



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Australian Higher Education Industrial Association (AM2010/129)

VICE PRESIDENT LAWLER

BRISBANE, 8 DECEMBER 2010

Application to insert a new Clause 18, Clause 21, Schedule D, Schedule E, Appendix E1 and Clause 10.3(f).

[1] This is an application by the Australian Higher Education Industrial Association (**AHEIA**) pursuant to s.158 of the *Fair Work Act 2009* (**FW Act**) to vary the *Higher Education Industry - General Staff Award 2010* (**Award**).¹

[2] The application seeks the insertion of the following:

- (a) The standard Supported Wage System as Schedule D and the standard National Training Wage schedules as schedules E and E1 (together with an a clause to give those schedules operation); and
- (b) A new clause 18 in relation to apprentices.

[3] The usual directions, published on the tribunal's website and notified to relevant subscribers, were made for the lodging of written submissions by interested parties. There was only two submissions received, namely a submission from the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (**AMWU**) and a submission in reply from AHEIA. Only the AHEIA and the AMWU appeared at the hearing of the application.

[4] The AMWU supports the application in relation to the matters specified in (a) above.

[5] The Award was made as part of the priority stage of award modernisation, that is, at a time when the Australian Industrial Relations Commission (**AIRC**) Award Modernisation Full Bench had postponed issues associated with the Supported Wage System and the National Training Wage.² Standard schedules and clauses were subsequently developed for inclusion in modern awards.

[6] It is unclear why these standard schedules were not included in the Award as part of the round of technical and administrative amendments to modern awards that occurred at the end of the Part 10A award modernisation process. It seems probable that this was a case of simple oversight. In any event, I can see no reason whatever why those standard schedules should not now be included in the Award. I am satisfied that, as required by s.157(1) the

inclusion of those schedules and associated clauses is necessary to achieve the modern awards objective in s.134(1).

[7] I turn to the issue of apprentices. The AMWU agrees that provision should be made for apprentices (or at least that, ultimately, there should be such provision). The difference between the parties is as to the terms that should be included and it should occur at this stage.

[8] The AMWU noted that research initiated by the Minimum Wage Panel is presently being conducted in relation to apprentices and the National Training Wage and submitted that the present application, in so far as it relates to apprentices, should be adjourned, until that research is completed. It also suggested that the issue was more appropriately addressed as part of the first review of modern awards in 2012. I disagree. Provision was made for apprentices in a number of the underlying pre-reform awards that were replaced by the Award. Apprentices are engaged among the general staff in the sector. Again, it would appear that the failure to ultimately include such provision was a matter of oversight. The exposure draft of the Award contained no provision for apprentices. Several submissions on the exposure draft drew attention to that fact and argued for inclusion of appropriate provisions. The Award as made did not contain provision for apprentices but the decision of the Full Bench of the AIRC in relation to the making of the Award makes no mention of the issue. In the circumstances, in my view, provision for apprentices in the Award is necessary to ensure that the Award, together with the National Employment Standards, provides a fair and relevant safety net of terms and conditions, as required by s.134 of the FW Act. I do not think it appropriate to adjourn the application. I propose to vary the Award to include provision in relation to apprentices. Of course, the terms I include will be amenable to review in 2012.

[9] Assuming that there was to be no adjournment, the AMWU's primary submission was that the Award should incorporate by reference the apprentice provisions in the main modern awards that have significant coverage of apprentices including, in particular, the *Manufacturing and Associated Industries and Occupations Award 2010*. The AHIEA opposed this course on the basis that it would add unnecessary complexity for employers and apprentices covered by the Award. I consider that there is force in that submission and that substantive provision should be made for apprentices within the Award itself. In the event that I was against the AMWU on the issue of incorporation by reference, the AMWU proposed an alternative set of provisions to those sought by the AHIEA.

[10] The AHIEA proposed apprentice rates that reflect the most common rates in the underlying awards. However, I consider that the apprentice rates should match those in the main industry and occupational awards covering apprentices. The work and training of apprentices is more dependent on the apprentice's trade rather than the industry of their employer for modern award purposes. I can see no reason why, for example, an apprentice performing building maintenance work who is employed by a maintenance contractor (and therefore covered by the *Manufacturing and Associated Industries and Occupations Award 2010*) should, at the safety net level, be paid any differently to an apprentice performing building maintenance work who is employed by a university.

