

The Exposure Draft was first published on 7 October 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
24 July 2015	To disaggregate <i>Professional Diving (Recreational) Award 2010</i> from the <i>Marine Tourism and Charter Vessels Award 2015</i> and amend in accordance with [2014] FWC FB 9412	1.2, 1.5, 2.1, 2.3,3.5, 5.1, 6.4(c) deleted, 10.4(c) deleted, 14.1, 15, 16, 17.1, 18, 19.1, 20.1, Schedule C, Schedule D, Schedule E
	Incorporate changes in accordance with the 24 April 2015 Report to the Full Bench PR563422	5.2(c), 6.4(d)(ii), 9.3, 9.6, 10.1(a), 13.1
	Correction to inconsistent drafting within the award.	Clause 10.1(c) deleted
	Incorporate changes resulting from [2015] FWC FB 3500 , PR566772 , PR566902 and PR568050	10, 11, Schedule A, Schedule B, Schedule C,
30 October 2015	Incorporates changes resulting from [2015] FWC FB 4658	1, 6, 9, 10, 13, 14, Schedule E
	Incorporate changes resulting from [2015] FWC FB 6656	1
	Incorporate changes resulting from [2014] FWC FB 9412	2, 16 and 19
	Incorporate changes resulting from [2015] FWC FB 7236	Schedule C
13 June 2017	Incorporate changes resulting from [2015] FWC FB 4658	9.3, 17.3, 19.2
	Incorporate changes resulting from [2016] FWC FB 3500 , PR579879 , PR581528 and PR579599	10, 11, Schedule A, Schedule B, Schedule C,
	Incorporate changes resulting from PR580863	Schedule D
	Incorporate changes resulting from PR583029	14, Schedule F, Schedule G
	Incorporate changes resulting from PR584118	13.4, Schedule H

Changes agreed to by parties appear in blue text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.

EXPOSURE DRAFT

Marine Tourism and Charter Vessels Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Marine Tourism and Charter Vessels Award 2010* (the Marine tourism award) as at 29 October 2015. This exposure draft does not seek to amend any entitlements under the Marine tourism award but has been prepared to address some of the structural issues identified in modern awards.

The review of these awards in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matters [AM2014/76](#) and [AM2014/85](#). 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.

Table of Contents

	Page
Part 1— Application and Operation	4
1. Title and commencement.....	4
2. The National Employment Standards and this award.....	4
3. Coverage	4
4. Award flexibility.....	5
5. Facilitative provisions.....	7
Part 2— Types of Employment and Classifications	7
6. Types of employment	7
7. Classifications.....	9
Part 3— Hours of Work	11
8. Ordinary hours of work.....	11
9. Breaks	11
Part 4— Wages and Allowances	13
10. Minimum wages	13
11. Allowances.....	15
12. Superannuation	16
Part 5— Overtime	18
13. Overtime rates.....	18
Part 6— Leave, Public Holidays and Other NES Entitlements.....	20
14. Annual leave	20
15. Personal/carer’s leave and compassionate leave	24

16.	Parental leave and related entitlements	24
17.	Public holidays	24
18.	Community service leave	24
19.	Termination of employment.....	24
20.	Redundancy	25
Part 7— Consultation and Dispute Resolution.....		26
21.	Consultation.....	26
22.	Dispute resolution.....	27
Schedule A —Summary of Monetary Allowances		28
Schedule B —Supported Wage System		29
Schedule C —National Training Wage		32
Schedule D —2016 Part-day public holidays		42
Schedule E —Definitions		44
Schedule F —Agreement to Take Annual Leave in Advance		45
Schedule G —Agreement to Cash Out Annual Leave		46
Schedule H —Agreement for Time Off Instead of Payment for Overtime.....		47

