**Nursery Award 2010**

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 19 December 2019 ([PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm))

Clause(s) affected by the most recent variation(s):

Schedule E—Part-day Public Holidays

Current review matter(s): [AM2014/47](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am201447-annual-leave); [AM2014/190](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am2014190-transitional); [AM2014/196](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am2014196-part-time); [AM2014/197](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am2014197-casual); [AM2014/238](https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/4-yearly-review/award-stage/award-review-documents/MA000033?m=AM2014/238); [AM2014/300](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am2014300-award); [AM2014/301](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am2014301-public); [AM2015/1](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20151-family-and); [AM2015/2](https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/4-yearly-review/am20152-family-friendly-work-arrangemen-0); [AM2016/8](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20168-payment-wages); [AM2016/15](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am201615-plain-language); [AM2016/17](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am201617-national); [AM2016/35](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am201635-abandonment)

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1. Application and Operation
2. Title

This award is the *Nursery Award 2010*.

1. Commencement and transitional

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm)]

* 1. This award commences on 1 January 2010.
	2. The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.
	3. This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:
* minimum wages and piecework rates
* casual or part-time loadings
* Saturday, Sunday, public holiday, evening or other penalties
* shift allowances/penalties.

[2.4 varied by [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm) ppc 04Dec13]

* 1. 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.

[2.5 varied by [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm) ppc 04Dec13]

* 1. The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

[2.6 varied by [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm) ppc 04Dec13]

* 1. The Fair Work Commission may review the transitional arrangements:
		1. on its own initiative; or
		2. on application by an employer, employee, organisation or outworker entity covered by the modern award; or
		3. on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
		4. in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.
1. Definitions and interpretation

[Varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR997772](http://www.fwc.gov.au/awardsandorders/html/PR997772.htm), [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm), [PR544272](file:///%5C%5CFWAVICSRV05%5CPCcommon%5C_Award%20Projects_drafts%5CModern%20awards%5CMA000033%20nursery%5Cadult%20apprentice%20means%20an%20apprentice%20who%20is%2021%20years%20of%20age%20or%20over%20at%20the%20commencement%20of%20their%20apprenticeship), [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm)]

* 1. In this award, unless the contrary intention appears:

[Definition of **Act** substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

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

[Definition of **adult apprentice** inserted by [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm) ppc 01Jan14]

**adult apprentice** means an apprentice who is 21 years of age or over at the commencement of their apprenticeship

[Definition of **agreement-based transitional instrument** inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

**agreement-based transitional instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

**associated nursery products** means all items required for the propagation, growing, maintenance and sale~~s~~ of plants and plant material. This includes products used in the garden environment for the planting, growing, maintenance and care of plants

 [Definition of **award-based transitional instrument** inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

**award-based transitional instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

**casual employee** means an employee who is engaged as a casual under the terms of clause 10—Types of employment of this award

[Definition of **Commission** deleted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

[Definition of **default fund employee** inserted by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14]

**default** **fund employee** means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

[Definition of **defined benefit member** inserted by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14]

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

[Definition of **Division 2B State award** inserted by [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm) ppc 01Jan11]

**Division 2B State award** has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **Division 2B State employment agreement** inserted by [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm) ppc 01Jan11]

**Division 2B State employment agreement** has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **employee** substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR997772](http://www.fwc.gov.au/awardsandorders/html/PR997772.htm) from 01Jan10]

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

[Definition of **employer** substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR997772](http://www.fwc.gov.au/awardsandorders/html/PR997772.htm) from 01Jan10]

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

[Definition of **enterprise** **award** deleted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

[Definition of **enterprise award-based instrument** inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

**enterprise award**-**based instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **enterprise NAPSA** deleted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

[Definition of **exempt public sector superannuation scheme** inserted by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14]

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

[Definition of **MySuper product** inserted by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14]

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

[Definition of **NAPSA** deleted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

[Definition of **NES** substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

**NES** means the National Employment Standards as contained in [sections 59 to 131](http://www.fwc.gov.au/awardmod/download/nes.pdf) of the *Fair Work Act 2009* (Cth)

[Definition of **on-hire** inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

**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

**plant material** means organisms defined under the *Kingdom Plantae*

**plant nursery** means a business involved in the nursery industry

**silviculture and afforestation** means the planting, pruning, fertilising and any other activities in or in connection with the establishment or cultivation of trees in forests

**standard rate** means the minimum hourly wage for the Grade 2 classification in clause 15.1. This rate is to be used for the purposes of calculating the various allowances that are linked to the standard rate.

[Definition of **transitional minimum wage instrument** inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

**transitional minimum wage instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

**vineyard** means a place where wine grapes are grown for processing into wine

**wine industry** means:

* the preparation of land for planting of wine grape vines; care, growing, treating, picking, harvesting, forwarding of wine grapes; and pruning of wine grape vines and other activities associated with a wine grape vineyard;
* processing wine grapes; producing wine juice or grape spirit; bottling, packaging, storage or despatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice and other activities associated with a winery or wine distillery including but not limited to cellar door sales, coopers, machinists, labourers making or repairing barrels, vats, casks, and like articles and laboratories; and
* the packaging, storage and despatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery
	1. Where this award refers to a condition of employment provided for in the NES, the reference is to the condition as defined in the NES.
1. Coverage

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm)]

* 1. This industry award covers employers throughout Australia in the nursery industry and their employees in the classifications listed in Schedule B—Classification Structure and Definitions to the exclusion of any other award.
	2. **Nursery industry** means:
		1. the propagation, planting, growing, cultivation, maintenance, sale, distribution or treating of plant material and associated nursery products in plant nurseries, flower, turf and tree farms or other similar enterprises;
		2. the production and modification of growing media and clearing, treating or preparing of land for the propagation, planting, growing, cultivation, maintenance, sales and distribution or treating of plant material and associated products;
		3. the processing, grading, packing or storing of plant material and associated products as part of a nursery; and
		4. the despatching and distribution of plant material and associated products in connection with work under clauses 4.2(a) to (c).
	3. **Nursery industry** does not mean:
		1. the general retail industry as defined in the *General Retail Industry Award 2010*;
		2. the wine industry;
		3. silviculture and afforestation; or
		4. sugar farming, sugar cane growing, sugar milling, sugar refining, sugar distilleries or sugar terminals.
	4. The award does not cover an employee excluded from award coverage by the Act.

[4.5 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* 1. The award does not cover 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.

[New 4.6 inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* 1. The award does not cover 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.

[New 4.7 inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* 1. This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

[New 4.8 inserted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* 1. This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

[4.6 renumbered as 4.9 by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* 1. 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.

1. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

1. The National Employment Standards and this award

The [NES](http://www.fwc.gov.au/awardmod/download/nes.pdf) and this award contain the minimum conditions of employment for employees covered by this award.

1. Individual flexibility arrangements

[Varied by [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm); 7—Award flexibility renamed and substituted by [PR610195](https://www.fwc.gov.au/documents/awardsandorders/html/pr610195.htm) ppc 01Nov08]

* 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:
		1. arrangements for when work is performed; or
		2. overtime rates; or
		3. penalty rates; or
		4. allowances; or
		5. annual leave loading.
	2. An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
	3. An agreement may only be made after the individual employee has commenced employment with the employer.
	4. An employer who wishes to initiate the making of an agreement must:
		1. give the employee a written proposal; and
		2. 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. 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.
	6. An agreement must do all of the following:
		1. state the names of the employer and the employee; and
		2. identify the award term, or award terms, the application of which is to be varied; and
		3. set out how the application of the award term, or each award term, is varied; and
		4. 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
		5. state the date the agreement is to start.
	7. An agreement must be:
		1. in writing; and
		2. signed by the employer and the employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.
	8. Except as provided in clause 7.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
	9. The employer must keep the agreement as a time and wages record and give a copy to the employee.
	10. The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
	11. An agreement may be terminated:
		1. at any time, by written agreement between the employer and the employee; or
		2. 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 s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the [Act](http://www.legislation.gov.au/Series/C2009A00028)).

