

The Fast Food Industry Award—plain language exposure draft was first published on 28 October 2020. Changes since that date are as follows:

Publication date	Amendments	Clauses affected
28 October 2020	Exposure Draft	
21 January 2021	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 14	7.2
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 25	12.4(a)(i)
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 29	13.2
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 34	15.2
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 42	17.8
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 44	18.3(d)
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 item 46	20.5
	[2021] FWCFB 293 at [4]; Consequential amendment – Summary of Submissions – 21/01/21 items 61, 62, 63 and 64	21.1
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 items 49, 56 and 57	22.2, 22.8(d), 22.8(e)
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 items 59 and 60	32.1(c), 32.3(c)
	[2021] FWCFB 293 at [4]; Summary of Submissions – 21/01/21 items 61, 62, 63 and 64	A.1.1, A.2.1, A.3.2, A.3.4
	Exposure Draft	
18 February 2021	[2021] FWCFB 858 at [9]	21.1, 22.3(b)(i), 22.3(b)(ii)
	[2021] FWCFB 858 at [11] and Attachment A; Summary of Submissions – 18/02/21 items 7, 8, 9, 23 and 24	4.2
	[2021] FWCFB 858 at [11] and Attachment A; Summary of Submissions – 18/02/21 items 23, 24, 26 and 27	12.4(a)(i), 12.4(b)(i)

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The Fast Food Industry Award—plain language exposure draft was first published on 28 October 2020. Changes since that date are as follows:

	[2021] FWCFB 858 at [11] and Attachment A; Summary of Submissions – 18/02/21 item 32	15.1
	[2021] FWCFB 858 at [11] and Attachment A; Summary of Submissions – 18/02/21 item 41	17.7(b)
	[2021] FWCFB 858 at [11] and Attachment A; Summary of Submissions – 18/02/21 item 48	20.6
	Administrative change made by Modern Awards team	A.3.1
	[2021] FWCFB 858 at [11] and Attachment A; Summary of Submissions – 18/02/21 item 65	B.2.1

PLAIN LANGUAGE EXPOSURE DRAFT

Fast Food Industry Award 20XX

The plain language exposure draft has been prepared by staff of the Fair Work Commission based on the *Fast Food Industry Award 2010* (Fast Food Award) as at 24 September 2020 and incorporates award updates to 20 November 2020. This exposure draft does not seek to amend any entitlements under the Fast Food Award. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award, in accordance with section 156 of the *Fair Work Act 2009*, is being dealt with in matters [AM2014/267](#) and [AM2016/15](#). Additionally, certain common issues are being finalised by the Commission and may affect this award. Transitional provisions have been deleted as a result of decisions during the review.

The Fast Food Award is a Group 3 award for the purposes of the [Annual Wage Review 2019–20](#). The rates and allowances will be updated in February 2021.

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

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Part 1—Application and Operation of this Award

1. Title and commencement

- 1.1 This is the *Fast Food Industry Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

2. Definitions

In this award:

Act means the [Fair Work Act 2009](#) (Cth).

adult employee means an employee who is 21 years of age or over.

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

employee means a national system employee as defined by section 13 of the [Act](#). See also section 30C and 30M of the [Act](#).

employer means a national system employer as defined by section 14 of the [Act](#). See also section 30D and 30N of the [Act](#).

enterprise instrument has the meaning given by subitem 2(1) of Schedule 6 to the [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009](#) (Cth).

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

Fair Work Regulations means the *Fair Work Regulations 2009* (Cth).

fast food industry is defined in clause 4.2.

immediate family has the meaning given by section 12 of the [Act](#).

junior employee means an employee who is under 21 years of age.

minimum hourly rate means the minimum hourly rate specified in clause 15—Minimum rates.

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

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

Commented [FWC1]: Item 2 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

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on-hire means the on-hire of an employee by their employer to a client, where the employee works under the general guidance and instruction of the client or a representative of the client.

standard rate means the minimum hourly rate for a fast food employee level 2 in **Table 3—Minimum rates**.

State reference public sector modern award has the meaning given by subitem 3(2) of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*.

State reference public sector transitional award has the meaning given by subitem 2(1) of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*.

Table 1—Facilitative provisions means the table in clause 7.2.

Table 2—Entitlements to rest and meal breaks means the table in clause 14.1.

Table 3—Minimum rates means the table in clause 15.1.

Table 4—Junior rates means the table in clause 15.2.

Table 5—Overtime rates means the table in clause 20.6.

Table 6—Penalty rates means the table in clause 21.1.

Table 7—Period of notice means the table in clause 31.1.

3. The National Employment Standards and this award

3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 The minimum conditions in the [NES](#) relate to the following matters:

- (a) maximum weekly hours (Division 3);
- (b) requests for flexible working arrangements (Division 4);
- (c) parental leave and related entitlements (Division 5);
- (d) annual leave (Division 6);
- (e) personal/carer's leave, compassionate leave and unpaid family and domestic violence leave (Division 7);
- (f) community service leave (Division 8);
- (g) long service leave (Division 9);
- (h) public holidays (Division 10);
- (i) notice of termination and redundancy pay (Division 11);
- (j) Fair Work Information Statement (Division 12).

Commented [FWC2]: Item 4 – outstanding. See [\[2021\] FWCFB 858](#) at [11].

SDA submission [Sub-25/11/20](#); Ai Group submission [Reply Sub – 9/12/20](#)

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

4. Coverage

Clauses 4.2 updated as a result of [\[2021\] FWCFB 858](#) at [11]; [Summary of Submissions – 18/02/21](#) items 7, 8 and 9 (see also items 23 and 24).

- 4.1 This industry award covers, to the exclusion of any other modern award:
- (a) employers in the fast food industry throughout Australia; and
 - (b) employees (with a classification defined in clause 12.4) of employers mentioned in clause 4.1(a).
- 4.2 In this award **fast food industry** means the industry of taking orders for, preparing, selling or delivering any of the following:
- (a) ~~food or~~ [meals, snacks and/or](#) beverages sold to the public primarily for consumption away from the point of sale; or
 - (b) ~~food or~~ [take away foods and/or](#) beverages packaged, sold or served in such a way as to allow them to be consumed away from the point of sale should the customer so decide; or
 - (c) food or beverages sold or served in food courts, shopping centres or retail complexes, excluding coffee shops, cafes, bars and restaurants that primarily provide a sit-down service [inside the catering establishment](#).
- 4.3 This industry award also covers:
- (a) on-hire employees working in the fast food industry (with a classification defined in clause 12.4) and the on-hire employers of those employees; and
 - (b) trainees employed by a group training employer and hosted by an employer covered by this award to work in the fast food industry (with a classification defined in clause 12.4) at a location where the employees mentioned in clause 4.1(b) also perform work and the group training employers of those trainees.
- 4.4 However, this industry award does not cover any of the following:
- (a) employees excluded from award coverage by the [Act](#); or
NOTE: See section 143(7) of the [Act](#).
 - (b) employees covered by a modern enterprise award or an enterprise instrument; or
 - (c) employees covered by a State reference public sector modern award or a State reference public sector transitional award; or
 - (d) [employers of employees mentioned in clause 4.4\(b\) or 4.4\(c\); or](#)

Commented [FWC3]: Item 10 – [SDA-25/11/20](#) submission; [Ai Group – 25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission; [SDA – 9/12/20](#) reply submission

Commented [FWC4]: Item 11 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

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- (e) employers covered by any of the following awards:
- (i) the *Hospitality Industry (General) Award 2020*; or
 - (ii) the *General Retail Industry Award 2020*.

