

Please note – This is a previous WA award summary and does not contain the current rates of pay

WA award summary

Landscape Gardening Industry Award

1 January 2021 – 30 June 2021

About this award summary

This WA award summary is a summary of the state Landscape Gardening Industry Award and does not include all obligations required by the award. It is important that you also refer to the full Landscape Gardening Industry Award that is available on the WA Industrial Relations Commission website www.wairc.wa.gov.au

Provisions of other employment legislation also apply to employees and have been included in this WA award summary where appropriate. You may need to refer to the *Minimum Conditions of Employment Act 1993*, the *Long Service Leave Act 1958*, and the *Industrial Relations Act 1979* for full details.

This document is formatted for viewing on the Wageline website and contains web links to other relevant information. If you are using a printed copy in which links are not visible, all additional information can be found at www.dmirs.wa.gov.au/wageline or by contacting Wageline on 1300 655 266.

The 2020 State Wage Order issued by the WAIRC in June 2020 granted an increase in pay rates under this award effective from the first pay period on or after 1 January 2021.







Three Step Check: to make sure this WA award summary is relevant to you

Step 1

Is the business in the state system?

This WA award summary applies to businesses in the **state industrial relations system.** It covers businesses which operate as:

- ✓ sole traders (e.g. Jane Smith trading as Jane's Landscaping)
- unincorporated partnerships (e.g. Jane and Bob Smith trading as Jane's Landscaping)
- unincorporated trust arrangements. (e.g. Jane and Bob Smith as trustees for Jane's Landscaping)
- incorporated associations and other non-profit bodies that are not trading or financial corporations

This summary does **not** apply to businesses in the national industrial relations system which operate as:

- Pty Ltd businesses (e.g. Smith Pty Ltd trading as Jane's Landscaping)
- incorporated partnerships or incorporated trusts
- incorporated associations and other non-profit bodies that are trading or financial corporations

For more information visit the <u>Guide to who is in the WA state system</u> page. If the business or organisation is in the national system visit the Fair Work Ombudsman website <u>www.fairwork.gov.au</u>

Step 2

Is the business covered by the Landscape Gardening Industry Award?

The Landscape Gardening Industry Award covers businesses in the state industrial relations system that are in the landscape gardening industry.

Step 3

Is the employee doing a job covered by the Landscape Gardening Industry Award?

The Landscape Gardening Industry Award sets pay rates, working hours and other employment arrangements for employees working as:

- ✓ landscape employees
- ▼ landscaping tradespeople



Employers covered by this WA award are legally required to keep employment records. Employers can be fined up to \$5,000 for not keeping employment records, for keeping inadequate or fraudulent records, or for not providing records to Industrial Inspectors when required to do so. Page 6 details record keeping requirements.

The Landscape Gardening Industry Award is a legal document that outlines the minimum wages and conditions of employment that must be provided to employees who are covered by the award. Employers and employees cannot agree to lesser conditions.

Industrial Inspectors at the Department of Mines, Industry Regulation and Safety have statutory powers to investigate employee complaints about underpayment of wages or leave entitlements under this WA award and state employment laws. The department can prosecute employers in the Industrial Magistrates Court for not paying the rates of pay, including overtime, penalty rates and allowances required by this WA award.

Employees who believe that they have been underpaid, or wish to make an anonymous report of wage theft, should visit the <u>Making a complaint about underpayment of wages or entitlements</u> page for more information.



All rates of pay are gross rates (before tax). The 2020 State Wage Order increased pay rates effective from the first pay period on or after **1 January 2021**. The tables below provide the rates that apply from the first pay period on or after **1 January 2021**.

Adult rates of pay – applicable from the first pay period on or after 1 January 2021 until end of last pay period commenced in June 2021

Classification	Weekly	Hourly	Casual		
Classification	vveekiy	поину	(Includes 20% loading)		
Landscape Employee Grade 1	\$760.00	\$20.00	\$24.00		
Landscape Tradesperson	\$812.90	\$21.39	\$25.67		

"Landscape Tradesperson" means an employee who has successfully completed a recognised apprenticeship in a branch or branches of the Horticultural Trade and who produces proof satisfactory to the employer of such qualification or who has by other means achieved a standard of knowledge deemed by the employer as comparable thereto and are appointed in writing as such by the employer.

