

**The Aquaculture Industry Award—Exposure Draft was first published on 8 December 2014. Subsequent amendments to the draft are as follows:**

<b>Publication date</b>	<b>Reason for amendments</b>	<b>Clauses affected</b>
15 February 2019	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a>	1.2, 4.5, 22.6, 22.7, 22.10, 24.6, Schedule D, Schedule H
	Incorporate changes resulting from <a href="#">[2017] FWCFB 3176</a> and <a href="#">PR593885</a>	16.5, Schedule F
	Incorporate changes resulting from <a href="#">PR598110</a>	Schedule I
	Incorporate changes resulting from <a href="#">PR592367</a>	18
	Incorporate changes resulting from <a href="#">PR588795</a>	15.5(a)(deleted)
	Incorporate changes resulting from <a href="#">[2018] FWCFB 3500</a> , <a href="#">PR606440</a> , <a href="#">PR606590</a> , <a href="#">PR606630</a>	16, 18, Schedule B, Schedule C, Schedule E
	Incorporate changes resulting from <a href="#">[2018] FWCFB 3936</a> , <a href="#">PR609448</a>	19A (deleted)
	Incorporates changes resulting from <a href="#">[2018] FWCFB 4695</a> , <a href="#">PR700645</a> , <a href="#">PR700543</a>	11.4, 11.5
	Incorporates changes resulting from <a href="#">PR701683</a>	Schedule I
	Incorporates changes resulting from <a href="#">[2018] FWCFB 6863</a> , <a href="#">PR701517</a>	6
	Administrative changes by Modern Awards team	10.6 (deleted), 17
	Incorporates changes resulting from <a href="#">[2018] FWCFB 4735</a> , <a href="#">PR610149</a>	17
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	<a href="#">Exposure Draft</a>	
2 September 2019	Incorporating A clauses into the numbering of the exposure draft	6, 17, 29
	Incorporating changes resulting from <a href="#">[2015] FWCFB 4658</a> at [57]	18
	Incorporating changes resulting from <a href="#">[2019] FWCFB 1333</a> at [35]	1.5 (deleted)
	Incorporating changes resulting from <a href="#">[2019] FWCFB 2548</a> , <a href="#">PR706901</a>	32
	Incorporating changes resulting from AWR 2018–19 Decision <a href="#">[2019] FWCFB 3500</a> , <a href="#">PR707533</a> , <a href="#">PR707759</a> , <a href="#">PR709080</a>	16, 18, Schedule B, Schedule C, Schedule E

## Exposure Draft—Aquaculture Industry Award 20XX

The Aquaculture Industry Award—Exposure Draft was first published on 8 December 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5144</a>	26
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5145</a> (determination in draft form).	7, 27, Schedule I
	Administrative changes made by Modern Awards team to the document structure and Part and clause titles in accordance with <a href="#">[2019] FWCFB 5409</a> at [6] and Attachment A	Part 1—, 1.4 (deleted), 2, 9, 10 , 11, 11.5, 13, 14, 16, 16.5, 16.6, 17.3, 18, Part 5—, 20, Part 6—, 22, 22.3, 22.4, 22.5, 25, Part 8—, 31, 32, Schedule C, Schedule D, Schedule F—National Training Wage (deleted), Schedule H—Definitions (moved), Schedule F, Schedule I
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5409</a>	2, 4, 16

## EXPOSURE DRAFT

### Aquaculture Industry Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Aquaculture Industry Award 2010** (the Aquaculture award) as at 8 December 2014 and incorporates award updates up to 20 June 2019. This exposure draft does not seek to amend any entitlements under the Aquaculture 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 [AM2014/200](#). 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 *Aquaculture 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 H—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

In this award, unless the contrary intention appears:

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

**afternoon shift** means any shift finishing after 6.00 pm and at or before midnight

Definition of **aquaculture industry** inserted in definitions clause in accordance with [\[2019\] FWCFB 5409](#) at [118]

**aquaculture industry** has the meaning given in 4.2

**continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least ~~six~~6 consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer

**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](#)

**exempt public sector superannuation scheme** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

**leading hand** means an employee who is required to supervise, direct or be in charge of another employee or employees

**MySuper product** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

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

**night shift** means any shift finishing after midnight and at or before 8.00 am

**non-successive shift work** means an afternoon or night shift which does not continue for at least:

- (a) ~~five-5~~ successive afternoon or night shifts or ~~six-6~~ successive afternoon or night shifts in a ~~six-6~~ day enterprise (where no more than ~~eight-8~~ ordinary hours are worked on each shift); or
- (b) 38 ordinary hours (where more than ~~eight-8~~ ordinary hours are worked on each shift and the shift arrangement is in accordance with clauses 13.2 and 13.3

**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

**rostered shift** means any shift of which the employee concerned has had at least 14 days' notice unless a lesser period has been agreed

**Saturday shift** means any shift performed between midnight on Friday and midnight on Saturday

**shiftwork** means work carried on in the form of at least ~~two-2~~ consecutive shifts of employees rostered to work during each 24 hour period

**standard rate** means the minimum weekly wage for the Aquaculture attendant—Level 4 classification in clause 16.1

### 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

Clause 4 amended in accordance with [\[2019\] FWCFB 5409](#) at [118]

**4.1** This industry award covers employers throughout Australia engaged in the ~~aquaculture industry breeding, production, farming and related harvesting of fish, shellfish, crustacea and marine vegetation and ancillary operations including initial preparation for market~~ and their employees in the classifications in Schedule A—Classification Definitions to the exclusion of any other modern award.

