

# A GUIDE TO EMPLOYING A FLEXIBLE WORKFORCE IN A PERSON-CENTRED ENVIRONMENT

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National Disability Services  
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**National Disability Services**

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**National Disability Services is the Australian peak body for non-government disability services.** Through the provision of information, representation and policy advice, NDS promotes and advances services which support people with all forms of disability to participate in all domains of life.

## **DISCLAIMER**

This guide gives general information, which is current at the date of publication.

It directs attention to, and comments on, aspects of industrial relations and employment law, but this is not intended as legal advice. Please seek specific advice before acting on information in this guide.

# CONTENTS

<b>SECTION 1: Overview</b>	<b>1</b>
How this guide can help	2
<b>SECTION 2: Types of employment contract</b>	<b>3</b>
Permanent Employment (full-time and part-time)	5
Full-time employment	5
Part-time employment	5
Examples of part-time contract clauses	9
Fixed-term employment	10
Example of a fixed-term contract clause	11
Casual employment	11
Example of a casual contract clause	11
Casual versus permanent	12
Converting casual to permanent employment	13
Summary of pros and cons of permanent/fixed-term vs casual employment	14
Independent contractors	20
Direct employment by people with disability	20
Brokered employment	21
Managing performance, and dealing with disputes and grievances within a brokered employment arrangement	22
Example of a brokered employment contract	25
Shared employment	25
Primary employer	26
Agency arrangement	26
Example of a shared employment contract	27
<b>SECTION 3: How to implement flexible employment options</b>	<b>28</b>
<b>SECTION 4: Considering enterprise agreements</b>	<b>34</b>
Multi-employer bargaining	35
Example of enterprise bargaining provisions	35
Averaging hours	35
Purchased leave	36
Individual flexibility agreements	38
<b>APPENDIX 1: Sample HR policies</b>	<b>39</b>
Flexitime policy	39
Jobshare policy (guidance)	41
Requests for flexible working arrangements policy	44
<b>APPENDIX 2: Hours of work – constraints for rostering</b>	<b>45</b>
<b>APPENDIX 3: Abbreviations</b>	<b>47</b>
<b>TERMS OF REFERENCE</b>	<b>48</b>



**One of the biggest challenges for providers will be engaging, supporting, retaining and continuously upskilling a flexible workforce that will meet the needs and wishes of people with disability.**

L – R Claire Heine, Donna Senescall, and Samantha Gimson

## SECTION 1: Overview

A flexible workforce is one that can effectively meet and respond (in terms of quantity, timing and type of work) to changes in customer requirements.

Recruiting and retaining a flexible workforce could mean the difference between success and failure for a not-for-profit disability organisation under the National Disability Insurance Scheme (NDIS).

The NDIS is premised on the great majority of funding being individualised, helping people with disability and their families to exercise choice and control. This will transform the system for all concerned.

Service providers will need to respond to increased levels of unpredictability in demand for services and hours of work—and for the first time, they will be forced to directly compete with other organisations, both for clients and employees.

One of the biggest challenges for providers will be engaging, supporting, retaining and continuously upskilling a flexible workforce that will meet the needs and wishes of people with disability. If workers and services are unavailable or rationed, the concept of consumer choice and control will have little meaning.

From a **mission perspective**, employers will need to provide person-centred services and invest in employment practices that balance the needs of clients, the organisation and employees, and that sit above pure economic considerations.

From a **financial viability perspective**, employers will need to be able to call on staff who are available when required, and at a competitive cost, to meet fluctuating demands for services.

From a **human resources management perspective**, employers will need employment practices that will help to attract, recruit and retain skilled workers with the right attitudes and values. This means investing in employment and people-management practices that motivate and support the right workers, including offering competitive pay rates, secure hours of work where wanted, rewarding and meaningful tasks, and work–life balance.

Employers who successfully manage employee preferences and accommodate everyone's interests, while delivering cost-effective, high-quality, customer focused services, will have a competitive advantage in the marketplace.

They are also much more likely to be rewarded with increased levels of commitment, interest and performance from employees, which will flow on to improved outcomes and levels of satisfaction from their clients with disability.

Traditionally, service providers have dealt with uncertain financial circumstances by employing casual staff and operating independently. However, these approaches could clash with the need to develop a stable workforce to maintain the highest possible service quality, and to improve workforce utilisation across historical boundaries.

Over time, people with disability will become confident in choosing where to purchase their services, and providers will become used to developing and maintaining a high-quality workforce in the face of fluctuating, less predictable cash flow. In the meantime, employers will need to consider many aspects if they are to successfully build and retain a flexible workforce.

This guide considers the industrial relations (IR) and human resource management (HRM) aspects of flexibly managing **when**, and in some areas **where**, work is done.

Under the Modern Awards, including the SCHADS (Social, Community, Home Care and Disability Services) Industry Award, employees are compensated with a premium wage for work outside standard hours (unsocial hours), and/or where there is a level of unpredictability.

The effective use of flexible employment arrangements can mitigate some of these costs where the employee gains some other benefit, such as time off in lieu (TOIL); however, some costs of service delivery cannot be avoided.

A culture of cooperation and trust is essential, including transparent, timely and honest communication and consultation that takes genuine account of employee input before finalising decisions. Decision-making that consults and considers all parties is a common feature of high-performing flexible workplaces, and is an important aspect of managing a workforce, regardless of any industrial obligations.

Employers already have industrial obligations around consultation on organisational change, but this has also recently been extended to include consultation on changes to rostering.

There are potential benefits for all parties in getting the balance right; however, arrangements will need to be structured to balance employees' rights to some predictability, and the employer's need to be able to respond to changing circumstances.

There is no single 'best way' to employ a workforce that will support the needs of all potential clients with disability. Employers will need to identify the most appropriate options for their clients, organisation and workforce, and that are clearly linked to their strategic direction, the external market demands and their workforce plans.

Employers will also need to consider how they will answer employees' **'what's in it for me?'** questions when implementing flexible employment practices.

## HOW THIS GUIDE CAN HELP

This guide aims to assist disability service employers and managers needing to introduce flexible working practices that comply with the Australian Industrial Relations framework and improve employee engagement and workforce utilisation.

It focuses on how these practices can be developed; employers and managers can work with employees to ensure client choice is maintained; a stable, skilled and flexible workforce is sustained; and considers options where employers can collaborate to attract new employees and retain the current workforce.

The guide provides a variety of options for consideration. Some are easier to implement and do not require changes to existing industrial arrangements, while others require mutual agreement between the employer and relevant employees.

**Employers should seek specialist advice before making significant changes to their organisation's working practices.**

## SECTION 2: Types of employment contract

All employees have a contract of employment. It is good practice to have a written contract; a contract can be verbal, but this is harder to enforce and more likely to cause disagreement.

Table 1 gives details of the types of employment contracts, including the pros and cons of each type, and an outline of the situations where they might be used.

Choosing the best types of contract is just one factor in the decision-making process. Everyone involved needs to be considered and decisions should be made in the context of the organisation's workforce plan.

For example, selecting a short-term casual or fixed-term employee to meet a short-term need may be at odds with the organisation's longer-term strategy to develop a stable, highly skilled and committed workforce.

**Table 1: types of employment contracts for a flexible workforce**

CONTRACT TYPE	PROS	CONS	WHEN TO USE
<b>Permanent</b> (also known as ongoing)	<ul style="list-style-type: none"> <li>Attracts a broad field of candidates</li> <li>Signals an employer's commitment</li> <li>Fosters employee commitment</li> <li>Promotes job security &amp; supports the retention of skilled workers</li> <li>Employees more likely to commit to training</li> <li>Easier to implement good HRM practices e.g. performance planning, supervision, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Award sets some limits to flexibility on hours of work</li> <li>Termination process may be lengthy</li> <li>Redundancy costs apply</li> </ul>	<ul style="list-style-type: none"> <li>Where there is an intended ongoing requirement such as the delivery of core services</li> <li>Hours of work are reasonably predictable, and there is a pattern of regular hours of work</li> <li>Where higher skill levels and discretionary effort are required</li> </ul>
<b>Fixed-term</b> (also known as temporary)	<ul style="list-style-type: none"> <li>No costs incurred when the contract expires</li> <li>Knowledge of the fixed term provides certainty for a given period of time to employer and employee</li> </ul>	<ul style="list-style-type: none"> <li>May restrict the pool of candidates, as it can be less attractive than permanent employment</li> <li>Impedes retention of skilled workers</li> <li>Industrial risks if overused</li> </ul>	<ul style="list-style-type: none"> <li>Short-term project work (including where specialist skills needed)</li> <li>Covering for staff on extended leave</li> </ul>

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CONTRACT TYPE	PROS	CONS	WHEN TO USE
<b>Casual</b>	<p>Easy to vary hours</p> <p>Easy to end engagement (in the short term)</p>	<p>Higher loading costs and minimum hours of engagement</p> <p>Long-term industrial risks and costs</p> <p>Lower levels of employee commitment</p> <p>Harder to engage staff in training, performance, supervision, team meetings, etc</p>	<p>Relief for other workers on leave</p> <p>Work that is short term and/or has unpredictable hours</p>
<b>Independent contractor</b>	<p>Easy to end the contract</p> <p>Contractor assumes risks</p> <p>Cost savings if organisations are able to run a competitive tender for services</p> <p>Organisation can purchase services only when needed</p>	<p>Employers have less control over how work is done</p> <p><u>Whether or not the contractor is actually an employee can be a technical minefield</u></p> <p>Risks of unanticipated industrial liabilities if contractor is found to be an employee</p>	<p>Work that requires specialist skills that are not available in-house</p>



## PERMANENT EMPLOYMENT (FULL-TIME AND PART-TIME)

The default employment type is **'permanent'**, sometimes referred to as **'ongoing'**, where no end date is set for the employment.

