

The Exposure Draft was first published on 15 January 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
15 January 2016	Exposure Draft	
14 July 2017	Incorporates changes resulting from [2016] FWCFB 3500 , PR579812 , PR579550 and PR581528	10, 11, Schedule B, Schedule C, Schedule D
	Incorporates changes resulting from PR582987	14, Schedule G, Schedule H
	Incorporates changes resulting from PR584088	13.7, Schedule I
	Incorporates changes resulting from [2017] FWCFB 3500 , PR592143 , PR592305 and PR592689	10, 11, Schedule B, Schedule C, Schedule D
	Incorporates changes resulting from [2017] FWCFB 3541	6
	Incorporates changes resulting from [2017] FWCFB 3433	1, 8, 14, Schedule F
	Incorporates changes resulting from PR582987	14, Schedule G, Schedule H

Red text indicates changes made to the draft since the previous published version, or issues that remain unresolved. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.

EXPOSURE DRAFT

Coal Export Terminals Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Coal Export Terminals Award 2010** (the Coal Export award) as at 15 January 2016. This exposure draft does not seek to amend any entitlements under the Coal Exports 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 [AM2014/220](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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

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DRAFT

Part 1—Application and Operation

1. Title and commencement

1.1 This award is the *Coal Export Terminals Award 2016*.

Clause 1.2 amended in accordance with [\[2017\] FWCFB 3433](#) at [328].

1.2 ~~This modern award, as varied, commenced operation on 1 January 2010. This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.~~

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

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

1.5 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 the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

3. Coverage

3.1 This industry award covers employers who operate coal export terminals in respect of work by their employees in the classifications listed in Clause 10—Minimum wages to the exclusion of any other modern award.

3.2 A **coal export terminal** is a facility that receives and stockpiles coal, and loads coal onto vessels for export and which does not deal with other cargo or undertake other port activities unless such cargo or activities are of a minor nature or incidental to that facility's activities relating to the receipt, stockpiling and loading of coal.

3.3 The award does not cover an employer who is covered by the *Port Authorities Award 2016* or its employees.

- 3.4** This award does not cover:
- (a) employees excluded from award coverage by the *Act 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.
- 3.5** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 3.6** This award covers employers which provide group training services for apprentices and trainees engaged in the industry and/or parts of industry set out at clause 3.1 and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 3.7** 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 **affected** employee, or the majority of **affected** 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:
8.3(a)	12 hour shifts	A majority of affected employees
8.5(a)(ii)	Rostering of hours and length of shifts	A majority of affected employees
8.5(b)(ii)	Shift starting and finishing times	A majority of affected employees
11.4(a)(ii)	Tool allowance	An individual

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 engaged to work an average of 35 ordinary hours per week.

6.3 Part-time employment

- (a) A part-time employee is an employee who:
 - (i) is engaged to work an average of less than 35 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) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the days to be worked and the starting and finishing times.
- (c) Any variation to the regular pattern of work will be recorded in writing.
- (d) A part-time employee will be paid the minimum hourly rate prescribed for their relevant classification and level found in clause 10.

6.4 Casual employment

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

A Full Bench found a model casual conversion clause should be inserted into modern awards without existing conversion clauses. Any further written submissions, including whether a conversion clause requires adaptation to meet the circumstances of particular awards, are to be filed by 2 August 2017. See [\[2017\] FWCFB 3541](#) at [381]-[382].

- (a) A casual employee is engaged and paid as a casual employee.
- (b) A casual employee's ordinary hours of work are the lesser of an average of 35 hours per week or the hours required to be worked by the employer.
- (c) For each hour worked, a casual employee will be paid no less than:
 - the minimum hourly rate; and
 - a casual loading of **25%** of the minimum hourly rate,for the classification in which they are employed.
- (d) The loading constitutes part of the casual employee's all purpose rate.
- (e) A casual employee will receive a minimum of four hours' payment for each engagement.
- (f) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other **attributes entitlements** of full-time or part-time employment.

7. Classifications

A description of the classifications under this award is set out Schedule A—Classification

Part 3—Hours of Work

8. Ordinary hours of work and rostering

8.1 The ordinary hours of work will be an average of 35 hours per week.

8.2 For the purposes of the NES an employee’s ordinary hours may be averaged over the roster cycle of either not more than 26 weeks for shiftworkers or a period of up to four weeks for day workers.

8.3 Penalty rates—day workers

Variations adopted following [Report to Full Bench](#) of 10 August 2016 and [\[2017\] FWCFB 3433](#) at [44].

(a) Dayworkers may be required to work up to 10 ordinary hours per day, between 6.00 am and 6.00 pm Monday to Sunday. If the employer and a majority of affected employees agree, up to 12 ordinary hours per day may be worked.

