<insert business name>

## ENTERPRISE AGREEMENT

## (National System Employers)

**Dated** the <insert day> day of <insert month> <insert year>

**BETWEEN:**

<insert employer name> [the employer] and all the employees *[or a group of employees so long as the group is identified]* engaged in the <insert sector> farming industry *[this can be mixed farm/cropping/ etc. if relevant]* at <insert location of property/ies>.

### 1 **Commencement and Duration of the Agreement**

1.1 This agreement will take effect 7 days after the [Fair Work Commission](https://www.fwc.gov.au/) approves the agreement.**(1)**

1.2 This agreement will have a nominal expiry date of four years from the date of approval.**(1.1)**

### 2 No Further Claims (2)

Employees covered by this agreement will not pursue any further claims relevant to the relationship of employer and employee whether dealt with in the agreement or not during the life of this agreement.

### 3 Award

In this agreement, references to the award are to the <insert award title>. **(3)**

### 4 Probation (4)

4.1 New employees will be on probation for the first three months of engagement.

4.2 The purpose of the probation period is to enable the employer and the employee to assess their suitability and capability to work together.

4.3 During the probation period the employer or the employee has the right to terminate the employment with a week’s notice for any reason and without any repercussions.

4.4 At the end of the probation period the employee will automatically become a permanent employee.

### 5 Categories of Employee (5)

Employees will be engaged as either:

* full-time permanent employees, or
* part-time permanent employees, or
* casual employees, or
* regular casual employees

and the employer will record this fact in the employment records of each employee.

### 6 Hours of Work (6)

6.1 Employees will work an average of 38 hours per week on any day of the week. The hours of work will be averaged over a 12-month period. **(6.1)**

6.2 The employer may at any time require or request an employee to work reasonable additional hours. **(6.2)**

### 7 Rest Breaks

Rest breaks will be as negotiated between the employee and the employer depending upon operational requirements.

### 8 Personal/Carer’s Leave and Compassionate Leave (7)

“Immediate family” is defined as follows:

a) A spouse, child, parent, grandparent, grandchild or sibling of the employee;

b) A child, parent grandparent, grandchild or sibling of a spouse of the employee.

8.1 Full-time permanent employees are entitled to 10 days paid personal/carer’s leave per year for personal injury or illness. Personal/carer’s leave accrues progressively throughout the year and from year to year.

8.2 Part-time permanent employees are entitled to paid personal/carer’s leave calculated on a pro-rata basis according to the number of hours worked each week.

8.3 Casual employees and regular casual employees are not entitled to paid personal/carer’s leave as the casual loading compensates them for personal/carer’s leave

8.4 Full-time and part-time employees can use their personal/carer’s leave as paid carer’s leave for the purpose of caring for a member of the employee’s immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

8.5 All employees (including casual employees) are entitled to two days unpaid personal/carer’s leave per occasion for the purpose of caring for a member of their immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

8.6 Full-time and part-time employees are entitled to two days paid compassionate leave per occasion for the purpose of attending the funeral of a member of the employee’s immediate family or a member of the employee’s household or to spend time with a member of the employee’s immediate family or a member of the employee’s household who has a personal injury or illness which poses a serious threat to his or her life. Casual employees are entitled to the same amount of unpaid compassionate leave

8.7 The employer may require a medical certificate for any period of personal/carer’s leave or compassionate leave.

8.8 Full-time and part-time employees may with the agreement of the employer, cash out any accrued personal/carer’s leave provided personal/carer’s leave of at least 15 days is kept as personal/carer’s leave. Cashed out personal/carer’s leave will be paid at the rate of pay that the employee would have received had they taken the personal/carer’s leave as leave. **(7.1)**

### 9 Annual Leave (8)

9.1 Full-time permanent employees are entitled to four weeks (152 hours) paid annual leave for each year of service with the employer. Annual leave accrues throughout the year and from year to year.

9.2 Part-time permanent employees are entitled to annual leave calculated on a pro-rata basis according to the number of hours worked each week.

9.3 Casual employees and regular casual employees are not entitled to annual leave as the casual loading compensates them for annual leave.

9.4 Employees may with the agreement of the employer, cash out accrued annual leave provided no less than 4 weeks’ annual leave is retained to be taken as annual leave.

9.5 Cashed out annual leave will be paid at the rate of pay that the employee would have received had they taken the annual leave as leave. **(8.1)**

9.6 Annual leave loading is not payable as the hourly rate of pay is calculated to compensate employees for this entitlement. **(8.2)**

### 10 Rates of Pay (9)

10.1 The following classifications and rates of pay are applicable to employees covered by this agreement: **(9.1)**

|  |  |
| --- | --- |
| **Category of Employee** | **Hourly Rate - Minimum Wage** |
| <insert category> | $ <insert remuneration> |
| <insert category> | $<insert remuneration> |
| <insert category> | $ <insert remuneration> |
| <insert category> | $<insert remuneration> |
| <insert category> | $<insert remuneration> |
| <insert category> | $<insert remuneration> |
| <insert category> | $<insert remuneration> |

10.2 Wages will be reviewed annually. Any increase will take into account the employee’s work performance and the financial performance of the employer.