Part 1—Application and Operation

1. Title and commencement

- 1.1 This award is the *Marine Tourism and Charter Vessels Award 2015*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- 1.4 Schedule E—Definitions sets out definitions that apply in this award.
- 1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2. 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 This industry award covers employers throughout Australia engaged in the marine tourism and charter vessels industry and their employees in the classifications listed in clause 7—Classifications to the exclusion of any other modern award.
- 3.2 The **marine tourism and charter vessel industry** means the operation of vessels engaged on a day charter or for an overnight charter wholly or principally as a tourist, sightseeing, sailing or cruise vessel and/or as a place of or for entertainment, functions, restaurant/food and beverage purposes, engaged in the provision of water orientated tourism, leisure and/or recreational activities but does not include the operation of ferries engaged in regular scheduled passenger and/or commuter transport.
- 3.3 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in

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

3.4 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 3.1 and 3.2 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clauses 3.1 and 3.2 are being performed. This subclause operates subject to the exclusions from coverage in this award.

3.5 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.

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

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

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 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:
- (a) clause 6.3—part-time employees;
 - (b) clause 8.2—ordinary hours of work;
 - (c) clause 9.3—minimum break between rostered duty times;
 - (d) clause 10.4—payment of wages; and
 - (e) clause 14.2—annual leave entitlement.

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 Full-time employees

Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in this award.

6.3 Part-time employees

- (a) An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a part-time basis.
- (b) A part-time employee:
 - (i) is engaged to work an average of less than 38 ordinary hours per week; and
 - (ii) has a regular pattern of hours; 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.

- (c) A part-time employee must be engaged for a minimum of two consecutive hours a day. In order to meet their personal circumstances, a part-time employee may request and the employer may agree to an engagement for less than the minimum of two hours.

6.4 Casual employees

- (a) An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a casual basis.
- (b) For the purposes of providing potential casual employees with the written notice as stipulated in clause 6.5, the employer must also specify the likely time periods or trips the employee will be required to work.
- (c) **A casual Overnight Charter Employee:**
 - (i) is engaged to work a specified trip or trips, at the direction of the employer;
 - (ii) must be engaged for a minimum of one half day trip; and
 - (iii) for working ordinary hours must be paid the ordinary minimum daily rate calculated in accordance with clause 10.1 for the classification in which they are employed plus a loading of **25%**.
- (d) **A casual Non-overnight Charter Employee:**
 - (i) is engaged to work a variety of hours, at the direction of the employer;
 - (ii) must be engaged for a minimum of two hours per engagement and a maximum of 12 hours per shift;
 - (iii) cannot be engaged for more than 38 hours per week; and
 - (iv) for each ordinary hour worked must be paid the minimum hourly rate in accordance with clause 10.2 for the classification in which they are employed plus a loading of **25%**.

6.5 Notice of employment type

- (a) Upon making an offer of employment to a potential employee, the employer must provide a written notice to the person to whom the offer of employment is addressed stating:
 - (i) whether the person is to be engaged as an Overnight Charter Employee or a Non-overnight Charter Employee;
 - (ii) whether the person is to be engaged on a full-time, part-time or casual basis; and
 - (iii) the classification level and rate of pay the employee will receive.
- (b) The engagement of an employee as described in the written notice provided pursuant to clause 6.5(a) can only be varied by mutual agreement between the employer and employee, documented in writing.

7. Classifications

7.1 Crew Level 1

- (a) This wage level is for the first three months of employment (probationary period). During this timeframe the five day Introduction Deckhand Course may be completed by the new employee.
- (b) Duties include but are not limited to:
- the service, hospitality and entertainment of passengers;
 - the preparation of the vessel for departure/s;
 - the setting, trimming, and striking of sails as required;
 - the stocking and dispensing of liquor under direction of licensee;
 - the preparation of meals;
 - the ordering of stores; and
 - the performance of duties as required by the immediate supervisor, Coxswain or Master.
- (c) Qualification training is not mandatory.

7.2 Crew Level 2

- (a) After completing the first three months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer, the employees' wage level will rise to that of the Crew Level 2 wage.
- (b) Duties include all those of a Crew Level 1 employee, usually to a higher level of competence than a Crew Level 1 employee.

7.3 Crew Level 3

- (a) A qualified crew member who obtains the qualification of Coxswain Ticket enabling the employee to drive a tender within two nautical miles of the mothership.
- (b) Duties include all those of Crew Levels 1 and 2, usually to a higher level of competence than a Crew Level 1 or 2 employee.

