

# EXPOSURE DRAFT

## Professional Employees Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Professional Employees Award 2010** as at 3 November 2016. This exposure draft does not seek to amend any entitlements under the *Professional Employees Award 2010* but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/281](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

No examples have been included in this exposure draft. Parties are asked to submit [examples](#) that clarify the operation of particular provisions.

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## Part 1—Application and Operation of this Award

### 1. Title and commencement

- 1.1 This award is the *Professional Employees Award 2016*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010.
- 1.3 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

- 2.1 In this award, unless the contrary intention appears:

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

**communications** includes any communication whether between persons and persons, things and things or persons and things, and whether in the form of:

- (a) speech, music, or other sounds;
- (b) data;
- (c) text;
- (d) visual images, whether or not animated;
- (e) signals; or
- (f) in any other form or other combination of forms.

**core competency standards** means the competency standards developed for a graduate's relevant professional discipline. Progress by a graduate towards attaining core competency standards will be assessed by comparison with the specified performance criteria.

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

**employee** means national system employee within the meaning of the Act

**employer** means national system employer within the meaning of the Act

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

**in-service training** means the formal and informal work-related learning activities undertaken by a technology based graduate through opportunities provided by the

employer, which contribute to professional development and efficiency. This includes supervised and unsupervised work experience to increase the breadth and depth of knowledge and the skills acquired by the graduate in specific areas of professional practice.

**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 *Fair Work Act 2009* (Cth)

**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

**supervision** means the oversight, direction, instruction, guidance and/or support provided to a graduate by the experienced professional responsible for ensuring the graduate is not placed in situations where required to function beyond their competence

## 2.2 Engineering stream

**Experienced engineer** means a professional engineer engaged in employment where the adequate discharge of any of the duties requires that the employee has the following:

- (a) membership of Engineers Australia; or
- (b) having graduated in a four or five year course at a university recognised by Engineers Australia, four years' experience on professional engineering duties since becoming a Qualified engineer; or
- (c) not having so graduated, five years of such experience.

**Graduate engineer** means a person who is the holder of a university degree (four or five year course) recognised by Engineers Australia or is the holder of a degree, diploma or other certificate which:

- (a) has been issued by a technical university, an institute of technology, a European technical high school (technische hochschule) or polytechnic or other similar educational establishment; and
- (b) is recognised by Engineers Australia as attaining a standard similar to a university degree; and has been issued following:
  - (i) a course of not less than four years' duration for a full-time course after a standard of secondary education not less than the standard of examination for matriculation to an Australian university; or
  - (ii) a part-time course of sufficient duration to obtain a similar standard as a four year full-time course after a similar standard of secondary education.

**Professional engineer** means a person qualified to carry out professional engineering duties as defined. The term professional engineer includes graduate engineer and experienced engineer as defined in this clause.

**Professional engineering duties** means duties carried out by a person in employment where the adequate discharge of any of the duties requires that a person has at least the qualifications of a graduate member of Engineers Australia

## 2.3 Information technology and telecommunications services stream

**Information technology industry** means:

- (a) the design and manufacture of computers and computer peripherals;
- (b) the design and manufacture of telecommunications equipment;
- (c) the design and manufacture of computer software;
- (d) computer system installation, repair and maintenance;
- (e) computer consultancy services;
- (f) computer programming;
- (g) system analysis services;
- (h) the design, development and maintenance of online internet architecture and the facilitation of online content management; or
- (i) activities which are incidental, ancillary or complementary to the activities set out in this definition.

**Experienced information technology employee** means a professional information technology employee in employment where the adequate discharge of any of the duties requires:

- (a) that they have graduated with a university degree, with a science or information technology major (three, four or five year course) and had four years' experience on professional information technology duties since graduating; or
- (b) that they, not having so graduated, have sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society plus a further four years' experience on professional information technology duties.

**Graduate information technology employee** means a person who:

- (a) holds a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society.

**Professional information technology duties** means duties carried out by a person in employment where the adequate discharge of any of the duties requires a person to:

- (a) hold a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) have sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society.

**Professional information technology employee** means an adult person qualified to carry out professional information technology duties as defined. The term professional information technology employee includes graduate information technology employee and experienced information technology employee as defined.

