

Fair Work or More Work

Fair Work Act 2009

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Livingstones Australia

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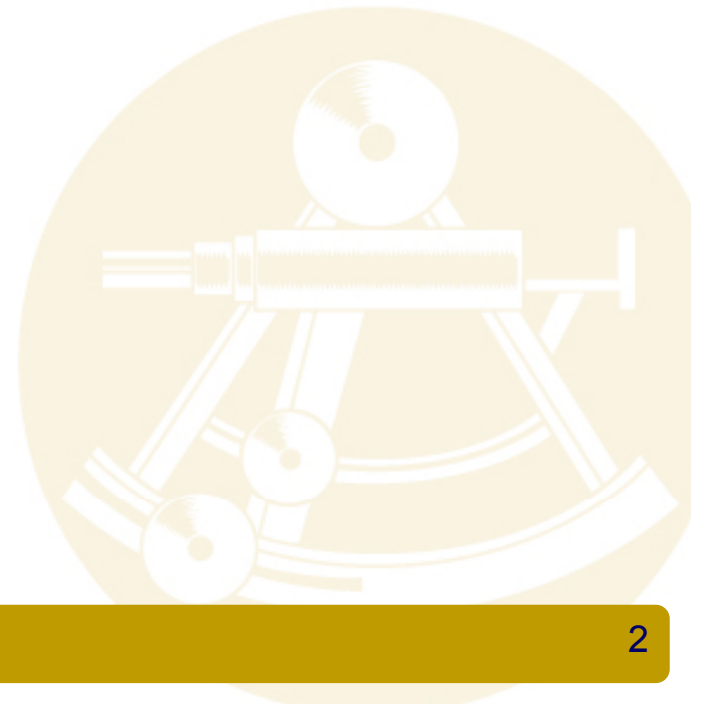


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A U S T R A L I A

Content

- National Employment Standards
- Award Modernisation
- Unfair Dismissal



National Employment Standards

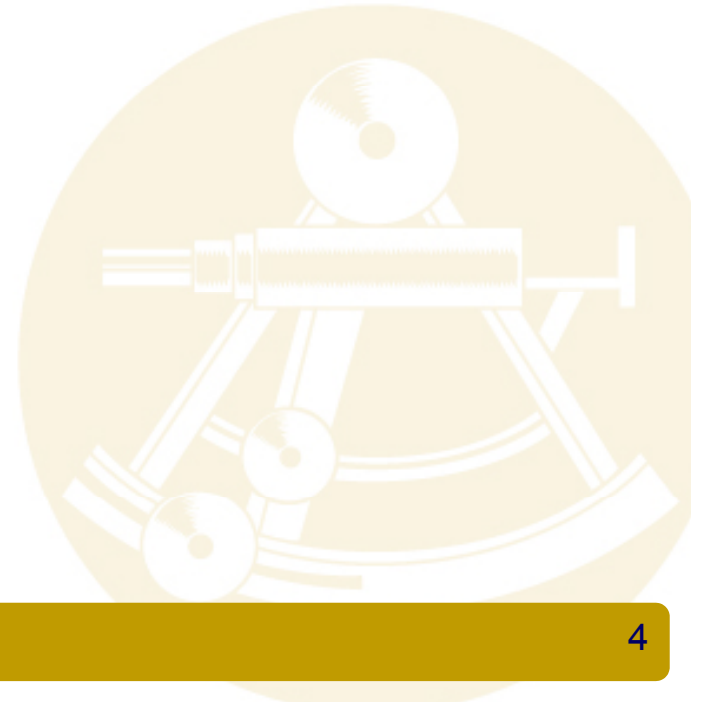


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A U S T R A L I A

1. Maximum Weekly Hours

- Standard 38 hours per week
- Plus reasonable additional hours
- May be averaged over a period of time