7.4 Dive Master/Diver Instructor

An employee at this level will perform all diving duties as required, including:

- instructing and supervising diving operations;
- ensuring adherence to all legislative and regulatory requirements;
- preparing vessels for departure and setting, trimming and striking sails as required;
- stocking and dispensing liquor under supervision of the licensee;
- preparation of meals;

- ordering of stores; and
- the performance of duties related to the operation of the vessel as required by the immediate supervisor, Coxswain or Master.

7.5 Coxswain

An employee at this level will:

- navigate vessel of class coxswain status;
- ensure the safe operation of the vessel;
- supervise the crew and entertain passengers; and
- perform routine and preventative maintenance as required.

7.6 Engineer MED III

An employee at this level will:

- engineer a vessel requiring a MED III certificate;
- ensure the proficient operation of the vessel plant and equipment; and
- perform routine and preventative maintenance as required.

7.7 Master V

An employee at this level will:

- navigate a vessel of class V status;
- ensure the safe operation of the vessel;
- supervise the crew and entertain passengers; and
- perform routine and preventative maintenance as required.

7.8 Engineer MED II

An employee at this level will:

- engineer a vessel requiring a MED II certificate;
- ensure the proficient operation of the vessel plant and equipment; and
- perform routine and preventative maintenance as required.

7.9 Master IV

An employee at this level will:

- navigate a vessel of class IV status;
- ensure the safe operation of the vessel;
- supervise the crew and entertain passengers; and
- perform routine and preventative maintenance as required.

7.10 Engineer MED I

An employee at this level will:

- engineer a vessel requiring a MED I certificate;
- ensure the proficient operation of the vessel plant and equipment; and
- perform routine and preventative maintenance as required.

Part 3—Hours of Work

8. Ordinary hours of work

8.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the NES in ss. [62](#) and [65](#) of the Act.

8.2 Ordinary hours and roster cycles—Non-overnight Charter Employees

For Non-overnight Charter Employees the ordinary hours:

- (a) must not exceed 38 hours per week averaged over a period of 12 months;
- (b) must be a minimum of two hours and a maximum of 12 hours on any one day within the spread of hours prescribed in clause 8.2(c); and
- (c) may be worked on any day of the week Monday to Saturday between the hours of 6.00 am and 2.00 am the next day or during any other six day period in any week mutually agreed upon between an employer and an employee and of which period the employer has given at least 14 days' written notice to the employee.

8.3 Ordinary hours and roster cycles—Overnight Charter Employees

The ordinary hours of work for an Overnight Charter Employee must not exceed:

- (a) 38 ordinary hours per week averaged over a period of 12 months;
- (b) 20 days in any 28 day roster cycle; or
- (c) a maximum of 12 ordinary hours on any one day.

9. Breaks

9.1 Unpaid meal breaks

- (a) An employee is entitled to unpaid meal breaks of not less than 30 minutes each during the course of their working day.
- (b) The actual time for a meal will be by agreement between the employee and the employer concerned appropriate to the operational requirements of the particular vessel.

9.2 Paid rest breaks

Each employee is entitled to a paid rest break of 10 minutes during the morning and afternoon. The breaks are to be taken at a time mutually agreed between the employer and the employee.

9.3 Minimum break between rostered duty times

- (a) Subject to clause 9.3(d), an employee must not be rostered to resume work within 10 hours after the end of their previous rostered charter or trip.
- (b) Where an employee has not had at least 10 hours' break between rostered duty times, the employee must be released from work until the employee has had 10 consecutive hours off between rostered duty times.
- (c) If on the direction of the employer such an employee resumes or continues work without having had 10 consecutive hours off duty, the employee must be paid at **200%** of the minimum hourly ~~ordinary~~ rate until 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 working time occurring during such absence.
- (d) For the purpose of clauses 9.3(a) to (c), eight hours will be substituted for 10 hours where there is a changeover of rosters or where the employee and employer mutually agree in writing to do so.

