

The Professional Diving (Industrial) Award—Exposure Draft was first published on 3 October 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
13 February 2019	Incorporate changes resulting from PR588655	33
	Incorporates changes resulting from [2017] FWCFB 3433	1.2, 4.2, 4.6, 14, 22.6 (substituted)
	Incorporate changes resulting from PR598110	Schedule G
	Incorporates changes resulting from [2018] FWCFB 1548	7.2
	Incorporate changes resulting from [2018] FWCFB 3500 , PR606434 , PR606584	27, 29, 32, 34, Schedule B, Schedule C
	Incorporates changes resulting from [2018] FWCFB 3802	10.3
	Incorporates changes resulting from [2018] FWCFB 3936 , PR609438	14A (deleted)
	Incorporates changes resulting from [2018] FWCFB 4695 , PR700600	10.6
	Incorporates changes resulting from [2018] FWCFB 4704 , PR610274	5, 23, 20, 21, 22
	Incorporates changes resulting from [2018] FWCFB 4735 , PR610142	28, 33
	Incorporates changes resulting from PR701683	Schedule G
	Incorporates changes resulting from [2018] FWCFB 6863 , PR701511	6
	Administrative changes by Modern Awards team	21.2 (deleted), 28, 25.2 (deleted), 33
	Exposure Draft	
14 October 2019	Incorporating changes resulting from [2015] FWCFB 4658 at [57]	29, 34
	Incorporates changes resulting from [2017] FWCFB 3433	2, 4
	Incorporating changes resulting from [2019] FWCFB 1333 at [35]	1.5 (deleted)
	Incorporates changes resulting from [2019] FWCFB 2548 , PR707014	24
	Incorporating plain language amendments to clause content resulting from [2019] FWCFB 2698	1.4 (deleted), C.1.1, C.3.1

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	Incorporating changes resulting from [2019] FWCFB 3500 , PR707526 , PR707753	27, 29, 34, Schedule B, Schedule C
	Incorporating changes resulting from [2019] FWCFB 5144	18
	Incorporating changes resulting from [2019] FWCFB 5409	4.5, 27
	Administrative changes made by Modern Awards team to the document structure and Part and clause titles in accordance with [2019] FWCFB 5409 at [6] and Attachment A	0, 2, 9, 10, 17, Part 6—, 23, 24, 27, Part 9—, 32, Schedule G—Definitions (moved), Schedule D
	Administrative changes made by Modern Awards team to incorporate previous A clauses into the numbering of the exposure draft	6, 21, 28, 33
	Administrative change by Modern Awards team	10.3(a)
	Administrative change by Modern Awards team to incorporate change resulting from [2018] FWCFB 3802	10.3(a)

EXPOSURE DRAFT

Professional Diving (Industrial) Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Professional Diving (Industrial) Award 2010** (the Diving industrial award) as at 29 October 2015 and incorporates award updates up to **20 June 2019**. This exposure draft does not seek to amend any entitlements under the Diving industrial award. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award in accordance with section 156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/84](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Some transitional provisions have been deleted as a result of decisions made during the review.

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

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SECTION A — GENERAL

Part 1—Application and Operation of this Award

1. Title and commencement

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

- 1.1** This award is the *Professional Diving Industry (Industrial) Award 20XX*.
- 1.2** This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3** A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- ~~**1.4** Schedule G—Definitions sets out definitions that apply in this award.~~
- ~~**1.5** Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.~~

2. Definitions

Definition of **professional industrial diving industry** inserted in definitions clause in accordance with [\[2017\] FWCFB 3433](#) at [339].

In this award, unless the contrary intention appears:

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

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

atmospheric diving systems (ADS) means a manned diving system such as OMB, ARMS, MOB, JIM, WASP and similar systems which allow an operator to work underwater without being subjected to greater than atmospheric pressure

casual hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 32—Minimum rates

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

designated assembly point means the point from which the employer provides transport to the designated point of embarkation

designated point of embarkation means the point from which transport to the offshore location is provided

distant work means work in which the distances, or the travelling facilities to and from such places of work, make it reasonably necessary that employees will live and sleep at some place other than their usual place of residence at the time of commencing such work. Provided that if employees, whilst employed on distant work, change their usual place of residence, such new place of residence or any further change thereof (if made whilst employed on distant work) will be their usual place of residence for determination of whether the work is distant work

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)

inshore divers means employees qualified as ADS divers (parts 1, 2, 3 trained to the appropriate level of AS 2815.1, 2815.2, 2815.3) who undertake diving operations in coastal or inland waters under the jurisdiction of Australian State or Territory legislation and in keeping with the provisions of the operational standard AS/NZS 2299.1:2007

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

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

offshore divers means employees qualified as ADS divers (parts 3, 4 trained to the appropriate level of AS 2815.3 or 2815.4) who undertake an offshore petroleum diving operation conducted outside the State or Territory boundaries but within the jurisdiction of the Commonwealth

offshore exploration and development diving means and includes all diving from oil drilling rigs, hydrocarbons exploration vessels or platforms and diving in or in connection with the construction and maintenance of platforms and associated submarine pipelines

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

professional industrial diving industry has the meaning given in [clause 4.2](#)

saturation techniques means procedures in accordance with which a diver is continuously subjected to an ambient pressure greater than atmospheric pressure so that the body tissues and blood become saturated with the inert element of the breathing mixture

standard rate means the minimum weekly wage for an inshore or offshore diver, as the case may be, in clauses 27—Minimum rates or 32—Minimum rates.

3. The National Employment Standards and this award

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

4. Coverage

Definition of **professional industrial diving industry** inserted in coverage clause in accordance with [\[2017\] FWCFB 3433](#) at [339].

Clause 4.5 amended in accordance with [\[2019\] FWCFB 5409](#) at [118].

- 4.1 This industry award covers employers throughout Australia in ~~the provision of underwater services to the professional industrial diving industry, including offshore exploration and development diving and related shipboard services,~~ and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award.

~~4.2 In this award, the professional industrial diving industry means the provision of underwater services to industry and includes offshore exploration and development diving and related shipboard services.~~

~~4.24.3~~ In clause 4.1, Australia means all areas within the Commonwealth of Australia or within the adjacent areas as defined in the Offshore Petroleum and Greenhouse Gas Storage Acts (State or Federal) and/or the Petroleum (Submerged Lands) Acts (State) and/or such areas that fall within the territorial jurisdiction of the Commonwealth of Australia.

