

The Exposure Draft was first published on 11 September 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
9 October 2014	Corrected errors	14.1(b), 18, 20.2 and Schedule C
2 February 2015	Incorporate changes resulting from [2014] FWCFB 9412	1, 2, 5, 6, 10, 14, 15, 16, 17, 18, 19, 20, 21, Schedule A, Schedule D, Schedule E, Schedule F
9 September 2016	Corrected errors	20.2
	Incorporate changes resulting from [2014] FWCFB 9412	1, 3.5, 16, Schedule D
	Incorporate changes resulting from [2015] FWCFB 4658	1, 10, 15, Schedule A, Schedule F
	Incorporate changes resulting from [2016] FWCFB 3500 , PR579824 , PR579558 and PR581528	10, 11, Schedule A, Schedule B, Schedule C
	Incorporate changes resulting from PR580863	Schedule E
	Incorporate changes resulting from PR582966	15, Schedule G, Schedule H
	Incorporate changes resulting from PR584075	14.4, Schedule I
	Incorporate changes proposed by agreement of parties see Joint parties' report to the Full Bench 25 April 2015 and in transcript of 24 October 2014	8.3(d), 11.1(c), 11.2(a), 11.2(e), 13.2(b), 13.3(a), 13.3(i), 14.1(b), 14.5(a), 15.4(a), 15.4(c)

Changes agreed to by parties appear in red text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.

EXPOSURE DRAFT

Asphalt Industry Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Asphalt Industry Award 2010** (the Asphalt award) as at 11 September 2014. This exposure draft does not seek to amend any entitlements under the Asphalt award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/66](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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Part 1—Application and Operation

1. Title and commencement

1.1 amended in accordance with para [4] [\[2015\] FWCFB 4658](#)

1.1 This award is the *Asphalt Industry Award 2014 2015*.

1.2 amended in accordance with para [8] [\[2015\] FWCFB 4658](#) and para [11] [\[2014\] FWCFB 9412](#)

1.2 This modern award, as varied, commenced operation on 1 January 2010.

1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

1.4 Schedule F– Definitions sets out definitions that apply in this award.

1.5 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

1.5 inserted in accordance with para [16] [\[2014\] FWCFB 9412](#)

1.6 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2. The National Employment Standards and this award

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

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

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

3. Coverage

3.1 This industry award covers employers throughout Australia in the asphalt industry and their employees in the classifications listed in clause 7.4—Classification definitions to the exclusion of any other modern award.

- 3.2** The **asphalt industry** means roadmaking and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt.
- 3.3** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 3.4** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 3.1 and 3.2 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clauses 3.1 and 3.2 are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 3.5** This award does not cover:
- (a) employees excluded from award coverage by the *Fair Work Act 2009* (Cth) (the Act);
 - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
 - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

Note deleted in accordance with para [35] [\[2014\] FWCFB 9412](#)

~~NOTE: Section [143\(7\)](#) of the Act describes classes of employees who are excluded from being covered by a modern award.~~

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

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

4. Award flexibility

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

- (a) arrangements for when work is performed;

- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

4.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

4.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and
- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

4.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

4.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

4.6 Except as provided in clause 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

4.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

4.8 The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

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

4.9 The notice provisions in clause 4.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 4.8(a) subject to four weeks’ notice of termination.

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

5. Facilitative provisions

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

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

Clause	Provision	Agreement between an employer and:
8.2(b)	Ordinary hours of work—employees other than shiftworkers	The majority of employees
8.4	Method of arranging working hours	An individual or the majority of employees
9.5(c)	Overtime meal break	An individual
13.1(b)	Shiftwork and penalties—Definitions	The majority of employees
13.3(b)	Hours of work—shiftworkers	The majority of employees
14.4	Time off instead of overtime payment	An individual
15.5	Annual leave in advance	An individual
18.4	Substitution of public holidays by agreement	The majority of employees

Part 2—Types of Employment and Classifications

6. Types of employment

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

- (a) full-time;
- (b) part-time; or

- (c) casual.

6.2 Full-time employees

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

6.3 Part-time employees

- (a) A part-time employee:
 - (i) is engaged to work an average of less than 38 ordinary hours per week; and
 - (ii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) For each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate of pay for the relevant classification in clause 10.1.
- (c) At the time of commencing employment, the employer and the part-time employee must agree in writing on the ordinary hours to be worked each week and the days these hours will be worked.
- (d) The employer and a part-time employee may vary the regular number of ordinary hours by mutual agreement. This variation must be recorded in writing.

6.4 Casual employees

- (a) A casual employee is an employee who is engaged and paid as a casual employee.
- (b) A casual employee's ordinary hours of work are the lesser of:
 - (i) an average of 38 hours per week; or
 - (ii) the hours required to be worked by the employer.
- (c) A casual employee will receive a minimum of four hours' pay per engagement.
- (d) **Casual loading**

For each ordinary hour worked, a casual employee must be paid:

- (i) the minimum hourly rate in clause 10.1; plus

Parties are asked to confirm whether the minimum hourly rate includes the industry allowances provided in clauses 11.2 and 11.3.

- (ii) a loading of 25% of the minimum hourly rate, for the classification in which they are employed.
- (e) The casual loading constitutes part of the casual employee's all purpose rate.
- (f) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.

6.5 Casual conversion

- (a) An **eligible casual employee** is a casual employee:
- who works on a regular and systematic basis;
 - who is employed under this award for a sequence of periods over six months; and
 - whose employment is to continue beyond the period of six months.
- (b) An eligible casual employee has the right, after six months, to elect to have their contract of employment converted to full-time or part-time employment.
- (c) Where an employee requests to have their employment converted, the employer will advise the employee in writing, within four weeks of the request, as to whether the employer consents to the request.
- (d) Where conversion occurs the details will be recorded in writing.
- (e) Any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment or the availability of a position will be dealt with in accordance with clause 23—Dispute resolution.