**4.2** ~~In this award, the aquaculture industry means the breeding, production, farming and related harvesting of fish, shellfish, crustacea and marine vegetation and ancillary operations including initial preparation for market.~~

**4.24.3** This award covers any employer which supplies labour on an on-hire basis in the ~~aquaculture~~ industry ~~set out in clause 4.10~~ 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.

**4.34.4** This award covers employers which provide group training services for trainees engaged in the ~~aquaculture~~ industry and/or parts of ~~the industry set out at clause 4.10~~ and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause ~~4.2~~ are being performed. ~~This subclause~~ **Clause 4.4** operates subject to the exclusions from coverage in this award.

**4.44.5** 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.

**4.54.6** 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 30—Dispute resolution.

## 7. Facilitative provisions

Clause 7 amended in accordance with [\[2019\] FWCFB 5145](#) at [50].

**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:
13.4	Methods of arranging ordinary working hours	An individual or the majority of employees
14.1(b)	Rostering	The majority of employees
15.1(b)	Meal breaks—day workers	An individual
15.3(b)	Paid breaks	The majority of employees
17.1	Payment of wages—frequency	An individual or the majority of employees
17.2	Payment of wages—pay day	The majority of employees
18.3(d)(ii)	Travel time and allowance	The majority of employees
<del>21.2</del>	<del>Penalties and shiftwork—span of hours</del>	<del>An individual or the majority of employees</del>
<del>21.4(e)</del>	<del>Shiftwork on Sunday and public holiday shifts</del>	<del>The majority of employees</del>
20.7	Time off instead of payment for overtime	An individual
20.8(c)	Breaks during overtime	An individual
20.9(d)	Rest period after overtime	An individual
21.2	<u>Penalties and shiftwork—span of hours</u>	<u>An individual or the majority of employees</u>
21.4(c)	<u>Shiftwork on Sunday and public holiday shifts</u>	<u>The majority of employees</u>
22.5	Annual leave in advance	An individual
22.10	Cashing out of annual leave	An individual
27.2	Substitution of public holidays by agreement	<u>The majority of employees</u> <u>An individual</u>

## 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.

8.2 At the time of engagement an employer will inform each employee in writing of the terms of their engagement and in particular whether they are to be full-time, part-time or casual.

### 9. Full-time employees

A full-time employee is engaged 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 less than 38 ordinary hours per week;
- (b) has reasonably predictable hours of work; and
- (c) 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 At the time of engagement the employer and the part-time employee will agree in writing, on a regular pattern of work including the hours to be worked and the starting and finishing times on each day.

10.3 Any variation to this agreement will be recorded in writing.

10.4 An employer is required to roster a part-time employee for a minimum of ~~three~~3 consecutive hours on any shift.

## 11. Casual employees

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

### 11.2 Casual loading

- (a) For each ordinary hour worked, a casual employee must be paid:
  - (i) the minimum hourly rate; and
  - (ii) a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.
- (b) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination and redundancy benefits.

11.3 A casual employee working:

- (a) overtime as prescribed in clause 20—Overtime;
- (b) on a public holiday as prescribed in clause 27—Public holidays; or
- (c) on Saturday or Sunday as prescribed in clause 13.2,  
will be paid at the penalty rate applicable to a full-time employee and is not paid the casual loading in addition.

11.4 A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

### 11.5 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under ~~this subclause~~ clause 11.5 must be in writing and provided to the employer.

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- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
- (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in ~~paragraph clause~~ 11.5(b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
  - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
  - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- ~~(i)~~ Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- ~~(j)~~ If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 30—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- ~~(k)~~ Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in ~~this~~ clause 11.5, the employer and employee must discuss and record in writing:
- (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.2.
- ~~(l)~~ The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

~~(4)(m)~~ Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

~~(m)(n)~~ A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under ~~this~~ clause 11.5.

~~(n)(o)~~ Nothing in ~~this~~ clause 11.5 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.

~~(o)(p)~~ Nothing in ~~this~~ clause 11.5 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.

~~(p)(q)~~ An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of ~~this subclause~~ clause 11.5 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of ~~this subclause~~ clause 11.5 by 1 January 2019.

~~(q)(r)~~ A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in ~~paragraph~~ clause 11.5(q).

## 12. Classifications

Employees covered by this award must be classified according to the structure set out in Schedule A—Classification Definitions and paid the minimum wages set out in clause 16—Minimum rates.

## Part 3—Hours of Work

### 13. Ordinary hours of work

13.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the [NES](#).

#### 13.2 Ordinary hours of work—day workers

- (a) Ordinary hours of work may be worked on any ~~five~~ 5 days, Monday to Sunday inclusive.
- (b) The ordinary hours are to be worked continuously, except for meal breaks, at the discretion of the employer, between 5.00 am and 7.00 pm up to a maximum of 10 hours a day.
- (c) Subject to clause 13.4, the ordinary hours of work for a day worker will not exceed 38 hours per week on average, over a maximum of 12 weeks.

- (d) Any work performed in excess of or outside the spread of hours must be paid in accordance with clause 20—Overtime.
- (e) Where an employee was employed before 12 July 2013, the employee cannot be required to work shiftwork, unless the employee otherwise agrees.

### 13.3 Ordinary hours of work—shiftworkers

- (a) **Continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least ~~six~~6 consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (b) Subject to clause 14.1, the ordinary hours of work for continuous and non-continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days.