~~4.34.4~~ The award does not cover employers and employees covered by the classifications listed in the *Professional Diving Industry (Recreational) Award 20XX*.

~~4.44.5~~ This award covers any employer which supplies labour on an on-hire basis in the [professional industrial diving](#) industry ~~set out in clause 4.2~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. ~~This subclause~~ Clause 4.5 operates subject to the exclusions from coverage in this award.

~~4.54.6~~ This award does not cover:

- (a) employees excluded from award coverage by the [Act](#);
- (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and*

Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees; or

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

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

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

5. Individual flexibility arrangements

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

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

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

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

5.4 An employer who wishes to initiate the making of an agreement must:

- (a) give the employee a written proposal; and
- (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

5.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

5.6 An agreement must do all of the following:

- (a) state the names of the employer and the employee; and

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- (b) identify the award term, or award terms, the application of which is to be varied; and
- (c) set out how the application of the award term, or each award term, is varied; and
- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

5.7 An agreement must be:

- (a) in writing; and
- (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

5.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.

5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

5.11 An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

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

5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.

5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

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

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

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

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

6.2 Responding to the request

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

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

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

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

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

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee’s circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

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

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

6.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 22—Dispute resolution.

7. Facilitative provisions

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

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

- (a) clause 14.5—Annual leave in advance
- (b) clause 14.6—Cashing out of annual leave
- (c) clause 25.1(e)—Ordinary hours of work and rostering;
- (d) clause 28.1—Payment of wages (inshore divers);
- (e) clause 30.4—Time off instead of payment for overtime;
- (f) clause 31.1(c)—Roster cycles for offshore divers; and
- (g) clause 33.1—Payment of wages (offshore divers).

Part 2—Types of Employment and Classifications

8. Types of employment

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

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

9. Full-time employees

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

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- 9.2 Where employment is of less than ~~four~~4 weeks' duration, employees will be paid casual rates.
- 9.3 Inshore divers must be employed by the week.
- 9.4 For offshore divers, employment for the first ~~four~~4 weeks will be on a weekly basis and thereafter will be on a calendar month basis.

10. Casual employees

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

Administrative change to clause 10.3(a) by modern awards team.

- 10.1 A casual employee is an employee who is engaged and paid as a casual employee.
- 10.2 A casual employee will be paid an hourly rate with a minimum payment of ~~eight~~8 hours except as provided for in clause 10.4.
- 10.3 **Casual loading**
- (a) For each ~~ordinary~~hour worked, a casual employee must be paid:
- (i) the minimum ~~weekly~~hourly rate; and
- (ii) a loading of 25% of the minimum hourly rate,
- for the classification in which they are employed.
- (iii) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.
- (iv) The loading constitutes part of the casual employee's all-purpose rate.
- 10.4 Where casual inshore divers are required to attend for work at the usual starting time and are not required to start work, they must be paid ~~four~~4 hours' pay plus fares and travelling time in accordance with clause 29.3(b).
- 10.5 Casual employment is to be terminated by ~~four~~4 hours' notice on either side, or by the payment or forfeiture of ~~four~~4 hours' wages as the case may be.
- 10.6 **Right to request casual conversion**
- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee under the provisions of this award.

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- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) Any request under ~~this subclause~~ clause 10.6 must be in writing and provided to the employer.
- (e) Where a regular casual employee seeks to convert to full-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (f) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in ~~paragraph (b)~~ clause 10.6(b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (g) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (h) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (i) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 22—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (j) Where it is agreed that a casual employee will have their employment converted to full-time employment as provided for in ~~this clause~~ 10.6, the employer and employee must discuss and record in writing that the employee will convert to full-time employment.
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

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- (l) Once a casual employee has converted to full-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under ~~this clause~~ 10.6.
- (n) Nothing in ~~this clause~~ 10.6 obliges a regular casual employee to convert to full-time employment, nor permits an employer to require a regular casual employee to so convert.
- (o) Nothing in ~~this clause~~ 10.6 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time employment.
- (p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of ~~this subclause~~ clause 10.6 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of ~~this subclause~~ clause 10.6 by 1 January 2019.
- (q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in ~~paragraph (o)~~ clause 10.6(p).

11. Classifications

The classification structure and definitions under this award are set out at Schedule A—Classification Definitions.

Part 3—Wage ~~related matters and Allowances~~

12. Accident pay

12.1 For the purposes of ~~this clause~~ 12, the following definitions will apply:

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

12.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 52 weeks.

12.3 Calculation of the period

- (a) The 52 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 52 week period.
- (b) The termination by the employer of the employee's employment within the 52 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

12.4 When not entitled to payment

An employee will not be entitled to any payment under ~~this~~-clause_12 in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

12.5 Return to work

If an employee entitled to accident pay under ~~this~~-clause_12 returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

12.6 Redemptions

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers compensation legislation, the liability of the employer to pay accident pay as herein provided will cease from the date the employee receives that payment.

12.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under ~~this~~-clause_12 and the employee will not be entitled to any further accident pay thereafter.

12.8 Casual employees

For a casual employee, the weekly payment referred to in clause ~~7A.1(a)~~12.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

13. Superannuation

13.1 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.

13.2 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.

13.3 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 13.2.
- (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 13.3(a) or 13.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 13.3(a) or 13.3(b) was made.

13.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 13.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 13.2, and pay the amount authorised under clauses 13.3(a) or 13.3(b), to one of the following superannuation funds or its successor:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust;

- (c) 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
- (d) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 4—Leave and Public Holidays

14. Annual leave

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

14.2 Payment for annual leave

- (a) Before the start of an employee’s annual leave, the employer must pay the employee the amount the employee would have been paid for working ordinary hours during the period of annual leave.

- (b) **Leave loading—inshore divers**

In addition, the employer must pay inshore divers an annual leave loading of 17.5% calculated at the employee’s minimum hourly rate.

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

14.3 Leave for offshore divers is provided for in clause 31.1—Ordinary hours and roster cycles.

14.4 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in ~~this~~ clause 14, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

14.5 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

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- (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 14.5 is set out at Schedule E—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 14.5 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 14.5, 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.