7. Classifications

7.1 A description of the classifications under this award is set out at clause 7.4—Classification definitions.

7.2 All employees covered by this award must be classified according to the structure set out at clause 7.4. Employers must advise their employees in writing of their classification and any changes to their classification.

7.3 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

7.4 Classification definitions

(a) **Skill level 1**

Skill level 1 is an employee who has no experience in the industry and who may be undertaking up to 38 hours induction training.

(b) **Skill level 2**

Skill level 2 is an employee who has completed the employer's induction course and/or is undertaking up to three months' on-the-job training and is not undertaking a traineeship.

(c) **Skill level 3**

Skill level 3 is an employee who has completed up to three months' on-the-job training; is capable of working productively under routine supervision; but is not yet a fully productive member of a spray or paving crew.

(d) Skill level 4

Skill level 4 is a multi-skilled employee who is assessed by the employer to be competent to perform all of the duties required within the work team.

- (i) Typically this will mean that the employee has an endorsed licence for the operation of heavy vehicles, is competent in the operation of the major pieces of plant and equipment utilised in the work team and who can perform all manual tasks in the work team.
- (ii) In asphalt production plants this will mean an employee who is deemed competent to operate the plant with a minimum of supervision.

(e) Skill level 5

Skill level 5 is an employee who has been appointed by the employer to be in charge of a mixing plant or to lead a spray or paving crew.

Part 3—Hours of Work

8. Ordinary hours of work and rostering

8.1 Ordinary hours of work

- (a) The ordinary hours of work for a full-time employee will be an average of 38 hours per week over a four week cycle.
- (b) Full-time employees will work eight hours each day.
- (c) 0.4 of one hour of each day worked will accrue as an entitlement to take a paid rostered day off in each four week cycle.
- (d) The ordinary hours of part-time and casual employees will be in accordance with clause 6—Types of employment.

8.2 Ordinary hours of work—employees other than shiftworkers

- (a) The ordinary hours of work for employees are between 6.00 am and 6.00 pm Monday to Friday.
- (b) An employer may agree with a majority of affected employees to alter the spread of hours in clause 8.2(a).
- (c) Employees may be required to work up to 10 ordinary hours per day.

8.3 Rostered days off—employees other than shiftworkers

- (a) A schedule of rostered days off will be determined and agreed between the parties in advance.
- (b) Scheduled rostered days off may be deferred and accumulated up to a maximum of four rostered days off, where the employer and individual employees agree.
- (c) An alternative day in the four week cycle may be substituted for the scheduled rostered day off where the employer (or their representative) and a majority of

employees in any work section agree. All provisions of this award will apply as if the alternative rostered day off was the scheduled rostered day off.

- (d) Each day of paid leave taken and any public holiday occurring during any cycle of four weeks will be regarded as a **shift day** worked for accrual purposes (this does not include periods of long service leave).
- (e) An employee who has not worked, or is not regarded by reason of clause 8.3(d) as having worked, a complete four week cycle will receive pro rata accrued entitlements for each day worked (or each fraction of a day worked) or regarded as having been worked in that cycle, payable for the rostered day off, or in the case of termination of employment, on termination.
- (f) The accrued rostered day off prescribed in this subclause will be taken as a paid day off.
- (g) An employee may be required to work on a rostered day off where it is necessary:
 - to allow other employees to be employed productively;
 - to carry out maintenance outside ordinary working hours;
 - because of unforeseen delays to a particular project or a section of it; or
 - for other reasons arising from unforeseen or emergency circumstances on a project.
- (h) Where the employee is required to work on a scheduled rostered day off they will take one paid day off before the end of the next work cycle, and the employee must be paid for the day worked at the rates prescribed for Saturday work in clause 13.6.

8.4 Methods of arranging working hours

- (a) An employer has the right to fix the daily hours of work for employees (other than shiftworkers) and to fix the commencing and finishing time of shifts. However, the arrangement of ordinary working hours may be by agreement between the employer and the majority of employees affected.
- (b) Clause 8.4(a) does not prevent the employer reaching agreement with individual employees about how their working hours are to be arranged.
- (c) Matters upon which agreement may be reached include:
 - (i) how the hours are to be averaged within a work cycle;
 - (ii) the duration of the work cycle for employees other than shiftworkers provided that such duration will not exceed three months;
 - (iii) rosters which specify the starting and finishing times of working hours;
 - (iv) a period of notice of a rostered day off which is less than four weeks;
 - (v) substitution of rostered days off;
 - (vi) accumulation of rostered days off;

(vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and

(viii) any arrangements of ordinary hours which exceed eight hours in any day.

8.5 Twelve hour shifts

(a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, 12 hour days or shifts may be introduced subject to:

- proper health monitoring procedures being introduced;
- suitable roster arrangements being made;
- proper supervision being provided; and
- adequate breaks being provided.

(b) Employees may be required to work on their rostered day off and if so will be granted a day off within 14 days of the original rostered day off.

8.6 Daylight saving

For work performed on a shift that spans the time when daylight saving begins or ends, as prescribed by relevant state or territory legislation, an employee will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work).

Examples

Daylight saving begins

Larry works in New South Wales where daylight saving is due to begin at 2.00 am on the first Sunday in October. At 2.00 am the clock will go forward one hour to 3.00 am.

Larry is rostered to work the night shift that evening from 10.00 pm to 6.30 am. Larry will work for seven and a half hours but he will be paid according to the difference in time on the clock which is eight and a half hours.

Daylight saving ends

Nadia works in Victoria where daylight saving is due to end at 3.00 am on the first Sunday in April. At 3.00 am the clock will go back one hour to 2.00 am.

