**Marine Towage Award 2010**

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 24 March 2020 ([PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm)).

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

4—Coverage

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); [AM2014/235](https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/4-yearly-review/award-stage/award-review-documents/MA000050?m=AM2014/235); [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); [AM2016/13](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am201613-annualised); [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); [AM2016/8](https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20168-payment-wages)

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1. Application and Operation
2. Title

This award is the *Marine Towage Award 2010*.

1. Commencement and transitional

[Varied by [PR991557](http://www.fwc.gov.au/awardsandorders/html/PR991557.htm), [PR542170](http://www.fwc.gov.au/awardsandorders/html/PR542170.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 [PR542170](http://www.fwc.gov.au/awardsandorders/html/PR542170.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 [PR542170](http://www.fwc.gov.au/awardsandorders/html/PR542170.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 [PR542170](http://www.fwc.gov.au/awardsandorders/html/PR542170.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 [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm), [PR997772](http://www.fwc.gov.au/awardsandorders/html/PR997772.htm), [PR503669](http://www.fwc.gov.au/awardsandorders/html/PR503669.htm), [PR528460](http://www.fwc.gov.au/awardsandorders/html/PR528460.htm), [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.htm)]

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

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

[Definition of agreement-based transitional instrument inserted by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10]

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

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

**contract towage** means when a tug is towing a vessel from one location to another location, where that tow or other services of a non-emergency nature has been contracted for and pre-planned by the employer

[Definition of **default fund employee** inserted by [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.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 [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.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 [PR503669](http://www.fwc.gov.au/awardsandorders/html/PR503669.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 [PR503669](http://www.fwc.gov.au/awardsandorders/html/PR503669.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 [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 [PR997772](http://www.fwc.gov.au/awardsandorders/html/PR997772.htm) from 01Jan10]

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

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

[Definition of **exempt public sector superannuation scheme** inserted by [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.htm) ppc 01Jan14]

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

**free running voyage** and **delivery voyage** means when a tug proceeds from one port to another either interstate or intrastate and is not engaged in towing between ports or on a nominated voyage. In addition, this definition will apply to a tug proceeding from its home port to another port to commence a contract tow or when returning to its home port on completion of a contract tow

**hourly rate** means 1/35th of the minimum weekly rate

[Definition of **MySuper product** inserted by [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.htm) ppc 01Jan14]

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

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

**officer** means a master, a mate or engineer of a tug

[Definition of on-hire inserted by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.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

**outside work** means work on a tug which proceeds to sea on a special voyage outside the limits of bays, rivers or regulated port boundaries or limits but within Australian territorial waters

**special voyage** means a voyage for which it is necessary to set watches and will include a free running voyage and delivery voyage, contract towage or emergency operations, but does not include a nominated voyage

**standard rate** means the minimum weekly rate for the classification of Rating in clause 13.1

[Definition of tonnage/power units inserted by [PR528460](http://www.fwc.gov.au/awardsandorders/html/PR528460.htm) from 24Sept12]

**tonnage/power units** means the sum of the gross registered tonnage figure of a tug and of the brake horse power figure of the main engine(s) only of the tug (including super charged power where applicable)

[Definition of **transitional minimum wage instrument** inserted by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10]

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

* 1. Where this award refers to a condition of employment provided for in the NES, the NES definition applies.
1. Coverage

[Varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm), [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm)]

[4.1 substituted by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 1. This industry award covers employers throughout Australia in respect of their operations in the marine towage industry and their employees in the classifications listed in clause 13.1 to the exclusion of any other modern award.

[4.3 renumbered as 4.2 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

Definition of marine towage industry

**Marine towage industry** means:

* + 1. any work on tug boats, in conjunction with ship-assist operations and voyages, at or about, or to or from, a port in Australia (**harbour towage operations**);
		2. movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia (**tug and barge operations**).

[New 4.3 inserted by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 1. This award does not cover employers and employees wholly or substantially covered by the following awards:
		1. the *Dredging Industry Award 2010*; or
		2. the *Maritime Offshore Oil and Gas Award 2020*.

[New 4.4 inserted by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 1. This award does not cover employers in respect of their operations covered by the *Ports, Harbours and Enclosed Water Vessels Award 2010.*

[4.2 renumbered as 4.5 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 1. The award does not cover maintenance contractors covered by the following awards:
		1. the *Manufacturing and Associated Industries and Occupations Award 2010*; or
		2. the *Electrical, Electronic and Communications Contracting Award 2010*.

[4.4 renumbered as 4.6 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 1. The award does not cover an employee excluded from award coverage by the Act.

[4.5 renumbered as 4.7 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 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 [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10; renumbered as 4.8 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]

* 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.

[4.7 inserted by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10; renumbered as 4.9 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]]

* 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.

[4.6 renumbered as 4.8 by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10; renumbered as 4.10 by [PR717594](https://www.fwc.gov.au/documents/awardsandorders/html/pr717594.htm) ppc 01May20]]

* 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 [PR542170](http://www.fwc.gov.au/awardsandorders/html/PR542170.htm); 7—Award flexibility renamed and substituted by [PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm) ppc 30Aug19]

* 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 section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](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 [PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm) ppc 30Aug19]

* 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 [PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm) ppc 30Aug19]

**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:

**(a)** 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

**(b)** invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

**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 [PR542170](http://www.fwc.gov.au/awardsandorders/html/PR542170.htm); substituted by [PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm) ppc 30Aug19]

* 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 [PR700582](https://www.fwc.gov.au/documents/awardsandorders/html/pr700582.htm), [PR700666](https://www.fwc.gov.au/documents/awardsandorders/html/pr700666.htm)]

An employee may be engaged on a full-time, part-time or casual basis.

