

The Exposure Draft was first published on 18 December 2015. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
18 July 2017	Incorporates changes resulting from <a href="#">PR580863</a>	Schedule F
	Incorporates changes resulting from <a href="#">[2016] FWCFB 3500</a> , <a href="#">PR579886</a> , <a href="#">PR579606</a> and <a href="#">PR581528</a>	10, 10.5(a), 11, Schedule B, Schedule C, Schedule D
	Incorporates changes resulting from <a href="#">PR583023</a>	16, Schedule H, Schedule I
	Incorporates changes resulting from <a href="#">PR585799</a>	14
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3500</a> , <a href="#">PR592200</a> , <a href="#">PR592354</a> , <a href="#">PR592689</a> , <a href="#">PR593873</a>	10, 10.5(a), Schedule B, Schedule C, Schedule D, Schedule E
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a>	1, 3, 11, 12, 14, 16, Schedule A, Schedule G
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3541</a>	6
18 December 2015	<a href="#">Exposure draft</a>	

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

### Labour Market Assistance Industry Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Labour Market Assistance Industry Award 2010** (the Labour Market award) as at 18 December 2015. This exposure draft does not seek to amend any entitlements under the Labour Market 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 [AM2014/232](#). 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 *Labour Market Assistance Industry Award 2015*.

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 G—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 in the labour market assistance industry throughout Australia and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award.

Definition of **labour market assistance industry** retained in coverage clause in accordance with [\[2017\] FWCFB 3433](#) at [339].

3.2 The **labour market assistance industry** means the provision of work placement, job searching, personal support, vocational training and related services in the welfare sector, delivered by arrangement or contract with federal and state governments, to assist persons seeking employment

- 3.3 The award does not cover employers and employees covered by the *Supported Employment Services Award 2015*.
- 3.4 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 3.5 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 3.1 and 3.2 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This clause operates subject to the exclusions from coverage in this award.
- 3.6 This award does not cover:

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

- (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.
- 3.7 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 employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

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

Clause	Provision	Agreement between an employer and:
6.4(b)	Part-time employment — maximum hours per week	An individual
6.4(c)	Part-time employment — loading	An individual
8.4	Hours of work—flexible working hours option	An individual
14.1(c)(ii)	Entitlement to payment for overtime	An individual
14.3	Time off instead of payment for overtime	An individual
15.4	Penalty rates	An individual
20.3(a)	Public holiday substitution	A majority of employees
20.3(b)	Public holiday substitution—NAIDOC day	An individual

## Part 2—Types of Employment

### 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;
- (c) casual; or

(d) sessional.

**6.2** At the time of engagement, an employer must, for each new employee (except a casual employee), specify:

- (a) an outline of the main duties of the position;
- (b) the employee's regular hours of work and the employee's normal spread of hours for ordinary duty in accordance with clause 8—Ordinary hours of work;
- (c) the employee's classification and rate of pay; and
- (d) the nature of the engagement in accordance with clause 6.1

**6.3 Full-time employees**

A full-time employee is engaged to work:

- (a) 38 ordinary hours per week; or
- (b) an average of 38 ordinary hours per week.

**6.4 Part-time employment**

- (a) A part-time employee is engaged to work:
  - (i) less than 38 hours per week or less than an average of 38 hours per week;
  - (ii) a specified number of regular hours; and
  - (iii) receives, on a pro-rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work.
- (b) A part-time employee's hours of work may be temporarily varied up to a maximum of 38 hours per week by agreement between the employer and an individual employee.
- (c) By mutual agreement between the employer and employee, a part-time employee may be paid a loading of **25%** on their hourly rate and not have an entitlement to annual leave, personal/carer's leave or payment for public holidays. Such agreement will not alter the employee's status as a part-time employee.

**6.5 Casual employees**

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** means an employee who is engaged intermittently by the hour for work of an unexpected or casual nature and does not include an employee who could properly be engaged as a full-time, part-time or sessional employee.

- (b) An employee engaged as a casual employee will be engaged for a minimum period of two consecutive hours per engagement.

- (c) **Casual loading**

For each hour worked during the spread of ordinary hours in clause 8.2 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.

- (d) Where a casual employee is employed outside of the ordinary spread of hours provided in clause 8—Ordinary hours of work, the hourly rate (exclusive of the **25%** loading) will be increased by the penalty rates provided in clause 14—Overtime.

## 6.6 **Sessional employees**

- (a) An employee may be engaged on a sessional basis to provide training sessions to clients.

- (b) A sessional employee will be engaged for a minimum of two consecutive hours in any one day.

- (c) A sessional employee will be paid the minimum casual hourly rate equivalent to the casual hourly rate of pay for a Training and placement officer grade 1 Pay point 3.

- (d) In addition, a sessional employee will be paid for preparation and associated non-teaching/training tasks. This payment can be paid by either:

- (i) incorporating a loading of **33.3%** of the minimum hourly rate into the hourly rate, provided that this rate is separately expressed; or

- (ii) paying the employee one hour's preparation/associated non-teaching/training tasks for every three hours' teaching up to a maximum of five additional hours per week.

- (e) An employer who employs a sessional employee under the terms of clause 6.6(d)(i) will not be obliged to pay the preparation loading in respect of any period involving staff training or staff meetings.

- (f) Upon engagement, in addition to the requirements specified for contracts of employment provided in clause 6.1 of this award, the employer will provide written advice to the employee setting out the particular arrangements for preparation and associated non-teaching/training tasks which will apply in respect of the employee.

- (g) **Cancellation provisions**

If a training course is cancelled and the employer no longer requires the services of a sessional employee engaged for the course, the employer will provide the sessional employee with two weeks' notice of termination or

payment instead of notice equivalent to two weeks' pay (inclusive of preparation loading or preparation time).

## **7. Classifications**

**7.1** All employees covered by this award must be classified according to the structure and definitions set out in Schedule A—Classification Definitions.

### **7.2 Progression**

- (a) At the end of each 12 months' continuous employment, an employee will be eligible for progression from one pay point to the next within a classification if:
  - (i) the employee has demonstrated competency and satisfactory performance over a minimum of 12 months at each pay point within the classification; and
  - (ii) the employee has acquired and satisfactorily used new or enhanced skills if required by the employer.
- (b) Competency and satisfactory performance is deemed to be satisfactory by the employer in accordance with its employment policies and procedures.
- (c) Movement to a higher classification will only occur by way of promotion or reclassification.

### **7.3 Salary packaging**

- (a) Where agreed between the employer and a full-time or part-time employee, an employer may introduce remuneration packaging in respect of salary, as provided for in clause 10.1—Minimum wages.
- (b) The terms and conditions of such a package must not, when viewed objectively, be less favourable than the entitlements otherwise available under this award.