**Telecommunications service** means a service for carrying communications by means of guided or unguided electromagnetic energy or both. Carry may include to transmit, switch or receive.

**Telecommunications services industry** means:

- (a) the supply and/or installation and/or maintenance of telecommunications services; or
- (b) the supply and/or installation and/or maintenance of value added telecommunications services; or
- (c) incidental, ancillary or complementary to the supply and/or installation and/or maintenance of telecommunications services; or
- (d) the installation and/or maintenance of telecommunications equipment and line.

## 2.4 Scientist stream

### Academic schedule

- (a) A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary educational institution.
- (b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of corporate membership.
- (c) Academic qualifications acceptable to the Australian Institute of Physics for admission to the grades of graduate membership or corporate membership.
- (d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either the Australasian Institute of Mining and Metallurgy for admission to the grade of junior or corporate membership, or the Institution of Metallurgists (London) for admission to the grades of graduate or associate membership.
- (e) Academic qualifications acceptable to the Australian Institute of Agricultural Science and Technology for admission to the grade of corporate membership.
- (f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grades of graduate or corporate membership.

- (g) Academic qualifications acceptable to a pharmacy board or council within the Commonwealth of Australia provided that the award will not apply to pharmacists employed in a retail pharmacy shop.

**Experienced scientist** means a professional scientist engaged in employment where the adequate discharge of any of the duties requires the possession of the following qualifications:

- (a) a degree or diploma and the following experience in professional scientific duties:
  - (i) when a graduate (four or five year course) – four years' experience;
  - (ii) when a graduate (three year course) – five years' experience, or
- (b) that they possess qualifications acceptable to:
  - (i) the Royal Australian Chemical Institute for admission to the grade of Associate member; or
  - (ii) the Australian Institute of Physics for admission to the grade of member; or
  - (iii) the Australasian Institute of Mining and Metallurgy for admission to the grade of Associate member; or
  - (iv) the Australian Institute of Food Science and Technology for admission to the grade of Associate member.

**Professional scientist** means a person qualified to carry out professional scientific duties as defined and includes qualified scientist and experienced scientist as defined.

**Professional scientific duties** means duties carried out by a person in employment where the adequate discharge of any of the duties requires the employee to have the academic qualifications set out in the academic schedule as defined.

**Qualified scientist** means a professional scientist other than an experienced scientist as defined, that is, a person possessing academic qualifications as specified in the academic schedule.

## 2.5 **Quality auditing stream**

**Quality auditing industry** means that industry in which the participants provide advisory, auditing and assessment services to companies which are pursuing quality improvement programs (in compliance with the International Standards Organisations quality standards).

**Quality auditor/senior (lead) quality auditor** means for the purposes of this award the classifications as outlined in Schedule A—Classification Structure and Definitions.

**Quality auditing** means duties carried out by a person in employment within the quality auditing industry where the adequate discharge of any of the duties requires the following qualifications and experiences:

**(a) Educational requirements**

- (i) Auditors will have successfully completed a course of study, after completing secondary education, involving a minimum of 600 hours direct contact and leading to an award from a recognised body, college or university. Equivalent distance learning courses or corporate/professional membership of a recognised professional institution will also be recognised.
- (ii) In all cases, documentary evidence of the educational standard claimed will be required to satisfy the educational requirement. Documentary evidence must be as follows:
  - originals (which are to be returned after sighting by an officer of the auditor certification body);
  - photocopies which have been signed as verified by one of the applicant's sponsors; or
  - a letter from the qualifying authority, e.g. university or college, confirming the award made.
- (iii) As an alternative, auditors may be considered for certification if they can demonstrate eight years' full-time work experience and satisfy the auditor certification body they have achieved a satisfactory educational standard including oral and written communication skills necessary to conduct and/or manage audits.

**(b) Experience requirement**

- (i) Auditors will have a minimum of two years' relevant experience in the implementation or application of quality management systems which provides the practical knowledge necessary to effectively audit such systems.
- (ii) The quality management system experience required may be concurrent with work experience, but must have been achieved in the six years prior to initial certification.

