

Exemption rates

10 December 2020

This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It does not represent the view of the Commission on any issue.

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Introduction

In the context of awards, ‘exemption clauses’ are clauses that operate to exclude certain employees from some or all of the terms of an award.¹ An exemption clause may, for example, operate to exclude anyone at or above a certain classification, or earning above a specified rate (the ‘exemption rate’) from some or all of the terms of the award (an **exemption rates clause**).

This background paper discusses the power of the Fair Work Commission (**Commission**) to include in modern awards exemption rates clauses that provide that certain provisions of the award (e.g. relating to penalty rates and overtime) do not apply to award covered employees who earn significantly above the minimum rate provided by the award. In particular, this background paper discusses the scope for inclusion of an exemption rates clause in the *General Retail Industry Award 2020* (**Retail Award**) in relation to senior executives, senior managers and chief executive officers (collectively referred to as **Senior Managers**) earning above award rates.

Exemption rates and the award modernisation process

Historically, a number of pre-reform awards and Notional Agreements Preserving State Awards (**NAPSAs**) included exemption clauses.² These are a feature of a relatively small number of

¹ [Clerks \(Breweries\) Consolidated Award case](#), Print S6443, 26 May 2000, at [3].

² [Clerks – Private Sector Award 2010](#) [2009] AIRCFB 922 at [14].

modern awards,³ most commonly providing that employees at or above a certain classification are exempt from provisions concerning overtime payments.⁴

Part 10A of the *Workplace Relations Act 1996 (WR Act)* established a process for the Australian Industrial Relations Commission (**AIRC**) to make modern awards. The AIRC had to carry out the process in accordance with an ‘award modernisation request’ from the Minister to the President of the AIRC.⁵ An award modernisation request could, *inter alia*, give directions about how, or whether, the AIRC was to deal with particular matters about which terms could be included in a modern award.⁶ Any terms the AIRC did include in a modern award had to be consistent with such directions.⁷

Paragraph 2(f) of the Minister’s [Award Modernisation Request](#) relevantly provided:

‘2. The creation of modern awards is not intended to: ...

(f) exempt or have the effect of exempting employees who are not high income employees, from modern award coverage or application, unless there is a history of exempting employees from coverage across a wide range of pre-reform awards and NAPSAs in the relevant industry or occupation;’

Paragraph 2(f) was added to the Minister’s Award Modernisation Request on 2 May 2009. In [Clerks – Private Sector Award 2010](#) [2009] AIRCFB 922 (**Clerks**), the Full Bench considered paragraph 2(f) in dealing with an application to delete an exemption rate clause in the *Clerks – Private Sector Award 2010*. The Full Bench had previously decided to include such a clause in the award but reconsidered this in light of the variation to the Minister’s Award Modernisation Request on 2 May 2009. The Full Bench also considered the Minister’s covering letter to the President of the AIRC regarding paragraph 2(f), which said:

‘... The request now reflects more clearly the Government’s intention that the creation of modern awards should not exempt, or have the effect of exempting from the safety net provided by modern awards, employees other than those expressly listed in the request. Employees who are not high income employees should be protected by a complete and comprehensive modern award safety net of basic entitlements unless there is a history of exempting employees from coverage across a wide range of pre-reform awards and NAPSAs in the relevant industry or occupation...’

The Full Bench decided to remove the exemption clause, stating at [24]:

‘We also note the clear intent of the change to the Minister’s request and the submission made in her letter to the Commission regarding her view of the test to be applied and the incidence of exemption provisions in current instrument. In this connection we also consider that it is relevant that, for the first time, the legislation determines that an award will not apply to persons who reach a certain level of income.’

Following the reasoning in *Clerks*, the Full Bench subsequently also removed an exemption rate clause from the *Banking, Finance and Insurance Award 2010*.⁸ In both awards, an annualised salary clause was instead inserted, which allowed an employer to pay an employee an annual

³ For example clause 17.3 of the *Registered and Licensed Clubs Award 2010*, clause 16 of the *Business Equipment Award 2010* and clause 25 of the *Hospitality Industry (General) Award 2020*.