* 1. An agreement terminated as mentioned in clause 7.11(b) ceases to have effect at the end of the period of notice required under that clause.
	2. The right to make an agreement under clause 7 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.
1. Consultation and Dispute Resolution
2. Consultation about major workplace change

[8—Consultation regarding major workplace change renamed and substituted by [PR546288](http://www.fwc.gov.au/awardsandorders/html/pr546288.htm), 8—Consultation renamed and substituted by [PR610195](https://www.fwc.gov.au/documents/awardsandorders/html/pr610195.htm) ppc 01Nov18]

* 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:
		1. give notice of the changes to all employees who may be affected by them and their representatives (if any); and
		2. discuss with affected employees and their representatives (if any):
			1. the introduction of the changes; and
			2. their likely effect on employees; and
			3. measures to avoid or reduce the adverse effects of the changes on employees; and
		3. commence discussions as soon as practicable after a definite decision has been made.
	2. For the purposes of the discussion under clause 8.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
		1. their nature; and
		2. their expected effect on employees; and
		3. any other matters likely to affect employees.
	3. Clause 8.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer’s interests.
	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 8.1(b).
	5. In clause 8:

**significant effects**, on employees, includes any of the following:

* + 1. termination of employment; or
		2. major changes in the composition, operation or size of the employer’s workforce or in the skills required; or
		3. loss of, or reduction in, job or promotion opportunities; or
		4. loss of, or reduction in, job tenure; or
		5. alteration of hours of work; or
		6. the need for employees to be retrained or transferred to other work or locations; or
		7. job restructuring.
	1. Where this award makes provision for alteration of any of the matters defined at clause 8.5, such alteration is taken not to have significant effect.

8A. Consultation about changes to rosters or hours of work

[8A inserted by [PR610195](https://www.fwc.gov.au/documents/awardsandorders/html/pr610195.htm) ppc 01Nov18]

**8A.1** Clause 8A 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.

**8A.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**8A.3** For the purpose of the consultation, the employer must:

* + 1. provide to the employees and representatives mentioned in clause 8A.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
		2. 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.

**8A.4** The employer must consider any views given under clause 8A.3(b).

**8A.5** Clause 8A is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

1. Dispute resolution

[Varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm); substituted by [PR610195](https://www.fwc.gov.au/documents/awardsandorders/html/pr610195.htm) ppc 01Nov18

* 1. Clause 9 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](https://www.fwc.gov.au/documents/awardmod/download/nes.pdf).
	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.
	3. If the dispute is not resolved through discussion as mentioned in clause 9.2, 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.
	4. If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 9.2 and 9.3, a party to the dispute may refer it to the Fair Work Commission.
	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.
	6. If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](http://www.legislation.gov.au/Series/C2009A00028) to use and that it considers appropriate for resolving the dispute.
	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 9.
	8. While procedures are being followed under clause 9 in relation to a dispute:
		1. work must continue in accordance with this award and the [Act](http://www.legislation.gov.au/Series/C2009A00028); and
		2. 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.
	9. Clause 9.8 is subject to any applicable work health and safety legislation.
1. Types of Employment and Termination of Employment
2. Types of employment

[Varied by [PR534343](http://www.fwc.gov.au/awardsandorders/html/pr534343.htm); [PR700590](https://www.fwc.gov.au/documents/awardsandorders/html/pr700590.htm)]

* 1. At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual.

Full-time employment

* + 1. A full-time employee is an employee who is engaged to work 38 ordinary hours per week.

[10.2(b) varied by [PR534343](http://www.fwc.gov.au/awardsandorders/html/pr534343.htm) ppc 11Mar13]

* + 1. A full-time employee will be provided with a written statement setting out their classification, applicable pay and terms of engagement.

Part-time employment

* + 1. A part-time employee is an employee who is engaged to perform a number of ordinary hours less than the full-time hours of 38 per week; and receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
		2. At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours to be worked each day and which days of the week the employee will work.
		3. Changes in hours may only be made by agreement between the employer and employee. Any agreed variation to the regular pattern of work will be recorded in writing.
		4. A part-time employee will be entitled to payment for annual leave, long service leave, public holidays, personal/carer’s leave and bereavement leave pursuant to this award on a pro rata basis to that of the equivalent full-time employee.
		5. An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
		6. The spread of ordinary working hours will be the same as those prescribed for full-time employees.
		7. A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
		8. An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.4.

Rosters

* + - 1. A part-time employee’s roster, but not the agreed number of hours, may be altered by the giving of notice in writing of seven days or in the case of an emergency, 48 hours, by the employer to the employee.
			2. The rostered hours of part-time employees may be altered at any time by mutual agreement between the employer and the employee.
			3. Rosters will not be changed except as provided in clause 10.3(i)(i) from week to week, or fortnight to fortnight, nor will they be changed to avoid any award entitlements.

Casual employment

* + 1. A casual employee is an employee engaged as such and paid by the hour. An employer, when engaging a casual, must inform the employee that they are employed as a casual, stating by whom the employee is employed, their classification level and their rate of pay.
		2. A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%.
		3. The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.
		4. Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
		5. On each occasion a casual employee is required to attend for work, casual employees are entitled to a minimum payment of three hours work at the appropriate rate.

Right to request casual conversion

[10.5 inserted by [PR700590](https://www.fwc.gov.au/documents/awardsandorders/html/pr700590.htm) ppc 01Oct18]

* + 1. A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
		2. 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 or part-time employee under the provisions of this award.
		3. 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.
		4. A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months’ casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
		5. Any request under this subclause must be in writing and provided to the employer.
		6. Where a regular casual employee seeks to convert to full-time or part-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.
		7. Reasonable grounds for refusal include that:
			1. 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 or part-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);
			2. it is known or reasonably foreseeable that the regular casual employee’s position will cease to exist within the next 12 months;
			3. 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
			4. 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.
		8. For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
		9. 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. 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 9. 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.
		10. Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
			1. the form of employment to which the employee will convert – that is, full-time or part-time employment; and
			2. if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.3(b).
		11. The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
		12. Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
		13. 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.
		14. Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
		15. Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
		16. An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause 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 by 1 January 2019.
		17. A casual employee’s right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).
1. Abandonment of employment

[11 deleted by [PR703317](https://www.fwc.gov.au/documents/awardsandorders/html/pr703317.htm) ppc 20Dec18]

1. Termination of employment

[12 substituted by [PR610195](https://www.fwc.gov.au/documents/awardsandorders/html/pr610195.htm) ppc 01Nov18]

Note: The [NES](https://www.fwc.gov.au/documents/awardmod/download/nes.pdf) sets out requirements for notice of termination by an employer. See ss.117 and 123 of the [Act](http://www.legislation.gov.au/Series/C2009A00028).

Notice of termination by an employee

* + 1. This clause applies to all employees except those identified in ss.123(1) and 123(3) of the [Act](http://www.legislation.gov.au/Series/C2009A00028).
		2. 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 1Employee’s period of continuous service with the employer at the end of the day the notice is given** | **Column 2Period 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 |

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.

