The Exposure Draft was first published on 7 October 2014. Subsequent amendments to the draft are as follows:		
Publication date	**Reason for amendments**	**Clauses affected**
24 July 2015	To disaggregate *Professional Diving (Recreational) Award 2010* from the *Marine Tourism and Charter Vessels Award 2015* and incorporate changes in accordance with [2014] FWCFB 9412.	1.2, 1.5, 2.3, 3.6, 5.1, 6.7(d), 10.3(d), 14.1, 15, 16, 17 18, 19, 20.1 0, Schedule D, Schedule E.
24 July 2015	Incorporate changes in accordance with the 24 April 2015 Report to the Full Bench PR563422	6.5(b), 7.2, 7.3, 10.1, 10.2(d)(iii), 10.3(b), Schedule E
24 July 2015	Correction to inconsistent drafting within the award.	6.2, 6.3, 6.7, 10.2, 11.3(e), Schedule E
24 July 2015	Incorporate changes resulting from [2015] FWCFB 3500, PR566789, and PR566918	10, 11, Schedule A, Schedule B
24 July 2015	Incorporate changes resulting from [2015] FWCFB 4658	10, Schedule E
30 October 2015	Incorporate changes resulting from [2015] FWCFB 6656	1.4
	Incorporate changes resulting from [2015] FWCFB 4658	1, 14, Schedule A
	Incorporate changes resulting from [2015] FWCFB 7236	Schedule C
13 June 2017	Correct errors	10.5, 19.2
	Redrafting to reflect parties agreed position (red text).	11.3(e)(ii)
	Further incorporate changes resulting from [2015] FWCFB 4658	10.1
	Incorporate changes resulting from [2016] FWCFB 3500, PR579900 and PR579614	10, 11, Schedule A, Schedule B, Schedule C
	Incorporate changes resulting from PR580863	Schedule D
	Incorporate changes resulting from PR583060	14, Schedule F, Schedule G
	Incorporate changes resulting from PR584136	13.4, Schedule H
	Incorporate changes resulting from PR588656	10.3(c)

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

EXPOSURE DRAFT

Professional Diving (Recreational) Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Professional Diving Industry (Recreational) Award 2010* (the Professional Diving (Recreational) Award) as at 29 October 2015. This exposure draft does not seek to amend any entitlements under the Diving recreational 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 matters AM2014/76 and AM2014/85. 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.

Table of Contents

Page

Part 1— Application and Operation 4

1. Title and commencement 4
2. The National Employment Standards and this award 4
3. Coverage 4
4. Award flexibility 5
5. Facilitative provisions 7

Part 2— Types of Employment and Classifications 7

6. Types of employment 7
7. Classifications 8

Part 3— Hours of Work 9

8. Ordinary hours of work 9
9. Breaks 9

Part 4— Wages and Allowances 9

10. Minimum wages 9
11. Allowances 11
12. Superannuation 13

Part 5— Overtime 14

13. Overtime 14

Draft

Part 6— Leave, Public Holidays and Other NES Entitlements 16
14. Annual leave 16
15. Personal/carer's leave and compassionate leave 20
16. Parental leave and related entitlements 20
17. Public holidays 20
18. Community service leave 20
19. Termination of employment 20
20. Redundancy 21
Part 7— Consultation and Dispute Resolution 21
21. Consultation 21
22. Dispute resolution 23
Schedule A —Summary of Hourly Rates of Pay—Recreational Diving Industry 24
Schedule B —Summary of Monetary Allowances 25
Schedule C —National Training Wage 26
Schedule D —2016 Part-day public holidays 36
Schedule E —Definitions 38
Schedule F —Agreement to Take Annual Leave in Advance 39
Schedule G —Agreement to Cash Out Annual Leave 40
Schedule H —Agreement for Time Off Instead of Payment for Overtime 41

Draft

Part 1—Application and Operation

1. Title and commencement

1.1 This award is the Professional Diving (Recreational) Award 2015.

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

1.3 A variation to this award this 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 E—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 throughout Australia engaged in the recreational diving industry and their employees in the classifications listed in clause 7—Classifications to the exclusion of any other modern award.

3.2 In clause 3.1, Australia includes all such areas as fall within the territorial jurisdiction of the Commonwealth or of a State.