## **Part 3—Hours of Work**

### **8. Ordinary hours of work**

#### **8.1 Ordinary hours of work**

The ordinary hours of work will be no more than an average of 38 hours per week to be worked over 152 hours within a work cycle not exceeding 28 days and not exceeding 10 hours in any one day.

## 8.2 Spread of hours

Except in relation to an employee engaged and paid to work their ordinary hours in accordance with clause 15—Penalty rates for ordinary hours of work, ordinary hours are worked between 6.00 am and 8.00 pm, Monday to Friday.

## 8.3 Flexible hours—accrued days off option

### (a) Accrued days/time off

An employer may offer and an employee may agree to work their ordinary hours, in accordance with the following arrangements:

- (i) Within each workplace there will be a written roster which provides full-time employees with at least two weeks' notice of the accrued days/time off in accordance with the working hours arrangements under this option.

Note to parties: this award doesn't state what "this option" is. [AP772299CRV](#) had arrangements for accrued days off (in clause [17.2.1](#) of the pre-reform award), but these provisions have not been included in the modern award. Should the options for how an employee may work ordinary hours be included in this award?

- (ii) Except in unforeseen circumstances, in any workplace where more than one employee is employed, accrued days/time off will be rostered in such a manner that the service will not be closed on any weekday on which the service would normally be open.
- (iii) Accrued days/time off will be taken in accordance with the roster. However, on the initiative of either the employer or the employee, and by agreement between the employer and the employee, or in exceptional or emergency situations, such time off may be deferred, in which case it must be taken off as soon as possible thereafter.
- (iv) Where possible, an accrued day off will be taken in conjunction with normal weekend days off.

### (b) Accrued days off falling on public holidays

Where an employee's accrued day off falls on a public holiday, another day will be determined by mutual agreement of the employee and the employer to be taken instead. This must be taken within the same or next four weekly work cycle.

## 8.4 Hours of work—flexible working hours option

### (a) Flexible working hours option—limitations

Notwithstanding the provisions of clause 8—Ordinary hours of work, an employer may offer and an employee may agree to accept to work flexible working hours (flexitime). Such agreement will be recorded and signed by the employee and employer and filed with the relevant wage and time records.

(b) **Definitions**

- (i) **Flexible working hours (flexitime)** means a system which allows employees to set their own patterns of attendance at work subject to the provisions of this award and the requirements of the workplace.
- (ii) **Standard day** means seven hours and 36 minutes per day worked in a continuous shift at any time within a designated 12 hour spread of hours between 6.00 am and 8.00 pm Monday to Friday.
- (iii) **Bandwidth** means the spread of any time on any day within which an employee may work as part of a flexible working hours arrangement subject to this award, and unless otherwise agreed in a workplace, will commence at 8.00 am and will conclude at 6.00 pm, Monday to Friday.
- (iv) **Core time** means the period during the day when all employees will perform ordinary duty unless absent upon approved leave or core time leave. Unless otherwise agreed in a workplace, core time will be between the hours of 9.30 am and 12 noon and between 2.00 pm and 4.30 pm.
- (v) **Core time leave** means any approved absence during core time other than approved leave.
- (vi) **Approved leave** means any leave of absence other than core time approved by the employer.
- (vii) **Flex credit** means the accumulated amount of time worked by an employee in excess of the standard days in the settlement period, including any carry-over, provided that any such time worked as overtime will not be taken into account.
- (viii) **Flex debit** means the difference between the sum of the standard days in a settlement period and the aggregate amount of time worked by an employee where the total time worked is less than the sum of the standard days in the settlement period after any necessary adjustment has been made for an absence of approved paid leave and includes any carry over.

Parties are asked to comment on whether the reference to “approved paid leave” in clause 8.4(b)(viii) should instead be to “approved leave” to be consistent with the defined term “approved leave” above?

- (ix) **Carry over** means the aggregate of flex credit or flex debit which an employee has accumulated during a settlement period which, subject to this award, the employee may carry over to the next settlement period.
  - (x) **Settlement period** means the ordinary working days over which calculations are made to determine flex credit or flex debit carry over and will be a fixed period of 10 working days aligned with the fortnightly pay period operating in the workplace.
- (c) Under flexitime, the times of commencement and cessation of duty will be subject to agreement between the employer and the employee.

- (d) An employee's attendance outside the hours of a standard day will be subject to the availability of work and the approval, which may be general or specific, of the employer.
- (e) Where it is reasonable to do so because an employee has failed to comply with the provisions of flexitime, an employer may for a specified period require that an employee will revert to working an average 38 hour week prescribed in clause 8.1.

8.5 Nothing in this clause prevents other mutually agreed methods of working flexible hours from applying in accordance with clause 8.1.

## 9. Breaks

### 9.1 Unpaid meal breaks

An employee will not work more than five hours without being entitled to an unpaid meal break of between 30 and 60 minutes.

### 9.2 Paid rest breaks

A paid rest break of 10 minutes will be allowed each morning between the time of commencing work and the usual meal break.

## Part 4—Minimum Wages and Related Matters

### 10. Minimum wages

Rates adjusted as a result of AWR 2017

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

(a) **Administrative assistant**

Employee classification	Minimum weekly wage \$	Minimum hourly rate \$
Pay point 1	787.00	20.71
Pay point 2	800.30	21.06
Pay point 3	829.10	21.82
Pay point 4	855.40	22.51

(b) **Administrative officer**

<b>Employee classification</b>	<b>Minimum weekly wage \$</b>	<b>Minimum hourly rate \$</b>
Pay point 1	906.00	23.84
Pay point 2	926.30	24.38
Pay point 3	946.20	24.90
Pay point 4	972.60	25.59

(c) **Training and placement officer grade 1**

<b>Employee classification</b>	<b>Minimum weekly wage \$</b>	<b>Minimum hourly rate \$</b>
Pay point 1	879.50	23.14
Pay point 2	906.00	23.84
Pay point 3	926.30	24.38

(d) **Training and placement officer grade 2**

<b>Employee classification</b>	<b>Minimum weekly wage \$</b>	<b>Minimum hourly rate \$</b>
Pay point 1	946.20	24.90
Pay point 2	972.60	25.59
Pay point 3	999.00	26.29
Pay point 4	1025.40	26.98
Pay point 5	1049.40	27.62

(e) **Training and placement co-ordinator**

<b>Employee classification</b>	<b>Minimum weekly wage \$</b>	<b>Minimum hourly rate \$</b>
Pay point 1	1049.40	27.62
Pay point 2	1075.90	28.31
Pay point 3	1100.10	28.95
Pay point 4	1126.50	29.64