Full-time employment

A full-time employee is an employee who is engaged to work an average of 35 ordinary hours per week.

Part-time employment

* + 1. A part-time employee is an employee who:
			1. is engaged to work ordinary hours which are less than the average number of ordinary hours of a full-time employee; and
			2. receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
		2. For each ordinary hour worked, a part-time employee will be paid not less than the hourly rate of pay for the relevant classification in clause 13.1.
		3. Before an employee commences part-time employment, an employer must inform the employee in writing of any rostered periods of duty to be worked by the employee.
		4. Any agreed variation of the rostered periods of duty must be recorded in writing.

Casual employment

[Preamble renumbered as 10.3(a) by [PR700666](https://www.fwc.gov.au/documents/awardsandorders/html/pr700666.htm) ppc 01Oct18]

* + 1. A casual employee is one engaged and paid as such.

[10.3(b) inserted by [PR700666](https://www.fwc.gov.au/documents/awardsandorders/html/pr700666.htm) ppc 01Oct18]

* + 1. A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

Right to request casual conversion

[10.4 inserted by [PR700582](https://www.fwc.gov.au/documents/awardsandorders/html/pr700582.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 10.2.
		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. Termination of employment

[Varied by [PR567223](http://www.fwc.gov.au/awardsandorders/html/PR567223.htm); substituted by [[PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm)](https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/pr711483.pdf) ppc 30Aug19]

NOTE: Sections 117 and 123 of the [Act](http://www.legislation.gov.au/Series/C2009A00028) set out requirements for notice of termination by an employer under the [NES](https://www.fwc.gov.au/documents/awardmod/download/nes.pdf). Clause 11.1 requires an employer to give a greater minimum period of notice than that generally required under the [NES](https://www.fwc.gov.au/documents/awardmod/download/nes.pdf).

Notice of termination by employer—permanent employees

* + 1. Despite the terms of the [NES](https://www.fwc.gov.au/documents/awardmod/download/nes.pdf), in order to terminate the employment of an officer the employer must give to the employee the following written notice:

| **Period of continuous service** | **Period of notice** |
| --- | --- |
| 1 year or less | 2 weeks |
| More than 1 year but less than 4 years | 6 weeks |
| More than 4 years | 8 weeks |

* + 1. Payment instead of the notice prescribed in paragraph (a) may be made.
		2. An employer may terminate an employee’s employment by giving part of the notice prescribed in paragraph (a) and part payment instead of notice.
		3. In calculating any payment instead of notice, the wages an employee would have received in respect of ordinary time the employee would have worked during the period of notice if the employee’s employment had not been terminated must be used.

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 11.2 is to be taken at times that are convenient to the employee after consultation with the employer.
	2. **Return to place of engagement**

If the employment of an employee is terminated by the employer elsewhere than at the employee’s home port or place of engagement for any reason other than misconduct, the employer will be responsible for conveying the employee to the employee’s home port or place of engagement.

Termination without notice

Despite the above provisions, an employer may terminate an employee’s employment without notice, or payment instead of notice, for serious misconduct.

* 1. **Notice of termination by employee—permanent employee**
		1. Clause 11.6 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](http://www.legislation.gov.au/Series/C2009A00028).
		2. An employee may terminate their employment by giving the employer the following notice in writing:
			1. in the case of officers, 2 weeks’ notice; or
			2. in the case of ratings, one week’s notice.
		3. If an employee 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.
		4. 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 (c).
		5. Any deduction under paragraph (c) must not be unreasonable in the circumstances.
	2. **Casual employees**

The employment of a casual employee terminates at the end of each period of duty.

1. Redundancy

[Substituted by [PR706983](https://www.fwc.gov.au/documents/awardsandorders/html/pr706983.htm); varied by [PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm)]

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 12.1 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 12 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.

[12.3(e) varied by [PR711483](https://www.fwc.gov.au/documents/awardsandorders/html/pr711483.htm) ppc 30Aug19]

* + 1. This entitlement applies instead of clauses 11.2 and 11.3.
1. Minimum Wages and Related Matters
2. Minimum wages

[Varied by [PR997947](http://www.fwc.gov.au/awardsandorders/html/PR997947.htm), [PR509081](http://www.fwc.gov.au/awardsandorders/html/PR509081.htm), [PR522912](http://www.fwc.gov.au/awardsandorders/html/PR522912.htm), [PR528460](http://www.fwc.gov.au/awardsandorders/html/PR528460.htm), [PR536715](http://www.fwc.gov.au/awardsandorders/html/pr536715.htm), [PR551638](http://www.fwc.gov.au/awardsandorders/html/PR551638.htm), [PR566723](https://www.fwc.gov.au/awardsandorders/html/PR566723.htm), [PR579820](http://www.fwc.gov.au/awardsandorders/html/PR579820.htm), [PR592148](http://www.fwc.gov.au/awardsandorders/html/PR592148.htm), [PR606375](https://www.fwc.gov.au/documents/awardsandorders/html/pr606375.htm), [PR707462](https://www.fwc.gov.au/documents/awardsandorders/html/pr707462.htm)]

