

**The Asphalt Industry Award—Exposure Draft was first published on 11 September 2014. Subsequent amendments to the draft are as follows:**

<b>Publication date</b>	<b>Reason for amendments</b>	<b>Clauses affected</b>
13 February 2019	Incorporates changes resulting from <a href="#">[2015] FWCFB 4658</a>	16, 17
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	Incorporates changes resulting from <a href="#">[2017] FWCFB 3176, PR593837</a>	Schedule D(deleted)
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a>	1.2, 4.2, 21, 29.6, 2
	Incorporates changes resulting from <a href="#">[2018] FWCFB 1548</a>	7.2
	Incorporates changes resulting from <a href="#">[2018] FWCFB 3500, PR606379, PR606534, PR606630</a>	15.1, 17, Schedule A, Schedule B, Schedule C
	Incorporate changes resulting from <a href="#">[2018] FWCFB 3802</a> and <a href="#">[2018] FWCFB 5602, PR700441</a>	1.1, 11.7, 13.3(c), 10.1, 17.2(a), 17.3(a), 17.3(e), 20.2(b)(i), 20.2(b)(ii), 20.2(b)(iv), 20.3(a), 20.3(i), 19.1(b), 19.5(a), 21.2, 21.8(a),21.8(c), 2
	Incorporates changes resulting from <a href="#">[2018] FWCFB 3936, PR609372</a>	19A (deleted)
	Incorporates changes resulting from <a href="#">[2018] FWCFB 4704, PR610217</a>	5, 30, 27, 28, 29
	Incorporates changes resulting from <a href="#">[2018] FWCFB 4735, PR610082</a>	16
	Incorporate changes resulting <a href="#">PR701683</a>	Schedule G
	Incorporates changes resulting from <a href="#">[2018] FWCFB 6863, PR701457</a>	6
	Administrative changes by Modern Awards team <a href="#">Exposure Draft</a>	10.2 (deleted), 16
14 October 2019	Incorporating changes resulting from <a href="#">[2019] FWCFB 1333</a> at [35]	1.5 (deleted)
	Incorporating changes resulting from <a href="#">[2019] FWCFB 3500, PR707466, PR707667, PR709080</a>	15, 17, Schedule A, Schedule B, Schedule C
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5144</a>	25

**Exposure Draft—Asphalt Industry Award 20XX**

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<b>Publication date</b>	<b>Reason for amendments</b>	<b>Clauses affected</b>
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5145, PR712276</a>	7, 26, Schedule G
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5409</a>	4.3, 4.4, 15, 20.2(a), 20.3(e)
	Administrative changes made by Modern Awards team to the document structure, Part and clause titles, and clause content in accordance with <a href="#">[2019] FWCFB 5409</a> at [6] and Attachment A	Part 1—, 1.4 (deleted) 2, 9, 10, 11, 15, 15.4, 16.5, 17, Part 5—, 19, 19.4, 20, Part 6—, 21, 21.3, 21.4, 24, Part 8—, 30, 31, Schedule B, Schedule D (deleted), Schedule F (deleted), Schedule D, Schedule G
	Incorporating changes resulting from <a href="#">[2019] FWCFB 6935</a>	2, A.3.3 (deleted), A.3.5(deleted)
	Incorporating changes resulting from <a href="#">[2019] FWCFB 6894</a>	11.7
	Administrative changes made by Modern Awards team to incorporate previous A clauses into the numbering of the exposure draft	6, 16, 28
	Administrative change by Modern Awards team	11.4(a)

## **EXPOSURE DRAFT**

### **Asphalt Industry Award 20XX**

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Asphalt Industry Award 2010** (the Asphalt award) as at 11 September 2014 and incorporates award updates up to 20 September 2019. This exposure draft does not seek to amend any entitlements under the Asphalt award. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award in accordance with section 156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/66](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Some transitional provisions have been deleted as a result of decisions made during the review.

This draft does not represent the concluded view of the Commission in this matter.

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## Part 1—Application and Operation of this Award

### 1. Title and commencement

Clause 1.4 deleted as a result of re-structure [\[2019\] FWCFB 5409](#) at [6]. Clause 1.5 deleted in accordance with [\[2019\] FWCFB 1333](#) at [35].

- 1.1 This award is the *Asphalt Industry Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

~~1.4 Schedule F—Definitions sets out definitions that apply in this award.~~

~~1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.~~

### 2. Definitions

Clause 2 amended in accordance with [\[2019\] FWCFB 6935](#).

In this award, unless the contrary intention appears:

**Act** means the *Fair Work Act 2009* (Cth)

**afternoon shift** means any shift starting at or after 10.00 am and before 8.00 pm

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave (see clause 17.2(a))

**asphalt industry** has the meaning given in clause 4.2

**casual ordinary hourly rate** means the hourly rate ~~for a casual employee~~ for the employee's classification specified in clause 15—Minimum rates plus the casual loading, industry allowance and inclement weather allowance

**day shift** means any shift starting at or after 6.00 am and before 10.00 am

**default fund employee** means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

**defined benefit member** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

**employee** means national system employee within the meaning of the [Act](#)

**employer** means national system employer within the meaning of the [Act](#)

**inclement weather** means wet weather and/or abnormal climatic conditions such as hail, cold, high winds, severe dust storms, extreme high temperatures or any combination thereof

**NES** means the National Employment Standards as contained in [sections 59 to 131](#) of the [Act](#)

**night shift** means any shift starting at or after 8.00 pm and before 6.00 am

**on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 15—Minimum rates, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

**rostered shift** means any shift of which the employee concerned has had at least 48 hours' notice

**standard rate** means the minimum weekly wage for a Skill level 3 in clause 15.1.

### 3. The National Employment Standards and this award

- 3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 3.3 The employer must ensure that copies of this award and the [NES](#) are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

### 4. Coverage

Clauses 4.3 and 4.4 amended in accordance with [\[2019\] FWCFB 5409](#) at [118].

- 4.1 This industry award covers employers throughout Australia in the asphalt industry and their employees in the classifications listed in [clause 12.4](#)—Classification definitions to the exclusion of any other modern award.
- 4.2 The **asphalt industry** means roadmaking and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt.
- 4.3 This award covers any employer which supplies labour on an on-hire basis in the [asphalt](#) industry ~~set out in clauses 4.1 and 4.2~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in

the performance of work for a business in that industry. ~~This subclause Clause 4.3~~ operates subject to the exclusions from coverage in this award.

**4.4** This award covers employers which provide group training services for trainees engaged in the asphalt industry and/or parts of that industry ~~set out at clauses 4.1 and 4.2~~ and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clauses 4.1 and 4.2 are being performed. ~~This subclause Clause 4.4~~ operates subject to the exclusions from coverage in this award.

**4.5** This award does not cover:

- (a) employees excluded from award coverage by the Act;
- (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
- (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

**4.6** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

## **5. Individual flexibility arrangements**

**5.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

**5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

**5.3** An agreement may only be made after the individual employee has commenced employment with the employer.

- 5.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
  - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 5.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
  - (b) identify the award term, or award terms, the application of which is to be varied; and
  - (c) set out how the application of the award term, or each award term, is varied; and
  - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
  - (e) state the date the agreement is to start.
- 5.7** An agreement must be:
- (a) in writing; and
  - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 5.11** An agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee; or
  - (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](#)).