(f) **Manager grade 1**

<b>Employee classification</b>	<b>Minimum weekly wage \$</b>	<b>Minimum hourly rate \$</b>
Pay point 1	1049.40	27.62
Pay point 2	1075.90	28.31
Pay point 3	1100.10	28.95
Pay point 4	1126.50	29.64
Pay point 5	1152.90	30.34
Pay point 6	1179.30	31.03

(g) **Manager grade 2**

<b>Employee classification</b>	<b>Minimum weekly wage \$</b>	<b>Minimum hourly rate \$</b>
Pay point 1	1205.70	31.73
Pay point 2	1232.20	32.43
Pay point 3	1258.60	33.12
Pay point 4	1284.90	33.81
Pay point 5	1311.40	34.51

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

**10.2 Higher duties**

- (a) An employee who is required by the employer to perform the duties of another employee in a higher classification for five consecutive working days or more will be paid for the entire period at a rate not less than the minimum rate prescribed for the higher classification.
- (b) Where the minimum rate of the higher classification is the same as the relieving employee's current rate, the relieving employee will be paid at the higher classification at the first pay point above their current rate.

**10.3 Payment of wages**

Payment within a specific period after pay cycle is being considered in matter [AM2016/6](#)

All wages will be paid weekly, fortnightly, four weekly or monthly by cash, cheque or electronic transfer in accordance with the arrangements determined by the employer and not more than five days following the end of the pay period.

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 Supported wage system

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

Clause 10.5 substituted per [PR593873](#).

#### 10.5 National training wage

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2017. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Labour Market Assistance Industry Award 2010* and not the *Miscellaneous Award 2010*.

### 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 Wage related allowances

**(a) First aid allowance**

An employee who is required by their employer to perform first aid duty at their workplace who holds a current first aid certificate issued by St John Ambulance or the Australian Red Cross Society or equivalent qualification will be paid a weekly allowance of **\$13.37**.

Parties were asked to clarify whether overtime payments apply for time worked in excess of ordinary hours while on excursions. See [\[2017\] FWCFB 3433](#) at [70] and [71].

AMOD has re-drafted clause 11.2(b) and clause 14.1(b) to clarify when overtime payments apply with regards to excursions. The redrafting intends to clarify when overtime is payable for all categories of employment.

Parties are invited to comment on the proposed re-drafting.

**(b) Excursions**

Where an employee is required to supervise clients in excursion activities involving overnight stays away from home, the employee will be entitled to **payment of a sleepover allowance of \$62.10 for every night. This allowance is paid in addition to the employee’s ordinary hourly rate of pay inclusive of any penalties or loadings.**

~~(i) — payment at ordinary rates of pay for time worked between the hours of 8.00 am to 6.00 pm Monday to Sunday up to a maximum of eight hours per day;~~

~~(ii) in addition,~~

### 11.3 Expense related allowances

#### (a) Meal allowance

Employees will be entitled to a meal allowance of **\$14.91** where the employee works:

- (i) overtime in excess of two hours on any of the days upon which ordinary hours are worked; or
- (ii) five hours or more on a day which is not an ordinary working day.

#### (b) Vehicle allowance

- (i) Where an employee is required to use their own motor vehicle in connection with their work, the employee is entitled to be reimbursed at the rate of **\$0.78** per kilometre.
- (ii) An employee required to travel by other means in connection with their work will be reimbursed all reasonable travelling expenses so incurred with reasonable proof of such expenses to be provided by the employee to the employer.
- (iii) Where an employee is called on duty at night or other than their normal hours, or on any non-working day, they will be reimbursed their fares, or if using their own vehicle to travel between home and the place of work, receive a vehicle allowance, as provided in clause 11.3(b)(i).

#### (c) Use of employee's own vehicle

Where an employee is required to use their own motor vehicle on the employer's business and the employee is required, by reason of that use, to pay:

- (i) a registration fee which exceeds the registration fee the employee would otherwise have been required to pay; and
- (ii) an amount by way of full comprehensive insurance premium which exceeds the amount the employee would otherwise have been required to pay by way of full comprehensive insurance premium,

the employee is entitled to be reimbursed for the difference between the two amounts.

#### (d) Travelling expenses

An employee required to stay away from home overnight will be reimbursed the cost of reasonable board, lodging and meals. Reasonable proof of costs so incurred is to be provided by the employee to the employer.

See Schedule C for a summary of monetary allowances.

## 12. Accident pay

12.1 For the purpose of this clause, the following definitions will apply:

Parties are asked to clarify whether the term 'shift loadings' should be replaced with 'shift penalties' in clause 12.1(a) given the Full Bench comments at [363] to [379] of [\[2017\] FWCFB 3433](#).

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid, or required to be paid to an employee pursuant to the applicable workers' compensation legislation and the employee's ordinary rate of pay (not including over award payments, shift loadings or overtime).
- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

### 12.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 39 weeks.

### 12.3 Calculation of the period of accident pay

- (a) The 39 week period commences from the first day of incapacity for work, which may be subsequent to the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 39 week period.
- (b) Entitlement to accident pay ceases on termination of the employee's employment, except where such termination:
  - (i) is by the employer other than for reason of the employee's serious and/or wilful misconduct; or
  - (ii) arises from a declaration of bankruptcy or liquidation of the employer, in which case the employee's entitlement in the absence of agreement will be referred to the Fair Work Commission to determine.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

### 12.4 When not entitled to accident pay

An employee will not be entitled to any payment under this clause in respect of the following.

- (a) Any period of paid annual leave or long service leave, or for any paid public holiday.
- (b) Any injury during the first five normal working days of incapacity.
- (c) Any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks.
- (d) Where in accordance with the applicable workers' compensation legislation a medical practitioner provides information to an employer of an employee's

fitness for work or specifies work for which an employee has a capacity and such work is made available by an employer but not commenced by an employee.

- (e) Industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration shall not be subject to the accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.
- (f) Where an employee receives a weekly payment under this section and subsequently such payment is reduced pursuant to the applicable workers' compensation legislation, such reduction will not render the employer liable to increase the amount of accident pay in respect of that injury.

#### **12.5 Return to work**

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

#### **12.6 Redemptions**

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

#### **12.7 Casual employees**

For a casual employee, the weekly payment referred to in clause 18.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

#### **12.8 Other**

This clause does not operate to diminish an employee's entitlement to compensation payments under the applicable workers' compensation legislation.

### **13. Superannuation**

#### **13.1 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.

### 13.2 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.

### 13.3 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 13.2.
- (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 13.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 13.3(a) or (b) was made.

### 13.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 13.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 13.2 and pay the amount authorised under clauses 13.3(a) or (b) to one of the following superannuation funds or its successor:

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

### 13.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 13.2 and pay the amount authorised under clauses 13.3(a) or (b):

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

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

## Part 5—Penalties and Overtime

### 14. Overtime

14 amended in accordance with [PR585799](#)

#### 14.1 Entitlement to payment for overtime

- (a) Overtime will only be worked with the prior approval of the employer except in emergency situations where prior approval has not been obtained.

