, beyond that which is necessary.
- 10.40 It also imposes an additional cost impost on employers by preventing the regular rostering of overtime on weekends or public holidays, which might very well be the time at which additional hours are required to be performed.
- 10.41 By requiring the employer to treat other hours in the week as overtime (instead of weekends/public holidays), the employer will obviously be exposed to greater costs than would otherwise be the case.
- 10.42 The Proposed Variation is accordingly inconsistent with this limb of the modern awards objective.

**134(1)(g) - The need to ensure a simple, easy to understand, stable and sustainable modern awards system for Australia that avoids unnecessary overlap of modern awards**

- 10.43 The UWU Submissions assert that the Practice is neither simple nor easy to understand.
- 10.44 Although this is not conceded, this submission misconceives the application of s134(1)(g). The provision is directed at ensuring that the *minimum safety net* is simple and easy to understand.

- 10.45 Whether employers adopt a particular practice that suits their operational imperatives has no impact upon whether the safety net itself is easy to understand, simple, stable and sustainable.
- 10.46 In any event, the Proposed Variation adds a level of complexity to the Award not presently in existence. By 'deeming' the regular and systematic allocation of overtime at times that penalty rates apply as unreasonable, employers must now grapple with a variety of questions when rostering:
- (a) Does the overtime overlap with other penalties?
  - (b) When does a rostering practice become regular?
  - (c) When does a rostering practice become systematic?
  - (d) Is there a particular minimum frequency of allocation that must be satisfied to trigger the 'unreasonable' test in the Award provision?

- 10.47 All of these matters add a level of complexity to the Award not presently in existence.
- 10.48 The Proposed Variation is accordingly inconsistent with this limb of the modern awards objective.

**134(1)(h) - The likely impact of Exercising Modern Award Power on Employment Growth, Inflation and the Sustainability Performance and Completeness of the National Economy**

- 10.49 This modern awards objective does not appear to be relevant to the proposed new clause 21.1(b).

**Conclusion on modern awards objective having regard to section 157 of the FW Act**

- 10.50 For a variation application pursuant to section 157 of the FW Act to be successful, the Commission has to be "*satisfied that making [a determination varying the modern award] ... is necessary to achieve the modern awards objective*".
- 10.51 The operation of this provision was considered in *Shop, Distributive and Allied Employees Association v National Retail Association (No.2)* (2012) 205 FCR 227

*"The statutory foundation for the exercise of FWA's power to vary modern awards is to be found in s 157(1) of the Act. The power is discretionary in nature. Its exercise is conditioned upon FWA being satisfied that the variation is "necessary" in order "to achieve the modern awards objective"...*

*The question under this ground then becomes whether there was material before the Vice President upon which he could reasonably be satisfied that a variation to the*

*Award was necessary, at the time at which it was made, in order to achieve the statutory objective ... In reaching my conclusion on this ground I have not overlooked the SDA's subsidiary contention that a distinction must be drawn between that which is necessary and that which is desirable. That which is necessary must be done. That which is desirable does not carry the same imperative for action."*

10.52 Having regard to:

- (a) these requirements;
- (b) the merit based grounds identified in these submissions as Grounds 3 to Grounds 5; and
- (c) the analysis of the modern awards objective in this section of our submissions,

the Union has not discharged its onus to establish that the Proposed Variation is necessary to achieve the modern awards objective.

## **11. CONCLUSION ON THE PROPOSED UNION CHANGES**

- 11.1 Having regard to the above, the proposed amendment to the Award by the addition of a new clause 21.1(b) does not meet the statutory requirements outlined in Division 3 of Part 2-3 of the Act.
- 11.2 For this reason, ABI and NSWBC respectfully submit that the Commission cannot vary the Award to include the proposed new clause and the UWU Application should be dismissed.

Filed on behalf of ABI and NSWBC by:

**Luis Izzo**  
Managing Director - Sydney Workplace  
Australian Business Lawyers & Advisors

**Emily Slaytor**  
Senior Associate  
Australian Business Lawyers & Advisors

30 April 2020

**ANNEXURE A**

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?																										
<b>Security Services Award 2010</b>	<p><b>23.3 Overtime rates</b> Where an employee works overtime the employer must pay to the employee the <b>ordinary time rate</b> for the period of overtime together with a loading as follows:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: center;">For overtime worked on</th> <th style="text-align: center;">Loading payable in addition to ordinary time rate %</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Monday to Friday—first 2 hours</td> <td style="text-align: center;">50</td> </tr> <tr> <td style="text-align: center;">Monday to Friday—thereafter</td> <td style="text-align: center;">100</td> </tr> <tr> <td style="text-align: center;">Saturday—first 2 hours</td> <td style="text-align: center;">50</td> </tr> <tr> <td style="text-align: center;">Saturday—thereafter</td> <td style="text-align: center;">100</td> </tr> <tr> <td style="text-align: center;">Sunday</td> <td style="text-align: center;">100</td> </tr> <tr> <td style="text-align: center;">Public Holiday</td> <td style="text-align: center;">150</td> </tr> </tbody> </table> <p>23.4 Where a period of overtime commences on one day and continues into the following day, the portion of the period worked on each day attracts the loading applicable to that day.</p>	For overtime worked on	Loading payable in addition to ordinary time rate %	Monday to Friday—first 2 hours	50	Monday to Friday—thereafter	100	Saturday—first 2 hours	50	Saturday—thereafter	100	Sunday	100	Public Holiday	150	<p><b>22. Penalty rates</b></p> <p><b>22.3</b> Penalty rates apply to ordinary hours worked as follows:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: center;">Hours worked during</th> <th style="text-align: center;">Penalty rate in addition to ordinary time rate %</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Night span</td> <td style="text-align: center;">21.7</td> </tr> <tr> <td style="text-align: center;">Night Span (permanent night work)</td> <td style="text-align: center;">30</td> </tr> <tr> <td style="text-align: center;">Saturday span</td> <td style="text-align: center;">50</td> </tr> <tr> <td style="text-align: center;">Sunday span</td> <td style="text-align: center;">100</td> </tr> <tr> <td style="text-align: center;">Public holiday span</td> <td style="text-align: center;">150</td> </tr> </tbody> </table>	Hours worked during	Penalty rate in addition to ordinary time rate %	Night span	21.7	Night Span (permanent night work)	30	Saturday span	50	Sunday span	100	Public holiday span	150	In accordance with clause 23.3.	No.  Penalty rates apply to ordinary hours only. Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.
For overtime worked on	Loading payable in addition to ordinary time rate %																													
Monday to Friday—first 2 hours	50																													
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Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
1. Aged Care Award 2010 [MA000018]	<p><b>25.1 Overtime rates</b></p> <p><b>(a) Full-time employees</b></p> <p>A full-time employee will be paid the following payments for all work done <b>in addition to their rostered ordinary hours</b> on any day:</p> <ul style="list-style-type: none"> <li>(i) for all authorised overtime on Monday to Friday, payment will be made at the rate of time and a half for the first two hours and double time thereafter;</li> <li>(ii) for all authorised overtime on a Saturday or Sunday, payment will be made at the rate of double time; and</li> <li>(iii) for all authorised overtime on a public holiday, payment will be made at the rate of double time and a half.</li> </ul> <p><b>Overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 26.1.</b></p> <p><b>(b) Part-time and casual employees</b></p> <p>(i) All time worked by a part-time or casual employee in excess of 38 hours per week or 76 per fortnight will be paid for at the rate of time and a half for the first two hours and double time thereafter, except that on Saturdays and Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and a half.</p> <p>(ii) Subject to the provisions of clause 25.1(b)(iii) below, all time worked by a part-time or casual employee which exceeds 10 hours per day, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the rate of double time and a half.</p> <p>(iii) For a part-time employee, all time worked in excess of their rostered hours on any one day (unless an agreement has been entered into under clause 10.3(c)), will be overtime and paid at the rates prescribed by clause 25.1(b)(i).</p>	<p><b>23. Saturday and Sunday work</b></p> <p>23.1 Employees whose <b>ordinary working hours include work on a Saturday and/or Sunday</b>, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and a half, and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. <b>These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in clause 26—Shiftwork</b></p> <p>23.2 Casual employees will be paid in accordance with clause 23.1. The rates prescribed in clause 23.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b).</p> <p><b>26.1 Shift allowances and penalty rates</b></p> <p>Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week will only be entitled to the additional rates where their shift commence prior to 6.00 am or finish subsequent to 6.00 pm.</p> <ul style="list-style-type: none"> <li>(a) Afternoon shift commencing at 10.00 am and before 1.00 pm—10% of the ordinary hourly rate</li> <li>(b) Afternoon shift commencing at 1.00 pm and before 4.00 pm—12.5% of the ordinary hourly rate</li> <li>(c) Night shift commencing at 4.00 pm and before 4.00 am—15% of the ordinary hourly rate</li> <li>(d) Night shift commencing at 4.00 am and before 6.00 am—10% of the ordinary hourly rate</li> </ul> <p>26.2 An employee entitled to a shift allowance under clause 26.1, will be paid the shift allowance for the entire shift.</p> <p>26.3 For the purposes of clause 26.1, “ordinary hourly rate” means the appropriate weekly rate divided by 38.</p>	In accordance with clause 25.1.	Rates are expressly not cumulative on the Saturday and Sunday shift penalties.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?										
<b>2. Amusement, Events and Recreation Award 2010 [MA000080]</b>	<p><b>23. Overtime and penalty rates</b></p> <p><b>23.1</b> All time worked by any full-time, part-time or casual employee in excess of the rostered working hours as provided on any one day, or in excess of an average of 38 hours per week in any rostered workcycle as provided for in clause 21.1, will be deemed to be overtime and will be paid for at the rate of time and a half for the first three hours and at the rate of double time after that.</p> <p><b>23.2</b> Employees will be entitled to a minimum period of 10 hours break between shifts. Should an employee be required by the employer to resume work without having a break of at least 10 hours between rostered shifts, they will be paid at the rate of double time for all time worked until they have had a break from work of at least 10 hours, or eight hours by agreement.</p>	<p><b>23.3 Sundays and public holidays</b></p> <p>(a) All time worked on a Sunday will be paid for at time and a half.            (b) All time worked on a public holiday will be paid for at double time and a half.            (c) The minimum payment for work performed on a Sunday or a public holiday will be as for four hours worked.</p>	In accordance with clause 23.	No.  The Saturday and Sunday penalty rates in 23.3 is intended to apply to ordinary hours only. Any work performed outside of the ordinary hours defined in the award will be subject to overtime rates.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.										
<b>3. Banking, Finance and Insurance Award 2020 [MA000019]</b>	<p><b>20. Overtime</b></p> <p><b>20.1 Payment for overtime</b></p> <p>All time worked at the direction of the employer outside ordinary hours of work prescribed by this award, will be paid for at the rate of:</p> <table border="1" data-bbox="581 1304 1327 1635"> <thead> <tr> <th></th> <th>% of minimum hourly rate</th> </tr> </thead> <tbody> <tr> <td>Monday - Saturday outside ordinary hours of work in clause 13.1</td> <td>First 3 hours 150</td> </tr> <tr> <td></td> <td>After 3 hours 200</td> </tr> <tr> <td>Saturday - outside employee's weekly hours</td> <td>200</td> </tr> <tr> <td>Sunday</td> <td>200</td> </tr> </tbody> </table> <p>NOTE: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime.</p>		% of minimum hourly rate	Monday - Saturday outside ordinary hours of work in clause 13.1	First 3 hours 150		After 3 hours 200	Saturday - outside employee's weekly hours	200	Sunday	200	<p><b>21. Penalty rates</b></p> <p>21.1 Penalty rates for working on a public holiday are provided for in clause 27.4.</p> <p>21.2 Shiftwork penalty rates are provided for in clause 13.7(d)</p>	In accordance with clause 20.	No.  Penalty rates apply to ordinary hours only (for defined shifts).  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the minimum hourly rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.
	% of minimum hourly rate													
Monday - Saturday outside ordinary hours of work in clause 13.1	First 3 hours 150													
	After 3 hours 200													
Saturday - outside employee's weekly hours	200													
Sunday	200													
<b>4. Building and Construction General On-site Award 2010 [MA000020]</b>	<p><b>36. overtime</b></p> <p><b>36.2</b> All time worked beyond an employee's ordinary time of work (inclusive of time worked for accrual purposes as prescribed in clauses 33—Ordinary hours of work and 34—Shiftwork), Monday to Friday, must be paid for at the rate of time and a half for the first two hours and at double time thereafter.</p>	<p><b>37. Penalty Rates</b></p> <p><b>37.1</b> Overtime worked on Saturday must be paid for at the rate of time and a half for the first two hours and double time thereafter, provided that all overtime worked after 12 noon on Saturday must be paid for at the rate of double time.</p>	In accordance with 37.1 - 37.7	No.  Overtime worked on a Saturday is overtime.  All time worked on a Sunday is paid at 200%										