9.4 Rest day

- (a) At the commencement of employment or as soon as practicable thereafter, an employer will inform each employee of the days on which the employee will be required to work and which days are to be rest days. Subject to clause 21.2, days may be altered by agreement or by the employer giving at least 14 days' written notice to the employee.
- (b) All time worked by an employee on a rest day will be overtime and paid in accordance with clause 13.

9.5 Notice to employees regarding employment of more than seven consecutive days

Where an employee is to be in employment for more than seven consecutive days, an employer will give as much notice as is reasonably practicable to an employee of the times during which they are to work on days other than their rest days.

9.6 Make-up time

An employee may elect, with the consent of the employer, to work make-up time, under which the employee takes time off during ordinary hours and works those hours at a later time during the spread of ordinary hours provided in clause 8, at the minimum daily rate or minimum hourly rate.

Part 4—Wages and Allowances

10. Minimum wages

10.1 Overnight Charter Employees

- (a) An employer must pay adult Overnight Charter Employees the following minimum wages:

Employee classification	Minimum daily rate	Minimum hourly rate	Casual daily rate	Casual hourly rate
	\$	\$	\$	\$
Crew Level 1	144.80	19.05	181.00	23.81
Crew Level 2	153.65	20.22	192.06	25.28
Crew Level 3	160.48	21.12	200.60	26.40
Divemaster/Dive instructor	160.48	21.12	200.60	26.40
Coxswain	173.35	22.81	216.69	28.51
Master V	220.40	29.00	275.50	36.25
Master IV	247.18	32.52	308.98	40.65

- (b) The rates in clause 10.1(a) have been calculated to include compensation for weekend and public holiday penalties.
- (c) Charters will be paid at the following percentage of the daily rate:

Charter length	% of daily rate
Half day charter *	50
Day charter **	100
1 day/1 night	150
2 days/1 night	200
2 days/2 nights	250
3 days/2 nights	300
3 days/3 nights	350
4 days/3 nights	400
4 days/4 nights	450

* Half day charter: No nights, with a duration of up to four hours

** Day charter: No nights, with a duration of more than four hours

This classifying system continues for all longer trips following the same pattern, and recognises that back to back departures are calculated as a single charter.

10.2 Non-overnight Charter Employees

An employer must pay adult Non-overnight Charter Employees the following minimum wages for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate	Minimum hourly rate	Casual hourly rate
	\$	\$	\$
Crew Level 1	673.89	17.73	22.16
Crew Level 2	741.27	19.51	24.39
Coxswain	807.22	21.24	26.55
Engineer MED III	811.01	21.34	26.68
Master V	811.01	21.34	26.68
Engineer MED II	825.75	21.73	27.16
Master IV	825.75	21.73	27.16
Engineer MED I	907.88	23.89	29.86

10.3 Junior rates

(a) Junior Crew Levels 1, 2 and 3

The minimum rates of pay of junior Crew Hands will be the following percentages of the rates of pay prescribed in clauses 10.1(a) and 10.2 for Crew Levels 1, 2 and 3:

Years of age	%
Age 16	50
Age 17	60
Age 18	75
Age 19	90
Age 20	100

Such percentages will be calculated to the nearest \$0.05, any broken part of \$0.05 in the result not exceeding half of \$0.05 being disregarded.

- (b) An employee under 20 years of age who holds a Master's Certificate and is employed to perform the duties of a master will be paid the appropriate adult rate of pay for a master prescribed by clauses 10.1(a) and 10.2.

10.4 Payment of wages

- (a) Wages will be paid either weekly or fortnightly. Payment will be made to the employee no later than Thursday in each pay cycle.
- (b) The employer may elect to pay wages either in cash or by electronic funds transfer into an account nominated by the employee with a bank or other financial institution. Provided that the employer and an employee may agree that wages be paid in cash.

- (c) Where a public holiday falls on the normal pay day or the day following the normal pay day, the wages will be paid on the ordinary working day before the normal pay day, or on another day if agreed between the employer and an employee.

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.