~~(b) All ordinary hours worked by a day worker on the following days will be paid for at the following rates:~~

	% of the minimum hourly rate
Saturday—First 4 hours	150
Saturday—After 4 hours	200
Sunday	200

8.4 Shiftwork

(a) Definitions

(i) **Afternoon shift** means any shift, the ordinary hours of which finish after 7.00 pm and at or before midnight.

(ii) **Night shift** means any shift, the ordinary hours of which finish after midnight and at or before 8.00 am.

(iii) **Permanent night shift** means a shift during a period which an employee:

- works night shift only;
- stays on night shift for a longer period than four consecutive weeks; or
- works on a roster that does not give at least one third of the employee’s working time off night shift in each roster cycle.

(b) Shiftwork rates

A shiftworker or continuous shiftworker will be paid the following rates, on the following shifts:

	% of minimum hourly rate
Afternoon shift	115
Night shift	115
Permanent night shift	125

8.5 Rostering

(a) Rostering of hours and length of shifts

- (i) The employer can determine the type of rosters to be worked.
- (ii) The employer can determine the length of shifts to be worked up to a maximum of 10 hours. Shifts of more than 10 ordinary hours can only be implemented by agreement between the employer and the majority of employees affected or, in the absence of agreement, as resolved in accordance with clauses 21.2 and 22 of this award.

(b) Shift starting and finishing times

- (i) The start and finish times of shifts up to 10 ordinary hours may be determined by the employer.
- (ii) Shifts in excess of 10 ordinary hours will be worked between the starting and finishing times that are agreed between the employer and the majority of employees affected or, in the absence of agreement, as resolved in accordance with clauses 21.2 and 22 of this award.

(c) Roster and shift changes

- (i) Subject to clause 21.2, an employer may vary an employee's days of work or start and finish times to meet the needs of the business by giving at least 48 hours' notice. A shorter period can be agreed on between the employer and individual employee.
- (ii) Where an employee is performing shiftwork, the employer may change shift rosters or require an employee to work a different shift roster upon 48 hours' notice. These time periods may be reduced where agreed by the employer and the employee or at the direction of the employer where operational circumstances require.
- (iii) The employer must consult with directly affected employees about any changes made under this clause in accordance with clause 21.2.
- (iv) In the case of an emergency an employer may vary or suspend any roster arrangement immediately, notwithstanding anything elsewhere in clause 8.5.

AMOD has re-drafted clause 13.3 to be consistent with the [Plain Language Guidelines](#). Parties are invited to provide comments on the draft variation to the exposure draft as per [\[2017\] FWCFCB 3433](#) at [44].

8.6 Weekend and Public Holiday Rates – All Employees

- (a) All ordinary hours worked by an employee other than a shiftworker on the following days will be paid for at the following rates:

Day	Rate of pay (% of minimum hourly rate)
Monday to Friday	100%

Day	Rate of pay (% of minimum hourly rate)
Saturday—First 4 hours	150%
Saturday—After 4 hours	200%
Sunday	200%
Public Holiday	250%

- (b) The rates in this clause are maximum rates, and are in substitution for and not cumulative upon any other rate in this award (including shiftwork rates in clause 8.4(b)).

9. Breaks

9.1 Unpaid meal breaks—dayworkers

An employee, other than a shiftworker, is entitled to an unpaid meal break of 30 minutes after every five consecutive hours worked.

9.2 Paid meal breaks—shiftworkers

- (a) A shiftworker working 10 hours or less will be entitled to a paid meal break of 30 minutes per shift.
- (b) A shiftworker working for longer than 10 hours will be entitled to paid meal breaks totalling 60 minutes per shift.

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

9.4 An employee working overtime may be entitled to a paid meal break in accordance with clause 13.4.

9.5 The employer and an employee may agree to any variation of this clause to meet the circumstances of the workplace, provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under this clause.

Part 4—Wages and Allowances

10. Minimum wages

10.1 Employees other than apprentices

Rates updated as a result of AWR 2017

- (a) An employer must pay an employee the following minimum wages for ordinary hours worked by the employee for their classification:

Employee classification	Minimum weekly rate	Minimum hourly rate
	\$	\$
<i>Operations and Services</i>		
Entry Level – Introductory	731.30	20.89
Basic	770.20	22.01
Competent	809.10	23.12
Advanced	886.60	25.33
<i>Maintenance Trades</i>		
Entry Level – Introductory	770.20	22.01
Competent	809.10	23.12
Advanced	886.60	25.33
Dual Trade	964.40	27.55

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

- (b) The classification structure and definitions for the above classifications are contained in Schedule A—Classification structure.

10.2 Apprentices

- (a) The terms of this award apply to apprentices, subject to the provisions of an applicable contract of apprenticeship operating under federal, State or Territory apprenticeship legislation.
- (b) Apprentices who commenced their apprenticeship before 1 January 2014 will be entitled to the percentage of the **Maintenance Trades – Competent Rate** ~~applicable adult weekly wage for their classification~~ as set out in the table below:

Parties are asked to clarify what the “applicable adult weekly wage” is for the purpose of clause 10.2(b).

