

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Application No. APPL 5 OF 2020

SECTION 40B APPLICATION TO VARY THE
SHOP AND WAREHOUSE (WHOLESALE AND RETAIL ESTABLISHMENTS)
STATE AWARD 1977

NOTICE is given that the Commission, of its Own Motion, pursuant to section 40B of the *Industrial Relations Act 1979* (WA), intends to vary the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977* (**Shop & Warehouse Award**).

The proposed variations are published in the annexed document and are being made for the purpose of updating and modernising the Shop & Warehouse Award.

A copy of the application and the proposed variations may be inspected at my office by appointment at Level 2, 111 St Georges Terrace, Perth.

A hearing for the purpose of affording interested persons an opportunity to be heard in relation to the proposed variations will be held at the Commission, Level 18, 111 St Georges Terrace Perth on Wednesday, the 17th day of April 2024 at 10.00 am.

Any person who wishes to be heard in relation to the proposed variations should contact Commissioner Kucera's Chambers by email at Chambers-Kucera@wairc.wa.gov.au.

S.BASTIAN
REGISTRAR

15 March 2024

Shop and Warehouse (Wholesale and Retail Establishments) State Award - Summary of changes

Overview of clauses included in updated award

Clause 1 - Title

Clause 1 is the title. The title remains unchanged, except the year of the award has been removed (this is common practice when the Commission is updating an award under s 40B of the *Industrial Relations Act 1979* and helps to avoid confusion about whether an award is still currently operating).

Clause 2 - Arrangement

Clause 2 is the arrangement clause. As is common practice in updated awards, like clauses have been grouped together under functional headings in a standard arrangements clause. The clause headings have also been hyperlinked for ease of navigation.

Clause 3 - Scope

Clause 3 of the award deals with scope. The scope of the award is unchanged, as this issue is being dealt with separately pursuant to CICS 9 of 2022.

Clause 4 - Area

Clause 4 of the award deals with area. The area clause is unchanged, as this issue is being dealt with separately pursuant to CICS 9 of 2022.

Clause 5 - Definitions

Clause 5 deals with definitions, and replaces Clause 6 of the existing award, as well as various definitions found in other parts of the existing award. A variety of definitions have been updated in the process, while several new definitions have been added.

Definitions that have been updated include:

- The definitions of “General Retail Shop”, “Small Retail Shop” and “Special Retail Shop” have all been updated to align with the current definitions of those establishments in the *Retail Trades Hours Act 1987*.
- The definition of “Casual employee” (replacing the definition of “Casual Worker” currently in Clause 7 of the award) has been updated, to simply mean a person employed by the hour. *Note: provisions regarding notice of termination and working hours for casual employees are dealt with elsewhere in the award.*

A variety of new definitions have also been added to the award, to help define key terms and aid with the award's interpretation.

New definitions include:

- Commission
- Non-working day
- Ordinary time earnings
- Rostered day off
- Member of the employee's family or household
- Standard hourly rate
- Standard weekly rate
- Standard meal allowance
- Standard motor vehicle allowance

Some definitions have been deleted, as they are either obsolete or are not used in the updated award. Definitions that have been deleted include:

- "Section 42 Shop" (as this type of establishment no longer exists and references to it have been removed from the award).
- The definitions of "Shop Assistant", "Storeman", "Storeman Operator Grade I", "Storeman Operator Grade II", "Storeman working singly", "Despatch hand", "Packer", "Collector", "Wholesale Salesman" "Window Dresser / Visual Merchandiser" and "Ticket Writer" have been deleted, as these positions have been incorporated into a new classification structure in Appendix A to the award that streamlines the existing classifications in the award.

Minor miscellaneous updates have been made to some other definitions to ensure they remain contemporary (without changing the meaning) e.g. replacing "worker" with "employee", removing gendered language etc.

Clause 6 – Contract of employment and termination

Clause 6 replaces clause 20 of the existing award, as well as other provisions in the award that deal with the contract of employment including Clause 37 – Stand down and Clause 31(2) (dealing with employee duties).

The main changes to this clause concern the termination of employment provisions, which have been updated to ensure consistency with the relevant parts of the *Fair Work Act 2009* that are applicable to all employers and employees throughout Australia (including State system employers and employees).

Relevant provisions from the 2005 Termination, Change and Redundancy General Order (**TCR General Order**) issued by the Western Australian Industrial Relations Commission have also been included in the updated clause.

Clause 7 – Introduction of Change

Clause 7 deals with the introduction of change, and replaces Clause 44 in the existing award.