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
	<p><b>36.16</b> All work performed on a Saturday or a Sunday will be paid in accordance with clause 37—Penalty rates.</p>	<p><b>37.2</b> An employee required to work overtime on a Saturday must be afforded at least three hours' work or be paid for three hours at the appropriate rate.</p> <p><b>37.3</b> All work performed on the Saturday following Good Friday must be paid for at the rate of double time and a half.</p> <p><b>37.4</b> An employee required to work on the Saturday following Good Friday must be afforded at least four hours' work or be paid for four hours at the appropriate rate.</p> <p><b>37.5</b> All time worked on Sundays must be paid for at the rate of double time. An employee required to work overtime on a Sunday must be afforded at least four hours' work or be paid for four hours at the appropriate rate.</p> <p><b>37.6</b> An employee working overtime on Saturday or Sunday must be allowed a paid rest period of 10 minutes between 9.00 am and 11.00 am. This provision operates in place of clause 35.3(a).</p> <p><b>37.7</b> An employee working overtime on a Saturday or working on a Sunday must be allowed a paid crib time of 20 minutes after four hours work, to be paid for at the ordinary time hourly rate of pay but this provision will not prevent any arrangements being made for the taking of a 30 minute meal period, the time in addition to the paid 20 minutes being without pay. This provision operates in place of clause 35.1(a).</p> <p><b>37.8</b> In the event of an employee being required to work in excess of a further four hours, the employee must be allowed to take a paid crib time of 30 minutes which will be paid at the ordinary time hourly rate of pay. This provision operates in place of clause 35.3(a) and (b).</p> <p><b>37.9</b> All work performed on public holidays, or substituted days, must be paid for at the rate of double time and a half, subject to a minimum payment for four hours' work.</p>		whether its ordinary hours or overtime hours.
<b>5. Car Parking Award 2020 [MA000095]</b>	<p><b>21. Overtime</b></p> <p><b>21.1</b> The NES contains provisions concerning the working of additional hours.</p> <p><b>21.2</b> All employees will be paid overtime for all time worked in</p>	<p><b>22. Shift penalty rates</b></p> <p><b>22.1 Definitions</b></p> <p>(a) Afternoon shift means the period of work performed by an employee between 7.00 pm and midnight.</p> <p>(b) Night shift means the period of work performed by an employee between midnight and 7.00 am.</p>	In accordance with clause 21.2	No.  Saturday Penalty rates apply to ordinary hours only. Therefore, for overtime hours worked on a Saturday, only