⁴ For example clause 23.4 of the *Airport Employees Award 2020*, clause 19.7 of the *Australian Government Industry Award 2016*.

⁵ WR Act, s.576C(1).

⁶ WR Act, s.576C(3)(d).

⁷ WR Act, s.576N(2).

⁸ *Banking, Finance and Insurance Award 2010* [2009] AIRCFB 923.

salary in satisfaction of provisions in the award regarding minimum weekly wages, allowances, overtime and penalty rates, and annual leave loading.

During the award modernisation process, an exemption rates clause (clause 17.3) was included in the *Registered and Licensed Clubs Award 2010 (Clubs Award)*, however that industry had a history of exempting employees from the full range of award coverage. The AIRC Full Bench noted that the clause reflected the terms of the major federal award for club managers and the New South Wales *Bowling and Golf Clubs Employees (State) Award*.⁹ The clause is two-tiered and applies to club managers receiving a salary in excess of 20 per cent, or in excess of 50 per cent, of the minimum annual salary rates for their classification. The clause also allows Maintenance and horticultural Levels 1–4 to freely agree in writing to payment of a salary of not less than 33 per cent in excess of the minimum weekly rate of pay for level 4 (Maintenance and horticultural Level 3–tradesperson) instead of various provisions of the award.

Legislative framework

The constraints that the Minister's Award Modernisation Request placed on the AIRC as to the terms it could include in modern awards do not apply to variations to modern awards under the *Fair Work Act 2009 (FW Act)*. The Commission can include exemption rates clauses in modern awards provided that:

- it is satisfied that they are necessary to achieve the modern awards objective in s.134 of the FW Act;¹⁰
- they are about matters set out in s.139 of the FW Act;¹¹
- they are not terms that must not be included in a modern award;¹² and
- they do not have the effect that employees earning above a certain rate stop being covered by the award altogether (unless the Commission is satisfied that those employees would instead be covered by another modern award (other than the miscellaneous modern award) that is appropriate for them).¹³

Section 134(1) of the FW Act provides:

134 The modern awards objective

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and

⁹ *Award Modernisation* [2009] AIRCFB 826 at [118].

¹⁰ FW Act, s.157(1).

¹¹ FW Act, s.136(1)(a).

¹² Terms that may not be included are set out in Subdivision D of Division 3 of Part 2-3 of the FW Act. None are clearly relevant here.

¹³ FW Act, s.163(1).

(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and

(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours; or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

(e) the principle of equal remuneration for work of equal or comparable value; and

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) the likely impact of any exercise of modern award power on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the ***modern awards objective***.

Arguably an exemption rates clause could reduce award complexity, reduce regulatory burden on business, and encourage collective bargaining. Whether it does so will depend on the terms of the clause itself, and how it will operate in the relevant industry. The Commission would, however, need to consider whether the exemption rate was set sufficiently high that it did not disadvantage employees and met the need to provide additional remuneration to employees as set out in s.134(1)(da). Further, the factors the Full Bench considered in *Clerks* in deciding to remove the exemption rate clause might be relevant to whether an exemption rates clause provides a fair and relevant minimum safety net,¹⁴ including that FW Act already provides a level at which high income employees do not have the benefits of award coverage, with s.47(2) providing that modern awards do not apply to high income employees (currently those earning above \$153,600).

Section 139(1) of the FW Act relevantly provides:

139 Terms that may be included in modern awards

(1) A modern award may include terms about any of the following matters:

...

(c) arrangements for when work is to be 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

¹⁴ See paragraph [7] above.

...

(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; ...

A clause that provides that overtime, penalty rates and allowances do not apply to a class of employees would be a term about the matters set out in s.139(d), (e) and (g) of the FW Act.

Retail award coverage for Senior Managers

A clause in the Retail Award that applies to Senior Managers will be of no utility if the Retail Award does not cover Senior Managers. Commission staff have not identified any Commission decisions that consider whether Senior Managers are covered by the Retail Award, but for the reasons that follow, it is unlikely that Senior Managers would be covered.