10.3 The minimum wage paid under this agreement will at all times not be less than the minimum rate of pay for the relevant classification under the <insert award title> as set by the [Fair Work Commission](https://www.fwc.gov.au/) and adjusted from time to time.**(9.2)**

10.4 Casual employees will at all times receive remuneration which includes a casual loading of not less than the 25% casual loading contained in the <insert award title>. **(9.2)**

10.5 Employees will be paid weekly/fortnightly *[delete where not applicable.]* in arrears into a bank account nominated by each employee/by cheque/by cash. *[delete where not applicable.]*

### 11 Public Holidays (10)

Full time employees are entitled to a day’s paid leave for all public holidays. Part time employees and casual employees rostered to work on public holidays are entitled to a day’s paid leave for all public holidays. If the employee works on a public holiday he/she is entitled to be paid at <insert rate as per award> *[delete if not applicable or compensating employees as part of the BOOT test]*

### 12 Community Service Leave (11)

Permanent employees are entitled to 10 days paid jury service leave. All employees are entitled to unpaid community service leave to attend jury service or a voluntary emergency management activity as provided for in the NES. Employees must provide evidence of the need for the leave if required to do so by the employer.

### 13 Long Service Leave (12)

Employees are entitled to long service leave as provided for in the National Employment Standards or state legislation.

**14 Parental Leave (13)**

Employees are entitled to Parental Leave in the form of Maternity, Paternity or Adoption Leave as provided for in the National Employment Standards

**15 Flexible Working Arrangements (14)**

Employees (other than short term casual employees) who have the care of a child under school age or a disabled child under 18 years of age are entitled to make a written request for flexible working arrangements once they have completed 12 months continuous service.

16 Superannuation

The employer will from the date of this agreement make superannuation contributions to a fund nominated by the employee. The superannuation contribution will be not less than that required under the Superannuation Guarantee (Administration) Act.

17 Termination of Employment (15)

17.1 The following minimum notice periods apply to termination of employment for all eligible employees:

|  | **Employee’s period of continuous service with the employer at the end of the day the notice is given** | **Period** |
| --- | --- | --- |
| 1 | Not more than 1 year | 1 week |
| 2 | More than 1 year but not more than 3 years | 2 weeks |
| 3 | More than 3 years but not more than 5 years | 3 weeks |
| 4 | More than 5 years | 4 weeks |

17.2 If the employee is over 45 years of age and has worked at least two years of continuous service with the employer the period of notice will be increased by one week.

17.3 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked.

17.4 The period of notice to be given by the employer will not apply in the case of dismissal for serious misconduct that justifies instant dismissal, including conduct which causes imminent and serious risk to the health or safety of a person or the reputation, viability or profitability of the employer’s business; attendance at work under the influence of alcohol or drugs; theft, fraud or assault in the course of employment or refusal to carry out a lawful and reasonable instruction.

17.5 Casual employees and seasonal employees are not entitled to notice of termination.

17.6 Employees are required to give the employer the same amount of notice as a minimum. This does not include the extra week based on age of the employee. If the employee does not give the employer notice the employer can deduct the amount the employee would have been paid for the notice period from the employee’s termination payments. **(15.1)**

18 Redundancy (16)

In the event of redundancy, the NES and the Fair Work Act will apply.

19 Dispute Resolution (17)

19.1 If a dispute relates to:

(a) a matter arising under the agreement; or

(b) the National Employment Standards;

this term sets out procedures to settle the dispute.

19.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

19.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

19.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission

19.5 The [Fair Work Commission](https://www.fwc.gov.au/) may deal with the dispute in two stages:

(a) the [Fair Work Commission](https://www.fwc.gov.au/) will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

(b) if [Fair Work Commission](https://www.fwc.gov.au/) is unable to resolve the dispute at the first stage, the [Fair Work Commission](https://www.fwc.gov.au/) may then:

(i) arbitrate the dispute; and

(ii) make a determination that is binding on the parties.

19.6 While the parties are trying to resolve the dispute using the procedures in this term:

(a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

(b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

(i) the work is not safe; or

(ii) applicable occupational health and safety legislation would not permit the work to be performed; or

(iii) the work is not appropriate for the employee to perform; or

(iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

19.7 The parties to the dispute agree to be bound by a decision made by the [Fair Work Commission](https://www.fwc.gov.au/) in accordance with this term.

20 Model Flexibility Term (18)

20.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

(a) the agreement deals with 1 or more of the following matters:

(i) arrangements about when work is performed;

(ii) overtime rates;

(iii) penalty rates;

(iv) allowances;

(v) leave loading; and

(b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and

(c) the arrangement is genuinely agreed to by the employer and employee.

20.2 The employer must ensure that the terms of the individual flexibility arrangement:

(a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and

(b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and

(c) result in the employee being better off overall than the employee would be if no arrangement was made.