### 13.4 Methods of arranging ordinary working hours

- (a) Subject to:
  - (i) the employer's right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in clause 13.2(a) and 13.2(b); and
  - (ii) the employer's right to fix the starting and finishing time of shifts from time to time,the employer and the majority of affected employees in the enterprise or part of the enterprise must agree on the arrangement of ordinary working hours.
- (b) Clause 13.4(a) does not prevent the employer from reaching agreement with individual employees about how their working hours are to be arranged.
- (c) The matters on which agreement may be reached include:
  - (i) how the hours are to be averaged within a work cycle established in accordance with clauses 13.2 and 13.3 provided the maximum ordinary hours will be 10 per day or shift;
  - (ii) the length of the work cycle for day workers provided that the length is not longer than 12 weeks. The 12 week period may be extended to 26 weeks provided that the daily ordinary hours will be a maximum of 10 ordinary hours and provided that the majority of the employees in the section or sections concerned agree by means of a vote.
  - (iii) rosters which specify the starting and finishing times of working hours;
  - (iv) a period of notice of a rostered day off which is no 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.

## 14. Rostering arrangements

### 14.1 Rostering

- (a) The employer and the majority of affected employees may agree on a roster system that operates on the basis that the weekly average of 38 ordinary hours is worked over a period which exceeds 28 consecutive days but does not exceed 12 weeks.
- (b) The majority of employees in the affected section or sections may vote to agree that the 12 week period be extended to 26 weeks, provided that the daily maximum does not exceed 10 ordinary hours.
- (c) Except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.

## 15. Breaks

### 15.1 Meal breaks—day workers

- (a) An employee will be allowed an unpaid meal break of not less than 30 minutes no later than ~~five~~ 5 hours after commencing work.
- (b) For the purpose of ensuring completion of a task or tasks before change of tide or to ensure the timely return of fish to a growing or holding area in the water, the employer and employee may agree that the employee take a meal break at some other time prior to finishing work on that day.

### 15.2 Paid meal breaks—shiftworkers

A shiftworker is entitled to a 20 minute meal break on each shift that is counted as time worked. This paid break is in lieu of the day work unpaid break set out in clause 15.1.

### 15.3 Paid breaks

- (a) Employees will be allowed a paid break of 10 minutes during the morning and afternoon periods of each working day, at a time to be arranged by the employer.
- (b) The afternoon break provided in clause 15.3(a) will not be taken in any establishment where the majority of employees agree to not take the break and finish normal work 10 minutes earlier each day.
- (c) Paid breaks may be staggered throughout the day and taken at times which suit operational requirements and are consistent with the employer's fatigue management plan.

#### 15.4 Breaks during overtime

An employee working overtime may be entitled to an additional break in accordance with clause 20.7.

### Part 4—Wages and Allowances

#### 16. Minimum rates

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

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

16.1 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
	\$	\$
Aquaculture attendant Level 1	740.80	19.49
Aquaculture attendant Level 2	751.50	19.78
Aquaculture attendant Level 3	822.00	21.63
Aquaculture attendant Level 4	862.50	22.70

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

16.2 Junior employees must be paid the following percentage of the appropriate adult minimum weekly wage in clause 16.1.

Age	%
Under 17 years of age	60
17 years of age	70
18 years of age	80
19 years of age	90
20 years of age	100

### 16.3 School-based apprentices

For school-based apprentices, see Schedule D—School-based Apprentices.

### 16.4 Higher duties

- (a) An employee required by the employer to perform work at a higher classification level for more than ~~two~~2 hours, will be paid for all work done on that day at the rate applicable for that higher level.
- (b) If the work at the higher classification level does not exceed ~~two~~2 hours, the employee will be paid the higher rate for the actual time worked at the higher level.

### 16.5 Supported wage system

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

### 16.6 National training wage

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at ~~1 July 2018~~1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Aquaculture Industry Award 2010* and not the *Miscellaneous Award 2010*.

## 17. Payment of wages

NOTE 1: 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 Period of payment

- (a) By agreement between an employer and an employee, wages will be paid either weekly or fortnightly.
- (b) By agreement between the employer and the majority of employees in the relevant enterprise, wages may be paid ~~three~~3 weekly, ~~four~~4 weekly or monthly. Agreement in this respect may also be reached between the employer and an individual employee.
- (c) Payment will be no later than Thursday in the agreed pay period.
- (d) By agreement between the employer and the majority of employees, wages may be paid on a day later than Thursday.

## 17.2 Method of payment

- (a) Wages may be paid by cash, cheque or electronic funds transfer into a nominated bank or financial institution account, as agreed between an employer and an employee.
- (b) If payment is by cash or cheque, wages will be paid during ordinary working hours.

## 17.3 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~~ 17.3(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~~ 17.3(b) allows the Commission to make an order delaying the requirement to make a payment under ~~this clause~~ 17.3. 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.

## 18. Allowances

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

Note inserted in accordance with [\[2015\] FWCFB 4658](#) at [57].

[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.](#)

- 18.1 Employers must pay to an employee the allowances the employee is entitled to under ~~this clause~~ 18. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

**18.2 Wage-related allowances**

**(a) First aid allowance**

An allowance of **\$2.93** per working day will be paid to any employee holding first aid qualifications from St John Ambulance and appointed by the employer to perform first aid duty.

**(b) Diving allowance**

Finfish attendants who are required by the employer to undertake diving duties will receive an allowance of **\$4.05** per hour or part thereof, where diving equipment, excluding tools, is supplied by the employer.

**18.3 Expense-related allowances**

**(a) Finfish attendants—diving equipment**

Finfish attendants, who supply their own diving equipment, excluding tools, will be paid an allowance of **\$5.82** per hour or part thereof in addition to the amount prescribed in clause 18.2(b).

**(b) Meal allowance**

(i) An employee required to work overtime for more than ~~two~~2 hours will either be supplied with a meal by the employer or paid **\$17.44**.

(ii) An employee is additionally required to be supplied with a meal by the employer or paid **\$17.44** on each occasion after the first occasion the employee is required to be provided with an overtime crib break in accordance with clause 20.8(a) unless the employer has advised the employee on the previous day or earlier of:

- a requirement to work overtime; and
- that the requirement will necessitate that the employee have a second or subsequent meal.