Apprentice rates of pay – applicable from the first pay period on or after 1 January 2021 until end of last pay period commenced in June 2021

- An employer is required to pay an apprentice for the time spent at TAFE (or other off the job training) as normal working hours. An employer is not required to pay TAFE fees on behalf of the apprentice.
- If the apprentice is a high school student undertaking a school based apprenticeship they must be paid the relevant hourly rate for the year of their apprenticeship for:
 - o all hours spent working on the job; plus
 - o hours spent in off the job training (deemed to be 25% of actual hours worked each week).
- Visit the <u>Pay rates for apprentices</u> page for more information

3 Year Term	Age	% of Landscape Tradesperson rate	Weekly	Hourly
1st year	Under 21 years old	55%	\$447.10	\$11.77
	21 years or over	Adult apprentice	\$649.40	\$17.09
2nd year	Under 21 years old	75%	\$609.70	\$16.04
	21 years or over	Adult apprentice	\$649.40	\$17.09
3rd vear		88%	\$715.40	\$18.83

Junior rates of pay* - applicable from the first pay period on or after 1 January 2021 until end of last pay period commenced in June 2021

Age	% of Landscape Employee Grade 1 rate	Weekly	Hourly	Casual (includes 20% casual loading)
20 years	90%	\$684.00	\$18.00	\$21.60
19 years	80%	\$608.00	\$16.00	\$19.20
18 years	70%	\$532.00	\$14.00	\$16.80
17 years	60%	\$456.00	\$12.00	\$14.40
16 years	50%	\$380.00	\$10.00	\$12.00
15 years of age	40%	\$304.00	\$8.00	\$9.60

- *Note some of the pay rates in the Landscape Gardening Industry Award fall below the minimum wages set by the 2020 State Wage Order. In such instances the rates listed here are the legal minimum rate.
- Under the *Children and Community Services Act 2004*, it is illegal to employ children under the age of 15 in this industry, except if the child is working as part of a school program or in a family business.



To receive email updates when WA award pay rates change, subscribe to Wageline News.



- A meal break of not less than 30 minutes or more than one hour is to be allowed. An employee must not be required to work more than 5 hours without a meal break.
- If an employee is required for duty during any meal break whereby the meal break is postponed for more than one hour, the employee must receive overtime rates until they are released for a meal.



Employment of children

- Under the Children and Community Services Act 2004, it is illegal to employ children under the age of 15 in this
 industry, except if the child is working as part of a school program (e.g. work experience placement) or in a family
 business.
- School aged children must not be employed during school hours, unless participating in a school program.
- Visit the When children can work in Western Australia page for more information.



Allowances

Meal money

An employee, required to work overtime for more than two hours, must be supplied with a meal by the employer or be paid \$12.50 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee must be supplied with such meal or paid \$8.75.

Meal money provisions do not apply:

- if the employee was notified the previous day or earlier that they are required to work overtime or
- if the employee lives in the same locality as their place of work and can reasonably go home for a meal

Leading hand allowance

A leading hand must be paid if placed in charge of

not less than 3 nor more than 10 staff
 more than 10 and not more than 20 staff
 more than 20 staff
 \$39.08 per week
 \$50.27 per week

Motor vehicle allowance

See the full award on the WA Industrial Relations Commission website www.wairc.wa.gov.au for details on motor vehicle allowance.

Location allowance for employees in regional areas

- Employees employed in certain regional towns must be paid the location allowance relevant to that town. Rates
 listed below are for adult employees working full time. Junior employees, casual employees, part time employees,
 apprentices and trainees must be paid proportionate location allowance based on the proportion which their
 weekly wage is to the adult rate under the WA award.
- If an employee has a dependant (a spouse or partner, or a child if there is no spouse or partner) the employee is entitled to receive double the allowance specified for the relevant town except if the dependant also receives a location or district allowance payment as part of their own employment.
- If an employee has a 'partial dependant' (a dependant who receives a district or location allowance of their own which is less than the location allowance the employee is entitled to under this award) the employee is entitled to receive:
 - o the relevant location allowance for the employee's town; plus
 - o an amount equal to the difference between the employee's location allowance and the amount their partial dependant receives in district or location allowance.