Minimum wages

[13.1 varied by [PR997947](http://www.fwc.gov.au/awardsandorders/html/PR997947.htm), [PR509081](http://www.fwc.gov.au/awardsandorders/html/PR509081.htm), [PR522912](http://www.fwc.gov.au/awardsandorders/html/PR522912.htm), [PR528460](http://www.fwc.gov.au/awardsandorders/html/PR528460.htm) from 24Sep12, [PR536715](http://www.fwc.gov.au/awardsandorders/html/pr536715.htm), [PR551638](http://www.fwc.gov.au/awardsandorders/html/PR551638.htm), [PR566723](https://www.fwc.gov.au/awardsandorders/html/PR566723.htm), [PR579820](http://www.fwc.gov.au/awardsandorders/html/PR579820.htm), [PR592148](http://www.fwc.gov.au/awardsandorders/html/PR592148.htm), [PR606375](https://www.fwc.gov.au/documents/awardsandorders/html/pr606375.htm), [PR707462](https://www.fwc.gov.au/documents/awardsandorders/html/pr707462.htm) ppc 01Jul19]

The minimum wage rates for each classification will be as follows:

| **Classification** | **Minimum rate** |
| --- | --- |
|  | **Daily$** | **Weekly$** |
| Rating and General Purpose Rating | 120.69 | 844.80 |
| **Category 1 (0–1850 tonnage/power units)** |  |  |
| Mate | 137.13 | 959.90 |
| Master and Engineer | 164.57 | 1152.00 |
| **Category 2 (1850 or more tonnage/power units)** |  |  |
| Mate | 143.24 | 1002.70 |
| Master and Engineer | 173.49 | 1214.40 |

Option for aggregate wage or annual salary—full-time and part-time employees

* + 1. As an alternative to being paid the minimum wage rate plus overtime and penalty payments (in accordance with clauses 22 and 26.2), an employer may agree to pay an aggregate wage or annual salary provided the employer obtains the agreement of a majority of its employees who are covered by this award.
		2. The aggregate wage or annual salary paid by the employer to employees must be based on a rate equivalent to an aggregate wage or annual salary of at least 40% above the minimum wage rate prescribed in clause 13.1.
		3. An employer will not be required to pay overtime and penalty payments provided that the aggregate wage or annual salary paid over the year was sufficient to cover what the employee would have been entitled to if the minimum wage rate plus overtime and penalty payments (as identified above) had been paid in that year.
		4. Where payment is adopted in accordance with this clause 13.2, the employer will keep a daily record of the hours worked by the employees which will show the daily date and start and finishing times of the employees. The record will be countersigned by the employee fortnightly, and will be kept at the place of employment for six years.

Casual rates of pay

* + 1. For each hour worked, a casual employee will be paid no less than the hourly rate of pay for their classification in clause 13.1, plus a casual loading of 25%.
		2. The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and the other attributes of full-time or part‑time employment.

Special voyages in harbour towage operations—rates of pay

Application

* + - 1. Clause 13.4 applies to employers operating in, and employees working in, harbour towage operations.
			2. Clause 13.4 does not apply to an employee who is regularly or continuously engaged on outside work.
			3. The payments in clause 13.4(b) are payable instead of the daily minimum wage rate specified in clause 13.1 (including clause 13.2), and the payments and penalties for working overtime under clause 20.2;
			4. The payments in clause 13.4(b) do not apply to employees on a nominated voyage.

Payment for special voyages

[13.4(b)(i) varied by [PR997947](http://www.fwc.gov.au/awardsandorders/html/PR997947.htm), [PR509081](http://www.fwc.gov.au/awardsandorders/html/PR509081.htm), [PR522912](http://www.fwc.gov.au/awardsandorders/html/PR522912.htm), [PR536715](http://www.fwc.gov.au/awardsandorders/html/pr536715.htm), [PR551638](http://www.fwc.gov.au/awardsandorders/html/PR551638.htm), [PR566723](https://www.fwc.gov.au/awardsandorders/html/PR566723.htm), [PR579820](http://www.fwc.gov.au/awardsandorders/html/PR579820.htm), [PR592148](http://www.fwc.gov.au/awardsandorders/html/PR592148.htm), [PR606375](https://www.fwc.gov.au/documents/awardsandorders/html/pr606375.htm), [PR707462](https://www.fwc.gov.au/documents/awardsandorders/html/pr707462.htm) ppc 01Jul19]

* + - 1. For any day (including Saturdays, Sundays and public holidays) on which an employee is engaged on outside work an employee will be entitled to the amount set out in the table below for their classification.

| **Voyage / Rank**  | **Minimum$** |
| --- | --- |
| **Free Running Voyage and Delivery Voyage** |  |
| General Purpose Rating | 473.98 |
| Mate (Casual or Tug Mate) | 565.60 |
| Mate (Permanent Tug Master) and Engineer | 691.41 |
| Master and Chief Engineer | 733.26 |
| **Contract Towage** |  |
| General Purpose Rating | 634.76 |
| Mate (Casual or Tug Mate) | 726.49 |
| Mate (Permanent Tug Master) and Engineer | 852.04 |
| Master and Chief Engineer | 890.12 |
| **Emergency Towage Operations** |  |
| General Purpose Rating | 795.51 |
| Mate (Casual or Tug Mate) | 887.53 |
| Mate (Permanent Tug Master) and Engineer | 1013.85 |
| Master and Chief Engineer | 1060.50 |