Commented [FWC5]: Item 12 – [ABI & NSWBC - 25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission; [SDA – 9/12/20](#) reply submission

- 4.5 If an employer is covered by more than one award, an employee of the employer is covered by the award containing the classification that is most appropriate to the work performed by the employee and to the environment in which it is normally performed.

Commented [FWC6]: Item 13 – outstanding. See [\[2021\] FWCFB 858](#) at [11]
[Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

NOTE: An employee working in the fast food industry who is not covered by this industry award may be covered by an award with occupational coverage.

5. Individual flexibility arrangements

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

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

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

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

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

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

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

- 5.6 An agreement must do all of the following:

- (a) state the names of the employer and the employee; and
- (b) identify the award term, or award terms, the application of which is to be varied; and
- (c) set out how the application of the award term, or each award term, is varied; and

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- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

5.7 An agreement must be:

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

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

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

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

5.11 An agreement may be terminated:

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

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

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

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

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

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

NOTE 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A).

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

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

6.2 Responding to the request

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

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

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

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

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

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

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

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

6.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 30—Dispute resolution.

7. Facilitative provisions

7.1 A facilitative provision allows for the standard approach in an award provision to be changed by agreement between an employer and an individual employee at the workplace.

7.2 The following clauses in this award contain facilitative provisions:

Table 1—Facilitative provisions

Clause	Provision
20.7	Time off instead of payment for overtime
22.4	Annual leave in advance
22.5	Cashing out of annual leave
23.2(c)	Personal/carer's leave and compassionate leave—casual employees
27.2	Substitution of public holidays by agreement

Part 2—Types of Employment and Classifications

8. Types of employment

8.1 An employee covered by this award must be one of the following:

- (a) a full-time employee; or
- (b) a part-time employee; or
- (c) a casual employee.

8.2 At the time of engaging an employee, the employer must inform the employee of the terms of their engagement, including whether they are engaged as a full-time, part-time or casual employee.

9. Full-time employees

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week over a period of no more than 4 weeks.

NOTE: See clause 13—Ordinary hours of work and rostering for averaging terms.

10. Part-time employees

10.1 A part-time employee is an employee who:

- (a) works less than 38 ordinary hours per week; and
- (b) has reasonably predictable hours of work.

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- 10.2** The minimum daily engagement for a part-time employee is 3 consecutive hours.
- 10.3** At the time of engaging a part-time employee, the employer and the employee must agree in writing on a regular pattern of work. That agreement must include at least all of the following:
- (a) the number of ordinary hours to be worked each day; and
 - (b) the days of the week on which the employee will work; and
 - (c) the times at which the employee will start and finish work each day; and
 - (d) when meal breaks may be taken and their duration; and
 - (e) that the daily engagement is a minimum of 3 consecutive hours; and
 - (f) that any variation will be in writing, including by any electronic means of communication (for example, by text message).
- 10.4** The employer must keep a copy of any agreement made under clause 10.3 and give a copy to the employee.
- 10.5** The employer and the employee may agree to vary the regular pattern of work agreed to under clause 10.3 for a particular rostered shift provided that:
- (a) the agreed variation is recorded in writing, including by electronic means of communication, at or by the end of the affected shift; and
 - (b) the employer keeps a copy of the agreed variation and, if requested, gives a copy to the employee.
- 10.6** If no record of an agreed variation to a particular rostered shift under clause 10.5 is kept by the employer, then the employer must pay the employee at overtime rates for any hours worked in excess of the employee's regular pattern of work.
- 10.7** The employer and employee may agree to vary the regular pattern of work agreed to under clause 10.3 on an ongoing basis or for a specified period of time, provided that:
- (a) the agreed variation is recorded in writing, including by any electronic means of communication, before the variation occurs; and
 - (b) the employer keeps a copy of the agreed variation and gives a copy to the employee.
- 10.8** An employer must pay a part-time employee in accordance with clause 15—Minimum rates for each ordinary hour worked.
- 10.9** All time worked in excess of the number of ordinary hours agreed under clause 10.3 or varied under clause 10.5 or 10.7, is overtime and must be paid at the overtime rate in accordance with clause 20—Overtime.

Commented [FWC7]: Item 15 – [SDA-25/11/20](#) submission – no equivalent of FFIA cl.12.7; [Ai Group – 9/12/20](#) reply submission

Commented [FWC8]: Item 17 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

Commented [FWC9]: Item 17 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

Commented [FWC10]: Item 18 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

11. Casual employees

- 11.1** A casual employee is an employee engaged as such.

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11.2 An employee who is not covered by clause 9—Full-time employees or clause 10—Part-time employees must be engaged and paid as a casual employee.

11.3 An employer must pay a casual employee for each ordinary hour worked:

- (a) the minimum hourly rate in clause 15—Minimum rates for the classification in which they are employed; plus
- (b) a loading of **25%** of the minimum hourly rate.

NOTE 1: The casual loading is paid instead of entitlements from which casuals are excluded by the terms of this award and the [NES](#). See sections 86 to 93 of the [Act](#).

NOTE 2: Overtime and penalty rates applicable to casuals are set out in clauses 20—Overtime and 21—Penalty rates.

Commented [FWC11]: Item 19 – SDA-25/11/20 submission; Ai Group – 9/12/20 reply submission

11.4 The minimum daily engagement for a casual employee is 3 consecutive hours.

11.5 An employer must pay a casual employee at the end of each engagement, or weekly or fortnightly in accordance with pay arrangements for full-time employees.

11.6 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) 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.
- (e) Any request under clause 11.6 must be in writing and provided to the employer.
- (f) 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.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time 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 clause 11.6(b);

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- (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
- (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
- (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) 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.
- (j) 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 30—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.6, the employer and employee must discuss and record in writing:

 - (i) the form of employment to which the employee will convert— that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.3.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) 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.
- (n) 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 clause 11.6.
- (o) Nothing in clause 11.6 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.
- (p) Nothing in clause 11.6 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.

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- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.6 within the first 12 months of the employee’s first engagement to perform work.
- (r) A casual employee’s right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.6(q).

12. Classifications

Clauses 12.4(a)(i) and 12.4(b)(i) updated as a result of [\[2021\] FWCFB 858](#) at [11]; [Summary of Submissions – 18/02/21](#) items 23, 24, 26 and 27.

- 12.1 An employer must classify an employee covered by this award in accordance with clause 12.4.

NOTE: The minimum rates applicable to the classifications in this award are in clause 15—Minimum rates.

- 12.2 The classification by the employer must be based on the skill level that the employee is required to exercise in order to carry out the principal functions of the employment.

- 12.3 Employers must notify employees in writing of their classification and of any change to it.

12.4 Classification definitions

- (a) **Fast food employee level 1** means an employee who is:

- (i) engaged in taking orders for, preparing, serving, selling or delivering, ~~food~~ ~~or~~ meals, snacks and/or beverages that are sold to the public primarily for consumption away from the point of sale or in a food court, in a shopping centre or retail complex; and
- (ii) required to undertake duties as directed within the limits of their competence, skills and training, including incidental cleaning and the cleaning of toilets.

