

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

| Publication date | Reason for amendments | Clauses affected |
|------------------|--|---|
| 25 January 2016 | Correct errors in casual rates | A.3.1 |
| | Exposure Draft | |
| 7 November 2016 | Incorporate changes resulting from PR580863 | Schedule F |
| | Incorporate changes resulting from [2016] FWCFB 3500 , PR579822 and PR579556 | 9, 10, Schedule A, Schedule B |
| | Incorporate changes resulting from PR585481 | 5.2, 12, Schedule C |
| | Incorporate changes agreed to by parties and changes made by AMOD following conference of 4 August 2016 | 8, 9.3, 10.1(d), 10.1(e) [deleted], 10.1(f) [deleted], 10.1(h) [deleted], 10.1(k), 10.2(d), 10.2(j)(ii), 10.2(k), 10.2(g)(iii), 10.2(j)(ii), Schedule B |
| | Exposure Draft | |
| 18 July 2017 | Incorporate changes resulting from PR588737 | 5.2, 14.4, 14.5, 14.6, 14.7, 14.8, Schedule D, Schedule E |
| | Note added | Schedule A |
| | Incorporate changes resulting from [2017] FWCFB 3500 , PR592150 , PR592312 | 9, 10, Schedule A, Schedule B |
| | Incorporate changes resulting from [2017] FWCFB 3541 | 6 |
| | Incorporate changes resulting from [2017] FWCFB 3433 | 1, 3, Schedule A, Schedule B, Schedule H |

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

EXPOSURE DRAFT

Ports, Harbours and Enclosed Water Vessels Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Ports, Harbours and Enclosed Water Vessels Award 2010* (the Ports award) as at 7 November 2016. This exposure draft does not seek to amend any entitlements under the Ports 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 [AM2014/241](#). 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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Part 1—Application and Operation

1. Title and commencement

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

- 1.1** This award is the *Ports, Harbours and Enclosed Water Vessels Award 2016*.
- 1.2** This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- ~~This modern award, as varied, commenced operation on 1 January 2010.~~
- 1.3** A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- 1.4** Schedule H—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

Definition of **ports, harbours and enclosed water vessels industry** retained in coverage clause in accordance with [\[2017\] FWCFB 3433](#) at [339]

Coverage to be determined by [AM2016/5](#).

- 3.1** This industry award covers employers throughout Australia in the ports, harbours and enclosed water vessels industry and their employees in the classifications listed in clause 9 to the exclusion of any other modern award.

- 3.2** For the purpose of clause 3.1, **ports, harbours and enclosed water vessels industry** means the operation of vessels of any type wholly or substantially within a port, harbour or other body of water within the Australian coastline or at sea on activities not covered by the above awards.
- 3.3** The award does not cover employers and employees wholly or substantially covered by the following awards:
- (a) the *Dredging Industry Award 2016*;
 - (b) the *Maritime Offshore Oil and Gas Award 2016*;
 - (c) the *Marine Tourism and Charter Vessels Award 2016*
 - (d) the *Marine Towage Award 2016*;
 - (e) the *Port Authorities Award 2016*;
 - (f) the *Seagoing Industry Award 2016*; and
 - (g) the *Stevedoring Industry Award 2016*.
- 3.4** The award does not cover maintenance contractors covered by the following awards:
- (a) the *Manufacturing and Associated Industries and Occupations Award 2016*; or
 - (b) the *Electrical, Electronic and Communications Contracting Award 2016*.
- 3.5** The award does not cover employees of a local government covered by another award.
- 3.6** This award does not cover:
- (a) employees excluded from award coverage by ~~the Fair Work Act 2009 (Cth)~~ (the Act);
 - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
 - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- 3.7** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 3.8** 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:

5.2 amended in accordance with [PR588737](#)

| Clause | Provision | Agreement between an employer and: |
|----------------|--|---|
| 8.3(c) | Breaks—breakfast | An individual |
| 8.5(b) and (c) | Breaks—tea | An individual |
| 12.4 | Time off instead of payment for overtime | An individual |
| <u>14.4</u> | Annual leave in advance | <u>An individual</u> |
| <u>14.5</u> | Cashing out of annual leave | <u>An individual</u> |

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; or
- (c) casual.

6.2 At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual.

6.3 Full-time employees

An employer may employ an employee on a full-time basis of 38 hours per week.

6.4 Part-time employees

Issue of ambiguity concerning 'regular' part-time employee in clause 6.4(g) was not addressed in [\[2017\] FWCFB 3433](#). Parties are asked to address whether 'regular' should be deleted.

- (a) An employer may employ part-time employees in any classification in this award.
- (b) A part-time employee is an employee who:
 - (i) has reasonably predictable hours of work; and
 - (ii) receives on a pro rata basis equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (c) A part-time employee employed under clause 6.4 must be paid at the ordinary hourly rate for the employee's classification in clause 9.1.
- (d) All leave accruals and separation entitlements of part-time employees will be calculated and paid on a pro rata basis of the full-time employee at the full-time rate of pay.
- (e) At the time of engagement the employer and the part-time employee will agree in writing, on a regular pattern of work, specifying at least:
 - (i) the hours worked each day;
 - (ii) the days of the week the employee will work; and
 - (iii) the actual starting and finishing times each day.
- (f) Any agreed variation to the regular pattern of work will be recorded in writing.
- (g) An employee is required to roster a regular part-time employee for a minimum of two consecutive hours on any shift.