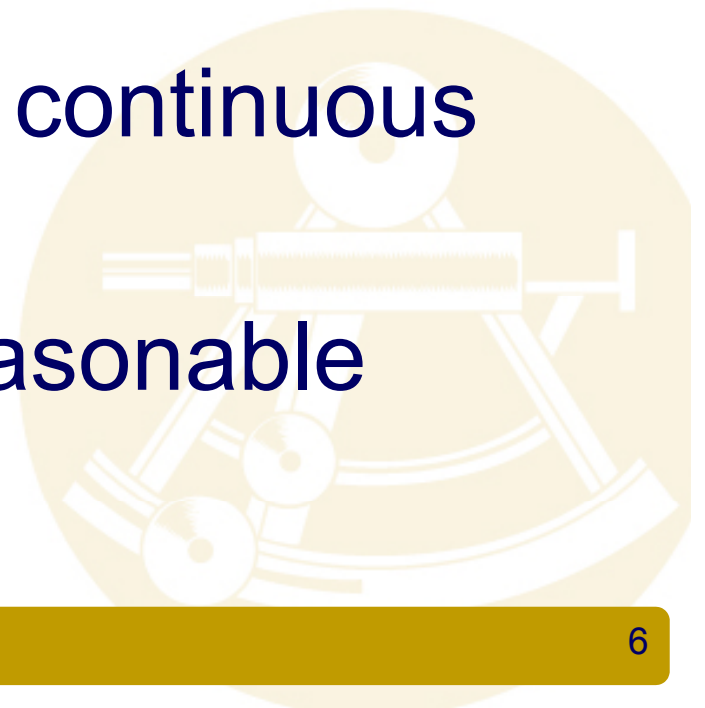
Reasonable Hours

- Any health and safety risk to employee
- Employee's personal circumstances
- Needs of the workplace
- Overtime or penalty rates for extra hours
- Notice given to employee or employer
- Usual patterns of work in the industry
- Nature of employee's role and responsibility



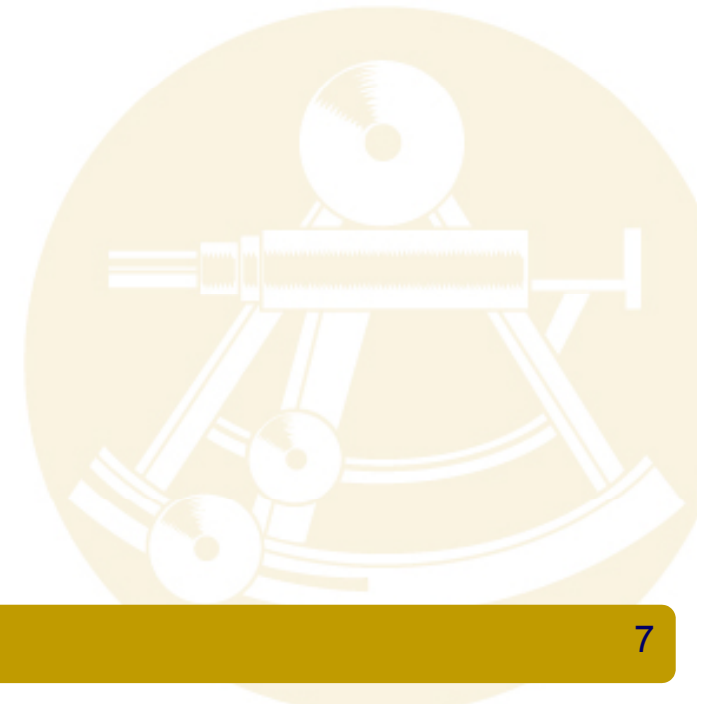
2. Flexible Working Arrangements

- Parents of school age children or children under 18 with a disability, may request a change in working arrangements
- Must have 12 months continuous service
- May be refused on reasonable business grounds



3. Parental Leave

- 12 months unpaid leave
- Must have completed 12 months continuous service



4. Annual Leave

- 4 weeks paid per year
- Additional week for continuous shift workers
- Employers can direct employees to take annual leave if it is reasonable
- No cashing out of annual leave unless provision in award or agreement
 - If annual leave is cashed out, must have 4 weeks balance remaining.