- (b) **Fast food employee level 2** means an employee who:

- (i) has the major responsibility on a day to day basis for supervising Fast food employees level 1 and/or training new employees; or
- (ii) is required to exercise trade skills.

- (c) **Fast food employee level 3** means an employee who is appointed by the employer to be in charge of a shop, food outlet or delivery outlet.

Commented [FWC12]: Item 20 – [Ai Group – 25/11/20](#) submission; [ABI & NSWBC - 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission; [Ai Group – 9/12/20](#) reply submission

Commented [FWC13]: Item 21 – [SDA-25/11/20](#) submission; [SDA – 9/12/20](#) reply submission; [Ai Group – 9/12/20](#) reply submission

Commented [FWC14]: Item 22 – [Ai Group – 25/11/20](#) submission; [ABI & NSWBC - 25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission; [SDA – 9/12/20](#) reply submission

Commented [FWC15]: Item 25 – see [\[2021\] FWCFB 858](#) at [12]

Part 3—Hours of Work

13. Ordinary hours of work and rostering

- 13.1 The ordinary hours of work for a full-time employee are an average of 38 ordinary hours per week over a period of no more than 4 weeks. See clause 9—Full-time employees.
- 13.2 An employer must roster a full-time employee in accordance with one of the following options:
- (a) working 38 ordinary hours per week; or
 - (b) working 76 ordinary hours over 2 consecutive weeks; or
 - (c) working 114 ordinary hours over 3 consecutive weeks; or
 - (d) working 152 ordinary hours over 4 consecutive weeks.
- 13.3 The ordinary hours of work for a part-time employee are as agreed under clause 10—Part-time employees.
- 13.4 The maximum number of ordinary hours that can be worked on any day is 11 hours.
- 13.5 Ordinary hours of work on any day are continuous, except for rest breaks and meal breaks, as specified in clause 14—Breaks.
- 13.6 Clause 13 does not operate to limit or increase or in any way alter the trading hours of any employer as determined by any relevant State or Territory legislation.

Commented [FWC16]: Item 28 – Ai Group – 25/11/20 submission; SDA – 9/12/20 reply submission

14. Breaks

- 14.1 Employees are entitled to rest and meal breaks in the following circumstances:

Table 2—Entitlements to rest and meal breaks

Hours worked per shift	Rest breaks	Meal breaks
Less than 4 hours	No rest break	No meal break
4 hours or more but less than 5 hours	One 10 minute paid rest break	No meal break
5 hours or more but less than 9 hours	One 10 minute paid rest break	One unpaid meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	If 2 unpaid meal breaks are provided:	
	One 10 minute paid rest break	Two unpaid meal breaks of at least 30 minutes but not more than 60 minutes
	Or, if 2 unpaid meal breaks are not provided:	

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Hours worked per shift	Rest breaks	Meal breaks
	Two 10 minute paid rest breaks — one to be taken in the first half of the shift and one in the second half of the shift	One unpaid meal break of at least 30 minutes but not more than 60 minutes

NOTE: Rest breaks count as time worked. Meal breaks do not count as time worked.

- 14.2** The timing and duration of rest and meal breaks for part-time employees must be included in the roster and are subject to any agreement made under clause 10.3 regarding a part-time employee’s regular pattern of work.
- 14.3** A variation agreed under clauses 10.5 and 10.7 for a part-time employee may include a variation to the time of taking rest and meal breaks.
- 14.4** When rostering rest and meal breaks, the employer must seek to ensure that the employee has meaningful breaks during work hours.
- 14.5** An employer cannot require an employee:
- (a) to take a rest break or meal break within the first or the last hour of work; or
 - (b) to take a rest break combined with a meal break; or
 - (c) to work more than 5 hours without taking a meal break.

Commented [FWC17]: Item 30 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

Part 4—Wages and Allowances

15. Minimum rates

Clause 15.1 updated as a result of [\[2021\] FWCFCB 858](#) at [11]; [Summary of Submissions – 18/02/21](#) item 32.

15.1 Adult rates

An employer must pay an adult employee, as defined in clause 2—Definitions, the minimum hourly rate applicable to the employee’s classification for ordinary hours of work as follows:

Table 3—Minimum rates

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Fast food employee level 1	813.60	21.41
Fast food employee level 2	862.50	22.70
Fast food employee level 3— in charge of one or no person	875.80	23.05

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Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Fast food employee level 3— in charge of 2 or more people	886.50	23.33

[NOTE 1: The minimum hourly rate is 1/38th of the minimum weekly rate.](#)

NOTE [2](#): Provisions for calculating rates for casual employees are at clause 11—Casual employees.

NOTE [3](#): See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including casual, overtime and penalty rates.

15.2 Junior rates

An employer must pay a junior employee, as defined in clause 2—Definitions, the minimum percentage of the adult rate applicable to the employee’s classification in clause 15.1 for ordinary hours of work as follows:

Commented [FWC18]: Item 33 – SDA-25/11/20 submission; AI Group – 9/12/20 reply submission

Table 4—Junior rates

Age	% of applicable adult rate
15 years of age and under	40
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

NOTE: See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay for junior employees including casual, overtime and penalty rates.

15.3 Supported wage system

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

15.4 National training wage

- (a) Schedule E to the [Miscellaneous Award 2020](#) sets out minimum rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the [Miscellaneous Award 2020](#) as at 1 July 2019. For that purpose, any reference to “this award” in Schedule E to the [Miscellaneous Award 2020](#) is to be read as referring to the *Fast Food Industry Award 20XX* and not to the [Miscellaneous Award 2020](#).

16. Payment of wages

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

16.1 The employer may determine the pay period of an employee as being either weekly or fortnightly.

16.2 Wages must be paid for a pay period according to the actual hours worked by the employee in the period or they may be averaged over a fortnight.

16.3 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under clause 16.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: Clause 16.3(b) allows the Commission to make an order delaying the requirement to make a payment under clause 16.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

17. Allowances

Clause 17.7(b) updated as a result of [\[2021\] FWCFB 858](#) at [11]; [Summary of Submissions – 18/02/21](#) item 41.

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

17.1 Employees are entitled to monetary allowances of the specified kinds in the specified circumstances set out in clause 17.

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NOTE: Schedule B—Summary of Monetary Allowances contains a summary of monetary allowances and methods of adjustment.

17.2 Broken Hill allowance

An employer must pay an employee at a workplace within the County of Yancowinna in New South Wales (Broken Hill) an allowance of **\$36.92** per week. This allowance is in addition to all other payments.

Commented [FWC19]: Item 35 – outstanding. See [\[2021\] FWCFB 858](#) at [11].

SDA submission [Sub-25/11/20](#); Ai Group submission [Reply Sub – 9/12/20](#)

Please note: Schedule C may need to be updated, depending on the outcome of this issue.

17.3 Cold work allowance

If an employee is principally employed on any day to enter cold chambers or to stock or refill refrigerated storages such as dairy cases or freezer cabinets, then:

- (a) the employer must pay the employee an allowance of **\$0.30** per hour while so employed; and
- (b) if the temperature in a cold chamber in which the employee is required to work is below 0°C, then the employer must pay the employee an additional allowance of **\$0.45** per hour while so employed—that is, the employer must pay the employee a total allowance of **\$0.75** per hour.