* + - 1. The amounts contained in clause 13.4(b)(i) will only be payable from the time that the tug leaves the wharf to proceed to sea on any special voyage until it ties up at the wharf at the termination of such special voyage.
			2. The amounts contained in clause 13.4(b)(i) are all inclusive and the total amount payable to an employee for all outside work performed in each 24 hours (midnight to midnight) or part thereof.
			3. Free running and contract voyages rates of pay will apply to each leg. The calculation for the first day’s pay will commence when the vessel departs the wharf. The daily rate of pay will apply for the first day. If the voyage exceeds 24 hours, employees will be entitled to eight hours pay, at the hourly rate, for each period or part period of eight hours worked.
			4. On any day on which an employee is put ashore sick or injured, they are entitled to the employee’s daily minimum wage rate, for each period or part period of eight hours worked on that day.
			5. A casual employee engaged on a special voyage will be paid the higher of:
* the casual rate of pay under clause 13.3; or
* the rate of pay payable to other employees of the same classification in respect of the special voyage, including any entitlement to proportionate leave. In this latter case, casual loading will be absorbed in the payment.
	+ - 1. A rest period may be given in the out-port depending on the circumstances of the voyage. In the case of a voyage of seven days or more, the maximum rest period will be 24 hours. In the case of a voyage of less than seven days, the rest period will be determined by the circumstances of the voyage and by discussion between the employer and employees.
1. Allowances—Harbour towage operations

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/MA000050-all.pdf).

[Varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm), [PR998175](http://www.fwc.gov.au/awardsandorders/html/PR998175.htm), [PR509203](http://www.fwc.gov.au/awardsandorders/html/PR509203.htm), [PR523033](http://www.fwc.gov.au/awardsandorders/html/PR523033.htm), [PR528460](http://www.fwc.gov.au/awardsandorders/html/PR528460.htm), [PR536836](http://www.fwc.gov.au/awardsandorders/html/pr536836.htm), [[PR551759](http://www.fwc.gov.au/awardsandorders/html/PR551759.htm)](http://www.fwc.gov.au/awardsandorders/html/PR000000.htm), [PR566860](http://www.fwc.gov.au/awardsandorders/html/PR566860.htm), [PR579555](http://www.fwc.gov.au/awardsandorders/html/PR579555.htm), [PR592310](http://www.fwc.gov.au/awardsandorders/html/pr592310.htm), [PR606531](https://www.fwc.gov.au/documents/awardsandorders/html/pr606531.htm), [PR704168](https://www.fwc.gov.au/documents/awardsandorders/html/pr704168.htm), [PR707663](https://www.fwc.gov.au/documents/awardsandorders/html/pr707663.htm)]

The allowances in this clause only apply to employers operating in, and employees working in, harbour towage operations.

Allowances for disabilities associated with the performance of particular tasks or work in particular conditions or locations

Nominated voyages allowance

* + - 1. A **nominated voyage** means an intrastate tug voyage from one port to another that is undertaken for operational reasons, to cover towage requirements in the other port.
			2. For each hour during which an employee is engaged on a nominated voyage, the employee will be paid an allowance equal to 2.46% of the [standard rate](#standard_rate).

Cyclone (shipkeeping) allowance

For each hour (including during Saturdays, Sundays and public holidays) on which an employee is on board a tug in port and available for the performance of any duty during a cyclone or cyclone alert an employee will be paid an allowance equal to 1.96% of the [standard rate](#standard_rate).

Emergency maintenance allowance

* + - 1. In this clause 14.1(c), **emergency maintenance** means work which is necessary to reinstate into service a tug which would otherwise be out of service.

[14.1(c)(ii) varied by [PR528460](http://www.fwc.gov.au/awardsandorders/html/PR528460.htm) from 24Sep12]

* + - 1. An employee who at the request of the employer is required to perform emergency maintenance work on board a tug outside the span of ordinary hours, will be paid an allowance as set out in the table below.

| **Category** | **% of** [**standard rate**](#standard_rate) **per hour** |
| --- | --- |
| General Purpose Rating | 6.62 |
| ***Category 1 (0*–*1850 tonnage/power units)*** |  |
| Mate | 8.25 |
| Master and Engineer | 10.51 |
| ***Category 2 (1850 or more tonnage/power units)*** |  |
| Mate | 7.60 |
| Master and Engineer | 10.96 |

Area and port-based allowances

* + - 1. In this clause 14.1(d), an area and port-based allowance refers to the following allowances prescribed in the *Tugboat Industry Award 1999*, made under the *Workplace Relations Act 1996* (Cth):
* payments for work outside port limits;
* area and port allowances; and
* resumption of duty allowance.
	+ - 1. An employee is entitled to payment of an area and port-based allowance in accordance with the terms of the *Tugboat Industry Award 1999*, made under the *Workplace Relations Act 1996* (Cth):
* that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
* that would have entitled the employee to payment of the area and port‑based allowance under clauses 9.5, 9.8, 12.10 and 12.11 of that award.
	+ - 1. Clause 14.1(d) ceases to operate on 31 December 2014.

Reimbursement and expense related allowances

Industrial and protective clothing

* + - 1. For each employee covered by this award who is required to wear industrial or protective clothing and equipment as stipulated by a relevant law or by the employer, the employer must reimburse the employee for the full cost of purchasing the industrial or protective clothing and equipment. The provisions of this subclause do not apply where the industrial or protective clothing and equipment is, or has been, paid for or provided by the employer and the employer replaces items on a fair wear and tear basis.
			2. Employees will be paid an allowance of $51.60 per annum towards the purchase of sunglasses for use during work.
			3. Employees are responsible for the safekeeping on board the vessel of each item of protective clothing.
			4. An employer may require an employee to sign a receipt for the issue of such clothing and equipment.