There is little change between the old and new versions of the clause, although minor miscellaneous updates have been made to the wording to ensure consistency with the TCR General Order.

Clause 8 – Redundancy

Clause 8 deals with redundancy and replaces Clause 51 in the existing award. There is minimal change between the old and new versions of the clause, except minor miscellaneous updates have been made to the wording to ensure consistency with the TCR General Order.

The new clause also applies to all employers - not just those who engage 15 or more employees at the time of any redundancies. This reflects the fact that many provisions in the TCR General Order apply to all employers and employees, regardless of business size.

The scale of severance payments (which does only apply to businesses employing more than 15 employees) has been extended to be consistent with the TCR General Order, as it is currently less favourable for some employees at present.

Provisions regarding Superannuation Benefits have been deleted from the clause, as they are obsolete (employees being made redundant are not currently entitled to receive superannuation benefits for a redundancy).

References to the “transmission of business” for continuity of service have been amended to the “transfer of business”¹, consistent with amendments that were recently made to the *Long Service Leave Act 1958* (which now refers to the “Transfer of business”). References to the Long Service Leave General Order have also been updated to refer to the *Long Service Leave Act*, reflecting the fact the Long Service Leave General Order was repealed in 2006.

Clause 9 – Full time employment

Clause 9 of the updated award is a new clause that defines full time employment as an average of 38 ordinary hours per week. The inclusion of such a provision complements similar clauses dealing with part time and casual employment, but will not have any practical impact on how the award operates.

Clause 10 – Part time employment

Clause 10 deals with part time employment and replaces Clause 8 of the existing award.

The main change that has been made to the part time clause is the inclusion of a provision that allows a part time employee to request to work more than 64 hours per fortnight, which the employer may agree to. This is intended to facilitate requests for flexible working arrangements, where an employee may wish to work slightly less than full time hours for a variety of personal reasons. As the request can only be made by the employee, the provision builds in a safeguard against it being misused.

¹ The term “Transfer of Business” is broader than the term “Transmission of Business”.

Some provisions regarding rates of pay, meal breaks, rest breaks and rostering for part time employees have been removed from the clause, as these provisions are now dealt with elsewhere in the award.

Clause 11 – Casual employment

Clause 11 deals with casual employment and replaces Clause 7 in the existing award. Several substantive changes have been made to the clause, including:

- The definition of “casual worker” has been moved to Clause 5 (Definitions) and updated.
- The casual loading has been standardised at 25% for all casual engagements (whether they be a full day or part day), consistent with the standard loading applying in the national industrial relations system and most of the country.
- The method for applying the casual loading to penalty rates has been included in the clause for clarity. Consistent with the method found in most national modern awards, penalty rates are calculated separately on the unloaded hourly rate (excluding the casual loading), and the casual loading is then added to, but not compounded on, that amount to determine the total amount payable.
- The exception to the 3 hour minimum engagement for school students engaged solely to collect trolleys in or about a shopping complex has been amended so that the 2 hour minimum now only applies between 4.00pm and 6.00pm Monday to Friday, rather than 4.00pm to 6.00pm Monday to Saturday (on the basis that school students do not have school on Saturdays).
- The formula for calculating hourly rates of pay for casual employees has been removed (as casual rates of pay are dealt with elsewhere in the award).
- Restrictions on how long an employee can be employed as a casual have been deleted and instead a casual conversion clause has been included (modelled largely on the conversion clause found in the Transport Workers (General) Award).

Clause 12 - Ordinary hours of work and rostering arrangements

Clause 12 deals with ordinary hours of work and rostering and replaces Clause 9 of the existing award.

The main changes that have been made to this clause are outlined below.

Span of ordinary hours

The span of ordinary hours for **General Retail Shops** has been updated. The span of ordinary hours has been extended for Monday to Friday to finish at 9.00pm on all evenings, reflecting current retail trading hours legislation. The span of ordinary hours for Saturdays is unchanged, while for Sundays, the proposed span of ordinary hours has been taken from the General Retail Industry Award 2020 (reflecting the fact that General Retail Shops can now trade on Sundays in Perth).

The span of ordinary hours for **Small Retail Shops** is unchanged. *Note: When the existing span of hours was inserted in the award Small Retail Shops could trade between 6.00am and 11.30pm, however Small Retail Shops can now trade 24 hours per day. The proposed span of ordinary hours for Small Retail Shops will therefore not cover all hours that such shops can be open, however this the case with the current award.*

The span of ordinary hours for **Special Retail Shops** and **Special Retail Shops (Pharmacies)** have been combined as current retail trading laws allow all Special Retail Shops to trade between 6.00am and 11.30pm, 7 days a week.