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
	<p>excess of or outside the ordinary hours of work on Monday to Sunday at the following rates:</p> <p>(a) first 2 hours—150% of the <b>minimum hourly rate</b>; and</p> <p>(b) after 2 hours—200% of the <b>minimum hourly rate</b>.</p> <p><b>21.3</b> Clause 21.2 applies to all employees including casuals, shiftworkers and weekly employees who work their ordinary hours on Monday to Friday and are required to work on Saturday.</p> <p><b>21.4</b> In calculating overtime each day's work will stand alone.</p>	<p><b>22.2</b> An employee, including a casual employee, who works shiftwork must be paid for each hour worked during an afternoon shift or a night shift 112.5% of the minimum hourly rate for the appropriate classification.</p> <p><b>22.3</b> A shiftworker working on a night shift which does not alternate with another shift or day work must be paid 125% of the minimum hourly rate for the appropriate classification for each hour worked during ordinary working hours on that night shift.</p> <p><b>23. Weekend and public holiday penalty rates</b></p> <p><b>23.1 Saturday work</b></p> <p>(a) <b>Ordinary hours</b> worked by a day worker on a Saturday will be paid at the rate of 150% of the minimum hourly rate.</p> <p>(b) Ordinary hours worked by a shiftworker on a Saturday will be paid at the rate of 150% of the minimum hourly rate for all time worked.</p> <p><b>23.2 Sunday work</b></p> <p>(a) All work performed by a day worker on a Sunday will be paid at the rate of 200% of the minimum hourly rate.</p> <p>(b) Ordinary hours worked by a shiftworker on a Sunday will be paid at the rate of 150% of the minimum hourly rate.</p> <p><b>(c) The rate in clause 23.2(a) is in substitution for and not cumulative upon any overtime rate in clause 21—Overtime</b></p>		<p>overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p> <p>The Sunday penalty rate is in substitution for any overtime rates.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>6. Cleaning Services Award 2010 [MA000022]</b>	<p><b>28. Overtime</b></p> <p><b>28.2</b> Overtime, worked from midnight Sunday to midnight Saturday will be paid at the rate of time and a half for the first two hours and double time thereafter.</p> <p><b>28.3</b> Overtime worked on Sundays will be paid at the rate of double time.</p>	<p><b>27.1 Shiftwork</b></p> <p>(a) Early morning, afternoon and non-permanent night shift</p> <p>All early morning, afternoon and non-permanent night shiftworkers will be paid an additional 15% of <b>the ordinary hourly rate</b> for the appropriate classification for all shiftwork. For the purposes of this clause shiftwork will mean any shift Monday to Friday starting before 6.00 am or any shift finishing after 6.00 pm. Employees will receive the shiftwork hourly rates of pay for the entire shift (other than overtime).</p> <p>(b) Permanent night shift</p> <p>If a night shift, being a period of duty finishing after midnight and at or before 8.00 am, does not rotate or alternate with another shift or day work, then a permanent night shift loading of 30% of <b>the ordinary hourly rate</b> for the appropriate classification will be paid for all hours worked. Provided that where a part-time employee is in receipt of this loading they will not also be entitled to be paid the 15% allowance provided for in clause 12.4(b)(iii).</p> <p><b>27.2 Weekend penalties</b></p> <p>(a) Saturday work</p> <p>For all hours worked between midnight Friday and midnight Saturday an employee will be paid <b>time and one half of the ordinary hourly rate</b> for their classification.</p> <p>(b) Sunday work</p> <p>For all hours worked between midnight Saturday and midnight Sunday, an employee will be paid double <b>the ordinary hourly rate</b> for their classification.</p>	In accordance with clause 28	No.  Penalty rates apply to ordinary hours only.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>7. Clerks—Private Sector Award 2010 [MA000002]</b>	<p><b>27.1 Payment for working overtime</b></p> <p>(a) Employees working overtime:</p> <p>(i) within the hours fixed in clause 25—Ordinary hours of work (other than shiftworkers), of this award but in excess of the hours fixed for an ordinary week's work; or</p> <p>(ii) outside the hours fixed in clause 25 of this award; must be paid time and a half for the first two hours and double time thereafter calculated on a daily basis.</p> <p>(b) For the purposes of this clause hours fixed for an ordinary week's work means the hours of work fixed in an establishment in accordance with clause 25 of this award or varied in accordance with the relevant clauses of this award.</p> <p>(c) For the purposes of administering the provisions contained in this clause, the minimum period for which an employee must be paid overtime is one half hour per week.</p> <p>(d) An employee who works 38 hours Monday to Friday must be paid a minimum of three hours at overtime rates for work performed on a Saturday, provided that such employee is ready, willing and available to work such overtime.</p>	<p><b>28.6 Work on Saturday, Sunday or public holiday</b></p> <p>A shiftworker whose ordinary working period does not include a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of the NES) as an ordinary working day must, if required to work on any such day be paid double time for work done with a minimum payment of four hours at double time if the employee is available for work during such four hours. This provision for minimum payment does not apply where the work on such day is continuous with the commencement or completion of the employee's ordinary shift.</p> <p><b>28.7 Special rates not cumulative</b>  <b>The special rates prescribed are in substitution for and not in addition to the shift allowances prescribed.</b></p>	<p><b>27.2 Payment for working Saturdays and Sundays</b></p> <p>(a) Work within the spread of ordinary hours on Saturday will be paid at the rate of time and a quarter.</p> <p>(b) All work done on a Sunday must be paid for at the rate of double time.</p> <p>(c) An employee required to work on a Sunday is entitled to not less than four hours' pay at penalty rates provided the employee is available for work for four hours.</p>	No.  Penalty rates apply to ordinary hours on Saturday only.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>8. Contract Call Centres Award 2010 [MA000023]</b>	<p><b>27.1 Payment for working overtime</b></p> <p>(a) Except as provided for in clause 12.5, for all work done in excess of the daily or weekly permissible number of ordinary hours an employee must be paid at the following rates:</p> <p>(i) overtime on Monday to Saturday—time and a half for the first three hours and double time thereafter; and</p> <p>(ii) overtime on Sunday—double time.</p> <p>Where hours are averaged over a four week period the maximum number of ordinary hours before overtime rates apply is to be calculated on a four weekly rather than weekly basis.</p> <p>(b) Provided that employees who are late starting or are absent for part of their ordinary hours on unpaid leave must complete their ordinary hours for that day prior to the entitlement to overtime.</p> <p><b>27.9 Rates not cumulative</b></p> <p>The rates prescribed in this clause are in substitution for and not cumulative upon the loadings prescribed in clauses 25—Ordinary hours of work, rostering and penalty rates and clause 31—Public holidays.</p>	<p><b>25.7</b> Penalty rates for time worked outside the spread of ordinary hours Monday to Friday and on weekends</p> <p>(a) Except as provided for in clauses 25.8(a)(i) and 25.10(a) employees are entitled to the following penalty rates for ordinary time worked:</p> <p>(i) Monday to Friday outside the spread of ordinary hours time and one quarter for each ordinary hour worked outside of the spread of hours in clause 25.6(a)(i);</p> <p>(ii) Saturday time and one quarter for each ordinary hour worked between midnight Friday and midnight on Saturday;</p> <p>(iii) Sunday outside the spread of ordinary hours time and three quarters for each ordinary hour worked between midnight on Saturday and 7.00 am on Sunday and between 7.00 pm on Sunday and midnight on Sunday;</p> <p>(iv) Sunday between the spread of ordinary hours time and one half for each ordinary hour worked between 7.00 am and 7.00 pm on Sunday.</p> <p>(b) The penalty rates in clause 25.7(a) are not payable for periods of overtime or for time worked on public holidays.</p> <p>(c) The penalty rates in clause 25.7(a) do not apply when the shift penalties apply in accordance with clause 25.10(a). The penalty rates in clause 25.7(a)(ii), (iii) and (iv) apply in substitution for and are not cumulative upon the afternoon and night shift loadings prescribed in clause 25.10.</p>	In accordance with clause 27	Rates are not cumulative  Penalty rates apply to ordinary hours on Saturday and Sunday only.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>9. Dry Cleaning and Laundry Industry Award 2010 [MA000096]</b>	<p><b>22.1 Overtime</b></p> <p>All work performed by an employee outside of and/or in excess of their <b>ordinary hours</b> will be paid for at the rate of time and a half for the first three hours and double time thereafter. In computing overtime each day's work will stand alone.</p>	In accordance with clause 22.5	<p><b>22.5 Weekend and public holiday work</b></p> <p>(a) <b>Saturday work</b></p> <p>(i) All <b>ordinary time</b> worked before midday on a Saturday will be paid at the rate of time and a quarter. All ordinary time worked after midday on a Saturday will be paid at the rate of time and a half.</p> <p>(ii) <b>For shiftworkers the rate in clause 22.5(a)(i) is in substitution for and not cumulative upon the shift premiums prescribed in clause 23—Shiftwork.</b></p> <p>(b) <b>Sunday work</b></p> <p>(i) All time worked by an employee on a Sunday will be paid at the rate of double time.</p> <p>(ii) <b>For shiftworkers the rate in clause 22.5(b)(i) is in substitution for and not cumulative upon the shift premiums prescribed in clause 23—Shiftwork.</b></p>	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>
<b>10. Electrical, Electronic and Communications Contracting Award 2010 [MA000025]</b>	<p><b>26.1 Payment for working overtime</b></p> <p>(a) For all work done outside ordinary hours, the rates of pay will be time and a half for the first two hours and double time thereafter.</p> <p>(b) Except as provided in clause 27.4, in computing overtime each day's work will stand alone.</p>	<p><b>24.14 Rate for working on Saturday shifts</b></p> <p>The minimum rate to be paid to a shiftworker for work performed between midnight on Friday and midnight on Saturday is time and a half. The extra rate is in substitution for and not cumulative upon the shift premiums prescribed in clause 24.13.</p> <p>(a) The rate at which continuous shiftworkers are to be paid for work on a rostered shift, the major portion of which is performed on a Sunday or public holiday, is double time.</p> <p>(b) The rate at which shiftworkers on other than continuous work are to be paid for all time worked on a Sunday or public holiday is as follows:</p> <p>(i) Sunday—double time.</p> <p>(ii) Public holidays—double time and a half.</p> <p>(c) Where shifts commence between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to</p>	<p><b>26.4 Sunday and public holiday work</b></p> <p>Double time must be paid for work done on Sundays and double time and a half must be paid for work on any of the public holidays prescribed in this award.</p>	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
		<p>the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday will be regarded as time worked on the Sunday or public holiday.</p> <p>(d) Where shifts fall partly on a public holiday, the shift that has the major portion falling on the public holiday will be regarded as the holiday shift.</p> <p><b>(e) The extra rates in this subclause are in substitution for and not cumulative upon the shift premiums prescribed in clause 24.13.</b></p>		
<b>11. Fast Food Industry Award 2010 [MA000003]</b>	<p><b>26.1 Rate of overtime</b></p> <p>(a) The rate of overtime for full time and part-time employees shall be time and a half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time and on a Public Holiday which shall be paid for at the rate of double time and a half.</p> <p>(b) The rate of overtime for casual employees shall be 175% of the ordinary hourly rate of pay for the first two hours on any one day and 225% of the ordinary hourly rate of pay thereafter, except on a Sunday which shall be 225% of the ordinary hourly rate of pay and 275% on a Public Holiday (inclusive of the casual loading).</p>	<p><b>25.5 Penalty rates</b></p> <p>(a) Evening work Monday to Friday</p> <p>(i) A loading of 10% will apply for ordinary hours of work within the span of hours between 10.00 pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.</p> <p>(ii) A loading of 15% will apply for ordinary hours of work between midnight and 6.00 am, and for casual employees this loading will apply in addition to their 25% casual loading.</p>	<p><b>25.5</b></p> <p><b>(b) Saturday work</b></p> <p>(i) A 25% loading will apply for all hours of work on a Saturday for full-time and part-time employees.</p> <p>(ii) A 50% loading will apply for all hours of work on a Saturday for casual employees, inclusive of the casual loading.</p> <p><b>(c) Sunday work– Level 1 employees</b></p> <p>(i) From 1 July 2017 to 30 June 2018 A 45% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 70% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).</p> <p>(ii) From 1 July 2018 to 30 June 2019 A 35% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 60% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).</p> <p>(iii) From 1 July 2019 A 25% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 50% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).</p> <p><b>(d) Sunday work – Level 2 and 3 employees</b></p> <p>A 50% loading will apply for all hours of work on a Sunday for full-time and part-time Level</p>	<p>Not explicitly stated in the award.</p> <p>Penalty rates are due to be paid “for all hours of work” on Saturday Sundays.</p> <p>However, the penalty rate are taken not to be cumulative.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
			2 or 3 employees. A 75% loading will apply for all hours of work on a Sunday for casual Level 2 or 3 employees (inclusive of the casual loading).	
<b>12. Food, Beverage and Tobacco Manufacturing Award 2010 [MA000073]</b>	<p><b>33.1 Payment for working overtime</b></p> <p>(a) Except as provided for in clauses 33.12 33.1(d), 33.7 and 33.8, for all work done outside ordinary hours on any day or shift, as defined in clauses 30.2, 30.3 and 30.4, the overtime rate is 150% for the first three hours and 200% thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is 200%.</p> <p>(b) For the purposes of clause 33—Overtime, ordinary hours means the hours worked in an enterprise, fixed in accordance with clause 30—Ordinary hours of work and rostering.</p> <p>(c) The hourly rate, when computing overtime, is determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.</p>		<p><b>33.6 Saturday work</b></p> <p>A day worker required to work overtime on a Saturday must be afforded at least four hours work or be paid for four hours at the rate of 150% for the first three hours and 200% thereafter, except where the overtime is continuous with overtime commenced on the previous day.</p> <p><b>33.7 Sunday work</b></p> <p>An employee required to work overtime on a Sunday must be paid for a minimum of three hours work at the rate of 200%. The 200% is to be paid until the employee is relieved from duty.</p>	No relevant penalty rates for Sunday work. All time worked on the weekend is overtime.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>13. General Retail Industry Award 2010 [MA000004]</b>	<p><b>29.2 Overtime</b></p> <p>(a) Hours worked in excess of the ordinary hours of work, outside the span of hours (excluding shiftwork), or roster conditions prescribed in clauses 27 and 28 are to be paid at time and a half for the first three hours and double time thereafter.</p> <p>(b) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3 will be paid at time and a half for the first three hours and double time thereafter.</p> <p>(c) Hours worked by casual employees:</p> <ul style="list-style-type: none"> <li>(i) in excess of 38 ordinary hours per week or, where the casual employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle;</li> <li>(ii) outside of the span of ordinary hours for each day specified in clause 27.2;</li> <li>(iii) in excess of 11 hours on one day of the week and in excess of 9 hours on any other day of the week;</li> </ul> <p>shall be paid at 175% of the ordinary hourly rate of pay for the first three hours and 225% of the ordinary hourly rate of pay thereafter (inclusive of the casual loading).</p> <p>(d) The rate of overtime for full-time and part-time employees on a Sunday is double time, and on a public holiday is double time and a half.</p> <p>(e) The rate of overtime for casual employees on a Sunday is 225% of the ordinary hourly rate of pay, and on a public holiday is 275% of the ordinary hourly rate of pay (inclusive of the casual loading).</p> <p>(f) Overtime is calculated on a daily basis.</p>	<p><b>29.4 Penalty payments</b></p> <p>(a) Evening work Monday to Friday—full-time or part-time employee A penalty payment of an additional 25% loading will apply for ordinary hours worked by a full-time or part-time employee after 6.00 pm.</p> <p>(b) Evening work Monday to Friday—casual employee            (i) From 1 November 2018 to 30 September 2019 A penalty payment of an additional 30% loading will apply for ordinary hours worked by a casual employee after 6.00 pm (inclusive of the casual loading).            (ii) From 1 October 2019 to 29 February 2020 A penalty payment of an additional 35% loading will apply for ordinary hours worked by a casual employee after 6.00 pm (inclusive of the casual loading).            (iii) From 1 March 2020 to 30 September 2020 A penalty payment of an additional 40% loading will apply for ordinary hours worked by a casual employee after 6.00 pm (inclusive of the casual loading).            (iv) From 1 October 2020 to 28 February 2021 A penalty payment of an additional 45% loading will apply for ordinary hours worked by a casual employee after 6.00 pm (inclusive of the casual loading).            (v) From 1 March 2021 A penalty payment of an additional 50% loading will apply for ordinary hours worked by a casual employee after 6.00 pm (inclusive of the casual loading).</p>	<p><b>29.4</b></p> <p><b>(e) Sunday work</b></p> <p>(i) From 1 July 2017 to 30 June 2018 A penalty payment of an additional 95% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 95% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).            (ii) From 1 July 2018 to 30 June 2019 A penalty payment of an additional 80% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 85% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).            (iii) From 1 July 2019 to 30 June 2020 A penalty payment of an additional 65% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 75% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).            (iv) From 1 July 2020 A penalty payment of an additional 50% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 75% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).</p>	<p>Not explicitly stated in the award.</p> <p>Penalty rates are due to be paid “for all hours of work” on Saturday Sundays.</p> <p>However the penalty rates are taken not to be cumulative.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>14. Graphic Arts, Printing and Publishing Award 2010 [MA000026]</b>	<p><b>33.2 Payment for overtime</b></p> <p>All duty performed by an employee in excess of or outside the hours mentioned in clause 30—Ordinary hours of work and rostering and clause 31—Special provisions for shiftwork employees of this award, as the case may be, or in excess of the employee's ordinary hours, will be overtime and will be paid at the rate of time and one half for the first three hours and double time thereafter.</p>	No relevant penalty rates	<p><b>33.3 Overtime work on a Saturday or a Sunday</b></p> <p>(a) Except as otherwise provided, double time will be paid for all overtime work done on a Saturday or on a Sunday.</p> <p>(b) A weekly employee who has been notified that the employee will be required to work overtime on a Saturday (not being work which is continuous with work which commenced on a Friday) or on a Sunday and so reports for work and is ready, willing and able to perform such work will be provided on a Saturday with at least two hours' work or at least two hours' pay at double time or on a Sunday with at least four hours' work or at least four hours' pay at double time.</p> <p>(c) Except as otherwise provided in clause 30—Ordinary hours of work and rostering or clause 31—Special provisions for shiftwork employees, the provisions of this subclause will apply to a shiftwork employee provided that a shiftwork employee required to work overtime on a Saturday immediately after the finishing time of their ordinary working hours which commenced on a Friday will be paid in accordance with clause 33.2.</p> <p>(d) Provided further that printing or publishing department employees engaged in a daily newspaper office required to commence work after midnight on Friday will continue to work for the ordinary hours of that shift (but no later than 8.00 am) without payment of overtime.</p>	No relevant penalty rates for Saturday or Sunday work.  All time worked on the weekend is overtime.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>15. Hair and Beauty Industry Award 2010 [MA000005]</b>	<p><b>31.2 Overtime and penalty rates</b></p> <p>(a) Overtime hours worked in excess of the ordinary number of hours of work prescribed in clause 28.2 are to be paid at time and a half for the first three hours and double time thereafter.</p> <p>(b) Hours worked by casual employees:</p> <ul style="list-style-type: none"> <li>(i) in excess of 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle;</li> <li>(ii) in excess of 10 ½ hours per day;</li> </ul> <p>shall be paid at 175% of the ordinary hourly rate of pay for the first three hours and 225% of the ordinary hourly rate of pay thereafter (inclusive of the casual loading).</p>	<p><b>31.2</b></p> <p><b>(c) Saturday work</b></p> <p>A loading of 33% will apply for ordinary hours of work for full-time, part-time and casual employees within the span of hours on a Saturday.</p> <p><b>(d) Sunday work</b></p> <p>A 100% loading will apply for all hours of work for full-time, part-time and casual employees on a Sunday.</p>	In accordance with clause 31.2(a) -(b)	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>
<b>16. Health Professionals and Support Services Award 2010 [MA000027]</b>	<p><b>28.1 Overtime rates</b></p> <p>(a) An employee who works outside their ordinary hours on any day will be paid at the rate of:</p> <ul style="list-style-type: none"> <li>(i) time and a half for the first two hours; and</li> <li>(ii) double time thereafter.</li> </ul> <p>(b) All overtime worked on a Sunday will be paid at the rate of double time.</p> <p>(c) These extra rates will be in substitution for and not cumulative upon the shift loading prescribed in clause 29—Shiftwork.</p>	<p><b>26.1</b> For all <b>ordinary hours</b> worked between midnight Friday and midnight Sunday a full-time or part-time employee will be paid their ordinary hourly rate and an additional 50% loading.</p> <p><b>26.2</b> A casual employee who works on a Saturday or Sunday will be paid a loading of 75% for all time worked instead of the casual loading of 25%.</p>	In accordance with clause 28.1	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>17. Hospitality Industry (General) Award 2010 [MA00009]</b>	<p><b>33.3 Overtime rates</b></p> <p>(a) The following overtime rates are payable to an employee, depending on the time at which the overtime is worked:</p> <p>(i) Monday to Friday: 150% of their ordinary hourly rate for the first two hours of overtime; and 200% of their ordinary hourly rate for the rest of the overtime.</p> <p>(ii) Between midnight Friday and midnight Sunday: 200% of their ordinary hourly rate.</p> <p>(b) When a full-time or part-time employee works overtime on a rostered day off or an accrued day off the following apply:</p> <p>(i) Subject to clause 33.3(b)(ii), the employee shall be paid 200% of their ordinary hourly rate for at least four hours even if they work for less than four hours.</p> <p>(ii) The four hour minimum payment does not apply to work which is part of the normal roster which began the day before the rostered day off or accrued day off when overtime worked is continuous from the previous day's duty.</p> <p>(c) Overtime stands alone</p> <p>Overtime worked on any day stands alone.</p>	<p><b>32.4 Penalty rates not cumulative</b></p> <p>Except as provided in clause 31—Breaks, where time worked is required to be paid for at more than the ordinary rate such time will not be subject to more than one penalty, but will be subject to that penalty which is to the employee's greatest advantage.</p>	In accordance with clause 33.3	Rates are not cumulative.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>18. Joinery and Building Trades Award 2010 [MA000029]</b>	<p><b>30.2 Payment for working overtime</b></p> <p>(a) Except as provided for in clauses 30.6 and 30.7, for all work done outside of ordinary hours by a day worker the overtime rate is 150% for the first two hours and 200% thereafter and for all work done outside of ordinary hours by a shiftworker the overtime rate is 200%.</p> <p>(b) Overtime work performed by a shiftworker employed on the second or third shifts of a day when two or three shifts are worked must be paid for at the rate of 200%.</p>	<p><b>28.3 (d) Shift rates</b></p> <p>(i) Other than for work on a Saturday, Sunday or public holiday, the rate of pay for afternoon or night shift is 150% and the rate of pay for early morning and early afternoon shift is 125%, provided that the employee is employed continuously for five shifts Monday to Friday in any week. A public holiday in any week is not a break in continuity for the purposes of clause 28.3(d)(i).</p> <p>(ii) An employee who is employed for less than five consecutive shifts Monday to Friday must be paid for each day the employee works on shiftwork at the rate of 150% for the first two hours and 200% thereafter, provided that when a job finishes after proceeding on shiftwork for more than one week, or the employee terminates their services during the week, the employee must be paid at the rate specified in clause 28.3(d)(i) for the time actually worked.</p>	<p><b>30.6 Weekend work</b></p> <p>(a) Overtime worked by an employee on a Saturday must be paid for at the rate of 150% for the first two hours and 200% thereafter, provided that all overtime worked by an employee after 12 noon on a Saturday must be paid for at the rate of 200%.</p> <p>(b) Overtime worked by an employee on a Sunday must be paid for at the rate of 200%.</p> <p>(c) An employee required to work overtime on a Saturday or a Sunday must be afforded and paid for at least three hours work on a Saturday or for four hours work on a Sunday at the appropriate rate.</p> <p>(d) An employee working overtime on a Saturday or a Sunday must be allowed a paid 10 minute rest period.</p> <p>(e) An employee working overtime on a Saturday or a Sunday must be allowed a paid 20 minute crib break after four hours work and a paid 30 minute crib break after a further four hours work, paid at the ordinary rate of pay.</p>	All time worked on the weekend is considered overtime.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>19. Labour Market Assistance Industry Award 2010 [MA000099]</b>	<p><b>23.2 Overtime rates</b></p> <p>(a) An employee who is required to work overtime will be paid at the rate of time and a half for the first two hours of overtime worked and double time thereafter for overtime worked Monday to Saturday.</p> <p>(b) An employee who is required to work overtime will be paid double time for all overtime worked on Sundays.</p> <p>(c) An employee who, with the approval of the employer, works on a public holiday will be paid, in addition to the payment for the public holiday, at the following rates:</p> <p>(i) time and a half for work performed during ordinary hours of work; and/or</p> <p>(ii) double time and a half for work performed outside ordinary hours of work.</p>	<p><b>23.7 Penalty rates for ordinary hours of work</b></p> <p>(a) An employee will receive the following payment for <b>working any of their ordinary hours</b> outside the normal spread of hours provided in clause 21.2:</p> <ul style="list-style-type: none"> <li>(i) a loading of 20% on their ordinary rate of pay for work performed between 8.00 pm and midnight Monday to Friday inclusive;</li> <li>(ii) a loading of 35% on their ordinary rate of pay for work performed between the hours of midnight and 6.00 am from Sunday to Friday inclusive;</li> <li>(iii) a loading of 75% on their ordinary rate of pay for work performed between midnight Friday and midnight Saturday; and</li> <li>(iv) a loading of 100% on their ordinary rate of pay for work performed between midnight Saturday and midnight Sunday.</li> </ul> <p>(b) An employee will be rostered so as to provide two consecutive days off in any seven day period.</p> <p>(c) An employee required to work between midnight Saturday and midnight Sunday as part of their ordinary hours of duty will be provided with a minimum of two hours ordinary time on each occasion so engaged.</p> <p>(d) By mutual agreement, employees who work between midnight Saturday and midnight Sunday may take the equivalent time off instead of payment of the loading.</p> <p><b>(e) The loadings payable in clause 23.7(a) will be in substitution of and not cumulative on overtime and time off instead of payment for overtime as provided for in clauses 23.1 and 23.3.</b></p>	In accordance with clause 23.2	Rates are not cumulative.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?															
<b>20. Legal Services Award [MA000116]</b>	<p><b>20.2 Overtime rates</b></p> <p>(a) Day workers and non-continuous shiftworkers</p> <table border="1" data-bbox="581 411 1232 900"> <thead> <tr> <th data-bbox="581 411 819 518">For overtime worked on</th><th data-bbox="819 411 1025 518">Overtime rate % of minimum hourly rate</th><th data-bbox="1025 411 1232 518">Minimum payment</th></tr> </thead> <tbody> <tr> <td data-bbox="581 518 819 649">Monday to Saturday until 12.00 pm—first 3 hours</td><td data-bbox="819 518 1025 649">150%</td><td data-bbox="1025 518 1232 649">—</td></tr> <tr> <td data-bbox="581 649 819 779">Monday to Saturday until 12.00 pm—after 3 hours</td><td data-bbox="819 649 1025 779">200%</td><td data-bbox="1025 649 1232 779">—</td></tr> <tr> <td data-bbox="581 779 819 855">Saturday after 12.00 pm and Sunday</td><td data-bbox="819 779 1025 855">200%</td><td data-bbox="1025 779 1232 855">3 hours</td></tr> <tr> <td data-bbox="581 855 819 900">Public holiday</td><td data-bbox="819 855 1025 900">250%</td><td data-bbox="1025 855 1232 900">3 hours</td></tr> </tbody> </table> <p>(b) Continuous shiftworkers</p> <p>For continuous shiftworkers the rate for working overtime is <b>200%</b> of the minimum hourly rate.</p>	For overtime worked on	Overtime rate % of minimum hourly rate	Minimum payment	Monday to Saturday until 12.00 pm—first 3 hours	150%	—	Monday to Saturday until 12.00 pm—after 3 hours	200%	—	Saturday after 12.00 pm and Sunday	200%	3 hours	Public holiday	250%	3 hours		In accordance with clause 20.2	Saturday and Sunday is considered overtime for day workers.
For overtime worked on	Overtime rate % of minimum hourly rate	Minimum payment																	
Monday to Saturday until 12.00 pm—first 3 hours	150%	—																	
Monday to Saturday until 12.00 pm—after 3 hours	200%	—																	
Saturday after 12.00 pm and Sunday	200%	3 hours																	
Public holiday	250%	3 hours																	
<b>21. Local Government Industry Award 2010 [MA000112]</b>	<p><b>25.2 Payment for overtime</b></p> <p>(a) Except as otherwise provided, overtime will be paid at the rate of time and a half for the first two hours and double time thereafter.</p> <p>(b) Overtime worked from 12 noon on a Saturday and all day on a Sunday will be paid at the rate of double time.</p> <p>(c) The payment for overtime rates is calculated on the employee's hourly ordinary time rate.</p> <p>(d) In computing overtime, each day's work stands alone.</p>	<p><b>24.1 Weekday penalty rates</b></p> <p>An employee required to work ordinary hours on a Monday to Friday outside the span of hours provided in clause 22.3 will be paid a penalty of 20% in addition to the hourly ordinary time rate for hours worked outside of such span.</p> <p><b>24.2 Weekend penalty rates</b></p> <p>An employee who works on a Saturday or Sunday in a role/work area specified in clause 22.2(b) will be entitled to the following penalties for all ordinary hours worked:</p> <p>(a) all ordinary hours worked on a Saturday will be paid at the rate of time and a half. Saturday is taken to commence at midnight on Friday and finish at midnight on Saturday;</p> <p>(b) all ordinary hours worked on a Sunday will be paid at the rate of time and three quarters. Sunday is taken to commence at midnight on Saturday and finish at midnight on Sunday; and</p> <p>(c) weekend penalty rates for ordinary hours worked in accordance with clauses 24.2(a) and (b) will be paid for the actual time worked on Saturday and/or Sunday.</p>	In accordance with clause 25.2	No. Penalty rates apply to ordinary hours on Saturday and Sunday only. Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.															