Parties were asked to clarify whether overtime payments apply for time worked in excess of ordinary hours while on excursions. See [\[2017\] FWCFB 3433](#) at [70].

AMOD has re-drafted clause 11.2(b) and clause 14.1(b) to clarify when overtime payments apply with regards to excursions. The redrafting intends to clarify when overtime is payable for all categories of employment.

Parties are invited to comment on the proposed re-drafting.

- (b) **Full-time employees**

- (i) A full-time employee will be entitled to overtime where the employee works more than 152 hours in any 28 day period or where the employee works outside of the spread of ordinary hours provided for in clause 8.2.
- (ii) A full-time employee will be entitled to overtime if they work in excess of 38 hours in any one week or more than 10 hours in any one day.

- (c) **Part-time employees**

- (i) A part-time employee will be entitled to overtime where they work in excess of their prescribed hours of duty.
- (ii) Overtime will not be paid where the employer and employee have agreed to a temporary variation of working hours in which case overtime will apply for work in excess of the mutually agreed varied working hours.
- (iii) A part-time employee will be entitled to overtime if they work in excess of 38 hours in any one week or ~~greater~~ more than 10 hours in any one day.

- (d) **Casual employees**

A casual employee will be entitled to overtime if they work in excess of 38 hours in any one week or more than 10 hours in any one day.

## 14.2 Overtime rates

### (a) Monday to Saturday

An employee who is required to work overtime Monday to Saturday will be paid at the rate of **150%** of the minimum hourly rate for the first two hours-and **200%** of the minimum hourly rate after two hours.

### (b) Sunday

An employee who is required to work overtime on a Sunday will be paid at **200%** of the minimum hourly rate for all overtime worked.

### (c) Public holidays

An employee who, with the approval of the employer, works on a public holiday will be paid at the following rates:

Parties agreed to the following redrafting of clause 14.2(c). See [\[2017\] FWCFB 3433](#) at [73].

AMOD has re-drafted clause 14.2 to clarify the applicable penalty rates for ordinary hours and hours outside the span of ordinary hours. This re-drafting is intended to be consistent with the [Plain Language Guidelines](#).

Parties are invited to comment on the proposed re-drafting.

(i) **250%** of the minimum hourly rate for work performed between 6.00 am and 8.00 pm, and not exceeding 10 hours in one day; or

~~250% of the minimum hourly rate for work performed during ordinary hours of work; and/or~~

(ii) **350%** of the minimum hourly rate for work performed outside the hours in 14.2(c)(i) or in excess of 10 hours in one day.

~~350% of the minimum hourly rate for work performed outside ordinary hours of work.~~

## 14.3 Time off instead of payment for overtime

(a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

(b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 14.3 an employee who worked 2 overtime hours at **150%** of the minimum hourly rate is entitled to 3 hours' time off.

(c) Time off must be taken:

(i) within the period of 6 months after the overtime is worked; and

- (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 14.3 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 14.3 will apply 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).

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 14.3 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.3.

**14.4** No employee will be entitled to payment for overtime or to time off instead of payment for overtime for a meal break not taken by the employee unless the employee was the only staff member on duty at the workplace at that time.

**14.5 Rest period after overtime**

- (a) When overtime is worked it will, wherever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between work on successive shifts.
- (b) An employee who, because of overtime worked after the end of their rostered ordinary hours, does not receive 10 hours off work between the end of the overtime and the start of their next rostered period of ordinary hours, must:
  - (i) be released from work, after the end of the overtime, until they have had at least 10 consecutive hours off work without loss of pay for ordinary hours; or

- (ii) if instructed by the employer to resume work, be paid at **200%** of the minimum hourly rate until they are released from work for 10 consecutive hours, without loss of pay for ordinary hours.

#### **14.6 Recall to work overtime**

- (a) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of four hours' work at the appropriate rate for each time they are recalled or be granted equivalent time off instead of payment for overtime in accordance with clause 14.3.
- (b) Except in the case of unforeseen circumstances, the employee will not be required to work the full four hours if the job they were recalled to perform is completed within a shorter period.

### **15. Penalty rates**

**15.1** An employee will receive the following payment for working any of their ordinary hours outside the normal spread of hours provided in clause 8.2:

- (a) **120%** of the minimum hourly rate for work performed between 8.00 pm and midnight Monday to Friday inclusive;
- (b) **135%** of the minimum hourly rate for work performed between the hours of midnight and 6.00 am from Sunday to Friday inclusive;
- (c) **175%** of the minimum hourly rate for work performed between midnight Friday and midnight Saturday; and
- (d) **200%** of the minimum hourly rate for work performed between midnight Saturday and midnight Sunday.

**15.2** An employee will be rostered so as to provide two consecutive days off in any seven day period.

**15.3** An employee required to work on Sunday as part of their ordinary hours of duty will be provided with a minimum of two hours ordinary time on each occasion so engaged.

**15.4** By mutual agreement, employees who work on Sunday may take the equivalent time off instead of payment of the loading.

**15.5** The loadings payable in clause 15.1 will be in substitution of and not cumulative on overtime and time off instead of paid overtime as provided for in clauses 14.2 and 14.3.

## Part 6—Leave, Public Holidays and Other NES Entitlements

### 16. Annual leave

16 amended in accordance with [PR583023](#)

Parties advised that they are continuing discussions regarding annual leave payments on termination. See [\[2017\] FWCFB 3433](#) at [74].

**16.1** Annual leave is provided for in the NES. This clause contains additional provisions.

#### 16.2 Annual leave loading

In addition to their ordinary pay, an employee will be paid an annual leave loading of **17.5%** of their ordinary rate of pay.

#### 16.3 Illness or injury during annual leave

Where an employee falls ill or suffers an injury while on annual leave and provides to their employer a medical certificate to show that they are or were incapacitated to the extent that they would be unfit to perform their normal duties, the period of certified incapacity will be paid for and debited as personal/carer's leave, subject to the employee having accrued sufficient personal/carer's leave.

#### 16.4 Annual leave in advance

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

Note: An example of the type of agreement required by clause 16.4 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 16.4 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 16.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

## 16.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 16.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 16.5.
- (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 16.5 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 16.5 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 16.5 as an employee record.

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

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 16.5.

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 16.5.

Note 3: An example of the type of agreement required by clause 16.5 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

## 16.6 Excessive leave accruals: general provision

Note: Clauses 16.6 to 16.8 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.

- (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 16.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 16.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

**16.7 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 16.6(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 16.6, 16.7 or 16.8 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under 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 16.7(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.