• If an employee receives free board and lodging, or is paid an allowance for board and lodging, the rate of location allowance is adjusted to 66.67% (two thirds) of the rate for the relevant town.

Location allowance rates effective 1 July 2020

Town	\$ per week	Town	\$ per week	Town	\$ per week
Agnew	\$22.30	Halls Creek	\$52.40	Norseman	\$19.80
Argyle	\$59.70	Kalbarri	\$8.00	Nullagine	\$57.80
Balladonia	\$23.10	Kalgoorlie	\$9.50	Onslow	\$38.90
Barrow Island	\$38.90	Kambalda	\$9.50	Pannawonica	\$29.10
Boulder	\$9.50	Karratha	\$37.60	Paraburdoo	\$28.90
Broome	\$35.90	Koolan Island	\$39.30	Port Hedland	\$31.10
Bullfinch	\$10.40	Koolyanobbing	\$10.40	Ravensthorpe	\$11.70
Carnarvon	\$18.40	Kununurra	\$59.70	Roebourne	\$43.30
Cockatoo Island	\$39.30	Laverton	\$22.80	Sandstone	\$22.30
Coolgardie	\$9.50	Learmonth	\$32.80	Shark Bay	\$18.40
Cue	\$22.90	Leinster	\$22.30	Southern Cross	\$10.40
Dampier	\$31.30	Leonora	\$22.80	Telfer	\$53.20
Denham	\$18.40	Madura	\$24.10	Teutonic Bore	\$22.30
Derby	\$37.30	Marble Bar	\$57.90	Tom Price	\$28.90
Esperance	\$6.50	Meekatharra	\$19.80	Whim Creek	\$37.20
Eucla	\$25.00	Mount Magnet	\$24.80	Wickham	\$35.90
Exmouth	\$32.80	Mundrabilla	\$24.60	Wiluna	\$22.50
Fitzroy Crossing	\$45.30	Newman	\$21.40	Wyndham	\$55.90



Hours and overtime

Ordinary hours are:

- 38 hours a week (or 7 hours and 36 minutes in each working day Monday Friday); and
- between 7.00am and 6.00pm.

Overtime

- All time worked in excess of ordinary hours is deemed overtime. All overtime worked on weekdays is paid for at the rate of time and one half for the first two hours and double time after that.
- All time worked on Saturday before 12 noon must be paid for at the rate of time and a half for the first two hours
 and double time thereafter. All time worked on a Saturday after 12 noon or on a Sunday must be paid for at the
 rate of double time.
- All time worked on a public holiday must be paid at the rate of double time and a half.



- Before engagement, an employee must be notified by the employer or by the employer's representative whether
 the duration of their employment is expected to exceed one month and, if they are hired as a casual employee,
 they must be advised accordingly.
- An employee is deemed to be a casual employee if:
 - o the expected duration of the employment is less than one month; or
 - o if the employee was not notified by the employer (as required above) and the employee is dismissed through no fault of their own within one month of commencing employment.
- The employment of a casual employee may be terminated by the giving or receiving of one hour's notice.



Deductions from pay

An employer may **only** make a deduction from an employee's pay if:

- the employee has agreed to the deduction in writing, (as part of a written employment contract or otherwise) and the deduction is on behalf of the employee;
- the employer is authorised by the WA award to make the deduction and the deduction is on behalf of the employee; or
- the employer is required by a court or a State or federal law to make the deduction (e.g. tax that must be withheld from the employee's pay).