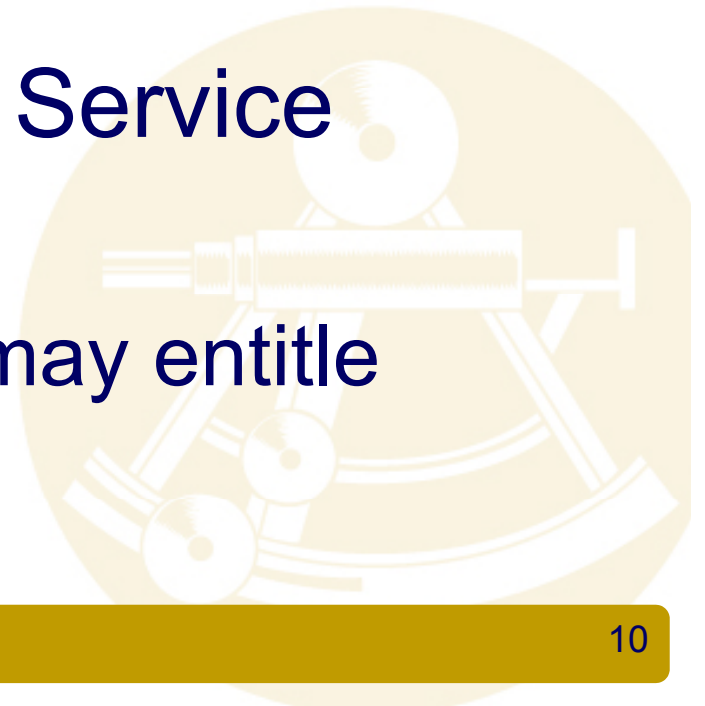
5. Personal/Carer's and Compassionate Leave

- 10 days per year
- Modern Award may include provision to Cash Out leave (15 day balance remaining)
- Extra 2 days for compassionate leave
- Extra 2 days unpaid carer's leave



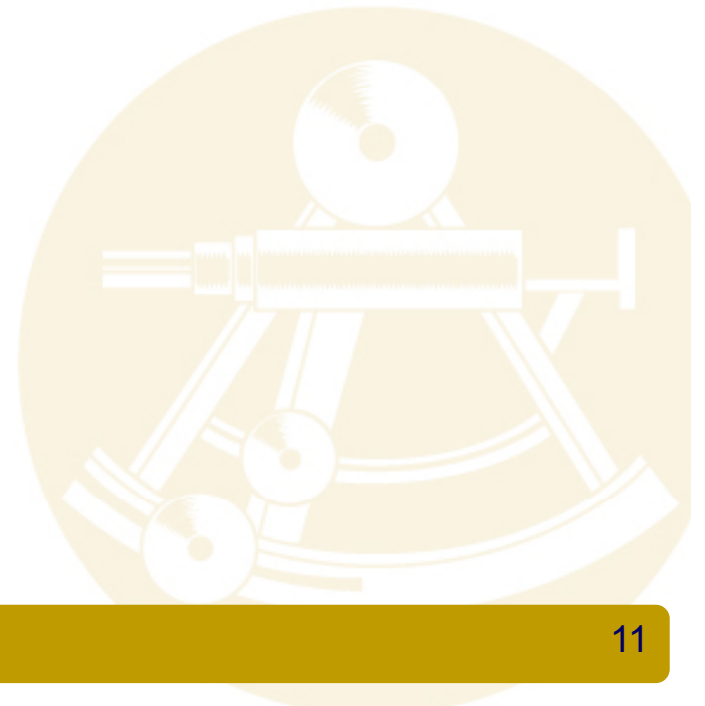
6. Community Service Leave

- Jury Service
 - Paid up to 10 days
 - Employer Top-up Jury Service Pay to base wage
- Voluntary Emergency Service
 - unpaid
 - State or Territory law may entitle employee to be paid



7. Long Service Leave

- Refers back to State Award or Legislation



8. Public Holidays

- Employee is entitled to be absent
- Employer may request employees to work if reasonable
- Employee can refuse if reasonable
- Similar criteria to reasonable additional hours



9a. Notice of Termination

Years of Continuous Service	Notice Required
Less than 1 year	1 week
More than 1 year but less than 3 years	2 weeks
More than 3 years but less than 5 years	3 weeks
More than 5 years	4 weeks
If over 45 years old and at least 2 years of continuous service	Additional week