* + 1. In paragraph (b) **continuous service** has the same meaning as in s.117 of the [Act](http://www.legislation.gov.au/Series/C2009A00028).
		2. If an employee who is at least 18 years old does not give the period of notice required under paragraph (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.
		3. If the employer has agreed to a shorter period of notice than that required under paragraph (b), then no deduction can be made under paragraph (d).
		4. Any deduction made under paragraph (d) must not be unreasonable in the circumstances.

Job search entitlement

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.

* 1. The time off under clause 12.2 is to be taken at times that are convenient to the employee after consultation with the employer.
1. Redundancy

[Varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm); [PR561478](http://www.fwc.gov.au/awardsandorders/html/PR561478.htm); substituted by [PR706990](https://www.fwc.gov.au/documents/awardsandorders/html/pr706990.htm) ppc 03May19]

NOTE: Redundancy pay is provided for in the [NES](https://www.fwc.gov.au/documents/awardmod/download/nes.pdf). See sections 119–123 of the [Act](http://www.legislation.gov.au/Series/C2009A00028).

Transfer to lower paid duties on redundancy

* + 1. Clause 13.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
		2. The employer may:
			1. 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](http://www.legislation.gov.au/Series/C2009A00028) as if it were a notice of termination given by the employer; or
			2. 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 paragraph (c).
		3. If the employer acts as mentioned in paragraph (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.

Employee leaving during redundancy notice period

* + 1. 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](http://www.legislation.gov.au/Series/C2009A00028).
		2. The employee is entitled to receive the benefits and payments they would have received under clause 13 or under sections 119–123 of the [Act](http://www.legislation.gov.au/Series/C2009A00028) had they remained in employment until the expiry of the notice.
		3. 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.

Job search entitlement

* + 1. 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](http://www.legislation.gov.au/Series/C2009A00028) for the purpose of seeking other employment.
		2. If an employee is allowed time off without loss of pay of more than one day under paragraph (a), the employee must, at the request of the employer, produce proof of attendance at an interview.
		3. A statutory declaration is sufficient for the purpose of paragraph (b).
		4. An employee who fails to produce proof when required under paragraph (b) is not entitled to be paid for the time off.
		5. This entitlement applies instead of clauses 12.2 and 12.3.

**13.5 Transitional provisions – NAPSA employees**

[13.5 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); renamed by [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm); deleted by [PR561478](http://www.fwc.gov.au/awardsandorders/html/PR561478.htm) ppc 05Mar15]

**13.6 Transitional provisions – Division 2B State employees**

[13.6 inserted by [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm); deleted by [PR561478](http://www.fwc.gov.au/awardsandorders/html/PR561478.htm) ppc 05Mar15]

1. Minimum Wages and Related Matters
2. Classifications

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm)]

Employees will be classified in accordance with the classification descriptions contained in Schedule B—Classification Structure and Definitions of this award.

1. Minimum wages

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR997913](http://www.fwc.gov.au/awardsandorders/html/PR997913.htm), [PR509064](http://www.fwc.gov.au/awardsandorders/html/PR509064.htm), [PR522895](http://www.fwc.gov.au/awardsandorders/html/PR522895.htm), [PR536698](http://www.fwc.gov.au/awardsandorders/html/PR536698.htm), [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm), [PR551621](http://www.fwc.gov.au/awardsandorders/html/PR551621.htm), [PR566703](https://www.fwc.gov.au/awardsandorders/html/PR566703.htm), [PR579795](http://www.fwc.gov.au/awardsandorders/html/PR579795.htm), [PR592129](http://www.fwc.gov.au/awardsandorders/html/pr592129.htm), [PR606357](https://www.fwc.gov.au/documents/awardsandorders/html/pr606357.htm), [PR707443](https://www.fwc.gov.au/documents/awardsandorders/html/pr707443.htm)]

[15.1 varied by [PR997913](http://www.fwc.gov.au/awardsandorders/html/PR997913.htm), [PR509064](http://www.fwc.gov.au/awardsandorders/html/PR509064.htm), [PR522895](http://www.fwc.gov.au/awardsandorders/html/PR522895.htm), [PR536698](http://www.fwc.gov.au/awardsandorders/html/PR536698.htm), [PR551621](http://www.fwc.gov.au/awardsandorders/html/PR551621.htm), [PR566703](https://www.fwc.gov.au/awardsandorders/html/PR566703.htm), [PR579795](http://www.fwc.gov.au/awardsandorders/html/PR579795.htm), [PR592129](http://www.fwc.gov.au/awardsandorders/html/pr592129.htm), [PR606357](https://www.fwc.gov.au/documents/awardsandorders/html/pr606357.htm), [PR707443](https://www.fwc.gov.au/documents/awardsandorders/html/pr707443.htm) ppc 01Jul19]

* 1. The minimum wages for an adult employee, other than one specified in clause 15.3, are set out in the following table:

| **Classification**  | **Minimum weekly wage $** | **Minimum hourly wage $** |
| --- | --- | --- |
| Grade 1A | 740.80 | 19.49 |
| Grade 1B | 762.10 | 20.06 |
| Grade 2 | 776.10 | 20.42 |
| Grade 3 | 813.60 | 21.41 |
| Grade 4 | 862.50 | 22.70 |
| Grade 5 | 952.90 | 25.08 |
| Grade 6 | 1037.40 | 27.30 |

* 1. For the purposes of clause 15.1, minimum weekly wage means any entitlement which an employee would receive for performing 38 hours of work.

[15.3 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); substituted by [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm) ppc 01Jan14]

* 1. The following employees are not entitled to the minimum wages set out in the table in clause 15.1:
		1. an employee receiving a supported wage (refer to Schedule D); or
		2. an employee covered by clauses 16—Apprentices (unless they are an adult apprentice who commences on or after 1 January 2014), 17—Junior wages or 18—National training wage.

Higher duties

An employee engaged for more than two hours during one day on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift. If an employee is so engaged for two hours or less during one day, they must be paid the higher minimum wage for the time so worked

1. Apprentices

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm), [PR559291](http://www.fwc.gov.au/awardsandorders/html/PR559291.htm)]

[16.1 substituted by [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm) ppc 01Jan14]

Apprentice minimum wages

* + 1. Other than as provided in clause 16.2, any apprentice who commenced before 1 January 2014 must be paid the following percentage of the Grade 4 rate of pay:

| **Year of apprenticeship** | **%** |
| --- | --- |
| 1st year | 50 |
| 2nd year | 63 |
| 3rd year | 75 |
| 4th year | 90 |

* + 1. Other than as provided in clause 16.2, any apprentice who commenced on or after 1 January 2014 must be paid the following percentage of the Grade 4 rate of pay:

| **Year of apprenticeship** | **% for apprentices who have not completed year 12** | **% of adult rate for apprentices who have completed year 12** |
| --- | --- | --- |
| 1st year | 50 | 55 |
| 2nd year | 63 | 65 |
| 3rd year | 75 | 75 |
| 4th year | 90 | 90 |

* 1. A trainee apprentice in New South Wales must be paid the following percentage of the Grade 4 rate of pay:

| **Year of apprenticeship** | **%** |
| --- | --- |
| 1st year | 58 |
| 2nd year | 67 |
| 3rd year | 76 |
| 4th year | 91 |

* 1. Clause 16.2 will cease to operate on 31 December 2014.