Employment can still be terminated, but only for a valid reason, such as resignation, retirement, redundancy, poor performance, misconduct or medical incapacity — all of which oblige the organisation to follow the appropriate processes.

Ongoing/permanent and fixed term employees receive leave entitlements (personal leave and annual leave) which are set out in the National Employment Standards (NES) and the Award, with part-time staff receiving pro rata leave entitlements. Full-time employment is 38 hours per week and part-time employment is less than 38 hours per week.

In principle, most of the flexible options proposed in this guide apply equally to full-time and part-time permanent employees.

Under an individualised funding arrangement, people with disability will be increasingly likely to request variations to service times. It may not always be possible to predict what hours will be required of permanent employees.

## FULL-TIME EMPLOYMENT

The hours of work of full-time employees can allow for flexibility, which is particularly important for shift work or rostered services.

The Modern Awards allow full-time (and part-time) employees:

- to work reasonable additional hours (overtime);
- to work different shifts (rostering) if they are shift workers;
- having flexible hours arrangements that allow for accrual of time in lieu; or
- to average their hours per week over a longer period of up to 4 weeks (more than 38 hours some weeks and less other weeks).

## PART-TIME EMPLOYMENT

There are many permanent part-time workers employed in the disability sector, and specific consideration has been provided in the guide.

Employers wanting to develop a stable, skilled and committed workforce may prefer part-timers over other flexible options such as casualisation.

Employees seeking part-time work usually prefer job security and reasonably predictable hours and times of work over a casual arrangement. In return, employers can expect greater levels of employee engagement and commitment, as employees are more likely to invest in skill development and discretionary effort when they can see they have a future in their job.

In the 2012 Modern Award review, the Fair Work Commission (FWC) strengthened the rights of part-time employees covered by the SCHADS Award to increase the predictability of their ordinary hours of work.

This was in response to claims that partly relied on evidence of some use of minimal hours contracts that resembled 'zero hours' contracts that offer maximum flexibility for employers, but minimal security for employees.

When hiring part-time employees, the Award requires written agreement on:

“..... a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.”

This may raise the question of whether employers should opt for part-time over casual employment, when the Award provides for ‘reasonably predictable hours of work’ for part-time employees.

Employers taking on part-time workers on a flexible basis need to understand:

- the principles behind the FWC’s approach to Award regulation of part-time work; and
- how the part-time employment clause interacts with other relevant provisions of the Award and the NES.

Where work is predictable, i.e. in an office environment, the Award poses no difficulty. Where there is likely to be some variation that cannot be predicted, contracts can be drafted to provide as much certainty as possible, and which also set the parameters for flexible hours.

Where the hours of work are completely unpredictable, casual employment may well be the only practical approach.

Most Modern Awards require some sort of written agreement on regular hours for part-time employees, including those industries that have high levels of casual and seasonal work.

Similarly to full-time workers, nothing in the Modern Awards prevents part-time employees from:

- being required to work reasonable additional hours (overtime);
- being rostered to work different shifts if they are shift workers;
- having flexible hours arrangements that allow for accrual of time in lieu or working make-up time where hours have previously fallen short; or
- averaging their hours per week over a longer period.

It is difficult to provide a single, simple answer to how to employ part-timers flexibly; there are different solutions for different situations. Enterprise agreements (EAs) may provide more scope for flexibility, but only on the basis that an employee is better off overall relative to the Award and the NES.

**Table 2: Q&A – employing part-time employees on a flexible basis**

QUESTION	ANSWER(S)
<p><b>What happens if the job involves shift work where the roster changes from time to time?</b></p>	<p>The contract should specify that shift work is required, and indicate the basis on which rosters are set</p> <p>The contract may specify days that will not be worked – for example, to accommodate a worker who chooses part-time work because of other set commitments</p> <p>As for full-time shift workers, the Award provides the ability to set rosters with 2 weeks’ notice of the commencement of a roster period, and to vary them with 7 days’ notice (clause 25.5)</p> <p>New consultation provisions have been added to all awards requiring consultation with staff prior to roster changes</p>
<p><b>What happens if a client cancels?</b></p>	<p>If insufficient notice is provided, employees are entitled to payment if they turn up for work. However, if there is sufficient notice they can be allotted alternative work, or if that is not practicable, make-up time can be worked at a later date</p> <p>The contracted weekly hours of work can be provided on an averaged basis, and this should be included in the contract.</p> <p>When developing a service level agreement (SLA) with clients, service providers should ensure reasonable notice provisions for cancellation by the client are included</p>
<p><b>The Award requires written agreed variations; can employers set minimum weekly hours and offer additional hours as they become available?</b></p>	<p>Additional hours above the contracted weekly hours can be recorded as a <u>mutually agreed variation</u>. If the additional hours are going to be regular and for a set period, a temporary contract variation can be offered to the employee with a specified end date for the variation. If it is an occasional arrangement, mutual agreement can be recorded in writing by email exchange or on time sheets without needing to rewrite a contract</p> <p>Alternatively, as with full-time employees, in the absence of a written agreed variation, hours worked in addition to the ordinary hours of the contract can be offered as overtime</p>

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QUESTION	ANSWER(S)
	<p>It is important to note that the SCHADS Award provides overtime for part-time workers at the “ordinary rate”, which means overtime rates are not paid until more than 38 hours are worked in a week, or 10 hours in one day. This allows employers to extend the part-time employee’s hours of work without paying overtime rates until the part-time employee works the equivalent of a full time employee’s hours of work</p> <p>When setting minimum hours, the employer needs to be reasonable about the genuine requirements of the position. Any use of contracts allowing unreasonable latitude (e.g. stating anything between 1 and 38 hours) carries the risk of disputation and may result in tighter regulation of part-time employment in future Award reviews</p>
<p><b>Can an employer request additional hours to be worked?</b></p>	<p>As with full-time employment, workers can be required to work additional hours as long as the additional hours are reasonable</p> <p>An employee can refuse, but only on reasonable grounds (e.g. health and safety, child care)</p> <p>Additional hours are only paid as overtime when the part-time employee works more than 38 hours or more than 10 hours per day</p> <p>In practice, additional hours paid at overtime rates are usually only requested in emergencies</p>
<p><b>What happens if the required hours of work vary from week to week?</b></p>	<p>It is necessary to specify the hours as far as possible, and state the parameters within which change is anticipated</p> <p><u>Clause 10.3(a)</u> allows part-time workers to be employed to work <b>an average</b> of less than 38 hours per week over a period of up to 28 days. This allows for the use of varied shift rosters, flexible working hours, make-up time, and additional hours</p>
<p><b>If hours of work are unpredictable and reasonable minimum hours cannot be guaranteed in a contract, casual employment may be more practicable</b></p>	

## EXAMPLES OF PART-TIME CONTRACT CLAUSES

### Standard fixed hours:

1. Your minimum ordinary hours will be 30.4 hours (4 days) per week, to be worked Tuesday, Thursday, Friday and Saturday. Your ordinary hours will be worked during 6.30am to 2.30pm, including a 30-minute unpaid lunch break.

### Flexitime:

2. Your minimum ordinary hours will be 30.4 hours (4 days) per week, to be worked Monday to Thursday.
  - a) Your ordinary hours will be worked on a flexible working hours basis between 8.00am and 6.00pm in accordance with the (INSERT Employer's name) Flexitime policy.
  - b) You may be required to work reasonable additional hours to perform your duties.

### Rotating rosters:

3. Your minimum ordinary hours will be 15.2 hours (2 days) per week.
  - a) Your ordinary hours will be worked between Monday to Sunday, and will initially be set as Monday and Tuesday upon commencement of employment. The days worked will vary across the week in accordance with a monthly roster set two weeks in advance.
  - b) Your initial roster is attached and shows the starting and finishing times for each day of work for the first 4 weeks of your employment.
  - c) You may be required to work reasonable additional hours to perform your duties.
  - d) It is agreed that you will not be rostered to work on Fridays or Saturdays [optional example where the employee is not available certain days of the week].

### Variable hours:

4. Your minimum ordinary hours will be 15.2 hours (2 days) per week.
  - a) Your ordinary hours will be worked between Monday to Sunday, and will initially be set as Monday and Tuesday upon commencement of employment. The days worked may vary across the week in accordance with a monthly roster set two weeks in advance.
  - b) Your initial roster is attached and shows the starting and finishing times for each of work for the first 4 weeks of your employment.
  - c) The roster may be changed at any time by mutual agreement.
  - d) You may be required to work reasonable additional hours to perform your duties.

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### **Fixed shift work with sleepovers:**

5. Your minimum ordinary hours will be 16 hours per week, to be worked as night shift in conjunction with a sleepover on Saturday and Sunday nights.

- a) Your starting time will be 4.00pm each day, to finish at 10.00pm followed by an 8-hour sleepover. You will then continue to work from 6.00am to 8.00am after the sleepover.
- b) You may be required to work reasonable additional hours to perform your duties.

### **Mutually agreed temporary variation to hours:**

We confirm that you have accepted an extension of hours and duties for the period [for example 30/4/14-31/5/14]. During this period your ordinary hours of work will increase from an average of 24 to an average of 32 hours per week. This increase in hours is to cover added responsibilities [see attached duty statement] during the period that the [insert reason here – e.g. 'client X requires an extra shift each week'].

After this contract variation expires on [1/6/14], you will return to your previous contracted hours of [an average of 24 hours per week] and your duties as per [title] job description

## **FIXED-TERM EMPLOYMENT**

Fixed-term contracts of employment are suited to:

- covering for employees on extended (e.g. parental) leave;
- short-term project work; or
- carrying out specific tasks for a defined duration.

Fixed-term employees typically have the same industrial entitlements as permanent employees for hours of work, pay, and paid leave such as annual and personal.

However, the inclusion of a specified end date means the contract can be allowed to simply expire. The employer then has no need to follow any particular process, or to pay redundancy.

Engaging an employee on a fixed-term basis requires a contract that reflects that arrangement.