Section 48(1) of the FW Act relevantly provides:

‘(1) A modern award **covers** an employee ... if the award is expressed to cover the employee...’

Employees covered by the Retail Award include employees of employers in the general retail industry throughout Australia with a classification defined in Schedule A – Classification Definitions to the Award.¹⁵ Whether a Senior Manager is covered by the Retail Award will depend on whether the principal purpose for which they are employed falls within a classification in the Retail Award.¹⁶

The most senior classification in the Retail Award Classification Definitions is for a ‘Retail Employee Level 8’. The classification provides:

A.8.1 Retail Employee Level 8 means an employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 7.

A.8.2 A Retail Employee Level 8 may have a Diploma qualification.

A.8.3 Indicative job titles that are usually within the definition of a Retail Employee Level 8 include:

- (a) shop manager of a shop with departments or sections; and
- (b) Clerical Officer Level 5.

A.8.4 Clerical Officer Level 5 characteristics:

- (a) Employees at this level are subject to broad guidance or direction and report to more senior staff as required.
- (b) Employees will typically have worked or studied in a relevant field and will have achieved a standard of relevant or specialist knowledge and experience sufficient to enable them to advise on

¹⁵ Retail Award, clause 4.1.

¹⁶ *R.Brand* [PR933272](#) at [13].

a range of activities and features and contribute, as required, to the determination of objectives, within the relevant field(s) of their expertise.

(c) Employees are responsible and accountable for their own work and may have delegated responsibility for the work under their control or supervision, in terms of, among other things, scheduling workloads, resolving operations problems, monitoring the quality of work produced as well as counselling staff for performance as well as work related matters.

(d) Employees would also be able to train and supervise employees in lower levels by means of personal instruction and demonstration. They would also be able to assist in the delivery of training courses. They often exercise initiative, discretion and judgment in the performance of their duties.

(e) The possession of relevant post secondary qualifications may be appropriate but not essential.

A.8.5 Indicative typical duties and skills at this level include:

(a) applying knowledge of the organisation's objectives, performance, projected areas of growth, product trends and general industry conditions; or

(b) applying computer software packages within either a micro personal computer or a central computer resource, including integrating complex word processing or desktop publishing, text and data documents or

(c) providing reports for management in any of the following areas:

(i) account or financial; or

(ii) staffing; or

(iii) legislative requirements; or

(iv) other company activities.

(d) administering individual executive salary packages, travel expenses, allowances and company transport; administering salary and payroll requirements of the organisation.' [Emphasis added]

While the description of a Retail Employee Level 8 does encompass management functions, the description more clearly fits that of an employee in middle rather than senior management. It is not clear that the description would commonly apply, for example, to Senior Managers working for retail chains such as supermarkets or department stores with responsibility for multiple shops, because:

- clause A.8.1 provides that a Retail Employee Level 8 performs work 'in or in connection with a retail establishment'. While 'retail establishment' is not defined in the Retail Award, the definition of 'general retail industry' includes 'clerical functions performed away from a retail establishment', suggesting that a retail establishment is a physical shop or store from which goods or services are sold, not a head office;¹⁷
- clause A.8.3 says that indicative job titles include 'shop manager of a shop with departments or sections';

¹⁷ In *Transport Workers' Union of Australia v Coles Supermarkets Pty Ltd* [2014] FCAFC 148, the Full Court considered whether Customer Service Agents (CSAs) were covered by the Retail Award. It said at [30]: 'The TWU argued that it was intended that the work of a Retail Employee Level 1 be performed either "within the four walls" of a shop or, at least "at" a retail establishment.... It is clear that not all work must be physically performed at a retail establishment. It is sufficient if a retail establishment is the base or location of the employment, even if work is performed away from the retail establishment – e.g. driver and door-to-door salesperson. CSAs start and finish at a retail establishment. They are based at a retail establishment. They make deliveries from the retail establishment.'