14.6 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.6.
- (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 14.6 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 14.6 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 14.6 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 14.6.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.6.

NOTE 3: An example of the type of agreement required by clause 14.6 is set out at Schedule F—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Cash Out Annual Leave.

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. Community service leave

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

18. Unpaid family and domestic violence leave

Clause 18 inserted in accordance with [\[2019\] FWCFB 5144](#) at [13].

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

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

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

19. Public holidays

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

19.2 An inshore diver required to work on a public holiday will be paid at the rate of 250% of the ordinary hourly rate, with a minimum payment for ~~four~~4 hours' work.

19.3 Part-day public holidays

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

Part 5—Consultation and Dispute Resolution

20. Consultation about major workplace change

- 20.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
 - (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
 - (c) commence discussions as soon as practicable after a definite decision has been made.
- 20.2** For the purposes of the discussion under clause 20.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
 - (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 20.3** Clause 20.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 20.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 20.1(b).
- 20.5** In clause 20 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or

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- (f) the need for employees to be retrained or transferred to other work or locations;
or
- (g) job restructuring.

20.6 Where this award makes provision for alteration of any of the matters defined at clause 20.5, such alteration is taken not to have significant effect.

21. Consultation about changes to rosters or hours of work

21.1 Clause 21 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

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

21.3 For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 21.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

21.4 The employer must consider any views given under clause 21.3(b).

21.5 Clause 21 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

22. Dispute resolution

22.1 Clause 22 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

22.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

22.3 If the dispute is not resolved through discussion as mentioned in clause 22.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

22.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 22.2 and 22.3, a party to the dispute may refer it to the Fair Work Commission.

- 22.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 22.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 22.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 22.
- 22.8 While procedures are being followed under clause 22 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 22.9 Clause 22.8 is subject to any applicable work health and safety legislation.

Part 6—Termination of Employment and Redundancy

23. Termination of employment

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

23.1 Notice of termination by an employee

- (a) Clause 23.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

Column 1 Employee’s period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

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

- (c) In clause 23.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 23.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 23.1(b), then no deduction can be made under clause 23.1(d).
- (f) Any deduction made under clause 23.1(d) must not be unreasonable in the circumstances.

23.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 23.2 is to be taken at times that are convenient to the employee after consultation with the employer.

24. Redundancy

Clause 24 amended in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR707014](#).

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

24.1 Transfer to lower paid duties on redundancy

- (a) Clause 24.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
 - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or
 - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 24.1(c).
- (c) If the employer acts as mentioned in clause 24.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-

purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

24.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act.
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 24 or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

24.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 24.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 24.3(b).
- (d) An employee who fails to produce proof when required under clause 24.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 23.2.

SECTION B—INSHORE DIVERS

Part 7—Hours of Work

25. Ordinary hours of work and rostering

25.1 Ordinary hours and roster cycles

- (a) Ordinary hours are worked between 6.00 am to 6.00 pm, Monday to Friday.
- (b) The ordinary hours of work for a full-time employee will not exceed 38 hours per week.
- (c) The ordinary hours of work for a casual employee will be in accordance with clause 10—Casual employees.
- (d) Work undertaken prior to the spread of hours provided by clause 25.1(a) for which overtime rates are payable will be deemed for the purposes of ~~this~~ clause 25 to be part of the ordinary hours of work.
- (e) The spread of hours provided by clause 25.1(a) may be altered by up to one hour by mutual agreement between the employer and employees.
- (f) Where employees are not employed on diving operations during their ordinary hours, the employer may use their services on other work for any time remaining.

25.2 Work on first day of off-duty period

To allow a smooth changeover of on-duty and off-duty crews, employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

26. Breaks

An inshore diver is entitled to an unpaid meal break of a duration and at a time fixed by agreement, provided that no employee will work more than ~~three~~ 3 hours without such a break.

Part 8—Wages and Allowances

27. Minimum rates

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

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

27.1 An employer must pay inshore divers the following minimum wages for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate <u>(full-time employee)</u>	Minimum hourly rate
	\$	\$
Diving Supervisor	1,396.90	36.76
Hyperbaric Welder	1,083.80	28.52
Diver	1,036.10	27.27
Diver's Attendant	851.90	22.42

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

27.2 Higher duties

- (a) Where employees perform the duties of a higher paid classification for a day or part day they will be paid at the higher rate for that day and paid at the higher rate for an equivalent day in their off-duty period.
- (b) For the purposes of clause 27.2(a), a higher paid classification means a classification where the total salary and allowances payable are greater than the total salary and allowances payable at the employee's current classification.

28. Payment of wages

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

- 28.1 Wages will be paid either weekly or fortnightly, unless otherwise agreed between the employer and the employee.
- 28.2 Wages will be paid by cash, bank cheque or electronic funds transfer (EFT).
- 28.3 Where an employee is paid by cash or cheque and the employee is kept waiting for their wages on pay day for more than 15 minutes after the usual time for ceasing work, the employee must be paid overtime rates after that 15 minutes for the duration spent waiting at the workplace.

28.4 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
- (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under ~~paragraph (a)~~ clause 28.4(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: ~~Paragraph (b)~~ Clause 28.4(b) allows the Commission to make an order delaying the requirement to make a payment under ~~this~~ clause 28.4. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

29. Allowances

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

Note inserted in accordance with [2015] FWCFB 4658 at [57].

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

29.1 Employers must pay to an employee the allowances the employee is entitled to under ~~this~~ clause 29. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

29.2 Over-award allowances

(a) Diving allowance

A Diver will be paid a diving allowance of **\$4.46** per metre or **\$1.35** per foot of water or equivalent pressure. The allowance will be payable once in respect of the greatest depth or equivalent pressure incurred each day.

- (i) The allowance will:

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- only apply to dives made in excess of 50 feet or 15 metres of water or equivalent pressure or when decompression is necessary whichever will occur first; and
 - be calculated from the surface to the maximum depth or equivalent pressure attained during the dive.
- (ii) The allowance will not be paid to persons performing practice or training dives. Underwater services will not be performed for the employer during practice or training dives.
- (iii) Diving Supervisors will receive 20% of the average diving allowance paid to Divers under their control. Average diving allowance will be calculated daily by *dividing* the total diving allowance earned by divers whilst under the control of a Diving Supervisor by the number of divers who earned a diving allowance on that day.