Reference to **Section 42 Shops** has been removed, as this type of establishment no longer operates.

The span of ordinary hours for **Other Establishments** is unchanged.

Work performed on Sunday

The award currently provides for Sunday work to be voluntary, and requires an employee to consent to working on Sundays each and every time. While it is relatively straightforward to continue making Sunday work voluntary under the award, it is difficult to require an employee to separately consent to being rostered on each and every Sunday due to rostering logistics – e.g. if a business that trades on Sunday operates a 4-week roster cycle it is impossible to roster employees to work on Sundays throughout the cycle as the employee could change their mind on any week.

The proposed update makes Sunday work voluntary, but removes the requirement an employee must consent to working each and every Sunday. Instead, a provision has been added enabling an employee to withdraw their consent to being rostered on Sundays by giving 4 weeks' notice.

Maximum daily hours

The maximum daily hours that can be worked have been standardised for all types of establishments, capping ordinary hours at a maximum of 9.5 per day, except for one day per week where ordinary hours may be rostered for up to 11.5 hours.

Allowing employers to roster an employee for a longer shift once per week overcomes the existing problem of the award referring to “the day of late night trading”. It is also consistent with the practice allowed in the General Retail Industry Award 2020.

Rostering provisions for full time employees

The core tenets of the rostering provisions for full time employees are largely unchanged and maintain the existing requirement that an employee cannot be rostered to work ordinary hours on more than 10 days per fortnight, with a safeguard for all employees (not just small businesses) that ordinary hours cannot be rostered on more than 6 consecutive days.

The prescriptive provisions in Part III of clause 9 have been removed, as they are out-of-date and align with retail trading legislation as it existed in the early 1990s.

Clause 13 – Shift work

Clause 13 deals with shift work and replaces Clauses 7A (Nightfill Duty) and 34 (Shift Work) of the existing award, bringing all shift work provisions within the one clause.

The updated shift work provisions are largely based on the provisions currently applying in Clause 34. However, in order to cater for all workplaces, the updated clause applies to wholesale and retail establishments, and also provides for work to be performed on weekends (shift workers would receive the same weekend penalty rates applicable to non-shift workers, with any higher weekend rate replacing the weekday shift penalty).

Clause 7A has been deleted, and most of its provisions have not been replicated in the updated clause. The existing Nightfill penalty rates are flat dollar amounts (expressed as allowances) and haven't been adjusted for a number of years. Clause 7A is also difficult to understand, and it is not clear how parts of it are intended to operate in practice.

The definitions of what constitutes “shift work” has been updated for clarity, and definitions of “day shift”, “afternoon shift” and “night shift” have been modified to cover all 24 hours of the day.

Ordinary hours of work are to be rostered in one of the methods prescribed in Clause 12.4 (which applies to non-shift workers).

A variety of other miscellaneous references have been included in the clause, to clarify various provisions.

Clause 14 – Display of rosters

Clause 14 deals with the display of rosters and replaces Clause 10 of the existing award.

Apart from some minor updating of terminology, the only changes of substance are:

- A roster would need to cover the period Monday to Sunday (rather than Monday to Saturday) to ensure rostering arrangements for businesses that operate on Sundays are accounted for. *Note: this does not require a business to open on Sunday.*
- A proper definition of a “rostered day off” has been included in the award, and defined to mean an accrued day off (e.g. for an employee working 19 days per 4 week cycle). In the current award the term “rostered day off” is used interchangeably to refer to an accrued day off and a non-working day, which can create confusion as some provisions are clearly aimed at accrued days off and not other non-working days.

Clause 15 – Meal breaks and rest periods

Clause 15 deals with meal breaks and rest periods and replaces Clause 11 in the existing award.

The core tenets of the existing clause have been retained, however as hours and rosters can be worked in a variety of flexible ways nowadays and this clause will also apply to shift workers, some minor modifications have been made to enable meal and rest periods to be taken during the times the employee is working (e.g. removing references to “lunch”, and references to tea breaks being taken in the “morning” and “afternoon”).

For ease of reference, a table has been included that lists the ordinary hours in the shift and the corresponding meal break and rest break entitlements.

Clause 16 – Overtime

Clause 16 deals with overtime and replaces Clause 13 in the existing award.

