

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

Publication date	Reason for amendments	Clauses affected
4 December 2015	Correct minor errors	B.1, 0
	Incorporating changes resulting from <a href="#">[2014] FWCFB 9412</a>	1, 2, 3.4, 5.1, 6.5, 10.6, 15, 16, 17, 18, 19, 20, Schedule F, Schedule H
	Incorporate changes resulting from <a href="#">[2015] FWCFB 3500</a> , <a href="#">PR566794</a> , <a href="#">PR566923</a> and <a href="#">PR568050</a>	10, 11, Schedule B, Schedule C, Schedule D
	Incorporate changes resulting from <a href="#">[2015] FWCFB 3023</a> and <a href="#">PR567228</a>	15.2
	Incorporate changes resulting from <a href="#">[2015] FWCFB 4658</a>	1.1, 1.2, 10.6, 14.7, 15.4, Schedule B
	Incorporate changes resulting from <a href="#">[2015] FWCFB 6656</a>	1
	Incorporating changes resulting from <a href="#">[2015] FWCFB 7236</a>	Schedule F
	Incorporate parties' agreed changes	3.1, 5.2, 6.3, 6.5(b)(ii), 8.2(c), 8.4(a)(i), 8.4(c)(i), 9.1(a), 9.2, 10.6(a), 10.7(a), 11.2(a), 11.3(d)(ii), 13.4, 14.3, 14.9, 20.2, B.1.1, B.1.2, 0, 0
31 October 2016	Incorporate changes resulting from <a href="#">PR580863</a>	Schedule G
	Incorporate changes resulting from <a href="#">[2016] FWCFB 3500</a> , <a href="#">PR579905</a> and <a href="#">PR579620</a> , <a href="#">PR581528</a>	10, 11, Schedule B, Schedule C, Schedule D; Schedule F
	Incorporate changes resulting from <a href="#">[2016] FWCFB 3953</a> and <a href="#">PR582963</a>	5.2, 15, Schedule I, Schedule J
	Incorporate changes resulting from <a href="#">[2016] FWCFB 4258</a> and <a href="#">PR584074</a>	5.2, 14.7, Schedule K
	Incorporate changes resulting from <a href="#">[2016] FWCFB 7254</a>	3.1, 5.2, 6.3, 6.5(b), 8.2(c), 8.4, 9.1(a), 9.2, 10.6(a), 10.7(a), 11.2(a), 11.3, 13.4, 14.3, 14.9, 20.2, B.1, 0, 0
Changes agreed to by parties appear in red text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.		

# EXPOSURE DRAFT

## Aquaculture Industry Award 2015

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. This exposure draft does not seek to amend any entitlements under the Aquaculture award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.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. Transitional provisions have not been included in this exposure draft pending the outcome of 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

### 1. Title and commencement

- 1.1 This award is the *Aquaculture Industry Award 2015*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010. 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.
- 1.3 Schedule H—Definitions sets out definitions that apply in this award.
- 1.4 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. The National Employment Standards and this award

- 2.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 2.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.
- 2.3 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.

### 3. Coverage

3.1 amended in accordance with para [40] of [2016] FWCFB 7254

- 3.1 This industry award covers employers throughout Australia engaged in the breeding, production, farming and related harvesting of fish, shellfish, crustacea and marine vegetation and ~~related~~ 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.
- 3.2 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 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 operates subject to the exclusions from coverage in this award.
- 3.3 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clause 3.1 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 3.1 are being performed. This subclause operates subject to the exclusions from coverage in this award.

**3.4** This award does not cover:

- (a) employees excluded from award coverage by the *Fair Work Act 2009* (Cth) (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.

**3.5** 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.

#### **4. Award flexibility**

**4.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:

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

**4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

**4.3** The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and

- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

4.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

4.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

4.6 Except as provided in clause 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

4.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

4.8 The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

NOTE: If any of the requirements of [s.144\(4\)](#), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see [s.145](#) of the Act).

4.9 The notice provisions in clause 4.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 4.8(a), subject to four weeks' notice of termination.

4.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

## 5. Facilitative provisions

5.1 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.