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
		<p><b>24.3 Weekend penalties for recreation centres and community services</b></p> <p>Employees engaged in recreation centres or community services will not be entitled to weekend penalty rates for ordinary hours worked on Saturday or Sunday between the hours of 5.00 am and 10.00 pm. All other weekend hours for such employees will be paid according to clause 24.2.</p>		
<b>22. Manufacturing and Associated Industries and Occupations Award 2010 [MA000010]</b>	<p><b>41.1 Payment for working overtime</b></p> <p>(a) Except as provided for in clauses 41.1(d), 41.8, 41.9, and 41.13, for all work done outside ordinary hours on any day or shift, as defined in clauses 37.2, 37.3 and 37.4, the overtime rate is time and a half for the first three hours and double time thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is double time.</p> <p>(b) For the purposes of clause 41—Overtime, ordinary hours means the hours worked in an enterprise, fixed in accordance with clause 37—Ordinary hours of work and rostering.</p> <p>(c) The hourly rate, when computing overtime, is determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.</p> <p>(d) When not less than 7.6 hours notice has been given to the employer by a relief shiftworker that the relief shiftworker will be absent from work and the shiftworker whom that person should relieve is not relieved and is required to continue work on their rostered day off the unrelieved shiftworker must be paid at the rate of double time.</p> <p>(e) In computing overtime each day's work stands alone.</p>	<p>No relevant penalty rates.</p>	<p><b>38.5 Rate for working on Sunday and public holiday shifts</b></p> <p>(a) The rate at which a continuous shiftworker must be paid for work on a rostered shift the major portion of which is performed on a Sunday or public holiday is double time.</p> <p>(b) The rate at which a shiftworker, on other than continuous shiftwork, must be paid for all time worked on a Sunday is double time and on a public holiday is double time and a half.</p> <p>(c) Where shifts commence between 11.00 p.m. and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday must be regarded as time worked on the Sunday or public holiday.</p> <p>(d) Where shifts fall partly on a holiday, the shift which has the major portion falling on the public holiday must be regarded as the holiday shift. By agreement between the employer and the majority of employees concerned, the shift which has the minor portion falling on</p>	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
			<p>the public holiday may be regarded as the holiday shift instead.</p> <p>(e) The extra rates in clause 38.5 are in substitution for and not cumulative upon the shift premiums prescribed in clause 38.3.</p> <p><b>41.7 Saturday work</b></p> <p>A day worker required to work overtime on a Saturday must be afforded at least four hours work or be paid for four hours at the rate of time and a half for the first three hours and double time thereafter, except where the overtime is continuous with overtime commenced on the previous day.</p> <p><b>41.8 Sunday work</b></p> <p>An employee required to work overtime on a Sunday must be paid for a minimum of three hours work at double time. The double time is to be paid until the employee is relieved from duty.</p>	
<b>23. Meat Industry Award 2010 [MA000059]</b>	<p><b>36.1 Entitlement to overtime and payment</b></p> <p>(a) All time worked outside ordinary working hours on any day as prescribed in clause 31—Hours of work (or in the case of a shiftworker, outside the hours rostered as ordinary shiftwork hours in accordance with clause 34—Rostering) will be deemed to be overtime and be paid for at time and a half for the first three hours and double time thereafter.</p> <p>(b) All overtime worked on a Sunday in meat processing establishments must be paid at double time with a minimum payment of four hours.</p>	<p><b>33.9 Shift allowances</b></p> <p>(a) An employee on afternoon shift will be paid the ordinary hourly rate for the classification in which the employee is employed under this award, plus 15%.</p> <p>(b) An employee on night shift will be paid the ordinary hourly rate for the classification in which the employee is employed under this award, plus 25%.</p> <p>(c) An employee on a fixed night shift will be paid the ordinary hourly rate for the classification in which the employee is employed under this award, plus 30 %.</p> <p>(d) A casual employee employed in shiftwork will receive the appropriate percentage loading (shift allowance) prescribed in this clause and an additional 25% casual loading (as prescribed by clause 15—Casual employment of this award) of the appropriate award rate (i.e. not inclusive of the shift allowance as prescribed by clause 33.9).</p> <p>(e) A shiftworker who works on an afternoon or night shift which does not continue for at least five successive afternoon or night shifts must be paid for each shift 50% for the first three hours and 100% for the remaining hours in addition to their ordinary rate.</p>	<p>In accordance with 36.1</p>	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?								
		(f) In any situation where an employee is entitled to a penalty payment under clause 31.2(h) and is also entitled to a shift allowance under this clause in relation to the same shift, the employee shall only be entitled to payment of the higher penalty rate and not both.										
24. Mining Industry Award 2020 [MA000011]	<p>20.4 Method of calculation</p> <p>(a) When calculating overtime payments, each day or shift worked will stand alone.</p> <p><b>(b) Overtime payments under clause 20 are in substitution for any other loadings or penalty rates.</b></p>	<p><b>21.2</b> A shiftworker or a continuous shiftworker must be paid:</p> <p>(a) 115% of their ordinary hourly rate of pay, while on afternoon shift or night shift; and</p> <p>(b) 130% of their ordinary hourly rate of pay, while on permanent night shift.</p> <p><b>21.3 Weekend work and public holiday rates</b></p> <p>An employee will be paid the following rates for ordinary hours worked on a Saturday, a Sunday or a public holiday:</p> <p>For ordinary hours worked on:</p> <p>% of ordinary hourly rate</p> <p>Saturday before 12 noon – first 3 hours 150%</p> <p>Saturday before 12 noon – after 3 hours 200%</p> <p>Saturday after 12 noon and all hours on Sunday 200%</p> <p>Public holiday 250%</p> <p><b>21.4 Payments under clause 21 are in substitution for any other loadings or penalty rates.</b></p>		<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>								
25. Nursery Award 2020 [MA000033]	<p><b>20. Overtime</b></p> <p><b>20.1 Payment for working overtime</b></p> <table border="1"> <thead> <tr> <th>Overtime hours worked</th> <th>% of ordinary hourly rate</th> </tr> </thead> <tbody> <tr> <td>Monday to Saturday</td> <td>First 3 hours 150</td> </tr> <tr> <td></td> <td>After 3 hours 200</td> </tr> <tr> <td>Sunday</td> <td>200</td> </tr> </tbody> </table>	Overtime hours worked	% of ordinary hourly rate	Monday to Saturday	First 3 hours 150		After 3 hours 200	Sunday	200	<p><b>21. Penalty rates</b></p> <p><b>21.1</b> The rate of pay for ordinary hours worked on a Saturday will be at the rate of 125% of the ordinary hourly rate.</p> <p><b>21.2</b> The rate of pay for ordinary hours worked on a Sunday will be at the rate of 200% of the ordinary hourly rate.</p> <p><b>21.3 All time worked outside the ordinary hours of work will be overtime and paid in accordance with clause 20—Overtime.</b></p>	In accordance with clause 20.	Rates are not cumulative
Overtime hours worked	% of ordinary hourly rate											
Monday to Saturday	First 3 hours 150											
	After 3 hours 200											
Sunday	200											