[11] I will make a determination varying the Award to include provision apprentices based on the draft clauses proposed by the AMWU. That draft was incomplete and required other adjustments referred to below. A draft determination is attached to this decision. I will make a final order after giving the parties an opportunity to comment.

[12] In relation to the draft determination, I note the following:

- Apprentices are dealt with in a new Schedule G rather than by adding a large number of clauses to the Award. A new clause 15.2 provides that apprentice wages can be found in Schedule G.
- In addition to adding the standard Supported Wage and National Training Wage schedules the standard School Based Apprenticeship schedule had been added.
- The standard (weekly) rate in the Award is defined by reference to HEW 3.1 classification which has a weekly rate of \$666.38. The standard weekly rate in the *Hospitality Industry (General) Award 2010 (Hospitality Award)* is defined by reference to the Level 4 classification which has a weekly rate of \$663.60. Since these rates are effectively commensurate, the draft determination contains the percentages for hospitality apprenticeships as those in the Hospitality Award.
- For waitstaff apprenticeships, the rates in the Hospitality Award increase at 6 month intervals. The third of those instalments is expressed as follows:

“Third six months Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in clause 20.1 and the standard weekly rate; and...”

The rate for a food and beverage attendant grade 2 (waiter) in clause 20.1 of the Hospitality Award equates is \$609 per week. This approximates to the weekly rate for the HEW 1.1 classification in the Award of \$612. This rates has been used for the third instalment in the draft determination:

“Third six months Midway between the total rate prescribed for a Higher Education Worker Level 1.1 in clause 15.1 and the standard weekly rate; and...”

- Apprenticeship rates in the *Plumbing and Fire Sprinklers Award 2010 (Plumbing Award)* are not based on a percentage of a standard rate, rather they are based on a percentage of an aggregate of the minimum rate for a Level 1 tradesperson, a plumbing trade allowance, a tool allowance to which is added an industry allowance yielding a weekly total of \$706.01 to which the following percentages are then applied.

Apprentice	Plumbing Award apprentices % per week
for the first year	37.5
for the second year	55
for the third year	70
for the fourth year	90

The rates for plumbing apprentices in the draft determination are intended to yield the approximately the same weekly pay as that received by apprentices under the Plumbing Award. This is achieved by applying the following percentages to the Award standard rate of \$666.38:

Apprentice	Plumbing apprentices % of standard rate
for the first year	41
for the second year	60
for the third year	76
for the fourth year	98

[13] If any interested person wishes to submit that the draft determination does not properly reflect these reasons they should notify my associate by email to chambers.lawler.vp@fwa.gov.au by 4.00 p.m. on Monday 13 December 2010. If no such submission is received I will proceed to make a determination in accordance with the draft determination. If such a submission is received it will be posted on the FWA website (<http://www.fwa.gov.au/index.cfm?pagename=awardsVarDoc&number=AM2010/129>) and the matter will be listed for argument in relation to the terms of the determination at 11.00 a.m. on Friday 17 December 2010.

VICE PRESIDENT

Appearances:

C. Pugsley for the Australian Higher Education Industrial Association.

C. Estoesta and *D. Hanisch* for the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU).

Hearing details:

2010.

Melbourne-Sydney (video link):

October 29.

MA000007 PRxxxxxx



DRAFT DETERMINATION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Australian Higher Education Industrial Association
(AM2010/129)

HIGHER EDUCATION INDUSTRY-GENERAL STAFF-AWARD 2010
[MA000007]

Educational services

VICE PRESIDENT LAWLER

MELBOURNE, XX DECEMBER 2010

A. Further to the decision in [2010] FWA XXX and pursuant to s 158 of the *Fair Work Act 2009*, the *Higher Education Industry General Staff - Award 2010* is varied as follows:

1. By inserting immediately after the heading for clause 15:

15.1 The minimum wages payable to employees are as follows:

2. By inserting a new sub-clause 15.2 as follows:

15.2 Apprentice rates of pay

The minimum award rates of pay for apprentices are set out in Schedule G—Apprentices.