**16.8 Excessive leave accruals: request by employee for leave**

- (a) Clause 16.8 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 16.6(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 16.7(a) that, when any other paid annual leave arrangements (whether made under clause 16.6, 16.7 or 16.8 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 16.6, 16.7 or 16.8 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (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).

## **17. Personal/carer's leave and compassionate leave**

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

## **18. Parental leave and related entitlements**

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

## **19. Community service leave**

Community service leave is provided for in the NES.

## **20. Public holidays**

Public holidays provisions may be affected by [AM2014/301](#)

**20.1** Public holiday entitlements are provided for in the NES. This clause contains additional provisions.

**20.2 Payment for working on a public holiday**

An employee who works on a public holiday will be paid at **250%** of the minimum hourly rate for all time worked.

Parties are asked to comment on how clause 20.2 interacts with clause 14.2(c), given clause 14.2(c) provides for 250% of the minimum hourly rate for time worked during ordinary hours, and 350% of the minimum hourly rate for time worked outside of ordinary hours. See [\[2017\] FWCFB 3433](#) at [72] – [73].

**20.3 Public holiday substitution**

- (a) An employer and the majority of employees may agree to substitute another day for any provided for in the NES.
- (b) An employer and an individual employee may agree to substitute a public holiday specified in the NES for the National Aboriginal and Islander Day of Celebration (NAIDOC), without loss of pay, on the day it is celebrated in the state in which the employee is employed. Provided that by mutual agreement instead of this day being taken as a substituted public holiday it may be taken as an annual leave day or a flexitime day.

**20.4 Part-day public holiday**

20.4 inserted on 21 September 2016

For provisions relating to part-day public holidays see Schedule F.

**21. Aboriginal and Torres Strait Islander ceremonial leave**

- 21.1** An employee who is legitimately required by the employee's Aboriginal or Torres Strait Islander tradition to be absent from work for ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year.
- 21.2** The employee must be able to establish to the employer that they have an obligation under Aboriginal or Torres Strait Islander custom and/or traditional law to participate in ceremonial activities in order to be granted such leave without pay for a maximum period of 10 days per year, or for such extension granted by the employer.
- 21.3** Such leave will not affect the employee's entitlement to personal/carer's leave and compassionate leave provided by the NES.
- 21.4** Approval of all Aboriginal and Torres Strait Islander ceremonial leave will be subject to the employer's convenience and will not unreasonably affect the operation of the work concerned but will not be unreasonably withheld.

**22. Termination of employment**

- 22.1** Notice of termination is provided for in the NES.
- 22.2** Notice of termination by an employee

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

### **22.3 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.

## **23. Redundancy**

**23.1** Redundancy pay is provided for in the NES.

### **23.2 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 the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount 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.

### **23.3 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.

### **23.4 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 22.3.

## Part 7—Consultation and Dispute Resolution

### 24. Consultation

#### 24.1 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 24.1(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 24.1(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.

#### 24.2 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.

## 25. Dispute resolution

- 25.1 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.
- 25.2 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 25.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 25.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 25.4 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.
- 25.5 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].

- 25.6 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 Definitions

Variations to Schedule A proposed by [Jobs Australia](#) (29 June 2016). See [\[2017\] FWCFB 3433](#) at [75].

### A.1 Administrative assistant

**A.1.1 Administrative assistant** means a person engaged to perform a range of clearly defined administrative, including financial and clerical duties, under ~~the~~ direct supervision ~~of the Manager or another employee with delegated supervisory responsibility~~. The duties will be clearly defined. Once familiar with the workplace, an Administrative assistant may be expected to exercise limited discretion and solve minor problems arising in the course of their duties and within clearly defined procedures, guidelines and policies of the service. ~~Instruction~~ Employment services and assistance will be readily available.

### A.1.2 Requirements

- (a) A person employed as an Administrative assistant will be able to:
- (i) satisfactorily perform a range of routine general office duties of a clerical and/or support nature including, but not limited to, filing and the maintenance of existing records systems;
  - (ii) perform general reception and telephonist duties including the accurate provision of information;
  - (iii) demonstrate proficiency in the straightforward operation of keyboard equipment including data input and basic word processing; and
  - (iv) demonstrate proficiency in the use of available office technology.
- (b) With experience, an Administrative assistant will be able to perform program support and/or more complex administrative duties including, but not limited to, petty cash control, ordering and invoicing under the direction of ~~the project manager or another employee with delegated supervisory responsibility~~ ~~their supervisor~~. Such an employee may also provide limited direct support to clients of the service undertaking self-paced instructional packages and/or limited pre-employment activities and services which do not require a level of skill and/or responsibility more properly exercised by a more senior employee. Such duties may also include provision of assistance to more senior employees in client selection and referral activities, and preparation and maintenance of client records under supervision.
- (i) ~~An Administrative assistant performing these duties will receive payment at no less than Pay point 2 within this classification.~~
- (c) An Administrative assistant will not be required to supervise other staff or volunteers.
- (d) ~~Formal qualifications are not normally required, but where a Certificate 3 or equivalent qualification is required, the entry point is Pay point 4 within this classification.~~

## A.2 Administrative officer

**A.2.1 Administrative officer** means a person engaged to perform and be responsible to the Manager of a service for a range of administrative duties and including, but not limited to financial, accounting and clerical duties ranging from the simple to the complex, for office management and for supervision of other administrative and support employees including trainees. In keeping with the nature of client services offered by the employer, an Administrative officer will also liaise from time to time with clients of the service and other service providers.

### A.2.2 Requirements

A person employed as an Administrative officer will, in addition to any of the duties of an Administrative assistant, be able to:

- (a) set up and administer a bookkeeping and/or accounting system including a chart of accounts for the organisation and each of its programs and services;
- (b) produce a range of accurate and timely financial reports, which clearly reflect the financial position of the organisation and each of its programs and services and which will enable cross-program financial management, including:
  - (i) profit and loss statements; and
  - (ii) cash flow analysis reports;
- (c) under the direction of the Manager, assist in the preparation of budgets for the organisation or for individual programs and services;
- (d) supervise and provide necessary office-based training to administrative or other support employees;
- (e) operate purchasing, inventory, asset control, payroll and other administrative procedures;
- (f) set up and maintain a full range of personnel, client data base and other management and administrative records required by the employer;
- (g) be computer literate and demonstrate expertise in the use of financial and other software packages; and
- (h) set up and maintain statistical information systems.

## A.3 ~~Training and placement~~ Employment services officer grade 1

**A.3.1 ~~Training and placement~~ Employment services officer grade 1** means a person engaged to deliver training or placement support where the employee exercises a lower range of skills and responsibilities than an employee classified as an ~~Employment services Training and placement~~ officer grade 2. A person engaged to perform training duties under a formal training program would be limited to one vocational area of training at this level.