10.5 Higher duties

- (a) An employee who is required to do work for more than four hours on any day for which a higher rate is fixed than that provided for their ordinary duties will be paid for all work done on such day at the higher rate.
- (b) If such work does not exceed four hours on any day the employee will be paid the higher rate for the actual time worked at the higher level.

10.6 Supported wage system

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

10.7 National training wage

For employees undertaking a traineeship, see Schedule C—National training wage.

11. Allowances

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

11.2 Wage related allowances

(a) MED Certificate allowance

Excluding any employee employed as a MED, employees required to hold a MED certificate are to be paid a daily allowance for the duration of each voyage, charter or tour as follows:

Certificate	\$ per day
MED II	27.29
MED III	13.64

(b) Outer reef work allowance

An allowance of **\$13.64** per day for the duration of each voyage, charter or tour is payable to a master where the itinerary requires outer reef work.

11.3 Expense related allowances

(a) Meal allowance during overtime

- (i) When an employee, including a casual, is required to work overtime in excess of one and a half hours before or after the usual start time, the

employee will be provided with a suitable meal free of cost and will be provided with a further suitable meal every four hours thereafter while overtime continues,

- (ii) If a meal is not provided a meal allowance of **\$12.02** per meal will be payable to the employee.

(b) Meals and living away from home

- (i) Whilst on an overnight charter every Overnight Charter Employee will be provided with:

- proper meals;
- a bed; and
- clean linen once a week, for which the employer will be responsible for the laundering.

- (ii) Meals, tea, sugar, milk and coffee will be provided on all vessels for all employees under this award at the employer's expense.

(c) Uniform allowance

A uniform allowance of **\$12.37** per week is payable to an employee who is required to wear a uniform, unless the employer provides the uniform at no cost to the employee.

(d) Compensation for personal effects

If, by fire, explosion, foundering, shipwreck, collision, stranding or any other cause whatsoever not attributable to the employee's neglect, an employee should sustain damage to or loss of their personal effects or equipment necessary for the performance of their duties, the employer will compensate the employee for such damage or loss by cash payment equivalent to the value of the lost or damaged goods to a maximum of **\$1141.00**. This amount or any part thereof will not be payable where loss is recovered through workers compensation insurance.

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:

- (i) Sunsuper; or
- (ii) REST Superannuation,
- (b) 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
- (c) a superannuation fund or scheme which the employee is a defined benefit member of.

12.5 Absence from work—marine tourism and charter vessel industry

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 12.2 and pay the amount authorised under clauses 12.3(a) or (b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

- (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
- (ii) the employee remains employed by the employer.

Part 5—Overtime

13. Overtime rates

13 amended in accordance with [PR584118](#) (13.4 inserted)

13.1 Non-overnight Charter Employees

All time worked by Non-overnight Charter Employees (other than casual employees) in excess of:

- (a) 12 hours per day;
- (b) outside the span of ordinary hours; or
- (c) the average ordinary hours per week as per clause 8.2(a),

is overtime and must be paid at **150%** of the employee's minimum rate for the first two hours and **200%** thereafter, calculated hourly.

13.2 Overnight Charter Employees

All time worked by Overnight Charter Employees in excess of:

- (a) 12 hours per day;
- (b) 20 days in a 28 day cycle, or
- (c) the average ordinary hours as per clause 8.3(a),

is overtime and must be paid at **150%** of the employee's minimum rate for the first two hours and **200%** of the minimum rate thereafter, calculated hourly.

13.3 Rest days

All time worked by an employee on a rest day will be overtime and must be paid for a minimum of four hours.

13.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 13.4.
- (c) An agreement must state each of the following:

- (i) the number of overtime hours to which it applies and when those hours were worked;
- (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
- (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
- (iv) that any payment mentioned in subparagraph (iii) 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 H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 13.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 13.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 13.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), 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 13.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 13.4 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 13.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 13.4.