(b) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography will be paid an allowance of **\$67.45** per day for each day or part day on which they are engaged in such duties.

(c) Hyperbaric welding allowance

- (i) The Hyperbaric Welder rate as specified in clause 29.2(c)(ii) will apply from the date an employee is required to carry out such duties. The payment will cease when the employee is no longer required by the employer to carry out those duties.
- (ii) A Hyperbaric Welder will be entitled to a payment of **\$5.08** per linear millimetre for a successfully completed weld. For the purpose of ~~this~~ clause 29.2(c), **successfully completed** means a weld which has been accepted by the client without the necessity for repair.
- (iii) Provided that instead of clause 29.2(c)(ii) a Hyperbaric Welder will be entitled to payment of **\$3.42** per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv) The payments prescribed in clauses 29.2(c)(ii) and ~~(iii)~~29.2(c)(iii) will apply only to members of the nominated hyperbaric welding team who have been coded for the particular hyperbaric welding task.

(d) Annual medical exam allowance

Employees who are subjected to greater than atmospheric pressure will be reimbursed the cost of an annual medical examination which will include, but not be limited to, the requirement set out in Appendix A of the Standards Association of Australia Underwater Air Breathing Operations Standard AS 2299. The provisions of clause 29.2(d) do not apply where the employer provides for the service.

29.3 Expense-related allowances

(a) Meal allowance

- (i) A meal allowance of **\$9.08** is payable to employees:
- who are required to work overtime for more than ~~two~~2 hours on any day after the usual finishing time; or
 - are notified that they will be required to work overtime the following day and such order is cancelled after they have left work on the day on which they were notified.
- (ii) The meal allowance is not payable when:
- an employee is notified the previous day that their services are required; or
 - a hot meal is provided by the employer.

(b) Fares and travelling time allowance

- (i) Employees who start and finish work within a 50 km radius of the General Post Office in the city or town in which the employer's business address is situated will receive a fare allowance of **\$11.63** per day.
- (ii) Where employees start and finish work beyond the 50 km radius referred to in clause 29.3(b)(i) they will be reimbursed for the actual fares incurred and all time spent travelling beyond this radius will be paid at ordinary rates.

(c) Distant work allowance

- (i) For the purpose of 29.3(c) **distant work** is work in which the distances, or the travelling facilities to and from places of work, make it reasonably necessary that employees will live and sleep at some place other than their usual place of residence at the time of starting work. Provided that if employees, whilst employed on distant work, change their usual place of residence, the new place of residence or any further change thereof (if made whilst employed on distant work) will be their usual place of residence for determination of whether the work is distant work.
- (ii) Employees engaged on distant work will be conveyed with equipment to and from work at their employer's expense. Such conveyance will be made each time the employee is recalled and sent again to the place of work. Provided that return fares and travelling time need not be paid to employees who:
- leave the employment of their own free will before the completion of the job or before being employed for ~~three~~3 months, whichever happens first; or
 - are discharged for incompetence within one week of engagement; or
 - are discharged for misconduct.

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- (iii) The rate of pay for time occupied in travelling to and from distant work will be ordinary rates, except on Sundays and public holidays when an employee will be paid 150% of the minimum hourly rate. Employees will also be paid an amount of **\$6.70** to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (iv) The maximum travelling time to be paid for will be 12 hours out of every 24 hours, or when a sleeping berth is provided by the employer for all night travel, ~~eight~~ 8 hours out of every 24 hours.
- (v) On distant work employees may be paid, by agreement with the employer, an allowance of **\$350.47** per week, or if agreed upon, a greater amount, in return for which employees will be responsible for securing their own accommodation and meals.
- (vi) In the case of broken parts of the week occurring at the beginning or ending of the employment on a distant job the allowance will be **\$50.11** per day or one seventh of any other weekly amount agreed upon.
- (vii) The provisions of 29.3(c)(v) and ~~(vi)~~ 29.3(c)(vi) do not apply if the employer provides reasonable board and lodging.
- (viii) Employees who consent to use their own vehicle in the course of their employment will be paid an allowance of **\$0.78** per kilometre. This allowance is for the use of the vehicle by the employee for transporting the employee and the employee's personal diving equipment.

(d) Diving clothing and equipment allowance

Employees who supply their own wet suits and personal diving equipment including weightbelt and diving knife will be paid, in addition to the ordinary rate, an allowance of **\$7.08** per day on each day on which the equipment is used.

(e) Protective clothing, footwear and equipment allowance

- (i) Employees will be reimbursed for the cost of all required industrial protective clothing, footwear and safety equipment other than that prescribed in clause 29.3(d). This provision does not apply if the clothing and the equipment is supplied by the employer.
- (ii) Casual employees may, instead of the provision of footwear by the employer, be paid an amount of **\$2.53** per day of employment for the purchase of approved safety footwear. This allowance will not be payable where safety footwear is not required to be worn.

Part 9—Overtime

30. Overtime

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

30.1 Definition of overtime

For an inshore diver, overtime is any time worked:

- (a) in excess of ~~six~~6 hours and 36 minutes per day; or
- (b) outside the spread of hours in clause 25.1(a).

30.2 Overtime rates

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

For overtime worked on	Overtime rate % of minimum hourly rate	Casual overtime rate % of the casual hourly rate ¹
Monday to Saturday—first 2 hours	150	150
Monday to Saturday—after 2 hours	200	200
Sunday—all day	200	200
Public holiday—all day	250	250

¹ **Casual hourly rate** is in clause 10—Casual employees and includes the casual loading which constitutes part of the casual employee’s all-purpose rate.

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

30.3 Call back

An employee recalled to work overtime after leaving the employer’s business premises (whether notified before or after leaving the premises) must be engaged and paid for a minimum of ~~four~~4 hours’ work at the overtime rates even when the employee is not required to work for the full ~~four~~4 hours.

30.4 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 30.4.

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- (c) An agreement must state each of the following:
- (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in ~~subparagraph (iii)~~ clause 30.4(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by ~~this~~ clause 30.4 is set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 30.4 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 30.4 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 30.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in ~~paragraph (e)~~ clause 30.4(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 30.4 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 30.4 will apply, including the requirement for separate written agreements under ~~paragraph (b) clause~~ 30.4(b) for overtime that has been worked.