3.3 The **recreational diving industry** means the provision of underwater services for the purposes of recreational diving and related shipboard services.

3.4 The award does not cover employers and employees covered by the classifications listed in the *Professional Diving Industry (Industrial) Award 2015*.

3.5 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.3 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 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.

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:

Draft

(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.

Draft

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 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 clause:

(a) clause 10.3(a)—payment of wages

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 All employees except casual employees must be employed by the week.

6.3 Where employment is of less than four weeks' duration, employees will be paid casual rates.

6.4 Full-time employees

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

6.5 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 minimum hourly rate for the relevant classification in clause 10.1.

(c) An employer must inform a part-time employee prior to the commencement of employment of the ordinary hours of work and starting and finishing times.

6.6 Casual employees

(a) A casual employee is an employee who is engaged and paid as a casual employee.

Draft

(b) Casual employment is to be terminated by four hours' notice on either side, or by the payment or forfeiture of four hours' wages as the case may be.

6.7 Casual loading

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

(i) the minimum hourly rate; and

(ii) a loading of **25%** of the minimum hourly rate,

for the classification in which they are employed.

(b) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other conditions of full-time or part-time employment.

(c) The loading constitutes part of the casual employee's all purpose rate.

7. Classifications

7.1 Employees may be required to carry out the duties of deckhands, cooks or skippers, in addition to instructing and supervising diving operations, shopwork, interviewing prospective clients and other undefined duties.

7.2 **Dive instructor** means an employee who is trained to train other divers in accordance with the following standards:

(a) for the training and certification of recreational divers:

- ISO 24801—3 Recreational Diving Services—Safety Related Minimum Requirements for the Training of Recreational Scuba Divers—Level 3. Dive Leader; and
- ISO 24802—1 Requirements for Training Scuba Instructors—Level 1 Assistant Instructor; and
- ISO 24802—2 Requirements for Training Scuba Instructors—Level 2 Instructor; and

(b) in keeping with the provisions of ISO 24803 Recreational Diving Services—Requirements for Recreational Scuba Diving Service Providers.

7.3 **Dive master** means an employee trained to the level required of:

- ISO 24801—3 Recreational Diving Services—Safety Related Minimum Requirements for the Training of Recreational Scuba Divers—Level 3. Dive Leader; or
- ISO 24802—1 Requirements for Training Scuba Instructors—Level 1 Assistant Instructor; or
- ISO 24802—2 Requirements for Training Scuba Instructors—Level 2 Instructor; and

in keeping with the provisions of ISO 24803 Recreational Diving Services—Requirements for Recreational Scuba Diving Service Providers.

Part 3—Hours of Work

8. Ordinary hours of work

8.1 This clause supplements Division 3 of the NES which deals with maximum weekly hours provided in s.62 of the Act.

8.2 The ordinary hours of work are an average of 38 hours per week but not exceeding 152 hours over a period of 28 days.

8.3 The ordinary hours of work may be worked on any day of the week to a maximum of 12 hours on any one day.

9. Breaks

9.1 Unpaid meal breaks

An employee is entitled to an unpaid meal break at a time fixed by agreement between the employer and the majority of employees concerned, provided that no employee works more than five hours without a meal break.

9.2 Paid rest breaks

An employee is entitled to a 10 minute paid rest break during the morning or the afternoon without loss of pay at a time agreed between the employer and the employee.

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:

10.1 amended in accordance with [63] of [2015] FWCFB 4658

Employee classification	Minimum annual rate	Minimum weekly rate[1]	Minimum hourly rate	~~Casual hourly rate~~[2]
	$	$	$	~~$~~
Dive master	38,104	730.80	19.23	~~24.04~~
Dive instructor	40,544	777.60	20.46	~~25.58~~

[1] **Minimum weekly rate** is determined by dividing the minimum annual rate by 52.1429.
[2] ~~**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.~~

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

Draft

10.2 Minimum payments

(a) Boat trips—full-time and part-time employees

(i) A **day trip** means a trip that takes place within a period of 24 hours, i.e. the employee leaves and returns within a period of 24 hours.

(ii) A **long trip** means a trip that exceeds a period of 24 hours.

(b) Full-time employees

(i) When a full-time employee is engaged on a day trip, the employee is entitled to a minimum payment of six hours at the minimum hourly rate.