- (h) All time worked in excess of the hours as mutually ~~agreed arranged, excluding any additional hours~~, will be overtime.
- (i) **Conversion of employment—full-time to part-time or part-time to full-time**
- (i) Part-time employment may be converted to full-time employment and full-time employment may be converted to part-time employment in accordance with clause 6.4(i).
- (ii) Conversion to or from part-time or full-time employment under clause 6.4(i)(i) may only occur where the employer and employee agree in writing.
- (iii) If an employee converts their employment in accordance with clause 6.4(i)(i), all accrued award and legislative entitlements will be maintained.
- (iv) Following a conversion to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

6.5 Casual employment

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

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

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

(b) **Casual loading**

The issue concerning whether casual loading applies instead of, or in addition to overtime and shiftwork rates was not considered in [\[2017\] FWCFB 3541](#), parties are asked to comment on whether clause 6.5(b)(i) should be amended.

- (i) For each ordinary hour worked, a casual employee must be paid:
- the ordinary hourly rate; and
 - a loading of **25%** of the ordinary hourly rate,
- for the classification in which they are employed.
- (ii) The casual loading incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances.
- (c) Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- (d) An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee.

(e) **Minimum payment for casual employees**

On each occasion a casual employee is required to attend work they are entitled to a minimum payment for three hours' work.

Part 3—Hours of Work

7. Ordinary hours of work and rostering

7.1 This clause supplements Division 3 of the NES which deals with maximum weekly hours.

7.2 Span of hours

Ordinary hours may be worked between 6.00 am and 6.00 pm for up to eight hours per day, Monday to Friday inclusive.

7.3 Rostering

An employee will be rostered off for two consecutive days each week except where the employer and the employee agree otherwise.

7.4 10 hour break

(a) An employee who has been on duty continuously, including meal breaks, for more than 18 hours will not be required by their employer to continue duty until they have had a period of 10 hours off duty for the purpose of rest.

(b) If an employee resumes or continues work at the request of the employer after they have been on duty continuously, including meal breaks for more than 18 hours, they will be entitled to be paid at **200%** of the ordinary hourly rate for the period of duty **in addition to** any other payment due to them until the 10 hours' rest period from duty commences.

(c) Employees will be paid their ordinary hourly rate for any rest period occurring in ordinary working hours.

8. Breaks—unpaid

Clause amended by AMOD following conference of [4 August 2016](#) (PN411–412)

8.1 An employee will not be required to work for more than five hours without a break for a meal.

8.2 The meal breaks in clauses 8.3–8.5 are unpaid.

8.3 Breakfast

(a) Breakfast is the hour preceding the usual starting time.

(b) The breakfast break will not be taken when employees are required to commence at 7.00 am or after, and preceding the usual starting time.

- (c) By mutual agreement between the employer and employees concerned, a 20 minute rest period may be taken without deduction of pay instead of the prescribed hour for breakfast.
- (d) This rest period will commence 20 minutes before the usual starting time unless otherwise mutually agreed.
- (e) Employees ordered in to dock or shift a vessel at 7.00 am will not be entitled to a meal break before noon.
- (f) Employees ordered in at any time before 7.00 am will have an hour for breakfast not later than 8.00 am or a rest period of 20 minutes as provided in clause 8.3(c).

8.4 Lunch

Lunch is from noon to 12.45 pm, or such period as is the usual custom of the establishment at which the employees are employed.

8.5 Tea

- (a) Tea is from 5.00 pm to 6.00 pm or according to the usual custom of the establishment at which the employees are employed.
- (b) By mutual agreement between the employer and employee concerned a rest period may be taken without deduction of pay instead of the prescribed hour for tea.
- (c) The times prescribed in clause 8.5(a) may be altered by mutual agreement between the employer and employee concerned.

8.6 Payment for work during breaks

- (a) An employee will be paid **200%** of the ordinary hourly rate for all work done during the breakfast, lunch and tea breaks specified above.
- (b) Payment at **200%** of the ordinary hourly rate will continue until the employees are granted a meal break or are released from duty.
- (c) Clauses 8.6(a) and (b) have no application to establishments or jobs where, in accordance with this clause, it is customary for paid rest periods to be taken instead of the breakfast and/or tea breaks, and the rest periods are allowed and taken.

Part 4—Wages and Allowances

9. Minimum wages

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

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

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| Classification | Minimum weekly rate | Minimum hourly rate |
|---|---------------------|---------------------|
| | \$ | \$ |
| Master | 947.70 | 24.94 |
| Mate | 902.60 | 23.75 |
| Engineer | 902.60 | 23.75 |
| General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand | 854.20 | 22.48 |
| Shipkeeper | 783.10 | 20.61 |
| Crane Driver (under 20 tonnes) | 797.00 | 20.97 |
| Crane Driver (over 20 tonnes) | 877.50 | 23.09 |

Issue concerning clarification of payment for a crane driver at 20 tonnes has been referred to [AM2016/5](#).