9b. Redundancy

- Excludes
 - Employees with less than 12 months continuous service
 - Employers who employ less than 15 employees
 - Employers who apply to FWA because obtain acceptable employment for employee or can't pay



Redundancy Pay Period

Employees period of continuous service	Redundancy Pay Period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

10. Fair Work Information Statement

- Employer must provide to each NEW employee under Fair Work from 1 January 2010
- Statement will provide information on legislation and employees rights at work



Award Modernisation

Amusement, Events & Recreation Award 2010

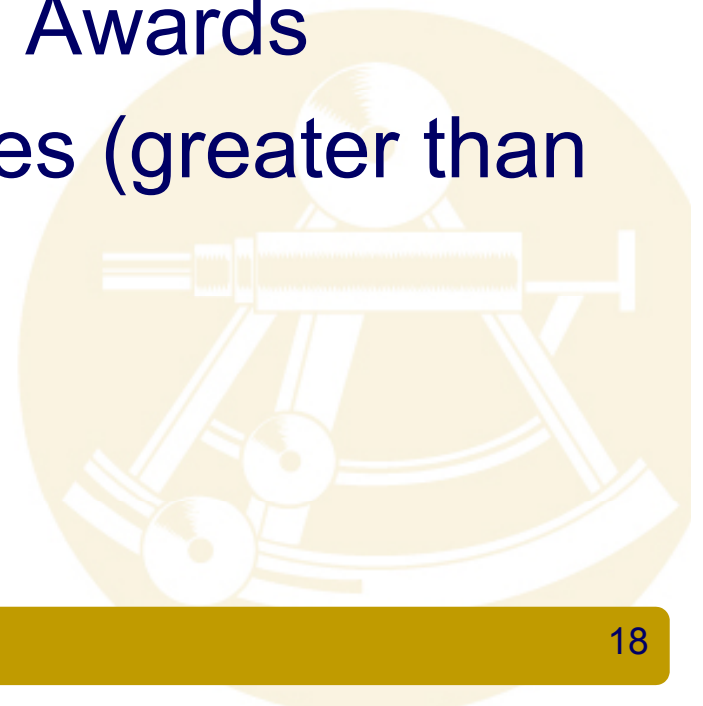


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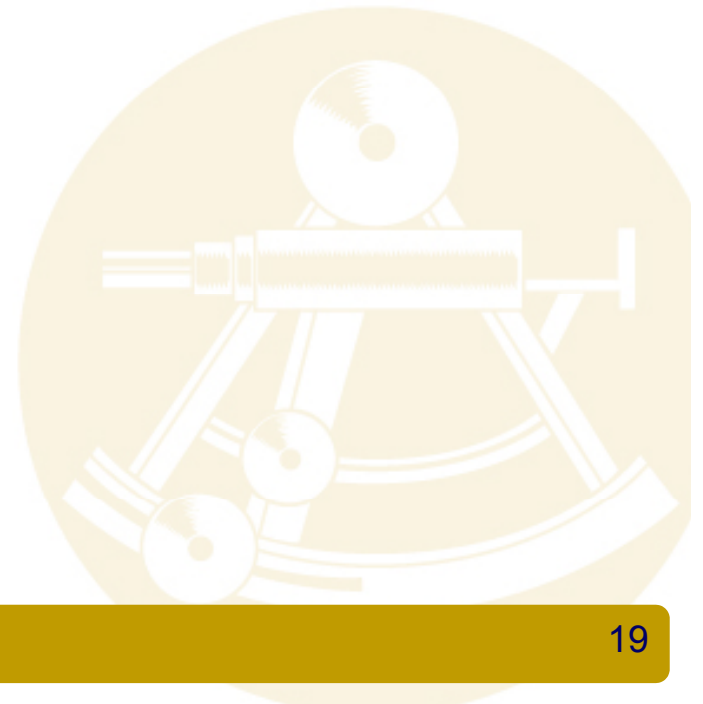
Award Modernisation