Employment records

- Employers are legally required to keep employment records which demonstrate that employees have been paid all entitlements under the Landscape Gardening Industry Award and relevant legislation.
- Employers must keep all employment records for at least seven years after they are made for both current and
 past employees. Records relating to long service leave must be kept for seven years from the date employment
 ends.
- Employers can be fined up to \$5,000 by the Industrial Magistrates Court for not keeping employment records or for keeping inadequate or fraudulent records. Employers often fail to keep sufficient detail in their employment records.
- Employers must keep records that detail:
 - Employee's name
 - o Date of birth if under 21 years of age
 - Date employee commenced with the employer
 - Total number of hours worked each week
 - o The gross and net amounts paid to the employee
 - o All information required to calculate long service leave entitlements and payment
 - All pay deductions and reasons for them
 - Name of WA award that applies
 - Daily start and finish time and meal breaks taken
 - Employment status (full time, part time, casual)
 - Employee's classification under the award
 - All leave taken, whether paid, partly paid or unpaid
 - Any other information necessary to prove that the wages received by an employee comply with the requirements of the Landscape Gardening Industry Award, such as overtime hours worked and allowances paid. Contact <u>Wageline</u> or view the full Landscape Gardening Industry Award on the WA Industrial Relations Commission website www.wairc.wa.gov.au for details.
- Employment records can be written or electronic as long as they are in a form that can be printed. Time and wage books can be used to keep employment records, however, it is the employer's responsibility to ensure the time and wage book includes all of the required information.
- The records must be in English.
- Wageline's <u>Employment record obligations for WA award employers</u> publication helps state system employers keep correct employment records. The publication features helpful step by step guides to record keeping and Wageline's new look <u>record keeping templates</u>.



Public holidays

- Full time employees are entitled to public holidays (or days substituted for public holidays) without deduction of pay. Part time employees are entitled to public holidays (or days substituted for public holidays) without deduction of pay if they would ordinarily be required to work on that day if it was not a public holiday.
- If a public holiday falls on a Saturday or Sunday, the following Monday will be considered to be the public holiday. However, if Boxing Day falls on a Sunday or Monday, the following Tuesday will be considered to be the public holiday. When a public holiday is substituted with another day, the public holiday itself is no longer considered a public holiday for the purposes of the WA award.
- If an employee works on a public holiday or substituted public holiday they must be paid at the rate of double time and one half.
- Visit the <u>Public Holidays in Western Australia</u> page to view the public holiday dates.



Leave entitlements

Long service leave

Quick reference guide				
Leave entitlement	Full time	Part time	Casual	
Annual leave	✓ .		*	
Sick and carer's leave	/		×	
Unpaid carer's leave	*	V	✓	
Bereavement leave		✓	✓	
Unpaid parental leave		✓	✓	

This WA award summary covers the basic leave entitlements for employees covered by the Landscape Gardening Industry Award but does **not** include all details on leave obligations and entitlements. Full details of conditions are contained in the Landscape Gardening Industry Award on the WA Industrial Relations Commission website www.wairc.wa.gov.au, the *Minimum Conditions of Employment Act 1993* and the *Long Service Leave Act 1958*.

Bereavement leave

- All employees, including casual employees, are entitled to two days paid bereavement leave on the death of a spouse, de facto partner, parent, step-parent, grandparent, child, step-child, grandchild, sibling or any other member of the employee's household. The 2 days need not be consecutive.
- Bereavement leave is a minimum entitlement from the Minimum Conditions of Employment Act 1993.

Parental leave

Employees, including eligible casual employees, are entitled to the unpaid parental leave entitlements in the National Employment Standards of the *Fair Work Act 2009*, as well as a number of more beneficial conditions contained in the *Minimum Conditions of Employment Act 1993* (a return to work after parental leave on a modified basis and a reversion to pre-parental leave working conditions). Visit the <u>Parental leave</u> page for more details.

Long service leave

- Long service leave is a paid leave entitlement for employees who have continuous employment with 'one and the same employer' for a specified period. Full time, part time and casual employees are entitled to long service leave under the Long Service Leave Act 1958.
- To be entitled to long service leave an employee's employment with their employer must be continuous. The amount of their long service leave is determined by the employee's period of continuous employment.

- There are a range of paid and unpaid absences or interruptions to an employee's employment that count towards the employee's period of employment for the purposes of accruing long service leave. Some other types of absences do not break an employee's continuous employment, but do not count towards an employee's period of employment for the purposes of accruing long service leave. See the <u>Long service leave – What is continuous</u> <u>employment</u> page for more information.
- 'The one and the same employer' also includes employers who previously owned a business, where there has
 been a transmission of business. This means an employer who buys or otherwise acquires a business or part of a
 business will take on the long service leave obligations for existing employees if there has been a transmission of
 business. This applies regardless of anything written in a sale of business contract.