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

Parties were asked whether classification definitions should be inserted in this award. The Group 3 Full Bench will determine this.

9.2 Payment of wages

Wages will be paid weekly or fortnightly. Wages may be paid by cash or electronic funds transfer (EFT).

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.

9.3 Higher duties

An employee engaged for more than two hours during one day on duties work carrying a higher rate than their ordinary classification will be paid the higher rate for that day. If engaged for two hours or less during one day they will be paid the higher rate for the time worked at the higher classification.

10. Allowances

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

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

10.1 Wage-related allowances

(a) All purpose allowances

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

- (i) dual capacity allowances (clause 10.1(d))
- (ii) towing allowance—towing or carrying explosives (clause 10.1(m)(i)); and
- (iii) towing allowance—towing non self-propelled bunker barges (clause 10.1(m)(ii)).

(b) Charge hands

Charge hands will be paid an allowance of **\$27.85** per week. Charge hands not directly supervised by a foreman in the allocation of duties to employees will be paid an allowance of **\$41.43** per week.

(c) Distant work

- (i) A relieving employee other than a casual employee who is required to work at a place away from their normal place of work will be paid all additional fares involved and additional travelling time involved at the rate of single time; provided that no employee will be paid more than their ordinary day's wages for any time not exceeding 24 hours spent travelling.
- (ii) A relieving employee including a casual employee who is temporarily transferred to a locality to carry out relieving duties, where it is necessary to sleep away from their home, will be provided with reasonable board and lodging or paid an allowance of **\$480.32** week of seven days. In the case of broken parts of a week, the allowance will be all living expenses actually and reasonably incurred but not exceeding **\$68.34** per day.

(d) Dual capacity allowance

An employee who is a holder of a Certificate of Competency as a Marine Motor Engineer will be paid an allowance of **\$4.95** (~~\$0.62 per hour~~) for each day or part of a day during which they are required to use such a certificate. The allowance prescribed by this subclause will, when paid, be deemed to be part of the ordinary rate of wages for the purpose of calculating overtime, annual leave, sick leave and long service leave.

~~(e) Uniforms~~

~~Where employees are required to wear uniforms, these will be provided by the employer at no cost to the employee. Alternatively, the employer will pay to~~

~~the employee the sum of \$16.62 per week. Uniforms will be laundered by the employer.~~

~~(f) Compensation for loss of personal effects~~

~~The employer will compensate the employee to the extent of damage or loss to a maximum of \$1738.97 if:~~

~~(i) in the course of employment, an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where the damage was not caused by the employee's own wilful neglect or fault; or~~

~~(ii) where the personal effects are lost through breaking or entering while securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop.~~

(e) Dirty work

(i) An employee called upon to perform work which is more dirty or offensive than would normally apply will be paid an additional **\$0.60** per hour for the time spent on such work.

(ii) Provided that, instead of the above allowance, for all work an employee is required to perform alongside vessels in discharging alumina, petroleum, coke, sulphur, anhydrous ammonia and all phosphates, the employee will be paid an allowance of **\$1.54** per hour. The employee will be eligible for this payment from the time the barge ties up to the vessel until the time it returns to its berth at the completion of the bunker.

(f) Wet work

(i) Any employee working in water or wet places will be paid an extra allowance of **\$0.26** per hour.

(ii) **Wet places** mean places where, in the performance of the work, the splashing of water or mud saturates the employee's clothing, or where protection is not provided to prevent splashing or dripping sufficient to saturate their clothing, and will include wet material or wet ground in which it is impracticable for the employee wearing ordinary working boots to work without getting wet feet. Provided this clause will not apply to employees working on natural surfaces made wet by rain.

(g) Unloading and loading garbage allowance

An employee called upon to work at loading or unloading garbage and/or ashes or other like material will be paid an allowance of **\$0.60** per hour.

~~(h) Slipway etc. allowance~~

~~A junior employee called to work on slipways, cleaning, scraping, painting or overhauling launches, barges, punts or any other floating plant will be paid an allowance of \$0.68 per hour.~~

(h) Bilge allowance

An employee required to work in the bilges will be paid an allowance of **\$0.94** per hour.

(i) Chipping hammers

Employees using electric or pneumatic chipping hammers, wire brushing machine and sandblasting machine will be paid **\$0.09** per hour in addition to any other ordinary or overtime rate for the time so occupied. Where a chipping hammer is being used in a confined space, suitable ventilation will be installed, if practicable, before work commences.

(j) First aid

An employee on becoming qualified as the holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or its equivalent, and who is required by the employer to perform first aid duty, will be paid an allowance of **\$14.52** per week.

(k) Loading and discharge of cargo and supplies

An employee directed by the employer to load or discharge cargo including personal belongings of passengers, foodstuffs, beverages, or laundry, will be paid allowances as set out below when so engaged.