**Auditing experience requirement**

- (a) All levels of auditor will maintain an audit log in order to demonstrate that their auditing experience was gained under the prescribed conditions and within the required time frame.
- (b) For all levels of auditor, only independent audits satisfy the auditing experience requirements. The auditor and the auditor's organisation will have independent management and operating structure from the audited organisation. Examples of acceptable relationships are:
  - (i) a head office audit of a plant or division;
  - (ii) one division of plant auditing another division or plant;
  - (iii) a customer organisation auditing a supplier;

- (iv) a third party certification audit; or
- (v) a consultant contracted to provide an independent audit.

### **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 the 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**

- 4.1 This industry and occupational award covers employers throughout Australia with respect to their employees performing professional engineering and professional scientific duties who are covered by the classifications in Schedule A of the award and those employees.
- 4.2 This award covers employers throughout Australia principally engaged in the information technology industry, the quality auditing industry or the telecommunications services industry and their employees who are covered by the classifications in Schedule A.
- 4.3 The award does not cover employees who are covered by the following awards:
  - (a) *Airport Employees Award 2016*;
  - (b) *Black Coal Mining Industry Award 2016*;
  - (c) *Electrical Power Industry Award 2016*;
  - (d) *Port Authorities Award 2016*;
  - (e) *Rail Industry Award 2016*;
  - (f) *State Government Agencies Award 2016*; and
  - (g) *Water Industry Award 2016*.
- 4.4 The award does not cover employees of a local government covered by another award.
- 4.5 This award covers any employer which supplies labour on an on-hire basis in the industries set out in clauses 4.1 and 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 those industries. This subclause operates subject to the exclusions from coverage in this award.

**4.6** This award covers any employer which supplies on-hire employees in classifications set out in Schedule A and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. This subclause operates subject to the exclusions from coverage in this award.

**4.7** This industry and occupational award does not cover:

- (a) an employee 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.

**4.8** 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. Effects of variations made by the Fair Work Commission**

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.

## **6. Award flexibility for individual arrangements**

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

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

- 6.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 6.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 6.1; and
  - (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.
- 6.4** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
  - (b) state each term of this award that the employer and the individual employee have agreed to vary;
  - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
  - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
  - (e) state the date the agreement commences to operate.
- 6.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 6.6** Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 6.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 6.8** The agreement may be terminated:
- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
  - (b) at any time, by written agreement between the employer and the individual employee.

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

**6.9** The notice provisions in clause 6.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 6.8(a), subject to four weeks' notice of termination.

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

## **7. Facilitative provisions for flexible working practices**

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

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

<b>Clause</b>	<b>Provision</b>	<b>Agreement between an employer and:</b>
13.7	Transfers – period of notice	An individual
17.5	Annual leave in advance	An individual
17.6	Cashing out of annual leave	An individual
20.2	Substitution of public holidays	An individual or the majority of employees

**7.3** Agreements made pursuant to clause 7.2 must be recorded in writing and be available to every affected employee on request.

## **Part 2—Types of Employment and Classifications**

### **8. Types of employment**

#### **8.1 Contract of employment**

Employment may be full-time, part-time or casual.

#### **8.2 Notification of conditions of employment**

Employees engaged or employed by an employer covered by this award must be advised in writing by the employer of the conditions under which the employee is to be employed.

### **9. Full-time employment**

Any person not specifically engaged as a part-time or casual employee is for all purposes of this award a full-time employee.

## 10. Part-time employment

Part-time employment provisions may be affected by [AM2014/196](#)

- (a) An employee may be engaged for a specified number of ordinary hours each week being less than an average of 38 hours per week.
- (b) A part-time employee must be paid the appropriate minimum hourly rate for the classification prescribed in clause 14—Minimum wages and must receive other conditions under this award on a pro rata basis.
- (c) Any employee engaged on a full-time basis must not be converted to a part-time basis as set out in this clause without the employee's written agreement.

## 11. Casual employment

Casual employment provisions may be affected by [AM2014/197](#)

- 11.1 A casual employee must be paid per hour worked:
  - (a) the minimum hourly rate appropriate to the employee's classification; and
  - (b) a loading of **25%** of that rate.
- 11.2 The casual loading is paid to compensate casual employees for a lack of continuity in employment, paid leave, termination and other employment benefits of a full-time or part-time employee.