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

- (k) If, on the termination of the employee’s employment, time off for overtime worked by the employee to which clause 30.4 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 30.4.

SECTION C—OFFSHORE DIVERS

Part 10—Hours of Work

31. Ordinary hours of work and rostering

31.1 Ordinary hours and roster cycles

- (a) The average daily hours of work for an offshore diver will be no greater than 12 hours.

- (b) **Leave accrual**

For each on-duty day worked, employees (other than casual employees) will receive one paid off-duty leave day.

- (c) **Rosters**

Starting and finishing times will be in accordance with a nominated regularly recurrent roster schedule. The employer will establish a regularly recurring roster of equal on-duty and off-duty periods for each work site. The on-duty and off-duty periods will each be of 14 days’ duration, provided that other equal periods may be worked by agreement between the employer and a majority of affected employees.

- (d) **On-duty period**

The on-duty period for employees (other than casual employees) will commence on the day of arrival at the designated point of embarkation to the work site.

(e) Off-duty period

- (i) The off-duty period for employees (other than casual employees) will commence on the day of departure from the work site.
- (ii) If the employee is held over beyond midnight on their crew change day and/or subsequent days, they will be paid one day's pay at 20% of the minimum weekly wage rate in clause 32.1, but they will not accrue a subsequent leave day.

(f) Not attending for duty

Employees not attending for duty in a rostered on-duty period other than as provided for elsewhere in ~~this~~ clause 31 will not receive payment nor accrue off-duty leave days in respect of such period.

(g) Authorised paid leave

Employees who are absent during a rostered on-duty period, for reasons provided for in clause 15—Personal/carer's leave and compassionate leave will be paid as if on-duty for the period of such absence.

(h) Authorised unpaid leave

Where requested by an employee, the employer may grant authorised unpaid leave to that employee. The employee will not receive payment nor accrue or use paid off-duty leave days in respect of such period of absence. The granting of authorised unpaid leave will be at the sole discretion of the employer.

(i) Roster changes by the employer

Where a roster is changed by the employer and the commencement of an employee's on-duty period is brought forward, the employee will be considered to be on duty from the day of arrival at the designated point of embarkation.

(j) Roster changes by the employee

Where a roster is changed at the request of an employee, the employee will be either on-duty and accruing off-duty leave days or off-duty and using off-duty leave days as provided in clauses 31.1(d) and 31.1(e).

(k) Returning to work early

Where an employee commences duty prior to the commencement of the employee's rostered on-duty period, the employee will be considered to be on-duty from the day of arrival at the designated point of embarkation.

(l) Prevented from commencing an on-duty period

Where an employee reports for duty at a designated assembly point but cannot be transported to the offshore work site due to weather conditions, insufficient work or other circumstances beyond the employer's control, the period of such delay will be regarded as an on-duty period provided that the employer may gainfully employ the employee onshore.

(m) Prevented from remaining on duty

Where during an on-duty period an employee cannot remain at the offshore work site due to circumstances beyond the employer's control, such days will be considered to be on-duty days provided that the employer may gainfully employ the employee onshore.

(n) Prevented from commencing off-duty period

Where due to weather conditions or other circumstances an employee is delayed offshore and prevented from commencing a rostered off-duty period the employee will be on duty and accruing off-duty leave days until the employee actually commences an off-duty period.

(o) Imbalance of off-duty leave days owed and actually taken

- (i)** Subject to 31.1, an employee may accrue more off-duty leave days than are taken or take more off-duty leave days than have been accrued.
- (ii)** Where the employee accrues more off-duty leave days than are taken the balance will be recorded and taken at another time.
- (iii)** Where the employee takes more off-duty leave days than are accrued they will be deducted from any balance of off-duty days yet to be taken. Where that results in a negative balance of off-duty leave days that number of days will be subtracted from the employee's pay for that month.
- (iv)** A positive balance of off-duty days owed to the employee on termination will be paid to the employee at that time.

31.2 Work on first day of off-duty period

To allow a smooth changeover of on-duty and off-duty crews, employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

Part 11—Wages and Allowances

32. Minimum rates

32.1 Minimum ~~wages~~ rates

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

- (a) An employer must pay offshore divers the following wages for ordinary hours worked by the employee:

Employee classification	Full-time employees		
	Minimum weekly rate	Aggregate weekly factor (percentage of minimum weekly rate)	Total weekly rate (minimum weekly rate plus aggregate weekly factor)
	\$	%	\$
Diving Superintendent	1138.70	117	2470.98
Diving Supervisor	1064.10	116	2298.46
Supervisor (ADS Operations)	1064.10	116	2298.46
Hyperbaric Welder	1027.10	116	2218.54
Life Support Technician	973.80	114	2083.93
Senior Operator (OMB Operations)	973.80	114	2083.93
Systems Maintenance Technician	911.70	113	1941.92
Diver	857.00	111	1808.27
Operator (ADS Operations)	857.00	111	1808.27
Diver's Attendant	745.50	108	1550.64

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

- (b) A full-time employee engaged in offshore diving must be paid the total weekly rate which is the minimum weekly rate plus the aggregate weekly factor.
- (c) The aggregate weekly factor specified in clause 32.1(a) includes payment for the various rosters that may be worked, overtime, the nature of the industry and penalties and conditions of employment applicable to the work performed.

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- (d) Total monthly rates are calculated by multiplying the total weekly rate specified in clause 32.1(a) by 4.35.

32.2 Higher duties

- (a) Where employees perform the duties of a higher paid classification for a day or part day they will be paid at the higher rate for that day and paid at the higher rate for an equivalent day in their off-duty period.
- (b) For the purposes of clause 32.2(a), a higher paid classification means a classification where the total salary and allowances payable are greater than the total salary and allowances payable at the employee's current classification.

33. Payment of wages

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

- 33.1** Wages will be paid either weekly or fortnightly, unless otherwise agreed between the employer and the employee.
- 33.2** Wages will be paid by cash, bank cheque or electronic funds transfer (EFT).
- 33.3** Where an employee is paid by cash or cheque and the employee is kept waiting for their wages on pay day for more than 15 minutes after the usual time for ceasing work, the employee must be paid overtime rates after that 15 minutes for the duration spent waiting at the workplace.