- (a) A person engaged to perform training duties as part of placement support will not be limited to one vocational area but will operate within clearly defined guidelines under the direction of the Manager or another more senior employee.

- (b) An employee who undertakes training or placement support duties and performs a wider range of duties than the following will be classified as an **Employment services ~~Training and placement~~** officer grade 2 and not as an **Employment services ~~Training and placement~~** officer grade 1.

### A.3.2 Requirements

- (a) In respect of an employee engaged primarily to deliver training to clients of the service, the employee may be expected to perform the following duties:
  - (i) participate in the client selection and assessment of client needs or suitability for the area in which they provide **instruction employment services** or placement support;
  - (ii) assist in following up client outcomes for their area of **instruction employment services** or placement support;
  - (iii) liaise with employers to organise work experience, work placement and industry support in their area of **instruction employment services** or placement support; and
  - (iv) undertake necessary planning and evaluation under supervision.
- (b) In respect of an employee engaged primarily to provide placement support to clients of the service, the employee may be expected to provide on-the-job training, placement and support to clients according to the individual client service program under the direction of a more senior employee. While the employee may assist a more senior officer to carry out client selection, assessment and/or preparation of individual client service programs, they would not exercise sole or principal responsibility for such functions.
- (c) An employee classified as an Administrative assistant who temporarily performs duties at the **Employment services ~~Training and placement~~** officer grade 1 level will be paid a higher duties allowance equivalent to the difference between their ordinary rate of pay and the rate of pay of an **Employment services ~~Training and placement~~** officer grade 1 Pay point 1 for any day in which all or a substantial part of the functions of an **Employment services ~~Training and placement~~** officer grade 1 are performed.
- (d) To assist in the facilitation of career advancement of Administrative assistants, employers may structure the job of an Administrative assistant to incorporate some functions of an **Employment services ~~Training and placement~~** officer grade 1 should they wish to design a mixed function job incorporating duties normally performed in both classifications. In such instances, the higher duties allowance provided for in clause 10.2—Higher duties.
- (e) Higher duties will apply in respect to any Administrative assistant who performs a mixed function job.
- (f) Provided that where a substantial part of the mixed function job incorporates the functions of an **Employment services ~~Training and placement~~** officer grade 1 the Administrative assistant will be re-classified to that classification and be deemed to be an **Employment services ~~Training and placement~~** officer grade 1.

#### **A.4 ~~Employment services Training and placement~~ officer grade 2**

**A.4.1 ~~Employment services Training and placement~~ officer grade 2** means a multi-functioned employee who is engaged to provide direct services to participants in training courses, placement or support services and other programs and activities provided by the employer.

##### **A.4.2 Requirements**

- (a) Such employees would be required to assist in the development and administration of programs. This may include arranging and conducting training courses, preparation of training curriculum and plans, client assessment activities, preparation of individual client service programs, the conduct of employment placement and/or support services and other activities. They may exercise some organising functions in respect of sessional employees, ~~Employment services Training and placement~~ officers grade 1 and/or Administrative assistants. They may be expected to participate in processes:
- (i) to evaluate course and program effectiveness and relevance;
  - (ii) to monitor and review individual client service programs;
  - (iii) to monitor, report and advise on client outcomes; and/or
  - (iv) to carry out case management functions and duties.
- (b) An ~~Employment services Training and placement~~ officer grade 2 is required to exercise professional judgment within the policy parameters of the employer and may also be required to:
- (i) write reports and assist in the preparation of funding proposals;
  - (ii) liaise with and market to employers, industry and the community;
  - (iii) participate in co-ordination activities with other agencies;
  - (iv) refer clients to appropriate agencies and programs; and
  - (v) carry out client placement activities.
- (c) An employee engaged to conduct job clubs and/or primarily to market services and/or clients to employers would normally be engaged as an ~~Employment services Training and placement~~ officer grade 2 however the size of the organisation and the level of complexity within their role may see them placed within the ~~Employment services Training and placement~~ co-ordinator definition and classification. Where a job club leader is responsible for the management and co-ordination of the service they will be engaged in accordance with the ~~Employment services Training and placement~~ co-ordinator classification.

#### **A.5 ~~Employment services Training and placement~~ co-ordinator**

**A.5.1 ~~Employment services Training and placement~~ co-ordinator** means a person engaged to assist the Manager of a larger and more complex service in the

management of all or part of the service and whose responsibilities primarily involve management/co-ordination functions.

#### A.5.2 Requirements

- (a) An Employment services ~~Training and placement~~ co-ordinator will in all cases report to ~~the~~ a senior employee classified at no less than a Manager grade 2 ~~of the organisation~~.
- (b) Such ~~officers~~ employees will be required to assist in the management of the service within the policy parameters of the employer and may also be required to develop policy proposals and other reports for consideration by the employer and/or funding authorities. They may also be expected to assist the Manager to develop and implement strategies to ensure community and business support for the service.
- (c) Such employees may be required to co-ordinate the development, implementation and evaluation of programs and/or services of the employer including the preparation of funding proposals and budgets on behalf of the employer and the monitoring of program performance and budgets. They would be expected to exercise a staff leadership role and supervise other employees of the service. This may include the co-ordination of induction of new employees, training and other human resource development strategies and co-ordination of work tasks and responsibilities. They may be expected to represent the employer in dealings with local employers, government and community agencies and in dealings with local media.
- (d) An Employment services ~~Training and placement~~ co-ordinator may also be expected to deliver training courses for clients of the service or to undertake placement support or other operational duties though these responsibilities would not form the major part of the employee's job.

### A.6 Manager grade 1

A.6.1 **Manager grade 1** means a person engaged to manage the operations of a small to medium size service **or team** where the total weekly staffing of the service is less than 285 hours.

#### A.6.2 Requirements

- (a) A Manager grade 1 may directly exercise delegated management functions of the employer.
- (b) Such employees will be required to manage the service within the policy parameters set by the employer and may be required to develop policy proposals and other reports for consideration by the employer and/or funding authorities. They may also be expected to develop and implement strategies to ensure community and business support for the service.
- (c) Such employees may be required to co-ordinate the development, implementation and evaluation of programs and/or services of the employer including the preparation of funding proposals and budgets on behalf of the employer and the monitoring of program performance and budgets. They would be expected to exercise a staff leadership role and supervise other employees of the service. This may include the co-ordination of induction of

new employees, training and other human resource development strategies and co-ordination of work tasks and responsibilities. They would be expected to represent the employer in dealings with local employers, government and community agencies and in dealings with local media.

- (d) No Manager grade 1 of a service with total weekly staffing of up to and including 190 staffing hours may advance beyond Pay point 4.