5.2 Facilitative provisions in this award are contained in the following clauses:

5.2 amended in accordance with para [40] of [2016] FWCFB 7254; PR584074 and PR582963

Clause	Provision	Agreement between an employer and:
8.3(c)(ii)	Rostering	The majority of employees
8.4	<u>Methods of arranging ordinary working hours</u>	<u>An individual or the majority of employees</u>
9.1(b)	Meal breaks—day workers	An individual
9.3(b)	Paid breaks	The majority of employees
10.6(a)	Payment of wages—frequency	<u>An individual or the majority of employees</u>
10.6(b)	Payment of wages—pay day	The majority of employees
11.3(d)(ii)	Travel time and allowance	The majority of employees
13.2	Penalties and shiftwork—span of hours	An individual or the majority of employees
13.4(c)	Shiftwork on Sunday and public holiday shifts	The majority of employees
14.7	<u>Time off instead of payment for overtime</u>	<u>An individual</u>
14.8(c)	Breaks during overtime	An individual
14.9(d)	Rest period after overtime	An individual
15.5	<u>Annual Paid leave in advance of accrual</u>	An individual
15.8	<u>Cashing out of annual leave</u>	<u>An individual</u>
18.2	Substitution of public holidays by agreement	The majority of employees

## Part 2—Types of Employment and Classifications

### 6. Types of employment

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

- (a) full-time;

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

**6.2** 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.

**6.3 Full-time employment**

6.3 amended in accordance with para [40] of [2016] FWCFB 7254

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

**6.4 Part-time employment**

- (a) A part-time employee:
  - (i) is engaged to work less than 38 ordinary hours per week;
  - (ii) has reasonably predictable hours of work; and
  - (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) 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.
- (c) Any variation to this agreement will be recorded in writing.
- (d) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

**6.5 Casual employees**

- (a) A casual employee is an employee who is engaged and paid as a casual employee.

**(b) Casual loading**

6.5(b) amended in accordance with para [40] of [2016] FWCFB 7254

- (i) For each ordinary hour worked, a casual employee must be paid:
  - the minimum hourly rate; and
  - a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.
- ~~(ii) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, and redundancy benefits, and other entitlements of full-time or part-time employment.~~
- (c) A casual employee working:
  - (i) overtime as prescribed in clause 14—Overtime;



- (ii) on a public holiday as prescribed in clause 18—Public holidays; or
- (iii) on Saturday or Sunday as prescribed in clause 8.2,

will be paid at the penalty rate applicable to a full-time employee and is not paid the casual loading in addition.

## 7. 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 10—Minimum wages.

The current classification definitions only provide for finfish and shellfish streams. Parties are asked to consider whether additional classifications should be inserted for employees in other streams e.g. marine vegetation (see coverage clause 3.1).

## Part 3—Hours of Work

### 8. Ordinary hours of work and rostering

8.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.

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

8.2 amended in accordance with para [40] of [2016] FWCFB 7254

- (a) Ordinary hours of work may be worked on any five 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 8.4, 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 14—Overtime.
- (e) Where an employee was employed before 12 July 2013, the employee cannot be required to work shiftwork, unless the employee otherwise agrees.

#### 8.3 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 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 8.3(c), 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.

**(c) Rostering**

- (i)** 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.
- (ii)** 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.
- (iii)** Except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.

**8.4 Methods of arranging ordinary working hours**

8.4 amended in accordance with para [40] of [2016] FWCFB 7254

**(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 8.2(b)~~ clause 8.2(a) and (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 8.4(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 8.2 and 8.3 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 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.

## 9. Breaks

### 9.1 Meal breaks—day workers

9.1 amended in accordance with para [40] of [2016] FWCFB 7254

- (a) An employee will be allowed an unpaid meal break of not less than 30 minutes ~~within~~ no later than five hours ~~of starting~~ 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.

### 9.2 Paid meal breaks—shiftworkers

9.2 amended in accordance with para [40] of [2016] FWCFB 7254

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 9.1.

### 9.3 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 9.3(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.

### 9.4 Breaks during overtime

An employee working overtime may be entitled to an additional break in accordance with clause 14.7.