Meal allowance

[14.2(b) varied by [PR998175](http://www.fwc.gov.au/awardsandorders/html/PR998175.htm), [PR509203](http://www.fwc.gov.au/awardsandorders/html/PR509203.htm), [PR523033](http://www.fwc.gov.au/awardsandorders/html/PR523033.htm), [PR536836](http://www.fwc.gov.au/awardsandorders/html/pr536836.htm), [[PR551759](http://www.fwc.gov.au/awardsandorders/html/PR551759.htm)](http://www.fwc.gov.au/awardsandorders/html/PR000000.htm), [PR566860](http://www.fwc.gov.au/awardsandorders/html/PR566860.htm), [PR579555](http://www.fwc.gov.au/awardsandorders/html/PR579555.htm), [PR592310](http://www.fwc.gov.au/awardsandorders/html/pr592310.htm), [PR606531](https://www.fwc.gov.au/documents/awardsandorders/html/pr606531.htm), [PR704168](https://www.fwc.gov.au/documents/awardsandorders/html/pr704168.htm), [PR707663](https://www.fwc.gov.au/documents/awardsandorders/html/pr707663.htm) ppc 01Jul19]

Each employee will receive a meal allowance of $14.73 for each day worked, provided that an allowance is not required to be paid if the employer provides a meal or meal-making facilities.

Telephone allowance

[14.2(c)(i) varied by [PR998175](http://www.fwc.gov.au/awardsandorders/html/PR998175.htm), [PR523033](http://www.fwc.gov.au/awardsandorders/html/PR523033.htm), [PR536836](http://www.fwc.gov.au/awardsandorders/html/pr536836.htm), [[PR551759](http://www.fwc.gov.au/awardsandorders/html/PR551759.htm)](http://www.fwc.gov.au/awardsandorders/html/PR000000.htm) ppc 01Jul14]

* + - 1. An employee who is required by their employer to telephone for orders will be entitled to be reimbursed an amount of $166.03 per annum.
			2. The employer will reimburse full installation costs of a new service and pay transfer costs on one occasion during an employee’s period of service.

Loss of personal effects allowance

If by fire, explosion, foundering, shipwreck, collision or stranding, an employee sustains damage to or loss of their personal effects or equipment, the employer will compensate the employee for such damage or loss by a payment equivalent to the value thereof to a maximum of $1754 (or $2799 if the damage or loss occurs on outside work). The maximum payable for any one article is limited to $466.80.

Insurance allowance

Outside work

An employee who is engaged on outside work by an employer (other than an employee regularly or continuously engaged on outside work) is entitled to be paid by the employer an annual allowance equal to the annual premium paid by the employee to obtain a policy of insurance, approved in advance by the employer, which provides a benefit to the employee of $100,000 upon their death whilst engaged on outside work.

This clause does not apply where the employee’s employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of $100,000 upon their death whilst engaged on outside work.

Fire fighting insurance

In this clause 14.2(e)(ii), total and permanent disability means incapacitation to the following extent:

* the loss of two limbs (where limbs include the whole of one hand or the whole of one foot) or the sight of both eyes or the loss of one limb and the sight of one eye; or
* after a period of six consecutive months continuous absence from their employment on account of injury which is proved to the satisfaction of the insurer (after considering such medical or other evidence or advice as they may require from time to time) the employee is unable or unlikely ever again to be able to undertake any form of remunerative work for which they are reasonably fitted by education or training or experience.

An employee who is engaged in fire fighting by an employer is entitled to be paid by the employer an allowance equal to the annual premium paid by the employee to obtain a policy of insurance, approved in advance by the employer, which provides a benefit to the employee of $130,000 in the case of death or total and permanent disability caused by bodily injury of the employee whilst engaged in fire fighting. This subclause does not apply if the employee’s employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of $130,000 in the case of death or total and permanent disability caused by bodily injury of the employee whilst engaged in fire fighting.

Victualling and accommodation allowance in out-ports

[14.2(f)(i) varied by [PR998175](http://www.fwc.gov.au/awardsandorders/html/PR998175.htm), [PR509203](http://www.fwc.gov.au/awardsandorders/html/PR509203.htm), [PR523033](http://www.fwc.gov.au/awardsandorders/html/PR523033.htm), [PR536836](http://www.fwc.gov.au/awardsandorders/html/pr536836.htm), [[PR551759](http://www.fwc.gov.au/awardsandorders/html/PR551759.htm)](http://www.fwc.gov.au/awardsandorders/html/PR000000.htm), [PR566860](http://www.fwc.gov.au/awardsandorders/html/PR566860.htm), [PR579555](http://www.fwc.gov.au/awardsandorders/html/PR579555.htm), [PR592310](http://www.fwc.gov.au/awardsandorders/html/pr592310.htm), [PR606531](https://www.fwc.gov.au/documents/awardsandorders/html/pr606531.htm), [PR704168](https://www.fwc.gov.au/documents/awardsandorders/html/pr704168.htm), [PR707663](https://www.fwc.gov.au/documents/awardsandorders/html/pr707663.htm) ppc 01Jul19]

* + - 1. Where an employee is not at their home port and is required to eat and/or sleep ashore the following allowances will be payable:

|  |  |
| --- | --- |
|  | **Allowance** |
|  | **$** |
| Breakfast | 16.35 |
| Lunch | 19.15 |
| Dinner | 30.84 |
| Accommodation | 86.82 |
| Total daily allowance | 153.16 |

* + - 1. An employee will only be entitled to the accommodation allowance if:
* the place at which the employee sleeps is not their usual place of residence; and
* the employee produces evidence to the reasonable satisfaction of the employer that the employee has properly incurred expenditure on the provision of accommodation for themself for the night or nights in question.
	+ - 1. In the case of casual employees, the provisions of this clause only apply if the casual employee is engaged to perform work on a vessel at a port which is not the home port of the permanent employees in the vessel’s crew.