(i) On vessels including barges and landing craft transporting passengers and cargo including fuel and or water and roll on/roll off cargoes between the mainland and island resorts:

- ~~\$25.54 per week~~ of \$ 5.11 for the first five working days; and
- ~~where an employee is so engaged in any week in excess of five days they will be paid an additional \$5.21 per day~~ \$5.21 thereafter.

(ii) On vessels (including barges and landing craft) transporting cargo only between the mainland and island resorts or between island resorts – **\$44.67** per trip.

(iii) On vessels engaged in overnight cruises of one to six nights – **\$17.17** per trip.

(iv) On vessels engaged in overnight cruises over six nights – **\$25.63** per trip.

(v) Provided that:

- an additional amount will not be payable where the loading or discharge is restricted to ships stores, fuel and or water cargoes, incidental personal belongings of passengers, or other items required on board exclusively for a day cruise; and
- an employee may be required to supervise the loading or discharge (including roll on/roll off cargoes) where such work is part of their normal duties, without additional payment.

(l) Waiting orders

- (i) An employee who is required by their employer to telephone for orders will:
- if an employee has a telephone installed at their home, be paid the annual rental of such telephone plus **\$141.03** per year for calls necessarily incurred by the employee for ringing for such orders. If the employee is required by their employer to have a phone installed, the installation fee will be paid by the employer; or
 - an off-duty employee required to ring for orders other than on a phone provided totally or in part by the employer, will receive an allowance of **\$3.59** for each call.

Parties are asked whether clause 10.1(l)(i) should be updated to take into account mobile phones

(m) Towing

- (i) Employees on any vessel either towing or carrying explosives will be paid an additional **\$2.48** for each day or part thereof while so engaged. This rate will be treated as part of the wages for all purposes of this award. For the purposes of this subclause, **explosives** means any material used as an explosive, such as gunpowder, blasting powder or materials, or any other material of like nature, but does not include petroleum products.
- (ii) Masters engaged in towing non self-propelled bunker barges having a carrying capacity of 400 tonnes or more, will be paid an additional amount of **\$2.31** for each day or part thereof while so engaged. Provided that moving such bunker barges at terminal points is not regarded as towing within this provision. This rate will be treated as part of the wages for all purposes of this award.
- (iii) Employees on vessels proceeding beyond the limits of a harbour, river or bay will whilst so engaged be paid their ~~normal wage~~ **ordinary hourly rate** plus an allowance of **25%** of their ~~normal wage~~ **ordinary hourly rate** for each day with a minimum payment for four hours.

(n) Ships stranded or wrecked or on fire

- (i) An employee will be paid **\$14.61** per hour for the time they are required to assist if a ship, in the course of a voyage, becomes wrecked or stranded and the employees are called on for special efforts while the ship is still wrecked or stranded.
- (ii) For the purposes of this clause a ship will be deemed to be **wrecked** if, while at sea, it is so disabled it becomes a dangerous crisis and unable for the time being to continue its voyage in the ordinary course of its operations.
- (iii) Where a ship grounds in a tidal river or harbour and is refloated by ordinary means, with or without cargo, and without special work such as laying out anchors and handling hawsers being required of the

employees, it will not be deemed to be wrecked or stranded within the meaning of clause 10.1(n)(i).

(o) Duties outside normal work—diving

An amount of **\$4.70** per day will be paid in excess of other wages and allowances to employees, for each day they are required to perform the duties of diving to clean glass bottom boats or to clear obstructions from boats propellers.

10.2 Expense-related allowances

(a) Meal allowances

(i) An employee will be provided with a suitable meal or be paid an allowance of **\$16.28** when the employee is required to work overtime in excess of one and a half hours after the usual ceasing time without being notified the previous day.

(ii) Should the overtime work continue for a further four hours, the employee will be provided with a second meal or be paid an additional **\$16.28**.

(b) Expenses

The employer will reimburse an employee any expenses reasonably incurred by them in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

(c) Bedding and other utensils

(i) When vessels are away during the night, the employer will supply a mattress, two blankets, two sheets, one pillow, one pillow slip, towel, soap, eating utensils, washing cloths and drying towels. Laundering is the responsibility of the employer.

(ii) On termination of employment an employee will be required to return to the employer all articles on issue to them.

(d) Compensation for loss of personal effects

The employer will compensate the employee to the extent of damage or loss to a maximum of **\$1796.38** if:

(i) in the course of employment, an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where the damage was not caused by the employee's own wilful neglect or fault; or

(ii) where the personal effects are lost through breaking or entering while securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop.

(e) Protective clothing

On request an employee will be supplied by the employer with an oilskin, waterproof coat, sea boots, overalls, gloves, hard hats, sunscreen lotion, safety

glasses, safety shoes, sunglasses and ear protection devices for their own use when it is reasonably necessary to wear such protective clothing.

(f) Tools

Where employees are required to provide and use their own tools the employer will be responsible for the replacement of such tools broken, worn out, lost or stolen in the course of employment.