## Part 4—Wages and Allowances

### 10. Minimum wages

Rates updated as a result of AWR 2016

**10.1** An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:

<b>Employee classification</b>	<b>Minimum weekly rate \$</b>	<b>Minimum hourly rate \$</b>
Aquaculture attendants		
Level 1	672.70	17.70
Level 2	682.40	17.96
Level 3	746.50	19.64
Level 4	783.30	20.61

See Schedule B for a summary of hourly rates of pay including overtime and penalties.

**10.2** Junior employees must be paid the following percentage of the appropriate adult minimum weekly wage in clause 10.1.

<b>Age</b>	<b>%</b>
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

### 10.3 Supported wage system

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

### 10.4 School-based apprentices

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

### 10.5 National training wage

For employees undertaking a traineeship, see Schedule F—National Training Wage.

### 10.6 Payment of wages

#### (a) Period of payment

10.6(a) amended in accordance with para [40] of [2016] FWCFB 7254

(i) By agreement between an employer and an employee, wages will be paid either weekly or fortnightly.

(ii) By agreement between the employer and the majority of employees in the relevant enterprise, wages may be paid three weekly, four weekly or monthly. Agreement in this respect may also be reached between the employer and an individual employee.

~~(ii)~~ (iii) Payment will be no later than Thursday in the agreed pay period.

~~(iii)~~(iv) By agreement between the employer and the majority of employees, wages may be paid on a day later than Thursday.

**(b) Method of payment**

(i) 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.

(ii) If payment is by cash or cheque, wages will be paid during ordinary working hours.

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.

**10.7 Higher duties**

10.7 amended in accordance with para [40] of [2016] FWCFB 7254

(a) An employee required by the employer to perform ~~the duties of a position~~ work at a higher classification level for more than two 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 hours, the employee will be paid the higher rate for the actual time worked at the higher level.

**11. Allowances**

Monetary amounts in this clause adjusted as a result of AWR 2016

**11.1** Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.

**11.2 Wage related allowances**

**(a) First aid allowance**

11.2(a) amended in accordance with para [40] of [2016] FWCFB 7254

An allowance of **\$2.66** per working day will be paid to any ~~full-time~~ 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 **\$3.68** per hour or part thereof, where diving equipment, excluding tools, is supplied by the employer.

**11.3 Expense related allowances**

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

Finfish attendants, who supply their own diving equipment, excluding tools, will be paid an allowance of **\$5.70** per hour or part thereof in addition to the amount prescribed in clause 11.2(b).

11.3(b) amended in accordance with para [47] of [2016] FWCFB 7254

~~**(b) Meal allowance**~~

~~(i) An employee required to work overtime for more than two hours will either be supplied with a meal by the employer or paid **\$16.38**.~~

~~(ii) Where the employer has not advised the employee on the previous day or earlier of:~~

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

~~the employer will supply the employee with a second or subsequent meal or make a further payment of **\$16.38** per meal.~~

~~(iii) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime or is required to work less than the amount advised, they will be paid **\$16.38** for each surplus meal provided.~~

**(b) Meal allowance**

(i) An employee required to work overtime for more than two hours will either be supplied with a meal by the employer or paid **\$16.38**.

(ii) An employee is additionally required to be supplied with a meal by the employer or paid **\$16.38** on each occasion after the first occasion the employee is required to be provided with an overtime crib break in accordance with clause 14.8(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 hours in the case of the first meal, or less than four hours in the case of the second

meal, or less than an additional four hours in the case of a subsequent meal, they will be paid \$16.38 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 \$9.62 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.

11.3(d)(ii) amended in accordance with para [40] of [2016] FWCFB 7254

- (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 ~~an~~ 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 14.8 will continue to apply.

- (iii) Clause 11.3(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 subclause 11.3(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.

**12. Superannuation**

**12.1 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.

**12.2 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.

**12.3 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 12.2.
- (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 12.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 12.3(a) or (b) was made.