Year of apprenticeship	Percentage of adult rate
	%
1st year	45
2nd year	55

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Year of apprenticeship	Percentage of adult rate
	%
3rd year	75
4th year	88

- (c) Apprentices who commenced their apprenticeship on or after 1 January 2014 will be entitled to the percentage of the Maintenance Trades – Competent Rate as set out in the tables below.

Year of apprenticeship	Have not completed Year 12	Have completed Year 12
	% of Maintenance Trades – Competent Rate	
	%	%
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	88	88

(d) Block release training

- (i) This clause applies to apprentices required to attend block release training identified in or associated with their training contract.
- (ii) Where the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training.
- (iii) Clause 10.2(d)(ii) does not apply where the apprentice could attend a closer Registered Training Organisation (RTO), and use of the more distant RTO is not agreed between the employer and the apprentice.

(e) For the purposes of clause 10.2(d)(ii), excess reasonable travel costs include:

- (i) the total costs of reasonable transport (including transporting tools where required);
- (ii) accommodation costs incurred while travelling (where necessary); and
- (iii) reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work.

- (f) Excess reasonable travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(g) Reduction of payment

- (i) Payment under clause 10.2(d) may be reduced where an apprentice is eligible to receive travel costs to attend the block release training under a Government apprentice assistance scheme.

- (ii) The payment may be reduced by the amount the apprentice is entitled to receive under the scheme.
- (iii) A payment reduction will only apply if an apprentice has either received assistance under the scheme or their employer has advised them in writing of the availability of the assistance.

(h) Reimbursements of course fees and materials

An employer must reimburse an apprentice for the following costs paid by the apprentice:

- (i) all training fees charged by an RTO for prescribed courses; and
 - (ii) all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship.
- (i) An employer must make the reimbursements in clause 10.2(h) at the later of:
- (i) within six months of starting the apprenticeship or the relevant stage of the apprenticeship; or
 - (ii) within three months of starting training provided by the RTO.
- (j) Reimbursement under clause 10.2(h) is not payable when there is unsatisfactory progress.
- (k) An employer may meet its obligations under clauses 10.2(h) and 10.2(i) by paying any fees and/or cost of textbooks directly to the RTO.
- (l) Attending training**
- (i) An apprentice will be released from work to attend any training and assessment specified in, or associated with, the training contract.
 - (ii) An apprentice's attendance at training must be without loss of continuity of employment and be paid at the appropriate wages.
 - (iii) Time spent attending training will be counted as time worked for the purposes of calculating the apprentice's wages and determining their employment conditions.
- (m) Clause 10.2(l)(iii) operates subject to the provisions of Schedule E—School-based Apprentices.
- (n) Except in an emergency, an apprentice must not be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

10.3 Adult apprentices

Parties are asked whether the term 'lowest adult classification' in clauses 10.3(c) and (e) should be more specific and instead be replaced with 'Entry Level – Introductory in the Maintenance Trades classification'.

- (a) An adult apprentice is a person who is 21 years of age or over when they commence their apprenticeship.

- (b) Adult apprentices who commenced a three year apprenticeship before 1 January 2014 will be entitled to the percentage of the applicable adult weekly wage for their classification as set out in the table below:

Year of apprenticeship	Percentage of adult rate
	%
1st year	80
2nd year	90
3rd year	95

- (c) Adult apprentices who commence a three year apprenticeship on or after 1 January 2014 will be entitled to the percentage of the Maintenance Trades—Competent Rate as set out in the table below, or, in the case of a second or third year apprentice only, the rate for the lowest adult classification in clause 10.1, whichever is the greater.

Year of apprenticeship	Percentage of Maintenance Trades – Competent Rate
	%
1st year	80
2nd year	90
3rd year	95

- (d) Adult apprentices who commence a four year apprenticeship on or after 1 January 2014 and are in the first year of their apprenticeship will be entitled to 80% of the Maintenance Trades—Competent Rate, or the rate prescribed by clause 10.2(c) for the relevant year of the apprenticeship, whichever is the greater.
- (e) Adult apprentices who commence a four year apprenticeship on or after 1 January 2014 and are in the second and subsequent years of their apprenticeship are entitled to the rate for the lowest adult classification in 10.1—Employees other than apprentices, or the rate prescribed by clause 10.2(c) for the relevant year of the apprenticeship, whichever is the greater.
- (f) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or 12 months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 10 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

10.4 Payment of wages

- (a) The employer will pay the employee’s wages, penalties and allowances at a frequency of not longer than fortnightly by electronic funds transfer into the

employee's bank (or other recognised financial institution) account nominated by the employee.

- (b) An employer may deduct any overpayment of wages and allowances from the amount that is required to be paid to an employee under this clause.

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

10.5 Supported wage system

For employees who because of the effects of a disability are eligible for a supported wage, see Schedule D.