20.3 The employer must ensure that the individual flexibility arrangement:

(a) is in writing; and

(b) includes the name of the employer and employee; and

(c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

(d) includes details of:

(i) the terms of the enterprise agreement that will be varied by the arrangement; and

(ii) how the arrangement will vary the effect of the terms; and

(iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and

(e) states the day on which the arrangement commences.

20.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

20.5 The employer or employee may terminate the individual flexibility arrangement:

(a) by giving no more than 28 days written notice to the other party to the arrangement; or

(b) if the employer and employee agree in writing — at any time.

**21 Model Consultation Term (19)**

21.1 This term applies if the employer:

(a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

(b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### Major change

21.2 For a major change referred to in paragraph (21.1)(a):

(a) the employer must notify the relevant employees of the decision to introduce the major change; and

(b) subclauses (21.3) to (21.9) apply.

21.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

21.4 If:

(a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

(b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

21.5 As soon as practicable after making its decision, the employer must:

(a) discuss with the relevant employees:

(i) the introduction of the change; and

(ii) the effect the change is likely to have on the employees; and

(iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

(b) for the purposes of the discussion—provide, in writing, to the relevant employees:

(i) all relevant information about the change including the nature of the change proposed; and

(ii) information about the expected effects of the change on the employees; and

(iii) any other matters likely to affect the employees.

21.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

21.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

21.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (21.2)(a) and subclauses (21.3) and (21.5) are taken not to apply.

21.9 In this term, a major change is ***likely to have a significant effect on employees*** if it results in:

(a) the termination of the employment of employees; or

(b) major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or

(c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

(d) the alteration of hours of work; or

(e) the need to retrain employees; or

(f) the need to relocate employees to another workplace; or

(g) the restructuring of jobs.

### Change to regular roster or ordinary hours of work

21.10 For a change referred to in paragraph (1)(b):

(a) the employer must notify the relevant employees of the proposed change; and

(b) subclauses (11) to (15) apply.

21.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.

21.12 If:

(a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

(b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

21.13 As soon as practicable after proposing to introduce the change, the employer must:

(a) discuss with the relevant employees the introduction of the change; and

(b) for the purposes of the discussion—provide to the relevant employees:

(i) all relevant information about the change, including the nature of the change; and

(ii) information about what the employer reasonably believes will be the effects of the change on the employees; and

(iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and

(c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

21.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

21.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

21.16 In this term:

***relevant employees*** means the employees who may be affected by a change referred to in subclause (21.1).

### SIGNATURES (20)

### FOR THE EMPLOYER

Date

Signed

Name in full (printed)

Position

Employer address

### FOR THE EMPLOYEES – EMPLOYEE REPRESENTATIVE (20.1)

Signed Date

Name in full (printed)

Address

### Authority to sign agreement (20.1)

The employees have elected <insert name of representative> to be their representative and she/he is authorised to sign this agreement on behalf of all employees covered by this agreement at <insert business name>.

### OR

*[repeat for each employee]*

### EMPLOYEE

Signed on his/her own behalf

Name in full (printed)

Address

### NOTES TO THE ENTERPRISE AGREEMENT

### GENERAL – Interpretation

### National system employer

This template is for national system employers.

All employers in New South Wales, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory and the Northern Territory are called national system employers.

Businesses in Western Australia run by a company, including trusts with a company trustee, which employ workers as part of their business, are called national system employers. They can use this template.

Employers in Western Australia who run their business as a sole trader, partnership or trust which does not have a company trustee are not national system employers. They can make workplace agreements under state laws.

### NOTE (1) COMMENCEMENT OF AGREEMENT

This is the only way that the commencement date can be expressed. The commencement date of the agreement depends on when the [Fair Work Commission](https://www.fwc.gov.au/) approves the agreement.

### NOTE (1.1) DURATION OF AGREEMENT

The duration of the agreement can be any length of time up to four years from the date of approval of the enterprise agreement by the [Fair Work Commission](https://www.fwc.gov.au/)

### NOTE (2) NO FURTHER CLAIMS

This clause prevents employees from attempting to add conditions of employment while the agreement is in force without your agreement. However, the agreement can be varied at any time by agreement with your employees.

### NOTE (3) AWARD TITLE

Enter the relevant award title as follows:

* Pastoral Award 2010
* Horticulture Award 2010
* Cotton Ginning Award 2010

For more information about the awards that applies to your employees check out the [Awards section on the People in Agriculture website](http://www.peopleinag.com.au/general/employers/how-much-do-i-pay-someone/awards-agreements-and-entitlements/).

### NOTE (4) PROBATION PERIODS

All new employees should be placed on a period of probation to enable both the employee and the employer to determine whether the employee is capable of doing the job and is suitable for the enterprise. Probation periods must be determined before work begins and cannot be extended. The length of the probation period must be reasonable in the circumstances and three months is generally accepted to be reasonable. If employers feel they need a longer period this must be justifiable based upon the special requirements of the job and the responsibilities which the employee will be required to undertake.