(iii) If an employee, in accordance with notice provided by the employer the previous day or earlier of the amount of overtime to be worked, has provided a meal or meals, and is not required to work overtime or is required to work an amount of overtime that is less than ~~two~~2 hours in the case of the first meal, or less than ~~four~~4 hours in the case of the second meal, or less than an additional ~~four~~4 hours in the case of a subsequent meal, they will be paid **\$17.44** for each surplus meal provided.

**(c) Tool allowance**

Employees required to use tools will be:

- (i) supplied with all tools by the employer; or
- (ii) be paid a tool allowance of **\$9.83** per week.

**(d) Travel time and allowance**

- (i) An employee required to work at a workplace away from the usual workplace;
- will, at the direction of the employer, present for work at such workplace at the usual starting time; and
  - all time reasonably spent in reaching and returning from such workplace (in excess of the time normally spent in travelling from the employee's home to their usual workplace and returning) will be paid at ordinary rates of pay.
- (ii) When a tuna fish farm is located away from the shore so that some means of transport is necessary for an employee to pass between the shore and the tuna farm before starting and after finishing work, the employee will be paid at ordinary rates of pay for the time:
- spent travelling before starting and after finishing work; or
  - necessarily waiting for the means of transport.
- If the majority of the employees agree, by means of a vote, that time will not count as part of the daily working time, except that the provisions of clause 20.8 will continue to apply.
- (iii) Clause 18.3(d)(ii) only applies to trips longer than 30 minutes during which an employee is travelling, resting or in a state of rest and recline.
- (iv) Where an employee is required to engage in the performance of work tasks during travel or waiting time, or where the majority of the employees have not agreed in accordance with clause 18.3(d)(ii), time spent travelling will be counted as daily working time.
- (v) Where an employee is required to remain away from their usual place of residence, the employee will be paid for all expenses reasonably incurred while required to do so.
- (vi) Where an employee, with the approval of the employer, is required to use a private motor vehicle, the employee will be paid **\$0.78** per kilometre travelled.

**(e) Protective clothing and equipment**

Where an employee is required to wear protective clothing which is not provided by the employer (e.g. oilskins, gumboots, overalls, goggles, safety boots etc.), the employer must reimburse the employee for the cost of purchasing such protective clothing and equipment.

## **19. Superannuation**

### **19.1 Superannuation legislation**

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

### **19.2 Employer contributions**

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

### **19.3 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 19.3(a) or 19.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or 19.3(b) was made.

### **19.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or 19.3(b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) Austsafe Super Pty Ltd;
- (c) Prime Super;

- (d) Tasplan;
- (e) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (f) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Overtime and Penalty Rates

### 20. Overtime

#### 20.1 Definition of overtime

- (a) Overtime work is any work performed:
  - (i) outside the spread of ordinary hours on any day or shift as defined in clauses 13.2 and 13.3;
  - (ii) in excess of 38 hours per week or in excess of 10 hours per day; or
  - (iii) by an employee on a shift other than a rostered shift.
- (b) In computing overtime, each day's work will stand alone.
- (c) Overtime is not paid when the time worked is:
  - (i) by arrangement between the employees themselves; or
  - (ii) for the purposes of effecting the customary rotation of shifts.

#### 20.2 Payment for overtime—workers other than continuous shiftworkers

- (a) Employees will be paid the following rates for overtime worked:
  - (i) **150%** of the minimum hourly rate for the first ~~three~~3 hours; and
  - (ii) **200%** of the minimum hourly rate thereafter.
- (b) Casual employees will be paid the rates in clause 20.2(a) for any overtime worked instead of the loading prescribed in clause 11.2.

#### 20.3 Payment for overtime—continuous shiftworkers

- (a) A continuous shiftworker working overtime will be paid **200%** of the minimum hourly rate.
- (b) Casual employees will be paid at the rate in clause 20.3(a) for any overtime worked instead of the loading prescribed in clause 11.2.



**20.4 Saturday work—day workers**

A day worker required to work overtime on a Saturday must be paid **150%** of the minimum hourly rate for the first ~~three~~3 hours and **200%** of the minimum hourly rate thereafter with a minimum payment period of ~~three~~3 hours, except where the overtime is continuous with overtime commenced on the previous day.

**20.5 Sunday work**

An employee required to work overtime on a Sunday must be paid for a minimum of ~~three~~3 hours' work at the rate of **200%**. The **200%** is to be paid until the employee is relieved from duty.

**20.6 Public holiday work**

- (a) A day worker required to work overtime on a public holiday must be paid for a minimum of ~~three~~3 hours' work at the rate of **250%**. The **250%** is to be paid until the employee is relieved from duty.
- (b) A continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of ~~three~~3 hours' work at the rate of **200%**.
- (c) A non-continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of ~~three~~3 hours' work at the rate of **250%**. The **250%** is to be paid until the employee is relieved from duty.

**20.7 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 20.7.
- (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;

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- (iv) that any payment mentioned in clause 20.7(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 20.7 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 20.7 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 20.7 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 20.7 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 clause 20.7(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 20.7 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 20.7 will apply, including the requirement for separate written agreements under clause 20.7(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 20.7 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 20.7.

#### 20.8 Breaks during overtime

- (a) An employee working overtime will be allowed a crib break of 20 minutes, without deduction of pay, after each ~~four~~ 4 hours of overtime worked if the employee is to continue work after the crib break.
- (b) Where overtime is to be worked immediately after the completion of ordinary hours and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime will be allowed a meal break of 20 minutes, to be paid at the employee's minimum hourly rate.
- (c) An employer and employee may agree to any variation of the provisions of clause 20.8 to meet the circumstances of the work at hand provided that the employer will not be required to make payment in respect of any time allowed in excess of 20 minutes.