(g) Transport

(i) Where an employee commences or finishes work or is required for call-out between the hours of 11.00 pm and 6.00 am the employer will:

- supply them with a conveyance to or from their home whichever is appropriate;
- pay them for time spent in reaching their home or travelling there from at the employee's ordinary weekly rate with a minimum of half an hour and a maximum of one hour; or
- if by arrangement with their employer the employee uses their own motor vehicle they will receive an allowance of not less than **\$0.78** per kilometre.

(ii) An employee required to use their own vehicle to travel to or from a starting or finishing point other than their regular starting or finishing point:

- will be paid **\$0.78** per kilometre for the distance in excess of the distance involved in getting to their normal starting or finishing point; and
- will be paid at their ordinary hourly rate for the time in excess of the time involved in getting to their normal starting or finishing point, with a minimum of payment of half an hour and a maximum of one hour.

(iii) Where an employee who is not required to use their own motor vehicle for work is required, in the ordinary course of employment, to begin their work for the day at a particular place, and finish their work at a different place, the employee:

- will be paid any reasonable travelling expenses; and
- will also be paid at overtime rates of pay for any travelling time beyond their ordinary travelling time.

(h) Travelling to another port

(i) When an employee is required to travel from their home port to another port, time spent travelling outside of their ordinary hours will be paid for as travelling time.

(ii) The rate of pay for travelling time will be ordinary rates, except on Sundays and public holidays when it will be at **150%** of the ordinary hourly rate.

(iii) The maximum travelling time to be paid for will be eight hours on any one day.

(i) **Travelling expenses**

(i) Where an employee is required to join or leave a vessel at a place other than their place of engagement, they will be entitled to a free passage and to be reimbursed all out of pocket expenses reasonably incurred by them.

(ii) If the free passage is by rail it will be first class and will include a sleeping berth when the train includes sleeping berth accommodation. If the free passage is by air it will be in commercial aircraft; first class if available.

(j) **Living away from home**

(i) An employer will provide the employee with proper meals and accommodation and be responsible for payment of reasonable expenses actually incurred for meals and accommodation ashore, whilst the employee is away from the vessel's home port.

(ii) Every employee will be provided with proper meals, attendances eating utensils, bedding and soap, and be supplied once a week with clean bed linen and twice a week with clean towels whilst at sea. The employer will be responsible for the laundering of linen and towels.

(iii) Where it is the employer's responsibility to provide the employee with proper meals and accommodation ashore, and the employer fails to do so, the employer will reimburse the employee for all costs incurred in relation to normal meals and charges incurred for a good standard of accommodation.

(iv) Tea, sugar, milk and coffee will be provided on all vessels for employees at the employer's expense.

(k) **Uniforms**

Where employees are required to wear uniforms, these will be provided by the employer at no cost to the employee. Alternatively, the employer will pay to the employee the sum of \$17.17 per week. Uniforms will be laundered by the employer.

In clause 10.2(i)(ii), parties are asked whether "attendances" can be replaced by an alternative word or term.

See Schedule B for a summary of monetary allowances

11. Superannuation

11.1 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.

11.2 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.

11.3 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 11.2.
- (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 11.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 11.3(a) or (b) was made.

11.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 11.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 11.2 and pay the amount authorised under clauses 11.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust;
- (c) 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

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

Part 5—Penalties and Overtime

12. Overtime and penalty rates

12.1 Entitlement to payment for overtime

Overtime is payable to employees for any time worked outside of ordinary hours on a Monday to Friday (except a public holiday).

- 12.2** Employees will be paid the following rates for ~~all~~ overtime worked Monday to Friday, work on a Saturday or on a Sunday, or work on a public holiday ~~or ordinary weekend work at the following rates:~~

| | | % of ordinary hourly rate |
|------------------------------------|-------------------|---------------------------|
| Overtime | | |
| Monday to Friday | First three hours | 150 |
| | After three hours | 200 |
| Ordinary hours and overtime | | |
| Saturday | | 150 |
| Sunday | | 200 |
| Public holiday | | 250 |

12.3 Minimum payment for recall to work overtime

An employee will be paid for a minimum of four hours if recalled to work overtime after leaving the employer's premises.

12.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 12.4.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;

- (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
- (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
- (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C. An agreement under clause 12.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 12.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 12.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 12.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 12.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee’s employment, time off for overtime worked by the employee to which clause 12.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 12.4

13. Shiftwork

13.1 Shiftwork definitions:

- (a) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight;
- (b) **continuous work** means work carried out:
- (i) on consecutive shifts of employees;
 - (ii) over 24 hours a day;
 - (iii) for at least six consecutive days; and
 - (iv) without interruption, except during breakdowns, meal breaks or due to unavoidable causes beyond the control of the employer;
- (c) **night shift** means any shift finishing after midnight and at or before 8.00 am;
- (d) **permanent night shift** employee means an employee who:
- (i) during a period of engagement on shift, works night shift only;
 - (ii) remains on night shift for a period longer than four consecutive weeks; or
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give them at least one third of their working time off night shift in each shift cycle during such engagement period or cycle.