Travelling allowance

* + - 1. This clause 14.2(g) applies where an employee is either travelling from their home port to another port at the direction of the employer or travelling to their home port from another port at the direction of the employer.
			2. This clause 14.2(g) does not apply if the employer provides and or pays for the cost of transport.
			3. The employer will reimburse the employee for the reasonable cost of the transport required by the employer to be used.
			4. Unless the employee is in receipt of an aggregate wage or annual salary pursuant to clause 13.2, time spent travelling under this clause 14.2(g) will be considered as time worked. In the case of an employee who is in receipt of an aggregate wage or annual salary pursuant to clause 13.2, no additional payment is payable for time spent travelling.

Port-based travel allowances—transitional arrangements

[14.2(h)(i) substituted by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10]

* + - 1. An employee is entitled to payment of a port-based travelling allowance in accordance with the terms of the *Tugboat Industry Award 1999*, made under the *Workplace Relations Act 1996* (Cth):
* that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
* that would have entitled the employee to payment of the port-based travelling allowance under clauses 9.5 and 12.8 and Table 2 of that award.
	+ - 1. This clause 14.2(h)(i) ceases to operate on 31 December 2014.
			2. During this transitional period an employee is not entitled to payment of both the port-based travelling allowance and the travelling allowance under clause 14.2(g). The employee must be paid whichever allowance is the greater.

Expenses

* + - 1. The employer will reimburse an employee for any expenses reasonably incurred by the employee in the performance of their duties on behalf of the employer. Wherever possible, in order to be reimbursed the employee must seek the pre-approval of the employer to undertake the expense.
			2. As well as to other matters, this clause will apply to enquiries as to casualties or as to the conduct of employees and to proceedings for any alleged breach of any maritime or port or other regulations, unless the authority conducting the enquiry or proceedings finds that such enquiry or proceedings have been occasioned by the default or misconduct of the employee or, in the event of an appeal there from, the appellate tribunal finds that such enquiry or proceedings have been occasioned by the default or misconduct of the employee.

Adjustment of expense related allowances

* + 1. At the time of any adjustment to the [standard rate](#standard_rate), each expense related allowance in clause 14.2 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.

[14.3(b) varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10; [PR523033](http://www.fwc.gov.au/awardsandorders/html/PR523033.htm) ppc 01Jul12]

* + 1. 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 |
| Industrial and protective clothing | Clothing and footwear group |
| Telephone allowance | Telecommunication equipment and services sub-group |
| Loss of personal effects allowance | Household appliances, utensils and tools sub-group |
| Victualling and accommodation allowance in out-ports | All groups |

1. District allowances

[Varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm); deleted by [PR561478](http://www.fwc.gov.au/awardsandorders/html/PR561478.htm) ppc 05Mar15]

1. Allowances—Tug and barge operations

The allowances in this clause 16 only apply to employers operating in, and employees working in, tug and barge operations.

Allowances for disabilities associated with the performance of particular tasks or work in particular conditions or locations

Multiple tow allowance

* + - 1. The following allowances will be paid where a vessel engages in a multiple tow for each day the vessel is at sea, in port or anchored from the time the tow is assigned until the time the vessel is berthed at its final destination.

| **Classification** | **% of** [**standard rate**](#standard_rate) **per day** |
| --- | --- |
| Engineer, Mate and General Purpose Rating | 5.91 |
| Master and Chief Engineer | 11.69 |

* + - 1. On a changeover day the employees joining the vessel will be entitled to this allowance, which will not be payable to employees proceeding on leave.

Cooking allowance

|  |  |
| --- | --- |
| **Classification** | **% of** [**standard rate**](#standard_rate) **per week** |
| Rating and General Purpose Rating acting as Cook | 4.17 |

Additional skills allowance

|  |  |
| --- | --- |
| **Classification** | **% of** [**standard rate**](#standard_rate) **per week** |
| Rating and General Purpose Rating holding qualifications as a Crane Driver, Able Seaman or Offshore Watch-keeper | 12.51 |

Reimbursement and expense related allowances

Industrial and protective clothing

Clause 14.2(a) applies.

Loss of personal effects allowance

Clause 14.2(d) applies.

Meals and accommodation

Clause 14.2(f) applies.

Travelling allowance

Clause 14.2(g) applies.

Expenses

Clause 14.2(i) applies.

Method of adjusting expense related allowances

Clause 14.3 applies in relation to the allowances under clause 16.2.

Medicals and passport allowances

The employer will pay an allowance to the employee equal to the cost of any medical examination, eyesight or hearing test, passport (with associated vaccinations), visas, etc., required for the purpose of revalidating certificates of competency or as required by the employer.

1. Accident pay

[Varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm), [PR503669](http://www.fwc.gov.au/awardsandorders/html/PR503669.htm); deleted by [PR561478](http://www.fwc.gov.au/awardsandorders/html/PR561478.htm); new 17 inserted by [PR571837](http://www.fwc.gov.au/awardsandorders/html/PR571837.htm) ppc 15Oct15]

Definitions

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

* + 1. **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers’ compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
		2. **Injury** will be given the same meaning and application as applying under the applicable workers’ compensation legislation covering the employer.

Entitlement to accident pay

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

Calculation of the period

* + 1. The 52 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 52 week period.
		2. The termination by the employer of the employee’s employment within the 52 week period will not affect the employee’s entitlement to accident pay.
		3. For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

When not entitled to payment

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

Return to work

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

Redemptions

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

Damages independent of the Acts

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

Casual employees

For a casual employee, the weekly payment referred to in clause 17.1(a) will be calculated using the employee’s average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee’s average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

1. Payment of wages

[Varied by [PR610076](https://www.fwc.gov.au/documents/awardsandorders/html/pr610076.htm)]

[18.1 varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10]

* 1. The employer will pay the employee’s wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee’s bank (or other recognised financial institution) account nominated by the employee.
	2. An employer may deduct from any amount required to be paid to an employee under this clause the amount of any overpayment of wages or allowances.