- clause A.8.2 says that a Retail Employee Level 8 may have a Diploma qualification, and clause A.8.4(e) provides that the possession of post secondary qualifications may be appropriate but not essential;
- clause A.8.4(a) provides that a Retail Employee Level 8 is subject to broad guidance or direction and reports to more senior staff as required; and
- clause A.8.5(d) refers to ‘administering executive salary packages’ as a different duty to ‘administering salary and payroll requirements’, suggesting a level of executive management in the retail industry that is not award covered.

While on a plain reading of the Retail Award Classification Definitions it is not apparent that they apply to Senior Managers, an additional consideration is whether Senior Managers in the retail industry have traditionally been award covered. Unlike some other modern awards, the Retail Award does not expressly provide that managerial and professional employees are not covered by the award.¹⁸ However, clause 4.4 of the Retail Award lists employees and employers that the Retail Award does not cover, relevantly providing:

‘4.4 However, this industry award does not cover any of the following:

(a) employees excluded from award coverage by the Act; or

NOTE: See section 143(7) of the Act. ...’

Section 143(7) of the FW Act provides:

‘(7) A modern award must not be expressed to cover classes of employees:

- (a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under laws of the Commonwealth or the States); or
- (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Note: For example, in some industries, managerial employees have traditionally not been covered by awards.’

An examination of pre-reform awards and NAPSAs in the retail industry would need to be undertaken to determine whether Senior Managers in the industry were historically award covered. If they were not, the coverage clause in the Retail Award might be read down so that it did not apply to Senior Managers.

While Senior Managers may not be covered by the Retail Award, employees that are covered could in theory be paid well above the award rate, although as noted below, retail industry workers tend to be lower paid. Part 5 considers how an exemption rates clause might be drafted to apply to high income employees who are covered by the Retail Award.

¹⁸ For example, clause 4.2 of the *Miscellaneous Award 2020* provides: ‘The award does not cover managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists’.

Possible exemption rates clauses in the Retail Award

Setting the exemption rate

If an exemption rates clause were to be inserted into the Retail Award, an appropriate exemption rate would need to be identified. The exemption rate could be expressed as a specified amount (e.g. an annual salary in excess of \$100,000), or as a percentage of the rate of pay specified in the award (e.g. in excess of 20% above the prescribed rate).

Staff of the Commission have conducted an audit of modern awards and have identified exemption rates clauses in the following 6 modern awards:

- *Business Equipment Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Market and Social Research Award 2020*
- *Racing Industry Ground Maintenance Award 2020*
- *Registered and Licensed Clubs Award 2010*
- *Sugar Industry Award 2020*

In most of the relevant clauses, the exemption rate is expressed as a percentage above the minimum rate that would otherwise apply. The percentages range from 10 per cent for employees in the clerical stream of the Business Equipment Award to 50 per cent for club managers in the Registered and Licensed Clubs Award. The only rate that is not expressed as a percentage is the exemption rate for employees in the technical stream of the Business Equipment Award is \$63,076 (the highest rate in the minimum rates clause is \$53,389).

Each of the relevant clauses is set out at **Attachment A**.

Regardless of how it is expressed, the exemption rate would need to be set so that the exemption rates clause meets the modern awards objective. The minimum weekly rate for a Retail Employee Level 8 is currently \$995.50. Data from the Australian Bureau of Statistics for May 2018 indicates that:

- retail trade employees were more likely to be lower paid;
- approximately 17% of retail trade employees earned in excess of 20 per cent above the minimum weekly rate for a Retail Employee Level 8 (then \$933.80);
- 2.3 per cent earned above \$106,600 per year.¹⁹

A high exemption rate that very few award covered employees actually earn may not be relevant, and would not result in a significant decrease in regulatory burden for employers, noting also that the Retail Award already does not apply to employees earning above the high income threshold. A low exemption rate may not be fair, and may mean additional remuneration is not provided for employees working overtime, unsocial, irregular or unpredictable hours, weekends or public holidays, or shifts.