10.6 School-based apprentices

For school-based apprentices, see Schedule E.

11. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2017

- 11.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.

- 11.2 Except where specifically indicated, the following allowances will apply to employees covered by this award and are payable in addition to an employee's classification rate of pay, but are not taken into account in the calculation of any other penalty rate prescribed by the award.

11.3 Wage related allowances

- (a) **First aid allowance**

An employee who has been trained to provide first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body must be paid **\$6.15** per week extra if appointed by their employer to perform first aid duty.

11.4 Expense related allowances

- (a) **Tool allowance—tradespersons**

- (i) A tradesperson must be paid **\$15.29** per week extra for supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson.
- (ii) An employer may reach agreement with an individual tradesperson to provide all of the tools required in the performance of their work. If agreement is reached, the tool allowance is not payable.

(iii) A tradesperson is to replace or pay for any tools supplied by their employer which are lost as a result of negligence on the part of the employee.

(b) Licence reimbursement

(i) An employee that is required by an employer to obtain and use a statutory license for work must be reimbursed by the employer for the cost of the license.

(ii) A pro rata rate will apply to casual or part-time employees.

(c) Meal allowance

(i) An employee must be paid a meal allowance of **\$13.96** on each occasion the employee is entitled to a rest break during overtime work in accordance with clause 13.4, except in the following circumstances:

- if the employee is a day worker and was notified no later than the previous day or previous rostered shift that they would be required to work the overtime;
- if the employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work the overtime;
- if the employee lives in the same locality as the enterprise and could reasonably return home for meals; or
- if the employee is provided with an adequate meal by the employer.

(ii) If an employee has provided their own meal or meals on the basis that they have been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, they must be paid the prescribed meal allowance for the meal or meals which they have provided but which are surplus.

(d) Protective clothing and equipment allowance

Where an employee is required to wear protective clothing and equipment as stipulated by the relevant law operating in a State or Territory, the employer must reimburse the employee for the cost of purchasing such special clothing and equipment unless the clothing and equipment is paid for by the employer.

12. Superannuation

12.1 Superannuation legislation

(a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a

superannuation fund, any superannuation fund nominated in the award covering the employee applies.

- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

12.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

12.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 12.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 12.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 12.3(a) or (b) was made.

12.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 12.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 12.2 and pay the amount authorised under clauses 12.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Maritime Super;
- (b) BHP Billiton Super Fund;
- (c) Plum Super;
- (d) Auscoal Super;
- (e) QSuper;
- (f) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (g) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Penalties and Overtime

13. Overtime

13 amended in accordance with [PR584088](#) (13.7 inserted)

13.1 Payment for overtime

All time worked in excess of or outside the ordinary hours of any shift on the following days will be paid for at the following rates:

Day	% of minimum hourly rate
Monday to Saturday—First 3 hours	150
Monday to Saturday—After 3 hours	200
Sunday	200
Public holidays	250

13.2 Method of calculation

When computing overtime, except for clause 13.6, each day or shift worked will stand alone.

13.3 Overtime—continuous shiftworkers

AMOD has re-drafted clause 13.3 to be consistent with the [Plain Language Guidelines](#). Parties are invited to provide comments on the draft variation to the exposure draft as per [\[2017\] FWCFB 3433](#) at [44].

- (a) A continuous shiftworker will be paid for all work done in addition to the ordinary hours at the rate of **200%** of the minimum hourly rate **except on a public holiday when the rate will be 250%**.
- (b) The rates in this clause are maximum rates and are in substitution for and not cumulative upon any other rate in this award (including shiftwork rates in clause 8.4(b)).

13.4 Rest period during overtime

An employee may take a paid rest break of 20 minutes after each four hours of overtime worked, if the employee is required to continue work after the rest break.

13.5 Rest period after working overtime

(a) Length of the rest period

When overtime work is necessary it will be arranged where possible for employees to have at least 10 consecutive hours off duty between the work of successive days.

(b) Where the employee does not get a 10 hour rest

- (i) The following conditions apply to an employee who works so much overtime that the employee has not had at least 10 consecutive hours off

duty between the end of the employee's work on one day and the start of the employee's work on the next day:

- the employee will be released from duty after that overtime is finished until the employee has had 10 consecutive hours off duty; and
 - there will be no loss of pay for rostered hours of work time which occur during this absence.
- (ii) The following conditions apply to an employee who, on the instructions of the employer, resumes or continues work without having had 10 consecutive hours off duty in accordance with clause 13.5(b)(i):
- the employee will be paid at **200%** of the minimum hourly rate during rostered hours and after that until the employee is released from duty;
 - the employee will then be entitled to be absent for 10 consecutive hours; and
 - there will be no loss of pay for rostered hours of work time which occur during this absence.