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>26. Nurses Award 2010 [MA000034]</b>	<p><b>28.1 Overtime penalty rates</b></p> <p>(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 21—Ordinary hours of work, are to be paid as follows:</p> <p>(i) Monday to Saturday (inclusive)—time and a half for the first two hours and double time thereafter;</p> <p>(ii) Sunday—double time; and</p> <p>(iii) Public holidays—double time and a half.</p> <p>(b) Overtime penalties as prescribed in clause 28.1(a) do not apply to Registered nurse levels 4 and 5.</p> <p><b>(c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 26—Saturday and Sunday work and clause 29—Shiftwork.</b></p>	<p><b>29.1 Shift penalties</b></p> <p>(a) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their ordinary rate of pay.</p> <p>(b) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their ordinary rate of pay.</p> <p>(c) The provisions of this clause do not apply where an employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.</p> <p>(d) For the purposes of this clause:</p> <p>(i) Afternoon shift means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; and</p> <p>(ii) Night shift means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.</p> <p><b>(e) The shift penalties prescribed in this clause will not apply to shiftwork performed by an employee on Saturday, Sunday or public holiday where the extra payment prescribed by clause 26—Saturday and Sunday work and clause 32—Public holidays applies.</b></p>	In accordance with Clause 28.	rates are not cumulative
<b>27. Passenger Vehicle Transportation Award 2020 [MA000063]</b>	<p>23.1 Overtime rates must be paid for all time worked in excess of the hours in clause 21.1 or any hours in excess of the rostered ordinary hours on any day at the rate of time and a half for the first three hours and double time thereafter.</p> <p><b>23.2 Ordinary hours worked on a Saturday will be paid at the rate of time and a half and on a Sunday at the rate of double time. Where an employee is entitled to overtime rates on a Saturday or Sunday, the employee will be paid at the applicable overtime rate or the Saturday or Sunday penalty, whichever is the greater. Weekend penalty rates and overtime rates are not cumulative.</b></p>	In accordance with clause 23.2	In accordance with clause 23.2	rates are not cumulative