It is common that fixed-term contracts include a termination notice period before the final expiry date to provide further flexibility in situations such as an unexpected loss of funding, or poor performance.

Fixed-term contracts carry their own risks, such as an employee prosecuting to have the length of a contract paid out if it is terminated early.

If the intention is to not renew a fixed-term contract, it is important that employment is not continued beyond the expiry date; otherwise the employer may be exposed to redundancy pay. Inappropriate use of fixed-term employment, to avoid industrial obligations such as redundancy entitlements, may be found to be illegal in the event of a dispute.

From an HRM perspective, fixed-term contracts could be less attractive to some potential employees, and if overused, they may undermine quality recruitment and retention strategies.

## EXAMPLE OF A FIXED-TERM CONTRACT CLAUSE

Term of appointment: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_

The employment is limited to the term stated. There is no expectation of continuing employment after [contract expiry date].

Notice of termination: (option to provide for termination prior to the expiry date)

Following the probation period, your employment may be terminated by either party by a period of notice as specified by the NES/Agreement. This does not affect the employer's right to terminate your employment without notice where you are found to have engaged in serious and wilful misconduct.

## CASUAL EMPLOYMENT

Casual employment is appropriate where hours of work vary, where the duration is uncertain and likely to be only short term, and to supplement the core workforce. It has, however, been common practice in the disability sector for employees to work on a casual basis for extended periods.

Casual employees do not accrue paid personal or annual leave; traditionally do not work regular or predictable hours; and can be terminated with minimal notice and cost. Casual loadings apply to compensate for the lack of paid leave, job insecurity and unpredictability of hours.

It is good practice to have a written casual contract at the start, to ensure that expectations are clear. It is enough to provide a contract on the first occasion of employment, and then simply ensure subsequent work is recorded on timesheets. Good practice would also include a note confirming the hours required at the start of each period of casual employment.

## EXAMPLE OF A CASUAL CONTRACT CLAUSE

The following provisions would be added to a simple standard contract which sets out key duties, hours of work and any other relevant conditions.

1. Expected term of appointment (if any): from \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_
2. This is a casual appointment and there is no expectation of any further employment after the contract expires.
3. While it is expected that employment will be available for the period stated above, casual employment may be terminated at any time.

## CASUAL VERSUS PERMANENT

When filling vacancies previously held by permanent workers, employers can feel pressured to choose between casual and permanent employment. Casual employment is also sometimes used as a form of probation to test whether a new employee has the skills needed. However, this approach may not be the most effective option for either purpose.

The Fair Work Act sets a default minimum employment period for permanent employees of six months (12 months for organisations with less than 15 employees), during which new staff may not claim unfair dismissal. This operates like the traditional probation period. Traditional probation practices can still be used for the induction of new staff; however, the legal minimum employment period will now apply to these arrangements. For at least the first six months (12 months for small employers), if the job turns out to not be financially viable, the employment can be terminated at no risk of an unfair dismissal claim.

During the first 12 months, the notice period is only one week. This means it is **not** that much more difficult to dismiss a part-time employee than a casual during this period — however, the casual employee attracts a 25% loading on their wage.

After the first year, a casual becomes a **long-term casual as defined under the Fair Work Act** (if also engaged and employed on a regular and systematic basis for a sequence of periods of employment), and must be treated similarly to a part-time employee in terms of contract termination.

A permanent employee will be entitled to four weeks' severance pay after one year, the cost of which is less than the 25% loading paid to casuals over that period of time.

**This means there is little advantage and great risk in employing long-term casuals over part-time employees, unless the ongoing nature of their engagement remains clearly and unequivocally casual. Categorising an employee as a long-term casual when they are effectively working on a permanent full-time or part-time basis is not recommended.**

It can, however, be challenging for employers to persuade a casual employee to convert to a permanent contract, as many casuals will have become used to receiving casual loading. This is another reason for getting the balance right from the start.

Using a casual for work that could be performed on a more permanent basis also misses some of the strategic HRM benefits around commitment and performance, which can be achieved by offering more secure employment from the start.

**The effect of predominantly using casual employment to deal with uncertainty might result in locking in a more expensive, less satisfactory form of employment for the long term.**

However, there will always be a need for some level of casual employment as part of the solution to managing fluctuations in workload. Investment in a pool of casual workers is likely to be as essential as with other employment types.

Employers need to consider carefully how to get the right balance to meet both short and long-term objectives.



**Table 3: casual versus long-term casual**

	SHORT-TERM CASUAL	LONG-TERM CASUAL
<b>Definition</b>	Usually less than 12 months Ad hoc, irregular hours	Defined by the Fair Work Act as: <ul style="list-style-type: none"> <li>• employed at least 12 months</li> <li>• <b>and</b> employed on a regular and systematic basis for a sequence of periods of employment</li> </ul>
<b>When to use</b>	Cover short-term workload	Not a recommended option although there is no technical obstacle
<b>Advantages</b>	Easy to hire Easy to terminate Easy to change hours	Some scope to manage unpredictable hours more easily than part-time
<b>Disadvantages</b>	Increased challenges in developing a skilled workforce and managing performance	Paying premium casual loadings while also losing the advantages of easy termination Slightly easier to change hours than for part-time, but potential restrictions apply

## CONVERTING CASUAL TO PERMANENT EMPLOYMENT

Sometimes long-term casual employees will want to convert to permanent part-time status, to enjoy greater job security and access to paid leave entitlements. This may suit employers if demand has become more predictable. This approach will also ensure workers get adequate leave, and reduce the expense of casual loading.

Conversion from casual to permanent employment can be achieved by offering a new contract based on the standard full-time or part-time contract.

Another approach is to designate positions as either casual or part-time as part of an organisation’s strategic workforce plan. Then when a vacancy for a part-time role occurs, a casual employee can be offered the opportunity to transfer to that role. A new contract would then be offered reflecting the new arrangement.

Employment as a casual will count as service for the purpose of long-service leave, provided it has been continuous. The definition of continuous service varies between jurisdictions, but commonly requires that there is no break in employment of more than two or three months.

As noted, casual employees can be reluctant to convert to part-time or full-time contracts because they will lose their casual loading. Employers may consider using growth in business under the NDIS as an opportunity to be able to offer more hours and so avoid reducing take home pay for the employee.

If the work offered is likely to be long-term with some predictability, it is more effective to offer part-time employment in the first instance, rather than trying to convert later.

**Table 4: Q&A – long-term casual employees**

QUESTION	ANSWER(S)
<p><b>Do long-term casuals have a right to convert to a permanent contract?</b></p>	<p>Neither the employer nor the employee can unilaterally force a change in status from casual to permanent part-time or full-time. It requires mutual agreement.</p> <p>Some EAs may provide a process to consider such applications</p>
<p><b>Can employers change the hours of work for long-term casuals?</b></p>	<p>Generally, at the very least, hours can be changed in the same way as for part-time employees, e.g. if it is shift work, rosters may change on a regular basis. Therefore there is little advantage to be gained from employment of long-term casuals over permanent part-time employees.</p>
<p><b>Can a long-term casual claim annual leave, loading and personal leave if the nature of their employment could more accurately be classified as permanent full-time or part-time?</b></p>	<p>Generally, there will not be such an entitlement if the employee has been engaged and paid as a casual in accordance with the Award. However in a dispute, the outcome may be affected by the specific provisions of any applicable contract or EA. A long-term casual job might be capable of being regarded as part-time or full-time, but that does not make it so, even if it might be a more sensible arrangement</p>
<p><b>Can an employer cease offering hours to a long-term casual?</b></p>	<p>Yes, provided they can demonstrate a valid reason for dismissal, and that due process was followed. A casual employee with more than 12 months' service may make an unfair dismissal claim if aggrieved.</p> <p>All casual employees can make general protection claims if they believe there has been adverse action taken against them for a prohibited reason, such as discrimination or temporary absence due to illness.</p> <p>A significant cut in regular hours could constitute such adverse action if it was not for a valid reason.</p>

**SUMMARY OF PROS AND CONS OF PERMANENT/FIXED-TERM VS CASUAL EMPLOYMENT**

Table 5 summarises some of the pros and cons of engaging permanent/fixed-term employees versus casuals. It also indicates which flexible employment options, in general, are best suited to different situations.

This summary does not cover every possible situation. The assessments made attempt to weigh up the IR obligations, potential costs, and how the options align with good HRM practice, which prioritises the fostering of high levels of performance and commitment from the workforce.

**Table 5: pros and cons – permanent/fixed-term vs casual employees**

OPTION	PERMANENT / FIXED-TERM	CASUAL	PROS	CONS
<b>Variable hours (part-time)</b>	✓✓		<p>Meet peaks and troughs in the workload</p> <p>If mutually agreed through a consultative process, helps to foster trust and cooperation in workplace</p> <p>No penalty rates apply if hours of work are within the weekly and daily thresholds</p> <p>Assist with workforce recruitment and retention</p>	<p>Identifying reasonable minimum guaranteed hours may be difficult</p> <p>If unreasonable minimum hours are set, this is likely to erode employee commitment. Additional hours may not be mutually agreed upon by both parties</p>
<b>Make-up time</b>	✓✓		<p>It is possible to rearrange work where client cancels</p>	<p>Make-up work may not be available, especially where the employee is tied to particular client(s)</p>
<b>Broken shift</b>	✓	✓	<p>Allows efficient use of staffing during peak demand period (i.e. when people with disability have other activities during the middle of the day)</p>	<p>Doubles commuting time for employees and breaks up non-work time</p> <p>Not an attractive arrangement for many skilled workers</p>