Excluded terms

An exemption rates clause could be drafted to operate by inclusion or exclusion, by providing that:

- the award will not apply to employees earning in excess of a specified amount/percentage of the minimum annual salary payable under the award, other than specified clauses;²⁰ or

¹⁹ ABS, *Microdata: Employee Earnings and Hours*, May 2018.

- the award will apply to employees earning in excess of a specified amount/percentage of the minimum annual salary payable under the award, save for specified clauses.²¹

The range of excluded terms cannot be so broad that in effect, the exemption rates clause provides that employees earning at or above the exemption rate cease to be award covered.

Of the exemption rates clauses that are in modern awards as set out above, commonly excluded terms are those dealing with:

- penalty rates;²²
- overtime;²³
- higher duties;²⁴
- ordinary hours of work and rostering;²⁵ and
- allowances e.g. uniform allowances,²⁶ vehicle allowances,²⁷ and living away from home allowances.²⁸

Awards commonly includes clauses dealing with penalty rates, overtime, ordinary hours of work and rostering arrangements, and allowances. By way of example, an exemption rates clause which excludes the application of commonly excluded clauses, including all allowances clauses, and which is drafted to operate by inclusion, is set out below. Evidence about common work patterns and allowances commonly received by employees earning more than the exemption rate might assist the Commission in determining which clause exclusions are necessary for the clause to meet the modern awards objective.

X Exemptions

X.1 The following provisions will not apply to employees paid at rates in excess of X% above the rates prescribed in clause 17 – Minimum rates for the appropriate classification prescribed by Schedule A – Classification Definitions:

(a) clause 15 – Ordinary hours of work and rostering arrangements

(b) clause 17.5 – Higher duties

(c) clause 19.2 – Allowances

(d) clause 21.2 – Payment of overtime

²⁰ For example, the draft exemption clause in *Clerks* at [3].

²¹ For example, clause 17.3 of the *Clubs Award*.

²² For example: *Clubs Award*, clauses 17.3(a)(i) and 17.3(a)(ii); *Hospitality Industry (General) Award 2020 (Hospitality Award)*, clause 25.2(f).

²³ For example: *Clubs Award*, clauses 17.3(a)(i) and 17.3(a)(ii); *Hospitality Award*, clause 25.2(e); *Business Equipment Award 2020 (BE Award)* clauses 16.1(h) and 16.3(d).

²⁴ For example: *Clubs Award*, clauses 17.3(a)(i) and 17.3(a)(ii); *BE Award*, clauses 16.1(c) and 16.3(c).

²⁵ For example: *Clubs Award*, clauses 17.3(a)(i) and 17.3(a)(ii); *Hospitality Award*, clause 25.2(b); *BE Award*, clauses 16.1(a) and 16.3(a).

²⁶ For example: *Clubs Award*, clause 17.3(a)(ii).

²⁷ For example: *Clubs Award*, clause 17.3(a)(ii).

²⁸ For example: *BE Award*, clause 16.3(e).

(e) clause 21.3 – Time off instead of payment for overtime

(f) clause 22 – Penalty rates.