33.4 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under ~~paragraph (a) clause 33.4(a)~~ is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: ~~Paragraph (b) Clause 33.4(b)~~ allows the Commission to make an order delaying the requirement to make a payment under ~~this clause 33.4~~. For example, the Commission could make an order delaying the requirement to pay redundancy pay if

an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

34. Allowances

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

Note inserted in accordance with [2015] FWCFB 4658 at [57].

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

34.1 Employers must pay to an employee the allowances the employee is entitled to under ~~this~~ clause 34. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

34.2 Over-award allowances

(a) Disability allowance

For each on-duty day on a support vessel whether dynamically positioned or anchor moored:

- (i) employees other than casual employees will receive an allowance of **\$68.56** per day; and
- (ii) casual employees will receive an allowance of **\$81.33** per day.

The allowance in clause 34.2(a) is paid in recognition of all disabilities and work requirements associated with living and working from such a vessel. The amounts in ~~this~~ clause 34.2 reflect payment for the on-duty and off-duty period.

(b) Diving allowances

(i) Diving other than ADS Operations

A Diver will be paid a diving allowance of **\$4.03** per metre or **\$1.20** per foot or equivalent pressure as follows:

- a minimum of **\$60.00** (50 times the diving allowance per foot) will be paid for dives using other than saturation techniques; or
- a minimum of **\$300.00** (calculated as 250 times the diving allowance per foot) will be paid where the employee is engaged in a dive using saturation techniques.
- The allowance will be payable once in respect of the greatest depth or equivalent pressure incurred in each period worked.

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- For the purposes of this allowance, a period worked will begin from the time the Diver enters the water or is subject to greater than atmospheric pressure and will end 12 hours later. If at the end of a period worked, or a further period worked, a Diver is still subject to greater than atmospheric pressure, further periods worked will begin again each 12 hours.

(ii) ADS Operations

A Senior Operator (OMB Operations) and Operator (ADS Operations) will be paid a diving allowance of **\$1.97** per metre or **\$0.60** per foot.

- A minimum of **\$150.00** will be paid (calculated as 250 times the diving allowance per foot).
- The allowance will be payable only once in respect of dives commenced within a 12 hour period.

(iii) Practice or training dives

The diving allowances in clauses 34.2(b)(i) and 34.2(b)(ii) must not be paid to:

- persons performing practice or training dives; or
- an Operator (ADS Operations) during the first 12 month period of training.

Underwater services must not be performed for the employer during practice or training dives.

(iv) Diving Superintendents, Diving Supervisors, Supervisors (ADS Operations) and Life Support Technicians

- Diving Superintendents, Diving Supervisors and Supervisors (ADS Operations) will receive 20% and Life Support Technicians will receive 15% of the average diving allowance paid to Divers or Operators (ADS Operations) under their control.
- The average diving allowance will be calculated daily by dividing the total diving allowance earned in each day (or part thereof) by Divers or Operators (ADS Operations) under the control of a Diving Superintendent, Diving Supervisor or Supervisor (ADS Operations) by the number of Divers or Operators (ADS Operations) who earned a diving allowance in that day.
- Surface oriented dives made in conjunction with saturation diving operations must be calculated separately for the purpose of calculating the average diving allowance.

(c) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography will be paid an

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allowance of **\$60.33** per day for each day or part day on which they are engaged in such duties.

(d) Hyperbaric welding allowance

- (i)** The minimum wage for a Hyperbaric Welder as specified in clause 32.1(a) will apply from the date an employee is required to carry out such duties. The payment will cease when the employee is no longer required by the employer to carry out those duties.
- (ii)** A Hyperbaric Welder will be entitled to a payment of **\$4.97** per linear millimetre for a successfully completed weld. For the purpose of ~~this~~ clause 34.2(d), **successfully completed** means a weld which has been accepted by the client without the necessity for repair.
- (iii)** Provided that instead of clause 34.2(d)(ii) a Hyperbaric Welder will be entitled to payment of **\$3.34** per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv)** The payments prescribed in clauses 34.2(d)(ii) and ~~(iii)~~ 34.2(d)(iii) will apply only to members of the nominated hyperbaric welding team who have been coded for that particular hyperbaric welding task.

34.3 Expense-related allowances

(a) Loss of personal effects reimbursement

- (i)** An employee will be reimbursed up to **\$2552.00** for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge.
- (ii)** No payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

(b) Living away from home allowance

- (i)** An allowance of **\$54.37** per day will be paid to each employee for each day or part thereof of their duty period offshore or in circumstances where employees would normally be working offshore and are temporarily accommodated onshore away from their home.
- (ii)** With the exception of annual leave, the allowance will not be payable during periods of leave or authorised absences nor during periods in which the employee is specifically engaged on shore-based duties including equipment mobilisation or demobilisation where the employee is able to live at home.

(c) Transportation and accommodation allowances

- (i)** At the beginning and end of each on-duty period, the employer must provide transport between the designated assembly point and the designated point of embarkation.

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- (ii) Employees are required to present themselves at the designated point of embarkation by use of the transport provided by the employer or otherwise at their own expense.
 - (iii) If the transport provided by the employer is in the form of a hired vehicle the employee will be responsible for the care of the vehicle and if an accident occurs while the employee is in charge of the vehicle and is proven to be under the influence of illegal drugs or alcohol, the employer will have the right to recover from the employee any cost incurred by the employer resulting from such accident.
 - (iv) During the period of duty, employees who cannot reasonably return to their usual residence will be reimbursed the cost of reasonable accommodation and meals. Where such accommodation and meals are provided by the employer the provisions of clause 34.3(c) do not apply.
 - (v) The employer will notify the employees of the designated assembly point and designated point of embarkation for each job.
- (d) Clothing and equipment allowances**
- (i) Employees will be reimbursed for the purchase of clothing and equipment required for the performance of duties. The provisions of clause 34.3(d) do not apply if the employer provides the clothing and equipment.
 - (ii) Where a full-time employee is required to supply and maintain their own wetsuit and approved safety footwear, they will be paid an allowance of **\$108.61** per calendar month.
 - (iii) A casual employee will be paid an allowance of **\$8.75** per day.
- (e) Medical examination allowance**
- (i) Where the employer requests that a prospective employee undertake a pre-employment medical examination, the employee will be reimbursed for the costs of attending the examination.
 - (ii) Where Commonwealth, State or Territory legislation requires that employees bound by this award must submit to medical examination, then upon employees complying with such Act or Regulation, the employer will reimburse the employee for all costs associated with such examination.
- (f) Insurance policy reimbursement**
- (i) Where the employee elects to obtain insurance cover against death from any cause with a sum insured of **\$129,489.00** to apply during the period of their employment, then upon presentation of verifiable evidence of the purchase of the insurance policy, the employer will reimburse the employee for the cost of the policy.
 - (ii) The insurance policy reimbursement does not apply if the employer provides the insurance coverage directly.