The key provisions of this clause are largely unchanged, although some of the wording has been updated for clarity. The main changes of note are:

- The clause explicitly clarifies that casual employees are entitled to overtime (reflecting the status quo) and outlines how overtime is calculated for casual employees (also reflecting the status quo).
- The calculation of overtime has been standardised for all types of establishments - i.e. each day stands alone.
- Minimum engagement provisions regarding overtime being worked on a rostered day off have been standardised for all workers (there is a 4 hour minimum engagement period in this situation).
- A paragraph has been included clarifying the circumstances an employee may refuse to work overtime where it would involve unreasonable hours, consistent with s 9B of the *Minimum Conditions of Employment Act 1993 (MCE Act)*.

Clause 17 – Public holidays

Clause 17 deals with public holidays and replaces Clause 14 and Clause 20(3) of the existing award.

The key provisions of this clause are largely unchanged, although some of the wording has been updated for clarity. The main changes of note are:

- Easter Sunday has been included as a public holiday in the award, reflecting the provisions of s 3(2) and 3(3) of the *Public and Bank Holidays Act 1972*. To achieve consistency with that Act, it is necessary to stipulate Easter Sunday is not substituted to another day because it falls on a weekend.
- The provision regarding special public holidays has been amended, so that all special public holidays are recognised under the award (regardless of whether they apply throughout the State or to a particular district or locality). This ensures the award is compliant with the General Order concerning special public holidays (CICS 3 / 2023).

- Provisions enabling an employee to forfeit wages where the employee has been absent without leave on the day before or after a public holiday have been removed as they are inconsistent with, and less favourable than, the MCE Act.

Clause 18 – Annual leave

Clause 18 deals with annual leave and replaces Clause 15 of the existing award.

The provisions of this clause have been closely modelled on the MCE Act, to ensure none of the provisions are less favourable than the statutory entitlements currently applying. The key amendments made to the existing clause are:

- Annual leave accrues on all forms of paid leave.
- Annual leave is to be taken at a time/s agreed between the employer and employee, which may be in multiple periods (reflecting the MCE Act).
- A provision has been included outlining the rights of employees to take annual leave at a time of their choosing, where the employer and employee have not agreed when outstanding leave is to be taken (this reflects the MCE Act).
- A provision regarding when payment for annual leave is to be made has been included (this also reflects the MCE Act).

Clause 19 – Personal leave

Clause 19 deals with personal leave and replaces Clause 27 of the existing award. References to “sick leave” have been replaced with “personal leave”, reflecting the provisions of the MCE Act.

The updated clause has been closely modelled on the MCE Act, to ensure none of the provisions are less favourable than the statutory entitlements currently applying.

The key amendments made to the existing clause are:

- Carer’s leave entitlements have been included in the award (including for casual employees), reflecting the MCE Act.
- The cap of 10 weeks’ sick leave in any year of service has been removed (as it is less favourable than the MCE Act, which contains no such cap).
- Provisions regarding the crediting of sick leave on the transmission of business have been updated so that personal leave credits are carried over on the “transfer of business”, consistent with the terminology that now applies in the LSL Act (this reflects the fact the old “transmission of business provisions” are no longer in use, and the long service leave provisions that used to apply to State awards were repealed in 2006).

Clause 20 – Long service leave

Clause 20 deals with long service leave and replaces Clause 33 of the existing award.

There is essentially no change to this clause, except the reference to “the long service provisions” has been updated to the “*Long Service Leave Act 1958*”, reflecting the repeal of the long service leave provisions in 2006. *Note: there is no change to the actual entitlement as a reference to the long service leave provisions is now taken to be a reference to the LSL Act.*

Clause 21 – Bereavement leave

Clause 21 deals with bereavement leave and replaces Clause 38 of the existing award.

The clause has been updated to reflect those provisions of the MCE Act that are currently more favourable than what is contained in the award, including

- updating the range of family or household members an employee may take bereavement leave for; and
- clarifying that the 2 days of bereavement leave need not be consecutive.

Clause 22 – Parental leave

Clause 22 deals with parental leave and replaces Schedule 1 of the existing award.

The provisions of this clause have been simplified to refer to parental leave being provided in accordance with the *Fair Work Act 2009* and the *Minimum Conditions of Employment Act 1993*. *Note: State system employers and employees are subject to the provisions of Division 5 of Part 2-2 of the Fair Work Act, as well as any more favourable provisions currently contained in the MCE Act.*

The existing provisions of Schedule 1 are significantly out of date, and are less favourable than the provisions of the *Fair Work Act* and the MCE Act in many aspects.