✓✓ particularly suited to a given circumstance

✓ generally suited to a given circumstance

✗ on balance, may be unsuitable/high risk

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OPTION	PERMANENT / FIXED-TERM	CASUAL	PROS	CONS
<b>Averaged hours</b>	✓		<p>Provides significant flexibility in hours</p> <p>Manages peaks and troughs, changes in client preferences and seasonal variations</p> <p>Is client-focused</p>	<p>Agreement would need to be included in an EA to be able to average hours over more than 28 days.</p> <p>Needs to operate within reasonable constraints of minimum and maximum hours and with regular reconciliation procedures, otherwise agreement is unlikely to be reached or the BOOT ('Better Off Overall Test') met</p> <p>If the right balance is not found, this option may be too unpredictable for some workers and may undermine recruitment and retention strategies</p>
<b>Flexitime</b>	✓✓		<p>Meet peaks and troughs in work, particularly in office environment and/or where an employee can manage their own caseload</p> <p>Helps employees with work-life balance</p> <p>Improves retention and reduces absenteeism</p> <p>Improves morale and satisfaction</p>	<p>Not suitable for many jobs outside an office environment or where workers cannot manage their own caseload</p> <p>Limited use for direct support delivery roles</p> <p>Needs management resources and an environment of trust</p>

✓✓ particularly suited to a given circumstance

✓ generally suited to a given circumstance

✗ on balance, may be unsuitable/high risk

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OPTION	PERMANENT / FIXED-TERM	CASUAL	PROS	CONS
<b>Shared employment (other than for full-time)</b>	✓	✓✓	<p>Helps to recruit and retain employees where there is insufficient work for full-time role with one employer</p> <p>Provides a variety in work and the opportunity to gain broader experience and develop skills</p> <p>Assists with covering peaks &amp; troughs</p>	<p>Potential for excessive hours &amp; fatigue</p> <p>Needs good management and coordination</p> <p>Potential conflicts of interest</p> <p>Potential contractual issues</p>
<b>Engage and terminate at short notice</b>	✗	✓/✗	<p>Short-term casual work may particularly suit some groups (e.g. students, retirees, etc.)</p> <p>Maximum flexibility for employer and person with disability</p>	<p>Increased HRM challenges in skill development and levels of commitment</p> <p>Increased costs of loading</p> <p>Long-term casual employment may be less flexible</p>
<b>Term-time employment</b>	✓/✗	✓	<p>Convenient for parents of younger children</p> <p>Some savings in wage costs</p>	<p>Is not provided under the SCHADS Award</p> <p>May be difficult to get agreement through enterprise bargaining</p> <p>Limited applicability for the disability sector</p>

✓ particularly suited to a given circumstance

✓ generally suited to a given circumstance

✗ on balance, may be unsuitable/high risk

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OPTION	PERMANENT / FIXED-TERM	CASUAL	PROS	CONS
<b>Leave without pay for additional purposes (e.g. study, travel, career break, etc.)</b>	✓✓		<p>Assists with recruitment and retention</p> <p>Can align well with work that is based around school terms or other known breaks</p> <p>Some savings in wage costs</p> <p>May assist with professional development</p> <p>Creates opportunities for other staff</p> <p>Can be offered through a purchasing additional leave arrangement</p>	<p>Employers need to take care in ensuring entitlements are met</p> <p>Cannot be imposed as a condition of employment as mutual agreement is needed</p> <p>May not align with client's plans and needs</p>
<b>Request for reduced hours</b>	✓✓		<p>Provides work-life balance opportunities</p> <p>Family-friendly</p> <p>Improves retention</p> <p>Assists resilience in the workplace</p>	<p>May increase workload management challenges</p>

✓✓ particularly suited to a given circumstance

✓ generally suited to a given circumstance

✗ on balance, may be unsuitable/high risk

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OPTION	PERMANENT / FIXED-TERM	CASUAL	PROS	CONS
<b>Job rotations and Secondments</b>	✓		Assists professional and career development, and employee commitment	Difficult in small organisations Needs clear written agreements and good management practices
<b>Jobshare</b>	✓		Widens the pool of potential candidates for full-time roles Retains experienced workers whose circumstances change Assists with continuity of support for clients during periods of leave	Requires good management and coordination practices
<b>Tele-commuting (work from home)</b>	✓		Attractive option for some types of work Some savings in commuting time and costs for worker	Isolation, performance management and trust issues Work Health and Safety (WHS) needs monitoring Only suited to a small number of jobs in the sector, not feasible for support roles

✓✓ particularly suited to a given circumstance

✓ generally suited to a given circumstance

✗ on balance, may be unsuitable/high risk

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## INDEPENDENT CONTRACTORS

Independent contracting is often the most straightforward way of purchasing some types of services an organisation wants to outsource, e.g. engaging a consultant to upgrade IT systems.

From an IR perspective, the question is whether the contractual relationship is one of employment or independent contractor. It is an objective issue and not necessarily a simple matter of choice. The agreed intention of the parties is not sufficient.

In the event of a dispute, a tribunal or court will look at the actual nature of the arrangement, not just what the parties agreed to call it. If the worker performs a role in the same way as an employee, even though they have an ABN and get paid by invoice, a court may conclude the individual is an employee and not an independent contractor.

The [contractor decision tool](#) used by the Australian Taxation Office (ATO) will provide guidance to whether an individual is an independent contractor. Key factors to consider include:

- An ABN is not sufficient on its own to justify an independent contractor arrangement.
- Where the contract is principally for labour, the remuneration must not be less than would be payable under any relevant Award.

Independent contracting cannot be used to undercut Award provisions. A contract that attempted to do this would likely be a '**sham**' contract, and penalties could apply to both parties (in relation to both IR and tax liabilities).

Independent contracting may be an attractive option for skilled workers who are able to provide services to a range of clients and organisations, where the **principal contractor** (the service provider), does not intend to control how or when the work is done.

Independent contractors are also covered by relevant WHS legislation and are anticipated to be covered by the proposed anti-bullying provisions of the Fair Work Act from 2014.

## DIRECT EMPLOYMENT BY PEOPLE WITH DISABILITY

When people with disability employ staff directly, they become the employer with all the same rights and responsibilities as the traditional service provider. The NES, SCHADS Award and other statutory requirements relating to superannuation, tax, anti-discrimination, WHS, etc. apply and must be complied with.

The person with disability would also be directly responsible for on-costs associated with employment, such as applicable insurances.



## BROKERED EMPLOYMENT

A person with disability may select a preferred worker themselves, but decide to engage a service provider to manage the administration. The provider is the legal employer, but an SLA with the person with disability may state which individual worker(s) will deliver the service.

The IR aspects are technically the same as with direct employment, but the employer responsibilities lie with the service provider. The person with disability may have many of the same benefits of control as with direct employment, but can transfer to the provider organisation some of the risks of managing employees. But even if the provider takes on some of the employment risks, they may benefit from being able to design jobs with increased stability and predictability, which will help them to recruit and retain workers.

In this type of arrangement, it is essential for each party to be absolutely clear about their rights and responsibilities from the start.

**Table 6: rights and responsibilities of each party in brokered employment**

WHO IS RESPONSIBLE FOR...?	SERVICE PROVIDER	PERSON WITH DISABILITY
<b>Paying wages and other entitlements</b>	The provider bears the industrial responsibility An SLA with the person with disability needs to reflect payment for actual labour costs	The person with disability needs to be aware of industrial constraints around issues such as hours of work An SLA may be used to document this
<b>Recruitment and selection</b>	The provider has a responsibility to ensure the process is not discriminatory, and a duty of care to the person with disability The position needs to be correctly classified under the Award	The person with disability makes the final decision, subject to relevant legislation being upheld
<b>Prevention of discrimination or harassment</b>	Both the provider and person with disability have responsibilities to ensure absence of discrimination or harassment	
<b>Training and development</b>	Agreement needs to be reached about what training is required and who provides for it	

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WHO IS RESPONSIBLE FOR...?	SERVICE PROVIDER	PERSON WITH DISABILITY
<b>Performance management</b>	<p>The provider has industrial responsibility</p> <p>Protocols should be agreed with the person with disability around providing feedback and ensuring professional standards are met</p>	<p>The person with disability has an interest in being involved</p>
<b>Dealing with disputes and grievances</b>	<p>The provider has to ensure fair processes</p>	<p>The person with disability may have responsibilities in how disputes are managed, depending on what is agreed in the SLA</p>
<b>Termination of employment</b>	<p>The provider has to ensure any termination is not harsh, unjust or unreasonable</p> <p>Redeployment or mutually agreed changes to hours of work will be options that should be explored if clients change their requirements or end their SLA</p>	

## MANAGING PERFORMANCE, AND DEALING WITH DISPUTES AND GRIEVANCES WITHIN A BROKERED EMPLOYMENT ARRANGEMENT

Brokered employment is unlikely to succeed if the motivation of the person with disability is to pass all responsibility to the provider, as the provider will always need to ensure that natural justice prevails in any dispute.

In all cases, if an employee is not meeting expectations they need to be given reasonable opportunity to rectify their performance and/or defend themselves against allegations of misconduct.

It is, however, reasonable in a brokered employment arrangement to agree performance standards that are tailored to the individual requirements of a person with disability, and to require the employee to maintain a reasonable, professional relationship with the client. Good communication between the person with disability, employer and employee are essential. This means there must be opportunities for regular supervision and feedback to guard against the relationship breaking down.

The contract of employment should make it clear how the brokered arrangement will work, and who the employer is.