Part 6—Leave, Public Holidays and Other NES Entitlements

14. Annual leave

14 amended in accordance with [PR583029](#). (14.4 substituted; old clauses 14.5 and 14.6 renumbered as new clauses 14.7 and 14.8; new clauses 14.5 and 14.6 inserted; 14.9 inserted)

14.1 Annual leave is provided for in the NES.

14.2 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in [s.87](#) of the Act to an hourly entitlement for administrative ease (i.e. 152 hours for a full-time employee entitled to four weeks of annual leave).

14.3 Payment of annual leave

The terms of the NES prescribe the basis for payment for annual leave, including payment for untaken leave upon the termination of employment. In addition to the terms of the NES, an employer is required to pay an additional leave loading of **17.5%** calculated on an employee’s ordinary time rate of pay.

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 be entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).

14.4 Excessive leave accruals: general provision

Note: Clauses 14.4 to 14.6 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks’ paid annual leave.

- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 14.5 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 14.6 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

14.5 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 14.4(a) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee’s remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.4, 14.5 or 14.6 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 14.5(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

14.6 Excessive leave accruals: request by employee for leave

- (a) Clause 14.6 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 14.4(a) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 14.5(a) that, when any other paid annual leave arrangements (whether made under clause 14.4, 14.5 or 14.6 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.4, 14.5 or 14.6 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

14.7 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 14.7 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 14.7 as an employee record.

- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 14.7, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

14.8 Payment of additional leave loading on termination

On termination of employment, an employee entitled to payment in place of annual leave must be paid the loading provided for in clause 14.3 on a pro rata basis.

14.9 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.9.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.9.
- (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 14.9 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 14.9 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 14.9 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 14.9.

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 14.9.

Note 3: An example of the type of agreement required by clause 14.9 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

15. Personal/carer's leave and compassionate leave

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

16. Parental leave and related entitlements

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

17. Public holidays

17.1 Public holidays are provided for in the NES.

17.2 Overnight Charter Employees

For the avoidance of doubt, Overnight Charter Employees are not entitled to the payment of loading for work performed on public holidays in accordance with clause 17.3.

17.3 Non-overnight Charter Employees

(a) Christmas day

Non-overnight Charter Employees who required to work on Christmas Day will be paid **300%** of the minimum hourly rate for a minimum of four hours.

(b) Public holidays other than Christmas day

(i) Non-overnight Charter Employees who are required to work on public holidays, other than Christmas Day will be paid ordinary time for the public holiday worked and have an extra day added to their annual leave entitlement or, alternatively, be paid at **200%** of their minimum hourly ordinary rate.

(ii) Where the part-time employee's normal rostered hours fall on a public holiday prescribed in the NES and work is not performed by the employee, such employee must not lose pay for the day.

17.4 Part-day public holidays

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

18. Community service leave

Community service leave is provided for in the NES.

19. Termination of employment

19.1 Notice of termination is provided for in the NES.

19.2 Notice of termination by an employee

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 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 monies ~~money~~ 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 the NES, less any period of notice actually given by the employee.

19.3 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.

20. Redundancy

20.1 Redundancy pay is provided for in the NES.

20.2 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.

20.3 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.

20.4 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 19.3.

Part 7—Consultation and Dispute Resolution

21. Consultation

21.1 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 21.1(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 21.1(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.

21.2 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.

22. Dispute resolution

- 22.1** 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.
- 22.2** 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 22.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 22.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 22.4** 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.
- 22.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 22.6** 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.

Schedule A—Summary of Monetary Allowances

A.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule E as the minimum daily wage for a Coxswain (Overnight Charter Employee) in clause 10 = \$173.35

Allowance	Clause	% of standard rate \$173.35	\$ per day
Holder of MED II certificate	11.2(a)	15.74	27.29
Holder of MED III certificate	11.2(a)	7.87	13.64
Outer reef work—master's allowance	11.2(b)	7.87	13.64

A.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.