17.4 Meal allowance

- (a) An employer must either pay an employee a meal allowance of **\$13.32** or supply the employee with a meal if all of the following apply:
 - (i) the employee is required to work overtime of more than one hour on any day after the time at which the employee ordinarily finishes work for the day; and
 - (ii) the employee was not given at least 24 hours' notice of that overtime requirement; and
 - (iii) the employee cannot reasonably return home for a meal in their meal break.
- (b) If the overtime mentioned in clause 17.4(a) is more than 4 hours, then the employer must pay the employee a further meal allowance of **\$12.03**.

Commented [FWC20]: Item 37 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

17.5 Special clothing allowance

- (a) If an employer requires an employee to wear any article of clothing, such as a uniform, dress, protective or other clothing, (**special clothing**), then the employer must:
 - (i) supply the special clothing to the employee; or
 - (ii) pay for the special clothing; or
 - (iii) reimburse the employee the costs of purchasing the special clothing and of replacing it as necessary because of normal wear and tear.
- (b) If the employee is responsible for laundering their special clothing, then the employer must pay the employee an allowance of:

Commented [FWC21]: Item 38 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

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- (i) \$6.25 per week for a full-time employee; or
- (ii) \$1.25 per shift for a part-time or casual employee

17.6 Travelling time reimbursement

- (a) If an employer requires an employee to work on any day at a place other than their usual place of work, then the employer must:
 - (i) pay the employee for any extra time reasonably spent travelling to and from work in excess of their normal travel times, as calculated under clause 17.6(b) at the rates set out in clause 17.6(c); and
 - (ii) reimburse the employee for any additional costs incurred in travelling to and from the other place of work.
- (b) The employer must pay the amounts in clause 17.6(c) for the extra time the employee spends travelling:
 - (i) both ways between the employee's residence and the other place of work; or
 - (ii) if the employer provides transport from a pick-up point, both ways between the employee's residence and that pick-up point.
- (c) The employer must pay the employee for the travelling time calculated under clause 17.6(b):
 - (i) on Monday to Saturday, at their minimum hourly rate of pay; or
 - (ii) on Sunday or a public holiday, at 150% of their minimum hourly rate of pay.

Commented [FWC22]: Item 39 – SDA-25/11/20 submission; Ai Group – 9/12/20 reply submission

17.7 Transport of employee reimbursement

- (a) An employer must reimburse an employee's travel costs as calculated under clause 17.7(b) if all of the following apply:
 - (i) the employee starts or finishes work on any day after 10.00 pm or before 7.00 am; and
 - (ii) the employee's regular means of transport is not available; and
 - (iii) the employee is unable to arrange their own alternative transport; and
 - (iv) the employer does not provide or arrange transport for the employee, at no cost to the employee.
- (b) The employer must reimburse the employee, as applicable, for any cost they reasonably incur in taking a commercial passenger vehicle:
 - (i) from their usual place of residence to their place of work; or
 - (ii) from their place of work to their usual place of residence, whichever is applicable.

Commented [FWC23]: Item 40 – SDA-25/11/20 submission; Ai Group – 9/12/20 reply submission

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- (c) Nothing in clause 17.7 prevents an employee from choosing to provide their own transport.

17.8 Motor vehicle allowance

If an employer requests an employee to use their own motor vehicle in performing their duties, then the employer must pay the employee an allowance for each kilometre travelled in performing their duties as follows:

- (a) **\$0.41** per kilometre if the employee is engaged primarily to deliver the employer's products to customers using their own motor vehicle; or
- (b) **\$0.78** per kilometre in any other case.

17.9 Excess travelling costs

If an employer requires an employee to move from one branch or shop to another for a period of up to 3 weeks, then the employer must reimburse the employee any additional travel costs they incur in travelling to and from those branches and shops.

17.10 Moving expenses

- (a) Clause 17.10 applies if an employer transfers an employee from one township to another.
- (b) The employer must pay the total cost (including fares and other transport charges) of moving the employee and any members of the employee's immediate family, as defined in clause 2—Definitions, who reside in the employee's household.

18. Accident pay

18.1 Clause 18 applies to an employee who is receiving weekly workers' compensation payments for an injury suffered by the employee.

18.2 In clause 18:

- (a) **accident pay** means a weekly payment made by an employer to an employee of an amount that is equal to the difference between:
 - (i) the weekly amount the employee is entitled to receive under the applicable workers' compensation legislation; and
 - (ii) the weekly rate of pay the employee would have received had they been performing their normal duties within their classification level including, for a casual employee, the casual loading specified in clause 11.3(b) but, in any case, not including any excluded payments.
- (b) **excluded payments** means any of the following:
 - (i) over-award payments; or
 - (ii) shift loadings; or
 - (iii) overtime; or

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- (iv) attendance bonus payments; or
 - (v) special rates; or
 - (vi) fares and travelling allowances; or
 - (vii) other similar payments.
- (c) **injury** has the same meaning as in the applicable workers' compensation legislation.

18.3 Entitlement to the payment

- (a) The employer must pay accident pay to the employee for up to 26 weeks if an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation
- (b) An employee is not entitled to accident pay in respect of:
- (i) an injury during the first 7 consecutive days (including non-working days) of incapacity; or
 - (ii) any incapacity occurring during the first 2 weeks of employment unless the incapacity continues beyond the first 2 weeks.
- (c) An employee is not entitled to accident pay in respect of any period of paid annual leave or long service leave, or for any paid public holiday.
- (d) The entitlement of an employee to accident pay continues on termination of the employee's employment where the termination is:
- (i) by the employer other than for reasons of the employee's serious or wilful misconduct; or
 - (ii) because of the employer's bankruptcy or the liquidation of the employer's business.

NOTE: The Fair Work Commission may determine the entitlement of an employee to accident pay in the circumstances mentioned in clause 18.3(d)(ii).

Commented [FWC24]: Item 45 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

Commented [FWC25]: Item 45 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

Commented [FWC26]: Please note: the reference may change as a result of item 45

18.4 Calculation of the period

- (a) The 26 week period begins from the first day of incapacity for work, whether that day is the date of injury or a subsequent day.
- (b) If the employee is absent from work on more than one occasion because of the injury, the absences are to be treated as cumulative in working out the 26 week period.

18.5 Calculation of the amount

- (a) If accident pay is paid for a period of less than one week, then the amount is calculated on a pro-rata basis.
- (b) For a casual employee, the amount of accident pay is calculated using either:

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- (i) the employee's average weekly ordinary hours with the employer over the previous 12 months; or
- (ii) 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.

18.6 Return to work

If an employee, who is entitled to accident pay, returns to work on reduced hours or modified duties, then the amount of accident pay to which the employee is entitled must be reduced by any amounts paid for performing that work.

18.7 Lump sum payments

If an employee receives a lump sum payment instead of weekly payments under the applicable workers' compensation legislation in respect of the injury, then the employee's entitlement to accident pay ends from the date of receipt of that payment.

18.8 Independent recovery of damages

If an employee recovers damages from the employer or a third party in respect of the injury independently of the applicable workers' compensation legislation, then the employee:

- (a) is liable to repay to the employer the amount of accident pay that the employer has paid to the employee under clause 18; and
- (b) is not entitled to any further accident pay in respect of the injury.

19. Superannuation

In accordance with section 156(2)(c) of the [Act](#) this clause has not been redrafted.

19.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

19.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the

superannuation guarantee charge under superannuation legislation with respect to that employee.