**Table 7: Q&A – brokered employment**

QUESTION	RESPONSE
<p><b>What are the employer’s obligations if the person with disability wants to hire a family member/carer as their support worker?</b></p>	<p>NDIS restricts the employment of family members to provide supports relating to household tasks or personal care to exceptional circumstances.</p> <p>It is important that any employee recruited meets the selection criteria for the role.</p> <p>There could be a risk of conflict of interest and disputes around skills and duty of care, handling disputes etc.</p> <p>The employer will carry some of this risk; however, a clear agreement on protocols, and what role, if any, the employer is expected to play in managing the employee, will be needed.</p>
<p><b>How should it be approached if the employee chosen by the person with disability does not have the skills or training to perform the duties required?</b></p>	<p>An employee who does not meet the selection criteria should not be recruited as it could lead to a mismatch in expectations.</p> <p>Ultimately, if agreement cannot be reached and the provider cannot be reasonably confident that they will be able to meet their duty of care, either party may choose not to proceed.</p>
<p><b>Can a person with disability choose a worker on grounds that might be discriminatory? (i.e. requesting an individual based on their gender)</b></p>	<p>No. It is important to ensure people with disability are aware of their legal obligations when involved in the recruitment process. Setting clear and objective selection criteria will minimise any risks of discrimination.</p>
<p><b>When does gender-specific recruitment apply?</b></p>	<p>Gender-specific recruitment applies when being of a particular gender is a ‘genuine occupational qualification’ essential for doing a job.</p> <p>For example, if the job involves working in public conveniences, showers, change rooms, etc, and it should be done by a person of a particular gender to maintain decency or privacy; or when the job involves providing personal welfare/education services to only men or only women and most men or women would object to those services being carried out by a person of the opposite gender.</p>

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QUESTION	RESPONSE
<p><b>What if the employer is satisfied with the worker, but the person with disability no longer wants support from that specific worker?</b></p>	<p>The SLA between the person with disability and the provider needs to specify what would be valid reasons for termination, and the appropriate process.</p> <p>Performance requirements should be clearly specified by the person with disability and the employer to minimise the risk of a mismatch in expectations.</p> <p>Good communication between all parties is essential.</p> <p>Ultimately, the employer has a duty to ensure fair process and provision of alternative work. If no work can be provided, it might result in redundancy.</p>
<p><b>Would redundancy apply if a person with disability discontinues the arrangement?</b></p>	<p>Redundancy occurs when the job in question is no longer required to be performed. Termination of employment is not always inevitable. A provider will have the same responsibilities as for any other potentially redundant employee, including the need to consult and exploring redeployment. If there is no alternative to termination, notice and severance pay for redundancy may apply.</p> <p>If a person with disability discontinues the arrangement, the contract of employment should provide that the worker may be assigned to a different client. Clients may change their requirements over time, but this should not mean termination of employment if other work is available.</p>

## EXAMPLE OF A BROKERED EMPLOYMENT CONTRACT

This shows how a contract might deal with a role that is tied to an individual client with disability, where it is expected the hours and duties may vary from time to time. These provisions would be added to a simple standard contract which sets out key duties and any other relevant conditions.

1. The fundamental role of this position is to provide direct support to designated clients. In the first instance you will provide support to (name of client), in accordance with the Care Plan developed by the client with the National Disability Insurance Agency (NDIA).
  - a) A core feature of (INSERT name of client)'s Care Plan is that the specific hours of work and duties may vary from week to week as required by the needs of the client.
  - b) Other than in an emergency, you will be given two weeks' notice of changes to the roster.
2. Your minimum ordinary hours will be 22.8 hours (three days) per week.
  - a) Your ordinary hours will be worked between Monday to Sunday, and will initially be set as Monday to Wednesday upon commencement of employment. The days worked may vary during the week in accordance with a monthly roster set two weeks in advance, in consultation with yourself, your manager and the client.
  - b) Your first roster is attached, showing the starting and finishing times for each day of work for the first four weeks of your employment.
  - c) The roster may be changed at any time by mutual agreement.
3. You may be required to work reasonable additional hours to perform your duties.
4. The key duties are set out in the attached position description together with the Care Plan.
5. The employer reserves the right to assign you to a different client following reasonable consultation.

## SHARED EMPLOYMENT

Shared employment involves workers being employed by more than one provider: examples may include direct services employees, allied health professionals such as physiotherapists or dietitians, and people performing some corporate service functions such as payroll or accounts.

Shared corporate service functions may provide benefits including increased economies of scale, by creating full-time roles where individual organisations might otherwise only be able to offer part-time employment. This type of work may also be contracted out to a larger organisation with surplus capacity, or to a specialist provider.

A shared employment approach could provide some employees with more consistent and secure work. It may also enable employers to retain workers and manage peaks and troughs in service demand. Sharing workers may mean there is greater scope to coordinate availability and manage workloads for groups of employees.

The greatest area of potential flexibility is with direct service delivery and professional and specialist services job roles (i.e. allied health), particularly where small to medium providers are looking at sharing a pool of part-time and casual workers.

From an industrial perspective, there will be one employer at any given time. An employee may have multiple employers during the week; however, while performing work for one organisation, they are that organisation's employee.

Each employer is liable only for entitlements that arise in connection with work performed specifically for them, e.g. if an employee works two consecutive eight-hour shifts for different employers, even though they have worked more than 10 hours for the day, neither employer incurs an obligation to pay overtime penalty rates. However, there may be obligations for the employers involved to take steps to manage the risks associated with fatigue as part of their general responsibilities under WHS legislation.

It is already common for direct service delivery employees to work part-time and casually for a number of employers. In a shared employment arrangement, employers manage this more systematically, working together to coordinate the supply of labour and potentially offer more security and predictable hours.

Collaboratively employers would need to consider:

- protocols specifying which shifts are 'locked in';
- protocols ensuring employees keep employers informed about outside commitments;
- monitoring total hours worked;
- managing potential fatigue and workload risks; and
- managing expectations and potential concerns of people with disability about the availability of preferred workers.

Shared employment arrangements may require the inclusion of relevant provisions in contracts to help manage the risks of fatigue and conflict of interest.

## **PRIMARY EMPLOYER**

An alternative way to share employees is to appoint a primary employer. Issues are simplified when a single organisation employs workers and makes them available through commercial agreements to other organisations. This is essentially a labour hire arrangement.

Where the relationship between organisations is looser, it may become a more complicated process.

Useful links can be found at the Victorian Department of Human Services website by following the links on their [strategic business planning page](#) for service providers considering establishing this type of arrangement.

## **AGENCY ARRANGEMENT**

Labour hire takes the shared employment arrangement a step further. The single employer (the agency) and various providers act as 'hosts' and pay a fee to the agency. The agency is responsible for all industrial entitlements, and workers will more easily reach thresholds such as the minimum earnings required for payment of superannuation. Both the agency and the host employer have responsibilities in relation to WHS and the prevention of discrimination.

## EXAMPLE OF A SHARED EMPLOYMENT CONTRACT

These provisions may be useful where employees are shared across service providers.

This sample refers to a 48-hour limit for total hours worked across more than one employer.

The Award sets 38 hours as the average weekly full-time hours. However, it is common for employees to work reasonable additional hours beyond that. Forty-eight hours is a common benchmark for what the total of reasonable additional hours might be, and is intended to help minimise fatigue.

Two types of clauses are provided to suit different degrees of formally shared employment:

1. A fairly loose arrangement that simply acknowledges the external employment.
2. A more formalised arrangement between two employers.

### Shared employment arrangement 1:

1. The employee will ensure that they are available and fit to work their ordinary hours at (INSERT Name of Employer) other than when on authorised leave.
2. The employee will advise the employer of any external employment that they are engaged in, including the number and pattern of hours expected to be worked to assist in managing WHS requirements
3. The employee must not engage in any external work that would result in total weekly hours worked being more than 48 hours, without permission from (INSERT Name of Employer).

### Shared employment arrangement 2:

1. This position is part of a shared employment arrangement with (INSERT Name(s) of other employer(s)).
2. You will ensure that you are available and fit to work your ordinary hours at (INSERT Name of Employer), other than when on authorised leave or working agreed hours elsewhere under the shared employment arrangement.
3. Your minimum ordinary hours of work are:
  - a) (INSERT ordinary hours of work) with this employer, and
  - b) it is agreed that additional hours may be worked in similar roles at (INSERT names of other employers),
  - c) provided that the total hours worked in one week in this position and your employment elsewhere do not exceed 48 hours without permission from this employer.

You will advise this employer if at any time you become aware of a potential conflict of interest, such as proposals for working for our client with disability on behalf of another employer.

## SECTION 3: How to implement flexible employment options

Most of the flexibility employment options that will be used in an individualised funding environment relate to **when** the work will be performed. When implementing the options they have chosen, employers need to be sure to comply with the relevant Award or EA as well as the NES.

Table 8 identifies a number of flexible options available and considers the outcomes sought, any industrial considerations and good-practice implementation.

A summary of common Award constraints for hours of work is at [Appendix 2](#).

**Table 8: process for implementing flexible employment options**

FLEXIBLE OPTION	OUTCOMES SOUGHT	INDUSTRIAL CONSIDERATIONS	BEST PRACTICE IMPLEMENTATION
<p><b>Variable hours for part-time employees</b></p>	<p>The ability to offer additional hours above guaranteed minimum regular hours</p>	<p>Employers are able to vary contracted hours by agreement at any time. Agreement needs to be reflected in the employment contract</p> <p>Mutual agreement is needed to change existing contractual arrangements</p> <p>Consultation is required if changes to rostering are proposed</p> <p>Employers can require reasonable additional hours be worked as overtime, but with no penalty rates payable until 38 hours a week or 10 hours per day have been worked</p>	<p>Establish realistic minimum hours with new employees (balancing predictable levels of work with the likely range of variation)</p> <p>Establish genuine involvement and consultation on setting rosters and offers of additional hours with existing employees</p> <p>Keep proformas for simple recording of agreed temporary variations</p> <p><a href="#">Examples of part-time contract clauses</a></p>