Nadia is rostered to work the night shift that evening from 10.00 pm to 6.30am. Nadia will work for nine and half hours but she will be paid according to the difference in time on the clock which is eight and a half hours.

9. Breaks

9.1 Meal breaks

(a) **Paid meal break—shiftworkers**

A shiftworker working 10 hours or less will be entitled to a paid meal break of 30 minutes per shift.

(b) Unpaid meal break—employees other than shiftworkers

An employee is entitled to an unpaid meal break of not less than 30 minutes after every five hours worked.

9.2 Paid rest breaks—employees other than shiftworkers

- (a)** One paid rest break of 15 minutes or two paid rest breaks of seven and a half minutes each must be provided on each day worked.
- (b)** The employer will fix the time for the commencement of the rest break and this break will not involve a complete stoppage of work.

9.3 Scheduling of breaks

Breaks will be scheduled by the employee's supervisor based upon operational requirements so as to ensure continuity of operations. The employer will not require an employee to work more than five hours before their first meal break or between subsequent meal breaks, if any.

9.4 Working during meal breaks

- (a)** Subject to clause 9.4(b), employees called to work during recognised meal breaks will be paid at overtime rates for all time worked until they receive a meal break of the usual period.
- (b)** Where it is necessary to alter the time of the recognised meal break, employees may be called upon to work for not more than one hour beyond the recognised meal break without being paid overtime rates provided that they receive the equivalent meal break.

9.5 Overtime meal break

- (a)** An employee must be allowed a 20 minute paid meal break after:
 - (i)** two hours of work past the normal finishing time; and
 - (ii)** each additional four hours of continuous overtime,provided that the employee is to continue working after the paid meal break.
- (b)** For the purpose of clause 9.5(a), the amount of time worked by an employee does not include time spent travelling from a job back to the depot.
- (c)** An employer and employee may agree to any variation of clause 9.5(a) to meet the circumstances of the work in hand, provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under clause 9.5(a).

Part 4—Wages and Allowances

10. Minimum wages

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

Ordinary hourly rates and casual hourly rates deleted in accordance with para [54] [\[2015\] FWCFB 4658](#); rates updated as a result of AWR 2016.

Employee classification	Minimum weekly rate	Minimum hourly rate	Ordinary hourly rate ¹	Casual ordinary hourly rate ²
	\$	\$	\$	\$
Skill Level 1	672.70	17.70	18.83	23.54
Skill Level 2	712.10	18.74	19.84	24.80
Skill Level 3	741.60	19.52	20.60	25.75
Skill Level 4	783.40	20.62	21.67	27.09
Skill Level 5	790.20	20.79	21.85	27.31
¹ This rate includes the industry allowance and inclement weather allowance payable to all employees for all purposes.				
² Casual ordinary hourly rate is based on the ordinary hourly rate (including all-purpose allowances, see clause 11.1(a)) and the casual loading which constitutes part of the casual employee's all-purpose rate.				

See Schedule A for a summary of hourly rates of pay including overtime and penalties.

10.2 Payment of wages

(a) Wages will be paid either weekly or fortnightly, by agreement between the employer and employee.

(b) **Method of payment**

An employer may pay an employee's wages by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account.

(c) **Payment of wages on termination of employment**

On termination of employment, the wages due to an employee must be paid on the day of termination or within two business days after termination.

(d) **Day off coinciding with pay day**

Where an employee is paid wages by cash or cheque and the employee is, not rostered to work on pay day, the employee must be paid no later than the working day immediately following pay day. However, if the employer is able

to make suitable arrangements, wages may be paid on the working day preceding pay day.

(e) Wages to be paid during working hours

- (i)** Where an employee is paid wages by cash or cheque, such wages are to be paid during the employee's ordinary hours.
- (ii)** If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

10.3 Higher duties

An employee required by the employer to perform the work of a position at a higher classification level must be paid at the rate applicable for that higher level for all work done on that day/shift.

10.4 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.

10.5 National training wage

For employees undertaking a traineeship, see Schedule D—National Training Wage.

11. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016
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Employers must pay to an employee any allowances the employee is entitled to under this clause. Where an employee is paid by the hour, the allowances will be 1/38th of the weekly allowance. See Schedule B for a summary of monetary allowances and the method of adjustment.

11.1 Wage related allowances

(a) All purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on leave. The following allowances are paid for all purposes under this award:

- (i)** industry allowance (clause 11.1(b))
- (ii)** inclement weather allowance (clause 11.1(c))

(b) Industry allowance

An industry allowance of **\$29.66** per week is payable to all employees. The industry allowance is payable for all purposes.

(c) **Inclement weather allowance**

(i) An inclement weather allowance of **\$30.41** per week is payable to employees to compensate employees for:

• ~~(ii)~~ all the additional disabilities of being required to work when exposed to inclement weather; and

• ~~(iii)~~ working in isolated and under-developed locations.

(iv) For the purpose of this clause, **inclement weather** means wet weather and/or abnormal climatic conditions such as hail, cold, high winds, severe dust storms, extreme high temperatures or any combination thereof.

(v) Inclement weather allowance is payable for all purposes.

(vi) Where employees cannot be gainfully employed on their normal duties or on other productive work because of wet weather, they will carry out alternative work out of the rain, where available.

(d) **First aid allowance**

A first aid allowance of **\$2.97** per day is payable to an employee if:

- the employee is appointed by the employer to perform first aid duties; and
- the employee holds a current first aid certificate.

(e) **Leading hand allowance**

A leading hand is paid an allowance of **\$25.96** per week.