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>28. Pastoral Award 2010 [MA000035]</b>	<p>31.1 All time worked by an employee in excess of the ordinary hours in clause 30.1 will be regarded as overtime.</p> <p>31.2 The rate of pay for overtime for a Farm and livestock hand will be time and a half, except on Sunday when the rate will be double time, except in the case of feeding and watering stock when such work will be paid for at the rate of time and a half.</p>	In accordance with clause 37.	<p><b>37.1 Saturdays</b></p> <p><b>(a) Day workers</b></p> <p>(i) The rate for ordinary time duty on Saturday will be time and a half.</p> <p>(ii) The rate for overtime duty on a Saturday will be time and half for the first two hours and double time after that, with a minimum payment of three hours except for work which is continuous with ordinary duty.</p> <p><b>(b) Shiftworkers</b></p> <p>The minimum rate to be paid to a shiftworker for work performed will be time and a half. Such extra rate will be in substitution for and not cumulative upon the shift allowances prescribed in clause 35.9 in this award.</p> <p><b>37.2 Sundays</b></p> <p>(a) The rate for overtime duty on a Sunday will be double time with a minimum payment of three hours at such rate except for work which is continuous with ordinary duty.</p> <p>(b) Shiftworkers on continuous shifts for work on a rostered shift the major portion of which is performed on a Sunday will be paid at the rate of double time.</p>	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>
<b>29. Pest Control Industry Award 2010 [MA000097]</b>	<p><b>22.1 Overtime</b></p> <p>(a) All time worked in excess of, or outside the ordinary hours of work will be paid for at the rate of time and a half for the first two hours and double time thereafter. In computing overtime each day's work will stand alone.</p>	<p><b>22.5 Weekend Work</b></p> <p>An employee who works ordinary hours on a Saturday will be paid at the rate of time and a half. They will be paid for a minimum of three hours' work.</p> <p>An employee who works ordinary hours on a Sunday will be paid at the rate of double time. They will be paid for a minimum of four hours' work.</p>	In accordance with clause 22.1	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>30. Pharmaceutical Industry Award 2010 [MA000069]</b>	<p><b>25. Overtime and penalty rates</b></p> <p>The following rates, based on 1/38th of the weekly wage rate, must be paid for all work done:</p> <p><b>25.1</b> Outside the times of beginning and ending work in any one day—150% for the first two hours and 200% thereafter.</p> <p><b>25.2</b> Within the times of beginning and ending work but in excess of eight hours in any one day—150% for the first two hours and 200% thereafter for a day worker and 150% for the first three hours and 200% thereafter for a shiftworker.</p> <p><b>25.3</b> On Saturday—150% for the first two hours and 200% thereafter, with a minimum payment as for three hours' work.</p> <p><b>25.4</b> On Sunday—200%, with a minimum payment as for three hours' work.</p>	In accordance with clause 25	In accordance with clause 25	Overtime and penalty rates are one and the same.
<b>31. Plumbing and Fire Sprinklers Award 2010 [MA000036]</b>	<p><b>33.1 General overtime provision</b></p> <p>(a) In respect of all time worked beyond the ordinary hours of work as prescribed in clause 29—Ordinary hours of work over a four week work cycle, employees must be paid:</p> <p>(i) plumbing and mechanical services employees—150% for the first two hours and 200% thereafter;</p> <p>(ii) plumbing and mechanical services employees in Victoria—150% for the first hour and 200% thereafter, provided that this clause will cease to operate on 31 December 2014;</p> <p>(iii) sprinkler fitter employees—150% for the first two hours and 200% thereafter.</p> <p>(b) Work commenced after midnight and prior to the commencement of ordinary hours must be paid for at the rate of 200%.</p>	<p><b>32.1 Weekend work</b></p> <p>(a) All employees who are directed by the employer to work ordinary hours between midnight on a Friday and midnight on a Saturday will receive:</p> <p>(i) plumbing and mechanical services in Victoria - a 50% loading calculated on their minimum hourly rate of pay for the first ordinary hour worked provided that this clause will cease to operate on 31 December 2014; or</p> <p>(ii) all other employees - a 50% loading calculated on their minimum hourly rate of pay for the first two ordinary hours worked; and</p> <p>(iii) a 100% loading calculated on their minimum hourly rate of pay for the remaining ordinary hours worked thereafter.</p> <p>(b) All employees who are directed by the employer to work ordinary hours between midnight on a Saturday and midnight on a Sunday will receive a 100% loading calculated on their minimum hourly rate of pay for such ordinary hours worked.</p>	<p><b>33.2 Weekend and public holiday overtime and breaks</b></p> <p>(a) Overtime worked on a Saturday must be paid for at the rate of:</p> <p>(i) Plumbing and mechanical services and irrigation installer employees (other)—150% for the first two hours and 200% thereafter; and</p> <p>(ii) Sprinkler fitter employees—200%, provided that all time worked after 12 noon must be paid for at 200%.</p> <p>(b) Overtime worked on a Sunday must be paid for at the rate of 200%.</p>	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>
<b>32. Poultry Processing Award 2010 [MA000074]</b>	<p><b>26.Overtime</b></p> <p><b>26.4 Weekend Work</b></p> <p>(a) Overtime worked by an employee on a Saturday must be paid at the rate of 150% for the first three hours and 200% thereafter.</p> <p>(b) Overtime worked by an employee on a Sunday must be paid at the rate of 200%.</p> <p>(c) An employee required to work overtime on a Saturday or a</p>	<p><b>24.5 Weekend and public holiday penalty rates</b></p> <p>An employee who works ordinary hours on a Saturday, Sunday or public holiday must be paid an additional amount of:</p> <p>(a) 50% of the ordinary time rate for ordinary hours worked on a Saturday;</p> <p>(b) 75% of the ordinary time rate for ordinary hours worked on a Sunday; and</p>	In accordance with 26.4.	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only</p>