The federal industrial laws provide that employees of small businesses engaged for less than 12 months and employees of other businesses engaged for less than 6 months cannot bring an action for unfair dismissal.

### NOTE (5) EMPLOYMENT CATEGORY

Full-time employees

Full-time employees are engaged on a permanent basis and the following entitlements usually apply: paid annual leave and personal leave (sick leave, carer’s leave, compassionate leave/bereavement leave) calculated on the basis of the employee’s base rate of pay at the time of taking leave; parental leave and notice of termination. In addition, awards may specify payment for public holidays.

Casual employees

Casual employees are employees who do not have regular or systematic hours of work or an expectation of continuing work. A typical casual employee is employed on a daily basis when the need arises. Casual employees are usually paid a loading to compensate them for lack of entitlements such as annual leave, personal leave and the lack of continuity of work.

Unless this is a term of a workplace agreement, employers who engage employees on a casual basis when their employment can be more accurately described as part-time, run the risk that the employee will bring an action for non-payment of entitlements such as annual leave and personal leave. Such claims have succeeded in the past despite the fact that a casual loading had been paid to the employee. Employees have up to six years to make a claim for non-payment of entitlements.

Unless there is a workplace agreement in place employees who work similar hours each week which are known in advance should be hired as part-time employees and paid the various entitlements calculated on a pro-rata basis.

The Pastoral, Horticulture, and Cotton Ginning Awards 2010 all provide a casual loading of 25%.

Unfair termination laws have for some time recognised the concept of regular casual employees.

Employers should be aware that the federal industrial laws allow all casual employees engaged on a regular and systematic basis with a reasonable expectation of continuing employment to bring an action for unfair dismissal. They are also entitled to parental leave.

Notice periods do not usually apply to casual employees and this continues under the federal industrial laws which exempt employers of both short-term casuals and casuals engaged on a regular and systematic basis from the requirement to give notice.

Part-time employees

Part-time employees are engaged for fixed hours every week and receive the same entitlements as full-time employees but on a pro-rata basis calculated on the proportion of the full-time rate. Some awards contain terms which set a minimum number of hours which can be worked by part-time employees.

### NOTE (6) HOURS OF WORK

The term ‘ordinary hours’ means hours of work where overtime is not payable.

For many years, awards have regulated the maximum hours of work which can be worked by employees before penalty rates and loadings are payable. A workplace agreement allows employers and employees to put in place hours of work which are more flexible than the award and better suit the needs of the business.

The National Employment Standards (NES) lay down maximum hours of work which can be worked in a week.

Award terms about overtime and weekend work as well as payment for work on public holidays are also relevant because the [Fair Work Commission](https://www.fwc.gov.au/) considers these award terms when assessing the agreement to determine if it passes the Better Off Overall Test.

If you are a farmer and are considering making an enterprise agreement your workplace will be bound by the relevant modern award and you will need to consider these terms when preparing your enterprise agreement.

See **Note (9)** for details about the Better Off Overall Test.

For more information on the Award Hours of work for each award refer to the relevant section of the award on the Fair Work Commission website:

[Pastoral Award 2010](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000035/default.htm)

[Horticulture Award 2010](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000028/default.htm)

[Cotton Ginning Award 2010](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000024/default.htm)

### The National Employment Standards

The National Employment Standards (NES) apply to all federal enterprise agreements.

Ordinary hours

Under the NES, ordinary hours of work for full-time award free employees are 38 hours per week but these hours can be averaged over a 26-week period by written agreement between the employer and the employee.

Overtime

The NES does not use the word ‘overtime’. Under the NES, employees may be asked to work reasonable additional hours. The enterprise agreement can only express hours of work, for award and award free employees, in excess of the maximum 38 hours per week as *reasonable additional hours*.

What is reasonable for additional hours is decided by weighing up a variety of factors including risks to occupational health and safety; operational requirements of the business; personal circumstances and family commitments; whether the employee has had notice of the likelihood of the need for additional hours; and whether the employee has previously indicated a willingness or capacity to work additional hours. Generally this will be a process of balancing the needs of the enterprise with the employee’s needs.

The NES does not specify any extra payment for overtime. However, see **note (9)** on the Better Off Overall Test.

### NOTE (6.1) ORDINARY HOURS OF WORK

This clause expresses hours of work to comply with the requirements under the federal industrial laws.

### NOTE (6.2) OVERTIME

This clause expresses overtime to comply with the requirements under the federal industrial laws. It is the only way overtime can be expressed in an enterprise agreement.

### NOTE (7) PERSONAL/carer’s leave and compassionate LEAVE

The National Employment Standards (NES) apply to all federal enterprise agreements as a minimum and the template enterprise agreement contains the NES terms.

Whilst the NES is a minimum, employers may wish to consider offering extra personal/carer’s leave, for example for family purposes, as part of the bargaining process.