[16.4 inserted by [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm) ppc 01Jan14]

Adult apprentices

* + 1. Any adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be paid 80% of the Grade 4 rate, or the rate prescribed by clause 16.1(b) for the relevant year of the apprenticeship, whichever is the greater.
		2. Any adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the rate for the lowest adult classification in clause 15—Minimum wages, or the rate prescribed by clause 16.1(b) for the relevant year of the apprenticeship, whichever is the greater.
		3. A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 15 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

[16.5 inserted by [PR559291](http://www.fwc.gov.au/awardsandorders/html/PR559291.htm) ppc 01Jan15]

Apprentice conditions of employment

* + 1. Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
		2. Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that this clause will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
		3. For the purposes of clause 16.5(b) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
		4. The amount payable by an employer under clause 16.5(b) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
		5. All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer’s technical library) for the apprenticeship , which are paid by an apprentice, shall be reimbursed by the employer within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.
		6. An employer may meet its obligations under clause 16.5(e) by paying any fees and/or cost of textbooks directly to the RTO.
		7. An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
		8. Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice’s wages and determining the apprentice’s employment conditions. This subclause operates subject to the provisions of Schedule F—School-based Apprentices.
		9. No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.
1. Junior wages

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm)]

Junior employees must be paid the following percentage of the appropriate wage rate in clause 15—Minimum wages.

|  |  |
| --- | --- |
| **Age** | **% of appropriate wage rate** |
| Under 16 years of age  | 50 |
| 16 years of age  | 60 |
| 17 years of age  | 70 |
| 18 years of age  | 80 |
| 19 years of age  | 90 |
| 20 years of age  | 100 |

1. National training wage

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR593824](http://www.fwc.gov.au/awardsandorders/html/pr593824.htm); substituted by [PR593824](http://www.fwc.gov.au/awardsandorders/html/pr593824.htm) ppc 01Jul17; varied by [PR606357](https://www.fwc.gov.au/documents/awardsandorders/html/pr606357.htm), [PR707443](https://www.fwc.gov.au/documents/awardsandorders/html/pr707443.htm)]

**18.1** Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.

[18.2 varied by [PR606357](https://www.fwc.gov.au/documents/awardsandorders/html/pr606357.htm), [PR707443](https://www.fwc.gov.au/documents/awardsandorders/html/pr707443.htm) ppc 01Jul19]

**18.2** This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Nursery Award 2010* and not the *Miscellaneous Award 2010.*

1. Supported wage system

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm)]

See Schedule D

1. Allowances

To view the current monetary amounts of work-related allowances refer to the [Allowances Sheet](http://www.fwc.gov.au/documents/documents/modern_awards/allowances/MA000033-all.pdf).

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR998136](http://www.fwc.gov.au/awardsandorders/html/PR998136.htm), [PR509186](http://www.fwc.gov.au/awardsandorders/html/PR509186.htm), [PR523016](http://www.fwc.gov.au/awardsandorders/html/PR523016.htm), [PR536819](http://www.fwc.gov.au/awardsandorders/html/PR536819.htm), [PR551742](http://www.fwc.gov.au/awardsandorders/html/PR551742.htm), [PR566843](http://www.fwc.gov.au/awardsandorders/html/PR566843.htm), [PR579538](http://www.fwc.gov.au/awardsandorders/html/PR579538.htm), [PR592292](http://www.fwc.gov.au/awardsandorders/html/pr592292.htm), [PR606514](http://www.fwc.gov.au/awardsandorders/html/pr606514.htm), [PR704179](https://www.fwc.gov.au/documents/awardsandorders/html/pr704179.htm), [PR707640](https://www.fwc.gov.au/documents/awardsandorders/html/pr707640.htm)]

All purpose allowances

The following allowances apply for all purposes of this award:

First aid allowance

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body must be paid a weekly allowance of 70% of the [standard rate](#standard_rate) if appointed by their employer to perform first aid duty.

Meal allowance

[20.1(b) varied by [PR998136](http://www.fwc.gov.au/awardsandorders/html/PR998136.htm), [PR509186](http://www.fwc.gov.au/awardsandorders/html/PR509186.htm), [PR523016](http://www.fwc.gov.au/awardsandorders/html/PR523016.htm), [PR536819](http://www.fwc.gov.au/awardsandorders/html/pr536819.htm), [PR551742](http://www.fwc.gov.au/awardsandorders/html/PR551742.htm), [PR566843](http://www.fwc.gov.au/awardsandorders/html/PR566843.htm), [PR579538](http://www.fwc.gov.au/awardsandorders/html/PR579538.htm), [PR592292](http://www.fwc.gov.au/awardsandorders/html/pr592292.htm), [PR606514](http://www.fwc.gov.au/awardsandorders/html/pr606514.htm), [PR704179](https://www.fwc.gov.au/documents/awardsandorders/html/pr704179.htm), [PR707640](https://www.fwc.gov.au/documents/awardsandorders/html/pr707640.htm) ppc 01Jul19]

An employee required to work overtime for more than two hours after the employee’s ordinary ceasing time without having been notified before leaving work on the previous day that the employee will be required to work overtime, will be provided free of cost with a suitable meal, and if the work extends into a second meal break, another meal. In the event of the meal not being supplied the employee is entitled to an amount of $13.76 for each meal.

Tool and equipment allowance

Where the employer requires an employee to supply their own tools and equipment, the employer must reimburse the employee for the cost of supplying such tools and equipment. This clause does not apply where the tools and equipment are paid for by the employer.

Travelling allowance

Where an employee is required to travel from one place to another, the time occupied in travelling will be counted as time worked, and paid for as such. Where an employee is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee’s normal place of sleeping during employment) the employer will reimburse the employee for the demonstrable cost of suitable accommodation. This clause will not apply where the employer provides the employee with suitable accommodation free of charge.

Adjustment of expense related allowances

At the time of any adjustment to the [standard rate](#standard_rate), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

|  |  |
| --- | --- |
| **Allowance** | **Applicable Consumer Price Index figure** |
| Meal allowance | Take away and fast foods sub-group |

1. District allowances

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); deleted by [PR561478](http://www.fwc.gov.au/awardsandorders/html/PR561478.htm) ppc 05Mar15]

1. Payment of wages

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR989303](http://www.fwc.gov.au/alldocuments/PR989303.htm), [PR534343](http://www.fwc.gov.au/awardsandorders/html/pr534343.htm), [PR610061](https://www.fwc.gov.au/documents/awardsandorders/html/pr610061.htm)]

Period of payment

Wages must be paid weekly, fortnightly or monthly.

Method of payment

Wages must be paid by cash, cheque or electronic funds transfer into the employee’s nominated bank or other recognised financial institution account.

Payment on termination of employment

[22.3 substituted by [PR534343](http://www.fwc.gov.au/awardsandorders/html/pr534343.htm); renamed and substituted by [PR610061](https://www.fwc.gov.au/documents/awardsandorders/html/pr610061.htm) ppc 01Nov18]

* + 1. The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
			1. the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
			2. all other amounts that are due to the employee under this award and the [NES](http://www.fwc.gov.au/awardmod/download/nes.pdf).
		2. The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](http://www.legislation.gov.au/Series/C2009A00028).

Note 1: Section 117(2) of the [Act](http://www.legislation.gov.au/Series/C2009A00028) 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) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the [Act](http://www.legislation.gov.au/Series/C2009A00028) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](http://www.fwc.gov.au/awardmod/download/nes.pdf).

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the [Act](http://www.legislation.gov.au/Series/C2009A00028), 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.