11.2 Expense-related allowances

(a) **Meal allowance**

Except where the meals required by this clause are provided by the employer, a meal allowance of **\$14.80** per occasion is payable to an employee who is required to work overtime for:

(i) more than one and a half hours after their usual finishing time, unless the employee was notified the previous day of the requirement to work additional time;

(ii) five and a half hours or more beyond the employee's usual finishing time; and every four hours thereafter.

~~(iii) every four hours thereafter.~~

(b) **Protective and special clothing and equipment allowance**

(i) Where an employee is required to wear protective clothing and equipment such as safety boots, headwear or wet-weather clothing, the employer must reimburse the employee for the cost of purchasing such clothing and equipment, except where the clothing and equipment is paid for by the employer.

- (ii) Where the employer requires an employee to wear any special clothing such as uniforms, the employer must reimburse the employee for the cost of purchasing three sets of uniforms, except where the special clothing is paid for by the employer.
- (iii) Where the protective clothing or uniforms are supplied to the employee without cost, the protective clothing or uniforms:
 - will remain the property of the employer; and
 - must be returned in good condition to the employer (subject to fair wear and tear) on the employee leaving the service of the employer.
- (iv) If an employee leaves the service of the employer within six months of commencement of employment and does not return all clothing issued, the employee will be liable for 50% of the cost of such clothing.

(c) Tools allowance

Where an employer requires an employee to provide and use any tools, the employer must reimburse the employee for the cost of purchasing such tools, except where the employer supplies the tools without cost to the employee.

(d) Country and distant work—travelling allowances

(i) Reimbursement of fares

Where an employee:

- is sent by the employer from the city to the country, or from one country centre to another country centre, or from a country centre to the city; or
- remains until the completion of the job, or until the special work on which they were sent to perform is completed and no other work is provided by the employer,

they will be:

- reimbursed for fares back to the place of employment; or
- paid an allowance equivalent to the actual cost of the fares.

(ii) Travelling expenses

Except where meals and accommodation are provided by the employer, an allowance is payable to an employee:

- while travelling to distant work, an employee will be paid **\$14.80** per meal with a maximum of three meals per day; and
- for accommodation, where an employee is required to spend a night en route to distant work will be paid **\$66.82**.

(e) Distant work—accommodation and incidentals allowances

- (i) Where an employee is required to work at a distance from the employee's usual commencement point, such that the employee is unable

to return home the same night, the following allowances are payable to the employee:

- an allowance of **\$479.52** per week for reasonable board and lodging (which will not be wages); or
- in the case of broken parts of a week, the allowance will be all for living expenses actually and reasonably incurred up to **\$479.52** per week for seven days;

except where the employer provides reasonable board and lodging.

- (ii) In addition to the allowance in clause 11.2(e)(i), an allowance of **\$5.11** per night will be paid to each employee for incidentals.

(f) Distant work—return home allowance

- (i) Where an employee is entitled under clause 11.2(f)(ii) to return home from distant work for a weekend, the employer must reimburse the cost of fares reasonably incurred by the employee or provide transport at the employer's cost.
- (ii) Subject to clause 11.2(f)(iii), the entitlement to return home from distant work for a weekend will only accrue:
 - where distant work continues for more than two months; and
 - at a rate of one weekend every four weeks after the completion of two months' continuous service on distant work.
- (iii) Fares will not be payable by the employer unless:
 - the employee works their full ordinary hours on the ordinary working day before, and the ordinary working day after, the relevant weekend; and
 - the distant work continues for at least two weeks after the relevant weekend.

(g) Distant work—travelling time

- (i) Subject to clause 11.2(g)(iii), where an employee is sent from one centre to another and is required to remain away from home while necessarily travelling between such centres, the rate of pay for the travelling time will be at ordinary rates.
- (ii) The maximum time to be paid for when travelling will be eight hours per day in addition to wages otherwise earned for work performed.
- (iii) Clause 11.2(g) will not alter any current practice.

12. Superannuation

12.1 Superannuation contributions for defined benefit members

An employer is permitted to make superannuation contributions to a superannuation fund or scheme in relation to a default fund employee who is a defined benefit member of the fund or scheme.

Part 5—Penalties and Overtime

13. Shiftwork and penalties

13.1 Definitions

(a) For the purpose of this clause:

rostered shift means any shift of which the employee concerned has had at least 48 hours' notice

day shift means any shift starting at or after 6.00 am and before 10.00 am

afternoon shift means any shift starting at or after 10.00 am and before 8.00 pm

night shift means any shift starting at or after 8.00 pm and before 6.00 am

non-successive afternoon or night shift means work on any afternoon or night shift that does not continue for at least five successive afternoons or nights

permanent night shift means a period of engagement on shiftwork where an employee works night shift only; remains on night shift for longer than four consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each shift cycle

(b) By agreement between the employer and the majority of affected employees the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

13.2 Shift penalties

(a) The loadings provided for in clause 13.2(b) are not cumulative.

(b) Afternoon and night shift penalties

(i) An employee whilst working afternoon or night shift will be paid **115%** of their ordinary hourly rate of pay.

(ii) An employee ~~who works~~ who is required to work on non-successive afternoon or night shifts will be paid **150%** of their ordinary hourly rate of pay for the first eight hours.

- (iii) An employee who works non-successive afternoon or night shifts will be paid **200%** of their ordinary hourly rate of pay for all time worked in excess of eight hours.
- (iv) An employee who works permanent night shifts will be paid **130%** of their ordinary hourly rate of pay for all time worked during ordinary working hours on permanent night shift. This clause will not apply where the employee requests to work permanent night shift.