### NOTE (7.1) CASHING OUT OF PERSONAL/CARER’S LEAVE

The NES allows for cashing out of personal/carer’s leave if it is a term of an enterprise agreement or award. Some employers use this as a tool to deal with absenteeism. This clause is not compulsory and can be omitted. But remember, cashing out of personal leave is ONLY permitted if it is a term of an enterprise agreement. Each agreement to cash out personal/carer’s leave must be in writing. Employees must keep 15 days of personal/carer’s leave to be taken as leave.

For a template agreement to cash out personal/carer’s adjust the Agreement to cash out Annual Leave document from [the “Annual Leave” section](http://www.peopleinag.com.au/general/employers/how-do-i-manage-my-employees/leave-and-public-holidays#Annual-leave) of the People in Agriculture website.

NOTE (8) ANNUAL LEAVE

The National Employment Standards (NES) apply to all federal enterprise agreements as a minimum and the template enterprise agreement contains the NES terms. Whilst the NES is a minimum, employers may wish to consider offering extra annual leave as part of the bargaining process.

The National Employment Standard (NES) for annual leave is four weeks per year which accrues progressively throughout the year and from year to year.

Part time employees accrue annual leave on a pro rata basis according to the hours they work.

Annual leave must be paid at a rate which is no less than the base rate of pay for ordinary hours the employee is paid at the time of taking the leave.

Casual employees are not entitled to annual leave under the NES as the casual loading contains a component which compensates them for not receiving this entitlement.

NOTE (8.1) CASHING OUT OF ANNUAL LEAVE

As of 29 July 2016 employers and employees covered by the Pastoral Award 2010 the Horticulture Award 2010 and the Cotton Ginning Award 2010 can agree in writing to cash out annual leave. The maximum amount of annual leave that can be cashed out in any 12-month period is 2 weeks and employees must keep a minimum of 4 week’s accrued leave. The Award provides a template written agreement in a Schedule at the end of the award. This agreement must be kept with the employee’s employment records.

Award employees can also cash out accrued annual leave if this is part of a formal workplace agreement and the employer agrees. Each agreement to cash out annual leave must be in writing. Employees must keep 4 weeks of annual leave to be taken as leave.

Non-award employees can cash out annual leave by agreement with the employer.

For a template agreement to cash out Annual Leave refer to the “Resources and References section” on [the “Annual Leave” section](http://www.peopleinag.com.au/general/employers/how-do-i-manage-my-employees/leave-and-public-holidays#Annual-leave) of the People in Agriculture website.

NOTE 8.2 Annual Leave Loading

Annual leave loading is an award entitlement. There is no annual leave loading under the NES but see below for award terms.

The Pastoral Award 2010 / The Horticulture Award 2010 / The Cotton Ginning Award 2010

These awards all also require payment of a 17.5% annual leave loading for all annual leave which is taken as leave. Annual leave loading must also be paid when annual leave is paid out on termination.

Employers who do not wish to pay the annual leave loading will have to compensate the employee in some other way in order to meet the Better Off Overall Test.

NOTE (9) Rates of Pay and The BETTER OFF OVERALL TEST

An enterprise agreement allows employers to adapt award terms and conditions to be more flexible and better suit the needs of the workplace. If employers are paying strictly according to the award then there is no reason to enter into an enterprise agreement. The advantages of enterprise agreements are that they cover multiple employees and automatically apply to all new employees.

The [Fair Work Commission](https://www.fwc.gov.au/) compares all enterprise agreements to the relevant award to ensure they meet the Better Off Overall Test. If the enterprise agreement contains terms which are different to the award, such as a flat rate of pay instead of overtime and penalty rates, The [Fair Work Commission](https://www.fwc.gov.au/) will compare the amounts paid to the employees with what they would have received under the award for these entitlements. The [Fair Work Commission](https://www.fwc.gov.au/) will then make an assessment as to whether the agreement results in the employee being better off overall.

Other benefits can be included in the enterprise agreement to compensate employees for loss of other entitlements but these must be able to be converted to a monetary amount or cash equivalent.

Remember, there are fringe benefits tax implications for many benefits and advice should be sought from an accountant if these benefits are to be included in the package.

If accommodation is given a value this may mean that state Residential Tenancies laws apply. See below.

As part of conducting the Better Off Overall Test The [Fair Work Commission](https://www.fwc.gov.au/)uses the Employer Declaration Form (Form 17) that must be lodged at the time the enterprise agreement is lodged.

Employers must enter details of hours of work and pay for each category of employee on this form. It is important that employers specify exactly the hours that will be worked by each employee in each category

so that the [Fair Work Commission](https://www.fwc.gov.au/) is able to assess whether the agreement meets the Better Off Overall Test. If the declaration does not contain adequate information or if the [Fair Work Commission](https://www.fwc.gov.au/) does not believe the Better Off Overall Test has been met the enterprise agreement will be sent back for amendment.

Some employers have concerns that if they put in place an enterprise agreement there may be a loss of confidentiality about wages and conditions. This issue is quite simple to address.