(ii) When a full-time employee is engaged on a long trip, the employee is entitled to a minimum payment of six hours at the minimum hourly rate for each 24 hour period of the trip.

(c) Part-time employees

(i) When a part-time employee is engaged on a day trip, the employee is entitled to a minimum payment of three hours at the minimum hourly rate.

(ii) When a part-time employee is engaged on a long trip, the employee is entitled to a minimum payment of six hours at the minimum hourly rate for each 24 hour period of the trip.

(d) Casual employees

(i) When a casual employee is engaged on a day trip that exceeds six hours, the employee is entitled to a minimum payment of six hours at the casual hourly rate.

(ii) When a casual employee is engaged on a day trip of less than six hours, the employee is to be paid the actual hours worked at the casual hourly rate.

(iii) When a casual employee is engaged in dive shop work which includes classroom instruction, the employee is entitled to a minimum payment of two hours at the casual hourly rate.

(iv) When a casual employee is engaged in field work that takes place within a period of 24 hours, the employee is entitled to a minimum payment of four hours at the casual hourly rate.

10.3 Payment of wages

10.3 amended in accordance with PR588656.

(a) Wages will be paid either weekly or fortnightly, unless otherwise agreed between the employer and the employee.

(b) Wages will be paid by cash, ~~bank cheque~~ or electronic funds transfer (EFT) into the employee's bank or nominated financial institution account.

Draft

~~Penalties upon late payment of wages is being considered in matter AM2016/8~~

(c) Where an employee is paid by cash or cheque and the employee is kept waiting for their wages on pay day for more than 15 minutes after the usual time for ceasing work, the employee must be paid overtime rates after that 15 minutes for the duration spent waiting at the workplace.

Payment of wages on termination is being considered in matter AM2016/8, see draft determination (at attachment A of Statement).

(d) On termination of employment, wages due to employees must be paid to them on the day of termination or forwarded to them by post on the next working day.

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.

10.4 Higher duties

(a) Where employees perform the duties of a higher paid classification for a day or part thereof they will be paid at the higher rate for that day.

(b) For the purposes of this clause a **higher paid classification** means a classification with salary and allowances at a higher paid classification than the employee's current classification.

10.5 National training wage

For employees undertaking a traineeship, see ~~0~~ Schedule C—National Training Wage.

11. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016

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

11.2 Wage related allowance—Language allowance

A language allowance of **$43.85** per week is payable to an employee who is required by their employer to instruct in a language other than English.

11.3 Expense related allowances

(a) Accommodation and meals—offshore

An employee will be reimbursed for all meals and accommodation purchased whilst onboard a vessel travelling offshore for a journey of one or more nights. This provision will not apply where meals and accommodation are provided by the employer.

(b) Vehicle allowance

A vehicle allowance of **$0.78** per kilometre is payable to an employee who consents to use the employee's own vehicle for the transportation of themselves and their personal diving equipment for work purposes.

(c) Distant work onshore

(i) For the purpose of this clause **distant work** means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at a place other than their usual place of residence at the time of commencing work.

(ii) If employees whilst employed on distant work change their usual place of residence, such new place of residence or any further change of residence (if made whilst employed on distant work) will be regarded as the employee's usual place of residence for determination of whether the work is distant work within the meaning of this clause.

(d) Travel to and from distant work

(i) Employees engaged on distant work, who are required to travel with equipment, to and from work will be reimbursed for the cost of such travel, unless the employer provides the means of travel.

(ii) Where an employee is recalled and required to return on more than one occasion to the place of distant work, the employer will reimburse the employee the cost of returning to work on each occasion, except where the employer provides the means of travel.

(iii) The employer will not reimburse the cost of travel and travelling time of an employee who:

- chooses to leave the employment before the completion of the job or before being three months in such employment, whichever happens first;
- is discharged for unsatisfactory performance within one week of engagement; or
- is discharged for misconduct.

(e) Payment for travel to and from distant work

(i) Payment for time occupied in travelling to and from distant work will be at the minimum hourly rate, except on Sundays and public holidays when it will be paid for at **150%** of the minimum hourly rate.

(ii) Employees will also be paid an amount of **$5.91** per trip home to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.