Clause 23 – Trade union training leave

Clause 23 deals with trade union training leave and replaces Clause 49 of the existing award.

The provisions of this clause are essentially unchanged, however references to courses needing to be approved under the Commonwealth *Trade Union Training Authority Act* (which was repealed in 1996) and qualifying for the purposes of the *Training Guarantee Act* (which was also repealed in 1996) have been removed. The update clause simply refers to “union training courses”.

Clause 24 – Wages

Clause 24 deals with award wage rates and replaces Clause 28 of the existing award.

The main change to this clause is the introduction of a broad based classification schedule, whereby a range of positions that were previously all listed separately but subject to the same base rate of pay have been grouped together in levels.

There is no change to the base weekly rate of pay applying to any of the positions, however grouping them together in functional classifications helps to streamline the operation of the award.

The wages clause has been simplified so it only expresses base rates of pay (in weekly and hourly terms). Any penalty rates in the existing Wages clause have been moved to new Clause 26 (Penalty rates), while relevant allowances have been moved to new Clause 31 (Allowances).

Base weekly rates of pay (for work performed between Monday and Friday) are unchanged in the new wages clause, as are the junior percentages payable under the award and the additional amounts payable for employees in charge of a shop, store, warehouse or other employees.

Clause 25 – Minimum adult award wage

Clause 25 is the Minimum adult award wages clause and replaces Clause 1B in the existing award.

No substantive changes have been made to the clause.

Clause 26 – Penalty rates

Clause 26 deals with penalty rates for non-shift workers, and replaces parts of Clause 7 (regarding casual rates for Saturdays), Clause 8 (regarding part time rates for Saturdays), Part IV of Clause 9 (regarding rates of pay for Sundays), Clause 28 (regarding rates of pay for Saturdays for full time workers, and rates of pay for weekday evenings and Saturday evenings in Small Retail Shops and Pharmacies), Clause 29 (regarding rates of pay for Easter Saturday) and Clause 48 (regarding rates of pay for “the day of late night trading” in General Retail Shops and Special Retail Shops).

There are currently a number of different penalty rates applicable to various employee groups under the award, depending on the type of shop or establishment an employee is working in, the day of the week, the time/s the employee is working, whether the employee finishes before or after 1pm on a Saturday (in the case of full time and part time employees) and whether the employee is working a full day or part day (in the case of casual employees).

The updated clause standardises the penalty rates applicable to all non-shift working employees, regardless of the type of establishment. It also standardises penalty rates for work performed on Saturdays (removing the distinction between work performed before 1pm and after 1pm) and on Sundays (removing the distinction between penalty rates for casual employees working a full day or a part day).

Due to the complexity of the existing penalty rate provisions, it is not possible to model the impact the draft changes would have on every employee group. While most employees would receive overall wages that would be at least equal to, if not greater than, the existing award, to

ensure that no employee is disadvantaged by the comprehensive update to the award, a no-reduction provision has been included as an appendix at the end of the award, clarifying that an employee cannot receive less pay than they were prior to the updated award being issued.

Clause 27 – Payment of wages

Clause 27 deals with the payment of wages and replaces Clause 25 of the existing award.

The provisions of this clause are largely unchanged, however, the option of payment by cheque has been removed, in line with contemporary practices. The reference to disputes being referred to a board of reference for determination has also been replaced with a reference to the dispute resolution clause.

Clause 28 – higher duties

Clause 28 deals with higher duties and replaces Clause 18 of the existing award. No substantive changes have been made to the clause.

Clause 29 – Supported wages employees

Clause 29 deals with supported wages employees and replaces Clause 24 of the existing award.

While there are no substantive changes, a variety of minor miscellaneous amendments have been made to the wording of the clause to make it consistent with the template provisions applying in the national industrial relations system (including for employees working under national modern awards and for award/agreement free employees under the National Minimum Wage Order). A similar exercise was undertaken when the Metal Trades (General) Award was updated under s 40B of the *Industrial Relations Act 1979* in 2022.

The Supported Wage System is intended to operate in a uniform manner throughout Australia with regard to employees with a disability, and the updates to this clause will ensure it remains contemporary and reflects the current provisions applying in other jurisdictions.

Clause 30 - traineeships

Clause 30 deals with traineeships and replaces Clause 47 of the existing award.

The traineeship clause in the existing award is considerably out of date, and reflects traineeship schemes and legislation that are now defunct. It also contains a number of obsolete references, and the minimum training wages are now well below the national standard.