13.2 Shiftwork rates

| Type of shift | % of the ordinary hourly rate |
|-----------------------|-------------------------------|
| Afternoon shift | 115 |
| Night shift | 115 |
| Permanent night shift | 130 |

Parties are asked to make submissions on which rates apply to shift work on weekends and how casual loading applies to shiftwork and weekend penalties. Issue of how the casual loading applies in relation to shiftwork and weekend penalties was referred to [AM2014/197](#) but was not considered in [\[2017\] FWCFB 3541](#).

Parties are asked whether ordinary hours for shift workers should be amended to extend to

weekends. Issue was referred to [AM2014/197](#). This issue was not considered in [\[2017\] FWCFB 3541](#).

Part 6—Leave, Public Holidays and Other NES Entitlements

14. Annual leave

14 amended in accordance with [PR588737](#)

14.1 The following provisions supplement the NES.

14.2 Annual leave loading

A loading of **17.5%** (**20%** for shiftworkers) is payable in addition to the payment for the leave.

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

14.3 Shiftworkers

For the purpose of Division 6 of the NES a shiftworker is an employee employed on shiftwork where three shifts per day are worked over a period of seven days per week or an employee regularly rostered to work on Sundays and public holidays.

14.4 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 14.4 is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C.

- (c) The employer must keep a copy of any agreement under clause 14.4 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 14.4, 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.

14.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.5.
- (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 14.5 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 14.5 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 14.5 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 14.5.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.5.

Note 3: An example of the type of agreement required by clause 14.5 is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E.

14.6 Excessive leave accruals: general provision

Note: Clauses 14.6 to 14.8 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 Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 14.3).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 14.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 14.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

14.7 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 14.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.6, 14.7 or 14.8 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 14.7(b)(i).

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

14.8 Excessive leave accruals: request by employee for leave

- (a) Clause 14.8 comes into operation from 20 December 2017.

- (b) If an employee has genuinely tried to reach agreement with an employer under clause 14.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 14.7(a) that, when any other paid annual leave arrangements (whether made under clause 14.6, 14.7 or 14.8 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 14.6, 14.7 or 14.8 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 (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 14.3) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

15. Parental leave and related entitlements

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

16. Personal/carer's leave and compassionate leave

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

17. Community service leave

Community service leave is provided for in the NES.

18. Public holidays

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

18.1 Public holiday entitlements are provided for in the NES.

18.2 An employee will be paid at **250%** of the ordinary hourly rate with a minimum of four hours' work when required to work on a public holiday.

18.3 Part-day public holidays

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

19. Termination of employment

19.1 Notice of termination is provided for in the NES.

19.2 Notice of termination by an employee

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

19.3 Job search entitlement

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

19.4 Return to place of engagement

If the employment of any employee is terminated by the employer elsewhere than at the place of engagement, for any reason other than misconduct, the employer will be responsible for conveying the employee to the place of engagement.

20. Redundancy

20.1 Redundancy pay is provided for in the NES.

20.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as 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.

20.3 Employee leaving during notice period

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

20.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 19.3.

Part 7—Consultation and Dispute Resolution

21. Consultation

21.1 Consultation regarding major workplace change

(a) Employers to notify

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

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 21.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 21.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

21.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

22. Dispute resolution

22.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

22.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 22.1

have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

- 22.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 22.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 22.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

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

- 22.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable ~~occupational work~~ health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Schedule A—Summary of Hourly Rates of Pay

A.1.2 amended and note added to the tables.

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

A Full Bench found that awards where all purpose allowances only apply to some employees should be amended in the manner below. Parties are to provide any objections to this proposal and/or comments on the list of applicable awards by Friday, 28 July 2017. See [\[2017\] FWCFB 3433](#) at [361].

Parties are to provide any objections to the proposal to insert the following footnote:

^x**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.

Submissions are due by 28 July 2017, see [\[2017\] FWCFB 3433](#) at [362].

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

A.1 Ordinary hourly rate

A.1.1 Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 10.1(a), this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

A.1.2 The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 9.1. **Consistent with clause A.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.**

A.2 Full-time and part-time employees

A.2.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

| | Ordinary hours | Saturday | Sunday | Public holiday |
|---|--|----------|--------|----------------|
| | % of ordinary hourly rate ¹ | | | |
| | 100% | 150% | 200% | 250% |
| | \$ | \$ | \$ | \$ |
| Master | 24.94 | 37.41 | 49.88 | 62.35 |
| Mate | 23.75 | 35.63 | 47.50 | 59.38 |
| Engineer | 23.75 | 35.63 | 47.50 | 59.38 |
| General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand | 22.48 | 33.72 | 44.96 | 56.20 |

Exposure draft – Ports, Harbours and Enclosed Water Vessels Award 2016

| | Ordinary hours | Saturday | Sunday | Public holiday |
|--------------------------------|---|-----------------|---------------|-----------------------|
| | % of ordinary hourly rate ¹ | | | |
| | 100% | 150% | 200% | 250% |
| | \$ | \$ | \$ | \$ |
| Shipkeeper | 20.61 | 30.92 | 41.22 | 51.53 |
| Crane Driver (under 20 tonnes) | 20.97 | 31.46 | 41.94 | 52.43 |
| Crane Driver (over 20 tonnes) | 23.09 | 34.64 | 46.18 | 57.73 |