Taking long service leave

The long service leave entitlement for full time, part time and casual employees is:

- after 10 years of continuous employment with the one and the same employer $-8^{2/3}$ (8.667) weeks of leave on ordinary pay; and
- for every 5 years of continuous employment with the one and the same employer after the initial 10 years $-4^{1/3}$ (4.333) weeks of leave on ordinary pay.

When employment ceases

Employee with between 7 and 10 years of continuous employment When an employee with at least 7 but less than 10 years of continuous employment resigns or is terminated, they are entitled to pro rata long service leave on the basis of $8^{2/3}$ (8.667) weeks for 10 years of continuous employment. This entitlement:

- is calculated on the employee's entire period of employment; that is, years, months, weeks and days;
- applies to employees who resign, are made redundant, die or whose employer has terminated them for any reason other than serious misconduct; and
- does not apply to an employee whose employer has terminated them for serious misconduct.

Employee with 10 or more years of continuous employment

Full entitlement - 10 years or more of continuous employment

An employee who resigns or whose employment is terminated for any reason is entitled to:

- 8^{2/3} (8.667) weeks of leave if they have completed 10 years of continuous employment; and
- an additional $4^{1/3}$ (4.333) weeks of leave for each subsequent 5 years after the initial 10 years of continuous employment.

Pro-rata entitlement – more than 10 years of continuous employment

When an employee with more than 10 years but less than 15 years of continuous employment resigns or is terminated, they are entitled to pro rata leave. This entitlement:

- is calculated on the basis of $8^{2/3}$ weeks for 10 years of continuous employment for each year of employment since they completed 10 years of continuous employment;
- is calculated on completed years of employment only; that is, it does not include months, weeks or days; and
- does not apply to an employee whose employer has terminated them for serious misconduct.

This pro rata entitlement (calculated on the basis of $8^{2/3}$ weeks for 10 years of continuous employment) will also apply to each year of employment since an employee completed 15, 20, 25, 30, 35 years etc. of employment.

- The Long service leave pages of the Wageline website contain extensive information on:
 - What counts as continuous employment, including details on the impact of various types of paid and unpaid absences or interruptions on continuous employment.
 - What happens when business ownership changes.
- The <u>WA long service leave calculator</u> can provide an estimate of an employee's long service leave entitlement when employment ends as a result of resignation, dismissal, death or redundancy. The WA long service leave calculator is available at <u>www.dmirs.wa.gov.au/lslcalculator</u>.

Sick and carer's leave

- Sick and carer's leave entitles a full time or part time employee to paid time off work due to either illness or injury
 to themselves (sick leave), or because they have to care for an ill or injured family or household member (carer's
 leave).
- Full time and part time employees are entitled to paid sick and carer's leave equal to the number of hours they would ordinarily work in a two week period, up to 76 hours per year. Sick and carer's leave is a cumulative entitlement, and any leave not taken in one year can be carried over to the next year.
- Sick and carer's leave accrues on a weekly basis for full and part time employees.
- In the first year of employment, a full time or part time employee can use any paid sick and carer's leave that they have accrued to date for caring purposes.
- In the second and subsequent years of employment, a full time employee can only use a maximum of 76 hours of their accrued sick leave entitlement for caring purposes, or a part time employee the relevant proportion of 76 hours based on their ordinary hours of work.
- An employee is entitled to up to two days of unpaid carer's leave per occasion if an employee does not have sufficient paid leave accrued or has exceeded the maximum amount of carer's leave that can be taken in any 12 month period.
- Casual employees are not entitled to paid sick leave or paid carer's leave. Casual employees can access up to two day's unpaid carer's leave per occasion.
- Sick and carer's leave is a minimum entitlement from the Minimum Conditions of Employment Act 1993.
- Wageline's Sick leave calculation guide can assist with calculating sick and carer's leave entitlements.
- Wageline's Employment record obligations for WA award employers publication includes a payslip template.