A.2 Expense related allowances

The expense-related allowances in this award will be adjusted by reference to the Consumer Price Index (CPI) as per the following:

Allowance	Clause	\$
Meal allowance—overtime	11.3(a)	12.02 per meal
Uniform allowance	11.3(c)	12.37 per week
Compensation for loss of or damage to personal effects—maximum	11.3(d)	Up to 1141.00 per occasion

A.3 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:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Uniform allowance	Clothing and footwear group
Compensation for personal effects	All groups

Schedule B—Supported Wage System

Rates updated as a result of AWR 2016

- B.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.
- B.2** In this schedule:
- approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system
- assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system
- disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme
- relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged
- supported wage system** (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au
- SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate
- B.3 Eligibility criteria**
- B.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.
- B.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.
- B.4 Supported wage rates**
- B.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

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

B.4.2 Provided that the minimum amount payable must be not less than \$82 per week.

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

B.5 Assessment of capacity

B.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.

B.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.

B.6 Lodgement of SWS wage assessment agreement

B.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.

B.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.

B.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.

B.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.

B.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.

B.10 Trial period

- B.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.
- B.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.
- B.10.3** The minimum amount payable to the employee during the trial period must be no less than \$82 per week.
- B.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- B.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 B.5.

Schedule C—National Training Wage

Rates updated as a result of AWR 2016

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

C.1 Title

This is the *National Training Wage Schedule*.

C.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

C.3 Coverage

C.3.1 Subject to clauses C.3.2 to C.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 C.7 to this schedule or by clause C.5.4 of this schedule.

C.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 C.7 to this schedule.

C.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.

C.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.

C.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.

C.3.6 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

C.4 Types of Traineeship

The following types of traineeship are available under this schedule:

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

C.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.

C.5 Minimum Wages

C.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause C.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 C.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 C.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 C.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
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 C.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 C.7.3 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	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 C.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 C.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70
Wage Level C	560.60	581.80

C.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses C.5.2(f) and C.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 C.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 C.5.2(f) and C.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 C.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 C.5.2(f) and C.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 C.7.3 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	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
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 C.5.2(f) and C.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 C.7 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.94	10.96

(e) AQF Certificate Level IV traineeships

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

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	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 C.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 C.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 C.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

C.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.

C.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 C.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.

C.6 Employment conditions

C.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.

C.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.

C.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 C.5.2(f)(ii) and not by this clause.

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

C.7 Allocation of Traineeships to Wage Levels

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

C.7.1 Wage Level A

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

Training package	AQF certificate level
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 Logistics	III
Water Industry (Utilities)	III

C.7.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II

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

C.7.3 Wage Level C

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

Schedule D—2016 Part-day public holidays

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

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

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

D.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 D.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 D.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.

Schedule E—Definitions

In this award, unless the contrary intention appears:

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

day charter means a charter with no nights, with a duration of more than four hours

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

engineer means a marine engineer

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

half day charter means a charter with no nights, with a duration of up to four hours

marine tourism and charter vessel industry means the operation of vessels engaged on a day charter or for an overnight charter wholly or principally as a tourist, sightseeing, sailing or cruise vessel and/or as a place of or for entertainment, functions, restaurant/food and beverage purposes, engaged in the provision of water orientated tourism, leisure and/or recreational activities but does not include the operation of ferries engaged in regular scheduled passenger and/or commuter transport

master means an appropriately qualified person appointed in command of a vessel

MED means Marine Engineer Driver

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

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

Overnight Charter Employee means an employee who is engaged within the classifications in clause 10.1 and who is employed by a business that provides overnight accommodation for staff and paying guests

Non-overnight Charter Employee means an employee who is engaged within the classifications in clause 10.2 and who is employed by a business that does not provide overnight accommodation for staff and paying guests

standard rate means the minimum daily rate for a Coxswain (Overnight Charter Employee) in clause 10.1.

Schedule F—Agreement to Take Annual Leave in Advance

Schedule F—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583029](#)

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

Name of employee: _____

Name of employer: _____

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

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

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule G—Agreement to Cash Out Annual Leave

Schedule G—Agreement to Cash Out Annual Leave inserted in accordance with [PR583029](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement for Time Off Instead of Payment for Overtime

Schedule H— Agreement for time off instead of payment for overtime inserted in accordance with [PR584118](#)

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

Name of employee: _____

Name of employer: _____

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

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___