13.3 Hours of work

- (a) The ordinary working hours of employees on shiftwork will not exceed an average of 38 hours per week spread over a period of two, three, or four weeks and must not exceed ~~44~~ 152 hours in 28 consecutive days. These hours are to be worked in shifts of eight hours inclusive of a paid meal break of 30 minutes. This paid meal break will be counted as time worked.
- (b) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer.
- (d) Except at changeover of shifts an employee will not be required to work more than one shift in each 24 hours.
- (e) Employees on shiftwork will accrue 0.4 of one hour for each eight hour shift worked to allow one complete shift to be taken off as a paid shift for every 20 shift cycle. This 20th shift will be paid for at the appropriate shift rate as prescribed by clause 13—Shiftwork and penalties.
- (f) Each day of paid leave taken and any public holiday occurring during any cycle of four weeks will be regarded as a shift worked for accrual purposes.
- (g) Except as provided for above, employees not working a complete four week cycle will be paid pro rata accrued entitlements for each shift worked, on the programmed shift off or, in the case of termination of employment, on termination.
- (h) The employer and employees will agree in writing upon arrangements for rostered paid days or for accumulation of accrued days to be taken at or before the end of a particular contract.
- (i) Once such days have been rostered they will be taken as paid days off. Provided that where an employer, for emergency reasons, requires a shiftworker to work on a rostered day off the employee will be paid, in addition to the accrued entitlement, the rates prescribed for Saturday work for employees other than shiftworkers in clause ~~13.6~~ 14.2.

13.4 Shift rosters

There will be a roster of shifts which will:

- (a) provide for rotation unless all the employees concerned desire otherwise; and

- (b) provide for not more than eight shifts to be worked in any nine consecutive days.

13.5 Overtime—shiftworkers

- (a) Work done by shiftworkers in excess of and outside the ordinary working hours of their shift (inclusive of time accrued for a rostered shift off under clause 13.3) or on a shift other than a rostered shift will be paid 200% of the employees ordinary hourly rate of pay.
- (b) This provision will not apply to arrangements made between the employees themselves, in cases due to rotation of shift or when the shiftworker is not relieved from duty by the following shift at the proper time.
- (c) Where a shiftworker is not relieved from duty at the proper time the shiftworker will be paid at **150%** of their ordinary hourly rate for the first eight hours, and **200%** of their ordinary hourly rate for time after eight hours for all time worked after finishing an ordinary shift.

13.6 Saturday shifts

Shiftworkers working ordinary hours of work on a Saturday (inclusive of time worked for accrual purposes as prescribed in clause 13.3) between midnight on Friday and midnight on Saturday will be paid a minimum of 150% of their ordinary hourly rate.

13.7 Sundays and public holidays

- (a) Shiftworkers working ordinary hours of work on a Sunday will be paid the Sunday overtime rate in accordance with clause 14—Overtime.
- (b) Shiftworkers working ordinary hours of work on a public holiday will be paid in accordance with clause 18—Public holidays.
- (c) Where a shift falls partly on a Sunday or a public holiday and partly on another day, the shift will be regarded as a Sunday or public holiday shift where the major portion of the shift falls on the Sunday or public holiday.
- (d) Where a shift is regarded as a public holiday in accordance with clause 13.7(c), time worked on the shift commencing before midnight on the day preceding a Sunday or public holiday and extending into a Sunday or public holiday will be regarded as time worked on a Sunday or public holiday.
- (e) Where a shift commences between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight will not entitle the employee to the Sunday or public holiday rate.

13.8 An employer may require an employee other than a shiftworker to change to shiftwork provided at least 24 hours' notice is given of the change. Overtime rates will be paid if the shifts do not continue for at least five consecutive afternoons or nights.

14. Overtime

This provision is being reviewed in [AM2014/66](#).

14 amended in accordance with [PR584075](#) (14.4 renamed and substituted)

14.1 Definition of overtime

- (a) For a full-time or casual employee other than a shiftworker, overtime is any time worked:
 - (i) in excess of the ordinary hours of work specified in clause 8.1; or
 - (ii) outside of the ordinary hours of work specified in clause 8.2.
- (b) For a part-time employee, hours worked in excess of the employee's ordinary hours (agreed in accordance with clauses 6.3(c) and 6.3(d)) will be **overtime** **and** paid at the appropriate overtime rate.
- (c) In computing overtime, each day's work will stand alone.
- (d) Overtime does not include any time spent:
 - (i) by an employee in the course of travelling to or from any yard, camp, depot or picking up place of the employer; or
 - (ii) going into a place of work for the purpose of starting work, or in the course of returning after ceasing work.

14.2 Overtime rates for employees other than shiftworkers

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

For overtime worked on	Overtime rate % of ordinary hourly rate <u>or</u> casual ordinary hourly rate	Minimum payment
Monday to Friday—first 2 hours	150%	—
Monday to Friday—after 2 hours	200%	—
Saturday—first 2 hours	150%	4 hours
Saturday—after 2 hours	200%	4 hours
Sunday all day	200%	4 hours

See Schedule A for a summary of hourly rates of pay including overtime and penalties.

See clause 13.5 for overtime rates for shiftworkers.

14.3 Overtime meal break

An employee required to work overtime is entitled to breaks in accordance with clause 9.5.

14.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 14.4.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 14.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 14.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 14.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 14.4 as an employee record.

- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 14.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 14.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.4.

14.5 Rest period after overtime

- (a) ~~Employees are entitled to at least 10 consecutive hours off duty between the end of a day or shift and the commencement of another day or shift. If an employee works overtime, the end of the employee's day or shift is the end of the overtime.~~

When overtime work is necessary it must, wherever reasonably practicable, be arranged so employees have at least 10 hours off duty between the end of a day or shift and the commencement of another day or shift. If an employee works overtime, the end of the employee's day or shift is the end of the overtime.