19.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 19.3(a) or 19.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or 19.3(b) was made.

19.4 Superannuation fund

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 19.3(b) to one of the following superannuation funds or its successor:

- (a) Retail Employees Superannuation Trust (REST);
- (b) Sunsuper;
- (c) Intrust Super;
- (d) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (e) a superannuation fund or scheme which the employee is a defined benefit member of.

19.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or 19.3(b):

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

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

Part 5—Overtime and Penalty Rates

20. Overtime

Clause 20.6 updated as a result of [\[2021\]FWCFB 858](#) at [11]; [Summary of Submissions – 18/02/21](#) item 48

20.1 Reasonable overtime

- (a) Subject to section 62 of the [Act](#) and clause 20.1, an employer may require an employee to work reasonable overtime hours at overtime rates.
- (b) An employee may refuse to work overtime hours if they are unreasonable.
- (c) In determining whether overtime hours are reasonable or unreasonable for the purpose of clause 20.1 the following must be taken into account:
 - (i) any risk to employee health and safety from working the additional hours;
 - (ii) the employee's personal circumstances, including family responsibilities;
 - (iii) the needs of the workplace or enterprise in which the employee is employed;
 - (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
 - (v) any notice given by the employer of any request or requirement to work the additional hours;
 - (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
 - (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
 - (viii) the nature of the employee's role, and the employee's level of responsibility;
 - (ix) whether the additional hours are in accordance with averaging terms of clause 13—Ordinary hours of work and rostering, inserted pursuant to section 63 of the [Act](#), that applies to the employee; and
 - (x) any other relevant matter.

20.2 Payment of overtime for full-time employees

An employer must pay a full-time employee at the overtime rate in clause 20.6 for any hours worked:

- (a) in excess of:
 - (i) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or
 - (ii) 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are worked on not more than 4 days); or
 - (iii) 11 ordinary hours on any one day; or
- (b) before the employee's rostered start time on any one day, or
- (c) after the employee's rostered finish time on any one day; or
- (d) outside the ordinary hours of work.

20.3 Payment of overtime for part-time employees

An employer must pay a part-time employee at the overtime rate in clause 20.6 for any hours worked as follows:

- (a) in excess of:
 - (i) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or
 - (ii) 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are worked on not more than 4 days); or
 - (iii) 11 ordinary hours on any one day; or
 - (iv) the agreed hours in clause 10.3; or
 - (v) the agreed hours as varied under clauses 10.5 or 10.7; or
 - (vi) their regular pattern of work in circumstances where there is no written record of an agreed variation to a particular rostered shift; or
- (b) before the employee's rostered start time on any one day, or
- (c) after the employee's rostered finish time, on any one day; or
- (d) outside the ordinary hours of work.

20.4 Payment of overtime for casual employees

An employer must pay a casual employee at the overtime rate in clause 20.6 for any hours worked in excess of:

- (a) 38 ordinary hours per week or, where the employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or

- (b) 11 ordinary hours on any one day.

20.5 Minimum payment on a Sunday

If an employee works overtime on a Sunday and the overtime is not immediately before or after ordinary hours, then the employer must pay the employee at the overtime rate in clause 20.6 for a minimum of 4 hours, even if the employee is required to work for a shorter time.

NOTE: This entitlement does not apply if the overtime is worked immediately before, or immediately after, ordinary hours.

20.6 Overtime rates

- (a) An employer must pay an employee for overtime worked as set out in clauses 20.2, 20.3 and 20.4 at the following rates:

Table 5—Overtime rates

For overtime worked:	Full-time and part-time employees % of minimum hourly rate	Casual employees % of minimum hourly rate
Monday to Saturday— first 2 hours	150	175
Monday to Saturday— after 2 hours	200	225
Sunday—all overtime hours	200	225
Public holiday—all overtime hours	250	275

NOTE 1: The overtime rates for casual employees have been calculated by adding the casual loading specified in clause 11.3(b) to the overtime rates for full-time and part-time employees specified in clause 20.6(a).

NOTE 2: Schedule A—Summary of Hourly Rates of Pay sets out the hourly overtime rate for all employee classifications.

- (b) The overtime rates prescribed in clause 20.6(a) for overtime work on Monday to Saturday are to be calculated on the basis that each day's work stands alone.

20.7 Time off instead of payment for overtime

- (a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 20.6(b) an employee who worked 2 overtime hours at **150%** of the minimum hourly rate is entitled to 3 hours' time off.

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- (c) Time off must be taken:
- (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 20.6(b) but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 20.7(c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request, then clause 20.6(b) will apply to the overtime.

NOTE: Clause 6—Requests for flexible working arrangements contains additional provisions to section 65 of the [Act](#) relating to requests for flexible working arrangements. If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the [Act](#)).

- (h) If, on the termination of the employee’s employment, time off for overtime worked by the employee to which clause 20.6(b) applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.6(b).

21. Penalty rates

Clause 21.1, Note 1 updated as a result of [\[2021\] FWC FB 858](#) at [9]

- 21.1 An employer must pay penalty rates to an employee who works ordinary hours as follows:

Table 6—Penalty rates

For ordinary hours worked:	Full-time and part-time employees % of minimum hourly rate	Casual employees % of minimum hourly rate
Monday to Friday—between 10.00 pm and midnight	110	135
Monday to Friday—between midnight and 6.00 am	115	140
Saturday—all ordinary hours	125	150
Sunday (Level 1 employees)—all ordinary hours	125	150
Sunday (Level 2 and 3 employees)—all ordinary hours	150	175
Public holiday—all ordinary hours	225	250

NOTE 1: The penalty rates for casual employees have been calculated by adding the casual loading specified in clause 11.3(b) to the penalty rates for full-time and part-time employees specified in clause 21.10.

NOTE 2: Schedule A—Summary of Hourly Rates of Pay sets out the hourly penalty rate for all employee classifications.

Part 6—Leave and Public Holidays

22. Annual leave

Clause 22.3(b)(i) and 2.3(b)(ii) updated as a result of [\[2021\]FWCFB 858](#) at [9]

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

22.1 Annual leave is provided for in the [NES](#). See sections 86 to 93 of the [Act](#). It does not apply to casual employees.

22.2 Additional paid annual leave for certain shiftworkers

A 7-day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week is entitled to an additional week of paid leave under the [NES](#). See section 87 of the [Act](#).

Commented [FWC27]: Item 50 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

Commented [FWC28]: Item 51 – [SDA-25/11/20](#) submission

22.3 Annual leave loading

(a) An employee is entitled to an additional payment for accrued annual leave, calculated on the minimum hourly rate specified in clause 15—Minimum rates for the classification in which they are employed.

Commented [FWC29]: Items 52 and 53 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

(b) The additional payment for the employee’s ordinary hours of work when taking paid annual leave is as follows:

Commented [FWC30]: Items 52 and 53 – [SDA-25/11/20](#) submission; [Ai Group – 9/12/20](#) reply submission

(i) Dayworkers

An employee who would have worked on day work only had they not been on leave must be paid the greater of either:

- the minimum hourly rate plus a loading of 17.5% of the minimum hourly rate; or
- the relevant weekend penalty rate specified in clause 21.10.

(ii) Shiftworkers

An employee who would have worked on shift work had they not been on leave must be paid the greater of either:

- the minimum hourly rate plus a loading of 17.5% of the minimum hourly rate; or
- the relevant penalty rate specified in clause 21.10, including relevant weekend penalty rates.