Attachment A—Relevant exemption clause

Award title	Exemption clause
<p><i>Business Equipment Award 2020</i></p>	<p>16.1 Exemptions for employees in the technical stream The following award provisions will not apply to an employee in the technical stream in receipt of a salary of \$63,076 or higher:</p> <ul style="list-style-type: none"> (a) clause 12—Ordinary hours of work and rostering; (b) clause 13—Meal breaks; (c) clause 14.4—Higher duties; (d) clause 17.2(c)—First aid allowance; (e) clause 17.2(d)—Representation allowance; (f) clause 17.3(d)—Area allowance; (g) clause 17.3(e)—Living away from home allowance; (h) clause 20—Overtime; (i) clause 21—Special provisions for dayworkers; (j) clause 22—Special provisions for shiftworkers; and (k) clause 28.4—Payment for time worked on a public holiday. <p>16.2 Exemptions for employees in the clerical stream Except as to:</p> <ul style="list-style-type: none"> (a) clause 1—Title and commencement; (b) clause 3—The National Employment Standards and this award; (c) I clause 4—Coverage; (d) clause 5—Individual flexibility arrangements; (e) I clause 23—Annual leave; (f) clause 24—Personal/carer’s leave and compassionate leave; (g) clause 26—Community service leave; (h) clause 28—Public holidays; (i) clause 30—Consultation about changes to rosters or hours of work; (j) clause 31—Dispute resolution; and (k) clause 32—Termination of employment (not including clause 32.2). <p>the terms of this award will not apply to any employee in the clerical stream in receipt of a salary which exceeds the appropriate rate prescribed in clause 14.2 in which they are employed by 10%.</p> <p>16.3 Exemptions for employees in the commercial travellers stream The following award provisions will not apply to employees in the commercial travellers stream:</p> <ul style="list-style-type: none"> (a) clause 12—Ordinary hours of work and rostering; (b) clause 13—Meal breaks; (c) clause 14.4—Higher duties; (d) clause 20—Overtime; (e) clause 21—Special provisions for dayworkers; (f) clause 22—Special provisions for shiftworkers; (g) clause 23—Annual leave; (h) clause 24—Personal/carer’s leave and compassionate leave; (i) clause 26—Community service leave; and

Award title	Exemption clause
<p><i>Hospitality Industry (General) Award 2020</i></p>	<p>(j) clause 28—Public holidays.</p> <p>25. Salaries absorption (Managerial Staff (Hotels))</p> <p>25.1 Clause 25 applies to all employees within the Managerial Staff (Hotels) classification level as defined by Schedule A—Classification Structure and Definitions who are paid a salary that is at least 125% of the minimum annual salary in clause 18.2—Managerial staff (Hotels).</p> <p>25.2 An employee is not entitled to the benefit of the terms and conditions within the following clauses:</p> <ul style="list-style-type: none"> (a) Clause 10—Part-time employees; (b) Clause 15—Ordinary hours of work and rostering arrangements (c) Clause 16—Breaks; (d) Clause 26—Allowances; (e) Clause 28—Overtime; (f) Clause 29—Penalty rates; (g) Clause 30.3—Payment for annual leave loading; (h) Clause 35.3—Additional public holiday arrangements for full-time employees; (i) Clause 37—Deductions for provision of employee accommodation and meals. <p>25.3 An employee must be rostered to have a minimum of 8 days off duty during each 4 week cycle of work.</p> <p>25.4 An employee who is required to work on a public holiday is entitled to paid time off of equal length to the time worked on the public holiday.</p> <p>25.5 The paid time off mentioned in clause 25.4 must be taken within 28 days after the entitlement is accrued.</p> <p>25.6 Despite the requirement to take time off within 28 days of accruing it in clause 25.5 an employee and an employer may agree to extend the period for taking the accrued time off to within 6 months of its accrual subject to the following:</p> <ul style="list-style-type: none"> (a) The agreement is recorded in writing and retained as an employee record; (b) The accrued time off is taken at a time or times within the period of 6 months agreed by the employee and the employer; (c) If the accrued time off is not taken within the period of 6 months, the employer must pay the employee for the accrued time off in the next pay period following those 6 months; and (d) If, on the termination of the employee’s employment, accrued time off for working on a public holiday has not been taken, the employer must pay the employee for the accrued time off. <p>25.7 Any calculation required to be made under this award to determine hourly amounts payable to an employee must be made by reference to the weekly equivalent of the annual salary of the employee. The weekly equivalent is determined by dividing the annual salary by 52 and rounding the result to the nearest \$0.10.</p> <p>25.8 Subject to compliance with any reimbursement policy approved by the employer, the employer must reimburse an employee for any money reasonably spent by the employee for and on behalf of the employer.</p>
<p><i>Market and Social Research Award 2020</i></p>	<p>14.4 Payment on a total wage basis</p> <p>An employer may pay a full-time or part-time employee on a total wage basis instead of the wages and penalty payments set out in clauses 14—Minimum rates, 16—Allowances, 18—Overtime, 19—</p>