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

A.2.2 Full-time and part-time shiftworkers—ordinary and penalty rates

| | Afternoon | Night | Permanent night | Saturday | Sunday | Public holiday |
|---|---|--------------|------------------------|-----------------|---------------|-----------------------|
| | % of ordinary hourly rate ¹ | | | | | |
| | 115% | 115% | 130% | 150% | 200% | 250% |
| | \$ | \$ | \$ | \$ | \$ | \$ |
| Master | 28.68 | 28.68 | 32.42 | 37.41 | 49.88 | 37.41 |
| Mate | 27.31 | 27.31 | 30.88 | 35.63 | 47.50 | 35.63 |
| Engineer | 27.31 | 27.31 | 30.88 | 35.63 | 47.50 | 35.63 |
| General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand | 25.85 | 25.85 | 29.22 | 33.72 | 44.96 | 33.72 |
| Shipkeeper | 23.70 | 23.70 | 26.79 | 30.92 | 41.22 | 30.92 |
| Crane Driver (under 20 tonnes) | 24.12 | 24.12 | 27.26 | 31.46 | 41.94 | 31.46 |
| Crane Driver (over 20 tonnes) | 26.55 | 26.55 | 30.02 | 34.64 | 46.18 | 34.64 |

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

A.3 Casual employees

A.3.1 Casual employees other than shiftworkers—ordinary and penalty rates

| | Ordinary hours | Saturday | Sunday | Public holiday |
|--|---|-----------------|---------------|-----------------------|
| | % of ordinary hourly rate ¹ | | | |
| | 125% | 150% | 200% | 250% |
| | \$ | \$ | \$ | \$ |

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| | Ordinary hours | Saturday | Sunday | Public holiday |
|---|--|----------|--------|----------------|
| | % of ordinary hourly rate ¹ | | | |
| | 125% | 150% | 200% | 250% |
| | \$ | \$ | \$ | \$ |
| Master | 31.18 | 37.41 | 49.88 | 62.35 |
| Mate | 29.69 | 35.63 | 47.50 | 59.38 |
| Engineer | 29.69 | 35.63 | 47.50 | 59.38 |
| General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand | 28.10 | 33.72 | 44.96 | 56.20 |
| Shipkeeper | 25.76 | 30.92 | 41.22 | 51.53 |
| Crane Driver (under 20 tonnes) | 26.21 | 31.46 | 41.94 | 52.43 |
| Crane Driver (over 20 tonnes) | 28.86 | 34.64 | 46.18 | 57.73 |

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

A.3.2 Casual shiftworkers—ordinary and penalty rates

| | Afternoon | Night | Permanent night | Saturday | Sunday | Public holiday |
|---|--|-------|-----------------|----------|--------|----------------|
| | % of ordinary hourly rate ¹ | | | | | |
| | 140% | 140% | 155% | 150% | 200% | 250% |
| | \$ | \$ | \$ | \$ | \$ | \$ |
| Master | 34.92 | 34.92 | 38.66 | 37.41 | 49.88 | 62.35 |
| Mate | 33.25 | 33.25 | 36.81 | 35.63 | 47.50 | 59.38 |
| Engineer | 33.25 | 33.25 | 36.81 | 35.63 | 47.50 | 59.38 |
| General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand | 31.47 | 31.47 | 34.84 | 33.72 | 44.96 | 56.20 |
| Shipkeeper | 28.85 | 28.85 | 31.95 | 30.92 | 41.22 | 51.53 |
| Crane Driver (under 20 tonnes) | 29.36 | 29.36 | 32.50 | 31.46 | 41.94 | 52.43 |
| Crane Driver (over 20 tonnes) | 32.33 | 32.33 | 35.79 | 34.64 | 46.18 | 57.73 |

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

Schedule B—Summary of Monetary Allowances

Clauses B.1.1, B.2.1 and B.2.2 amended by AMOD as a consequence of amendments at clauses 10.2(d) and 10.2(k) following conference of [4 August 2016](#) (PN421)

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

See clause 10—Allowances for full details of allowances payable under this award.