Schedule A—Classification Definitions

An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

- A.1 Diver** means an employee trained and certified in accordance with AS 2815 Parts 1-3 and experienced in the use of Self-Contained Underwater Breathing Apparatus (SCUBA) and/or Surface Supplied Breathing Apparatus (SSBA) equipment, the physics and physiology of diving, underwater communication systems, use, inspection and maintenance of compressed air supplies, operation and maintenance of underwater tools, preparation and operation of compression chambers (Parts 1 and 2 under supervision), the performance of underwater work, first aid and the relevant legislation.
- A.2 Diver's Attendant** means an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures and equipment used in diving operations. The Diver's Attendant will carry out the functions of attending to a diver, including assisting the diver to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned by the diving supervisor but will not be required to perform underwater services.
- A.3 Diving Superintendent** means an employee placed in charge of a 24 hour diving operation to co-ordinate the diving work and to relieve Diving Supervisors engaged in that operation where and when necessary.
- A.4 Diving Supervisor** means a diver experienced in diving and diving techniques, appointed by the employer in writing to supervise diving operations, to instruct other divers and to be responsible for safe diving practices. The diving supervisor will also be competent to supervise all classes of hydrocarbon exploration and development diving applicable to and appropriate to the particular operation which may include using helium/oxygen or similar mixtures, using submarine observation chambers and operating from submarine working chambers. In addition, the diving supervisor is responsible to the employer for other on-site supervisory functions relating to matters within the scope of this award, including liaison with other companies, supervision of employees, keeping of appropriate records and reports ensuring that all equipment is kept and properly maintained to comply with all rules and regulations and that all expendable items are maintained at an acceptable stock level. An employee must have worked as a diver for a period of not less than ~~six~~6 months before being designated as a diving supervisor.
- A.5 Hyperbaric Welder** means an employee who is a trained and certified diver and is a qualified welder appointed to perform work in such capacity by the employer.
- A.6 Life Support Technician** means an employee who will, under the supervision of a diving supervisor, control and monitor all the systems and functions which relate to the life support, safety and health of any person inside hyperbaric chambers used in saturation diving.
- A.7 Operator (ADS Operations)** means an operator in relation to ADS Operations as defined in ~~Schedule G—Definitions clause 2~~—Definitions.

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- A.8 Senior Operator (OMB Operations)** means an employee appointed as such to operate an observation manipulator bell as OMB, ARMS or MOB.
- A.9 Supervisor (ADS Operations)** means a supervisor in relation to ADS Operations as defined in ~~Schedule G—Definitions clause 2~~—Definitions.
- A.10 Systems Maintenance Technician** means an employee engaged specifically to perform maintenance and repair tasks on diving and ancillary equipment. Such an employee will typically have a relevant trade qualification and be familiar with diving operations.

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Schedule B—Summary of Rates of Pay

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

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

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

B.1 Full-time employees—inshore divers

B.1.1 Full-time employees—ordinary and penalty rates

	Ordinary hours	Public holiday
	% of minimum hourly rate	
	100%	250%
	\$	\$
Diving Supervisor	36.76	91.90
Hyperbaric Welder	28.52	71.30
Diver	27.27	68.18
Diver's Attendant	22.42	56.05

Commented [FWC1]: (Minimum weekly rate ÷ 38) in cl. 27.1.

Commented [FWC2]: Relevant percentage in cl 19.2

B.1.2 Full-time employees—overtime rates

	Monday to Saturday—first 2 hours	Monday to Saturday—after 2 hours	Sunday—all day	Public holiday
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Diving Supervisor	55.14	73.52	73.52	91.90
Hyperbaric Welder	42.78	57.04	57.04	71.30
Diver	40.91	54.54	54.54	68.18
Diver's Attendant	33.63	44.84	44.84	56.05

Commented [FWC3]: (Minimum weekly rate ÷ 38) in cl. 27.1.

Commented [FWC4]: Relevant percentage in cl 30.2

B.2 Casual employees—inshore divers

B.2.1 Casual hourly rate includes the casual loading which is payable for all purposes.

B.2.2 Casual employees—ordinary and penalty rates

	Ordinary hours	Public holiday
	% of minimum-casual hourly rate	
	100.125%	250.275%
	\$	\$
Diving Supervisor	45.95	114.88
Hyperbaric Welder	35.65	89.13
Diver	34.09	85.23
Diver’s Attendant	28.03	70.08

Commented [FWC5]: (Minimum weekly rate ÷ 38) in cl. 27.1 + 25% casual loading in cl 10.3(a)(ii)

Rates in table include the all-purpose casual loading.

Commented [FWC6]: Relevant percentage in cl 19.3

B.3 Full-time employees—offshore divers

B.3.1 Full-time employees—ordinary rates

	Total hourly rate	Total monthly rate ¹
	\$	\$
Diving Superintendent	65.03	10,748.76
Diving Supervisor	60.49	9,998.30
Supervisor (ADS Operations)	60.49	9,998.30
Hyperbaric Welder	58.38	9,650.65
Life Support Technician	54.84	9,065.10
Senior Operator (OMB Operations)	54.84	9,065.10
Systems Maintenance Technician	51.10	8,447.35
Diver	47.59	7,865.97
Operator (ADS Operations)	47.59	7,865.97
Diver's Attendant	40.81	6,745.28

Commented [FWC7]: (Minimum weekly rate + aggregate weekly factor) ÷ 38 in cl 32.1

Commented [FWC8]: (Total weekly rate in cl 32.1(a) x 4.35 in cl 32.1(c))

¹ Total monthly rates are calculated by multiplying the total weekly rate specified in clause 32.1(a) by 4.35.