- 5.12** An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 5.13** The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

## **6. Requests for flexible working arrangements**

### **6.1 Employee may request change in working arrangements**

Clause 6 applies where an employee has made a request for a change in working arrangements under section 65 of the [Act](#).

NOTE 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 6 supplements or deals with matters incidental to the [NES](#) provisions.

NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 6 is an addition to section 65.

### **6.2 Responding to the request**

Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)).

NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)).

### **6.3 What the written response must include if the employer refuses the request**

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.

- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must:
- (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee’s circumstances; and
  - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

**6.4 What the written response must include if a different change in working arrangements is agreed**

If the employer and the employee reached an agreement under clause 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

**6.5 Dispute resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 29—Dispute resolution.

**7. Facilitative provisions**

Clause 7 amended in accordance with [\[2019\] FWCFB 5145](#) at [50]. Consequential amendment as a result of [PR712276](#).

**7.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

**7.2** Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
13.2(b)	Ordinary hours of work—employees other than shiftworkers	The majority of employees
13.4	Method of arranging working hours	An individual or the majority of employees
14.5(c)	Overtime meal break	An individual
16	Payment of wages	An individual
19.4	Time off instead of overtime payment	An individual
20.1(b)	Shiftwork and penalties—Definitions	The majority of employees

Clause	Provision	Agreement between an employer and:
20.3(b)	Hours of work—shiftworkers	The majority of employees
21.9	Annual leave in advance	An individual
21.10	Cashing out of annual leave	An individual
26.4	Substitution of public holidays by agreement	<del>The majority of employees</del> An individual

## Part 2—Types of Employment and Classifications

### 8. Types of employment

8.1 Employees under this award will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

### 9. Full-time employees

A full-time employee is employed to work an average of 38 ordinary hours per week.

### 10. Part-time employees

10.1 A part-time employee:

- (a) is engaged to work an average of less than 38 ordinary hours per week; and
- (b) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

10.2 For each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate of pay for the relevant classification in clause 15.1.

10.3 At the time of commencing employment, the employer and the part-time employee must agree in writing on the ordinary hours to be worked each week and the days these hours will be worked.

10.4 The employer and a part-time employee may vary the regular number of ordinary hours by mutual agreement. This variation must be recorded in writing.

## 11. Casual employees

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals.

Administrative change to clause 11.4(a) by modern awards team.

**11.1** A casual employee is an employee who is engaged and paid as a casual employee.

**11.2** A casual employee's ordinary hours of work are the lesser of:

- (a) an average of 38 hours per week; or
- (b) the hours required to be worked by the employer.

**11.3** A casual employee will receive a minimum of ~~four~~ 4 hours' pay per engagement.

### 11.4 Casual loading

- (a) For each ~~ordinary~~ hour worked, a casual employee must be paid:
  - (i) the minimum hourly rate in clause 15.1; plus
  - (ii) a loading of 25% of the minimum hourly rate, for the classification in which they are employed.

**11.5** The casual loading constitutes part of the casual employee's all-purpose rate.

**11.6** The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.

### 11.7 Casual conversion

Casual conversion clause has been referred to Plain Language Full Bench (see [\[2018\] FWCFB 5602](#)).

The Full Bench in [AM2019/17](#) has expressed the *provisional* view that the current casual conversion clause be inserted pending the resolution of issues associated with the drafting of the term – see [\[2019\] FWCFB 6894](#) at [81].

- ~~(a) An eligible casual employee is a casual employee:~~
  - ~~• who works on a regular and systematic basis;~~
  - ~~• who is employed under this award for a sequence of periods over six 6 months; and~~
  - ~~• whose employment is to continue beyond the period of six 6 months.~~
- ~~(b) An eligible casual employee has the right, after six 6 months, to elect to have their contract of employment converted to full-time or part-time employment.~~

- ~~(e) Where an employee requests to have their employment converted, the employer will advise the employee in writing, within four 4 weeks of the request, as to whether the employer consents to the request.~~
- ~~(d) Where conversion occurs the details will be recorded in writing.~~
- ~~(e) Any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment or the availability of a position will be dealt with in accordance with clause 29 Dispute resolution.~~
- (a) A casual employee, other than an irregular casual employee, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.
- (b) Where the employee requests to have their employment converted, the employer will advise the employee in writing, within four weeks of the request, as to whether the employer can consent to the request. Any dispute as to whether such a full-time or part-time position is available will be processed through the dispute resolution procedure.
- (c) Where such conversion occurs the details will be recorded in writing.
- (d) Any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment will be processed through the dispute resolution procedure.
- (e) For the purposes of clause 11.7, an **irregular casual employee** is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

## 12. Classifications

- 12.1 A description of the classifications under this award is set out at clause 12.4.
- 12.2 All employees covered by this award must be classified according to the structure set out at clause 12.4. Employers must advise their employees in writing of their classification and any changes to their classification.
- 12.3 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

### 12.4 Classification definitions

(a) **Skill level 1**

Skill level 1 is an employee who has no experience in the industry and who may be undertaking up to 38 hours induction training.

**(b) Skill level 2**

Skill level 2 is an employee who has completed the employer's induction course and/or is undertaking up to ~~three~~3 months' on-the-job training and is not undertaking a traineeship.

**(c) Skill level 3**

Skill level 3 is an employee who has completed up to ~~three~~3 months' on-the-job training; is capable of working productively under routine supervision; but is not yet a fully productive member of a spray or paving crew.

**(d) Skill level 4**

Skill level 4 is a multi-skilled employee who is assessed by the employer to be competent to perform all of the duties required within the work team.

(i) Typically this will mean that the employee has an endorsed licence for the operation of heavy vehicles, is competent in the operation of the major pieces of plant and equipment utilised in the work team and who can perform all manual tasks in the work team.

(ii) In asphalt production plants this will mean an employee who is deemed competent to operate the plant with a minimum of supervision.

**(e) Skill level 5**

Skill level 5 is an employee who has been appointed by the employer to be in charge of a mixing plant or to lead a spray or paving crew.

## Part 3—Hours of Work

### 13. Ordinary hours of work and rostering

#### 13.1 Ordinary hours of work

- (a) The ordinary hours of work for a full-time employee will be an average of 38 hours per week over a ~~four~~4 week cycle.
- (b) Full-time employees will work ~~eight~~8 hours each day.
- (c) 0.4 of one hour of each day worked will accrue as an entitlement to take a paid rostered day off in each ~~four~~4 week cycle.
- (d) The ordinary hours of part-time and casual employees will be in accordance with clause 8—Types of employment.

#### 13.2 Ordinary hours of work—employees other than shiftworkers

- (a) The ordinary hours of work for employees are between 6.00 am and 6.00 pm Monday to Friday.

- (b) An employer may agree with a majority of affected employees to alter the spread of hours in clause 13.2(a).
- (c) Employees may be required to work up to 10 ordinary hours per day.