#### 20.9 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that an employee has at least 10 consecutive hours off duty after finishing the overtime.
- (b) An employee who works so much overtime that they will not have at least 10 consecutive hours off duty between completing the overtime and commencing ordinary work must, subject to ~~this sub-clause~~ [clause](#) 20.9, be released after completing such overtime until they have at least 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If on the instructions of the employer an employee resumes or continues work without having had 10 consecutive hours off duty the employee must be paid 200% of the minimum hourly rate until the employee is released from duty. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.
- (d) By agreement between the employer and individual employee, the 10 hour break provided for in clause 20.9 may be reduced to a period of no less than ~~eight~~ 8 hours.
- (e) The provisions of clause 20.9 will apply in the case of a shiftworker as if ~~eight~~ 8 hours were substituted for 10 hours when overtime is worked:
- (i) for the purpose of changing shift rosters; or

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- (ii) where a shiftworker does not report for duty and a day worker~~s~~ or a shiftworker is required to replace the shiftworker~~s~~; or
- (iii) where a shift is worked by arrangement between the employees themselves.

## 21. Penalties and shiftwork

### 21.1 Definitions

- (a) **Shiftwork** means work carried on in the form of at least ~~two-2~~ consecutive shifts of employees rostered to work during each 24 hour period.
- (b) **Rostered shift** means any shift of which the employee concerned has had at least 14 days' notice unless a lesser period has been agreed.
- (c) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.
- (d) **Night shift** means any shift finishing after midnight and at or before 8.00 am.
- (e) **Saturday shift** means any shift performed between midnight on Friday and midnight on Saturday.
- (f) **Non-successive shift** means an afternoon or night shift which does not continue for at least:
  - (i) ~~five-5~~ successive afternoon or night shifts or ~~six-6~~ successive afternoon or night shifts in a ~~six-6~~ day enterprise (where no more than ~~eight-8~~ ordinary hours are worked on each shift); or
  - (ii) 38 ordinary hours (where more than ~~eight-8~~ ordinary hours are worked on each shift and the shift arrangement is in accordance with clause 13.3—Ordinary hours of work—shiftworkers).
- (g) **Continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least ~~six-6~~ consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

Issue remains outstanding – draft variation determinations to be issued - see [\[2019\] FWCFB 5409](#) at [235].

- 21.2 Where the employer and the majority of employees concerned or in appropriate cases an individual employee agree, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

### 21.3 Shiftwork penalties

- (a) An employee will be paid the following penalty rates for all ordinary hours worked by the employee during the following periods:

Shift		Penalty rate	Casual penalty rate (inclusive of 25% loading)
Afternoon		115%	140%
Night		130%	155%
Non-successive afternoon or night	First 3 hours	150%	175%
	After 3 hours	200%	225%
Saturday		150%	175%
Sunday	Continuous shiftworker	200%	225%
	Non-continuous shiftworker	200%	225%
Public holiday	Continuous shiftworker	200%	225%
	Non-continuous shiftworker	250%	275%

<sup>1</sup>The extra rates for working on Saturday, Sunday and public holiday shifts is in substitution for and not cumulative upon the shift allowances.

### 21.4 Shiftwork on Sunday and public holiday shifts

- (a) Where a shift starts between 11.00 pm and midnight on a Sunday or public holiday, the time worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift.
- (b) The time worked by an employee on a shift starting before midnight on the day before a Sunday or public holiday and extending into the Sunday or public holiday must be regarded as time worked on the Sunday or public holiday.
- (c) Where a shift falls partly on a public holiday, the shift which has the major portion falling on the public holiday must be regarded as the public holiday shift. By agreement between the employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the public holiday shift instead.

### 21.5 Penalties—day workers

- (a) The rate to be paid to a day worker for ordinary time worked on a Saturday is **125%**.
- (b) The rate to be paid to a day worker for ordinary time worked on a Sunday is **150%**.
- (c) A day worker required to work on a public holiday must be paid for a minimum of ~~three~~3 hours' work at the rate of **250%**. The **250%** rate must be paid to the employee until the employee is relieved from duty.

## Part 6—Leave and Public Holidays

### 22. Annual leave

22.1 Annual leave is provided for in the [NES](#). Annual leave does not apply to casual employees.

#### 22.2 Definition of shiftworker

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.

#### 22.3 Payment for annual leave

Before the start of the employee's annual leave the employer must pay the employee:

- (a) instead of the base rate of pay referred to in section 90(1) of the [Act](#), the amount the employee would have earned for working their normal hours, exclusive of overtime, had they not been on leave; and
- (b) an additional loading of **17.5%** of the minimum rate prescribed in clause 16—Minimum rates.

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](#)).

#### 22.4 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 22 an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

## 22.5 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 22.5 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 22.5 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 22.5, 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.

## 22.6 Excessive leave accruals: general provision

NOTE: Clauses 22.6 to 22.8 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 22.2).
- (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 22.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

**22.7 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 22.6(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 clause~~ 22.7(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 22.6, 22.7 or 22.8 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 clause~~ 22.7(a) that is in effect.
- (d) An employee to whom a direction has been given under ~~paragraph clause~~ 22.7(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 clause~~ 22.7(d) may result in the direction ceasing to have effect. See clause 22.7(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.

**22.8 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 22.6(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 clause~~ 22.8(a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and



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- (ii) the employee has not been given a direction under clause 22.7(a) that, when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 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 clause~~ 22.8(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 22.6, 22.7 or 22.8 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 clause~~ 22.8(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 22.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under ~~paragraph clause~~ 22.8(a).