- (b) Where an employee, other than a casual employee, has not had at least 10 consecutive hours off duty between those days or shifts, the employee must, subject to this subclause, be released after completion of such overtime until the employee has 10 consecutive hours off duty without loss of pay for ordinary time occurring during the absence.
- (c) If the employer directs an employee to resume or continue work without having had 10 consecutive hours off duty, the employee must be paid at 200% of the ordinary hourly rate until released from duty for 10 hours. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.
- (d) The provisions of this subclause will apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purpose of changing shift rosters;
 - (ii) where a shiftworker does not report for duty and an employee other than a shiftworker or a shiftworker is required to replace the shiftworker; or

- (iii) where a shift is worked by arrangement between the employees themselves.

14.6 Recall and stand-by

- (a) An employee recalled to work overtime after leaving the job (whether notified before or after leaving the job) must be paid for a minimum of three hours at the overtime rates.
- (b) Where the employee has been paid for standing by, the employee will be paid a minimum of three hours' pay at the appropriate rates.

Part 6—Leave, Public Holidays and Other NES Entitlements

15. Annual leave

15 amended in accordance with [PR582966](#). (15.5 substituted; 15.7 and 15.8 inserted)

15.1 Annual leave is provided for in the NES.

15.2 Seven day shiftworkers

- (a) For the purpose of the additional week of annual leave provided for in s.87(1)(b) of the Act, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.
- (b) Where an employee with 12 months' continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by one day per 36 ordinary shifts the employee is continuously engaged as a seven day shiftworker.

15.3 Taking annual leave

Annual leave will be taken within 18 months of the entitlement accruing. For the purpose of ensuring accrued annual leave is taken within that period and in the absence of agreement as provided for in [s.88](#) of the Act, an employer may direct an employee to take a period of annual leave from a particular date provided the employee is given at least 28 days' notice.

15.4 Close-down

- (a) ~~Where an employer intends temporarily to close (or reduce to nucleus) during the Christmas/New Year period for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause.~~

An employer may elect to temporarily close down (or reduce to nucleus) during the Christmas/New Year period for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, provided that the employer gives affected employees no less than one month's notice in writing of its intention to close down.

- (b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.
- (c) Where an employee has been given notice pursuant to clauses 15.4(a) or (b) ~~15.4(b) or (c)~~ and the employee has:
 - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
 - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
 - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.
- (d) Public holidays that fall within the period of close-down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

15.5 Annual leave in advance

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

Note: An example of the type of agreement required by clause 15.5 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

- (c) The employer must keep a copy of any agreement under clause 15.5 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 15.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

15.6 Payment for annual leave

- (a) Before the start of an employee's annual leave, the employer must pay the employee the amount the employee would have earned for working their ordinary hours had they not been on leave for the period.
- (b) In addition, before the start of an employee's annual leave, the employer must pay the employee the greater of:

- (i) a loading of 17.5% of the employee’s ordinary hourly rate; or
- (ii) if the employee was a shiftworker before commencing the leave:
 - the 17.5% loading prescribed by clause 15.6(b)(i); and
 - the shift penalty that would have been payable to the employee for that shift under clause 13.2.

Note inserted in accordance with para [94] [\[2015\] FWCFB 4658](#)

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

15.7 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 15, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

15.8 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 15.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 15.8.
- (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 15.8 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 15.8 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee’s remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 15.8 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 15.8.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 15.8.

Note 3: An example of the type of agreement required by clause 15.8 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

16. Personal/carer's leave and compassionate leave

16 substituted in accordance with para [35] [\[2014\] FWCFB 9412](#)

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

17. Parental leave and related entitlements

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

18. Public holidays

18.1 Public holidays are provided for in the NES.

18.2 Payment for working public holidays

Where a full-time or part-time employee works ordinary hours on a public holiday the employee will be paid **250%** of the ordinary hourly rate for all time worked on the public holiday. A casual employee who works on a public holiday will be paid **250%** of the casual ordinary hourly rate.

18.3 An employee who works on a public holiday will be paid for a minimum four hours at the rate prescribed in clause 18.2.

18.4 Substitution of public holidays by agreement

By agreement between the employer and the majority of employees in an enterprise, another day may be substituted for a public holiday.

18.5 Part-day public holidays

For provisions relating to part-day public holidays see Schedule E—2016 Part-day public holidays

19. Community service leave

Community service leave is provided for in the NES.

20. Termination of employment

20.1 Notice of termination is provided for in the NES.

20.2 Notice of termination by an employee

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

20.3 Job search entitlement

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

21. Redundancy

21.1 Redundancy pay is provided for in the NES.

21.2 Transfer to lower paid duties

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

21.3 Employee leaving during notice period

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

21.4 Job search entitlement

- (a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c)** This entitlement applies instead of clause 20.3.

Part 7—Consultation and Dispute Resolution

22. Consultation

22.1 Consultation regarding major workplace change

(a) Employers to notify

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

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 22.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 22.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

22.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information

about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);

- (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

23. Dispute resolution

- 23.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 23.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 23.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 23.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 23.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 23.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 23.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Schedule A— Summary of Hourly Rates of Pay

Note inserted in accordance with para [63] [\[2015\] FWCFB 4658](#); rates updated as a result of AWR 2016

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

A.1 Full-time and part-time employees

A.1.1 The ordinary hourly rate includes the industry allowance (clause 11.1(b)) and inclement weather allowance (clause 11.1(c)) which are payable for all purposes.

A.1.2 Where an additional allowance is payable for all purposes in accordance with clause 11.1(a), this forms part of the employee's ordinary hourly rate and must be added to the ordinary hourly rate prior to calculating penalties and overtime.