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FLEXIBLE OPTION	OUTCOMES SOUGHT	INDUSTRIAL CONSIDERATIONS	BEST PRACTICE IMPLEMENTATION
<b>Flexitime</b>	<p>The ability to manage peaks and troughs in demand without need for overtime</p> <p>Work–life balance benefits that help to reduce absenteeism and staff turnover, and improve employee engagement</p>	<p>Full-time and part-time hours are worked as a weekly average</p> <p>Maintenance of timesheets to record the flexitime accrued and used</p> <p>Ensure work’s performed within the span of hours set by the Award i.e. between 6am and 8pm under SCHADS and up to 10 hours in a day by mutual agreement can be worked as ordinary hours, before overtime applies</p>	<p>Develop a specific <u>flexitime policy</u> that outlines eligibility of when overtime applies, the ability to terminate the arrangement if it is not working, and that limits accrual of flexible hours</p> <p>Consult employees in developing and implementing the policy</p> <p>Ensure that access to flexitime is subject to operational requirements (it may not be suitable for some direct support roles)</p>
<b>Broken shifts</b>	<p>Flexibility where people with disability need support at the beginning and end of the day, but are doing activities such as work or education during the day</p>	<p>Employers must comply with Award provisions regarding the span of the shift and any shift loadings that might apply</p> <p>There is no prohibition on broken shifts, but there are some constraints on the length of shifts before penalty rates apply</p>	<p>Inclusion in EAs may provide scope in relaxing some Award restrictions (subject to passing the BOOT)</p>

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FLEXIBLE OPTION	OUTCOMES SOUGHT	INDUSTRIAL CONSIDERATIONS	BEST PRACTICE IMPLEMENTATION
<b>Make-up time</b>	Managing client cancellations	The Award allows for notice and pay to be provided for workers classified as Home Care employees	<p>Develop a policy for monitoring timesheets, to ensure adequate notice is provided for cancellations &amp; details of make-up time provisions, together with the ability to average weekly hours</p> <p>SLAs with people with disability to include reasonable notice requirements for cancellation and/or variation of shifts</p>
<b>Request for reduced hours</b>	Accommodating requests from employees with caring responsibilities	This is a common option under entitlements to parental leave and the NES provisions on the right to request flexible working arrangements	<p>Develop a flexibility policy setting out everyone's rights and responsibilities consistent with the NES</p> <p>See <a href="#">sample policy on flexibility requests</a></p>
<b>Averaged hours</b>	Enables part-time and full-time workers to have fluctuating hours to meet the needs of people with disability	<p>Awards limit averaging of hours to a 4 week cycle</p> <p>Averaging over more than a 4 week period requires inclusion in an EA</p> <p>Additional benefits need to be provided to ensure arrangements meet the BOOT</p>	<p>Include an <a href="#">averaging hours clause</a> in an EA</p> <p>Develop procedures for rostering and monitoring the accrual of extra hours or a shortfall in hours</p>

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FLEXIBLE OPTION	OUTCOMES SOUGHT	INDUSTRIAL CONSIDERATIONS	BEST PRACTICE IMPLEMENTATION
<b>Jobshare</b>	<p>Providing family-friendly options in response to employee requests to reduced hours (i.e. where a full-time employee requests to work part-time on their return from parental leave)</p> <p>Potential to provide continuity for people with disability by jobshare partners covering each other during periods of leave</p>		<p>Develop a <u>policy</u> that sets parameters for considering requests for jobshare</p> <p>Clarify contract provisions on work hours, variation or cessation of the arrangement, and employee rights if circumstances change</p>
<b><u>Purchased leave</u></b> <b>(e.g. 48/52)</b>	<p>Providing a family-friendly option to workers with school-age children, and workplaces where the workload reduces during school holidays</p>		<p>Develop a policy that specifies eligibility on how the arrangement affects leave and pay rates including superannuation, and the processes for varying or terminating the arrangement</p> <p>Also suitable for inclusion in an EA</p>
<b>Term-time employment</b>	<p>Options where work only occurs during school term time</p>	<p>Not provided for in the SCHADS Award</p>	<p>May be an option for inclusion in an EA</p> <p>Care is needed in order to meet BOOT</p>

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FLEXIBLE OPTION	OUTCOMES SOUGHT	INDUSTRIAL CONSIDERATIONS	BEST PRACTICE IMPLEMENTATION
<b>Tele commuting (working from home)</b>	This is best suited to work where an employee is able to work fairly autonomously (it may not be suitable for direct service delivery roles)		Develop a policy that covers issues such as WHS, reporting, performance management, minimum 'in-office' attendance requirements, attendance at meetings, the provision of adequate office equipment & furniture
<b>Shared employment with other services</b>	Where there is more work available than can be offered by an individual organisation, to enable part-time workers to work extra hours		Develop policies and contracts to reflect the management of total hours, reporting lines, rostering, protocols for variation of hours, fatigue and the management of potential conflicts of interest  Requires a commercial agreement with partner organisations
<b>Job rotation and secondments</b>	The availability of development and career opportunities and assisting with retention of skilled workers across the organisation and/or with external partner organisations		Develop a policy with criteria for considering proposals from employees, and guidelines on protecting substantive positions and return to substantive roles  Develop contract provisions regarding service and return to substantive roles  Clear written agreement needed

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FLEXIBLE OPTION	OUTCOMES SOUGHT	INDUSTRIAL CONSIDERATIONS	BEST PRACTICE IMPLEMENTATION
<b>‘Annualised’ hours</b>	The ability to manage peaks and troughs in demand without need for overtime	The Award limits averaging to 28 day period. EBA provisions needed for longer periods	<p>An agreement will need to be reached on the period of averaging and to set reasonable minimum and maximum limits, otherwise it is unlikely to pass the BOOT or get genuine employee agreement</p> <p>Regular monitoring and reconciliation of the hours of work is necessary to ensure the agreed average is maintained</p>
<b>Leave incentives</b>	Work-life balance benefits that help to reduce absenteeism and staff turnover, and improve employee engagement		Employers to consider offering additional days of leave as an incentive to take leave during periods of reduced work volume

## SECTION 4: Considering enterprise agreements

EAs can be used to modify Award provisions and implement flexible arrangements that better suit your organisation's particular needs.

The Fair Work Act requires that:

- agreements result in all employees being 'better off overall' than they would be under the Modern Award and NES (passing/meeting the BOOT);
- agreements must include various mandatory provisions such as:
  - consultation on organisational change and rostering;
  - dispute resolution;
  - individual flexibility; and
  - expiry within four years.
- the rates of pay cannot be less than the employee would receive if the relevant Modern Award is applied (this includes the – ERO).

Many of the arrangements that could mean greater flexibility for employers in the new environment will relate to **how** hours of work are arranged. Since non-standard hours of work frequently incur penalty rates of pay, any changes in an EA that would reduce those penalties will require compensation, usually financial, to ensure employees are not worse off and the agreement passes the BOOT.

The process of bargaining is also regulated by the Fair Work Act, with rules on representation rights, the role of unions, good faith bargaining and the process for approval of agreements.

**Table 9: some pros and cons of enterprise bargaining**

PROS	CONS
Deliver changes to Award conditions that don't support the service	BOOT may be difficult to meet without significant 'offsets' (compensation) in some cases
A formal process for engagement with the workforce, resolves problems and fosters trust	There is a risk of unforeseen employee agendas
Deliver improved pay and conditions to increase employee engagement, performance, etc.	Some improvements can be delivered without the need for bargaining
Productivity improvements	There are limits to the scope in changing Award conditions and to the extent that industrial arrangements can affect productivity
Investment in transparent, consistent arrangements	Potentially very time-consuming, costly and demanding on management

## MULTI-EMPLOYER BARGAINING

Some of the disadvantages identified in Table 9 relate to the time and resources that need to be invested in the bargaining process. One option that could minimise some of those disadvantages is multi-employer bargaining.

A number of Multi-Employer Agreements (MEAs) currently exist in the community sector. Commonly, these involve networks of similar types of services, or regional groupings. If the employers are not competing with each other on the basis of price through low labour costs, and offer similar employment conditions, this can reduce collective resources used on bargaining by centralising the process.

Multi-employer bargaining is effective when there is a reasonable consensus between employers and employees about the shape of the proposed agreement. It can also facilitate inter-employer agreement on matters such as portability of service. Protected industrial action is not an option for unions in this type of process.

## EXAMPLE OF ENTERPRISE BARGAINING PROVISIONS

The examples of enterprise bargaining provisions set out below could provide flexibility for both employers and employees without reducing employee entitlements. These are only examples and advice should be sought before including such provisions in an EA.

### AVERAGING HOURS

The SCHADS Award allows hours to be averaged over a period of up to four weeks. The provision proposed here extends that to 12 weeks. This would provide much more flexibility. However, there is a history of resistance to lengthy periods of averaging in Australia.

The 'Work Choices' legislation was heavily criticised for allowing averaging over a 12-month period, as this was felt to be too open to exploitation, harming employees' rights to reasonably predictable hours of work.

An important feature of the sample provision set out below is a mechanism for regular reconciliation of hours to limit the amount of fluctuation, while still delivering more flexibility for the employer.

#### Sample clause

1. An employee may be engaged as a permanent or fixed-term employee on an averaged hours basis. The objectives of this type of arrangement are to:
  - a) facilitate the provision of direct support to individual clients where the client's needs are likely to vary from week to week; and
  - b) minimise the need for casual rather than part-time or full-time employment.
2. Each employee will have a contract of employment that specifies the average hours per week (38 hours for full-time, or less than 38 hours for part-time).

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3. The contract may specify that the actual hours worked may vary by up to eight hours per week, and that rostered hours may be changed with notice by 5pm the day before the shift.
  - a) Where extra hours within this limit are worked, overtime does not apply, although relevant shift penalty rates will apply.
  - b) Where a shift is cancelled with less notice than by 5pm the previous day, the client cancellation provisions of the Award will apply.
4. Despite any variation in hours actually worked, the employee will be paid on the basis of their contracted average ordinary hours.
5. A reconciliation of hours worked will take place every 12 weeks.
  - a) Where an employee has worked in excess of their contracted average hours, TOIL will be taken at mutually agreed times during the following 12 weeks. Where agreement cannot be reached, the employer may either direct the employee to take the necessary time off, or agree to defer that taking of time off to the next 12-week period, or pay the accrued time at an hour-for-hour basis.
  - b) Where an employee has worked less than their contracted average hours, the employer may require the employee to work make-up time equivalent to the shortfall in hours worked in the subsequent 12-week period. This time may be made up in working with other clients or in other areas of the employer's business provided the employee has the skill and competence to perform the work.