<b>Modern Award</b>	<b>Overtime Clause</b>	<b>Penalty Rates</b>	<b>How is overtime on Saturday and Sunday dealt with?</b>	<b>Are the rates cumulative?</b>																							
	Sunday must be paid for a minimum of three hours on a Saturday and four hours on a Sunday at the overtime rates.	(c) 150% of the ordinary time rate for ordinary hours worked on a public holiday.		overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.																							
<b>33. Professional Employees Award 2010 [MA000065]</b>	N/A	N/A	N/A	N/A																							
<b>34. Real Estate Industry Award 2020 [MA000106]</b>	N/A	N/A	Same as overtime for any other day of the week	N/A																							
<b>35. Registered and Licensed Clubs Award 2010 [MA000058]</b>	<p><b>28. Overtime</b></p> <p><b>28.3</b> The following overtime rates are payable to an employee, depending on the time at which the overtime is worked:</p> <p>(a) Monday to Friday inclusive - 150% for the first two hours and 200% for all work thereafter;</p> <p>(b) between midnight Friday and midnight Saturday - 175% for the first two hours and 200% for all work thereafter;</p> <p>(c) between midnight Saturday and midnight Sunday - 200% for all time worked;</p>	<p><b>29 penalty rates</b></p> <p><b>29.1</b> An employee other than a maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 17—Minimum wages for the relevant classification:</p> <table border="1"> <thead> <tr> <th></th> <th>M to F</th> <th>Saturday</th> <th>Sunday</th> <th>PH</th> </tr> </thead> <tbody> <tr> <td>FT/PT</td> <td>100</td> <td>150</td> <td>175</td> <td>250</td> </tr> <tr> <td>Casual</td> <td>125</td> <td>150</td> <td>175</td> <td>250</td> </tr> </tbody> </table> <p><b>29.2</b> A maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 17—Minimum wages for the relevant classification:</p> <table border="1"> <thead> <tr> <th>M to F and Saturday before noon</th> <th>Saturday after noon</th> <th>Sunday</th> <th>Public Holiday</th> </tr> </thead> <tbody> <tr> <td>100%</td> <td>150% for the first 2 then 200%</td> <td>200%</td> <td>250%</td> </tr> </tbody> </table>		M to F	Saturday	Sunday	PH	FT/PT	100	150	175	250	Casual	125	150	175	250	M to F and Saturday before noon	Saturday after noon	Sunday	Public Holiday	100%	150% for the first 2 then 200%	200%	250%	In accordance with clause 28	Not explicitly stated in the award.  However, rates are not taken to be cumulative
	M to F	Saturday	Sunday	PH																							
FT/PT	100	150	175	250																							
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100%	150% for the first 2 then 200%	200%	250%																								

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?																									
36. Restaurant Industry Award 2010 [MA000119]	<p><b>33.2 Overtime rates</b> The overtime rate payable to an employee depends on the time at which the overtime is worked.</p> <p>(a) Monday to Friday: 150% of the employee's ordinary base rate of pay for the first two hours of overtime then 200% of the employee's ordinary base rate of pay for the rest of the overtime.</p> <p>(b) Between midnight Friday and midnight Saturday: 175% of the employee's ordinary base rate of pay for the first two hours of overtime then 200% of the employee's ordinary base rate of pay for the rest of the overtime.</p> <p>(c) Between midnight Saturday and midnight Sunday: 200% of the employee's ordinary base rate of pay for all time worked.</p>	<p><b>34.1 penalty rates for work on weekends and public holidays</b></p> <p>An employee <b>working ordinary time hours</b> on the following days will be paid the following percentage of the minimum wage in clause 20—Minimum wages for the relevant classification:</p> <table border="1"> <thead> <tr> <th>Type of employment</th> <th>Monday to Friday</th> <th>Saturday</th> <th>Sunday</th> <th>Public holidays</th> </tr> <tr> <th></th> <th>%</th> <th>%</th> <th>%</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Full-time and part-time</td> <td>100</td> <td>125</td> <td>150</td> <td>225</td> </tr> <tr> <td>Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)</td> <td>125</td> <td>150</td> <td>150</td> <td>250</td> </tr> <tr> <td>Casual Level 3 to Level 6 (inclusive of casual 25% loading)</td> <td>125</td> <td>150</td> <td>175</td> <td>250</td> </tr> </tbody> </table>	Type of employment	Monday to Friday	Saturday	Sunday	Public holidays		%	%	%	%	Full-time and part-time	100	125	150	225	Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)	125	150	150	250	Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	250	In accordance with Clause 33.2.	No.  Penalty rates apply to ordinary hours on Saturday and Sunday only.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.
Type of employment	Monday to Friday	Saturday	Sunday	Public holidays																									
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Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	250																									
37. Road Transport and Distribution Award 2010 [MA000038]	<p><b>27. Overtime</b></p> <p><b>27.1</b> For all work done outside ordinary hours the rate of pay will be time and a half for the first two hours and double time thereafter, such double time to continue until the completion of the overtime work.</p>	<p><b>28. Penalty Rates</b></p> <p><b>28.1 Weekend work</b></p> <p>(a) For <b>any ordinary time hours</b> worked between midnight on Friday and midnight on Saturday an employee must be paid at the rate of time and a half.</p> <p>(b) For any ordinary time hours worked between midnight on Saturday and midnight Sunday an employee must be paid at the rate of double time.</p>	In accordance with clause 27.	No.  Penalty rates apply to ordinary hours on Saturday and Sunday only.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.																									

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>38. Road Transport (Long Distance Operations) Award 2010 [MA000039]</b>	<p><b>14. 1 (b)Overtime allowance</b> The rates per kilometre are inclusive of an overtime allowance of 1.2 times the ordinary rate, which takes into account an overtime factor of two hours in 10 at double time.</p>	N/A	N/A	N/A
<b>39. Seafood Processing Award 2020 [MA000068]</b>	<p><b>19.1 Payment for working overtime</b> (a) For all time worked outside of ordinary hours on any day or shift, the overtime rates are: (i) 150% of the minimum hourly rate for the first 3 hours; and (ii) 200% of the minimum hourly rate thereafter until the completion of the overtime work; or (iii) 200% of the minimum hourly rate for a continuous shiftworker; except as provided for in clauses 19.1(d), 19.5 and 19.6.  (b) For the purposes of clause 19.1, ordinary hours means the hours worked in an enterprise, fixed in accordance with clause 13—Ordinary hours of work and rostering.</p>	<p><b>20.1 Saturday and Sunday work—day worker</b> The rate to be paid to a day worker for ordinary time worked: (a) before noon on a Saturday is 125% of the minimum hourly rate; and (b) after noon on a Saturday is 150% of the minimum hourly rate. (c) Where agreement is reached in accordance with clause 13.2(f), the rate to be paid to a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday is 200%.</p>	<p><b>19.4 Saturday work</b> A day worker required to work overtime on a Saturday must be paid for a minimum of 3 hours' work at the rate of 150% of the minimum hourly rate for the first 3 hours and 200% of the minimum hourly rate thereafter, except where the overtime is continuous with overtime commenced on the previous day.</p> <p><b>19.5 Sunday work</b> An employee required to work overtime on a Sunday must be paid for a minimum of 3 hours' work at the rate of 200% of the minimum hourly rate. The 200% is to be paid until the employee is relieved from duty.</p>	No. Penalty rates apply to ordinary hours on Saturday and Sunday only.  Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.
<b>40. Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]</b>	<p><b>28. Overtime and penalty rates</b> <b>28.1 Overtime rates</b> <b>(a)full-time employees</b>  A full-time employee will be paid the following payments for all work done in addition to their rostered ordinary hours on any day: (i) disability services, home care and day care employees—for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first two hours and double time thereafter; (ii) social and community services and crisis accommodation employees—for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first three hours and double time thereafter; (iii) for all authorised overtime on a Sunday, payment will be made at the rate of double time; (iv) for all authorised overtime on a public holiday, payment will be made at the rate of double time and a half; and <b>(v) overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 29—Shiftwork and the casual loading prescribed in clause 10.4(b), and are not applicable to overtime hours worked on a Saturday or a Sunday.</b></p>	<p><b>26. Saturday and Sunday work</b> Employees whose ordinary working hours include work on a Saturday and/or Sunday will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and a half, and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of double time. <b>These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in clause 29—Shiftwork and the casual loading prescribed in clause 10.4(b), and are not applicable to overtime hours worked on a Saturday or a Sunday.</b></p>	In accordance with clause 28.1	Rates are not cumulative