## 12. Classifications

- 12.1 Descriptions of the classifications under this award are set out in Schedule A—Classification Structure and Definitions.

### 12.2 Notification of responsibility level

An employee must on appointment or upon request be informed by their employer of the responsibility level as described in Schedule A—Classification Structure and Definitions which the employer considers relevant to the employee's employment having regard to the duties performed by the employee concerned.

### 12.3 Evidence of qualifications

- (a) An employee who is employed under this award or who is an applicant for employment covered by this award, must if required to do so by the employer, produce written evidence that they have the qualifications of a Qualified engineer, Experienced engineer, Qualified scientist, Experienced scientist, Graduate information technology employee or Experienced information technology employee.
- (b) Where an employee has failed to produce written evidence that they have the relevant qualifications but later claims to be entitled to a rate of pay under this award, it will be the employer's defence if they can establish that they did not

know and had no reason to believe that the employee had the relevant qualifications.

#### **12.4 Professional development**

- (a) Employees are responsible for keeping themselves informed of developments in their profession and developing their professional knowledge and ability. It is appropriate for employees to be encouraged to undertake self-development programs.
- (b) Where the employee and the employer agree that an activity be undertaken by the employee as a component of a structured training program, the employer will meet all costs associated with the training.

### **Part 3—Hours of Work**

#### **13. Ordinary hours of work**

Parties are asked to confirm the maximum number of weeks in a cycle, that is over how many weeks may 38 hours be averaged.

- 13.1** For the purpose of the NES, ordinary hours of work under this award are 38 per week.
- 13.2** An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over the cycle.
- 13.3** Employers must compensate for:
  - (a) time worked regularly in excess of ordinary hours of duty;
  - (b) time worked on call-backs;
  - (c) time spent standing by in readiness for a call-back;
  - (d) time spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours over the telephone or via remote access arrangements; or
  - (e) time worked on afternoon, night or weekend shifts.
- 13.4** Compensation may include:
  - (a) granting special additional leave;
  - (b) granting special additional remuneration;
  - (c) taking the factors in clause 13.3 into account in the fixation of annual remuneration; or
  - (d) granting a special allowance or loading.
- 13.5** Where relevant, compensation in clause 13.4 must include consideration of the penalty rate or equivalent and conditions applicable from to the majority of

employees employed in a particular establishment in which the employee is employed.

**13.6** The compensation in clause 13.4 must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause.

**13.7 Transfers**

- (a) An employee who is transferred permanently from day work to shiftwork or from shiftwork to day work must receive at least one month’s notice unless the employer and the employee agree on a lesser period of notice.
- (b) Clause 13.7(a) is subject to the requirements of clause 23—Consultation about changes to rosters or hours of work.

**Part 4—Wages and Allowances**

**14. Minimum wages**

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

Employee classification	Annual wages	Minimum hourly rate	Casual minimum hourly rate
	\$	\$	\$
Level 1 Graduate professional			
Pay point 1.1 (3 year degree)	46,764	23.59	29.49
Pay point 1.1 (4 or 5 year degree)	47,962	24.19	30.24
Pay point 1.2	48,768	24.60	30.75
Pay point 1.3	50,798	25.63	32.04
Pay point 1.4	53,370	26.92	33.65
Level 2 Experienced professional/quality auditor	55,168	27.83	34.79
Level 3 Professional/senior (lead) quality auditor	60,292	30.41	38.01
Level 4 Professional	68,001	34.30	42.88

**14.2** Minimum hourly rates are calculated as follows:

- (a) Hourly rate = (Annual wage x 6/313) /38

Parties are asked to confirm whether the hourly rates in clause 14.1 and the method in clause 14.2 are correct.

## 15. Allowances

To view the current monetary amounts of work-related allowances refer to the [Allowances Sheet](#).

**15.1** Employers must pay to an employee the expense-rated allowances the employee is entitled to under this clause.

### 15.2 Travelling expenses and travelling time

An employee must be reimbursed all reasonable expenses (including accommodation, meals and out-of-pocket expenses directly related to their employment) incurred while travelling on their employer's business. Reasonable compensation for excess travel time will be agreed upon.