## **A.7 Manager grade 2**

### **A.7.1 Manager grade 2 means:**

An employee engaged to manage a single service or multiple projects sponsored by the same employer with total weekly staffing in excess of 285 staffing hours.

~~(a) an employee engaged to manage a single service or multiple projects sponsored by the same employer with total weekly staffing of 285 or more staffing hours; or~~

~~(b) a person engaged to manage a SkillShare Disability Access and Support Unit.~~

### **A.7.2 Requirements**

Functions would generally be similar to a Manager grade 1 except that their position would involve significantly increased responsibility as a result of the size and complexity of the service(s) which they manage. They may also be required to supervise the work of Managers grade 1 and/or Training and placement co-ordinators where such employees are employed by the same employer.

## Schedule B—Summary of Hourly Rates of Pay

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

Rates adjusted as a result of AWR 2017

### B.1 Full-time and part-time employees

#### B.1.1 Full-time and part-time employees—ordinary and penalty rates

	Ordinary hours	Late work <sup>1</sup>	Early work <sup>2</sup>	Saturday	Sunday	Public holiday
	% of minimum hourly rate					
	100%	120%	135%	175%	200%	250%
	\$	\$	\$	\$	\$	\$
<b>Administrative assistant</b>						
Pay point 1	20.71	24.85	27.96	36.24	41.42	51.78
Pay point 2	21.06	25.27	28.43	36.86	42.12	52.65
Pay point 3	21.82	26.18	29.46	38.19	43.64	54.55
Pay point 4	22.51	27.01	30.39	39.39	45.02	56.28
<b>Administrative officer</b>						
Pay point 1	23.84	28.61	32.18	41.72	47.68	59.60
Pay point 2	24.38	29.26	32.91	42.67	48.76	60.95
Pay point 3	24.90	29.88	33.62	43.58	49.80	62.25
Pay point 4	25.59	30.71	34.55	44.78	51.18	63.98
<b>Training and placement officer grade 1</b>						
Pay point 1	23.14	27.77	31.24	40.50	46.28	57.85
Pay point 2	23.84	28.61	32.18	41.72	47.68	59.60
Pay point 3	24.38	29.26	32.91	42.67	48.76	60.95
<b>Training and placement officer grade 2</b>						
Pay point 1	24.90	29.88	33.62	43.58	49.80	62.25
Pay point 2	25.59	30.71	34.55	44.78	51.18	63.98
Pay point 3	26.29	31.55	35.49	46.01	52.58	65.73
Pay point 4	26.98	32.38	36.42	47.22	53.96	67.45
Pay point 5	27.62	33.14	37.29	48.34	55.24	69.05

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	Ordinary hours	Late work <sup>1</sup>	Early work <sup>2</sup>	Saturday	Sunday	Public holiday
	% of minimum hourly rate					
	100%	120%	135%	175%	200%	250%
	\$	\$	\$	\$	\$	\$
<b>Training and placement co-ordinator</b>						
Pay point 1	27.62	33.14	37.29	48.34	55.24	69.05
Pay point 2	28.31	33.97	38.22	49.54	56.62	70.78
Pay point 3	28.95	34.74	39.08	50.66	57.90	72.38
Pay point 4	29.64	35.57	40.01	51.87	59.28	74.10
<b>Manager grade 1</b>						
Pay point 1	27.62	33.14	37.29	48.34	55.24	69.05
Pay point 2	28.31	33.97	38.22	49.54	56.62	70.78
Pay point 3	28.95	34.74	39.08	50.66	57.90	72.38
Pay point 4	29.64	35.57	40.01	51.87	59.28	74.10
Pay point 5	30.34	36.41	40.96	53.10	60.68	75.85
Pay point 6	31.03	37.24	41.89	54.30	62.06	77.58
<b>Manager grade 2</b>						
Pay point 1	31.73	38.08	42.84	55.53	63.46	79.33
Pay point 2	32.43	38.92	43.78	56.75	64.86	81.08
Pay point 3	33.12	39.74	44.71	57.96	66.24	82.80
Pay point 4	33.81	40.57	45.64	59.17	67.62	84.53
Pay point 5	34.51	41.41	46.59	60.39	69.02	86.28
<sup>1</sup> Late work means work performed between 8.00 pm and midnight Monday to Friday inclusive						
<sup>2</sup> Early work means work performed between the hours of midnight and 6.00 am from Sunday to Friday inclusive						

**B.1.2 Full-time and part-time employees—overtime rates**

	Monday to Saturday		Sunday	Public holiday	
	First two hours	After two hours		Within ordinary hours	Outside ordinary hours
	% of minimum hourly rate				
	150%	200%	200%	250%	350%
	\$	\$	\$		\$
<b>Administrative assistant</b>					
Pay point 1	31.07	41.42	41.42	51.78	72.49
Pay point 2	31.59	42.12	42.12	52.65	73.71
Pay point 3	32.73	43.64	43.64	54.55	76.37
Pay point 4	33.77	45.02	45.02	56.28	78.79
<b>Administrative officer</b>					
Pay point 1	35.76	47.68	47.68	59.60	83.44
Pay point 2	36.57	48.76	48.76	60.95	85.33
Pay point 3	37.35	49.80	49.80	62.25	87.15
Pay point 4	38.39	51.18	51.18	63.98	89.57
<b>Training and placement officer grade 1</b>					
Pay point 1	34.71	46.28	46.28	57.85	80.99
Pay point 2	35.76	47.68	47.68	59.60	83.44
Pay point 3	36.57	48.76	48.76	60.95	85.33
<b>Training and placement officer grade 2</b>					
Pay point 1	37.35	49.80	49.80	62.25	87.15
Pay point 2	38.39	51.18	51.18	63.98	89.57
Pay point 3	39.44	52.58	52.58	65.73	92.02
Pay point 4	40.47	53.96	53.96	67.45	94.43
Pay point 5	41.43	55.24	55.24	69.05	96.67
<b>Training and placement co-ordinator</b>					
Pay point 1	41.43	55.24	55.24	69.05	96.67
Pay point 2	42.47	56.62	56.62	70.78	99.09