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>41. Storage Services and Wholesale Award 2010 [MA000084]</b>	<p><b>24.1 Payment for overtime</b> All time worked by an employee in excess of or outside the ordinary hours of work prescribed by this award will be paid at the rate of time and a half for the first two hours and double time after that.</p> <p><b>24.5 Penalty rates for weekends and public holidays</b></p> <p><b>(a) Saturdays</b></p> <p>(i) All time worked on a Saturday must be paid for at the rate of time and a half.</p> <p>(ii) An employee required to work overtime on a Saturday must be afforded at least three hours' work or must be paid for three hours at the appropriate rate, except where such overtime is worked immediately prior to or at the conclusion of ordinary hours of work.</p> <p><b>(b) Sundays</b></p> <p>(i) All time worked on a Sunday must be paid for at the rate of double time.</p> <p>(ii) An employee required to work overtime on a Sunday must be afforded at least four hours' work or must be paid for four hours at the appropriate rate, except where such overtime is worked immediately prior to or at the conclusion of ordinary hours of work.</p>	In accordance with clause 24.5	In accordance with clause 24.5	<p>Not explicitly stated in the award.</p> <p>However, the rates are not taken to be cumulative.</p>
<b>42. Sugar Industry Award 2010 [MA000087]</b>	<p><b>31.1 Payment for working overtime</b></p> <p>(a) Employees working overtime:</p> <p>(i) within the hours fixed in clause 29—Ordinary hours of work and rostering—other than shiftworkers of this award but in excess of the hours fixed for an ordinary week's work; or</p> <p>(ii) outside the hours fixed in clause 29, must be paid time and a half for the first three hours and double time thereafter calculated on a daily basis.</p> <p><b>31.2 Payment for working rostered day off, Saturdays or Sundays</b></p> <p>(a) An employee required to work overtime commencing on Saturday or rostered day off will be paid at the rate of time and a half for the first three hours and then double time after that for a minimum of three hours.</p> <p>(b) All work done commencing on a Sunday must be paid for at the rate of double time with a minimum of three hours work or payment provided the employee is available for work for three hours.</p>	<p><b>Ordinary hours of work and rostering—other than shiftworkers</b></p> <p>29.2 (c) All ordinary time worked on Saturdays or Sundays will be paid for at the rate of time and a half.</p>	In accordance with clause 31.2	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
<b>43. Surveying Award 2020 [MA000066]</b>	<p><b>21. Overtime and penalty rates</b></p> <p><b>21.1</b> An employer must pay an employee for all authorised time worked in excess of or outside the spread of ordinary hours of duty at the rate of 150% of the minimum hourly rate for the first 3 hours and 200% of the minimum hourly rate thereafter.</p>	<p><b>21.3 Sundays and public holidays</b></p> <p>(a) An employee must be paid the following rates for work done on Sundays and public holidays, until the employee is relieved from duty:</p> <p>(i) Sunday—200% of the minimum hourly rate;</p>	In accordance with clause 21.1	<p>Not explicitly stated in the award.</p> <p>However, rates are not taken to be cumulative</p>
<b>44. Telecommunications Services Award 2010 [MA000041]</b>	<p><b>21.1 Overtime rates</b></p> <p>(a) Except as provided for in clause 11.2(b), for all work done in excess of ordinary hours an employee will be paid at the rate of time and a half for the first three hours and double time thereafter.</p> <p><b>21.2 Minimum payment</b></p> <p>(a) An employee required to work overtime on a Saturday or Sunday will be paid for a minimum of three hours at the appropriate rate except where such overtime is worked prior to or at the conclusion of ordinary hours of work.</p> <p>(b) In such circumstances, the employee will receive payment at the rate prescribed in clause 21.1 hereof for the actual time worked.</p> <p><b>21.9 Rates not cumulative</b></p> <p>The rates prescribed in this clause are in substitution for and not cumulative upon the loadings prescribed in clause 20—Hours of work and clause 26—Public holidays.</p>	<p><b>20.8 Weekend penalty rate</b></p> <p>(a) Employees are entitled to a rate of time and a half for ordinary time worked:</p> <p>(i) between midnight on Friday and 7.00 am on Saturday; and</p> <p>(ii) between 1.00 pm on Saturday and midnight on Sunday.</p>	In accordance with clause 20.8	Rates are not cumulative.
<b>45. Textile, Clothing, Footwear and Associated Industries Award 2010 [MA000017]</b>	<p><b>39. Overtime Rates</b></p> <p><b>39.3 Payment for working overtime</b></p> <p>(a) An employer must pay an employee overtime at the rate of:</p> <p>(i) 150% for the first three hours; and</p> <p>(ii) 200% thereafter.</p>	<p><b>36.5 Payment for shiftwork</b></p> <p>(a) An employer must pay shiftworkers, other than day shiftworkers, in addition to their ordinary rate of pay, a penalty loading of 15% of one-fifth of the weekly rate for Skill Level 2, per shift worked.</p> <p>(b) An employer must pay employees engaged on a permanent night shift, in addition to their ordinary rate of pay, a penalty loading of 30% of one-fifth of the weekly rate for Skill Level 2 per shift worked.</p> <p>(c) Shift penalties must be calculated to the nearest cent.</p> <p>(d) All time worked by a shiftworker (other than a seven day continuous shiftworker) between midnight on Sunday and 7.00 am on Monday must be paid for at the rate of time and a half for the first three hours and double time thereafter.</p>	<p><b>39.4 Weekend work</b></p> <p>(a) All work on a Saturday will be paid at 150% of the employees' ordinary rate for the first three hours and 200% thereafter.</p> <p>(b) All work on a Sunday will be paid at 200% of the employees' ordinary rate.</p>	All time worked on a weekend is overtime.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
		<p>(e) Where an employee begins the week's work on Sunday night, the employee will receive double time for all work performed on Sunday. However an employer and the majority of employees in an enterprise or part of an enterprise may agree to arrange shifts so that they commence on Sunday night instead of Monday with ordinary rates to be paid for Sunday work provided that agreement is in accordance with clause <a href="#">8.3</a>.</p> <p>(f) An employee who is required to change from one shift to another without two working days notice of such change of shifts will be paid an allowance in accordance with clause <a href="#">26.4</a> as compensation. This allowance will not apply during any period where power restrictions are operating</p>		
<b>46. Timber Industry Award 2010 [MA000071]</b>	<p><b>30.1 Payment for working overtime</b></p> <p>All time worked by employees outside the spread of hours prescribed in clause 27—Hours of work, or in excess of the ordinary daily number of hours prescribed in clause 27, will be paid for at the rate of time and a half for the first two hours and double time thereafter.</p>	.	<p><b>30.5 Payment for work on Saturdays</b></p> <p>Except in the case of a shiftworker, all work performed on a Saturday by weekly employees, on the instructions of the employer, will be paid for at the rate of time and a half for the first two hours and double time thereafter with a minimum payment as for three hours at such rate.</p> <p><b>30.6 Payment for work on Sundays</b></p> <p>All work performed on Sundays by weekly employees, on the instructions of the employer, will be paid for at the rate of double time with a minimum payment as for three hours at such rate</p>	All work performed on Saturday and Sunday is overtime.
<b>47. Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA000089]</b>	<p><b>28. Overtime</b></p> <p><b>28.2</b> An employee required to work outside the ordinary hours as prescribed by the award will be paid as follows:</p> <p>(a) on a Sunday—at the rate of double time;</p> <p>(b) on a public holiday—at the rate of double time and a half; and</p> <p>(c) on any other day—time and a half for the first three hours and double time thereafter. Payment at double time is to continue until the completion of the overtime work.</p>	<p><b>Section 1—Vehicle Industry RS&amp;R Employees</b></p> <p><b>38. Saturday Work</b></p> <p>An employee who works any of their ordinary hours on a Saturday will be paid at time and a half.</p> <p>An employee who works outside rostered hours on a Saturday will be paid for the hours so worked at the overtime rate prescribed by clause 28—Overtime rates.</p> <p><b>Payments prescribed by this clause will stand alone and will not be included for any other purpose of this award.</b></p> <p><b>39. Sunday Work</b></p> <p>An employee who works any of their ordinary hours on a Sunday will be paid at the rate of double time for the hours so worked.</p> <p>An employee who works outside their rostered hours on a</p>	In accordance with clause 28.2	<p>No.</p> <p>Penalty rates apply to ordinary hours on Saturday and Sunday only.</p> <p>Therefore, for overtime hours worked on a Saturday or Sunday, only overtime rates will be payable on the ordinary time rate of pay, not the penalty loaded rate as there are no ordinary hours of work being performed.</p>

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
		<p>Sunday will be paid for the hours so worked at the rate prescribed by clause 28—Overtime rates.</p> <p><b>Payments prescribed by this clause will stand alone and will not be included for any other purpose of this award.</b></p> <p><b>Section 2—Vehicle manufacturing employees</b></p> <p><b>55. Penalty rates for Sunday work</b></p> <p>(a) Where an employee works on a Sunday, the work done will be paid for at the rate of double time.</p>		
<b>48. Waste Management Award 2010 [MA000043]</b>	<p><b>30. Overtime</b></p> <p><b>30.1</b> Work done outside ordinary hours must be paid for at 150% of the relevant minimum wage calculated hourly for the first two hours and 200% after the first two hours.</p>		<p><b>31. Saturday and Sunday Work</b></p> <p><b>31.1</b> An employee required to work overtime on a Saturday is to be paid for at least four hours at overtime rates unless the overtime is continuous with overtime which commenced on the previous day.</p> <p><b>31.4</b> All time of duty on any Sunday stands alone and must be paid for at 200% of the relevant minimum wage calculated hourly with a minimum payment of four hours.</p>	Rate is not cumulative
<b>49. Water Industry Award 2020 [MA000113]</b>	<p><b>20. Overtime</b></p> <p><b>20.1</b></p> <p>(a) Overtime worked on Monday to Saturday will be paid at 150% of the minimum hourly rate for the first 2 hours and 200% of the minimum hourly rate after 2 hours except as otherwise provided.</p> <p>(b) Overtime worked on a Sunday will be paid at 200% of the minimum hourly rate.</p>	No Clause	In accordance with clause 20.1	All Saturday and Sunday work is considered overtime so not applicable.
<b>50. Wine Industry Award 2010 [MA000090]</b>	<p><b>30.1 Payment for working overtime</b></p> <p>Except as provided in clauses 30.2, 30.3 and 30.6, all time worked outside ordinary hours on any day or shift must be paid for at the rate of 150% for the first two hours on any day or shift and 200% thereafter until the completion of the overtime work.</p> <p><b>30.2 Sunday Work</b></p> <p>An employee required to work overtime on a Sunday must be paid at the rate of 200% until the completion of the overtime.</p> <p>Ordinary hours only between Monday to Friday</p>	<p><b>28.2 ordinary hours of work - day workers</b></p> <p><b>(g) Penalty rates</b></p> <p>(i) The rate to be paid to a day worker for ordinary hours worked on a Saturday is 125% and on a Sunday is 200%.</p> <p>(ii) A day worker required to work on a public holiday must be paid for a minimum of four hours work at the rate of 250%.</p> <p><b>28.3 ordinary hours of work - shiftworkers</b></p> <p><b>(f) Rate for working on Saturday shifts</b></p> <p>The rate at which a shiftworker must be paid for work performed between midnight on Friday and midnight on Saturday is 150%. <b>The extra rate is in substitution for and</b></p>	In accordance with clause 30.	Not explicitly stated in the award.  However, rates are not taken to be cumulative.

Modern Award	Overtime Clause	Penalty Rates	How is overtime on Saturday and Sunday dealt with?	Are the rates cumulative?
		<p>not cumulative upon the shift premiums prescribed in clause 28.3(e).</p> <p><b>(g) Rate for working on Sunday and public holiday shifts</b>  The rate at which a shiftworker must be paid for all time worked on a Sunday is 200% and on a public holiday is 250%. The extra rate is in substitution for and not cumulative upon the shift premiums prescribed in clause 28.3(e)</p>		