### 13.3 Rostered days off—employees other than shiftworkers

- (a) Scheduled rostered days off may be deferred and accumulated up to a maximum of ~~four~~ 4 rostered days off, where the employer and individual employees agree.
- (b) An alternative day in the ~~four~~ 4 week cycle may be substituted for the scheduled rostered day off where the employer (or their representative) and a majority of employees in any work section agree. All provisions of this award will apply as if the alternative rostered day off was the scheduled rostered day off.
- (c) Each day of paid leave taken and any public holiday occurring during any cycle of ~~four~~ 4 weeks will be regarded as a day worked for accrual purposes (this does not include periods of long service leave).
- (d) An employee who has not worked, or is not regarded by reason of clause 13.3(c) as having worked, a complete ~~four~~ 4 week cycle will receive pro rata accrued entitlements for each day worked (or each fraction of a day worked) or regarded as having been worked in that cycle, payable for the rostered day off, or in the case of termination of employment, on termination.
- (e) The accrued rostered day off prescribed in this subclause will be taken as a paid day off.
- (f) An employee may be required to work on a rostered day off where it is necessary:
  - to allow other employees to be employed productively;
  - to carry out maintenance outside ordinary working hours;
  - because of unforeseen delays to a particular project or a section of it; or
  - for other reasons arising from unforeseen or emergency circumstances on a project.
- (g) Where the employee is required to work on a scheduled rostered day off they will take one paid day off before the end of the next work cycle, and the employee must be paid for the day worked at the rates prescribed for Saturday work in clause 20.6.

### 13.4 Methods of arranging working hours

- (a) An employer has the right to fix the daily hours of work for employees (other than shiftworkers) and to fix the commencing and finishing time of shifts. However, the arrangement of ordinary working hours may be by agreement between the employer and the majority of employees affected.

- (b) Clause 13.4(a) does not prevent the employer reaching agreement with individual employees about how their working hours are to be arranged.
- (c) Matters upon which agreement may be reached include:
- (i) how the hours are to be averaged within a work cycle;
  - (ii) the duration of the work cycle for employees other than shiftworkers provided that such duration will not exceed ~~three~~3 months;
  - (iii) rosters which specify the starting and finishing times of working hours;
  - (iv) a period of notice of a rostered day off which is less than ~~four~~4 weeks;
  - (v) substitution of rostered days off;
  - (vi) accumulation of rostered days off;
  - (vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and
  - (viii) any arrangements of ordinary hours which exceed ~~eight~~8 hours in any day.

### 13.5 Twelve hour shifts

- (a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, 12 hour days or shifts may be introduced subject to:
- proper health monitoring procedures being introduced;
  - suitable roster arrangements being made;
  - proper supervision being provided; and
  - adequate breaks being provided.
- (b) Employees may be required to work on their rostered day off and if so will be granted a day off within 14 days of the original rostered day off.

### 13.6 Daylight saving

For work performed on a shift that spans the time when daylight saving begins or ends, as prescribed by relevant state or territory legislation, an employee will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work).



**Examples**

**Daylight saving begins**

Larry works in New South Wales where daylight saving is due to begin at 2.00 am on the first Sunday in October. At 2.00 am the clock will go forward one hour to 3.00 am.

Larry is rostered to work the night shift that evening from 10.00 pm to 6.30 am. Larry will work for ~~seven and a half~~ 7 1/2 hours but he will be paid according to the difference in time on the clock which is ~~eight and a half~~ 8 1/2 hours.

**Daylight saving ends**

Nadia works in Victoria where daylight saving is due to end at 3.00 am on the first Sunday in April. At 3.00 am the clock will go back one hour to 2.00 am.

Nadia is rostered to work the night shift that evening from 10.00 pm to 6.30 am. Nadia will work for ~~nine and half~~ 9 1/2 hours but she will be paid according to the difference in time on the clock which is ~~eight and a half~~ 8 1/2 hours.

**14. Breaks**

**14.1 Meal breaks**

**(a) Paid meal break—shiftworkers**

A shiftworker working 10 hours or less will be entitled to a paid meal break of 30 minutes per shift.

**(b) Unpaid meal break—employees other than shiftworkers**

An employee is entitled to an unpaid meal break of not less than 30 minutes after every ~~five~~ 5 hours worked.

**14.2 Paid rest breaks—employees other than shiftworkers**

**(a)** One paid rest break of 15 minutes or ~~two~~ 2 paid rest breaks of ~~seven and a half~~ minutes each must be provided on each day worked.

**(b)** The employer will fix the time for the commencement of the rest break and this break will not involve a complete stoppage of work.

**14.3 Scheduling of breaks**

Breaks will be scheduled by the employee's supervisor based upon operational requirements so as to ensure continuity of operations. The employer will not require an employee to work more than ~~five~~ 5 hours before their first meal break or between subsequent meal breaks, if any.

**14.4 Working during meal breaks**

**(a)** Subject to clause 14.4(b), employees called to work during recognised meal breaks will be paid at overtime rates for all time worked until they receive a meal break of the usual period.

- (b) Where it is necessary to alter the time of the recognised meal break, employees may be called upon to work for not more than one hour beyond the recognised meal break without being paid overtime rates provided that they receive the equivalent meal break.

#### 14.5 Overtime meal break

- (a) An employee must be allowed a 20 minute paid meal break after:
- (i) ~~two~~ 2 hours of work past the normal finishing time; and
  - (ii) each additional ~~four~~ 4 hours of continuous overtime,
- provided that the employee is to continue working after the paid meal break.
- (b) For the purpose of clause 14.5(a), the amount of time worked by an employee does not include time spent travelling from a job back to the depot.
- (c) An employer and employee may agree to any variation of clause 14.5(a) to meet the circumstances of the work in hand, provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under clause 14.5(a).

### Part 4—Wages and Allowances

#### 15. Minimum rates

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

Minimum rates table amended in accordance with [\[2019\] FWCFB 5409](#) at [114].

- 15.1 An employer must pay adult employees the following minimum ~~rates~~ wages for ordinary hours worked by the employee

Employee classification	Minimum weekly rate <u>(full-time employee)</u> \$	Minimum hourly rate \$
Skill Level 1	740.80	19.49
Skill Level 2	784.10	20.63
Skill Level 3	816.70	21.49
Skill Level 4	862.70	22.70
Skill Level 5	870.20	22.90

See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalties.

### 15.2 Higher duties

An employee required by the employer to perform the work of a position at a higher classification level must be paid at the rate applicable for that higher level for all work done on that day/shift.

### 15.3 Supported wage system

For employees who because of the effects of a disability are eligible for a supported wage, see Schedule C—Supported Wage System.

### 15.4 National training wage

- (a) Schedule E to the *Miscellaneous Award 20XX* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 20~~10XX~~* as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 20~~10XX~~* is to be read as referring to the *Asphalt Industry Award 20~~10XX~~* and not the *Miscellaneous Award 20~~10XX~~*.

## 16. Payment of wages

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

**16.1** Wages will be paid either weekly or fortnightly, by agreement between the employer and employee.

### 16.2 Method of payment

An employer may pay an employee’s wages by cash, cheque or electronic funds transfer into the employee’s bank or other recognised financial institution account.

### 16.3 Day off coinciding with pay day

Where an employee is paid wages by cash or cheque and the employee is, not rostered to work on pay day, the employee must be paid no later than the working day immediately following pay day. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

### 16.4 Wages to be paid during working hours

- (a) Where an employee is paid wages by cash or cheque, such wages are to be paid during the employee’s ordinary hours.
- (b) If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

### 16.5 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:

- (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under ~~paragraph (a) clause~~ 16.5(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

NOTE 2: ~~Paragraph (b) Clause~~ 16.5(b) allows the Commission to make an order delaying the requirement to make a payment under ~~this clause~~ [clause](#) 16.5. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee’s employment terminates or shortly after.