If the agreement records the minimum amount of income which will be paid so that the agreement will pass the Better Off Overall Test there is nothing to stop the employer paying more than that amount to different employees. In this case the employer can simply put in place a short common law employment contract which provides for the higher wages and increased benefits paid to the individual employee which can sit alongside the agreement.

The following is a step-by-step process you could use to work out if the agreement passes the Better Off Overall test.

Better Off Overall TEST CALCULATOR

**CALCULATOR APPLIES TO PASTORAL AWARD ONLY**

1. Calculate the minimum amount due under the award

* Assess the total hours needed to be worked over a given period (say 4 weeks if using the Pastoral Award which provides for 152 hours over a 4 week period before any overtime is payable).
* Work out the total rate of pay for this period of time taking into account any overtime and penalty rates which will be payable.
* Multiply by 12 months if hours of work will be regular over that time. If hours will not be regular break the calculation down into the various periods when hours will be regular.
* Add in the value to the employee of double time pay for any public holidays which are usually worked.
* Add in the value of annual leave loadings if you wish to remove these.
* If you are introducing a category of permanent casual employees as a way of flattening out the rate of pay you will need to add the value of annual leave at 4 weeks per year, and personal leave of 10 days per year.
* This will give you the minimum annual amount you will need to pay employees in each classification to meet the Better Off Overall Test.

2. Consider other entitlements which can be used to offset the minimum and give these entitlements a realistic monetary value.

For example:

* Incentive based payments and bonuses;
* Accommodation;
* Fuel and use of vehicle;
* Milk and meat;
* Extra superannuation;
* Extra annual leave/leave for family purposes.

3. Add or subtract these amounts from the minimum rate you calculated in number 1 above.

4. Divide the total amount by the total number of hours to be worked over the year.

5. The final amount is the hourly rate you will enter into the agreement for that class of employee. The federal industrial laws require all pay rates to be expressed as an hourly rate.

### Residential Tenancies Laws

Residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider lease of the farming property. These laws lay down notice periods for ending the tenancy, whether bonds can be required and how much can be charged as well as rules regarding repairs and inspection and agreements with specific terms. Breaches of these laws attract fines.

New South Wales, South Australia, Tasmania and Western Australia

In New South Wales, South Australia, Tasmania and Western Australia, residential tenancy laws do not usually apply where the tenancy is not ‘for value’ or ‘consideration’ which means that no rent is paid for the accommodation. However, farmers should be aware that making accommodation a part of a formal workplace agreement where the accommodation is used as a part of the Better Off Overall Test may have the effect of making the tenancy ‘for value’ and residential tenancy laws may then apply.

Victoria

In Victoria, residential tenancy laws do not apply where the tenancy is a part of the employment contract. Employers should agree with employees on a fair period of notice which will apply in the event that the employment is terminated. The notice period should be long enough to enable the employee to find alternative accommodation but also recognise the needs of the employer if the property is needed for a new employee. As a minimum, three to four weeks is considered to be fair in these circumstances.

Queensland

The Queensland residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider commercial lease of the farming property. Whilst residential tenancy laws can protect both the tenant and the landlord, the notice periods for ending the tenancy (four weeks) can be problematic when accommodation has been part of a remuneration package and an employee leaves as a result of their employment being terminated either with notice but particularly when dismissed summarily for misconduct. In these circumstances the only avenue available to the employer is to make an application to the tenancy tribunal to have the lease terminated earlier on the ground of hardship.

NOTE (9.1) RATES OF PAY

Pay rates should be expressed as hourly rates.

The amounts entered here will depend upon calculations based on the Better Off Overall Test. (See calculator on the previous page)

Rates of pay will depend on the level or classification as set out in the relevant modern award. Click on the individual awards to download their Pay Rate Summary Guides:

### [Horticulture Award 2010 [MA000028] Pay Guide - Fair Work ...](https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwi5wOjg4OnOAhVI1RoKHb3eCEsQFggiMAE&url=https%3A%2F%2Fwww.fairwork.gov.au%2FArticleDocuments%2F872%2Fhorticulture-award-ma000028-pay-guide.docx.aspx&usg=AFQjCNFR-DF3Pk6NTGb7eHgQJus3rXxeUw&sig2=BqilaZB_4BZjZ82RTdwVPg&bvm=bv.131286987,d.d2s)

### [Cotton Ginning Award 2010 [MA000024] Pay ... - Fair Work Ombudsman](https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjV3IL14OnOAhULiRoKHTnmD1QQFggcMAA&url=https%3A%2F%2Fwww.fairwork.gov.au%2FArticleDocuments%2F872%2Fcotton-ginning-award-ma000024-pay-guide.docx.aspx&usg=AFQjCNGzVrMphBFEqEahRKp2h2crmhG5tA&sig2=GvIef6mpI6CKWNu0N2hp2g&bvm=bv.131286987,d.d2s)

### [Pastoral Award 2010 [MA000035] Pay Guide - Fair Work Ombudsman](https://www.fairwork.gov.au/ArticleDocuments/872/pastoral-award-ma000035-pay-guide.pdf.aspx)

Pay rates

As pay rates vary no pay rates are included in this document.