Commented [FWC31]: Item 54 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

NOTE: Section 90(2) of the [Act](#) contains provisions relating to an employee’s entitlement to payment for any untaken paid annual leave when employment ends.

22.4 Annual leave in advance

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

- (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
- (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.

NOTE: An example of the type of agreement required by clause 22.4 is set out at Schedule D—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule D—Agreement to Take Annual Leave in Advance.

(c) The employer must keep a copy of any agreement under clause 22.4 as an employee record.

(d) If, on the termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in

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accordance with an agreement under clause 22.4, 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.

22.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.5(c).
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.5(c).
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 22.5(c) must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 22.5(c) must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made. See clause 22.3.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 22.5(c) as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.5(c).

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.5.

NOTE 3: An example of the type of agreement required by clause 22.5(c) is set out at Schedule E—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Cash Out Annual Leave.

22.6 Excessive leave accruals: general provision

NOTE: Clauses 22.6 to 22.8 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See sections 86 to 93 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by [clause 22.2](#)).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 22.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

Commented [FWC32]: Item 55 – [Ai Group – 25/11/20](#) submission; [SDA – 9/12/20](#) reply submission

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

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 22.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 22.7(a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 22.7(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 22.7(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 22.7(d) may result in the direction ceasing to have effect. See clause 22.7(b)(i).

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NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

22.8 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 22.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under clause 22.8(a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 22.7(a) that, when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 22.8(b) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under clause 22.8(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by [clause 22.2](#)) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 22.8(a).

Commented [FWC33]: Please note: the provision may change as a result of item 55

23. Personal/carer's leave and compassionate leave

- 23.1** Personal/carer's leave and compassionate leave are provided for in the [NES](#).

23.2 Casual employees

- (a) Subject to clause 23.2(b), casual employees are entitled to be absent from work, whether by making themselves unavailable for work or by leaving work, to care for a person who requires care because of:
 - (i) illness or an injury; or
 - (ii) an emergency.
- (b) A casual employee may only be absent from work under clause 23.2 for a period of up to 48 hours.
- (c) With the agreement of the employer, a casual employee may be absent from work for a purpose mentioned in clause 23.2 for longer than 48 hours.
- (d) A casual employee is not entitled to be paid for time away from work for a purpose mentioned in clause 23.2.
- (e) An employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under clause 23.2.

24. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the [NES](#).

25. Community service leave

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

26. Unpaid family and domestic violence leave

Unpaid family and domestic violence leave is provided for in the [NES](#).

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

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

27. Public holidays

27.1 Public holiday entitlements are provided for in the [NES](#).

27.2 Substitution of public holidays by agreement

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

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

27.3 Payment for work on public holiday or substitute day

- (a) An employer must pay an employee who works on a public holiday, or on a day that is substituted for a public holiday, at the public holiday penalty rate set out in clauses 20—Overtime and 21—Penalty rates.
- (b) An employer must pay an employee who works on a part-day public holiday, or on a day that is substituted for a part-day public holiday, at the public holiday penalty rate set out in clauses 20—Overtime and 21—Penalty rates.
- (c) If an employee works on both a public holiday and on a day that is substituted for the public holiday, the public holiday penalty rate is applicable to only one of those days. The employee may choose which day is to be paid at the public holiday penalty rate.
- (d) If an employee works on both a part-day public holiday and on a part-day that is substituted for the part-day public holiday, the public holiday penalty rate is applicable to only one of those days. The employee may choose which part-day is to be paid at the public holiday penalty rate.

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

Part 7—Consultation and Dispute Resolution

28. Consultation about major workplace change

28.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

28.2 For the purposes of the discussion under clause 28.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

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- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

28.3 Clause 28.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

28.4 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 28.1(b).

28.5 In clause 28:

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

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or
- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

28.6 Where this award makes provision for alteration of any of the matters defined at clause 28.5, such alteration is taken not to have significant effect.

29. Consultation about changes to rosters or hours of work

29.1 Clause 29 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.

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

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

- (a) provide to the employees and representatives mentioned in clause 29.2 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.

29.4 The employer must consider any views given under clause 29.3(b).

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29.5 Clause 29 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

30. Dispute resolution

30.1 Clause 30 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

30.2 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.

30.3 If the dispute is not resolved through discussion as mentioned in clause 30.2, 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.

30.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 30.2 and 30.3, a party to the dispute may refer it to the Fair Work Commission.

30.5 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.

30.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.

30.7 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 30.

30.8 While procedures are being followed under clause 30 in relation to a dispute:

- (a) work must continue in accordance with this award and the [Act](#); and
- (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

30.9 Clause 30.8 is subject to any applicable work health and safety legislation.

Part 8—Termination of Employment and Redundancy

31. Termination of employment

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

31.1 Notice of termination by an employee

- (a) Clause 31.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).

- (b) An employee must give the employer notice of termination in accordance with **Table 7—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 7—Period of notice

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

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer, except that the employee does not have to give additional notice based on the age of the employee, if the employee is over 45 years and has completed at least 2 years’ continuous service.

- (c) In clause 31.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 31.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week’s wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 31.1(b), then no deduction can be made under clause 31.1(d).
- (f) Any deduction made under clause 31.1(d) must not be unreasonable in the circumstances.

31.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 31.2 is to be taken at times that are convenient to the employee after consultation with the employer.

32. Redundancy

Clauses 32.1(c) and 32.3(c) updated as a result of [Summary of Submissions – 18/02/21](#) items 59 and 60

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119 to 123 of the [Act](#).

32.1 Transfer to lower paid duties on redundancy

- (a) Clause 32.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
 - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
 - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 32.1(c).
- (c) If the employer acts as mentioned in clause 32.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates 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, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

32.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 32 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

32.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 32.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.

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- (c) A statutory declaration is sufficient for the purpose of clause 32.3(b). |
- (d) An employee who fails to produce proof when required under clause 32.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 31.2.

DRAFT

Schedule A—Summary of Hourly Rates of Pay

Clause A.3.1 – administrative change made by Modern Awards team

See also Part 4—Wages and Allowances and Part 5—Overtime and Penalty Rates.

A.1 Full-time and part-time adult employees

A.1.1 Full-time and part-time adult employees—ordinary and penalty rates

	Ordinary hours	Evening work – Monday to Friday – between 10.00 pm and midnight	Evening work – Monday to Friday – after midnight and before 6.00 am	Saturday	Sunday – level 1	Sunday – levels 2 and 3	Public holiday
	% of minimum hourly rate						
	100%	110%	115%	125%	125%	150%	225%
	\$	\$	\$	\$	\$	\$	\$
Fast food employee level 1	21.41	23.55	24.62	26.76	26.76		48.17
Fast food employee level 2	22.70	24.97	26.11	28.38		34.05	51.08
Fast food employee level 3—in charge of one or no person	23.05	25.36	26.51	28.81		34.58	51.86
Fast food employee level 3—in charge of 2 or more people	23.33	25.66	26.83	29.16		35.00	52.49

A.1.2 Full-time and part-time adult employees—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all hours	Public holiday – all hours
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Fast food employee level 1	32.12	42.82	42.82	53.53
Fast food employee level 2	34.05	45.40	45.40	56.75
Fast food employee level 3—in charge of one or no person	34.58	46.10	46.10	57.63
Fast food employee level 3—in charge of 2 or more people	35.00	46.66	46.66	58.33