## 17. Allowances

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.
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Note inserted in accordance with <a href="#">[2015] FWCFB 4658</a> at [57].
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[NOTE: Regulations 3.33\(3\) and 3.46\(1\)\(g\) of Fair Work Regulations 2009 set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.](#)

**17.1** Employers must pay to an employee any allowances the employee is entitled to under ~~this clause~~ 17. Where an employee is paid by the hour, the allowances will be 1/38th of the weekly allowance.

See Schedule B—Summary of Monetary Allowances for a summary of monetary allowances and the method of adjustment.

### 17.2 Wage-related allowances

#### (a) All-purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) industry allowance (clause 17.2(b))

(ii) inclement weather allowance (clause 17.2(c))

**(b) Industry allowance**

An industry allowance of **\$32.67** per week is payable to all employees. The industry allowance is payable for all purposes.

**(c) Inclement weather allowance**

(i) An inclement weather allowance of **\$33.48** per week is payable to employees to compensate employees for:

- all the additional disabilities of being required to work when exposed to inclement weather; and
- working in isolated and under-developed locations.

(iv) For the purpose of ~~this~~ clause 17.2(c), **inclement weather** means wet weather and/or abnormal climatic conditions such as hail, cold, high winds, severe dust storms, extreme high temperatures or any combination thereof.

(v) Inclement weather allowance is payable for all purposes.

(vi) Where employees cannot be gainfully employed on their normal duties or on other productive work because of wet weather, they will carry out alternative work out of the rain, where available.

**(d) First aid allowance**

A first aid allowance of **\$3.27** per day is payable to an employee if:

- the employee is appointed by the employer to perform first aid duties; and
- the employee holds a current first aid certificate.

**(e) Leading hand allowance**

A leading hand is paid an allowance of **\$28.58** per week.

**17.3 Expense-related allowances**

**(a) Meal allowance**

Except where the meals required by ~~this~~ clause 17.3(a) are provided by the employer, a meal allowance of **\$15.75** per occasion is payable to an employee who is required to work overtime for:

(i) more than one and a half hours after their usual finishing time, unless the employee was notified the previous day of the requirement to work additional time;

(ii) ~~five-5~~ and a half hours or more beyond the employee's usual finishing time and every ~~four-4~~ hours thereafter.

**(b) Protective and special clothing and equipment allowance**

- (i) Where an employee is required to wear protective clothing and equipment such as safety boots, headwear or wet-weather clothing, the employer must reimburse the employee for the cost of purchasing such clothing and equipment, except where the clothing and equipment is paid for by the employer.
- (ii) Where the employer requires an employee to wear any special clothing such as uniforms, the employer must reimburse the employee for the cost of purchasing ~~three~~ 3 sets of uniforms, except where the special clothing is paid for by the employer.
- (iii) Where the protective clothing or uniforms are supplied to the employee without cost, the protective clothing or uniforms:
- will remain the property of the employer; and
  - must be returned in good condition to the employer (subject to fair wear and tear) on the employee leaving the service of the employer.
- (iv) If an employee leaves the service of the employer within ~~six~~ 6 months of commencement of employment and does not return all clothing issued, the employee will be liable for 50% of the cost of such clothing.

**(c) Tools allowance**

Where an employer requires an employee to provide and use any tools, the employer must reimburse the employee for the cost of purchasing such tools, except where the employer supplies the tools without cost to the employee.

**(d) Country and distant work—travelling allowances**

**(i) Reimbursement of fares**

Where an employee:

- is sent by the employer from the city to the country, or from one country centre to another country centre, or from a country centre to the city; or
- remains until the completion of the job, or until the special work on which they were sent to perform is completed and no other work is provided by the employer,

they will be:

- reimbursed for fares back to the place of employment; or
- paid an allowance equivalent to the actual cost of the fares.

**(ii) Travelling expenses**

Except where meals and accommodation are provided by the employer, an allowance is payable to an employee:

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- while travelling to distant work, an employee will be paid **\$15.75** per meal with a maximum of ~~three~~3 meals per day; and
- for accommodation, where an employee is required to spend a night en route to distant work will be paid **\$70.30**.

**(e) Distant work—accommodation and incidentals allowances**

- (i)** Where an employee is required to work at a distance from the employee's usual commencement point, such that the employee is unable to return home the same night, the following allowances are payable to the employee:
- an allowance of **\$504.54** per week for reasonable board and lodging (which will not be wages); or
  - broken parts of a week, the allowance will be all for living expenses actually and reasonably incurred up to **\$504.54** per week for ~~seven~~7 days;
- except where the employer provides reasonable board and lodging.
- (ii)** In addition to the allowance in clause 17.3(e)(i), an allowance of **\$5.38** per night will be paid to each employee for incidentals.

**(f) Distant work—return home allowance**

- (i)** Where an employee is entitled under clause 17.3(f)(ii) to return home from distant work for a weekend, the employer must reimburse the cost of fares reasonably incurred by the employee or provide transport at the employer's cost.
- (ii)** Subject to clause 17.3(f)(iii), the entitlement to return home from distant work for a weekend will only accrue:
- where distant work continues for more than ~~two~~2 months; and
  - at a rate of one weekend every ~~four~~4 weeks after the completion of ~~two~~2 months' continuous service on distant work.
- (iii)** Fares will not be payable by the employer unless:
- the employee works their full ordinary hours on the ordinary working day before, and the ordinary working day after, the relevant weekend; and
  - the distant work continues for at least ~~two~~2 weeks after the relevant weekend.

**(g) Distant work—travelling time**

- (i)** Subject to clause 17.3(g)(iii), where an employee is sent from one centre to another and is required to remain away from home while necessarily travelling between such centres, the rate of pay for the travelling time will be at ordinary rates.

- (ii) The maximum time to be paid for when travelling will be ~~eight~~ 8 hours per day in addition to wages otherwise earned for work performed.
- (iii) Clause 17.3(g) will not alter any current practice.

## 18. Superannuation

### 18.1 Superannuation contributions for defined benefit members

An employer is permitted to make superannuation contributions to a superannuation fund or scheme in relation to a default fund employee who is a defined benefit member of the fund or scheme.

## Part 5—Overtime, Shiftwork and Penalty Rates

## 19. Overtime

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals.

### 19.1 Definition of overtime

- (a) For a full-time or casual employee other than a shiftworker, overtime is any time worked:
  - (i) in excess of the ordinary hours of work specified in clause 13.1; or
  - (ii) outside of the ordinary hours of work specified in clause 13.2.
- (b) For a part-time employee, hours worked in excess of the employee's ordinary hours (agreed in accordance with clauses 10.3 and 10.4) will be overtime and paid at the appropriate overtime rate.
- (c) In computing overtime, each day's work will stand alone.
- (d) Overtime does not include any time spent:
  - (i) by an employee in the course of travelling to or from any yard, camp, depot or picking up place of the employer; or
  - (ii) going into a place of work for the purpose of starting work, or in the course of returning after ceasing work.

### 19.2 Overtime rates for employees other than shiftworkers

Where an employee works overtime the employer must pay to the employee the overtime rates as follows:



For overtime worked on	Overtime rate % of ordinary hourly rate or casual ordinary hourly rate	Minimum payment
Monday to Friday—first 2 hours	150	—
Monday to Friday—after 2 hours	200	—
Saturday—first 2 hours	150	4 hours
Saturday—after 2 hours	200	4 hours
Sunday all day	200	4 hours

See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalties.