~~22.9—Payment for annual leave~~

~~Before the start of the employee's annual leave the employer must pay the employee:~~

- ~~(a) instead of the base rate of pay referred to in section 90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime, had they not been on leave; and~~
- ~~(b) an additional loading of 17.5% of the minimum rate prescribed in clause 16—Minimum.~~

~~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).~~

~~22.10—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 22.7 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.~~

~~(c) The employer must keep a copy of any agreement under clause 22.7 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 22.7, 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.~~

#### ~~22.11—Electronic funds transfer (EFT) payment of annual leave~~

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

#### ~~22.12~~22.9 Close down

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

(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of ~~this~~ clause 22.9. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.

(b) Where an employee has been given notice pursuant to clause 22.9 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.

- (c) 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.

**22.1322.10 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.10.
- (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 22.10 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 22.10 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 22.10 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 22.10.

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 22.10.

NOTE 3: An example of the type of agreement required by clause 22.10 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.

## **23. Personal/carer's leave and compassionate leave**

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

## 24. Parental leave and related entitlements

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

## 25. Community service leave

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

## 26. Unpaid family and domestic violence leave

Clause 26 inserted in accordance with [\[2019\] FWCFB 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.

## 27. Public holidays

Clause 27 amended in accordance with [\[2019\] FWCFB 5145](#) at [50] ([determination](#) in draft form).

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

### 27.2 Substitution of public holidays by agreement

(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.

27.3 Where an employee works on a public holiday or another day substituted in accordance with clause 27.2 they will be paid in accordance with clauses 21.3 or 20.6.

### 27.4 Part-day public holidays

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

## Part 7—Consultation and Dispute Resolution

### 28. Consultation about major workplace change

- 28.1** 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.
- 28.2** For the purposes of the discussion under clause 28.1(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.
- 28.3** Clause 28.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 28.4** 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 28.1(b).
- 28.5** In clause 28 **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.

**28.6** Where this award makes provision for alteration of any of the matters defined at clause 28.5, such alteration is taken not to have significant effect.

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

**29.1** Clause 29 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.

**29.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**29.3** For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 29.2 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.

**29.4** The employer must consider any views given under clause 29.3(b).

**29.5** Clause 29 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **30. Dispute resolution**

**30.1** Clause 30 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**30.2** 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.

**30.3** If the dispute is not resolved through discussion as mentioned in clause 30.2, 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.

**30.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 30.2 and 30.3, a party to the dispute may refer it to the Fair Work Commission.

- 30.5** 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.
- 30.6** 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.
- 30.7** 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 30.
- 30.8** While procedures are being followed under clause 30 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.
- 30.9** Clause 30.8 is subject to any applicable work health and safety legislation.
- 30.10** The parties must co-operate to ensure that the dispute resolution procedure is carried out in a timely manner and in good faith.

## Part 8—Termination of employment and Redundancy

### 31. Termination of employment

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

#### 31.1 Notice of termination by an employee

- (a) Clause 31.1 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.

- (c) In clause 31.1(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 31.1(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 31.1(b), then no deduction can be made under clause 31.1(d).
- (f) Any deduction made under clause 31.1(d) must not be unreasonable in the circumstances.

### 31.2 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 31.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## 32. Redundancy

Clause 32 amended in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR706901](#).

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

### **32.1 Transfer to lower paid duties on redundancy**

- (a) Clause 32.1 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 32.1(c).**



(c) If the employer acts as mentioned in clause 32.1(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.

### **32.2 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 32 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.

### **32.3 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 32.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 32.3(b).
- (d) An employee who fails to produce proof when required under clause 32.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 31.2.

## Schedule A—Classification Definitions

### A.1 Aquaculture Attendant Level 1

#### A.1.1 Finfish stream

A finfish attendant Level 1 means a person who has been employed for less than ~~four~~ 4 months to:

- (a) operate boats (including loading and unloading boats);
- (b) moor pens;
- (c) wash and change nets; and/or
- (d) move materials and equipment.

#### A.1.2 Shellfish stream

A shellfish attendant Level 1 means a person who has been employed for less than ~~four~~ 4 months' in the industry and who is engaged on either an inter-tidal, deep water or land-based shellfish enterprise to perform with supervision some or all of the following:

- (a) operating boats or punts;
- (b) loading, unloading, moving, packing, constructing of shellfish culture mediums (including baskets, cages, droplines and oyster racking);
- (c) recording data; and/or
- (d) operating mechanical equipment such as grading machines; preparation of product for market/transport as well as the general maintenance duties.

### A.2 Aquaculture Attendant Level 2

#### A.2.1 Finfish stream

A finfish attendant Level 2 means a person with more than ~~four~~ 4 months' service with one or more employer who is employed in finfish aquaculture to:

- (a) operate boats (including loading and unloading boats);
- (b) moor pens;
- (c) wash and change nets; and/or
- (d) move materials and equipment and prepare the product for market/transport.

### **A.2.2 Shellfish stream**

A shellfish attendant Level 2 means an employee who has completed at least ~~four~~4 months' service as a shellfish attendant Level 1 and in addition is capable of performing, without constant supervision, some or all of the following functions:

- (a) operating boats or punts;
- (b) loading, unloading, moving, packing, constructing of shellfish culture mediums (including baskets, cages, droplines and oyster racking);
- (c) recording data; and/or
- (d) operating mechanical equipment such as grading machines, preparation of product for market/transport, as well as general maintenance duties.

## **A.3 Aquaculture Attendant Level 3**

### **A.3.1 Finfish stream**

A finfish attendant Level 3 is an employee who has demonstrated the competency to perform the tasks as below:

- (a) harvest fish (including bleeding) and preparation for market/transport;
- (b) husband fish (including observing, separating, mortality retrieval, feeding); and/or
- (c) carry out general housekeeping and maintenance.