A.2 Casual adult employees

A.2.1 Casual adult employees—ordinary and penalty rates

	Ordinary hours	Evening work – Monday to Friday – between 10.00 pm and midnight	Evening work – Monday to Friday – after midnight and before 6.00 am	Saturday	Sunday – level 1	Sunday – levels 2 and 3	Public holiday
	% of minimum hourly rate						
	125%	135%	140%	150%	150%	175%	250%
	\$	\$	\$	\$	\$	\$	\$
Fast food employee level 1	26.76	28.90	29.97	32.12	32.12		53.53
Fast food employee level 2	28.38	30.65	31.78	34.05		39.73	56.75
Fast food employee level 3—in charge of one or no person	28.81	31.12	32.27	34.58		40.34	57.63
Fast food employee level 3—in charge of 2 or more people	29.16	31.50	32.66	35.00		40.83	58.33

A.2.2 Casual adult employees—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all hours	Public holiday – all hours
	% of minimum hourly rate			
	175%	225%	225%	275%
	\$	\$	\$	\$
Fast food employee level 1	37.47	48.17	48.17	58.88
Fast food employee level 2	39.73	51.08	51.08	62.43
Fast food employee level 3—in charge of one or no person	40.34	51.86	51.86	63.39
Fast food employee level 3—in charge of 2 or more people	40.83	52.49	52.49	64.16

A.3 Junior rates

A.3.1 The **junior hourly rate** is based on a percentage of the appropriate adult rate, as set out in clause 15—Minimum rates ~~15.1—Adult rates and 15.2—Junior rates~~. Adult rates apply from 21 years of age. See clause 2—Definitions.

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A.3.2 Full-time and part-time junior employees—ordinary and penalty rates

Age	Ordinary hours	Evening work – Monday to Friday – between 10.00 pm and midnight	Evening work – Monday to Friday – after midnight and before 6.00 am	Saturday	Sunday – level 1	Sunday – levels 2 and 3	Public holiday
	% of junior hourly rate						
	100%	110%	115%	125%	125%	150%	225%
	\$	\$	\$	\$	\$	\$	\$
Fast food level 1							
Under 16 years	8.56	9.42	9.84	10.70	10.70		19.26
16 years	10.71	11.78	12.32	13.39	13.39		24.10
17 years	12.85	14.14	14.78	16.06	16.06		28.91
18 years	14.99	16.49	17.24	18.74	18.74		33.73
19 years	17.13	18.84	19.70	21.41	21.41		38.54
20 years	19.27	21.20	22.16	24.09	24.09		43.36
Fast food level 2							
Under 16 years	9.08	9.99	10.44	11.35		13.62	20.43
16 years	11.35	12.49	13.05	14.19		17.03	25.54
17 years	13.62	14.98	15.66	17.03		20.43	30.65
18 years	15.89	17.48	18.27	19.86		23.84	35.75
19 years	18.16	19.98	20.88	22.70		27.24	40.86
20 years	20.43	22.47	23.49	25.54		30.65	45.97
Fast food level 3— in charge of one or no person							
Under 16 years	9.22	10.14	10.60	11.53		13.83	20.75
16 years	11.52	12.67	13.25	14.40		17.28	25.92
17 years	13.83	15.21	15.90	17.29		20.75	31.12
18 years	16.13	17.74	18.55	20.16		24.20	36.29
19 years	18.44	20.28	21.21	23.05		27.66	41.49
20 years	20.74	22.81	23.85	25.93		31.11	46.67
Fast food level 3— in charge of 2 or more people							
Under 16 years	9.33	10.26	10.73	11.66		14.00	20.99
16 years	11.66	12.83	13.41	14.58		17.49	26.24
17 years	14.00	15.40	16.10	17.50		21.00	31.50
18 years	16.33	17.96	18.78	20.41		24.50	36.74
19 years	18.66	20.53	21.46	23.33		27.99	41.99
20 years	21.00	23.10	24.15	26.25		31.50	47.25

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A.3.3 Full-time and part-time junior employees—overtime rates

Age	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all hours	Public holiday – all hours
	% of junior hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Fast food level 1				
Under 16 years	12.84	17.12	17.12	21.40
16 years	16.07	21.42	21.42	26.78
17 years	19.28	25.70	25.70	32.13
18 years	22.49	29.98	29.98	37.48
19 years	25.70	34.26	34.26	42.83
20 years	28.91	38.54	38.54	48.18
Fast food level 2				
Under 16 years	13.62	18.16	18.16	22.70
16 years	17.03	22.70	22.70	28.38
17 years	20.43	27.24	27.24	34.05
18 years	23.84	31.78	31.78	39.73
19 years	27.24	36.32	36.32	45.40
20 years	30.65	40.86	40.86	51.08
Fast food level 3—in charge of one or no person				
Under 16 years	13.83	18.44	18.44	23.05
16 years	17.28	23.04	23.04	28.80
17 years	20.75	27.66	27.66	34.58
18 years	24.20	32.26	32.26	40.33
19 years	27.66	36.88	36.88	46.10
20 years	31.11	41.48	41.48	51.85
Fast food level 3—in charge of 2 or more people				
Under 16 years	14.00	18.66	18.66	23.33
16 years	17.49	23.32	23.32	29.15
17 years	21.00	28.00	28.00	35.00
18 years	24.50	32.66	32.66	40.83
19 years	27.99	37.32	37.32	46.65
20 years	31.50	42.00	42.00	52.50

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A.3.4 Casual junior employees—ordinary and penalty rates

Age	Ordinary hours	Evening work – Monday to Friday – between 10.00 pm and midnight	Evening work – Monday to Friday – after midnight and before 6.00 am	Saturday	Sunday – level 1	Sunday – levels 2 and 3	Public holiday
	% of junior hourly rate						
	125%	135%	140%	150%	150%	175%	250%
	\$	\$	\$	\$	\$	\$	\$
Fast food level 1							
Under 16 years	10.70	11.56	11.98	12.84	12.84		21.40
16 years	13.39	14.46	14.99	16.07	16.07		26.78
17 years	16.06	17.35	17.99	19.28	19.28		32.13
18 years	18.74	20.24	20.99	22.49	22.49		37.48
19 years	21.41	23.13	23.98	25.70	25.70		42.83
20 years	24.09	26.01	26.98	28.91	28.91		48.18
Fast food level 2							
Under 16 years	11.35	12.26	12.71	13.62		15.89	22.70
16 years	14.19	15.32	15.89	17.03		19.86	28.38
17 years	17.03	18.39	19.07	20.43		23.84	34.05
18 years	19.86	21.45	22.25	23.84		27.81	39.73
19 years	22.70	24.52	25.42	27.24		31.78	45.40
20 years	25.54	27.58	28.60	30.65		35.75	51.08
Fast food level 3—in charge of one or no person							
Under 16 years	11.53	12.45	12.91	13.83		16.14	23.05
16 years	14.40	15.55	16.13	17.28		20.16	28.80
17 years	17.29	18.67	19.36	20.75		24.20	34.58
18 years	20.16	21.78	22.58	24.20		28.23	40.33
19 years	23.05	24.89	25.82	27.66		32.27	46.10
20 years	25.93	28.00	29.04	31.11		36.30	51.85
Fast food level 3—in charge of 2 or more people							
Under 16 years	11.66	12.60	13.06	14.00		16.33	23.33
16 years	14.58	15.74	16.32	17.49		20.41	29.15
17 years	17.50	18.90	19.60	21.00		24.50	35.00
18 years	20.41	22.05	22.86	24.50		28.58	40.83