A.1.3 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Day	Public holiday
	% of ordinary hourly rate	
	100%	250%
	\$	\$
Skill Level 1	19.28	48.20
Skill Level 2	20.32	50.80
Skill Level 3	21.10	52.75
Skill Level 4	22.20	55.50
Skill Level 5	22.37	55.93

A.1.4 Full-time and part-time employees other than shiftworkers—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day
	% of ordinary hourly rate		
	150%	200%	200%
	\$	\$	\$
Skill Level 1	28.92	38.56	38.56
Skill Level 2	30.48	40.64	40.64
Skill Level 3	31.65	42.20	42.20
Skill Level 4	33.30	44.40	44.40
Skill Level 5	33.56	44.74	44.74

A.1.5 Full-time and part-time shiftworkers—ordinary and penalty rates

	Day	Afternoon or night	Non-successive afternoon or night ¹		Permanent night ²	Saturday	Public holiday
			8 hours or less	More than 8 hours			
% of ordinary hourly rate							
	100%	115%	150%	200%	130%	150%	250%
	\$	\$	\$	\$	\$	\$	\$
Skill Level 1	19.28	22.17	28.92	38.56	25.06	28.92	48.20
Skill Level 2	20.32	23.37	30.48	40.64	26.42	30.48	50.80
Skill Level 3	21.10	24.27	31.65	42.20	27.43	31.65	52.75
Skill Level 4	22.20	25.53	33.30	44.40	28.86	33.30	55.50
Skill Level 5	22.37	25.73	33.56	44.74	29.08	33.56	55.93

¹ **Non-successive afternoon or night** means work on any afternoon or night shift that does not continue for at least five successive afternoons or nights (see clause 13.1)

² **Permanent night** shift means a period of engagement on shiftwork where an employee works night shift only; remains on night shift for longer than four consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each shift cycle (see clause 13.1)

A.1.6 Full-time and part-time shiftworkers—overtime

	Overtime	Unrelieved overtime	
		First 8 hours	After 8 hours
% of ordinary rate			
	200%	150%	200%
	\$	\$	\$
Skill Level 1	38.56	28.92	38.56
Skill Level 2	40.64	30.48	40.64
Skill Level 3	42.20	31.65	42.20
Skill Level 4	44.40	33.30	44.40
Skill Level 5	44.74	33.56	44.74

A.2 Casual employees

A.2.1 Casual ordinary hourly rate includes the casual loading, industry allowance (clause 11.1(b)) and inclement weather allowance (clause 11.1(c)) which are payable for all purposes.

A.2.2 Casual employees other than shiftworkers—ordinary and penalty rates

	Day	Public holiday
	% of casual ordinary hourly rate	
	100%	250%
	\$	\$
Skill Level 1	24.10	60.25
Skill Level 2	25.40	63.50
Skill Level 3	26.38	65.95
Skill Level 4	27.75	69.38
Skill Level 5	27.96	69.90

A.2.3 Casual employees other than shiftworkers—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day
	% of casual ordinary hourly rate		
	150%	200%	200%
	\$	\$	\$
Skill Level 1	36.15	48.20	48.20
Skill Level 2	38.10	50.80	50.80
Skill Level 3	39.57	52.76	52.76
Skill Level 4	41.63	55.50	55.50
Skill Level 5	41.94	55.92	55.92

A.2.4 Casual shiftworkers-ordinary and penalty rates

	Day	Afternoon or night	Non-successive afternoon or night ¹		Permanent night ²	Saturday	Public holiday
			8 hours or less	More than 8 hours			
% of casual ordinary hourly rate							
	100%	115%	150%	200%	130%	150%	250%
	\$	\$	\$	\$	\$	\$	\$
Skill Level 1	24.10	27.72	36.15	48.20	31.33	36.15	60.25
Skill Level 2	25.40	29.21	38.10	50.80	33.02	38.10	63.50
Skill Level 3	26.38	30.34	39.57	52.76	34.29	39.57	65.95
Skill Level 4	27.75	31.91	41.63	55.50	36.08	41.63	69.38
Skill Level 5	27.96	32.15	41.94	55.92	36.35	41.94	69.90

¹ **Non-successive afternoon or night** means work on any afternoon or night shift that does not continue for at least five successive afternoons or nights (see clause 13.1)

² **Permanent night** shift means a period of engagement on shiftwork where an employee works night shift only; remains on night shift for longer than four consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each shift cycle (see clause 13.1)

A.2.5 Casual shiftworkers-overtime rates

	Regular overtime	Unrelieved overtime-first 8 hours	Unrelieved overtime-after 8 hours
% of casual ordinary hourly rate			
	200%	150%	200%
	\$	\$	\$
Skill Level 1	48.20	36.15	48.20
Skill Level 2	50.80	38.10	50.80
Skill Level 3	52.76	39.57	52.76
Skill Level 4	55.50	41.63	55.50
Skill Level 5	55.92	41.94	55.92

Schedule B—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016
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See clause 11—Allowances for full details of allowances payable under this award.

B.1 Wage-related allowances:

The following wage-related allowances are based on the weekly standard rate defined in Schedule F—Definitions as the minimum weekly wage for a Skill level 3 in 10.1= \$741.60. These rates are to be paid in accordance with the clause 11.

Allowance	Clause	% of standard rate \$741.60	\$ per week
Industry allowance ¹	11.1(b)	4.0	29.66
Inclement weather allowance ²	11.1(c)	4.1	30.41
First aid allowance	11.1(d)	0.4	2.97 per day
Leading hand allowance	11.1(e)	3.5	25.96

^{1,2} These allowances apply for all purposes of this award

B.2 Adjustment of wage-related allowances

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

B.3 Expense-related allowances:

The following expense-related allowances are to be paid in accordance with the clause 11 and will be adjusted by reference to the Consumer Price Index (CPI):

Allowance	Clause	\$
Meal allowance—overtime of one and a half hours after usual ceasing time—without notice	11.2(a)	14.80 per occasion
Meal allowance—overtime—five and a half hours or after usual ceasing time and each further four hours	11.2(a)	14.80 per occasion
Travelling expenses—meal allowance	11.2(d)(ii)	14.80 per meal
Travelling expenses—required to spend a night en route	11.2(d)(ii)	66.82 per night
Distant work—accommodation and incidentals allowance:		
Board and lodging for seven days	11.2(e)(i)	479.52 per week
All living expenses for broken parts of a week	11.2(e)(i)	Up to 479.52 per week
Incidentals allowance	11.2(e)(ii)	5.11 per night

B.4 Adjustment of expense related allowances

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.