### **A.3.2 Shellfish stream**

A shellfish attendant Level 3 means an employee who, in addition to performing some or all of the functions of shellfish attendant Level 2 may be required to accept responsibility for acting in a minor supervisory capacity in directing the work of other employees.

## **A.4 Aquaculture Attendant Level 4**

### **A.4.1 Finfish stream**

A Finfish attendant Level 4 means a person who has been employed to perform the following:

- (a) husband fish (including observing, separating, mortality retrieval, feeding);
- (b) carry out general housekeeping and maintenance;
- (c) carry out basic net repairs; and/or
- (d) may be required to perform diving duties.

**A.4.2 Shellfish stream**

A shellfish attendant Level 4 is an employee who, in addition to performing some or all of the functions of shellfish attendant Level 3, directs the work of other employees and accepts responsibility for acting in charge.

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## Schedule B—Summary of Hourly Rates of Pay

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

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

### B.1 Full-time and part-time employees

#### B.1.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

Employee classification	Ordinary hours	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>			
	<b>100%</b>	<b>125%</b>	<b>150%</b>	<b>250%</b>
	\$	\$	\$	\$
Aquaculture Attendant Level 1	19.49	24.36	29.24	48.73
Aquaculture Attendant Level 2	19.78	24.73	29.67	49.45
Aquaculture Attendant Level 3	21.63	27.04	32.45	54.08
Aquaculture Attendant Level 4	22.70	28.38	34.05	56.75

Commented [FWC1]: (Weekly rate ÷ 38) in cl 16.1

Commented [FWC2]: Relevant percentage in cl 21.5.

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**B.1.2 Full-time and part-time shiftworkers—ordinary and penalty rates**

Employee classification	Day	Afternoon	Night	Non-successive afternoon or night		Saturday	Sunday	Public holiday -	
				First 3 hours	After 3 hours			All ordinary hours on PH – non-cont s'worker	Major portion of shift on PH – cont s'worker
	% of minimum hourly rate								
	100%	115%	130%	150%	200%	150%	200%	250%	200%
	\$	\$	\$	\$	\$	\$	\$	\$	\$
Aquaculture Attendant Level 1	19.49	22.41	25.34	29.24	38.98	29.24	38.98	48.73	38.98
Aquaculture Attendant Level 2	19.78	22.75	25.71	29.67	39.56	29.67	39.56	49.45	39.56
Aquaculture Attendant Level 3	21.63	24.87	28.12	32.45	43.26	32.45	43.26	54.08	43.26
Aquaculture Attendant Level 4	22.70	26.11	29.51	34.05	45.40	34.05	45.40	56.75	45.40

Commented [FWC3]: (Weekly rate ÷ 38) in cl 16.1

Commented [FWC4]: Relevant percentage in cl 21.3

<sup>1</sup>Non-successive afternoon or night which does not continue for at least ~~five~~ 5 successive afternoon or night shifts or ~~six~~ 6 successive afternoon or night shifts in a ~~six~~ 6 day enterprise or for at least 38 ordinary hours (see clause 21.1(f))

<sup>2</sup>PH = public holiday.

**B.2 Casual employees**

**B.2.1 Casual employees other than shiftworkers—ordinary and penalty rates**

Employee classification	Day	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	125%	125%	150%	250%
	\$	\$	\$	\$
Aquaculture Attendant Level 1	24.36	24.36	29.24	48.73
Aquaculture Attendant Level 2	24.73	24.73	29.67	49.45

Commented [FWC5]: (Weekly rate ÷ 38) in cl 16.1.

Commented [FWC6]: Minimum hourly rate + 25% casual loading in cl 11.2

Commented [FWC7]: Relevant percentage in cl 21.5. See also cl 11.3

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Employee classification	Day	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	125%	125%	150%	250%
Aquaculture Attendant Level 3	27.04	27.04	32.45	54.08
Aquaculture Attendant Level 4	28.38	28.38	34.05	56.75

Commented [FWC5]: (Weekly rate ÷ 38) in cl 16.1.

Commented [FWC6]: Minimum hourly rate + 25% casual loading in cl 11.2

Commented [FWC7]: Relevant percentage in cl 21.5. See also cl 11.3

**B.2.2 Casual shiftworkers—ordinary and penalty rates**

Employee classification	Day	Afternoon	Night	Non-successive afternoon or night		Saturday	Sunday	Public holiday	
				First 3 hours	After 3 hours			All ordinary hours on PH- non-cont s' worker	Major portion of shift on PH- cont s' worker
	% of minimum hourly rate								
	125%	140%	155%	175%	225%	175%	225%	275%	225%
	\$	\$	\$	\$	\$	\$	\$	\$	\$
Aquaculture Attendant Level 1	24.36	27.29	30.21	34.11	43.85	34.11	43.85	53.60	43.85
Aquaculture Attendant Level 2	24.73	27.69	30.66	34.62	44.51	34.62	44.51	54.40	44.51
Aquaculture Attendant Level 3	27.04	30.28	33.53	37.85	48.67	37.85	48.67	59.48	48.67
Aquaculture Attendant Level 4	28.38	31.78	35.19	39.73	51.08	39.73	51.08	62.43	51.08

Commented [FWC8]: (Weekly rate ÷ 38) in cl 16.1

Commented [FWC10]: Relevant percentage in cl 21.3

Commented [FWC9]: Minimum hourly rate + 25% casual loading in clause 11.2

<sup>1</sup>Non-successive afternoon or night which does not continue for at least ~~five~~<sup>5</sup> successive afternoon or night shifts or ~~six~~<sup>6</sup> successive afternoon or night shifts in a ~~six~~<sup>6</sup> day enterprise or for at least 38 ordinary hours (see clause 21.1(f))

<sup>2</sup>PH = public holiday.