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Age	Ordinary hours	Evening work – Monday to Friday – between 10.00 pm and midnight	Evening work – Monday to Friday – after midnight and before 6.00 am	Saturday	Sunday – level 1	Sunday – levels 2 and 3	Public holiday
	% of junior hourly rate						
	125%	135%	140%	150%	150%	175%	250%
	\$	\$	\$	\$	\$	\$	\$
19 years	23.33	25.19	26.12	27.99		32.66	46.65
20 years	26.25	28.35	29.40	31.50		36.75	52.50

A.3.5 Casual junior employees—overtime rates

Age	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all hours	Public holiday – all hours
	% of junior hourly rate			
	175%	225%	225%	275%
	\$	\$	\$	\$
Fast food level 1				
Under 16 years	14.98	19.26	19.26	23.54
16 years	18.74	24.10	24.10	29.45
17 years	22.49	28.91	28.91	35.34
18 years	26.23	33.73	33.73	41.22
19 years	29.98	38.54	38.54	47.11
20 years	33.72	43.36	43.36	52.99
Fast food level 2				
Under 16 years	15.89	20.43	20.43	24.97
16 years	19.86	25.54	25.54	31.21
17 years	23.84	30.65	30.65	37.46
18 years	27.81	35.75	35.75	43.70
19 years	31.78	40.86	40.86	49.94
20 years	35.75	45.97	45.97	56.18
Fast food level 3—in charge of one or no person				
Under 16 years	16.14	20.75	20.75	25.36
16 years	20.16	25.92	25.92	31.68
17 years	24.20	31.12	31.12	38.03
18 years	28.23	36.29	36.29	44.36
19 years	32.27	41.49	41.49	50.71
20 years	36.30	46.67	46.67	57.04

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Age	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all hours	Public holiday – all hours
	% of junior hourly rate			
	175%	225%	225%	275%
	\$	\$	\$	\$
Fast food level 3—in charge of 2 or more people				
Under 16 years	16.33	20.99	20.99	25.66
16 years	20.41	26.24	26.24	32.07
17 years	24.50	31.50	31.50	38.50
18 years	28.58	36.74	36.74	44.91
19 years	32.66	41.99	41.99	51.32
20 years	36.75	47.25	47.25	57.75

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Schedule B—Summary of Monetary Allowances

Clause B.2.1 updated as a result of [\[2021\] FWCFB 858](#) at [11]; [Summary of Submissions – 18/02/21](#) item 65

See clause 17—Allowances for full details of allowances payable under this award.

B.1 Wage-related allowances

B.1.1 The following wage-related allowances are based on the [standard rate](#), defined in clause 2—Definitions as the minimum hourly rate for a fast food employee level 2 in clause 15—Minimum rates (\$22.70).

Allowance	Clause	% of standard rate	\$	Payable
Broken Hill allowance	17.2	162.7	36.92	per week
Cold work allowance—cold chambers; stocking and refilling refrigerated storages	17.3(a)	1.3	0.30	per hour
Cold work allowance—cold chambers; below 0°C—additional to clause 17.3(a)	17.3(b)	2.0	0.45	per hour
Cold work allowance—cold chambers; below 0°C—total amount	17.3(b)	3.3	0.75	per hour

B.1.2 Adjustment of wage-related allowances

Wage-related allowances are adjusted in accordance with increases to wages and are based on a percentage of the [standard rate](#) as specified.

B.2 Expense-related allowances

B.2.1 The following expense-related allowances will be payable to employees in accordance with clause 17—Allowances:

Allowance	Clause	\$	Payable
Meal allowance—more than one hour's overtime without 24 hours' notice	17.4(a)	13.32	per occasion meal
Meal allowance—if more than 4 hours' overtime without 24 hours' notice—further allowance	17.4(b)	12.03	per occasion meal
Special clothing allowance—laundrying—full-time employee	17.5(b)(i)	6.25	per week
Special clothing allowance—laundrying—part-time or casual employee	17.5(b)(ii)	1.25	per shift

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Allowance	Clause	\$	Payable
Motor vehicle allowance—own motor vehicle—engaged primarily for delivery duties	17.8(a)	0.41	per km
Motor vehicle allowance—own motor vehicle—engaged other than primarily for delivery duties	17.8(b)	0.78	per km

B.2.2 Adjustment of expense-related allowances

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Special clothing	Clothing and footwear group
Motor vehicle allowance	Private motoring sub-group

Schedule C—Supported Wage System

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

C.2 In this schedule:

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

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

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

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

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

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

C.3 Eligibility criteria

C.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

C.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

C.4 Supported wage rates

C.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
10	10

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

- C.4.2** Provided that the minimum amount payable must be not less than **\$89** per week.
- C.4.3** Where an employee’s assessed capacity is 10%, they must receive a high degree of assistance and support.
- C.5 Assessment of capacity**
- C.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.
- C.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the [Act](#).
- C.6 Lodgement of SWS wage assessment agreement**
- C.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.
- C.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.
- C.7 Review of assessment**
- The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

- C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- C.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$89** per week.
- C.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

Schedule D—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule E—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule F—Part-day Public Holidays

This Schedule is being considered in [AM2014/301](#) and [AM2019/17](#). It has not been drafted in plain language

- F.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- F.2** 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:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours 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.
 - (c) 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 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.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause F.2(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.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between on the declared or prescribed part-day public holiday.
- F.3** An employer and employee may agree to substitute another part-day for a part-day that part-day public holiday under the [NES](#).
- F.4** This schedule is an interim provision and subject to further review.

Schedule X—Additional Measures During the COVID-19 Pandemic

X.1 Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 8 April 2020 until 29 March 2021. The period of operation can be extended on application.

X.2 During the operation of Schedule X, the following provisions apply:

X.2.1 Unpaid pandemic leave

- (a) Subject to clauses X.2.1(b), (c) and (d), any employee is entitled to take up to 2 weeks' unpaid leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.
- (b) The employee must give their employer notice of the taking of leave under clause X.2.1(a) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).
- (c) An employee who has given their employer notice of taking leave under clause X.2.1(a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause X.2.1(a).
- (d) A period of leave under clause X.2.1(a) must start before 29 March 2021, but may end after that date.
- (e) Leave taken under clause X.2.1(a) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this award and the [NES](#).

NOTE: The employer and employee may agree that the employee may take more than 2 weeks' unpaid pandemic leave.

X.2.2 Annual leave at half pay

- (a) Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay.
- (b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.
- (c) A period of leave under clause X.2.2(a) must start before 29 March 2021, but may end after that date.

EXAMPLE: Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking 2 weeks' annual leave on half pay. In this example:

- the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under the Annual Leave clause of this award); and

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- one week of leave is deducted from the employee’s annual leave accrual.

NOTE 1: A employee covered by this award who is entitled to the benefit of clause X.2.1 or X.2.2 has a workplace right under section 341(1)(a) of the [Act](#).

NOTE 2: Under section 340(1) of the [Act](#), an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the [Act](#), an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee’s prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the [Act](#), a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

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