13.6 Call-back

(a) Payment for call-back

- (i) An employee who is recalled to work overtime after leaving the coal export terminal (whether the employee was notified before or after leaving it) will be paid for at least four hours' work at the appropriate rate for each time the employee is recalled.
- (ii) The employee will not be required to work the full four hours if the job to be performed is completed within a shorter period, except where unforeseen circumstances arise.
- (iii) The provisions of this clause do not apply in the following cases:
- where it is customary for an employee to return to the coal export terminal to perform a specific job outside the employee's ordinary working hours; or
 - where the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time.

(b) Call-back less than four hours

Overtime worked in the circumstances specified in clause 13.6(a) will not be regarded as overtime for the purposes of a rest period as set down in clause 13.5 if the actual time worked is less than four hours on any recall or on each of any recalls.

13.7 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.

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- (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 13.7.
- (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 13.7 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 13.7 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 13.7 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 13.7 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 13.7 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 13.7 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 13.7.

Part 6—Leave, Public Holidays and Other NES Entitlements

14. Annual leave

14 amended in accordance with [PR582987](#). (14.6 and 14.7 renumbered as 14.7 and 14.8; new 14.6 inserted; 14.8 renamed and substituted; 14.9 - 14.12 inserted)

- 14.1 Annual leave is provided for in the NES. This clause supplements those entitlements and provides industry specific detail.

14.2 Definition of shiftworker

For the purpose of the additional week of annual leave provided for in the NES, a shiftworker is a continuous shiftworker as defined in Schedule F— Definitions.

14.3 Deduction of annual leave

For each period of annual leave taken the ordinary hours of rostered shifts that would have been worked by an employee will be deducted from the employee’s accrued annual leave entitlement.

14.4 Payment for annual leave

AMOD has re-drafted clause 14.4 to be consistent with the [Plain Language Guidelines](#). Parties are invited to provide comments on the draft variation to the exposure draft as per [\[2017\] FWCFB 3433](#) at [44].

An employee taking annual leave must be paid either:

- (a) the employee’s ordinary rate of pay plus a loading of **17.5%** of that rate; or
- (b) the employee’s rostered earnings for the period of annual leave, which includes all rostered overtime and rostered public holidays (paid at ~~200% of the~~

~~minimum hourly rate~~ the rate in clause 8.6(a)), but does not include shift allowances penalties, other than for seven day roster employees,

whichever is the greater.

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).

14.5 When payment will be made for annual leave

An employee will be paid for a period of annual leave in accordance with the employee's normal pay periods, unless an employee requests that payment of the entire period of annual leave be made prior to the employee commencing leave.

14.6 Electronic funds transfer (EFT) payment of annual leave

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

14.7 Taking of annual leave during shut downs

An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works. If an employee does not have sufficient accrued annual leave for the period, then the employee may be required to take leave without pay. A minimum of four weeks' notice will be given for a shutdown under this clause.

14.8 Excessive leave accruals: general provision

References to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350].

Note: Clauses 14.8 to 14.10 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act Fair Work Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 14.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 14.9 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 14.10 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 14.8(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.8, 14.9 or 14.10 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 14.9(b)(i).

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

14.10 Excessive leave accruals: request by employee for leave

- (a) Clause 14.10 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 14.8(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 14.9(a) that, when any other paid annual leave arrangements (whether made under clause 14.8, 14.9 or 14.10 or otherwise agreed by the employer and

employee) are taken into account, would eliminate the employee's excessive leave accrual.

- (d) A notice given by an employee under paragraph (b) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.8, 14.9 or 14.10 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 14.2) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

14.11 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 14.11 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 14.11 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 14.11, 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.

14.12 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.12.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.12.
- (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 14.12 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 14.12 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 14.12 as an employee record.

Note 1: Under section 344 of the [Act 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 14.12.

Note 2: Under section 345(1) of the [Act 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 14.12.

Note 3: An example of the type of agreement required by clause 14.12 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

15. Parental leave and related entitlements

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

16. Personal/carer's leave and compassionate leave

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

17. Community service leave

Community service leave is provided for in the NES.

18. Public holidays

18.1 Public holidays are provided for in the NES.

18.2 Payment for public holidays for day workers is in accordance with clause 13.1.

19. Termination of employment

19.1 Notice of termination is provided for in the NES.

19.2 Notice of termination by an employee

19.3 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.

19.4 Termination of employment

This clause does not affect the right of the employer to dismiss an employee without notice for serious misconduct and in such cases the wages will be payable up to the time of dismissal only.

20. Redundancy

20.1 Redundancy pay is provided for in the NES.

20.2 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.

Part 7—Consultation and Dispute Resolution

21. Consultation

21.1 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 21.1(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 21.1(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.

21.2 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.

22. Dispute resolution

- 22.1 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.
- 22.2 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 22.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 22.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 22.4 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.
- 22.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

Parties are to consider the proposed variations regarding 'occupational health and safety' and provide any comments by Friday 28 July 2017. See [\[2017\] FWCFB 3433](#) at [382].