A further issue with the existing clause is it classifies all traineeships in the wholesale and retail industries as Skill Level B, despite the fact some traineeships in the industry are now classified as Level A by the Department of Training and Workforce Development.

To achieve consistency with the national training wage system, the new clause directly incorporates the minimum pay and conditions applying to trainees in the national industrial relations system. This will ensure that trainees working under the award are paid the appropriate national wage rate for the skill level that corresponds to the relevant traineeship.

Clause 31 - Allowances

Clause 31 brings all allowance provisions together in the one clause. The following outlines the key changes made to each allowance.

Meal allowance

Clause 31.1 deals with meal allowances and replaces Clause 12 of the existing award.

The amounts payable for meal allowances have not been adjusted for a number of years, and to ensure they are kept up to date, the award directly incorporates the standard meal allowances that are currently payable under the General Retail Industry Award 2020. These amounts are regularly adjusted by the Fair Work Commission, and referring to them directly will ensure the meal allowances in the Shop and Warehouse Award are self-updating.

For consistency with the General Retail Industry Award, an option has also been included for the employer to supply the employee with a meal, in lieu of paying a meal allowance.

Storeperson allowance

Clause 31.2 is the storeperson allowance and replaces subclause (1) of Part III of Clause 28 of the existing award. The existing storeperson allowances haven't been updated for a number of years, and in order to ensure they are kept up-to-date the dollar amounts have been replaced with a self-updating formula, using the methodology found in national modern awards.

The formula has been devised by comparing the dollar amount of the allowances when they were last adjusted in 2012 with the base minimum hourly rate of pay for a Shop Assistant (referred to as the "standard hourly rate") at the time, and converting this to a percentage. The resulting allowance therefore equates to an amount that is consistent with what it would have been had the allowance been adjusted each year since 2012, and as it contains a self-updating formula, it will remain current at all times.

Bicycle allowance

Clause 31.3 deals with the bicycle allowance and replaces subclause (3) of Part III of Clause 28 of the existing award. The bicycle allowance hasn't been updated for a number of years, and in order to ensure it is kept up-to-date the dollar amount has been replaced with a self-updating formula, using the methodology found in national modern awards.

The formula has been devised by comparing the dollar amount of the allowance when it was last adjusted in 2012 with the base minimum weekly rate of pay for a Shop Assistant (referred to as the "standard weekly rate") at the time, and converting this to a percentage. The resulting allowance therefore equates to an amount that is consistent with what it would have been had the allowance been adjusted each year since 2012, and as it contains a self-updating formula, it will remain current at all times.

Cold chamber allowance

Clause 31.4 deals with the Cold chamber allowance, and replaces subclause (4) of Part III of Clause 28 of the existing award. As it is not clear what the allowance amounts are linked to or how they are traditionally adjusted, no change to the allowances have been made, including

how they are expressed. The cold chamber allowances are currently much higher than the equivalent “cold work allowances” in Clause 19.9 of the General Retail Industry Award 2020.

Motor vehicle allowance

Clause 31.5 deals with motor vehicle allowance and replaces Clause 32 of the existing award. The amounts payable for motor vehicle allowance have not been adjusted for a number of years, and to ensure they are kept up to date, the award directly incorporates the standard motor vehicle allowance that is currently payable under the General Retail Industry Award 2020. This amount is regularly adjusted by the Fair Work Commission, and referring to it directly will ensure the motor vehicle allowance in the Shop and Warehouse Award is self-updating.

Location allowance

Clause 31.6 deals with location allowances and replaces Clause 39 of the existing award. No substantive changes have been made to the clause.

First aid allowance

Clause 31.7 deals with the first aid allowance and replaces Clause 46 in the existing award. The existing allowance hasn't been updated for a number of years, so in order to ensure it is kept up-to-date the dollar amount has been replaced with a self-updating formula, using the methodology found in national modern awards.

The formula has been devised by comparing the dollar amount of the allowance when it was last adjusted in 2012 with the base minimum weekly rate of pay for a Shop Assistant (referred to as the “standard weekly rate”) at the time, and converting this to a percentage. The resulting allowance therefore equates to an amount that is consistent with what it would have been had the allowance been adjusted each year since 2012, and as it contains a self-updating formula, it will remain current at all times.

References to the name of the first aid qualifications have also been updated.

Country work and travelling time

Clause 31.8 deals with country work and travelling time and replaces Clause 25 of the existing award. The core tenets of the clause have been retained, requiring employers to pay all reasonable travelling costs, including for accommodation and meals. However, some of the references have been modernised, and specific references to travelling by coastal boat have been removed.