### 15.3 Vehicle allowance

The employer must pay an employee required to use their private vehicle on the employer's business at least **\$0.78** per kilometre travelled.

### 15.4 Equipment and special clothing

Except where an employee elects to provide equipment and special clothing, the employer must provide free of cost, all such equipment and special clothing reasonably required for the adequate discharge of duties. The equipment or clothing will remain the property of the employer.

### 15.5 Adjustment of expense related allowances

- (a) At the time of any adjustment to wages as a result of an annual wage review, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Vehicle allowance	Private motoring sub-group

## 16. Superannuation

### 16.1 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.

## **16.2 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.

## **16.3 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 16.2.
- (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 16.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 16.3(a) or (b) was made.

## **16.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 16.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 16.2 and pay the amount authorised under clauses 16.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) Tasplan;
- (c) Statewide Superannuation Trust;
- (d) 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
- (e) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Leave and Public Holidays

### 17. Annual leave

17.1 Annual leave is provided for in the NES.

17.2 An employee must be paid a loading calculated at the rate of **17.5%** of their base rate of pay, provided that:

Parties are asked to comment on how 17.2(a) operates given annual leave accrues progressively rather than falling on a given date.

- (a) The entitlement must not exceed the ABS average weekly earnings for all males (Australia) for the September quarter of the year preceding in which the date of the accrual of the annual leave falls; and
- (b) Where an employee receives remuneration from their employer which is related to their annual leave loading and which is established as being of equivalent value to or greater value than the loading provided by this clause, no further entitlement will accrue. Where the benefit is of a lesser value than equivalent value then the employer must make up the benefit to that value.

### 17.3 Definition of shiftworker

For the purpose of the additional week of annual leave provided for in the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.

### 17.4 Annual close-down

- (a) An employer may close down a section or more of the enterprise for the purpose of allowing annual leave to all or the majority of employees.
- (b) The same conditions which apply to the other employees of the enterprise (or sections) also apply to employees covered by this award.

### 17.5 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 17.5 is set out at Schedule B. There is no requirement to use the form of agreement set out at Schedule B.

- (c) The employer must keep a copy of any agreement under clause 17.5 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 17.5, 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.

#### **17.6 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 17.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 17.6.
- (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 17.6 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 17.6 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 17.6 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 17.6.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 17.6.

Note 3: An example of the type of agreement required by clause 17.6 is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C.

**17.7 Excessive leave accruals: general provision**

Note: Clauses 17.7 to 17.9 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 17.3).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 17.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 17.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

**17.8 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 17.7(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 17.7, 17.8 or 17.9 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 17.8(b)(i).

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

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

- (a) Clause 17.9 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 17.7(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 17.8(a) that, when any other paid annual leave arrangements (whether made under clause 17.7, 17.8 or 17.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 17.7, 17.8 or 17.9 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 17.3) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

**18. Personal/carer's leave and compassionate leave**

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

## 19. Parental leave and related entitlements

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

## 20. Public holidays

20.1 Public holiday entitlements are provided for in the NES.

### 20.2 Substitution of public holidays by agreement at the enterprise

- (a) An employer and a majority of affected employees may agree to substitute another day for any of the prescribed days in this clause.
- (b) An employer and individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or relevant section or sections of it.

## 21. Community service leave

Community service leave is provided for in the NES.

## Part 6—Consultation and Dispute Resolution

## 22. Consultation regarding major workplace change

### 22.1 Employers to notify

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

### 22.2 Employers to discuss change

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

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

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

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

## **24. Dispute resolution**

- 24.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 24.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 24.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

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

## **Part 7—Termination of Employment and Redundancy**

### **25. Termination of employment**

- 25.1** Notice of termination is provided for in the NES.
- 25.2** Instead of s.117(3)(a) of the Act, in order to terminate the employment of an employee the employer must give the employee one month's notice.
- 25.3** **Notice of termination by an employee**

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

### **26. Redundancy**

Redundancy pay is provided for in the NES.