**12.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 12.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 12.2 and pay the amount



authorised under clauses 12.3(a) or (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—Penalties and Overtime

### 13. Penalties and shiftwork

#### 13.1 Definitions

- (a) **Shiftwork** means work carried on in the form of at least two 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 successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise (where no more than eight ordinary hours are worked on each shift); or
  - (ii) 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with clause 8.3).
- (g) **Continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

**13.2** 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.

**13.3 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.

**13.4 Shiftwork on Sunday and public holiday shifts**

13.4 amended in accordance with para [40] of [2016] FWCFB 7254

(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. ~~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.~~

~~(b) 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.~~

- (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.

### 13.5 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 hours' work at the rate of **250%**. The **250%** rate must be paid to the employee until the employee is relieved from duty.

## 14. Overtime

14 amended in accordance with [PR584074](#). (Old 14.7-14.8 renumbered as 14.8-14.9, new 14.7 inserted)

### 14.1 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 8.2 and 8.3;
  - (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.

### 14.2 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 hours; and
  - (ii) **200%** of the minimum hourly rate thereafter.
- (b) Casual employees will be paid the rates in clause 14.2(a) for any overtime worked instead of the loading prescribed in clause 6.5(b).

### 14.3 Payment for overtime—continuous shiftworkers

14.3 amended in accordance with para [40] of [2016] FWCFB 7254

- (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 14.3(a) for any overtime worked instead of the loading prescribed in clause 6.5(b).

### 14.4 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 hours and **200%** of the minimum hourly rate thereafter with a minimum payment period of three hours, except where the overtime is continuous with overtime commenced on the previous day.

### 14.5 Sunday work

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

### 14.6 Public holiday work

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

### 14.7 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 14.7.
- (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;

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

Note: An example of the type of agreement required by this clause is set out at Schedule K. There is no requirement to use the form of agreement set out at Schedule K. An agreement under clause 14.7 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 14.7 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 14.7 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 paragraph (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 14.7 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 14.7 will apply, including the requirement for separate written agreements under paragraph (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 14.7 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 14.7.

#### 14.8 Breaks during overtime

- (a) An employee working overtime will be allowed a crib break of 20 minutes, without deduction of pay, after each four 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 14.8 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.

#### 14.9 Rest period after overtime

14.9 amended in accordance with para [40] of [2016] FWCFB 7254

- (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 between the work of successive working days after finishing the overtime.
- (b) An employee who works so much overtime ~~between the end of their ordinary hours on one day and the start of their ordinary hours on the next day that the employee has not had~~ that they will not have at least 10 consecutive hours off duty ~~between those times~~ completing the overtime and commencing ordinary work must, subject to ~~the other provisions of clause 14.9 this sub-clause,~~ be released after ~~finishing the~~ completing such overtime until ~~the employee has had~~ they have at least 10 consecutive hours off duty without loss of pay for ordinary ~~hours~~ working time occurring during ~~the~~ 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 14.9 may be reduced to a period of no less than eight hours.
- (e) The provisions of clause 14.9 will apply in the case of a shiftworker as if eight hours were substituted for 10 hours when overtime is worked:
  - (i) for the purpose of changing shift rosters; or
  - (ii) where a shiftworker does not report for duty and a day workers or a shiftworker is required to replace the shiftworkers; or

- (iii) where a shift is worked by arrangement between the employees themselves.

## Part 6—Leave, Public Holidays and Other NES Entitlements

### 15. Annual leave

15 amended in accordance with [PR582963](#) (15.5 renamed and substituted, 15.6 renumbered as 15.7, new 15.6 inserted, 15.8 inserted)

**15.1** Annual leave is provided for in the NES. Annual leave does not apply to casual employees.

#### 15.2 Definition of shiftworker

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

#### 15.3 Taking annual leave

Annual leave is to be taken within 18 months of the entitlement accruing. For the purpose of ensuring accrued annual leave is taken within that period, and in the absence of agreement as provided for in s.88 of the Act, an employer may require an employee to take a period of annual leave from a particular date provided the employee is given at least 28 days' notice.

#### 15.4 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 s.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 10—Minimum wages.

NOTE: Where an employee is receiving overaward 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 ss.16 and 90 of the Act).

#### 15.5 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 15.5 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

- (c) The employer must keep a copy of any agreement under clause 15.5 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 15.5, 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.

#### **15.6 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.

#### **15.7 Close down**

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. 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.