1. Superannuation

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR990540](http://www.fwc.gov.au/alldocuments/PR990540.htm), [PR992289](http://www.fwc.gov.au/awardsandorders/html/PR992289.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR530240](http://www.fwc.gov.au/awardsandorders/html/PR530240.htm), [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm); [PR549548](http://www.fwc.gov.au/awardsandorders/html/PR549548.htm)]

Superannuation legislation

* + 1. 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.
		2. The rights and obligations in these clauses supplement those in superannuation legislation.

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.

Voluntary employee contributions

* + 1. 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 23.2.
		2. 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.
		3. The employer must pay the amount authorised under clauses 23.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 23.3(a) or (b) was made.

Superannuation fund

[23.4 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 23.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 23.2 and pay the amount authorised under clauses 23.3(a) or (b) to one of the following superannuation funds or its successor:

[23.4(a) substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. Primesuper;
		2. AustSafe Super

[23.4(c) deleted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

[23.4(d) to (f) renumbered as 23.4(c) to (e) by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. Tasplan;
		2. Sunsuper;

[23.4(e) substituted by [PR530240](http://www.fwc.gov.au/awardsandorders/html/PR530240.htm) ppc 26Oct12]

* + 1. CareSuper;

[New 23.4(g) inserted by [PR992289](http://www.fwc.gov.au/awardsandorders/html/PR992289.htm); renumbered as 23.4(f) by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); deleted by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14]

[New 23.4(f) inserted by [PR549548](http://www.fwc.gov.au/awardsandorders/html/PR549548.htm) ppc 01Jan14]

* + 1. Westscheme;

[23.4(g) renumbered as 23.4(h) by [PR992289](http://www.fwc.gov.au/awardsandorders/html/PR992289.htm); renumbered as 23.4(g) by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); renumbered as 23.4(f) and varied by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14; renumbered as 23.4(g) by [PR549548](http://www.fwc.gov.au/awardsandorders/html/PR549548.htm) ppc 01Jan14]

* + 1. 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 scheme; or

[New 23.4(g) inserted by [PR546002](http://www.fwc.gov.au/awardsandorders/html/PR546002.htm) ppc 01Jan14; renumbered as 23.4(h) by [PR549548](http://www.fwc.gov.au/awardsandorders/html/PR549548.htm) ppc 01Jan14]

* + 1. a superannuation fund or scheme which the employee is a defined benefit member of.
1. Hours of Work and Related Matters
2. Ordinary hours of work and rostering

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm)]

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

Ordinary hours of work

* + 1. The ordinary hours of work for full-time employees are an average of 38 per week but not exceeding 152 hours in 28 days.
		2. The ordinary hours of work may be worked between the hours of 6.00 am and 6.00 pm on any five out of seven days. Provided that the ordinary hours of work may be worked between 6.00 am and 9.00 pm on one day per week between Monday and Friday.
		3. Subject to this clause, the ordinary hours of work will not exceed eight hours on any day, provided that by arrangement between an employer and an employee ordinary working hours greater than eight but not exceeding 10 on any day may be worked subject to:
			1. the employer and employee concerned being guided by relevant occupational health and safety provisions;
			2. suitable roster arrangements being made; and
			3. proper supervision being provided.
		4. The rate of pay for ordinary hours worked on a Saturday will be at the rate of 125% of the appropriate minimum wage calculated hourly.

[24.2(e) varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. The rate of pay for ordinary hours worked on a Sunday will be at the rate of 200% of the appropriate minimum wage calculated hourly.
		2. All time worked outside the ordinary hours of work will be overtime.
1. Breaks

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm)]

* 1. An unpaid meal break of not less than 30 minutes and not more than one hour will be allowed each day, to be taken not later than five hours after commencing ordinary hours of work. Provided that where there is mutual agreement between employer and individual employee, such meal break may be taken as agreed.
	2. All work performed on the instruction of the employer during a meal break will be paid for at the rate of 200% of the appropriate minimum wage. Such payment will continue until the employee is released for a meal break of not less than 30 minutes.
	3. Employees will be allowed a paid rest break of 10 minutes each morning. Where agreement is reached between the employer and employee for additional rest breaks, such rest breaks will be unpaid and in addition to the employee’s ordinary hours of work.
1. Overtime and penalty rates

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR584124](http://www.fwc.gov.au/documents/awardsandorders/html/pr584124.htm)]

Payment for working overtime

The rate of pay for overtime will be 150% of the appropriate minimum wage for the first three hours and 200% thereafter, except on Sunday when the rate will be 200% for all time worked.

Payment for working on public holidays

* + 1. All work performed on public holidays will be paid for at the rate of 250%.
		2. All employees required to work on a public holiday will be paid for a minimum of four hours.

Call-back

An employee recalled to work overtime after leaving the employer’s business premises will be paid for a minimum of three hours work at the appropriate rate for each time so recalled. This subclause does not apply in cases where it is customary for an employee to return to the employer’s premises to perform a specific job outside the employee’s ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

Time off instead of payment for overtime

[26.4 inserted by [PR584124](http://www.fwc.gov.au/documents/awardsandorders/html/pr584124.htm) ppc 22Aug16]

* + 1. 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.
		2. 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 26.4.
		3. An agreement must state each of the following:
			1. the number of overtime hours to which it applies and when those hours were worked;
			2. that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
			3. 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;
			4. that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 26.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

* + 1. 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 26.4 an employee who worked 2 overtime hours is entitled to 2 hours’ time off.

* + 1. Time off must be taken:
			1. within the period of 6 months after the overtime is worked; and
			2. at a time or times within that period of 6 months agreed by the employee and employer.
		2. If the employee requests at any time, to be paid for overtime covered by an agreement under clause 26.4 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.
		3. If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
		4. The employer must keep a copy of any agreement under clause 26.4 as an employee record.
		5. 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.
		6. 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 26.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

* + 1. If, on the termination of the employee’s employment, time off for overtime worked by the employee to which clause 26.4 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 26.4.

26A. Requests for flexible working arrangements

[26A inserted by [PR701433](https://www.fwc.gov.au/documents/awardsandorders/html/pr701433.htm) ppc 01Dec18]

26A.1 Employee may request change in working arrangements

Clause 26A applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](http://www.legislation.gov.au/Series/C2009A00028).

Note 1: Section 65 of the [Act](http://www.legislation.gov.au/Series/C2009A00028) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

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

Note 3: Clause 26A is an addition to s.65.

26A.2 Responding to the request

Before responding to a request made under s.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:

* + 1. the needs of the employee arising from their circumstances;
		2. the consequences for the employee if changes in working arrangements are not made; and
		3. any reasonable business grounds for refusing the request.

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

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

26A.3 What the written response must include if the employer refuses the request

Clause 26A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 26A.2.

* + 1. The written response under s.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.
		2. If the employer and employee could not agree on a change in working arrangements under clause 26A.2, the written response under s.65(4) must:
			1. 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
			2. if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

26A.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 26A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

26A.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 26A, can be dealt with clause under clause 9—Dispute resolution.

1. Leave and Public Holidays
2. Annual leave

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR568676](https://www.fwc.gov.au/awardsandorders/html/PR568676.htm), [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm), [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm)]

* 1. Annual leave is provided for in the NES**.** Annual leave does not apply to a casual employee.

Conversion to hourly entitlement

An employer may reach agreement with an employee to convert the annual leave entitlement in the NES to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to four weeks annual leave).

Payment for period of annual leave

An employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

Electronic funds transfer (EFT) payment of annual leave

[New 27.4 inserted by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm) ppc 29Jul16]

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

Annual leave loading

[27.4 renumbered as 27.5 by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm) ppc 29Jul16]

During a period of annual leave an employee must also be paid a loading of 17.5% of the wages prescribed in clause 27.3.