- Commence 1 January 2010
- Reviewed every 4 years
- Employees exempted
 - Covered by Enterprise Awards
 - High Income Employees (greater than 100K May 2007)



Award Scope

- Theme Parks
- Animal Parks
- Agricultural Shows
- Carnivals
- Amusement Arcades
- Sporting Stadiums
- Convention Centres



Awards Replaced

- AWU Theme Park Award
- Exhibition Industry Award
- Recreation Grounds Award
- Agricultural, Pastoral or Horticultural Societies Show Awards
- Recreation & Leisure Industry Awards

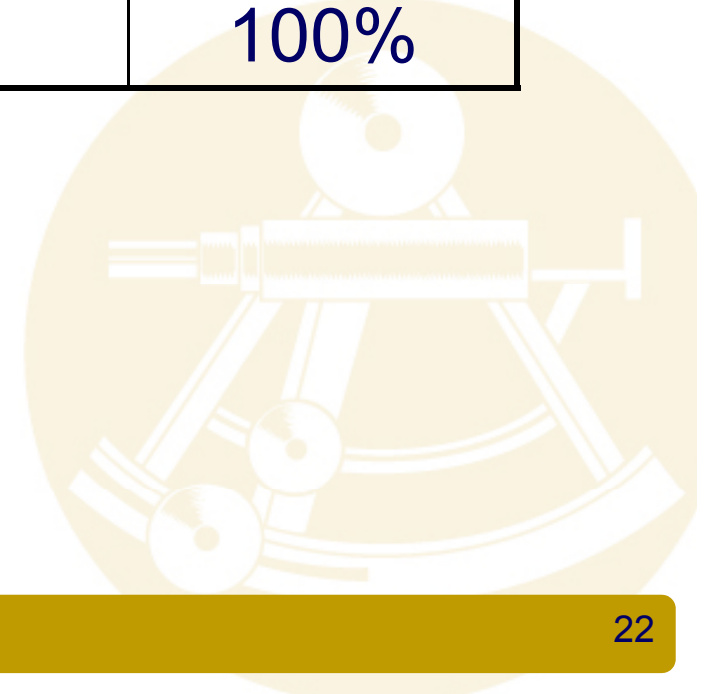


Wages

	Rates per hour
Introductory	\$14.31
Grade 1	\$14.75
Grade 2	\$15.34
Grade 3	\$15.89
Grade 4	\$16.78
Grade 5	\$17.33
Grade 6	\$17.87
Grade 7	\$18.37
Grade 8	\$19.34
Grade 9	\$21.49

Junior Rates

Under 17 years	55%
17 and under 18 years	65%
18 and under 19 years	75%
19 and under 20 years	85%
20 years	100%



Allowances

- Tractor – 3% of the standard rate (\$19.13 per week)
- Meal (after 1½ hours overtime or 8 hours of work on a Saturday, Sunday or public holiday - \$8.80)
- First Aid – 2% of the standard rate (\$12.75 per week)
- Laundry - \$6.62 per week
- Tool - \$12.10 per week
- Employee in charge – 5.33% of the standard rate (\$33.98 per week)

Casual Cancellation Allowance

	Percentage of Ordinary Rate
Postponement where employee has attended work	100%
Event postponed prior to ordinary starting time	50%
Event scheduled at night and postponed after 3.00 pm	50%
Decision to cancel made later than 2 hours prior to starting time	50%

Hours of Work

- Average of 38 hours per week
- Maximum daily hours of 8 up to 12 hours by agreement
- Full time employees may only work 5 days Monday to Sunday
- Sunday paid at double time with the minimum of 4 hours
- Public holidays paid at double time and a half with a minimum of 4 hours