See clause 20.5 for overtime rates for shiftworkers.

### 19.3 Overtime meal break

An employee required to work overtime is entitled to breaks in accordance with clause 14.5.

### 19.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.4.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in ~~subparagraph (iii) clause~~ 19.4(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by ~~this~~ clause 19.4 is set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 19.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 19.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
- (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in ~~paragraph (e)~~ clause 19.4(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 19.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.4 will apply, including the requirement for separate written agreements under ~~paragraph (b)~~ [clause](#) 19.4(b) for overtime that has been worked.

NOTE: If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the [Act](#)).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.4.

## 19.5 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so employees have at least 10 consecutive hours off duty between the end of a day or shift and the commencement of another day or shift. If an

employee works overtime, the end of the employee's day or shift is the end of the overtime.

- (b) Where an employee, other than a casual employee, has not had at least 10 consecutive hours off duty between those days or shifts, the employee must, subject to this subclause, be released after completion of such overtime until the employee has 10 consecutive hours off duty without loss of pay for ordinary time occurring during the absence.
- (c) If the employer directs an employee to resume or continue work without having had 10 consecutive hours off duty, the employee must be paid at **200%** of the ordinary hourly rate until released from duty for 10 hours. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.
- (d) The provisions of this subclause will apply in the case of shiftworkers as if ~~eight~~ **8** hours were substituted for 10 hours when overtime is worked:
  - (i) for the purpose of changing shift rosters;
  - (ii) where a shiftworker does not report for duty and an employee other than a shiftworker or a shiftworker is required to replace the shiftworker; or
  - (iii) where a shift is worked by arrangement between the employees themselves.

#### 19.6 Recall and stand-by

- (a) An employee recalled to work overtime after leaving the job (whether notified before or after leaving the job) must be paid for a minimum of ~~three~~ **3** hours at the overtime rates.
- (b) Where the employee has been paid for standing by, the employee will be paid a minimum of ~~three~~ **3** hours' pay at the appropriate rates.

## 20. Shiftwork and penalty rates

### 20.1 Definitions

- (a) For the purpose of ~~this~~ clause 20.1:

**rostered shift** means any shift of which the employee concerned has had at least 48 hours' notice

**day shift** means any shift starting at or after 6.00 am and before 10.00 am

**afternoon shift** means any shift starting at or after 10.00 am and before 8.00 pm

**night shift** means any shift starting at or after 8.00 pm and before 6.00 am

**non-successive afternoon or night shift** means work on any afternoon or night shift that does not continue for at least ~~five~~<sup>5</sup> successive afternoons or nights

**permanent night shift** means a period of engagement on shiftwork where an employee works night shift only; remains on night shift for longer than ~~four~~<sup>4</sup> consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each shift cycle

- (b) By agreement between the employer and the majority of affected employees the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

## 20.2 Shift ~~penalty rates~~<sup>penalties</sup>

Clauses 20.2(a) and 20.3(e) amended in accordance with [\[2019\] FWCFB 5409](#) at [141] to [145].

- (a) The ~~penalty rates~~<sup>loadings</sup> provided for in clause 20.2(b) are not cumulative.
- (b) **Afternoon and night shift ~~penalty rates~~<sup>penalties</sup>**
- (i) An employee whilst working afternoon or night shift will be paid **115%** of their ordinary hourly rate of pay.
- (ii) An employee who is required to work on non-successive afternoon or night shifts will be paid **150%** of their ordinary hourly rate of pay for the first ~~eight~~<sup>8</sup> hours.
- (iii) An employee who works non-successive afternoon or night shifts will be paid **200%** of their ordinary hourly rate of pay for all time worked in excess of ~~eight~~<sup>8</sup> hours.
- (iv) An employee who works permanent night shifts will be paid **130%** of their ordinary hourly rate of pay for all time worked during ordinary working hours on permanent night shift. ~~This clause~~<sup>This clause</sup> 20.2(b) will not apply where the employee requests to work permanent night shift.

## 20.3 Hours of work

- (a) The ordinary working hours of employees on shiftwork will not exceed an average of 38 hours per week spread over a period of ~~two~~<sup>2</sup>, ~~three~~<sup>3</sup>, or ~~four~~<sup>4</sup> weeks and must not exceed 152 hours in 28 consecutive days. These hours are to be worked in shifts of ~~eight~~<sup>8</sup> hours inclusive of a paid meal break of 30 minutes. This paid meal break will be counted as time worked.
- (b) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer.

- (d) Except at changeover of shifts an employee will not be required to work more than one shift in each 24 hours.
- (e) Employees on shiftwork will accrue 0.4 of one hour for each ~~eight~~ 8 hour shift worked to allow one complete shift to be taken off as a paid shift for every 20 shift cycle. This 20th shift will be paid for at the appropriate ~~penalty~~ shift rate as prescribed by clause 20.
- (f) Each day of paid leave taken and any public holiday occurring during any cycle of ~~four~~ 4 weeks will be regarded as a shift worked for accrual purposes.
- (g) Except as provided for above, employees not working a complete ~~four~~ 4 week cycle will be paid pro rata accrued entitlements for each shift worked, on the programmed shift off or, in the case of termination of employment, on termination.
- (h) The employer and employees will agree in writing upon arrangements for rostered paid days or for accumulation of accrued days to be taken at or before the end of a particular contract.
- (i) Once such days have been rostered they will be taken as paid days off. Provided that where an employer, for emergency reasons, requires a shiftworker to work on a rostered day off the employee will be paid, in addition to the accrued entitlement, the rates prescribed for Saturday work for employees other than shiftworkers in clause 19.2.

#### 20.4 Shift rosters

There will be a roster of shifts which will:

- (a) provide for rotation unless all the employees concerned desire otherwise; and
- (b) provide for not more than ~~eight~~ 8 shifts to be worked in any ~~nine~~ 9 consecutive days.

#### 20.5 Overtime—shiftworkers

- (a) Work done by shiftworkers in excess of and outside the ordinary working hours of their shift (inclusive of time accrued for a rostered shift off under clause 20.3) or on a shift other than a rostered shift will be paid **200%** of the employees ordinary hourly rate of pay.
- (b) This provision will not apply to arrangements made between the employees themselves, in cases due to rotation of shift or when the shiftworker is not relieved from duty by the following shift at the proper time.
- (c) Where a shiftworker is not relieved from duty at the proper time the shiftworker will be paid at **150%** of their ordinary hourly rate for the first ~~eight~~ 8 hours, and **200%** of their ordinary hourly rate for time after ~~eight~~ 8 hours for all time worked after finishing an ordinary shift.

#### 20.6 Saturday shifts

Shiftworkers working ordinary hours of work on a Saturday (inclusive of time worked for accrual purposes as prescribed in clause 20.3) between midnight on

Friday and midnight on Saturday will be paid a minimum of **150%** of their ordinary hourly rate.

#### 20.7 Sundays and public holidays

- (a) Shiftworkers working ordinary hours of work on a Sunday will be paid the Sunday overtime rate in accordance with clause 19—Overtime.
- (b) Shiftworkers working ordinary hours of work on a public holiday will be paid in accordance with clause 26—Public holidays.
- (c) Where a shift falls partly on a Sunday or a public holiday and partly on another day, the shift will be regarded as a Sunday or public holiday shift where the major portion of the shift falls on the Sunday or public holiday.
- (d) Where a shift is regarded as a public holiday in accordance with clause 20.7(c), time worked on the shift commencing before midnight on the day preceding a Sunday or public holiday and extending into a Sunday or public holiday will be regarded as time worked on a Sunday or public holiday.
- (e) Where a shift commences between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight will not entitle the employee to the Sunday or public holiday rate.