- 22.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable **work health and safety** ~~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—Classification structure

A.1 Classification and progression principles

A.1.1 Classification

In each of the classifications under this award it is a requirement that an employee must:

- (a) perform work in a fully flexible manner as reasonably required by the employer and in accordance with the employee's ability and competence;
- (b) acquire any skills as reasonably requested by the employer and, where necessary, undertake required training and assist with the training of others; and
- (c) use such tools and equipment as may be required, subject to the limit of the employee's skills and competence and provided that the employee has been properly trained in the use of such tools and equipment.

A.1.2 Progression

An employee will progress through the classification levels subject to:

- (d) possessing the applicable skills for the level; and
- (e) being required by the employer to perform work at that level.

Progression from the level of Competent and above will be subject to the employee being appointed by the employer.

Employees at a particular level in the classification structure will be expected to perform all duties within the classification and any other functions or duties which they are capable and qualified to perform.

A.2 Classification groups

A.2.1 Services employees

A Services employee is designated as such by their employer and performs all tasks as directed by their employer which include but are not limited to: labouring; assisting work crews and tradespersons; operation of plant and equipment (including mobile plant); maintenance work on plant, equipment or buildings; performance of general plant, stores, workshop, warehouse and packaging tasks; preparing and cleaning equipment and materials; and on-site catering, cleaning and security.

A.2.2 Operations employees

An Operations employee is designated as such by their employer and performs all tasks as directed by their employer which include but are not limited to operating and adjusting all plant equipment (and associated control panels) utilised in coal export terminal operations.

A.2.3 Maintenance Trades employees

A Maintenance Trades employee is designated as such by their employer, performs all tasks in relation to a coal export terminal as directed by their employer and is trade qualified.

A.3 Classification structure

A.3.1 Entry Level—Introductory

An employee at this level is undertaking the standard induction training required for the operation or business. Such training covers: conditions of employment; coal export terminal and plant safety; first aid procedures; movement around the site; work and documentation procedures; quality control and quality assurance; and introduction to supervisors and fellow workers. Employees at this level perform routine duties under direct supervision.

This level applies to Services, Operations and Maintenance Trades employees.

A.3.2 Basic

An employee at this level will have completed the standard induction training and have been assessed to be able to competently carry out the basic and semi-skilled work on a range of plant and equipment functions required for this level. The employee exercises discretion within their level of skill and is responsible for the quality of the work subject to routine supervision.

An Operations employee at this level may be required to perform duties which include driving and or operating mobile plant and light vehicles such as motor vehicles, cranes and or machines. An Operations employee at this level may also perform duties relating to receiving, tipping, stacking, crushing, blending, shovelling, carting, sampling and loading of coal onto and or into wagons, rail trucks and or hoppers and or conveyor belts.

This level applies to Services and Operations employees.

A.3.3 Competent

An employee at this level will have been assessed as being competent to apply skills and knowledge in complex but routine situations where discretion and judgment are involved. The skills and knowledge are acquired through the completion of a trade certificate, or through practical experience which has equipped the employee with an equivalent level of skills and knowledge.

An employee at this level can plan tasks, select equipment and appropriate procedures from known alternatives and takes responsibility for the work of others. An employee at this level requires only limited supervision or guidance.

An employee at this level: understands and applies quality control techniques; exercises discretion within the scope of this level; performs work under limited supervision; operates all equipment incidental to the work; and assists in the provision of on-the-job training.

An employee at this level will provide guidance and assistance to others.

An Operations employee at this level will be required to be proficient in performing the duties of an Operations employee at the levels of Entry Level – Introductory and Basic, and may be required to perform duties relating to operating ship loading, reclaiming and stacking machines.

This level applies to Services, Operations and Maintenance Trades employees.

A.3.4 Advanced

An employee at this level will have met the requirements of, and be proficient in performing the duties of an employee at the levels of Entry Level—Introductory, Basic and Competent, and been assessed as being competent to perform tasks which require in-depth skill or knowledge, or the employee is assessed as having the integration of a broad range of skills. The work may be of a non-routine nature requiring the application of the relevant skills and knowledge to new but predictable situations.

The level of skills or knowledge required to perform this work will involve the completion of post-trade training appropriate for this level, or through the acquisition of practical skills and knowledge which has equipped the employee with the equivalent level of skills and knowledge.

An employee at this level may be required to supervise other employees and direct the conduct of work by employees at the levels of Entry Level—Introductory, Basic and Competent.

An Operations employee at this level may be required to be competent in coal export terminal operations computer skills and perform duties which include control room operations.

This level applies to Services, Operations and Maintenance Trades employees.

A.3.5 Dual Trade

A Maintenance Trades employee at this level will have met the requirements of, and be proficient in performing, the duties of a Maintenance Trades employee at the levels of Competent and Advanced, and hold a dual trade qualification or equivalent prescribed post-trade course used in the operation and has acquired additional knowledge enabling the employee to apply dual trade skills or an equivalent level of high precision specialised trade skills in one area.