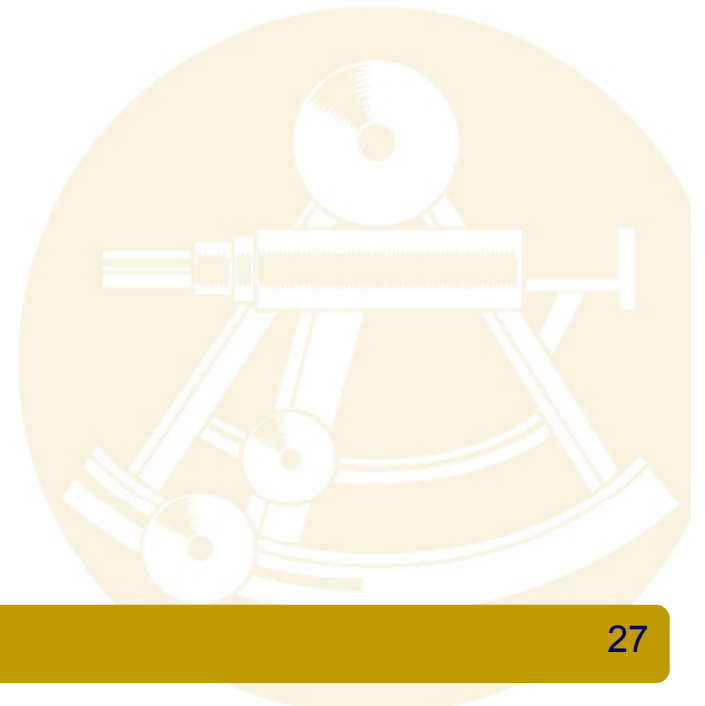
Breaks

- FT and PT employees receive a meal break of between 30 and 60 minutes within 5 hours
- Casuals receive a 20 minute paid rest break for each 5 hours of work



Classification Structure

- New structure
- 10 grades
- Detailed and complex



Unfair Dismissal



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Unfair Dismissal Applies If:

- Employee completed qualifying period of:
 - 6 months
 - Or 12 months for small business with less than 15 full time equivalent employees
- If casual,
 - Been employed on a regular and systematic basis
 - Have a reasonable expectation employment would continue



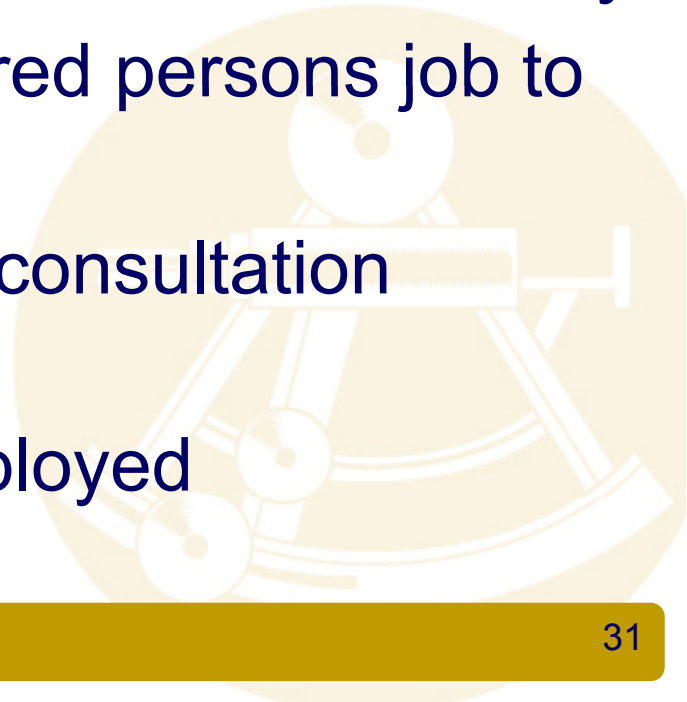
Unfair Dismissal

- Covered by Modern Award or Enterprise Agreement
- Not covered by Modern Award or EA & is not a high income employee ie > \$100K indexed



Unfair Dismissal?