20.8 An employer may require an employee other than a shiftworker to change to shiftwork provided at least 24 hours' notice is given of the change. Overtime rates will be paid if the shifts do not continue for at least ~~five~~5 consecutive afternoons or nights.

### Part 6—Leave and Public Holidays

#### 21. Annual leave

21.1 Annual leave is provided for in the [NES](#).

#### 21.2 Seven day shiftworkers

For the purpose of the additional week of annual leave provided for in section 87(1)(b) of the [Act](#), a **shiftworker** is a ~~seven~~7 day shiftworker who is regularly rostered to work on Sundays and public holidays.

#### 21.3 Payment for annual leave

Annual leave loading remains outstanding with further decision to be issued – see [\[2019\] FWCFB 5409](#) at [153].

- (a) Before the start of an employee's annual leave, the employer must pay the employee the amount the employee would have earned for working their ordinary hours had they not been on leave for the period.
- (b) In addition, before the start of an employee's annual leave, the employer must pay the employee the greater of:

- (i) a loading of 17.5% of the employee's ordinary hourly rate; or
- (ii) if the employee was a shiftworker before commencing the leave:
  - the 17.5% loading prescribed by clause 21.3(b)(i); and
  - the shift penalty rate that would have been payable to the employee for that shift under clause 20.2.

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the [Act](#)).

**21.4 Electronic funds transfer (EFT) payment of annual leave**

Despite anything else in clause 21, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

**21.5 Excessive leave accruals: general provision**

NOTE: Clauses 21.5 to 21.7 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 21.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 21.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 21.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

**21.6 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 21.5(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under ~~paragraph (a)~~ clause 21.6(a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 21.5, 21.6 or 21.7 or otherwise agreed by the employer and employee) are taken into account; and

- (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under ~~paragraph (a) clause~~ 21.6(a) that is in effect.
- (d) An employee to whom a direction has been given under ~~paragraph (a) clause~~ 21.6(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in ~~paragraph (d) clause~~ 21.6(d) may result in the direction ceasing to have effect. See clause 21.6(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

#### 21.7 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 21.5(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under ~~paragraph (a) clause~~ 21.7(a) if:
- (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 21.6(a) that, when any other paid annual leave arrangements (whether made under clause 21.5, 21.6 or 21.7 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under ~~paragraph (a) clause~~ 21.7(a) must not:
- (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 21.5, 21.6 or 21.7 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or



- (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under ~~paragraph (a)~~ 21.7(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 21.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under ~~paragraph (a)~~ clause 21.7(a).

## 21.8 Close-down

Issue remains outstanding with further decision to be issued – see [\[2019\] FWCFB 5409](#) at [247].

- (a) An employer may elect to temporarily close down (or reduce to nucleus) during the Christmas/New Year period for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, provided that the employer gives affected employees no less than one month's notice in writing of its intention to close down.
- (b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.
- (c) Where an employee has been given notice pursuant to clauses 21.8(a)~~(a)~~ or 21.8(b)~~(b)~~ and the employee has:
  - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
  - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
  - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.
- (d) Public holidays that fall within the period of close-down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

## 21.9 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 21.9 is set out at Schedule E—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 21.9 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 21.9, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

~~21.10—Payment for annual leave~~

~~21.11—Electronic funds transfer (EFT) payment of annual leave~~

~~21.12~~21.10 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 21.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 21.10.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 21.10 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 21.10 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 21.10 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 21.10.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.10.

NOTE 3: An example of the type of agreement required by clause 21.10 is set out at Schedule F—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Cash Out Annual Leave.

## 22. Personal/carer’s leave and compassionate leave

Personal/ carer’s leave and compassionate leave are provided for in the [NES](#).

## 23. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the [NES](#).

## 24. Community service leave

Community service leave is provided for in the [NES](#).

## 25. Unpaid family and domestic violence leave

Clause 25 inserted in accordance with [\[2019\] FWCFCB 5144](#) at [13].

Unpaid family and domestic violence leave is provided for in the NES.

NOTE 1: Information concerning an employee’s experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee’s need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

## 26. Public holidays

Clause 26 amended in accordance with [\[2019\] FWCFCB 5145](#) at [50] and [PR712276](#).

26.1 Public holidays are provided for in the [NES](#).

### 26.2 Payment for working public holidays

Where a full-time or part-time employee works ordinary hours on a public holiday the employee will be paid **250%** of the ordinary hourly rate for all time worked on

the public holiday. A casual employee who works on a public holiday will be paid 250% of the casual ordinary hourly rate.

26.3 An employee who works on a public holiday will be paid for a minimum ~~four~~ 4 hours at the rate prescribed in clause 26.2.

26.4 **Substitution of public holidays by agreement**

~~By agreement between the employer and the majority of employees in an enterprise, another day may be substituted for a public holiday.~~

(a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.

(b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

26.5 **Part-day public holidays**

For provisions relating to part-day public holidays see Schedule G—Part-day Public Holidays.

## Part 7—Consultation and Dispute Resolution

### 27. Consultation about major workplace change

27.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
  - (i) the introduction of the changes; and
  - (ii) their likely effect on employees; and
  - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

27.2 For the purposes of the discussion under clause 27.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

- 27.3** Clause 27.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 27.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 27.1(b).
- 27.5** In clause 27 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
  - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
  - (c) loss of, or reduction in, job or promotion opportunities; or
  - (d) loss of, or reduction in, job tenure; or
  - (e) alteration of hours of work; or
  - (f) the need for employees to be retrained or transferred to other work or locations; or
  - (g) job restructuring.
- 27.6** Where this award makes provision for alteration of any of the matters defined at clause 27.5, such alteration is taken not to have significant effect.

## **28. Consultation about changes to rosters or hours of work**

- 28.1** Clause 28 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 28.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 28.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 28.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
  - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 28.4** The employer must consider any views given under clause 28.3(b).
- 28.5** Clause 28 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## 29. Dispute resolution

- 29.1 Clause 29 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).
- 29.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 29.3 If the dispute is not resolved through discussion as mentioned in clause 29.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 29.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 29.2 and 29.3, a party to the dispute may refer it to the Fair Work Commission.
- 29.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 29.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 29.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 29.
- 29.8 While procedures are being followed under clause 29 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
  - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 29.9 Clause 29.8 is subject to any applicable work health and safety legislation.

## Part 8—Termination of Employment and Redundancy

### 30. Termination of employment

NOTE: The [NES](#) sets out requirements for notice of termination by an employer. See sections 117 and 123 of the [Act](#).

#### 30.1 Notice of termination by an employee

- (a) Clause 30.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2

according to the period of continuous service of the employee specified in column 1.

**Table 1—Period of notice**

<b>Column 1</b> <b>Employee’s period of continuous service with the employer at the end of the day the notice is given</b>	<b>Column 2</b> <b>Period of notice</b>
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

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

NOTE: The notice of termination required to be given by an employer is the same as that required of an employee except that the employer does not have to give additional notice based on the age of the employee.