Excessive leave accruals: general provision

[27.6 substituted by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm) ppc 20Dec16]

Note: Clauses 27.6 to 27.8 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.

* + 1. An employee has an excessive leave accrual if the employee has accrued more than 8 weeks’ paid annual leave.
		2. 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.
		3. Clause 27.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
		4. Clause 27.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

Excessive leave accruals: direction by employer that leave be taken

[New 27.7 inserted by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm) ppc 20Dec16]

* + 1. If an employer has genuinely tried to reach agreement with an employee under clause 27.6(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.
		2. However, a direction by the employer under paragraph (a):
			1. 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 27.6, 27.7 or 27.8 or otherwise agreed by the employer and employee) are taken into account; and
			2. must not require the employee to take any period of paid annual leave of less than one week; and
			3. 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
			4. must not be inconsistent with any leave arrangement agreed by the employer and employee.
		3. The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
		4. 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 27.7(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.

Excessive leave accruals: request by employee for leave

[New 27.8 inserted by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm); substituted by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm) ppc 20Dec17]

* + 1. If an employee has genuinely tried to reach agreement with an employer under clause 27.6(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.
		2. However, an employee may only give a clause notice to the employer under paragraph (a) if:
			1. the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
			2. the employee has not been given a direction under clause 27.7(a) that, when any other paid annual leave arrangements (whether made under clause 27.6, 27.7 or 27.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee’s excessive leave accrual.
		3. A notice given by an employee under paragraph (a) must not:
			1. 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 27.6, 27.7 or 27.8 or otherwise agreed by the employer and employee) are taken into account; or
			2. provide for the employee to take any period of paid annual leave of less than one week; or
			3. 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
			4. be inconsistent with any leave arrangement agreed by the employer and employee.
		4. An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks’ paid annual leave in any period of 12 months.
		5. The employer must grant paid annual leave requested by a notice under paragraph (a).

Annual leave in advance

[27.7 renamed and substituted by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm) ppc 29Jul16; renumbered as 27.9 by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm) ppc 20Dec16]

* + 1. 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.
		2. An agreement must:
			1. state the amount of leave to be taken in advance and the date on which leave is to commence; and
			2. 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 27.6 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G

* + 1. The employer must keep a copy of any agreement under clause 27.6 as an employee record.
		2. 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 27.6, 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.

[27.7 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); deleted by [PR568676](https://www.fwc.gov.au/awardsandorders/html/PR568676.htm) ppc 16Oct15]

Proportionate leave on termination

[27.8 renumbered as 27.7 by [PR568676](https://www.fwc.gov.au/awardsandorders/html/PR568676.htm); 27.7 renumbered as 27.8 by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm), 27.8 renumbered as 27.10 by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm) ppc 20Dec16]

On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 27.3.

Time of taking leave

[27.9 renumbered as 27.8 by [PR568676](https://www.fwc.gov.au/awardsandorders/html/PR568676.htm); 27.8 renumbered as 27.9 by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm), 27.9 renumbered as 27.11 and substituted by [PR588730](http://www.fwc.gov.au/awardsandorders/html/PR588730.htm) ppc 20Dec16]

The employer may require annual leave to be taken during periods of business close-down or when the business cannot open due to restrictions on opening hours due to State or Federal legislation. The employer may also require leave to be taken at certain times of the year because of particular seasonal requirements.

Cashing out of annual leave

[27.10 inserted by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm) ppc 29Jul16]

* + 1. Paid annual leave must not be cashed out except in accordance with an agreement under clause 27.11.
		2. Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 27.11.
		3. 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.
		4. An agreement under clause 27.11 must state:
			1. the amount of leave to be cashed out and the payment to be made to the employee for it; and
			2. the date on which the payment is to be made.
		5. An agreement under clause 27.11 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.
		6. 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.
		7. An agreement must not result in the employee’s remaining accrued entitlement to paid annual leave being less than 4 weeks.
		8. The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
		9. The employer must keep a copy of any agreement under clause 27.11 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 27.11.

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 27.11.

Note 3: An example of the type of agreement required by clause 27.11 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

1. Personal/carer’s leave and compassionate leave

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm)]

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

1. Community service leave

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm)

Community service leave is provided for in the NES.

1. Public holidays

[Varied by [PR990479](http://www.fwc.gov.au/alldocuments/PR990479.htm), [PR712195](https://www.fwc.gov.au/documents/awardsandorders/html/pr712195.htm)]

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

[30.2 varied by [PR712195](https://www.fwc.gov.au/documents/awardsandorders/html/pr712195.htm) ppc 04Oct19]

* 1. An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. If either the public holiday or the substitute day is worked, public holiday penalties must be paid. If both days are worked, one day at the election of the employee must be paid at public holiday rates.

[Note inserted by [PR712195](https://www.fwc.gov.au/documents/awardsandorders/html/pr712195.htm) ppc 04Oct19]

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

1. Leave to deal with Family and Domestic Violence

[31 inserted by [PR609350](https://www.fwc.gov.au/documents/awardsandorders/html/pr609350.htm) ppc 01Aug18]

* 1. This clause applies to all employees, including casuals.
	2. Definitions
		1. In this clause:

***family and domestic violence*** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

***family member*** means:

* + - 1. a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
			2. a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
			3. a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
		1. A reference to a spouse or de facto partner in the definition of family member in clause 31.2(a) includes a former spouse or de facto partner.
	1. Entitlement to unpaid leave

An employee is entitled to 5 days’ unpaid leave to deal with family and domestic violence, as follows:

* + 1. the leave is available in full at the start of each 12 month period of the employee’s employment; and
		2. the leave does not accumulate from year to year; and
		3. is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days’ unpaid leave to deal with family and domestic violence.

* 1. Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

* + 1. is experiencing family and domestic violence; and
		2. needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

* 1. Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee’s continuity of service.

* 1. Notice and evidence requirements
		1. Notice

An employee must give their employer notice of the taking of leave by the employee under clause 31. The notice:

* + - 1. must be given to the employer as soon as practicable (which may be a time after the leave has started); and
			2. must advise the employer of the period, or expected period, of the leave.
		1. Evidence

An employee who has given their employer notice of the taking of leave under clause 31 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 31.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

* 1. Confidentiality
		1. Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 31.6 is treated confidentially, as far as it is reasonably practicable to do so.
		2. Nothing in clause 31 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: 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.

* 1. Compliance

An employee is not entitled to take leave under clause 31 unless the employee complies with clause 31.

1. —Transitional Provisions

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm)]

General

* + 1. The provisions of this schedule deal with minimum obligations only.

[A.1.2 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. The provisions of this schedule are to be applied:
			1. when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;
			2. when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;
			3. when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or
			4. when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

Minimum wages – existing minimum wage lower

* + 1. The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:
			1. was obliged,

[A.2.1(b) substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + - 1. but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
			2. if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

* + 1. In this clause minimum wage includes:
			1. a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
			2. a piecework rate; and
			3. any applicable industry allowance.
		2. Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.
		3. The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.
		4. From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

| **First full pay period on or after** |  |
| --- | --- |
| 1 July 2010 | 80% |
| 1 July 2011 | 60% |
| 1 July 2012 | 40% |
| 1 July 2013 | 20% |

* + 1. The employer must apply any increase in minimum wages in this award resulting from an annual wage review.
		2. These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

Minimum wages – existing minimum wage higher

* + 1. The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:
			1. was obliged,

[A.3.1(b) substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + - 1. but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
			2. if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

* + 1. In this clause minimum wage includes:
			1. a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
			2. a piecework rate; and
			3. any applicable industry allowance.
		2. Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.
		3. The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.
		4. From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

|  |  |
| --- | --- |
| **First full pay period on or after** |  |
| 1 July 2010 | 80% |
| 1 July 2011 | 60% |
| 1 July 2012 | 40% |
| 1 July 2013 | 20% |

* + 1. The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.
		2. These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

Loadings and penalty rates

For the purposes of this schedule loading or penalty means a:

* casual or part-time loading;
* Saturday, Sunday, public holiday, evening or other penalty;
* shift allowance/penalty.