- (a) Where an employee has been given notice pursuant to clause 15.5 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.
- (b) 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.

#### **15.8 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 15.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 15.8.



- (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 15.8 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 15.8 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 15.8 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 15.8.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 15.8.

Note 3: An example of the type of agreement required by clause 15.8 is set out at Schedule J. There is no requirement to use the form of agreement set out at Schedule J.

## **16. Personal/carer’s leave and compassionate leave**

Personal/carer’s leave and compassionate leave are provided for in the NES.

## **17. Parental leave and related entitlements**

Parental leave and related entitlements are provided for in the NES.

## **18. Public holidays**

**18.1** Public holidays are provided for in the NES.

### **18.2 Substitution of public holidays by agreement**

The employer and the majority of employees in an enterprise may agree to substitute another day for a public holiday.

**18.3** Where an employee works on a public holiday or another day substituted in accordance with clause 18.2 they will be paid in accordance with clauses 13.3 or 14.6.

**18.4 Part-day public holidays**

For provisions relating to part-day public holidays see Schedule G—2016 Part-day public holidays.

**19. Community service leave**

Community service leave is provided for in the NES.

**20. Termination of employment**

**20.1** Notice of termination is provided for in the NES.

**20.2 Notice of termination by an employee**

20.2 amended in accordance with para [40] of [2016] FWCFB 7254

The notice of termination required to be given by an employee is the same as that required of an employer, ~~except that there is no requirement for employees over 45 years old to give additional notice~~ except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice, the employer may withhold ~~from~~ any ~~money~~ monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause, less any period of notice actually given by the employee.

**20.3 Job search entitlement**

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

**21. Redundancy**

**21.1** Redundancy pay is provided for in the NES.

**21.2 Transfer to lower paid duties**

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as if the employment had been terminated and the employer may, at the employer's option, make payment instead. The payment will be equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

### **21.3 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

### **21.4 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 20.3.

## **Part 7—Consultation and Dispute Resolution**

### **22. Consultation**

#### **22.1 Consultation regarding major workplace change**

##### **(a) Employers to notify**

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

##### **(b) Employers to discuss change**

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 22.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 22.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

## **22.2 Consultation about changes to rosters or hours of work**

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
  - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## **23. Dispute resolution**

**23.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

**23.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 23.1

have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

- 23.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 23.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 23.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 23.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 23.7** The parties must co-operate to ensure that the dispute resolution procedure is carried out in a timely manner and in good faith.

DRAFT

## **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 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 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 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 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.

## Schedule B—Summary of Hourly Rates of Pay

Rates updated as a result of AWR 2016

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 amended in accordance with para [40] of [2016] FWCFB 7254

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

	Ordinary hours	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>			
	<b>100%</b>	<b>150 125 %</b>	<b>200 150 %</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	17.70	22.13	26.55	44.25
Level 2	17.96	22.45	26.94	44.90
Level 3	19.64	24.55	29.46	49.10
Level 4	20.61	25.76	30.92	51.53

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

	Day	Afternoon	Night	Non-successive afternoon or night		Saturday	Sunday	Public holiday -	
				First 3 hours	After 3 hours			All ordinary hours on PH = <u>non-cont s'worker</u>	Major portion of shift on PH = <u>cont s'worker</u>
	<b>% of minimum hourly rate</b>								
	<b>100%</b>	<b>115%</b>	<b>130%</b>	<b>150%</b>	<b>200%</b>	<b>150%</b>	<b>200%</b>	<b>250%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	17.70	20.36	23.01	26.55	35.40	26.55	35.40	44.25	35.40
Level 2	17.96	20.65	23.35	26.94	35.92	26.94	35.92	44.90	35.92
Level 3	19.64	22.59	25.53	29.46	39.28	29.46	39.28	49.10	39.28
Level 4	20.61	23.70	26.79	30.92	41.22	30.92	41.22	51.53	41.22

<sup>1</sup>**Non-successive afternoon or night** which does not continue for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise or for at least 38 ordinary hours (see clause 13.1(f))