- Harsh, unjust or unreasonable
- Not consistent with the “Small business Fair Dismissal Code”
- Dismissal was not a genuine redundancy
 - Employer no longer required persons job to be performed
 - Complied with Award/EA consultation procedures
 - Unreasonable to be redeployed



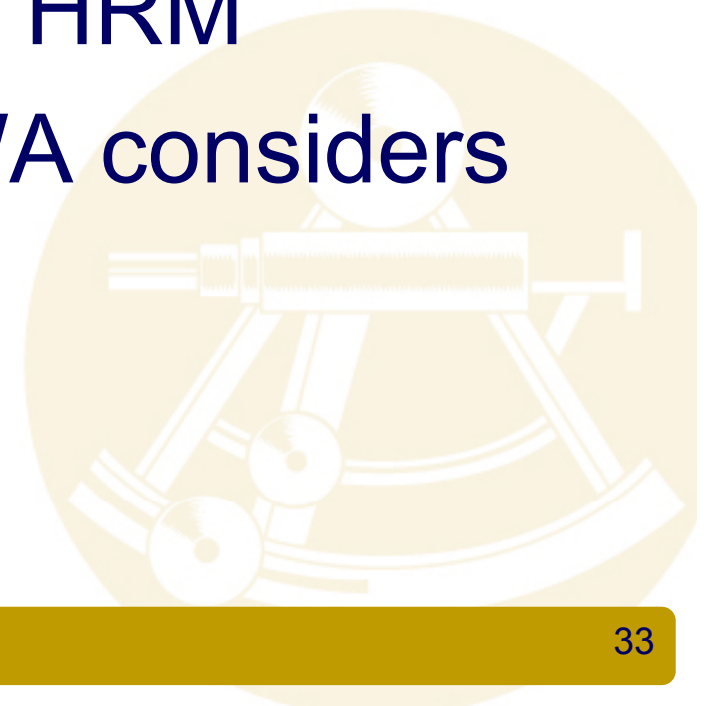
Harsh, Unjust or Unreasonable

- Valid reason related to capacity or conduct
- Notified of reason
- Opportunity to respond
- Unreasonable refusal to allow support person



Harsh, Unjust or Unreasonable

- If related to unsatisfactory performance whether was warned
- Size of employer's enterprise
- Absence of dedicated HRM
- Any other matters FWA considers relevant



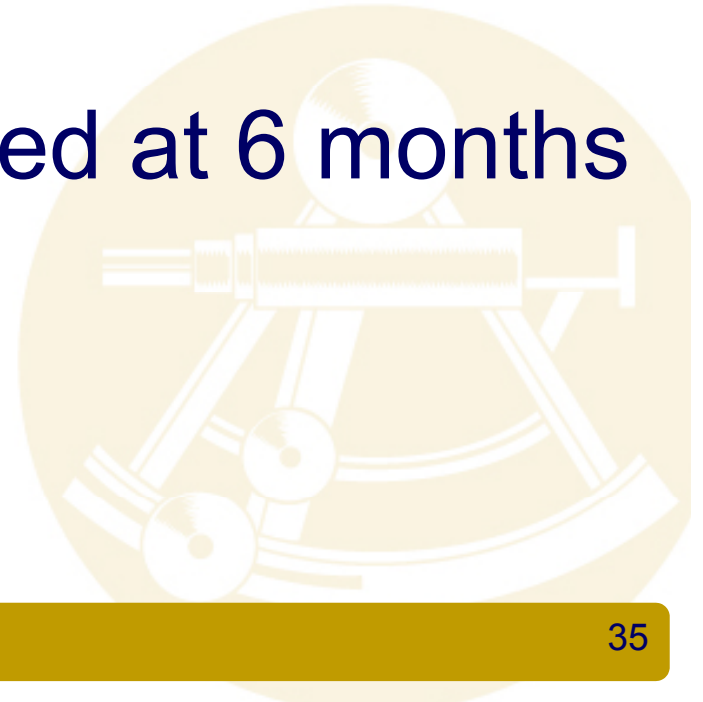
Unfair Dismissal Process

- Application lodged within 14 days of dismissal
- FWA will;
 - Conduct initial inquiries
 - Hold informal conference
 - Seek mediated resolution



Remedies

- Reinstatement
- Re employment to another role
- If reinstatement is inappropriate compensation
- Compensation capped at 6 months remuneration



Action Items

- Review current terms and conditions of employment in light of the NES
- Determine differences between current Award and Modern Amusement, Events and Recreation Award
- Focus particularly on classifications, hours of work and allowances
- Review dismissal processes and practices for compliance with the Small Business Fair Dismissal Code