Loadings and penalty rates – existing loading or penalty rate lower

[A.5.1 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:
			1. was obliged,
			2. but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
			3. if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

[A.5.2 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.
		2. The difference between the loading or penalty in this award and the rate in clause A.5.2 is referred to as the transitional percentage.
		3. From the following dates the employer must pay no less than the loading or penalty in this award minus the specified proportion of the transitional percentage:

|  |  |
| --- | --- |
| **First full pay period on or after** |  |
| 1 July 2010 | 80% |
| 1 July 2011 | 60% |
| 1 July 2012 | 40% |
| 1 July 2013 | 20% |

* + 1. These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

Loadings and penalty rates – existing loading or penalty rate higher

[A.6.1 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:
			1. was obliged,
			2. but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
			3. if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

[A.6.2 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

[A.6.3 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.
		2. From the following dates the employer must pay no less than the loading or penalty in this award plus the specified proportion of the transitional percentage:

|  |  |
| --- | --- |
| **First full pay period on or after** |  |
| 1 July 2010 | 80% |
| 1 July 2011 | 60% |
| 1 July 2012 | 40% |
| 1 July 2013 | 20% |

* + 1. These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

Loadings and penalty rates – no existing loading or penalty rate

[A.7.1 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. The following transitional arrangements apply to an employer not covered by clause A.5 or A.6 in relation to a particular loading or penalty in this award.
		2. Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

[A.7.3 substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm) from 01Jan10]

* + 1. From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

|  |  |
| --- | --- |
| **First full pay period on or after** |  |
| 1 July 2010 | 20% |
| 1 July 2011 | 40% |
| 1 July 2012 | 60% |
| 1 July 2013 | 80% |

* + 1. These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

Former Division 2B employers

[A.8 inserted by [PR503642](http://www.fwc.gov.au/awardsandorders/html/PR503642.htm) ppc 01Jan11]

* + 1. This clause applies to an employer which, immediately prior to 1 January 2011, was covered by a Division 2B State award.
		2. All of the terms of a Division 2B State award applying to a Division 2B employer are continued in effect until the end of the full pay period commencing before 1 February 2011.
		3. Subject to this clause, from the first full pay period commencing on or after 1 February 2011 a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under this Schedule if it had been a national system employer immediately prior to 1 January 2010.
		4. Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.
		5. Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.
		6. In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.
1. —Classification Structure and Definitions

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm)]

**Grade 1A**

Employees in this grade have no previous experience in the industry and no formal qualifications. They carry out general nursery and labouring duties of a routine and repetitive and/or manual nature, mainly under supervision, for a period of no longer than three months.

**Grade 1B**

Employees in this grade have three months experience in the industry. They perform and are accountable for nursery tasks as directed within the skill levels set out below. They work within established routines, methods and procedures. Supervision is direct.

Employees may be required to train other employees in the skills of their own grade by means of personal instruction and demonstration.

Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

* assisting with potting machines, seeding machines, bagging machines, transplanting machines, grading machines, etc.;
* assisting with spray application;
* cleaning;
* collecting cuttage, budwood or scions;
* flower bunching;
* general errands;
* general/labouring duties;
* grafting and budding;
* irrigation;
* labelling, stacking and preparation of stock for sale;
* mixing soil, container filling, container assembly;
* moving plants;
* order selection and assembly;
* packing shelves;
* packing plants and seedlings;
* picking and grading;
* plant care and ground maintenance;
* potting;
* preparing and sticking cuttings;
* spacing and moving plants;
* transplanting;
* tubing;
* unloading/receiving materials;
* using towing and/or carry-all vehicles etc.;
* watering; and
* weeding.

**Grade 2**

Employees in this grade are capable of performing Grade 1B duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 1B. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

* answering phone;
* basic data entry;
* basic plant maintenance;
* control and maintenance of irrigation equipment;
* handling direct enquiries;
* disease and pest control;
* driving tractors with implements;
* fertigation;
* filing; and
* may be in charge of one assistant of a lower grade.

**Grade 3**

Employees in this grade are capable of performing Grade 1B and 2 duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 2. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

* correspondence (handling);
* customer service;
* forklift operator;
* invoicing;
* order acceptance;
* processing income;
* receiving money; and
* regular driver.

**Grade 4—Certified tradesperson**

Employees in this classification perform nursery duties using a more extensive range of skills and knowledge at a higher level than required of a Grade 3, having obtained and required to utilise the appropriate Accredited Trade Certificate or equivalent. They are responsible and accountable for their own work and may have responsibility for the work of up to three additional employees. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is minimal.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Additional duties may include:

* independent cultural decisions relevant to previous gradings (e.g. plant nutrition, merchandising, menus);
* payroll; and
* processing of incoming and outgoing invoices.

**Grade 5**

Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 4. They are responsible and accountable for their own work and may have responsibility for the work of a section or unit. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to senior management or proprietor.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

* ability to use a variety of computer packages (this may include, but not limited to, desktop publishing, spreadsheets, word processing, databases, etc.);
* allocation of accounts;
* co-ordination of production programs;
* creditor/debtor reconciliation;
* data reconciliation;
* design & implement fertiliser programs and pest control programs;
* design, install and use irrigation systems;
* landscape consultation and/or design;
* ordering stock;
* planning, co-ordination and implementation of nursery maintenance programs;
* preparation of daily reports;
* set targets; and
* set shift rosters.

**Grade 6**

Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 5. They are responsible and accountable for their own work and may have responsibility for the work of a section. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to management or proprietor.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

* analysing data;
* dispatch;
* key performance indicators for annual performance targets;
* monthly and annual reports;
* nursery manager;
* production planner;
* propagator (person appointed to take responsibility for control of propagating environments, scheduling propagation, selecting cuttage, budwood and other propagules); and
* senior grower or head grower.
1. —National Training Wage

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm); substituted by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm); varied by [PR997913](http://www.fwc.gov.au/awardsandorders/html/PR997913.htm), [PR509064](http://www.fwc.gov.au/awardsandorders/html/PR509064.htm), [PR522895](http://www.fwc.gov.au/awardsandorders/html/PR522895.htm), [PR536698](http://www.fwc.gov.au/awardsandorders/html/PR536698.htm), [PR545787](http://www.fwc.gov.au/awardsandorders/html/PR545787.htm), [PR551621](http://www.fwc.gov.au/awardsandorders/html/PR551621.htm), [PR566703](https://www.fwc.gov.au/awardsandorders/html/PR566703.htm), [PR579795](http://www.fwc.gov.au/awardsandorders/html/PR579795.htm); deleted by [PR593824](http://www.fwc.gov.au/awardsandorders/html/pr593824.htm) ppc 01Jul17]