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	Monday to Saturday		Sunday	Public holiday	
	First two hours	After two hours		Within ordinary hours	Outside ordinary hours
	<b>% of minimum hourly rate</b>				
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>	<b>350%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>		<b>\$</b>
Pay point 3	43.43	57.90	57.90	72.38	101.33
Pay point 4	44.46	59.28	59.28	74.10	103.74
<b>Manager grade 1</b>					
Pay point 1	41.43	55.24	55.24	69.05	96.67
Pay point 2	42.47	56.62	56.62	70.78	99.09
Pay point 3	43.43	57.90	57.90	72.38	101.33
Pay point 4	44.46	59.28	59.28	74.10	103.74
Pay point 5	45.51	60.68	60.68	75.85	106.19
Pay point 6	46.55	62.06	62.06	77.58	108.61
<b>Manager grade 2</b>					
Pay point 1	47.60	63.46	63.46	79.33	111.06
Pay point 2	48.65	64.86	64.86	81.08	113.51
Pay point 3	49.68	66.24	66.24	82.80	115.92
Pay point 4	50.72	67.62	67.62	84.53	118.34
Pay point 5	51.77	69.02	69.02	86.28	120.79

**B.2 Casual employees**

**B.2.1 Casual and sessional employees—ordinary and penalty rates**

	Ordinary hours	Late work <sup>1</sup>	Early work <sup>2</sup>	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>					
	<b>125%</b>	<b>145%</b>	<b>160%</b>	<b>200%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Administrative assistant</b>						
Pay point 1	25.89	30.03	33.14	41.42	46.60	56.95
Pay point 2	26.33	30.54	33.70	42.12	47.39	57.92
Pay point 3	27.28	31.64	34.91	43.64	49.10	60.01
Pay point 4	28.14	32.64	36.02	45.02	50.65	61.90

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	Ordinary hours	Late work <sup>1</sup>	Early work <sup>2</sup>	Saturday	Sunday	Public holiday
	% of minimum hourly rate					
	125%	145%	160%	200%	225%	275%
	\$	\$	\$	\$	\$	\$
<b>Administrative officer</b>						
Pay point 1	29.80	34.57	38.14	47.68	53.64	65.56
Pay point 2	30.48	35.35	39.01	48.76	54.86	67.05
Pay point 3	31.13	36.11	39.84	49.80	56.03	68.48
Pay point 4	31.99	37.11	40.94	51.18	57.58	70.37
<b>Training and placement officer grade 1</b>						
Pay point 1	28.93	33.55	37.02	46.28	52.07	63.64
Pay point 2	29.80	34.57	38.14	47.68	53.64	65.56
Pay point 3 <sup>3</sup>	30.48	35.35	39.01	48.76	54.86	67.05
<b>Training and placement officer grade 2</b>						
Pay point 1	31.13	36.11	39.84	49.80	56.03	68.48
Pay point 2	31.99	37.11	40.94	51.18	57.58	70.37
Pay point 3	32.86	38.12	42.06	52.58	59.15	72.30
Pay point 4	33.73	39.12	43.17	53.96	60.71	74.20
Pay point 5	34.53	40.05	44.19	55.24	62.15	75.96
<b>Training and placement co-ordinator</b>						
Pay point 1	34.53	40.05	44.19	55.24	62.15	75.96
Pay point 2	35.39	41.05	45.30	56.62	63.70	77.85
Pay point 3	36.19	41.98	46.32	57.90	65.14	79.61
Pay point 4	37.05	42.98	47.42	59.28	66.69	81.51
<b>Manager grade 1</b>						
Pay point 1	34.53	40.05	44.19	55.24	62.15	75.96
Pay point 2	35.39	41.05	45.30	56.62	63.70	77.85
Pay point 3	36.19	41.98	46.32	57.90	65.14	79.61
Pay point 4	37.05	42.98	47.42	59.28	66.69	81.51
Pay point 5	37.93	43.99	48.54	60.68	68.27	83.44

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	Ordinary hours	Late work <sup>1</sup>	Early work <sup>2</sup>	Saturday	Sunday	Public holiday
	% of minimum hourly rate					
	125%	145%	160%	200%	225%	275%
	\$	\$	\$	\$	\$	\$
Pay point 6	38.79	44.99	49.65	62.06	69.82	85.33
<b>Manager grade 2</b>						
Pay point 1	39.66	46.01	50.77	63.46	71.39	87.26
Pay point 2	40.54	47.02	51.89	64.86	72.97	89.18
Pay point 3	41.40	48.02	52.99	66.24	74.52	91.08
Pay point 4	42.26	49.02	54.10	67.62	76.07	92.98
Pay point 5	43.14	50.04	55.22	69.02	77.65	94.90
<sup>1</sup> <b>Late work</b> means work performed between 8.00 pm and midnight Monday to Friday inclusive						
<sup>2</sup> <b>Early work</b> means work performed between the hours of midnight and 6.00 am from Sunday to Friday inclusive						
<sup>3</sup> A <b>sessional employee</b> will be at Training and placement officer grade 1 Pay point 3						

## Schedule C—Summary of Monetary Allowances

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

See clause 10.5(a) 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 G as the minimum weekly wage for an Administrative assistant – Pay point 2 in clause 10 = **\$774.70**.

Allowance	Clause	% of standard rate \$774.70	\$
First aid allowance	11.2(a)	1.67	13.37 per week
Excursions—sleepover allowance	11.2(b)	7.76	62.10 per night

#### 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 11.3:

Allowance	Clause	\$
Meal allowance—overtime in excess of two hours, or work of five or more hours on non-ordinary working day	11.3(a)	14.91 per occasion
Vehicle allowance	11.3(b)	0.78 per km

#### C.2.1 Adjustment of expense related allowances

- (b) 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) 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
Vehicle allowance	Private motoring 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](http://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—National Training Wage

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

Schedule deleted by [PR593873](#).

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## Schedule F—2016 Part-day Public Holidays

The part-day public holidays schedule may be affected by [AM2014/301](#).

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

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

- F.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 F.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 F.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.

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

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

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## Schedule G—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)

**arrangement or contract with federal or state governments** does not include the delivery of recruitment, outplacement, on-hire or similar services to federal or State governments to address its own workforce needs

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

**early work** means work performed between the hours of midnight and 6.00 am from Sunday to Friday inclusive

**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)

**flexible working hours (flexitime)** means a system which allows employees to set their own patterns of attendance at work subject to the provisions of this award and the requirements of the workplace

Definition of **labour market assistance industry** has been changed in accordance with [\[2017\] FWCFB 3433](#) at [339].

**labour market assistance industry** has the meaning given in clause 3.2.

~~means the provision of work placement, job searching, personal support, vocational training and related services in the welfare sector, delivered by arrangement or contract with federal and state governments, to assist persons seeking employment~~

**late work** means work performed between 8.00 pm and midnight Monday to Friday inclusive

**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

**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)~~

**standard rate** means the minimum weekly wage for an Administrative assistant—Pay point 2 in clause 10.1

## Schedule H—Agreement to Take Annual Leave in Advance

Schedule H—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583023](#)

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 I—Agreement to Cash Out Annual Leave

Schedule I—Agreement to Cash Out Annual Leave inserted in accordance with [PR583023](#)

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\_\_\_\_