Payment on termination of employment

[18.3 inserted by [PR610076](https://www.fwc.gov.au/documents/awardsandorders/html/pr610076.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 [PR990820](http://www.fwc.gov.au/awardsandorders/html/PR990820.htm), [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm), [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.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 19.2.
		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 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

Superannuation fund

[19.4 varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or (b) to one of the following superannuation funds or its successor:

* + 1. Maritime Super;
		2. AMP Superannuation Savings Trust;
		3. Sunsuper;

[19.4(d) deleted by [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.htm) ppc 01Jan14]

[19.4(e) renumbered as 19.4(d) and varied by [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.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 19.4(e) inserted by [PR546023](http://www.fwc.gov.au/awardsandorders/html/PR546023.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. Hours of work and rostering

Ordinary hours of work

For the purposes of the NES, the ordinary hours of work for full-time employees will be 35 hours per week, which may be averaged over a period of up to one year, and are given effect to in the manner provided under clause 23.2(c)(iv).

Span of hours

The span of hours in which ordinary hours may be worked will be between the hours of 0700 and 1700. An employer may agree with a majority of affected employees in a port to alter this spread of hours.

Maximum hours of work

* + 1. No employee will be required to perform work continuously in excess of 16 hours, except as provided in clause 20.3(b). An employee’s continuity of work is not broken by meal breaks taken pursuant to clause 21—Breaks and any other authorised period off duty of less than four hours duration.
		2. An employer may require an employee to perform work continuously in excess of 16 hours (extended hours) where:
			1. it is reasonably necessary to meet operational requirements;
			2. the employer endeavours to terminate the period of continuous work as soon as practicable; and
			3. the employer grants the employee a rest period of no less than 10 hours before requiring the employee to resume duty.
1. Breaks

Meal breaks

* + 1. An employee is entitled to a meal break of not less than 30 minutes after every five hours worked.
		2. Breaks will be scheduled by the employee’s supervisor based upon operational requirements so as to ensure continuity of operations. The employer will not require an employee to work more than five hours before the first meal is taken or between subsequent meal breaks if any.

Minimum breaks

* + 1. No break in duty will be of less than six hours duration from the time the employee is relieved from work. In computing a break of duty in relation to this subclause time off duty before the ordinary finishing time of the day up to 1600 hours will not count except on Saturdays, Sunday and public holidays.
		2. An employee who is required to resume duty after the ordinary finishing time of the day, when possible, will be given details of the work expected to be done up to and including the ordinary starting time the next day.
1. Overtime and penalty rates

Payment for working overtime

* + 1. Subject to any agreement pursuant to clause 13.2, the following payments will be made for working overtime:
			1. all time worked:
* in excess of the ordinary hours of duty, as specified in clause 20.1, or
* beyond the applicable span of hours under clause 20.2, must be paid for at the rate of time and one half for the first two hours and double time thereafter Monday to Friday;
	+ - 1. on Saturday the rate of time and a half for the first two hours and double time thereafter with a minimum of four hours’ payment; and
			2. on Sunday the rate of double time with a minimum of four hours’ payment.

Penalty rates—extended hours

Subject to any agreement pursuant to clause 13.2, an employee who is required to perform work pursuant to clause 20.3(b) must be paid for such work at the rate of double the employee’s hourly rate.

Calculating overtime and penalty rates

* + 1. In calculating overtime payments under clause 22.1, and penalty rates under clause 22.2, any period:
			1. less than half an hour will be counted as half an hour; and
			2. greater than half an hour but less than an hour will be counted as an hour.
		2. An employee who may have an entitlement under both clauses 22.1 and 22.2 will be paid whichever is the higher payment.

Resumption of duty

* + 1. This clause 22.4 does not apply in any case where an employee is subject to an agreement in accordance with clause 13.2.
		2. When an employee who has ceased duty on any day is required thereafter to resume duty otherwise than in a consecutive extension before or after ordinary duty for the day, the employee will be entitled to a minimum payment of four hours for each resumption but, if the employee has to resume duty on two occasions during the hours between 1800 hours on the one day and 0500 hours on the following day will be entitled to a payment for the whole of the time from the commencement of the first to the termination of the last resumption.
		3. For each resumption of duty on any day under this clause 22.4, otherwise than in a consecutive extension before or after ordinary duty for the day, travelling time of up to one hour will be considered as time worked.

22A. Requests for flexible working arrangements

[22A inserted by [PR701452](https://www.fwc.gov.au/documents/awardsandorders/html/pr701452.htm) ppc 01Dec18]

22A.1 Employee may request change in working arrangements

Clause 22A 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 22A is an addition to s.65.

22A.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)).

22A.3 What the written response must include if the employer refuses the request

Clause 22A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 22A.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 22A.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.

22A.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 22A.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.

22A.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 22A, can be dealt with under clause 9—Dispute resolution.

1. Leave and Public Holidays
2. Annual leave

[Varied by [PR588736](https://www.fwc.gov.au/documents/awardsandorders/html/pr588736.htm)]

* 1. Clause 23—Annual leave operates in conjunction with the NES. The provisions of this clause are intended to satisfy the provisions in the NES concerning maximum weekly hours of work, annual leave and public holidays.