## **PURCHASED LEAVE**

1. In addition to other elements of this agreement intended to help employees achieve their desired work-life balance, the parties have agreed to introduce a purchased leave scheme.
2. The purchased leave scheme enables employees to access between one and eight whole weeks additional leave per year. The leave is 'purchased' through salary deductions that are averaged over the entire year to ensure that a standard rate is received each pay period. Purchased leave will not affect entitlements to other forms of leave. No leave loading is payable on the leave purchased.
3. Employees' participation in the scheme is voluntary, and subject to sub-clause 4. No existing employee will be required by the employer to work under the scheme.
4. Approval of any application to participate in the scheme is at the discretion of the employer.

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## 5. Eligibility and restriction:

- a) Full-time and part-time employees are eligible to participate in the scheme. The provisions of this clause do not apply to casuals or to fixed-term employees engaged for less than twelve months.
- b) Salary deductions for part-time employees will be based on the hours of duty at the time of the application and will only be varied to take into account salary movements.
- c) Purchased leave is not to be accessed for less than one week at a time, and may only be accessed in whole week blocks.
- d) The purchased leave must be taken within 52 weeks of the date of commencement of the salary deductions, and employees must specify these dates in their application.

## 6. Calculation of salary deductions

- a) The leave is purchased over twelve continuous months and employees are required to stay on the scheme for the full period, while employed in that position.
- b) In order to 'pay' for the purchased leave, employees will have an amount deducted from their gross salary each pay period for a period of twelve continuous months.
- c) The amount deducted will result in a reduction in the employee's taxable income. The amount deducted weekly is calculated using the following formula:

$$\frac{\text{Salary received per week} \times \text{number of weeks of purchased leave}}{52}$$

- d) The first salary deduction will be made on the pay day after the nominated commencement date. The deduction is adjusted to take into account salary increases resulting from salary increments or other salary increases.

## 7. Application and entitlements

- a) Purchased leave can be taken in conjunction with annual leave, long service leave and parental leave. Paid leave taken while on the scheme will be paid at the reduced fractional rate (between 48/52 and 51/52 as appropriate), provided that long service leave will be paid either at the relevant fractional rate or the lesser rate that applies where part-time hours have varied, in accordance with the relevant long-service leave legislation. During a purchased leave arrangement, annual and long service leave continue to accrue at the full-time rate.
- b) Superannuation will be payable on the reduced rate of pay.
- c) A new application must be made and approved every 12 months for an employee to continue to participate in the scheme.
- d) On termination of employment, a reconciliation of the employee's purchased leave account including any adjustments in final payment will be conducted.

## INDIVIDUAL FLEXIBILITY AGREEMENTS

Modern Awards and EAs made under the Fair Work Act provide a way to introduce flexible arrangements through IFAs.

Employers can agree with staff members to vary certain terms of the award or agreement. These may involve:

- arrangements for when work is performed
- overtime rates
- penalty rates
- allowances
- leave loading

An IFA must pass the BOOT, meaning that the employee must be 'better off overall' than they would be under the Award and NES. An IFA made under the award after 4 December 2013 may be terminated by either party with 13 weeks' written notice. This notice period for termination of an IFA was increased from 28 days which applies to IFAs made before 4 December 2013, and which can also still apply to IFAs made under an EA.

An example of where an IFA may apply is where an employee wants to vary the 'hours of work' part of the Award so they can work non-standard hours because of their responsibilities as a parent, which the employer would otherwise not agree to because they would be liable for penalty rates. While this sounds like a way of mutually agreeing to avoid penalty rates, in practice to the extent of this is likely to be limited by the requirement of passing the BOOT.

Employers are recommended to seek advice about using IFAs. Although they provide some scope for family-friendly flexibility, they are unlikely to be effective in establishing arrangements that reduce payment of penalty rates, since this will usually be regarded as detrimental to the employee.

Further details about IFAs are available through the [Fair Work Ombudsman's website](#).

# APPENDIX 1: Sample HR policies

## FLEXTIME POLICY

### 1. Policy statement

The Employer recognises that in some circumstances Time Off in Lieu of payment (TOIL) can be a flexible way to balance the needs of the service and the personal needs of individual employees. TOIL needs to be managed in a way that is industrially fair and beneficial to employees, and which is also operationally and financially manageable for the agency.

### 2. Objectives

The objectives of this policy are:

- to give effect to industrial obligations regarding TOIL for overtime, and
- to set the parameters for TOIL arising from flexible hours arrangements.

The policy also seeks to clearly distinguish between arrangements for overtime and flexible working arrangements.

### 3. Scope

This policy applies to all employees. The policy sets the general parameters for managing TOIL and should be read in conjunction with any relevant Award or Enterprise Agreement. The Award or Enterprise Agreement will prevail if there is any inconsistency. The specific hours for each employee will normally be set out in their contract of employment.

### 4. Procedures

#### 4.1. Introduction

Staff who work additional hours to their normal employment may be entitled to TOIL provisions under the Award/Enterprise Agreement, where the additional hours are overtime that has been approved in advance. Staff may also work some additional hours as part of a flexible hours arrangement, with the agreement of their manager, and accrue TOIL on a flexible basis subject to this policy.

#### 4.2 Flexible hours arrangements

- 4.2.1 Flexible hours arrangements are available subject to operational requirements. This means there may be some positions in the organisation where flexible hours arrangements will not be available to employees.
- 4.2.2 Staff may choose, with the agreement of their manager, to work additional hours as flexible hours (some Awards refer to this as make-up time). TOIL accrued at the initiative of the employee as flexible hours is not overtime. If not taken, this TOIL will be paid out on termination of employment at ordinary hours rates.
- 4.2.3 Flexible extra hours may only be worked within the ordinary span of hours prescribed by the relevant Award (e.g. 6.00am to 8.00pm).

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- 4.2.4 Flexible extra hours may only be worked to a maximum of 10 hours in a day.
- 4.2.5 TOIL for flexible hours accrues on an hour-for-hour basis for the time worked.
- 4.2.6 Unless otherwise mutually agreed, the maximum amount of TOIL for flexible hours which may be accrued is (INSERT no.) hours. Once an employee's accrued TOIL exceeds this limit, their manager may discuss with the employee when the TOIL will be taken. If no agreement can be reached on when the employee will use the accrued TOIL in excess of (INSERT no.) hours, the staff member's manager may direct that it be taken at a time of the manager's choosing, or in exceptional circumstances may authorise that it be paid out. TOIL for flexible hours which is paid out will be at the ordinary time rate.
- 4.2.7 Where flexible working arrangements are used, it is expected that employees will generally use TOIL rather than paid leave to cover minor absences such as appointments, and also to help manage peaks and troughs in workloads.

### 4.3 Overtime

- 4.3.1 This policy regarding TOIL for overtime is to be read in conjunction with and to supplement the Award; and the Award will prevail to the extent of any inconsistency.
- 4.3.2 Overtime may only be worked with the prior approval of the relevant manager. It is intended that overtime will only rarely be required to be worked
- 4.3.3 A staff member who is required to work overtime may be granted TOIL for overtime subject to agreement between the staff member and their manager. This should be determined before any overtime is approved.
- 4.3.4 TOIL for overtime accrues on the basis of [the applicable penalty rates for the overtime worked/hour for hour] (check relevant Award e.g. if the applicable penalty rate is time and a half for the first two hours overtime, the employee will be entitled to three hours' TOIL for those two hours overtime).
- 4.3.5 If there is no agreement to take TOIL for overtime, the overtime will either not be approved or will be paid at the appropriate (penalty) rate prescribed by the Award/Enterprise Agreement.
- 4.3.6 TOIL for overtime must be taken within (three months – check applicable Award) of the overtime being worked at a time agreed to by the staff member and their supervisor.
- 4.3.7 If TOIL for overtime is not taken within the (three-month) period it will be paid out.
- 4.3.8 TOIL for overtime that is paid out will be at the appropriate (INSERT penalty rate/ordinary rate from applicable Award/Enterprise Agreement).

4.4 An important objective of this policy is to ensure that staff do not carry an excessive amount of TOIL for lengthy periods. The organisation reserves the right to review and amend this policy if TOIL accruals across the organisation regularly exceed the limits set by this policy.

4.5 Records of TOIL hours, indicating whether for overtime or for flexible hours, are kept on the employee's timesheet.

## JOBSHARE POLICY (GUIDANCE)

Job sharing is a form of permanent part-time work in which two, or sometimes more, people share the responsibilities, hours, salary and benefits of one job. The relevant job will typically be full-time. The performance of jobshare partners is evaluated separately even though they share the duties of the one job.

There are a number of possible job sharing arrangements. These include:

- **Shared responsibilities** — this is where the responsibilities of one full-time job are shared between two employees. There is no division of work and the two individuals perform the full range of tasks within the single position. The employees are viewed as interchangeable. This form of job sharing requires excellent communication systems and skills, but is the least disruptive in the workplace if implemented well.
- **Divided responsibilities** — under this arrangement, work such as project work can be divided up. Partners may also provide back-up for each other.
- **Unrelated responsibilities** — this arrangement is evident where the two partners perform completely separate tasks, usually due to their different skills. In reality, two part-time jobs are performed.

### Principles and objectives:

- Job sharing enables staff to maintain their skill level and networks and earn an income while managing other commitments.
- It enables the organisation to retain valuable and skilled staff members who also have significant family commitments.
- The organisation has the opportunity to cover a longer span of hours within the one position without attracting penalty or overtime rates.
- The organisation has the opportunity to draw on the expertise of more than one person for the same position.

A job-sharing arrangement will be with the approval of (INSERT position or department). Managers are advised to consult with (INSERT position or department e.g. HR) to ensure compliance with Equal Opportunity policy and legislation.