Award title	Exemption clause
	Penalty rates and 20.2, provided that the total wage is not less than the total minimum wages set out in clause 14.1, plus 25%.
<i>Racing Industry Ground Maintenance Award 2020</i>	<p>11.4 A casual employee engaged on night cleaning duties must be paid, in addition to the casual loading of 25%, a shift allowance of 30% of the ordinary hourly rate for each hour work worked. The following provisions do not apply to casual employees on night cleaning duties:</p> <ul style="list-style-type: none"> • clause 13—Ordinary hours of work and rostering; • clause 19—Overtime; and • clause 20—Penalty rates.
<i>Registered and Licensed Clubs Award 2010</i>	<p>17.3 Non-application of particular provisions of this awards to employees within particular classifications receiving specified salaries</p> <p>(a) Managerial classifications—levels 7–13 inclusive in clause 17.2</p> <p>(i) Subject to the requirements of the NES, the provisions of clauses:</p> <ul style="list-style-type: none"> • 18.1(h)—Higher duties; • 18.3—Broken shifts; • 26—Ordinary hours of work and rostering (other than sub clause 26.8—Special provisions for accrued rostered days off—club managers); • 27—Recall to duty—club managers; • 28—Overtime; and • 29—Penalty rates (other than penalty rate provisions relating to public holidays (see clause 29)); <p>will not apply to a club manager receiving a salary of 20% in excess of the minimum annual salary rates for the appropriate classification prescribed in Schedule C—Classifications Definitions.</p> <p>(ii) Subject to the requirements of the NES, the provisions of clauses:</p> <ul style="list-style-type: none"> • 18.1(a)—Meal allowance; • 18.1(c)—Uniforms—club managers; • 18.1(d)—Vehicle allowance; • 18.1(h)—Higher duties; • 18.3—Broken shifts; • 26—Ordinary hours of work and rostering; • 27—Recall to duty—club managers; • 28—Overtime; • 29—Penalty rates; and • 34.4—Additional arrangements for full-time employees <p>will not apply to club managers receiving a salary in excess of 50% above the minimum annual salary rate for the appropriate classification prescribed in Schedule C—Classification Definitions.</p> <p>(iii) To avoid doubt, where a club manager is not paid in accordance with either paragraph (i) or (ii) above, the club manager will be entitled to the benefits of all relevant</p>

Award title	Exemption clause
	<p>provisions of this Award.</p> <p>(b) Maintenance and horticultural levels 1–4</p> <p>An employee classified at Maintenance and horticultural levels 1–4 (as defined) may freely agree in writing to payment of a salary of not less than 33% in excess of the minimum weekly rate of pay for level 4 (Maintenance and horticultural level 3—tradesperson) instead of the following provisions of the award—clause 18.1(a)—Meal allowance; clause 24—Meal breaks; clause 26—Ordinary hours of work and rostering; clause 28—Overtime; and clause 34—Public holidays, provided that no employee on such a salary arrangement will be required to work in excess of 38 ordinary hours per week, averaged over a 52 week period. An agreement made pursuant to this subclause may be terminated by either party after 12 months by giving 28 days’ written notice or such lesser period as is agreed.</p>
<p><i>Sugar Industry Award 2020</i></p>	<p>17.2 Single contract hourly rate</p> <p>(a) Field sector employees may be engaged in writing on a single contract hourly rate basis and will be paid 115% of the minimum hourly rate and must be paid that rate for each and every hour of work, instead of the provisions of clauses 15.2(c), 29.1 and 29.2 irrespective of the number of hours worked per day or per pay period or the days of the pay period on which work is performed.</p> <p>(b) The minimum hourly rate, for the purposes of clause 17, is the minimum hourly rate for the employee’s classification in clause 17.1.</p> <p>(c) Employees employed on this basis will be entitled to all other entitlements contained in this award.</p>