1. —Supported Wage System

[Varied by [PR988418](http://www.fwc.gov.au/awardsandorders/html/PR988418.htm), [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR998748](http://www.fwc.gov.au/awardsandorders/html/PR998748.htm), [PR510670](http://www.fwc.gov.au/awardsandorders/html/PR510670.htm), [PR525068](http://www.fwc.gov.au/awardsandorders/html/PR525068.htm), [PR537893](http://www.fwc.gov.au/awardsandorders/html/PR537893.htm), [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm), [PR551831](http://www.fwc.gov.au/awardsandorders/html/PR551831.htm), [PR568050](http://www.fwc.gov.au/awardsandorders/html/PR568050.htm), [PR581528](http://www.fwc.gov.au/awardsandorders/html/PR581528.htm), [PR592689](http://www.fwc.gov.au/awardsandorders/html/PR592689.htm), [PR606630](https://www.fwc.gov.au/documents/awardsandorders/html/pr606630.htm), [PR709080](https://www.fwc.gov.au/documents/awardsandorders/html/pr709080.htm)]

* 1. This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

[D.2 varied by [PR568050](http://www.fwc.gov.au/awardsandorders/html/PR568050.htm) ppc 01Jul15]

* 1. In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**supported wage system** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee’s productive capacity and agreed wage rate

Eligibility criteria

* + 1. Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
		2. This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

* + 1. Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

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

[D.4.2 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR998748](http://www.fwc.gov.au/awardsandorders/html/PR998748.htm), [PR510670](http://www.fwc.gov.au/awardsandorders/html/PR510670.htm), [PR525068](http://www.fwc.gov.au/awardsandorders/html/PR525068.htm), [PR537893](http://www.fwc.gov.au/awardsandorders/html/PR537893.htm), [PR551831](http://www.fwc.gov.au/awardsandorders/html/PR551831.htm), [PR568050](http://www.fwc.gov.au/awardsandorders/html/PR568050.htm), [PR581528](http://www.fwc.gov.au/awardsandorders/html/PR581528.htm), [PR592689](http://www.fwc.gov.au/awardsandorders/html/PR592689.htm), [PR606630](https://www.fwc.gov.au/documents/awardsandorders/html/pr606630.htm), [PR709080](https://www.fwc.gov.au/documents/awardsandorders/html/pr709080.htm) ppc 01Jul19]

* + 1. Provided that the minimum amount payable must be not less than $87 per week.
		2. Where an employee’s assessed capacity is 10%, they must receive a high degree of assistance and support.

Assessment of capacity

* + 1. For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.
		2. All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

Lodgement of SWS wage assessment agreement

[Varied by [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm)]

[D.6.1 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm) ppc 04Dec13]

* + 1. All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

[D.6.2 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR542153](http://www.fwc.gov.au/awardsandorders/html/PR542153.htm) ppc 04Dec13]

* + 1. All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee’s capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial period

* + 1. In order for an adequate assessment of the employee’s capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
		2. During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

[D.10.3 varied by [PR994503](http://www.fwc.gov.au/awardsandorders/html/PR994503.htm), [PR998748](http://www.fwc.gov.au/awardsandorders/html/PR998748.htm), [PR510670](http://www.fwc.gov.au/awardsandorders/html/PR510670.htm), [PR525068](http://www.fwc.gov.au/awardsandorders/html/PR525068.htm), [PR537893](http://www.fwc.gov.au/awardsandorders/html/PR537893.htm), [PR551831](http://www.fwc.gov.au/awardsandorders/html/PR551831.htm), [PR568050](http://www.fwc.gov.au/awardsandorders/html/PR568050.htm), [PR581528](http://www.fwc.gov.au/awardsandorders/html/PR581528.htm), [PR592689](http://www.fwc.gov.au/awardsandorders/html/PR592689.htm), [PR606630](https://www.fwc.gov.au/documents/awardsandorders/html/pr606630.htm), [PR709080](https://www.fwc.gov.au/documents/awardsandorders/html/pr709080.htm) ppc 01Jul19]

* + 1. The minimum amount payable to the employee during the trial period must be no less than $87 per week.
		2. Work trials should include induction or training as appropriate to the job being trialled.
		3. Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.
1. —Part-day Public Holidays

[Sched E inserted by [PR532630](http://www.fwc.gov.au/awardsandorders/html/pr532630.htm) ppc 23Nov12; renamed and varied by [PR544519](http://www.fwc.gov.au/awardsandorders/html/pr544519.htm) ppc 21Nov13; renamed and varied by [PR557581](http://www.fwc.gov.au/awardsandorders/html/PR557581.htm), [PR573679](http://www.fwc.gov.au/awardsandorders/html/PR573679.htm), [PR580863](http://www.fwc.gov.au/awardsandorders/html/PR580863.htm), [PR598110](http://www.fwc.gov.au/documents/awardsandorders/html/pr598110.htm), [PR701683](http://www.fwc.gov.au/documents/awardsandorders/html/pr701683.htm) ppc 21Nov18; varied by [PR712195](https://www.fwc.gov.au/documents/awardsandorders/html/pr712195.htm), [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm)]

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

[E.1 varied by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* 1. Where a part-day public holiday is declared or prescribed between 6.00 pm and midnight, or 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:
		+ 1. 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.

[E.1(b) varied by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* + - 1. Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday 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.

[E.1(c) substituted by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* + - 1. Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of being on annual leave does not work, they will be taken not to be on annual leave during the hours of the declared or prescribed part-day public holiday that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

[E.1(d) varied by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* + - 1. Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday, 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.1(e) varied by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* + - 1. Excluding annualised salaried employees to whom clause E.1(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

[E.1(f) varied by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* + - 1. 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 on the declared or prescribed part-day public holiday.

[E.1(g) varied by [PR715146](https://www.fwc.gov.au/documents/awardsandorders/html/pr715146.htm) ppc 18Nov19]

* + - 1. An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause E.1(a), will not be entitled to another day off, another day’s pay or another day of annual leave as a result of the part-day public holiday.

[E.2 inserted by [PR712195](https://www.fwc.gov.au/documents/awardsandorders/html/pr712195.htm) ppc 04Oct19]

* 1. An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

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

1. —School-based Apprentices

[Sched F inserted by [PR544272](http://www.fwc.gov.au/awardsandorders/html/PR544272.htm) ppc 01Jan14]

* 1. This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
	2. A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
	3. The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
	4. For the purposes of clause F.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
	5. A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
	6. For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
	7. The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
	8. School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency based progression if provided for in this award.
	9. The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration) or stages of competency progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
	10. If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
	11. School-based apprentices are entitled pro rata to all of the other conditions in this award.
1. —Agreement to Take Annual Leave in Advance

[Sched G inserted by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm) ppc 29Jul16]

Link to PDF copy of [Agreement to Take Annual Leave in Advance](http://www.fwc.gov.au/documents/documents/modern_awards/leave-in-advance-agreement.pdf).

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\_\_\_

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| *[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\_\_\_ |

1. —Agreement to Cash Out Annual Leave

[Sched H inserted by [PR583037](http://www.fwc.gov.au/awardsandorders/html/PR583037.htm) ppc 29Jul16]

Link to PDF copy of [Agreement to Cash Out Annual Leave](http://www.fwc.gov.au/documents/documents/modern_awards/cash-out-agreement.pdf).

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\_\_\_

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| *Include if the employee is under 18 years of age:*Name of parent/guardian: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of parent/guardian: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date signed: \_\_\_/\_\_\_/20\_\_\_ |

1. —Agreement for Time Off Instead of Payment for Overtime

[Sched I inserted by [PR584124](http://www.fwc.gov.au/awardsandorders/html/PR584124.htm) ppc 22Aug16]

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](http://www.fwc.gov.au/documents/documents/modern_awards/toil-agreement.pdf).

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\_\_\_