Go to the following websites for more information:

Pastoral Award 2010

<http://www.fwa.gov.au/documents/modern_awards/pdf/MA000035.pdf>

Horticulture Award 2010

<http://awardviewer.fwo.gov.au/award/show/MA000028#TOPOFPAGE>

Cotton Ginning Award 2010

<https://www.fwc.gov.au/documents/documents/modern_awards/award/MA000024/default.htm>

National minimum wage

http://www.fwa.gov.au/index.cfm?pagename=minlatest

NOTE (9.2)

These clauses allow for increases during the term of the agreement and ensure that the agreement does not fall below the national minimum wage.

NOTE (10) PUBLIC HOLIDAYS

The NES provides for employees to be absent from work on specified public holidays.

Payment is the employee’s base rate of pay for ordinary hours of work.

Full-time employees are entitled to a paid day off for public holidays. Part-time employees are entitled to be paid for the hours they would normally work on public holidays. If they do not normally work on the day of the public holiday they are not entitled to pay. Casuals are not entitled to pay for public holidays unless they are rostered for work on that day.The following days are public holidays for the NES:

* 1 January (New Year’s Day)
* 26 January (Australia Day)
* Good Friday
* Easter Monday
* 25 April (Anzac Day)
* Queen’s birthday holiday
* 25 December (Christmas Day)
* 26 December (Boxing Day)

If a State or Territory substitutes another day or declares an additional day, the employee is entitled to be absent on that day. If a day is substituted then this day becomes the public holiday for the purpose of working out entitlements and not the other day.

Payment for working on public holidays

Payment for working on public holidays is an award entitlement.

Different awards provide for different pay rates for public holidays. See the [“Leave and Public Holidays”](http://www.peopleinag.com.au/general/employers/how-do-i-manage-my-employees/leave-and-public-holidays/) section on the People in Agriculture website for more information. If employers wish to remove this public holiday entitlement they will need to compensate employees in order to meet the Better Off Overall Test.

Substitution of other days

The Pastoral Award 2010 and the Horticulture Award 2010 allow for employers and individual employees or employers and the majority of employees to agree to substitute an alternative day for the public holiday.

Award free employees can agree with employers to substitute public holidays.

Enterprise Agreements can also provide for substitution of public holidays.

Requests to work on public holidays

An employer may request an employee to work on a public holiday if the request is reasonable.

The request may be refused if it is unreasonable or the employee’s refusal is reasonable. The NES provides list of factors to be taken into account when determining the reasonableness of a request or refusal.

**NOTE 11 COMMUNITY SERVICE LEAVE**

The NES provides an entitlement to leave for all employees required to attend jury service and for those who engage in a voluntary emergency management activity.

Jury service leave

Employees (excluding casual employees) are entitled to be paid by their employer for a period of up to 10 days while they are absent from work during a period of jury service.

Payment for jury service leave is the employee’s base rate of pay for ordinary hours of work.

Employers can require the employee to obtain payments for jury service leave from the applicable State/Territory or Commonwealth body and these payments will reduce the amount payable to the employee.

*Notice requirements – jury service leave*

Employers can request evidence that the employee has taken steps to obtain any available payments and evidence of the payments from the State/Territory or Commonwealth body for the first 10 days of the jury service leave. If this is not provided the employer does not have to make the payment for jury service leave.

Voluntary emergency management activities

Employees are entitled to unpaid leave to engage in voluntary activities which involve dealing with a natural disaster or emergency if they are voluntary members of the emergency management body and the body has requested them to attend. Emergency management bodies include fire fighting bodies, civil defence and rescue.

*Notice requirements – community service leave*

Employees must give employers notice of the need for community service leave as soon as possible and advise the employer of the expected length of the absence. Employers can also require employees to give them reasonable evidence of the need for the leave.

NOTE (12) LONG SERVICE LEAVE

State and territory laws continue to apply.

See the [“Leave and Public Holidays”](http://www.peopleinag.com.au/general/employers/how-do-i-manage-my-employees/leave-and-public-holidays/) section on the People in Agriculture website for more information.

NOTE (13) PARENTAL LEAVE

The federal parental leave laws contained in the NES apply to all employers. Parental leave involves unpaid maternity leave, paternity leave and adoption leave.

Parents cannot take parental leave at the same time except for a period of up to eight weeks in total. This period of concurrent leave may be taken in separate periods but unless the employer agrees, each period must not be shorter than 2 weeks.

The concurrent leave must not start before the date of birth of the child or the day of placement of the child if the leave is adoption leave unless the employer agrees. The entitlement exists once an employee has worked for the employer for 12 months. It also applies to certain long-term casual employees.

The laws about parental leave are complex and there are specific requirements for notification. Employers should seek legal advice or advice from their local state farming organisation if an employee becomes eligible for parental leave. See the [“Leave and Public Holidays”](http://www.peopleinag.com.au/general/employers/how-do-i-manage-my-employees/leave-and-public-holidays/) section on the People in Agriculture website for more information.