Each member of staff appointed to a jobshare position is regarded as a separate appointment and is employed under a separate contract of employment.

### Contract of employment:

The contract of employment for each employee will specify time fractions, days and times to be worked.

A staff member employed on a continuing contract whose position becomes a jobshare for a fixed term will retain a continuing appointment.

A staff member employed on a continuing contract who is appointed to an advertised jobshare position may apply to take up the position on a secondment basis.

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Should one jobshare partner leave the position and/or the organisation, and the remaining partner and the relevant manager agree that the jobshare arrangement should continue, the manager will seek to appoint a new person to fill the vacant position on a jobshare basis.

### **Advertising:**

A whole job may be advertised as being available on a jobshare basis.

When advertising jobshare positions, the selection criteria should include attributes to ensure the success of the jobshare arrangement.

### **Requests for jobshare:**

An employee may initiate a request to reduce their hours of work to the level and work pattern of their choice by jobshare arrangement.

Employees requesting jobshare are required to demonstrate the viability of the arrangements. Any entry into a jobshare agreement must meet the organisation's operational needs. All requests for jobshare must be genuinely considered by the organisation. The outcome of the employee's request for job sharing must be given to requesting employees in writing.

A request by an employee for a jobshare arrangement shall clearly indicate whether the jobshare is for a fixed period or permanent. Specifications of an agreed jobshare arrangement will be in writing and signed by an organisational representative and the relevant jobshare incumbents.

Jobshare staff are contracted to work on particular days. Accordingly, holiday and leave entitlements accrue separately and there is no automatic entitlement to share benefits (for example dividing public holidays between jobsharers equally) unless agreed in writing by the participants.

### **Supervision:**

There should be one clearly designated supervisor for the job sharing participants.

One position description for the job should be clearly written and provided to the incumbents before they commence the arrangement (unless the job has divided or unrelated responsibilities).

The performance of the incumbents will be assessed separately according to the performance management policy.

Jobshare incumbents should have access to staff development and training courses, including induction and orientation.

Good communication between jobsharers is essential to ensure continuity of work. The jobshare partners have primary responsibility for ensuring effective communication and continuity. An overlap/hand-over period is recommended although not compulsory.

Communication may also be maintained through the use of detailed notes in a log book, electronic diary or email etc. The most appropriate methods of communication including the possible need for an overlap period should be discussed and agreed before the jobshare commences.

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### **Integrating jobshare employees:**

Employees participating in job sharing arrangements are to be fully integrated into the workplace and have equitable access to entitlements, benefits, conditions and equal opportunities compared with non-jobshare employees. Jobshare employees are entitled to:

- equitable access to communication and consultation processes, training and development, information and equipment
- equitable managerial commitment and support
- equal opportunities to pursue careers

Consideration should be given to the requirement for each jobsharer to attend team meetings. It may be possible for one jobsharer to attend and pass on details of the meeting. However, on occasions, it may be necessary for both jobsharers to be present and the working pattern will have to be varied to accommodate this.

### **Leave:**

Staff members in jobshare arrangements accumulate leave on a pro-rata basis.

### **Termination and variation:**

Where one jobshare partner leaves, the remaining employee remains entitled to continue on their current time fraction in accordance with their contract of employment. The presumption is that the vacancy would be filled on the same jobshare basis if this still meets operational requirements and the remaining partner still agrees to jobshare. However, the opportunity to review the staffing needs should be taken, and this should include providing the remaining employee with the opportunity to request to vary their hours (including changing to full-time), before a decision is made regarding whether and how to fill the vacancy.

As is the case with any other employee, where the jobshare partners wish to vary the arrangement, and there is mutual agreement between the partner(s) and the employer, then the contracts for each partner may be varied accordingly.

### **Higher duties:**

Jobshare employees are to be considered for higher duties opportunities which arise (i.e. both full-time and part-time opportunities) in accordance with the usual selection arrangements for higher duties and on the same basis as other employees.

If a jobshare employee is selected to undertake higher duties, the employee is to undertake the higher level role on the substantive basis of the role for the designated period (i.e. full-time or part-time) unless the role has also been designated as a role available for job sharing.

In some instances a full-time employee may relieve in a higher level jobshare role. The balance of the employee's usual hours is then worked in their normal role.

Payment of higher duties is subject to the minimum qualifying period and other provisions in the relevant Award.

## REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS POLICY

1. This policy provides options available for employees wanting to make flexible working arrangements to help them accommodate an appropriate balance between work and personal life outside work. In particular, this policy is intended to assist the organisation to implement the requirements of the National Employment Standards (NES) on requests for flexible working arrangements for employees with particular caring responsibilities. Options available include:

- a) jobshare
- b) reduced hours
- c) flexible hours
- d) working from home
- e) special leave
- f) leave without pay

2. Where an employee requests any of the above flexible arrangements, (INSERT name of employer) will seriously consider the request, and subject to operational requirements, will not unreasonably withhold agreement. It is recognised that agreeing to such requests may require some reasonable accommodation and changes to usual arrangements to be made by the employer.

3. It is also recognised that consideration of a request may lead to some negotiation and modification of the employee's original proposal.

4. In general, requests for flexible arrangements may only be refused on grounds of operational requirements where it can be shown that the proposal will cause significant negative consequences for the organisation, such as:

- the burden of additional costs
- decreased ability to meet customer demand
- inability to reorganise work among existing staff
- negative impact on quality
- negative impact on performance
- insufficient work during the periods the employee proposes to work
- structural changes

5. An employee requesting flexible arrangements may need to provide a written proposal which:

- a) explains the effect they think it will have on the work of their area; and
- b) proposes how this could be accommodated by the work area.

6. (INSERT name of employer) will respond to the written request within 21 days, in accordance with the National Employment Standards.



## APPENDIX 2: Hours of work – constraints for rostering

Table 10 gives a brief summary of some of the hours-of-work provisions of the SCHADS Modern Award 2010 (as at February 2014), as a starting point for identifying potential obligations. It is not exhaustive, nor is it a substitute for the detail in the Award. The Award is subject to change from time to time.

**Table 10: a summary of the hours of work provisions of the SCHADS Award 2010**

TYPE OF HOURS	CONSTRAINTS UNDER AWARD	PENALTY IF CONSTRAINT EXCEEDED
<b>Ordinary hours</b>	10 hour max for single shift	Overtime* at 1.5 x 2 hours, then 2x
	Span 6.00am – 8.00pm for rostered ordinary hours	12.5% or 15% shift loading (check transitional rates) for rostered ordinary hours outside the span
	Where overtime is worked outside the span (the span being 6.00am – 8.00pm) penalty rates apply	Overtime at 1.5 x 2 hours, then 2x
<b>Maximum weekly hours</b>	Full-time: maximum 38 hours (or up to 152 averaged over 28 days)	Overtime at 1.5 x 2 hours, then 2x
	Part-time: maximum is the agreed amount in contract which is less than 38 hours per week (or as averaged over up to 28 days)	Ordinary time for additional hours up to 38 hours, then overtime at 1.5 x 2 hours, then 2x
	Casual: hours agreed to per engagement up to 38 hours (or up to 152 averaged over 28 days)	Ordinary casual rates up to 38 hours, then over time at 1.5 x 2 hours, then 2x (calculated on the ordinary base rate in substitution for the casual loading)
<b>Broken shift</b>	Within 12 hour span	Overtime at 2x
	Ends after 8.00pm	12.5 or 15% shift loading

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TYPE OF HOURS	CONSTRAINTS UNDER AWARD	PENALTY IF CONSTRAINT EXCEEDED
<b>Shift with sleepover (sleepover does not break shift)</b>	10 hour max for single shift	Overtime at 1.5 x 2 hours, then 2x
	Span 6.00am – 8.00pm	12.5 or 15% shift loading applies
<b>Breaks between shifts</b>	Break for ordinary shifts and broken shifts - 10 hours	Award breach – potential fines
	Break for sleepover 10 or, by agreement, 8 hours	Award breach – potential fines
	Break where overtime was worked previous shift 10 hours	Overtime 2x until 10 hour break

\* Payment of penalty rates for overtime may be substituted with TOIL on the basis of time for time if mutually agreed in advance. Where more than one penalty could apply, the higher penalty applies in substitution for any other penalty.

## APPENDIX 3: Abbreviations

BOOT	Better Off Overall Test
EA	Enterprise Agreement
ERO	Equal Remuneration Order
FWC	Fair Work Commission
HR	Human Resources
HRM	Human Resource Management
IFA	Individual Flexibility Agreement
IR	Industrial Relations
MEA	Multi-Employer Agreement
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NES	National Employment Standards
SCHADS	Social, Community, Home Care and Disability Services Industry Award 2010
SLA	Service Level Agreement
TOIL	Time Off In Lieu
WHS	Work Health and Safety

## Terms of reference

### INDUSTRIAL RELATIONS ARRANGEMENTS

The Fair Work Act sets minimum entitlements for employees through:

- [The National Employment Standards](#)
- [Modern Awards](#)
- [Enterprise Agreements](#)

Other legislation covering superannuation, Work Health and Safety and equal opportunity, etc. is also relevant.

Most employees in the disability sector are covered by the **Social, Community, Home Care and Disability Services Industry Award** (2010) Modern Award. Other awards that may apply to the sector are:

- Supported Employment Services Award 2010
- Nurses Award 2010
- Labour Market Assistance Industry Award 2010
- Health Professionals and Support Services Award 2010

Unless otherwise stated, this guide refers to the SCHADS Modern Award. Other Awards operate in a broadly similar manner, but there is also significant differences of detail between the different Modern Awards, employers are advised to seek further assistance in this area.

### Work Health and Safety

WHS is beyond the scope of this guide. Employers are advised to contact the applicable State or Territory Health and Safety Regulator.

Employers should seek specialist advice on these issues.



National Disability Services