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



## B.2 Casual employees

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

	Day	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	125%	125%	150%	250%
	\$	\$	\$	\$
Level 1	22.13	22.13	26.55	44.25
Level 2	22.45	22.45	26.94	44.90
Level 3	24.55	24.55	29.46	49.10
Level 4	25.76	25.76	30.92	51.53

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

B.2.2 amended in accordance with para [40] of [2016] FWCFB 7254

	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%
	\$	\$	\$	\$	\$	\$	\$	\$	\$
Level 1	22.13	24.78	27.44	30.98	39.83	30.98	39.83	48.68	39.83
Level 2	22.45	25.14	27.84	31.43	40.41	31.43	40.41	49.39	40.41
Level 3	24.55	27.50	30.44	34.37	44.19	34.37	44.19	54.01	44.19
Level 4	25.76	28.85	31.95	36.07	46.37	36.07	46.37	56.68	46.37

<sup>1</sup>**Non-successive afternoon or night** which does not continue for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise or for at least 38 ordinary hours (see clause 13.1(f))

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

### B.3 Overtime

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

	Monday to Saturday		Sunday – all day	Public holiday
	first 3 hours	after 3 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	26.55	35.40	35.40	44.25
Level 2	26.94	35.92	35.92	44.90
Level 3	29.46	39.28	39.28	49.10
Level 4	30.92	41.22	41.22	51.53

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

B.3.2 amended in accordance with para [40] of [2016] FWCFB 7254

	<u>Non-continuous shiftworkers</u>				Continuous shiftworkers	
	Monday to Saturday		Sunday – all day	Public holiday	Monday to Sunday	Public holiday
	first 3 hours	after 3 hours				
	<b>% of minimum hourly rate</b>					
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>	<b>200%</b>	<b><del>250</del> 200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	26.55	35.40	35.40	44.25	35.40	35.40
Level 2	26.94	35.92	35.92	44.90	35.92	35.92
Level 3	29.46	39.28	39.28	49.10	39.28	39.28
Level 4	30.92	41.22	41.22	51.53	41.22	41.22

## Schedule C—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016

See clause 11 for full details of allowances payable under this award.

### C.1 Wage related allowances

The following wage related allowances in this award are based on the standard rate as defined in Schedule H as the minimum weekly wage for the Aquaculture attendant—Level 4 classification in clause 10.1 = **\$783.30**

Allowance	Clause	% of standard rate <b>\$783.30</b>	\$
First aid allowance	11.2(a)	0.34	2.60 per working day
Diving allowance—finfish attendants	11.2(b)	0.47	3.68 per hour or part thereof

#### C.1.1 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

The following expense related allowances will be payable to employees in accordance with clause 11.3:

Allowance	Clause	\$
Finfish attendants—diving equipment (in addition to diving allowance under clause 11.2(b))	11.3(a)	5.70 per hour or part thereof
Meal allowance—overtime of more than two hours:	0	
First meal		16.38 per occasion
Second/subsequent meal		16.38 per occasion
Not required to work or less work than advised—surplus meal		16.38 per surplus meal
Tool allowance	11.3(c)	9.62 per week
Travelling time and allowance—use of private vehicle	11.3(d)(vi)	0.78 per km

**C.2.1 Adjustment of expense related allowances**

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.

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:

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
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

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## Schedule D—Supported Wage System

Schedule D updated in accordance with [PR581528](#)

**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](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

### **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:

<b>Assessed capacity (clause D.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

**D.4.2** Provided that the minimum amount payable must be not less than \$82 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 the Fair Work Commission.

**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 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.

## **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 \$82 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.

## Schedule E—School-based Apprentices

- E.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.
- E.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.
- E.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.
- E.4** For the purposes of clause E.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.
- E.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.
- E.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.
- E.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.
- E.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.
- E.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.
- E.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.
- E.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.



## Schedule F—National Training Wage

This schedule is being reviewed in matter [AM2016/17](#)

Rates updated in accordance with AWR 2016

### F.1 Title

This is the *National Training Wage Schedule*.