- (c) In clause 30.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 30.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week’s wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 30.1(b), then no deduction can be made under clause 30.1(d).
- (f) Any deduction made under clause 30.1(d) must not be unreasonable in the circumstances.

**30.2 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 30.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## 31. Redundancy

Clause 31 substituted in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR706904](#).

NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.

### 31.1 Transfer to lower paid duties on redundancy

- (a) Clause 31.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
  - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or
  - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 31.1(c).
- (c) If the employer acts as mentioned in clause 31.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

### 31.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act.
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 31 or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

### 31.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 31.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.



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- (c) A statutory declaration is sufficient for the purpose of clause 31.3(b).
- (d) An employee who fails to produce proof when required under clause 31.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 30.2.

DRAFT

## Schedule A—Summary of Hourly Rates of Pay

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals. See [\[2019\] FWCFCB 6935](#)

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.  
Clauses A.3.3 and A.3.5 deleted in accordance with [\[2019\] FWCFCB 6935](#).

~~NOTE: Employers who meet their obligations under this schedule are meeting their obligations under the award.~~

### A.1 Ordinary hourly rate

The ordinary hourly rate includes the industry allowance (clause 17.2(b)) and inclement weather allowance (clause 17.2(c)) which are payable for all purposes.

### A.2 Full-time and part-time employees

#### A.2.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Day	Public holiday
	<b>% of ordinary hourly rate<sup>1</sup></b>	
	<b>100%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>
Skill Level 1	21.23	53.08
Skill Level 2	22.37	55.93
Skill Level 3	23.23	58.08
Skill Level 4	24.44	61.10
Skill Level 5	24.64	61.60

**Commented [FWC1]:** (Weekly rate ÷ 38) + industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c).

Rates in table include the all purpose industry allowance and inclement weather allowance.

**Commented [FWC2]:** Relevant percentage in cl 26.2.

<sup>1</sup> Ordinary hourly rate includes the industry allowance and inclement weather allowance payable to all employees for all purposes.

#### A.2.2 Full-time and part-time employees other than shiftworkers—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day
	<b>% of ordinary hourly rate<sup>1</sup></b>		
	<b>150%</b>	<b>200%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Skill Level 1	31.85	42.46	42.46
Skill Level 2	33.56	44.74	44.74
Skill Level 3	34.85	46.46	46.46

**Commented [FWC3]:** (Weekly rate ÷ 38) + industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c).

Rates in table include the all purpose industry allowance and inclement weather allowance.

**Commented [FWC4]:** Relevant percentage in cl 19.2.

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	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day
	<b>% of ordinary hourly rate<sup>1</sup></b>		
	<b>150%</b>	<b>200%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Skill Level 4	36.66	48.88	48.88
Skill Level 5	36.96	49.28	49.28

**Commented [FWC3]:** (Weekly rate ÷ 38) + industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c).

Rates in table include the all purpose industry allowance and inclement weather allowance.

**Commented [FWC4]:** Relevant percentage in cl 19.2.

<sup>1</sup> **Ordinary hourly rate** includes the industry allowance and inclement weather allowance payable to all employees for all purposes.

**A.2.3 Full-time and part-time shiftworkers—ordinary and penalty rates**

	Day	Afternoon or night	Non-successive afternoon or night <sup>1</sup>		Permanent night <sup>2</sup>	Saturday	Public holiday
			8 hours or less	More than 8 hours			
	<b>% of ordinary hourly rate<sup>3</sup></b>						
	<b>100%</b>	<b>115%</b>	<b>150%</b>	<b>200%</b>	<b>130%</b>	<b>150%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Skill Level 1	21.23	24.41	31.85	42.46	27.60	31.85	53.08
Skill Level 2	22.37	25.73	33.56	44.74	29.08	33.56	55.93
Skill Level 3	23.23	26.71	34.85	46.46	30.20	34.85	58.08
Skill Level 4	24.44	28.11	36.66	48.88	31.77	36.66	61.10
Skill Level 5	24.64	28.34	36.96	49.28	32.03	36.96	61.60

**Commented [FWC5]:** (Weekly rate ÷ 38) + industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c).

Rates in table include the all purpose industry allowance and inclement weather allowance.

**Commented [FWC6]:** Relevant percentage in cl 20.2(b).

**Commented [FWC7]:** Relevant percentage in cl 20.6.

**Commented [FWC8]:** Relevant percentage in cl 26.2.

<sup>1</sup> **Non-successive afternoon or night** means work on any afternoon or night shift that does not continue for at least ~~five~~5 successive afternoons or nights (see clause 20.1).

<sup>2</sup> **Permanent night** shift means a period of engagement on shiftwork where an employee works night shift only; remains on night shift for longer than ~~four~~4 consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each shift cycle (see clause 20.1).

<sup>3</sup> **Ordinary hourly rate** includes the industry allowance and inclement weather allowance payable to all employees for all purposes.

**A.2.4 Full-time and part-time shiftworkers—overtime**

	Overtime	Unrelieved overtime	
		First 8 hours	After 8 hours
	% of ordinary rate <sup>1</sup>		
	200%	150%	200%
	\$	\$	\$
Skill Level 1	42.46	31.85	42.46
Skill Level 2	44.74	33.56	44.74
Skill Level 3	46.46	34.85	46.46
Skill Level 4	48.88	36.66	48.88
Skill Level 5	49.28	36.96	49.28

**Commented [FWC9]:** (Weekly rate ÷ 38) + industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c).

Rates in table include the all purpose industry allowance and inclement weather allowance.

**Commented [FWC10]:** Relevant percentage in cl 20.5(a).

**Commented [FWC11]:** Relevant percentage in cl 20.5(c).

<sup>1</sup> **Ordinary hourly rate** includes the industry allowance and inclement weather allowance payable to all employees for all purposes.

**A.3 Casual employees**

**A.3.1 Casual ordinary hourly rate** includes the casual loading, industry allowance (clause 17.2(b)) and inclement weather allowance (clause 17.2(c)) which are payable for all purposes.

**A.3.2 Casual employees other than shiftworkers—ordinary and penalty rates**

	Day	Public holiday
		% of casual ordinary hourly rate <sup>1</sup>
	100%	250%
	\$	\$
Skill Level 1	26.54	66.35
Skill Level 2	27.96	69.90
Skill Level 3	29.04	72.60
Skill Level 4	30.55	76.38
Skill Level 5	30.80	77.00

**Commented [FWC12]:** ((Weekly rate ÷ 38) + (industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c)) + 25% casual loading in cl 11.4(a)(ii)).

Rates in table include the all purpose industry allowance, inclement weather allowance and casual loading.

**Commented [FWC13]:** Relevant percentage in cl 26.2.

<sup>1</sup> **Casual ordinary hourly rate** includes the casual loading, the industry allowance and the inclement weather allowance payable to all employees for all purposes.

**A.3.3—Casual employees other than shiftworkers—overtime rates**

-	<b>Monday to Saturday —first 2 hours</b>	<b>Monday to Saturday —after 2 hours</b>	<b>Sunday— all day</b>
	<b>% of casual ordinary hourly rate<sup>1</sup></b>		
-	<b>150%</b>	<b>200%</b>	<b>200%</b>
	\$	\$	\$
<b>Skill Level 1</b>	39.81	53.08	53.08
<b>Skill Level 2</b>	41.94	55.92	55.92
<b>Skill Level 3</b>	43.56	58.08	58.08
<b>Skill Level 4</b>	45.83	61.10	61.10
<b>Skill Level 5</b>	46.20	61.60	61.60

<sup>1</sup> **Casual ordinary hourly rate** includes the casual loading, the industry allowance and the inclement weather allowance payable to all employees for all purposes.