3. By inserting a new Schedule D as follows:

Schedule D—Supported Wage System

D.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.

D.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

SWS wage assessment agreement means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

D.3 Eligibility criteria

D.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.

D.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.

D.4 Supported wage rates

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

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

D.4.2 Provided that the minimum amount payable must be not less than \$73 per week.

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

D.5 Assessment of capacity

D.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 Supported Wage System 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.

D.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.

D.6 Lodgement of SWS wage assessment agreement

D.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 Fair Work Australia.

D.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 Fair Work Australia to the union by certified mail and the agreement will take effect unless an objection is notified to Fair Work Australia within 10 working days.

D.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 supported wage system.

D.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.

D.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.

D.10 Trial period

- D.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 weeks) may be needed.
- D.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.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than \$73 per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.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 D.5.

3. By inserting a new Schedule E as follows:

Schedule E—National Training Wage

E.1 Title

This is the *National Training Wage Schedule*.

E.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

approved training means the training specified in the training contract

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (c) not include any period during a calendar year in which a year of schooling is completed

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

traineeship means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

year 10 includes any year before Year 10

E.3 Coverage

- E.3.1** Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a

wage level by Appendix E1 to this schedule or by clause E.5.4 of this schedule.

- E.3.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in Appendix E1 to this schedule.
- E.3.3** This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.
- E.3.4** This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.5** Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.
- E.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

E.4 Types of Traineeship

The following types of traineeship are available under this schedule:

- E.4.1** a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and
- E.4.2** a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

E.5 Minimum Wages

E.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	256.00	282.00	336.00
Plus 1 year out of school	282.00	336.00	391.00
Plus 2 years out of school	336.00	391.00	455.00

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
Plus 3 years out of school	391.00	455.00	521.00
Plus 4 years out of school	455.00	521.00	
Plus 5 or more years out of school	521.00		

(b) Wage Level B

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	256.00	282.00	327.00
Plus 1 year out of school	282.00	327.00	376.00
Plus 2 years out of school	327.00	376.00	441.00
Plus 3 years out of school	376.00	441.00	503.00
Plus 4 years out of school	441.00	503.00	
Plus 5 or more years out of school	503.00		

(c) Wage Level C

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	256.00	282.00	327.00
Plus 1 year out of school	282.00	327.00	368.00
Plus 2 years out of school	327.00	368.00	411.00
Plus 3 years out of school	368.00	411.00	458.00
Plus 4 years out of school	411.00	458.00	

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
Plus 5 or more years out of school	458.00		

(d) AQF Certificate Level IV traineeships

- (i) Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii) Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	Highest year of schooling completed	
	Year 10	Year 11
	per week	per week
	\$	\$
Wage Level A	541.00	562.00
Wage Level B	522.00	542.00
Wage Level C	475.00	493.00

E.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.42	9.28	11.05
Plus 1 year out of school	9.28	11.05	12.86
Plus 2 years out of school	11.05	12.86	14.97
Plus 3 years out of school	12.86	14.97	17.14
Plus 4 years out of school	14.97	17.14	

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 5 or more years out of school	17.14		

(b) Wage Level B

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.42	9.28	10.76
Plus 1 year out of school	9.28	10.76	12.37
Plus 2 years out of school	10.76	12.37	14.51
Plus 3 years out of school	12.37	14.51	16.55
Plus 4 years out of school	14.51	16.55	
Plus 5 or more years out of school	16.55		

(c) Wage Level C

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.42	9.28	10.76
Plus 1 year out of school	9.28	10.76	12.11
Plus 2 years out of school	10.76	12.11	13.52
Plus 3 years out of school	12.11	13.52	15.07
Plus 4 years out of school	13.52	15.07	
Plus 5 or more years out of school	15.07		

(d) School-based traineeships

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix E1 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
8.42	9.28

(e) AQF Certificate Level IV traineeships

(i) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	17.80	18.49
Wage Level B	17.17	17.83
Wage Level C	15.63	16.22

(f) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

(ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.