### F.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

### **F.3 Coverage**

- F.3.1** Subject to clauses F.3.2 to F.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 clause F.7 to this schedule or by clause F.5.4 of this schedule.
- F.3.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause F.7 to this schedule.
- F.3.3** This schedule does not apply to:
- (a) the apprenticeship system;
  - (b) qualifications not identified in training packages; or
  - (c) qualifications in training packages which are not identified as appropriate for a traineeship.
- F.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.
- F.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.
- F.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

## F.4 Types of Traineeship

The following types of traineeship are available under this schedule:

- F.4.1** a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and
- F.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.

## F.5 Minimum Wages

F.5 updated as a result of AWR 2016

### F.5.1 Minimum wages for full-time traineeships

#### (a) Wage Level A

Subject to clause F.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 clause F.7.1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

#### (b) Wage Level B

Subject to clause F.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 clause F.7.2 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>Per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

**(c) Wage Level C**

Subject to clause F.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 clause F.7.3 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

**(d) AQF Certificate Level IV traineeships**

- (i) Subject to clause F.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 F.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:

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level C	560.60	581.80

**F.5.2 Minimum wages for part-time traineeships**

**(a) Wage Level A**

Subject to clauses F.5.2(f) and F.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 clause F.7.1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

**(b) Wage Level B**

Subject to clauses F.5.2(f) and F.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 clause F.7.2 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

**(c) Wage Level C**

Subject to clauses F.5.2(f) and F.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 clause F.7.3 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78
Plus 4 years out of school	15.95	17.78	
Plus 5 or more years out of school	17.78		

**(d) School-based traineeships**

Subject to clauses F.5.2(f) and F.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 clause F.7 are as follows when the trainee works ordinary hours:

<b>Year of schooling</b>	
<b>Year 11 or lower</b>	<b>Year 12</b>
<b>per hour</b>	<b>per hour</b>
<b>\$</b>	<b>\$</b>
9.94	10.96

**(e) AQF Certificate Level IV traineeships**

**(i)** Subject to clauses F.5.2(f) and F.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 F.5.2(f) and F.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:

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

**(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 F.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 F.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 F.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

**F.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.

**F.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 clause F.7 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.

## F.6 Employment conditions

**F.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.

**F.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.

**F.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.

**Note:** The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause F.5.2(f)(ii) and not by this clause.

**F.6.4** Subject to clause F.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

## F.7 Allocation of Traineeships to Wage Levels

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

### F.7.1 Wage Level A

F.7.1 updated in accordance with para [356] [\[2015\] FWC FB 7236](#)

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 (III in Western Australia only)



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<b>Training package</b>	<b>AQF certificate level</b>
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I, II, III (III in Western Australia only)
Financial Services	I, II, 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, III
Training and Assessment	III
Transport and <del>Distribution</del> Logistics	III
Water Industry (Utilities)	III

**F.7.2 Wage Level B**

F.7.2 updated in accordance with para [356] [\[2015\] FWCFB 7236](#)

<b>Training package</b>	<b>AQF certificate level</b>
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<b>Training package</b>	<b>AQF certificate level</b>
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
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

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

**F.7.3 Wage Level C**

<b>Training package</b>	<b>AQF certificate level</b>
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

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## Schedule G—2016 Part-day public holidays

This provision is being reviewed in [AM2014/301](#)

Schedule G amended in accordance with [PR580863](#)

This schedule operates in conjunction with award provisions dealing with public holidays.

**G.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause G.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
- (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause G.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

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

This schedule is an interim provision and subject to further review.

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## Schedule H—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

**continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six 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 [ss. 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 successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise (where no more than eight ordinary hours are worked on each shift); or
- (b) 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with clauses 8.2 and 8.3)

**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

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**shiftwork** means work carried on in the form of at least two 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 10.1

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### Schedule I—Agreement to Take Annual Leave in Advance

Schedule I—Agreement to Take Annual Leave in Advance inserted in accordance with [PR582963](#)

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 J—Agreement to Cash Out Annual Leave

Schedule J—Agreement to Cash Out Annual Leave inserted in accordance with [PR582963](#)

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 K—Agreement for Time Off Instead of Payment for Overtime**

Schedule K— Agreement for time off instead of payment for overtime inserted in accordance with [PR584074](#).

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\_\_\_