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
Country and distant work	Domestic holiday travel and accommodation sub-group

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Schedule C—Supported Wage System

Rates updated as a result of AWR 2016

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* (Cth), 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

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 \$82 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 Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

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 supported wage system.

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 four 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 \$82 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—National Training Wage

Rates updated as a result of AWR 2016.

This schedule is being reviewed in matter [AM2016/17](#)

D.1 Title

This is the *National Training Wage Schedule*.

D.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

approved training means the training specified in the training contract

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (c) not include any period during a calendar year in which a year of schooling is completed

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

traineeship means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

year 10 includes any year before Year 10

D.3 Coverage

D.3.1 Subject to clauses D.3.2 to D.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by clause D.7 to this schedule or by clause D.5.4 of this schedule.

D.3.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause D.7 to this schedule.

D.3.3 This schedule does not apply to:

- (a) the apprenticeship system;
- (b) qualifications not identified in training packages; or
- (c) qualifications in training packages which are not identified as appropriate for a traineeship.

D.3.4 This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.

D.3.5 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

D.3.6 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

D.4 Types of Traineeship

The following types of traineeship are available under this schedule:

D.4.1 a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

D.4.2 a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

D.5 Minimum Wages

D.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause D.7.1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

(b) Wage Level B

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause D.7.2 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

(c) Wage Level C

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause D.7.3 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

(d) AQF Certificate Level IV traineeships

- (i) Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii) Subject to clause D.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70
Wage Level C	560.60	581.80

D.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause D.7.1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

(b) Wage Level B

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause D.7.2 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

(c) Wage Level C

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause D.7.3 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 4 years out of school	15.95	17.78	
Plus 5 or more years out of school	17.78		

(d) School-based traineeships

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by clause D.7 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.94	10.96

(e) AQF Certificate Level IV traineeships

(i) Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

(f) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

- (ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.
- (iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

D.5.3 Other minimum wage provisions

- (a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

D.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by clause D.7 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

D.6 Employment conditions

- D.6.1** A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer's leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.
- D.6.2** A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- D.6.3** Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause D.5.2(f)(ii) and not by this clause.

- D.6.4** Subject to clause D.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

D.7 Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

D.7.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I, II, III
Beauty	III
Business Services	I, II, III
Chemical, Hydrocarbons and Refining	I, II, III
Civil Construction	III
Coal Training Package	II, III
Community Services	II, III
Construction, Plumbing and Services Integrated Framework	I, II, III
Correctional Services	II, III
Drilling	II, III
Electricity Supply Industry—Generation Sector	II, III (III in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I, II, III (III in Western Australia only)
Financial Services	I, II, III
Floristry	III
Food Processing Industry	III
Gas Industry	III
Information and Communications Technology	I, II, III
Laboratory Operations	II, III
Local Government (other than Operational Works Cert I and II)	I, II, III
Manufactured Mineral Products	III
Manufacturing	I, II, III
Maritime	I, II, III
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III

Training package	AQF certificate level
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

D.7.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II

Training package	AQF certificate level
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	I, II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

D.7.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I, II, III
Conservation and Land Management	I, II, III
Funeral Services	I, II, III
Music	I, II, III
Racing Industry	I, II, III
Rural Production	I, II, III
Seafood Industry	I, II, III

Schedule E—2016 Part-day public holidays

This provision is being reviewed in [AM2014/301](#)

Schedule E amended in accordance with [PR580863](#)

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

E.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause E.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
- (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause E.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

- (h)** Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

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

This schedule is an interim provision and subject to further review.

DRAFT

Schedule F—Definitions

In this award, unless the contrary intention appears:

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

afternoon shift means any shift starting at or after 10.00 am and before 8.00 pm

Definition of ‘all purposes’ amended in accordance with para [35] and [91] [\[2015\] FWCFCB 4658](#)

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave (see clause 11.1(a))

asphalt industry means roadmaking and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt

casual ordinary hourly rate means the hourly rate for a casual employee for the employee’s classification specified in clause 8, inclusive of the casual loading, industry allowance and inclement weather allowance

day shift means any shift starting at or after 6.00 am and before 10.00 am

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

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

inclement weather means wet weather and/or abnormal climatic conditions such as hail, cold, high winds, severe dust storms, extreme high temperatures or any combination thereof

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

night shift means any shift starting at or after 8.00 pm and before 6.00 am

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

ordinary hourly rate means the hourly rate for the employee’s classification specified in clause 10, plus any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes

rostered shift means any shift of which the employee concerned has had at least 48 hours’ notice

standard rate means the minimum weekly wage for a Skill level 3 in clause 10.1

Schedule G—Agreement to Take Annual Leave in Advance

Schedule G—Agreement to Take Annual Leave in Advance inserted in accordance with [PR582966](#).

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 H—Agreement to Cash Out Annual Leave

Schedule H—Agreement to Cash Out Annual Leave inserted in accordance with [PR582966](#).

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 I—Agreement for time off instead of payment for overtime

Schedule I— Agreement for time off instead of payment for overtime inserted in accordance with [PR584075](#).

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___