- (iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

E.5.3 Other minimum wage provisions

- (a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

E.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by Appendix E1 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

E.6 Employment conditions

- E.6.1** A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer’s leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.
- E.6.2** A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- E.6.3** Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee’s wages and determining the trainee’s employment conditions.
- E.6.4** Subject to clause E.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

4. By inserting a new Appendix E1 as follows:

Appendix E1: Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

E1.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I II III
Beauty	III
Business Services	I II III
Chemical, Hydrocarbons and Refining	I II III
Civil Construction	III
Coal Training Package	II III
Community Services	II III
Construction, Plumbing and Services Integrated Framework	I II III
Correctional Services	II III
Drilling	II III
Electricity Supply Industry— Generation Sector	II III (in Western Australia only)
Electricity Supply Industry— Transmission, Distribution and Rail Sector	II
Electrotechnology	I II III (in Western Australia only)
Financial Services	I II

Training package	AQF certificate level
	III
Floristry	III
Food Processing Industry	III
Gas Industry	III
Information and Communications Technology	I II III
Laboratory Operations	II III
Local Government (other than Operational Works Cert I and II)	I II III
Manufactured Mineral Products	III
Manufacturing	I II III
Maritime	I II III
Metal and Engineering (Technical)	II III
Metalliferous Mining	II III
Museum, Library and Library/Information Services	II III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I II

Training package	AQF certificate level
	III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

E1.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I II III
Asset Maintenance	I II III
Australian Meat Industry	I II III
Automotive Industry Manufacturing	II III
Automotive Industry Retail, Service and Repair	I II III
Beauty	II
Caravan Industry	II III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I II III
Extractive Industries	II III
Fitness Industry	III
Floristry	II
Food Processing Industry	I II
Forest and Forest Products Industry	I II III

Training package	AQF certificate level
Furnishing	I
	II
	III
Gas Industry	I
	II
Health	II
	III
Local Government (Operational Works)	I
	II
Manufactured Mineral Products	I
	II
Metal and Engineering (Production)	II
	III
Outdoor Recreation Industry	I
	II
	III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II
	III
Property Services	I
	II
	III
Public Safety	I
	II
Pulp and Paper Manufacturing Industries	I
	II
Retail Services	I
	II
Screen and Media	I
	II
	III
Sport Industry	II
	III
Sugar Milling	I
	II
	III
Textiles, Clothing and Footwear	I
	II
Transport and Logistics	I
	II

Training package	AQF certificate level
Visual Arts, Craft and Design	I II III
Water Industry	I II

E1.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I II III
Conservation and Land Management	I II III
Funeral Services	I II III
Music	I II III
Racing Industry	I II III
Rural Production	I II III
Seafood Industry	I II III

5. By inserting a new Schedule F as follows:

SCHEDULE F—School-Based Apprenticeship

F.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.

- F.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.
- F.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.
- F.4** For the purposes of clause F.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.
- F.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.
- F.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.
- F.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- F.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice.
- F.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three 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.
- F.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.
- F.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

6. By inserting a new Schedule G as follows:

Schedule G—Apprentices

G.1 Definitions

adult apprentice is an employee who is 21 years of age or over at the time of signing the contract of training.

apprentice is an employee who is bound by a contract of training registered with the appropriate State or Territory training authority.

apprenticeship is a system of structured on-the-job training with an employer and off-the-job training with an approved training provider accessed through a contract of training

approved training provider is a Technical and Further Education College or other training provider accredited by the appropriate State or Territory training authority.

contract of training means an approved agreement for training registered with the appropriate State or Territory training authority or under the provisions of the appropriate State or Territory training legislation.

school-based apprentice is an employee who is undertaking an apprenticeship in accordance with Schedule F while also undertaking a course of secondary education.

standard rate (SR) means the weekly rate derived from the annual rate for a HEW 3.1 in clause **Error! Reference source not found.—Error! Reference source not found.**

For the purposes of this award, a **building trades apprenticeship, electrical trades apprenticeship, metal and engineering trades apprenticeship, plumbing trades apprenticeship** and **hospitality trades apprenticeship** is a contract of training for the acquisition of tradesperson qualifications.

G.2 Building trades apprentices

- (a) The minimum ordinary rate of pay to be paid to junior building trades apprentices shall be in accordance with the percentages set out below applied to the standard rate.