Annual leave

- Full time employees are entitled to a minimum of four weeks of paid annual leave for each year of completed service, up to 152 hours. Part time employees are entitled to a minimum of four weeks of paid annual leave per year paid on a pro rata basis according to the number of hours they are required ordinarily to work in a four week period. Casual employees are not entitled to annual leave.
- Annual leave is a minimum entitlement in the *Minimum Conditions of Employment Act 1993* and the Landscape Gardening Industry Award sets out additional requirements regarding annual leave and annual leave loading.
- During a period of annual leave an employee must be paid annual leave loading of 17.5%.
- On termination, annual leave loading of 17.5% is paid out on fully accrued annual leave entitlements for completed
 years of employment. Annual leave loading is not paid on proportionate leave (leave accrued in an incomplete
 year of employment) on termination.
- Annual leave accrues on a weekly basis:
 - o A full time employee accrues 2.923 hours of annual leave for each completed week of work.
 - A part time employee accrues the relevant proportion of 2.923 hours annual leave for each completed week of work.
 - Wageline's Annual leave calculation guide can assist with calculating annual leave entitlements.
- Wageline's Employment record obligations for WA award employers publication includes a payslip template.



Resignation, termination and redundancy

Resignation by the employee

- Except within the first three months of employment, full time and part time employees are required to provide one week's notice.
- A casual employee can resign by providing one hour's notice to the employer.

Termination

- An employer is required to give a casual employee one hour's notice of termination.
- Prior to terminating an apprentice, an employer must contact the Department of Training and Workforce Development Apprenticeship Office on 13 19 54 to discuss any proposed termination of an apprentice.

• Except in cases of serious misconduct, an employer is required to give full time and part time employees the following period of notice of termination (or payment in lieu):

Period of continuous service	Notice period
Not more than 1 year	1 week
More than 1 year but not more than 3 years*	2 weeks
More than 3 years but not more than 5 years*	3 weeks
More than 5 years*	4 weeks

^{*}Employees over 45 years of age with two or more years of continuous service must receive an additional week's notice.

Dismissal requirements

- Under state laws, employees cannot be dismissed if to do so would be harsh, unfair or oppressive. There must be a valid and fair reason for dismissal, such as:
 - o consistent unsatisfactory work performance (which has been raised with the employee and the employee given further training and an opportunity to improve their work performance);
 - o inappropriate behaviour or actions; or
 - serious misconduct.
- The <u>Dismissal information</u> page outlines obligations and requirements when an employee is terminated.

Redundancy

- An employee is redundant when their employer has made a definite decision that they no longer wish the job the employee has been doing to be done by anyone.
- When an employee has been made redundant they are entitled to receive:
 - the appropriate notice period or pay in lieu of notice, as outlined in the termination section above;
 - o paid leave for job interviews;
 - any unpaid wages;
 - o any unused accrued and pro rata annual leave;
 - o any unused accrued long service leave;
 - pro rata long service leave (if applicable); and
 - o severance pay (if applicable).
- Visit the <u>Redundancy General information</u> page for information on redundancy obligations.

Severance pay - Employers who employ 15 or more employees

- Employers covered by this award who employ 15 or more employees must pay severance pay when an employee is made redundant, as outlined in the table below.
- Employers who employ less than 15 employees are not required to make severance payments to redundant employees.

Period of continuous service*	Number of weeks severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	6 weeks
3 years and less than 4 years	7 weeks
4 years and less than 5 years	8 weeks
5 years and less than 6 years	10 weeks
6 years and less than 7 years	11 weeks
7 years and less than 8 years	13 weeks
8 years and less than 9 years	14 weeks
9 years and less than 10 years	16 weeks
10 years and over	12 weeks

^{*}An employee's period of continuous service includes any service with that business under a previous employer where there has been a transmission of the business.

- These severance pay requirements do not apply to probationary employees, apprentices and trainees, casual and contract employees or employees terminated due to serious misconduct or for other reasons not related to redundancy.
- Redundancy pay is calculated based on the applicable number of weeks' severance multiplied by ordinary time earnings. Ordinary time earnings excludes overtime, penalty rates, and allowances.
- If the employee resigns during the notice period, they are entitled to the same severance pay they would receive if they had worked until the end of the notice period. However, in this circumstance the employee is not entitled to payment in lieu of notice.
- Visit the <u>Redundancy payments</u> page for more information on redundancy payments.



Disclaimer

The Department of Mines, Industry Regulation and Safety has prepared this WA award summary to provide information on pay rates and major award provisions. It is provided as a general guide only and is not designed to be comprehensive or to provide legal advice. The department does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.