### **27. Transfer to lower paid job on redundancy**

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

## **28. Employee leaving during redundancy notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under clause 26—Redundancy had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

## **29. Job search entitlement**

### **29.1 Job search entitlement for notice of termination of employment**

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

### **29.2 Job search entitlement—redundancy**

#### **(a) Time off for seeking other employment**

An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

#### **(b) Proof of attendance**

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

## Schedule A—Classification Structure and Definitions

For employment involving the performance of professional duties, the following classification definitions apply:

### A.1 Professional responsibility levels

#### A.1.1 Level 1—Graduate professional includes: graduate engineer, graduate scientist and graduate information technology employee

- (a) An employee at this level undertakes initial professional tasks of limited scope and complexity, such as minor phases of broader assignments, in office, plant, field or laboratory work.
- (b) Under supervision from higher level Professional engineers, Professional scientists or Professional information technology employees as to method of approach and requirements, the employee performs normal professional work and exercises individual judgment and initiative in the application of principles, techniques and methods.
- (c) In assisting more senior Professional engineers, Professional scientists or Professional information technology employees by carrying out tasks requiring accuracy and adherence to prescribed methods of professional engineering or professional scientific/information technology analysis, design or computation, the employee draws upon advanced techniques and methods learned during and after the undergraduate course.
- (d) Training, development and experience using a variety of standard procedures, enable the employee to develop increasing professional judgment and apply it progressively to more difficult tasks at Level 2.
- (e) Decisions are related to tasks performed, relying upon precedent or defined procedures for guidance. Recommendations are related to solution of problems in connection to the tasks performed.
- (f) Work is reviewed by higher level Professional engineers, Professional scientists or Professional information technology employees for validity, adequacy, methods and procedures. With professional development and experience, work receives less review, and the employee progressively exercises more individual judgment until Level 2 competence is achieved.
- (g) The employee may assign and check work of technical staff assigned to work on a common project.

#### A.1.2 Graduate professional—appointment and progression

##### (a) Pay Point 1.1

Given clause 14.1 provides a rate of pay for a 5 year degree, parties are asked whether it should be included in A.1.2(a).

Means the pay point to which a graduate will be appointed where they possess and may be required to utilise a level of professional skill and knowledge based

on either the completion of an accredited three or four year tertiary professional technology qualification in Australia or equivalent.

**(b) Pay Point 1.2**

Means the pay point to which a graduate will be appointed or will progress from Pay Point 1.1 having been assessed as being competent at Pay Point 1.1, where the graduate possesses and may be required to utilise a level of professional skill and knowledge based on:

**(i) Training and experience**

In addition to the experience, skill and knowledge requirements for Pay Point 1.1 up to one additional year of practical professional experience, with supervision as appropriate, and the undertaking of in-service training, subject to its provision by the employer.

**(ii) Core competency standards**

The development of core competency standards in the practice setting/s undertaken since being assessed as competent at Pay Point 1.1 measured against the prescribed performance criteria.

**(c) Pay Point 1.3**

Means the pay point to which a graduate will be appointed or will progress from Pay Point 1.2 having been assessed as being competent at this Pay Point, where the graduate possesses and may be required to utilise a level of professional skill and knowledge based on:

**(i) Training and experience**

In addition to the experience, skill and knowledge requirements for Pay Point 1.2, up to one additional year of practical professional experience, with supervision as appropriate, and the undertaking of in-service training, subject to its provision by the employer.

**(ii) Core competency standards**

In addition to the core competency standards developed at Pay Point 1.2, the further development of core competency standards in the practice settings undertaken since being assessed as competent at Pay Point 1.2 measured against the prescribed performance criteria.

**(d) Pay Point 1.4**

Means the pay point to which a graduate will be appointed or will progress from Pay Point 1.3 having been assessed as being competent at this Pay Point, where the graduate possesses and may be required to utilise a level of professional skill and knowledge based on:

**(i) Training and experience**

In addition to the experience, skill and knowledge requirements for Pay Point 1.3, up to one additional year of practical professional experience,

with supervision as appropriate, and the undertaking of in-service training, subject to its provision by the employer.

**(ii) Core competency standards**

In addition to the core competency standards developed at Pay Point 1.3, the further development of core competency standards in the practice settings undertaken since being assessed as competent at Pay Point 1.3 measured against the prescribed performance criteria.