(iii) The maximum travelling time to be paid for is:

- 12 hours out of every 24 hours; or

Draft

- when a sleeping berth is provided by the employer for all night travel—eight hours out of every 24 hours.

(f) Accommodation and meals—distant work

(i) The employee will be reimbursed for all meals and accommodation purchased whilst on distant work. The provision will not apply where meals and accommodation are provided by the employer or where the provisions of clauses 11.3(f)(ii) and (iii) apply.

(ii) An employee, by agreement with the employer, may be paid a minimum of **$331.89** per week in return for the employee being responsible for securing their own accommodation and meals.

(iii) In the case of parts of the week occurring at the beginning or end of employment on distant work, the allowance is **$47.47** per day or one seventh of any other weekly amount agreed on.

(g) Loss of personal effects allowance

(i) An employee will be reimbursed up to **$2364.00** for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge.

(ii) No payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

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.

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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:

(i) Maritime Super; or

(ii) AMP Superannuation Savings Trust,

(b) 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

(c) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Overtime

13. Overtime

13 amended in accordance with PR584136

13.1 All time worked on any one day in excess of 12 hours will be paid as overtime.

13.2 Overtime will be paid for at the rate of **150%** of the minimum hourly rate for the first two hours and **200%** of the minimum hourly rate thereafter.

13.3 Employees including casual employees who are called back to work after the usual finishing time will be paid for a minimum of four hours' work at overtime rates.

Draft

13.4 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 13.4.

(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 H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 13.4 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 13.4 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 13.4 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 13.4 as an employee record.

Draft

(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 13.4 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 13.4 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 13.4.

Part 6—Leave, Public Holidays and Other NES Entitlements

14. Annual leave

14 amended in accordance with PR583060.

14.1 Annual leave is provided for in the NES.

14.2 Payment for annual leave

In addition to the payment required to be made under the NES, the employee will be paid an annual leave loading of 17.5% of the ordinary rate of pay for the period of annual leave.

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).

14.3 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 14.3 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

(c) The employer must keep a copy of any agreement under clause 14.3 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 14.3, 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.

14.4 Cashing out of annual leave

(a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.4.

(b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.4.

(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 14.4 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 14.4 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 14.4 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 14.4.

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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 14.4.

Note 3: An example of the type of agreement required by clause 14.4 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

14.5 Excessive leave accruals: general provision

Note: Clauses 14.5 to 14.7 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

(a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.

(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 14.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

(d) Clause 14.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

14.6 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 14.5(a) 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 14.5, 14.6 or 14.7 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.

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(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 14.6(b)(i).

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

14.7 Excessive leave accruals: request by employee for leave

(a) Clause 14.7 comes into operation from 29 July 2017.

(b) If an employee has genuinely tried to reach agreement with an employer under clause 14.5(a) 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 14.6(a) that, when any other paid annual leave arrangements (whether made under clause 14.5, 14.6 or 14.7 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 14.5, 14.6 or 14.7 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 in any period of 12 months.

(f) The employer must grant paid annual leave requested by a notice under paragraph (b).

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15. Personal/carer's leave and compassionate leave

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

16. Parental leave and related entitlements

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

17. Public holidays

17.1 Public holidays are provided for in the NES.

17.2 Part-day public holidays

17.2 inserted on 1 September 2016

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

18. Community service leave

Community service leave is provided for in the NES.

19. Termination of employment

19.1 Notice of termination is provided for in the NES.

19.2 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 ~~money~~ 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 the NES, less any period of notice actually given by the employee.

19.3 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.

19.4 Notice of termination

Termination of a casual employee in the recreational diving industry is in accordance with clause 6.6(b).

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20. Redundancy

20.1 Redundancy pay is provided for in the NES.

20.2 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.

20.3 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.

20.4 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 19.3.

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

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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.

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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.

22.6 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.