### B.3 Overtime

#### B.3.1 Full-time, part-time and casual employees other than shiftworkers

Employee classification	Monday to Saturday		Sunday – all day	Public holiday
	first 3 hours	after 3 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Aquaculture Attendant Level 1	29.24	38.98	38.98	48.73
Aquaculture Attendant Level 2	29.67	39.56	39.56	49.45
Aquaculture Attendant Level 3	32.45	43.26	43.26	54.08
Aquaculture Attendant Level 4	34.05	45.40	45.40	56.75

Commented [FWC11]: (Weekly rate ÷ 38) in cl 16.1

Commented [FWC12]: Relevant percentage in cl 20.2, 20.4, 20.5 and 20.6. See also cl 11.3.

#### B.3.2 Full-time, part-time and casual shiftworkers

Employee classification	Non-continuous shiftworkers				Continuous shiftworkers	
	Monday to Saturday		Sunday – all day	Public holiday	Monday to Sunday	Public holiday
	first 3 hours	after 3 hours				
	% of minimum hourly rate					
	150%	200%	200%	250%	200%	200%
	\$	\$	\$	\$	\$	\$
Aquaculture Attendant Level 1	29.24	38.98	38.98	48.73	38.98	38.98
Aquaculture Attendant Level 2	29.67	39.56	39.56	49.45	39.56	39.56

Commented [FWC13]: (Weekly rate ÷ 38) in cl 16.1.

Commented [FWC14]: Relevant percentage in cl 20.2, 20.5 and 20.6. See also cl 11.3.

Commented [FWC15]: Relevant percentage in cl 20.3, 20.5 and 20.6. See also cl 11.3.



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Employee classification	Non-continuous shiftworkers				Continuous shiftworkers	
	Monday to Saturday		Sunday – all day	Public holiday	Monday to Sunday	Public holiday
	first 3 hours	after 3 hours				
	% of minimum hourly rate					
	150%	200%	200%	250%	200%	200%
	\$	\$	\$	\$	\$	\$
Aquaculture Attendant Level 3	32.45	43.26	43.26	54.08	43.26	43.26
Aquaculture Attendant Level 4	34.05	45.40	45.40	56.75	45.40	45.40

Commented [FWC13]: (Weekly rate ÷ 38) in cl 16.1.

Commented [FWC14]: Relevant percentage in cl 20.2, 20.5 and 20.6. See also cl 11.3

Commented [FWC15]: Relevant percentage in cl 20.3, 20.5 and 20.6. See also cl 11.3.

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## Schedule C—Summary of Monetary Allowances

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

See clause 18—Allowances for full details of allowances payable under this award.

### C.1 Wage-related allowances

**C.1.1** The following wage-related allowances in this award are based on the standard rate as defined in clause 2—Definitions as the minimum weekly rate for the Aquaculture attendant—Level 4 classification in clause 16.1 = **\$862.50**

Allowance	Clause	% of standard rate <del>\$862.50</del>	\$	<u>Payable</u>
First aid allowance	18.2(a)	0.34	2.93 <del>per working day</del>	<u>per working day</u>
Diving allowance—finfish attendants	18.2(b)	0.47	4.05 <del>per hour or part thereof</del>	<u>per hour or part thereof</u>

### C.1.2 Adjustment of wage-related allowances

Wage-related allowances are adjusted in accordance with increases to wages and are based on a percentage of the standard rate as specified.

### C.2 Expense-related allowances

**C.2.1** The following expense-related allowances will be payable to employees in accordance with clause 18.3:

Allowance	Clause	\$	<u>Payable</u>
Finfish attendants—diving equipment (in addition to diving allowance under clause 18.2(b))	18.3(a)	5.82 <del>per hour or part thereof</del>	<u>per hour or part thereof</u>
Meal allowance—overtime of more than <del>two-2</del> hours:	18.3(b)		
First meal		17.44 <del>per occasion</del>	<u>per occasion</u>
Second/subsequent meal		17.44 <del>per occasion</del>	<u>per occasion</u>
Not required to work or less work than advised—surplus meal		17.44 <del>per surplus meal</del>	<u>per surplus meal</u>

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Allowance	Clause	\$	Payable
Tool allowance	18.3(c)	9.83 <del>per week</del>	<u>per week</u>
Travelling time and allowance—use of private vehicle	18.3(d)(vi)	0.78 <del>per km</del>	<u>per km</u>

**C.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
Tool/equipment allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group

## Schedule D—School-based Apprentices

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- D.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- D.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed ~~six~~6 years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each ~~two~~2 years of employment as an apprentice.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of ~~four~~4 years (unless the apprenticeship is of ~~three~~3 years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- D.10** If an apprentice converts from school-based to full-time, all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- D.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule E—Supported Wage System

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

**E.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.

**E.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

### **E.3 Eligibility criteria**

**E.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.

**E.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.

## **E.4 Supported wage rates**

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

<b>Assessed capacity (clause E.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

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

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

## **E.5 Assessment of capacity**

**E.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.

**E.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](#).

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

**E.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.

**E.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.

### **E.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.

### **E.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.

### **E.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.

### **E.10 Trial period**

- E.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.
- E.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.
- E.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.
- E.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- E.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 E.5.

**Schedule F—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 G—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 H—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 I—Part-day Public Holidays

Schedule I amended in accordance with [\[2019\] FWCFB 5145](#) at [52] ([determination](#) in draft form).

- I.1** This schedule operates in conjunction with award provisions dealing with public holidays.
- I.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 I.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 I.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.

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

I.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.

I.3I.4 This schedule is not intended to detract from or supplement the [NES](#).

DRAFT