B.4 Casual employees—offshore divers

B.4.1 Casual employees—ordinary rates

	Casual ordinary rate
	\$
Diving Superintendent	37.46
Diving Supervisor	35.00
Supervisor (ADS Operations)	35.00
Hyperbaric Welder	33.79
Life Support Technician	32.04
Senior Operator (OMB Operations)	32.04
Systems Maintenance Technician	29.99
Diver	28.19
Operator (ADS Operations)	28.19
Diver's Attendant	24.53

Commented [FWC9]: (Minimum weekly rate ÷ 38) in cl 32.1 + 25% casual loading in cl 10.3(a)(ii)

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Schedule C—Summary of Monetary Allowances

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

See clauses 29—Allowances and 34—Allowances for full details of allowances payable under this award.

C.1 Wage-related allowances—inshore divers

C.1.1 The following wage-related allowances are based on the weekly [standard rate](#) defined in ~~Schedule G—Definitions clause 2~~—Definitions as the minimum weekly wage for a Skill level 3 in clause 27—Minimum rates = **\$1036.10**. These rates are to be paid in accordance with the clause 29—Allowances.

Allowance	Clause	% of standard rate	\$	Payable
Diving allowance—Per metre; OR	29.2(a)	0.43	4.46	per metre
Diving allowance—Per foot of water or equivalent pressure	29.2(a)	0.13	1.35	per foot of water or equivalent pressure
Non-destructive testing allowance	29.2(b)	6.51	67.45	per day
Hyperbaric welding allowance	29.2(c)(ii)	0.49	5.08	per linear millimetre
Hyperbaric welding allowance—weld which requires repair	29.2(c)(iii)	0.33	3.42	per linear millimetre

C.2 Expense-related allowances—inshore divers

C.2.1 The expense-related allowances in this award will be adjusted by reference to the Consumer Price Index (CPI) as per the following:

Allowance	Clause	\$	Payable
Meal allowance—overtime	29.3(a)	9.08	per occasion
Meal allowance—late cancellation of overtime	29.3(a)	9.08	per occasion
Fares and travelling time allowance	29.3(b)(i)	11.63	per day
Distant work allowance—Expenses	29.3(c)(iii)	6.70	per occasion
Distant work allowance—Accommodation and meals	29.3(c)(v)	350.47	per week by agreement

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Allowance	Clause	\$	Payable
Distant work allowance— Accommodation and meals— broken parts of the week	29.3(c)(vi)	50.11	per day
Distant work allowance—Use of own vehicle allowance	29.3(c)(viii)	0.78	per km
Diving clothing and equipment allowance	29.3(d)	7.08	per day
Protective clothing, footwear and equipment allowance— casual employees	29.3(e)(ii)	2.53	per day

C.3 Wage-related allowances—offshore divers

C.3.1 The following wage-related allowances are based on the weekly [standard rate](#) defined in ~~Schedule G—Definitions~~ clause 2—Definitions as the minimum weekly wage for a Skill level 3 in clause 32.1 = **\$857.00**. These rates are to be paid in accordance with the clause 34—Allowances.

Allowance	Clause	% of standard rate	\$	Payable
Disability allowance— Full-time/part-time employees	34.2(a)	8.00	68.56	per on-duty day
Disability allowance— Casual employees	34.2(a)	9.49	81.33	per on-duty day
Diving allowance—other than ADS Operations— Per metre; OR	34.2(b)(i)	0.47	4.03	per metre
Diving allowance—other than ADS Operations— Per foot or equivalent pressure	34.2(b)(i)	0.14	1.20	per foot or equivalent pressure
Diving allowance—other than ADS Operations— Minimum payment 50 x Diving allowance per foot; OR	34.2(b)(i)		60.00	per 12 hour period
Diving allowance—other than ADS Operations— Minimum payment using saturation techniques— 250 x Diving allowance per foot	34.2(b)(i)		300.00	per 12 hour period

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Allowance	Clause	% of <u>standard rate</u>	\$	Payable
Diving allowance—ADS Operations—Per metre; OR	34.2(b)(ii)	0.23	1.97	per metre
Diving allowance—ADS Operations—Per foot	34.2(b)(ii)	0.07	0.60	per foot
Diving allowance—ADS Operations—Minimum payment—250 x Diving allowance per foot	34.2(b)(ii)		150.00per 12 hour period	
Non-destructive testing allowance	34.2(c)	7.04	60.33	per day
Hyperbaric welding allowance	34.2(d)(ii)	0.58	4.97	per linear millimetre
Hyperbaric welding allowance—weld which requires repair	34.2(d)(ii)	0.39	3.34	per linear millimetre

C.4 Expense-related allowances—offshore divers

C.4.1 The expense-related allowances in this award will be adjusted by reference to the Consumer Price Index (CPI) as per the following:

Allowance	Clause	\$	Payable
Loss of personal effects reimbursement—maximum— an <u>amount of up to</u>	34.3(a)(i)	2552.00	per claim
Living away from home allowance	34.3(b)(i)	54.37	per day
Clothing and equipment allowances—Full-time employees	34.3(d)(ii)	108.61	per calendar month
Clothing and equipment allowances—Casual employees	34.3(d)(iii)	8.75	per day
Insurance policy—reimbursement of cost policy	34.3(f)	129,489	insured sum

C.5 Adjustment of wage-related allowances

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

C.6 Adjustment of expense-related allowances

C.6.1 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

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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.

C.6.2 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
Clothing, footwear and equipment allowances	Clothing and footwear group
Distant work allowance	Domestic holiday travel and accommodation sub-group
Fares allowance	Transport group
Insurance policy reimbursement	Insurance and financial services group
Living away from home allowance	Domestic holiday travel and accommodation sub-group
Loss of personal effects reimbursement	Consumer price index – All groups
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

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

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule E—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule F—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20__

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20__

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20__

Schedule G—Part-day Public Holidays

- G.1** This schedule operates in conjunction with award provisions dealing with public holidays.
- G.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause G.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
 - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause G.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
 - (h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.
- G.3** This schedule is not intended to detract from or supplement the [NES](#).