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Schedule A—Summary of Hourly Rates of Pay—Recreational Diving Industry

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—ordinary rates

	Monday to Sunday $
Dive master	19.23
Dive instructor	20.46

A.2 Full-time and part-time employees—overtime rates

	Monday to Sunday	
	First 2 hours	After 2 hours
	% of minimum hourly rate	
	150%	200%
	$	$
Dive master	28.85	38.46
Dive instructor	30.69	40.92

A.3 Casual employees (and other employees where duration of employment is less than four weeks)—ordinary rates

	Monday to Sunday $
Dive master	24.04
Dive instructor	25.58

A.4 Casual employees (and other employees where duration of employment is less than four weeks)—overtime rates

	Monday to Sunday	
	First 2 hours	After 2 hours
	% of casual hourly rate	
	150%	200%
	$	$
Dive master	36.06	48.08
Dive instructor	38.37	51.16

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Schedule B—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016

B.1 Wage related allowances

B.1.1 Allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule E as the minimum weekly wage for a dive master in clause 10 = $730.80

Allowance	Clause	% of standard rate $730.80	$ per week
Language allowance	11.2	6.0	43.85

B.1.2 Adjustment of wage related allowances

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

B.2 Expense related allowances

The expense-related allowances in this award will be adjusted by reference to the Consumer Price Index (CPI) as per the following:

B.2.1 Expense related allowances

Allowance	Clause	$
Accommodation and meals allowance—offshore	11.3(a)	331.89 per week
Accommodation and meals allowance—broken parts of the week	11.3(f)(iii)	47.47 per day
Vehicle allowance	11.3(b)	0.78 per km
Travel to and from distant work	11.3(e)(ii)	5.91 per occasion
Loss of personal effects allowance—maximum	11.3(g)	Up to 2364.00 per occasion

B.3 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
Accommodation and meals	All groups
Vehicle and travel allowances	Private motoring sub-group
Distant work	Transport group
Loss of personal effects	All groups

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Schedule C—National Training Wage

This schedule is being reviewed in matter AM2016/17

Rates updated as a result of AWR 2016

C.1 Title

This is the *National Training Wage Schedule*.

C.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*

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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

C.3 Coverage

C.3.1 Subject to clauses C.3.2 to C.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 C.7 to this schedule or by clause C.5.4 of this schedule.

C.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 C.7 to this schedule.

C.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.

C.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.

C.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.

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

C.4 Types of Traineeship

The following types of traineeship are available under this schedule:

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

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C.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.

C.5 Minimum Wages

C.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause C.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 C.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 C.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 C.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		

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(c) Wage Level C

Subject to clause C.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 C.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 C.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 C.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

C.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses C.5.2(f) and C.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 C.7.1 are:

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	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 C.5.2(f) and C.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 C.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 C.5.2(f) and C.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 C.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

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	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 C.5.2(f) and C.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 C.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 C.5.2(f) and C.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 C.5.2(f) and C.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

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(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 C.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 C.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 C.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

C.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.

C.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 C.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.

C.6 Employment conditions

C.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.

C.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.

C.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 C.5.2(f)(ii) and not by this clause.

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

C.7 Allocation of Traineeships to Wage Levels

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

C.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

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Training package	AQF certificate level
Maritime	I, II, III
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III
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 Logistics	III
Water Industry (Utilities)	III

C.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

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Training package	AQF certificate level
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II
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	II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

C.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

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Schedule D—2016 Part-day public holidays

This provision is being reviewed in AM2014/301

Schedule D amended in accordance with PR580863

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

D.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 D.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 D.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.

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(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 E—Definitions

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, loadings or payment while they are on annual leave.

casual hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 10, inclusive of the casual loading, which is payable for all purposes

day trip means a trip that takes place within a period of 24 hours, i.e. the employee leaves and returns within a period of 24 hours

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

distant work means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at a place other than their usual place of residence at the time of commencing work

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)

long trip means a trip that exceeds a period of 24 hours

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

NES means the National Employment Standards as contained in ss.59 to 131 of the Act

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

standard rate means the minimum weekly rate for a dive master in clause 10

working time for an instructor means instruction time plus pre-dive and post-dive briefings of a maximum 30 minutes duration each

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Schedule F—Agreement to Take Annual Leave in Advance

Schedule F—Agreement to Take Annual Leave in Advance inserted in accordance with PR583060

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___

Draft

Schedule G—Agreement to Cash Out Annual Leave

Schedule G—Agreement to Cash Out Annual Leave inserted in accordance with PR583060

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___

Draft

Schedule H—Agreement for Time Off Instead of Payment for Overtime

Schedule H— Agreement for time off instead of payment for overtime inserted in accordance with PR584136

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___

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