An employee at this level has high precision trade skills in more than one area; is qualified to work on machinery or equipment with complex mechanical, hydraulic, electrical circuitry or controls; and meets the skills requirements for Tradespersons in accordance with the *Manufacturing and Associated Industries and Occupations Award 2016* for this level.

This level applies to Maintenance Trades employees.

Schedule B—Summary of Hourly Rates of Pay

NOTE: The hourly rates in this Schedule are based on a 35 hour week.

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

Rates updated as a result of AWR 2017

B.1 Full-time and part-time employees

B.1.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Saturday		Sunday
		First 4 ordinary hours	After 4 ordinary hours	
% of minimum hourly rate				
	100%	150%	200%	200%
	\$	\$	\$	\$
Operations and Services				
Entry Level – Introductory	20.89	31.34	41.78	41.78
Basic	22.01	33.02	44.02	44.02
Competent	23.12	34.68	46.24	46.24
Advanced	25.33	38.00	50.66	50.66
Maintenance Trades				
Entry Level – Introductory	22.01	33.02	44.02	44.02
Competent	23.12	34.68	46.24	46.24
Advanced	25.33	38.00	50.66	50.66
Dual Trade	27.55	41.33	55.10	55.10

B.1.2 Full-time and part-time employees other than shiftworkers—overtime rates

	Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
% of minimum hourly rate				
	150%	200%	200%	250%
	\$	\$	\$	\$
Operations and Services				
Entry Level – Introductory	31.34	41.78	41.78	52.23
Basic	33.02	44.02	44.02	55.03

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	Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Competent	34.68	46.24	46.24	57.80
Advanced	38.00	50.66	50.66	63.33
Maintenance Trades				
Entry Level – Introductory	33.02	44.02	44.02	55.03
Competent	34.68	46.24	46.24	57.80
Advanced	38.00	50.66	50.66	63.33
Dual Trade	41.33	55.10	55.10	68.88

B.1.3 Full-time and part-time shiftworkers—ordinary rates and penalty rates

	Day	Afternoon shift	Night shift	Permanent night shift ¹
		% of minimum hourly rate		
	100%	115%	115%	125%
	\$	\$	\$	\$
Operations and Services				
Entry Level – Introductory	20.89	24.02	24.02	26.11
Basic	22.01	25.31	25.31	27.51
Competent	23.12	26.59	26.59	28.90
Advanced	25.33	29.13	29.13	31.66
Maintenance Trades				
Entry Level – Introductory	22.01	25.31	25.31	27.51
Competent	23.12	26.59	26.59	28.90
Advanced	25.33	29.13	29.13	31.66
Dual Trade	27.55	31.68	31.68	34.44

¹**Permanent night shift** means an employee who works night shift only, for a longer period of four consecutive weeks, or on a roster that does not give at least one third of the employee's working time off night shift in each roster cycle.

B.1.4 Full-time and part-time shiftworkers—overtime

	Other than continuous shiftworkers		Continuous shiftworkers	All employees	
	Saturday		Sunday	Monday - Sunday	
	First 3 hours	After 3 hours		Public holiday	
	% of minimum hourly rate				
	150%	200%	200%	200%	250%
	\$	\$	\$	\$	\$
Operations and Services					
Entry Level – Introductory	31.34	41.78	41.78	41.78	52.23
Basic	33.02	44.02	44.02	44.02	55.03
Competent	34.68	46.24	46.24	46.24	57.80
Advanced	38.00	50.66	50.66	50.66	63.33
Maintenance Trades					
Entry Level – Introductory	33.02	44.02	44.02	44.02	55.03
Competent	34.68	46.24	46.24	46.24	57.80
Advanced	38.00	50.66	50.66	50.66	63.33
Dual Trade	41.33	55.10	55.10	55.10	68.88

¹Permanent night shift means an employee who works night shift only, for a longer period of four consecutive weeks, or on a roster that does not give at least one third of the employee’s working time off night shift in each roster cycle, see clause 8.4(a)(iii).

B.2 Casual employees

B.2.1 Casual employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Saturday		Sunday
		First 4 ordinary hours	After 4 ordinary hours	
	% of casual hourly rate ¹			
	125%	150%	200%	200%
	\$	\$	\$	\$
Operations and Services				
Entry Level – Introductory	26.11	39.17	52.22	52.22
Basic	27.51	41.27	55.02	55.02
Competent	28.90	43.35	57.80	57.80
Advanced	31.66	47.49	63.32	63.32