Automotive spare parts and accessories salespersons

Clause 31.9 deals with the allowance payable to automotive spare parts or accessories salespersons and replaces subclause (7) of Part II of Clause 28 of the existing award.

The existing allowance hasn't been updated for a number of years, and in order to ensure it is kept up-to-date the dollar amount has been replaced with a self-updating formula, using the methodology found in national modern awards.

The formula has been devised by comparing the dollar amount of the allowance when it was last adjusted in 2012 with the base minimum weekly rate of pay for a Shop Assistant (referred to as the "standard weekly rate") at the time, and converting this to a percentage. The resulting allowance therefore equates to an amount that is consistent with what it would have been had the allowance been adjusted each year since 2012, and as it contains a self-updating formula, it will remain current at all times.

Clause 32 - Uniforms

Clause 32 deals with uniforms and replaces Clause 22 of the existing award.

No substantive changes have been made to the clause, although references to disputes being referred to a board of reference have been removed (reflecting the fact the award now has a contemporary dispute resolution clause for such matters).

Clause 33 – Union notice board

Clause 33 deals with union notices and replaces Clause 43 of the existing award.
No substantive changes have been made to the clause.

Clause 34 – Dispute resolution procedure

Clause 34 deals with the resolution of disputes and replaces the Appendix in the existing award titled "Resolution of Disputes Requirement".

No substantive changes have been made to the clause, although some of the historic references to the dates various parts of the clause were first inserted into the award have been removed.

Clause 35 – Employment records and pay slips

Clause 35 deals with employment records and pay slips and replaces Clause 21 of the existing award.

The existing clause is currently out-of-date and does not reflect the statutory record keeping and pay slip requirements now contained in Division 2F of the *Industrial Relations Act 1979*.

To ensure consistency with the *Industrial Relations Act* the clause has been streamlined, referring directly to the relevant provisions in that Act.

Clause 36 – Right of entry

Clause 36 deals with right of entry and replaces Clause 30 of the existing award.

Clause 36 is considerably out of date, and its provisions are less favourable than the statutory right of entry provisions currently provided for in the *Industrial Relations Act*. To ensure consistency with the *Industrial Relations Act* the clause has been streamlined, referring directly to the relevant provisions in that Act.

Clause 37 – Named parties

Clause 37 deals with the named parties to the award and replaces Clause C and Clause D of the existing award.

There are no changes to the parties to the award.

Schedule A – Classifications

Schedule A deals with classifications and replaces a range of definitions currently contained in Clause 6 of the existing award. Schedule A reflects a new classification schedule, whereby a range of positions that were previously all listed separately but subject to the same base rate of pay have been grouped together in levels.

Level 1 groups together all of the positions that were previously paid the lowest base weekly rate of pay (Monday to Friday), including Shop Assistants, Sales Persons, Wholesale Sales Persons, Demonstrators, Canvassers, Collectors, Storepersons, Packers, Despatch Hands, Reserve Stock Hands and Ticket Writers.

Level 2 is the new classification for a Window Dresser / Visual Merchandiser.

Level 3 is the new classification for a Storeperson Operator Grade I

Level 4 is the new classification for a Storeperson Operator Grade II

There is no change to the base weekly rate of pay applying to any of the above positions, however grouping them together in functional classifications helps to streamline the operation of the award.

Schedule B – Summary of hourly rates of pay

Given the widespread usage of this award and the many different pay points it entails, a dedicated series of pay scales have been developed. The pay scales list many of the key hourly rates of pay that are applicable to employees working under the award, and operate in a similar manner to the pay scales that are now included as a schedule to most national modern awards.

The benefit of including pay scales is it reduces the chance of error occurring when parties are interpreting the award and calculating wage rates, as well as assisting with overall compliance.

Schedule C – No reduction

Schedule C is new provision that has been inserted into the award to protect employees from receiving a reduction in pay as a result of the award being updated.

While most employees would receive overall wages that would be at least equal to, if not greater than, the existing award following the updates, given the complexity of the existing award and the many different loadings and allowances that are currently spread across multiple clauses, a no-reduction provision has been included as a safeguard mechanism, to ensure that an employee cannot receive less pay than they were prior to the updated award being issued.

The no reduction clause is largely modelled on a similar provision that was included in the State hospitality awards, when these awards were comprehensively updated in 2001.

Clauses and schedules deleted

A variety of clauses and appendixes in the existing award have been deleted, as they are either obsolete or their provisions are dealt with elsewhere in the updated award.