NOTE (14) REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

The laws about requests for flexible working arrangements changed on 1 July 2013.

The NES give employees the right to request a change to working arrangements in the following circumstances:

* If the employee is a parent, or has the responsibility for the care, of a child who is of school age or younger:
* The employee is a carer (within the meaning of the Carer Recognition Act 2012);
* The employee has a disability;
* The employee is 55 or older;
* The employee is experiencing violence from a member of the employee’s family;
* The employee provides care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because the member is experiencing violence from the member’s family.

In addition, parents or those who have responsibility for the care of a child and who are returning from a period of parental leave or adoption leave may request to work part-time to assist the employee to care for the child.

Casual employees who work on a regular and systematic basis with a reasonable expectation of continuing work can also make a request for flexible working arrangements.

The request must be in writing and provide details of the change sought and reasons for the change.

Employers must respond to the request in writing within 21 days and give reasons if the request is refused. A request may only be refused on reasonable business grounds which should be specified in the written response.

Reasonable Business Grounds are defined as follows:

Fair Work Act provides the following list of matters which may amount to reasonable business grounds but there may be others:

* That the new working arrangements would be too costly for the employer;
* That there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
* That it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee;
* That the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
* That the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service;

NOTE (15) TERMINATION

It is very important to manage employee separation carefully whether the employee is leaving because of resignation, redundancy or dismissal. First, it minimises the risk of legal problems and secondly, it protects the reputation of both your business and you as an employer.

Employers should use fair procedures when terminating employees as replacing employees is expensive and claims for unfair or unlawful dismissal can be costly and time consuming to defend.

Termination of employment can lead to court action. Employers who are considering dismissing an employee should always obtain legal advice before doing so.

Notice – the NES

Notice Periods

The template agreement contains the NES for notice of termination,

Continuous service’ is the time an employee has spent working for an employer without a break and this needs to be calculated so that the notice period can be worked out.

Unauthorised absences from work do not break continuous service but are not counted when calculating how long the notice period should be.

Exclusions from notice requirement

The following employees do not have to be given notice:

* employees employed for a specified period of time, for a specified task, or seasonal employees;
* employees whose employment is terminated because of serious misconduct;
* casual employees;
* trainees (other than apprentices) and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement.

Dismissal without notice

The federal industrial laws allow for termination without notice in cases of serious misconduct. The template contains a clause providing for termination without notice in these circumstances.

**NOTE 15.1 Employee notice**

Employees can only be required to give notice if it is a term of an award or enterprise agreement. If employers want to enforce employee notice for award free employees this term should be included in the enterprise agreement.

NOTE (16) REDUNDANCY

This clause incorporates the NES terms about redundancy, which apply to businesses with 15 or more employees.

If employers wish to remove redundancy entitlements they will need to compensate employees in order to meet the Better Off Overall Test.

The laws about redundancy are complex and legal advice should be sought if the need for redundancies arises.

NOTE (17) DISPUTE RESOLUTION

All enterprise agreements must include a clause dealing with dispute resolution. This clause complies with the requirements of the federal industrial laws*.*

**NOTE (18) MODEL FLEXIBILITY TERM**

All enterprise agreements must include a flexibility term providing for employees and the employer to agree to flexible arrangements for work. The clause in the template is the model clause which is laid down in the federal industrial laws. If the agreement does not include this term the [Fair Work Commission](https://www.fwc.gov.au/) will make a note on the agreement when it approves it that the model clause is included

**NOTE (19) MODEL CONSULTATION TERM**

All enterprise agreements must include a consultation term which requires the employer to consult with the employees about major workplace changes which are likely to have a significant effect on employees.

The clause also requires employers to consult with employees if they propose to make changes to regular rosters or regular hours of work.

The employer must notify the relevant employee(s) of the proposed changes and provide them with information about the proposed change and what the employer believes will be the effect upon them.

The employer must give the affected employee(s) an opportunity to give their views about the impact of the change on them including on their family or caring responsibilities. The employer must then give prompt and genuine consideration to the matters raised by the employees before implementing the changes.

The clause in the template is the model clause which is laid down in the federal industrial laws. If the agreement does not include this term the [Fair Work Commission](https://www.fwc.gov.au/) will make a note on the agreement when it approves it that the model clause is included.

NOTE (20) SIGNATURES

Enterprise agreements are ‘approved’ when a majority (51%) of those who cast a valid vote, have voted in favour of the agreement. The vote can be by ballot or by electronic means.

All of the employees or a representative(s) of the employees can sign enterprise agreements.

The signing page should also include the full name and address of each person signing the agreement.

NOTE (20.1) REPRESENTATION CLAUSE

If an employee representative(s) signs the enterprise agreement, the signing page of the agreement should explain how the representative has authority to sign on behalf of the employees.

The template has a signing clause which must be used if an employee representative is signing on behalf of the other employees.