	Ordinary hours	Saturday		Sunday
		First 4 ordinary hours	After 4 ordinary hours	
	% of casual hourly rate ¹			
	125%	150%	200%	200%
	\$	\$	\$	\$
Maintenance Trades				
Entry Level – Introductory	27.51	41.27	55.02	55.02
Competent	28.90	43.35	57.80	57.80
Advanced	31.66	47.49	63.32	63.32
Dual Trade	34.44	51.66	68.88	68.88
¹ Casual hourly rate is based on the minimum hourly rate and includes the casual loading which constitutes part of the casual employee’s all purpose rate				

B.2.2 Casual shiftworkers—ordinary and penalty rates

	Day	Afternoon shift	Night shift	Permanent night shift ¹
	125%	140%	140%	150%
	\$	\$	\$	\$
Operations and Services				
Entry Level – Introductory	26.11	30.03	30.03	32.64
Basic	27.51	31.64	31.64	34.39
Competent	28.90	33.24	33.24	36.13
Advanced	31.66	36.41	36.41	39.58
Maintenance Trades				
Entry Level – Introductory	27.51	31.64	31.64	34.39
Competent	28.90	33.24	33.24	36.13
Advanced	31.66	36.41	36.41	39.58
Dual Trade	34.44	39.61	39.61	43.05
¹ Permanent night shift means an employee who works night shift only, for a longer period of four consecutive weeks, or on a roster that does not give at least one third of the employee’s working time off night shift in each roster cycle, see clause 8.4(a)(iii).				
¹ Casual hourly rate is based on the minimum hourly rate and includes the casual loading which constitutes part of the casual employee’s all purpose rate				

Schedule C—Summary of Monetary Allowances

Monetary amounts in this schedule adjusted as a result of AWR 2017

See clause 11 for full details of allowances payable under this award.

C.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule F as the minimum weekly wage for an Operations employee Competent level in clause 10.1(a) = **\$809.10**.

Allowance	Clause	% of standard rate \$783.30	\$ per week
First aid allowance	11.3(a)	0.76	6.15

C.1.1 Adjustment of wage related allowances

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

C.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clause 11.4:

Allowance	Clause	\$
Tool allowance—tradesperson	11.4(a)	15.29 per week
Meal allowance—overtime	11.4(c)	13.96 per occasion

C.2.1 Adjustment of expense related allowances

C.2.2 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.

C.2.3 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
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

Schedule D—Supported Wage System

Schedule D updated in accordance with [PR592689](#).

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

D.2 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

D.3 Eligibility criteria

D.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.

D.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.

D.4 Supported wage rates

D.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 D.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

D.4.2 Provided that the minimum amount payable must be not less than **\$84** per week.

D.4.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

D.5 Assessment of capacity

D.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.

D.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.

D.6 Lodgement of SWS wage assessment agreement

D.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.

D.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.

D.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.

D.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.

D.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.

D.10 Trial period

D.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.

D.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.

D.10.3 The minimum amount payable to the employee during the trial period must be no less than \$84 per week.

D.10.4 Work trials should include induction or training as appropriate to the job being trialled.

D.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 D.5.

Schedule E—School-based Apprentices

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

Schedule F— Definitions

Placement of the **definitions** to be determined by Plain Language Process. See [\[2017\] FWCFB 3433](#) at [333].

In this award, unless the contrary intention appears:

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

all purpose rate means the rate of pay of an employee who is entitled to an all purpose loading. This rate is to be used when calculating any penalties or loadings

casual hourly rate means the hourly rate for a casual employee for the employee's classification specified in Schedule A, inclusive of the casual loading, which is payable for all purposes

Definition of Coal export terminal has been changed in accordance with [\[2017\] FWCFB 3433](#) at [339].

coal export terminal has the meaning given in clause 3.2

~~means a facility that receives and stockpiles coal, and loads coal onto vessels for export and which does not deal with other cargo or undertake other port activities unless such cargo or activities are of a minor nature or incidental to that facility's activities relating to the receipt, stockpiling and loading of coal.~~

continuous shiftworker means an employee engaged in a continuous process who is rostered to work regularly on Sundays and public holidays

day means a calendar day commencing at midnight on one day and concluding 24 hours later (unless otherwise agreed by the employer and a majority of the employees affected)

day worker means an employee other than a shiftworker

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

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

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the ~~Act *Fair Work Act 2009* (Cth)~~

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

Exposure draft – Coal Export Terminals Award 2016

ordinary hours means the hours required to be worked by an employee for the payment of their award classification rate

roster means any arrangement of rostered hours worked by an employee

rostered hours means ordinary hours of work and rostered overtime

rostered overtime means reasonable additional hours which are required to be worked by an employee as an integral part of the employee's roster

standard rate means the minimum weekly wage for an Operations employee Competent level in clause 10.1(a)

DRAFT

Schedule G—Agreement to Take Annual Leave in Advance

Schedule G—Agreement to Take Annual Leave in Advance inserted in accordance with [PR582987](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement to Cash Out Annual Leave

Schedule H—Agreement to Cash Out Annual Leave inserted in accordance with [PR582987](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule 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 [PR584088](#).

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

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___