Clauses that have been deleted are:

Clause 2A – No Extra Claims

This clause relates to the 1991 State Wage Principles which are no longer in place.

Clause 5 – Term

The term of the award expired on 15 August 1978, and this clause has been deleted as it no longer has any impact on how the award operates.

Clause 16 – Change rooms

This clause requires employers with more than 6 employees engaged at the same time under the award to provide workers with a room for their hat and clothing, and to consume meals. It was considered unnecessary to maintain such a specific provision in the updated award (particularly as nobody is actively enforcing it).

Clause 19 – Casual limitations

This clause provides that for employers in General Retail Shops and Special Retail Shops employing 13 or more employees the total number of hours worked by a casual employee cannot exceed 33 1/3% of the total hours worked in that shop. The clause is fairly prescriptive at present, and contains inconsistencies between different types of retail establishments. It has been removed from the updated award as it was not actively being enforced and a new casual conversion provision has been included in the updated award to provide long term regular casual employees with an opportunity to request permanency. The new casual conversion clause provides a more effective mechanism to guard against the over-casualisation of the industry.

Clause 23 – Board of reference

This clause establishes a board of reference for the award and outlines how it is constituted. It is not a requirement that awards specifically refer to a board of reference, particularly if there is nothing contained in the award for a board of reference to determine.

There were only several minor issues that provided for a board of reference to determine matters in dispute - regarding the wearing and laundering of uniforms and a change to the method of payment respectively. Mention of a board of reference determining these issues has been removed from the award, as there is now a modern dispute resolution provision that can be used to deal with questions, difficulties or disputes.

As there is nothing remaining in the award that would be determined by a board of reference, the board of reference clause itself has been deleted.

Clause 26 – Junior workers' certificate

This clause requires junior employees to furnish the employer with a certificate showing their name, age and date of birth. This pre-dates current statutory record keeping requirements and has been removed from the updated award.

Clause 28A – Structural efficiency agreement – cold storage industry

This clause applies only to P. & O. Cold Stores and Clelands Cold Stores, and provides additional wages to employees of these two organisations. Both entities are Pty Ltd (and have since changed ownership and trading names) and are no longer subject to the award. The clause is therefore obsolete.

Clause 31 – Other provisions

This clause requires employees to carry or lift things in accordance with the Manual Handling Code of Practice issued by the Occupational Health, Safety and Welfare Commission of W.A. It also prescribes a variety of cleaning functions that form part of employee's duties, and limits what could not be required of employees in this regard.

Provisions regarding manual handling have been deleted, as many of the references (including the name of the Code) are out of date. Codes of Practice are updated regularly by what is now the Work Health and Safety Commission, and employers have a range of statutory obligations under the *Work Health and Safety Act 2020*.

Provisions regarding cleaning duties have been incorporated into Clause 6 (Contract of employment and termination).

Clause 36 – Posting of award

This clause requires the employer to allow a copy of the award, if supplied by the union, to be posted in a place which is easily accessible to the workers. The clause pre-dates the advent of modern electronic communications, and is now unnecessary given all awards are readily available on the internet.

Clause 41 – Liberty to apply

This clause reserves a liberty to any of the parties to apply to amend the award in respect of certain matters. A liberty to apply clause is only relevant when an award has not yet reached its nominal expiry, and as the term of this award expired 45 years ago, such a provision is no longer needed and serves no purpose.

45 - Superannuation

This clause deals with employer superannuation obligations. Most of its provisions are now out-of-date and inconsistent with Commonwealth superannuation legislation. The clause has been deleted as Commonwealth legislation provides a range of more beneficial entitlements.

Clause 50 - Enterprise level award change procedure

This clause was inserted into the award in 1992, and details how parties are to bargain for enterprise level conditions. It has not been included in the updated award, as it pre-dates the current provisions in the *Industrial Relations Act 1979* dealing with awards and industrial agreements, including procedural requirements for agreement making and good faith bargaining obligations.

The clause refers to both “enterprise agreements” and “workplace agreements” (which may create confusion given the introduction of, and subsequent real of, the *Workplace Agreements Act 1993*) and it is likely the clause is ultra vires as it purports to introduce a system of agreement making outside of the statutory parameters of the *Industrial Relations Act*.

Appendix – S.49B – Inspection of records requirements

This appendix was inserted into the award in the 1990s, and contains restrictions on right of entry that have since been repealed by the *Labour Relations Reform Act 2002*. The appendix is no longer current and has been deleted from the updated award.

Current right of entry provisions are dealt with in Clause 36 of the updated award.