Entitlement to leave

* + 1. A permanent full-time employee will be entitled to 168 days free of duty in each year, or to proportionate leave for any continuous service of less than a year.
		2. A part-time employee’s entitlement to days free of duty will be determined in accordance with clause 10.2.
		3. The leave prescribed in clause 23.2(a) above includes:
			1. 104 days of leave, being instead of weekends;
			2. five weeks of paid annual leave for shiftworkers under the NES. Employees under this award are considered to be shiftworkers for the purposes of the NES;
			3. public holiday entitlements under the NES; and
			4. an additional 28 days’ leave, to give effect to a 35 hour week.
	1. Employees will not be entitled to leave from duty under this clause 23 in relation to a period of absence from service on account of workers compensation, or leave without pay. An employee’s leave entitlement under clause 23.1 will be debited by 0.857 of a day for each day of absence referred to in this clause.
	2. Employers will consult with their employees and prepare a roster providing for the taking of leave from duty. Where practicable, the roster should provide for predictability to the taking of 140 days of leave from duty in each year (or the proportion of the employee’s entitlement to rostered leave days in a year that 140 bears to 168).
	3. Despite the provisions of this clause, the value of any leave given to the employee in advance will be deducted, upon termination of employment, from any money owing to an employee.

Continuous service

For the purposes of clause 23, a permanent employee will be deemed to have served continuously for the aggregate of their service although the service may have been temporarily interrupted (by up to 21 days) by transfer to some other work of their employer, or for the convenience of the employer, or by suspension of operations, or the need to carry out repairs or maintenance on a tug that the employee is rostered to work on.

Annual leave in advance

[23.7 inserted by [PR588736](https://www.fwc.gov.au/documents/awardsandorders/html/pr588736.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 23.7 is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C.

* + 1. The employer must keep a copy of any agreement under clause 23.7 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 23.7, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Cashing out of annual leave

[23.8 inserted by [PR588736](https://www.fwc.gov.au/documents/awardsandorders/html/pr588736.htm) ppc 20Dec16]

* + 1. Paid annual leave must not be cashed out except in accordance with an agreement under clause 23.8.
		2. Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 23.8.
		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 23.8 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 23.8 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.
		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 23.8 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 23.8.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 23.8.

Note 3: An example of the type of agreement required by clause 23.8 is set out at Schedule D. There is no requirement to use the form of agreement set out at Schedule D.

1. Personal/carer’s leave and compassionate leave

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

1. Community service leave

Community service leave is provided for in the NES.

1. Public holidays

[Varied by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm)]

* 1. Employees are entitled to public holidays in accordance with the NES.

[26.2 substituted by [PR994461](http://www.fwc.gov.au/awardsandorders/html/PR994461.htm) from 01Jan10]

* 1. In ports where clause 13.2 is not invoked, employees required to work on any of the days specified in the NES will be paid:
		1. for all hours worked within ordinary hours at the rate of time and a half of the minimum wage for their classification; and
		2. outside ordinary hours at the rate of double time and a half of the minimum wage for their classification,

with a minimum payment of four hours.

* 1. In ports where clause 13.2 is invoked, an agreement under clause 13.2 recognises that harbour towage operations require tugs to be available on any day of the year. Entitlements to public holidays under the NES are incorporated in the applicable port rosters developed under clause 23.4 and the aggregated entitlements to leave from duty.
1. Leave to deal with Family and Domestic Violence

[27 inserted by [PR609367](https://www.fwc.gov.au/documents/awardsandorders/html/pr609367.htm) ppc 01Aug18]

* 1. This clause applies to all employees, including casuals.

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 27.2(a) includes a former spouse or de facto partner.

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.

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.

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.

Notice and evidence requirements

Notice

An employee must give their employer notice of the taking of leave by the employee under clause 27. 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.

Evidence

An employee who has given their employer notice of the taking of leave under clause 27 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 27.4.

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.

Confidentiality

* + 1. Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 27.6 is treated confidentially, as far as it is reasonably practicable to do so.
		2. Nothing in clause 27 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.

Compliance

An employee is not entitled to take leave under clause 27 unless the employee complies with clause 27.

1. —Transitional Provisions

[Varied by [PR991557](http://www.fwc.gov.au/awardsandorders/html/PR991557.htm), [PR503669](http://www.fwc.gov.au/awardsandorders/html/PR503669.htm)]

General

* + 1. The provisions of this schedule deal with minimum obligations only.
		2. 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,
			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 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,
			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 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

* + 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.

* + 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

* + 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.

* + 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.
		2. 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.
		3. 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

* + 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.
		3. 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 [PR503669](http://www.fwc.gov.au/awardsandorders/html/PR503669.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. —Part-day Public Holidays

[Sched B inserted by [PR532631](http://www.fwc.gov.au/awardsandorders/html/pr532631.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 [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.htm)]

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

[B.1 varied by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.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.

[B.1(b) varied by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.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.

[B.1(c) substituted by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.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.

[B.1(d) varied by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.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.

[B.1(e) varied by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.htm) ppc 18Nov19]

* + - 1. Excluding annualised salaried employees to whom clause B.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.

[B.1(f) varied by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.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.

[B.1(g) varied by [PR715190](https://www.fwc.gov.au/documents/awardsandorders/html/pr715190.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 B.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.
			2. Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

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

1. —Agreement to Take Annual Leave in Advance

[Sched C inserted by [PR588736](https://www.fwc.gov.au/documents/awardsandorders/html/pr588736.htm) ppc 20Dec16]

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\_\_\_

|  |
| --- |
| *[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 D inserted by [PR588736](https://www.fwc.gov.au/documents/awardsandorders/html/pr588736.htm) ppc 20Dec16]

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\_\_\_

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