**A.1.3 Annual review**

Subject to the requirements of each Pay Point, each graduate will progress on their annual anniversary date from one Pay Point to the next, having regard to the acquisition and utilisation of core competencies through experience in their practice setting/s over such period. Confirmation of the employee's progression to the next Pay Point will be provided by the employer in writing.

**A.1.4 Deferral**

Progression from one Pay Point to the next may be deferred or refused by the employer. Such deferral or refusal of progression will not be unreasonably or arbitrarily imposed by the employer. Any decision to defer or refuse progression to the next pay point will be confirmed in writing.

**A.1.5 Appeal and review**

An employee may appeal a deferral, provided that where any such appeal results in a revocation of the employer's decision, Pay Point progression will be deemed to operate and be payable from the employee's anniversary date for such progression. An appeal or review, for the purpose of this clause, will be undertaken and resolved in accordance with clause 24—Dispute resolution.

**A.1.6 Accelerated advancement**

Progression from one Pay Point to the next may be advanced by the employer to occur prior to the annual anniversary date provided that any such advancement is referable to the requirements for each Pay Point.

**A.1.7 Level 2—Experienced professional**

Following development, the Experienced professional plans and conducts professional work without detailed supervision but with guidance on unusual features and is usually engaged on more responsible assignments requiring substantial professional experience.

**A.1.8 Level 2—Quality auditor**

A candidate has satisfied the criteria and has demonstrated the ability to perform all or any part of a quality management system audit, solo, or as a member of a team to ISO 10011 Part 2, AS 3911 Part 2, NZS 10011 Part 2.

**A.1.9 Level 3—Professional**

- (a) An employee at this level performs duties requiring the application of mature professional knowledge. With scope for individual accomplishment and coordination of more difficult assignments, the employee deals with problems for which it is necessary to modify established guides and devise new approaches.
- (b) The employee may make some original contribution or apply new professional approaches and techniques to the design or development of equipment or products.
- (c) Recommendations may be reviewed for soundness of judgement but are usually regarded as technically accurate and feasible. The employee makes responsible decisions on matters assigned, including the establishment of professional standards and procedures. The employee consults, recommends and advises in specialty areas.
- (d) Work is carried out within broad guidelines requiring conformity with overall objectives, relative priorities and necessary cooperation with other units. Informed professional guidance may be available.
- (e) The employee outlines and assigns work, reviews it for technical accuracy and adequacy, and may plan, direct, coordinate and supervise the work of other professional and technical staff.

**A.1.10 Level 3—Senior (lead) auditor**

A candidate has satisfied the criteria and has demonstrated the ability to manage an audit team and co-ordinate all aspects of a complete quality management system audit to ISO 10011 Part 2, AS 3911 Part 2, NZS 10011 Part 2.

**A.1.11 Level 4—Professional**

- (a) An employee at this level performs professional work involving:
  - (i) considerable independence in approach, demanding a considerable degree of originality, ingenuity and judgment; and
  - (ii) knowledge of more than one field of, or expertise (for example, acts as their organisation's technical reference authority) in a particular field of professional engineering, professional scientific/information technology field or professional information technology field.
- (c) An employee at this level:
  - (i) initiates or participates in short or long range planning and makes independent decisions on professional engineering, professional scientific, or information technology policies and procedures within an overall program;
  - (ii) gives technical advice to management and operating departments;

- (iii) may take detailed technical responsibility for product development and provision of specialised professional engineering or professional scientific/information technology systems, facilities and functions;
  - (iv) coordinates work programs; and
  - (v) directs or advises on the use of equipment and materials.
- (d) An employee at this level makes responsible decisions not usually subject to technical review, decides courses of action necessary to expedite the successful accomplishment of assigned projects, and may make recommendations involving large sums or long range objectives.
- (e) Duties are assigned only in terms of broad objectives, and are reviewed for policy, soundness of approach, accomplishment and general effectiveness.
- (f) The employee supervises a group or groups including professionals and other staff, or exercises authority and technical control over a group of professional staff. In both instances, the employee is engaged in complex professional engineering or professional scientific/information technology applications.

**Schedule B—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 C—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\_\_\_\_