**A.3.4A.3.3 Casual shiftworkers—ordinary and penalty rates**

	Day	Afternoon or night	Non-successive afternoon or night <sup>1</sup>		Permanent night <sup>2</sup>	Saturday	Public holiday
			8 hours or less	More than 8 hours			
	<b>% of casual ordinary hourly rate<sup>3</sup></b>						
	<b>100%</b>	<b>115%</b>	<b>150%</b>	<b>200%</b>	<b>130%</b>	<b>150%</b>	<b>250%</b>
	\$	\$	\$	\$	\$	\$	\$
Skill Level 1	26.54	30.52	39.81	53.08	34.50	39.81	66.35
Skill Level 2	27.96	32.15	41.94	55.92	36.35	41.94	69.90
Skill Level 3	29.04	33.40	43.56	58.08	37.75	43.56	72.60
Skill Level 4	30.55	35.13	45.83	61.10	39.72	45.83	76.38
Skill Level 5	30.80	35.42	46.20	61.60	40.04	46.20	77.00

**Commented [FWC14]:** ((Weekly rate ÷ 38) + (industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c)) + 25% casual loading in cl 11.4(a)(ii)).

Rates in table include the all purpose industry allowance, inclement weather allowance and casual loading.

**Commented [FWC15]:** Relevant percentage in cl 20.2(b).

**Commented [FWC16]:** Relevant percentage in cl 20.6.

**Commented [FWC17]:** Relevant percentage in cl 26.2.

<sup>1</sup> **Non-successive afternoon or night** means work on any afternoon or night shift that does not continue for at least ~~five~~5 successive afternoons or nights (see clause 20.1).

<sup>2</sup> **Permanent night** shift means a period of engagement on shiftwork where an employee works night shift only; remains on night shift for longer than ~~four~~4 consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each shift cycle (see clause 20.1)

<sup>3</sup> **Casual ordinary hourly rate** includes the casual loading, the industry allowance and the inclement weather allowance payable to all employees for all purposes.

**A.3.5 Casual shiftworkers overtime rates**

-	<b>Regular overtime</b>	<b>Unrelieved overtime-first 8 hours</b>	<b>Unrelieved overtime-after 8 hours</b>
<b>% of casual ordinary hourly rate<sup>1</sup></b>			
-	<b>200%</b>	<b>150%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Skill Level 1</b>	53.08	39.81	53.08
<b>Skill Level 2</b>	55.92	41.94	55.92
<b>Skill Level 3</b>	58.08	43.56	58.08
<b>Skill Level 4</b>	61.10	45.83	61.10
<b>Skill Level 5</b>	61.60	46.20	61.60

<sup>1</sup>~~Casual ordinary hourly rate~~ includes the casual loading, the industry allowance and the inclement weather allowance payable to all employees for all purposes.

**Commented [FWC18]:** ((Weekly rate ÷ 38) + (industry allowance in cl 17.2(b) + inclement weather allowance in cl 17.2(c)) + 25% casual loading in cl 11.4(a)(ii)).

Rates in table include the all purpose industry allowance, inclement weather allowance and casual loading.

**Commented [FWC19]:** Relevant percentage in cl 20.5(a).

**Commented [FWC20]:** Relevant percentage in cl 20.5(c).

**Schedule B—Summary of Monetary Allowances**

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

See clause 17—Allowances for full details of allowances payable under this award.

**B.1 Wage-related allowances:**

- B.1.1** The following wage-related allowances are based on the weekly [standard rate](#) defined in [Schedule clause 2](#)—Definitions as the minimum weekly wage for a Skill level 3 in clause 15.1= **\$816.70**. These rates are to be paid in accordance with the clause 17—Allowances.

Allowance	Clause	% of standard rate	\$	Payable
Industry allowance <sup>1</sup>	17.2(b)	4.0	32.67	per week
Inclement weather allowance <sup>2</sup>	17.2(c)	4.1	33.48	per week
First aid allowance	17.2(d)	0.4	3.27	per day
Leading hand allowance	17.2(e)	3.5	28.58	per week

<sup>1,2</sup> These allowances apply for all purposes of this award.

**B.1.2 Adjustment of wage-related allowances**

Wage-related allowances are adjusted in accordance with increases to wages and are based on percentage of the [standard rate](#) as specified.

**B.2 Expense-related allowances:**

- B.2.1** The following expense-related allowances are to be paid in accordance with the clause 17—Allowances and will be adjusted by reference to the Consumer Price Index (CPI):

Allowance	Clause	\$	Payable
Meal allowance—overtime of one and a half hours after usual ceasing time—without notice	17.3(a)	15.75	per occasion
Meal allowance—overtime— <del>five-5</del> and a half hours or after usual ceasing time and each further <del>four-4</del> hours	17.3(a)	15.75	per occasion
Travelling expenses—meal allowance	17.3(d)(ii)	15.75	per meal
Travelling expenses—required to spend a night en route	17.3(d)(ii)	70.30	per night
Distant work—accommodation and incidentals allowance:			
Board and lodging for <del>seven-7</del> days	17.3(e)(i)	504.54	per week
All living expenses for broken parts of a	17.3(e)(i)	504.54	per week

Allowance	Clause	\$	Payable
week <del>—an amount of up to</del>			
Incidentals allowance	17.3(e)(ii)	5.38	per night

### B.2.2 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Country and distant work	Domestic holiday travel and accommodation sub-group



## Schedule C—Supported Wage System

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked.

**C.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

**C.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**supported wage system (SWS)** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

### **C.3 Eligibility criteria**

**C.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**C.3.2** This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

### **C.4 Supported wage rates**

**C.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C.5) %	Relevant minimum wage %
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

**C.4.2** Provided that the minimum amount payable must be not less than **\$87** per week.

**C.4.3** Where an employee’s assessed capacity is **10%**, they must receive a high degree of assistance and support.

### **C.5 Assessment of capacity**

**C.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

**C.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the [Act](#).

### **C.6 Lodgement of SWS wage assessment agreement**

**C.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

**C.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

### **C.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

## **C.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

## **C.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

## **C.10 Trial period**

**C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding ~~four~~ 4 weeks) may be needed. |

**C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

**C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.

**C.10.4** Work trials should include induction or training as appropriate to the job being trialled.

**C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

**Schedule D—Agreement for Time Off Instead of Payment for Overtime**

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:**

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

**The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.**

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

**Schedule E—Agreement to Take Annual Leave in Advance**

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*[If the employee is under 18 years of age - include:]*

**I agree that:**

**if, on termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

**Schedule F—Agreement to Cash Out Annual Leave**

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree to the employee cashing out a particular amount of the employee’s accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule G—Part-day Public Holidays

Schedule G amended in accordance with [\[2019\] FWCFB 5145](#) at [52] and [PR712276](#).

- G.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- G.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
  - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
  - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
  - (e) Excluding annualised salaried employees to whom clause G.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
  - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause G.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

- (h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

G.3 An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

G.3G.4 This schedule is not intended to detract from or supplement the NES.

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