Four year apprenticeship	% of the standard rate
First year	45
Second year	55
Third year	75
Fourth year	90
Three year apprenticeship	% of the standard rate
First year	55
Second year	75
Third year	90

- (b) The rate of pay of a building trades adult apprentice will be the rate prescribed for Higher Education Worker Level 1.1 or the percentages in G.2(a), whichever is higher.

G.3 Electrical trades apprentices

- (a) The minimum ordinary rate of pay to be paid to electrical trades apprentices shall be in accordance with the percentages set out below applied to the standard rate.

Year	Junior apprentice % of standard rate	Adult apprentice % of standard rate
1	42	70
2	55	80
3	75	85
4	85	90

G.4 Metal and engineering trades apprentices

- (a) The minimum ordinary rate of pay to be paid to junior metal and engineering trades apprentices shall be in accordance with the percentages set out below applied to the standard rate.

Stage of apprenticeship	Column 1	Column 2	Column 3	Column 4
	Completed Year 10 or less	Completed Year 11	Completed Year 12	Adult (i.e. 21 years of age or over)
Stage 1	42% of the Higher Education Worker Level 3.1 rate	80% of the unapprenticed junior rate under this award for an 18 year old	The relevant rate applicable to a trainee commencing after year 12 under National Training Wage Skill Level A.	National Training Wage Traineeship Skill Level B exit rate.
Stage 2	55% of the Higher Education Worker Level 3.1 rate	55% of the Higher Education Worker Level 3.1 rate	The relevant rate applicable to a trainee commencing at year 12 plus one year under National Training Wage Skill Level A.	Higher Education Worker Level 1.1 rate
Stage 3	75% of the Higher Education Worker Level 3.1 rate	75% of the Higher Education Worker Level 3.1 rate	75% of the Higher Education Worker Level 3.1 rate	Higher Education Worker Level 1.2 rate

Stage 4	88% of the Higher Education Worker Level 3.1 rate	88% of the Higher Education Worker Level 3.1 rate	Higher Education Worker Level 1.3 rate	Higher Education Worker Level 1.1 rate
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G.5 Plumbing trades apprentices

- (a) The minimum ordinary rate of pay to be paid to plumbing trades apprentices shall be in accordance with the percentages set out below applied to the standard rate:

Year	% of standard rate
First	41
Second	60
Third	76
Fourth	98

G.6 Hospitality trades apprentices

(a) Cooking apprenticeship

- (i) A person who has completed a full apprenticeship for cooking must be paid not less than the standard weekly rate.
- (ii) An employee apprenticed in the cooking trade will be paid the percentage of the standard rate, as follows:

Year	% of standard rate
First	55
Second	65
Third	80
Fourth	95

(b) Waiting apprenticeship

- (i) A person who has completed a full apprenticeship for waiting must be paid not less than the standard weekly rate.
- (ii) An employee apprenticed in the waiting trade will be paid the percentage of the standard weekly rate, or the wage as otherwise prescribed, as follows:

First six months	70%
Second six months	85%
Third six months	Midway between the total rate prescribed for a Higher Education Worker Level 1.1 in clause 15.1 and the standard weekly rate; and

Fourth six months Midway between the total rate prescribed for third six months, above, and the standard weekly rate.

(c) Proficiency payments—cooking trade

(i) Application

Proficiency pay as set out in clause (ii) will apply to apprentices who have successfully completed their schooling in a given year.

(ii) Payments

Apprentices must receive the standard weekly rate during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:

(1) one occasion only:

- for the first nine months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard weekly rate.

(2) on two occasions:

- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard weekly rate.

(3) on all three occasions:

- for the entire fourth year, the standard weekly rate.

(d) Proficiency payments—waiting trade

(i) Application

Proficiency pay as set out in clause 0 will apply to level 2 apprentices who have successfully completed their schooling in the first year.

(ii) Payments

Apprentices who have attained the standard of proficiency in their first year must receive the standard weekly rate during the latter half of the second year of apprenticeship.

G.7 Allowances

To avoid doubt, clause 18—Allowances applies to apprentices.

7. By updating the Table of Contents accordingly.

B. This variation will come into force on the full pay period commencing on or after XX December 2010.

VICE PRESIDENT

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² [2008] AIRCFB 1000 at [72]-[73]