B.1 Wage-related allowances

B.1.1 The following wage-related allowances are based on the weekly standard rate defined in Schedule H—Definitions as the minimum weekly rate for a General Purpose Hand in clause 9.1 = **\$854.20**. These rates are to be paid in accordance with clause 10.1:

| Allowance | Clause | % of standard rate \$854.20 | \$ per week (unless otherwise stated) |
|--|---------------|------------------------------------|--|
| Dual capacity allowance ¹ | 10.1(d) | 0.58 | 4.95 per day or part thereof |
| Towing allowance—towing or carrying explosives ² | 10.1(m)(i) | 0.29 | 2.48 per day or part thereof |
| Towing allowance—towing non self-propelled bunker barges ³ | 10.1(m)(ii) | 0.27 | 2.31 per day or part thereof |
| Distant work—relieving employee—week of seven days | 10.1(c)(ii) | 56.23 | 480.32 |
| Distant work—relieving employee—broken parts of a week | 10.1(c)(ii) | 8.00 | 68.34 per day |
| Uniforms allowance | 0 | 2.01 | 17.17 |
| Compensation for loss of personal effect—maximum | 0 | 210.3 | Up to 1738.97 per occasion |
| Dirty or offensive work allowance | 10.1(e)(i) | 0.07 | 0.60 per hour |
| Dirty work allowance—work alongside vessels in discharging alumina, petroleum, coke etc. | 10.1(e)(ii) | 0.18 | 1.54 per hour |
| Wet work allowance | 10.1(f)(i) | 0.03 | 0.26 per hour |
| Unloading and loading garbage allowance | 10.1(g) | 0.07 | 0.60 per hour |
| Slipway etc. Allowance—junior employee | 0 | 0.08 | 0.68 per hour |
| Bilge allowance | 10.1(h) | 0.11 | 0.94 per hour |
| Chipping hammers allowance | 10.1(i) | 0.01 | 0.09 per hour |
| First aid allowance | 10.1(j) | 1.70 | 14.52 |

| Allowance | Clause | % of standard rate \$854.20 | \$ per week(unless otherwise stated) |
|--|--------------|--------------------------------|--------------------------------------|
| Loading and discharge of cargo and supplies: | 10.1(k) | | |
| Transporting passengers and cargo—week of five working days | 10.1(k)(i) | 2.99 | 25.54 |
| Transporting passengers and cargo—working week in excess of five days—additional allowance | 10.1(k)(i) | 0.61 | 5.21 per day |
| Transporting cargo only | 10.1(k)(ii) | 5.23 | 44.67 per trip |
| Overnight cruises, one to six nights | 10.1(k)(iii) | 2.01 | 17.17 per trip |
| Overnight cruises, over six nights | 10.1(k)(iv) | 3.00 | 25.63 per trip |
| Waiting orders—telephone installed at home | 10.1(l)(i) | 16.51 | 141.03 per annum |
| Waiting orders—off-duty employee | 10.1(l)(i) | 0.42 | 3.59 per call |
| Special efforts allowance—ships stranded or wrecked or on fire | 10.1(n)(i) | 1.71 | 14.61 per hour |
| Loading for duties outside normal work | 10.1(o) | 0.55 | 4.70 per day |
| 1, 2, 3 This allowance applies for all purposes | | | |

B.1.2 Adjustment of wage-related allowances

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

B.2 Expense-related allowances

B.2.1 The following expense-related allowances will be payable to employees in accordance with clause 10.2:

| Allowance | Clause | \$ |
|---|----------------|-----------------------------------|
| <u>Compensation for loss of personal effects—maximum</u> | <u>10.2(d)</u> | <u>Up to 1796.38 per occasion</u> |
| Meal allowance—overtime in excess of one and a half hours | 10.2(a) | 16.28 per occasion |
| Meal allowances—further four hours of overtime | 10.2(a) | 16.28 per occasion |
| Transport allowance—own vehicle | 10.2(g)(i) | 0.78 per km |

| Allowance | Clause | \$ |
|---|----------------|--------------|
| Transport allowance—own vehicle—travel to or from different starting or finishing point | 10.2(g)(ii) | 0.78 per km |
| <u>Uniforms allowance</u> | <u>10.2(k)</u> | <u>17.17</u> |

B.2.2 Adjustment of expense related allowances

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

| Allowance | Applicable Consumer Price Index figure |
|--|--|
| <u>Compensation for loss of personal effects allowance</u> | <u>All groups</u> |
| Meal allowance | Take away and fast foods sub-group |
| <u>Uniforms allowance</u> | <u>Clothing and footwear group</u> |
| Vehicle allowance | Private motoring sub-group |

B.3 Other allowances

The following other allowances will be payable to employees in accordance with clause 10:

| Allowance | Clause | Payment detail |
|--|--------------|--|
| Towing allowance—vessels proceeding beyond limits of harbour, river or bay | 10.1(m)(iii) | 25% of the employee's normal wage per day (minimum payment for four hours) |

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

Schedule E renumbered as Schedule C

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule D—Agreement to Take Annual Leave in Advance

Schedule D inserted in accordance with [PR588737](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule E—Agreement to Cash Out Annual Leave

Schedule E inserted in accordance with [PR588737](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule F—2016 Part-day Public Holidays

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

Renumbered as Schedule F following [PR588737](#) and [PR585481](#)

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

- 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.

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

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

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

DRAFT

Schedule H—Definitions

Schedule D renumbered as Schedule H following [PR588737](#) and [PR585481](#)

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

Definition of ports, harbours and enclosed water vessels industry has been inserted in accordance with [\[2017\] FWCFB 3433](#) at [339].

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

In this award, unless the contrary intention appears:

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

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

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

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

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

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

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

ordinary hourly rate means the hourly rate for the employee's classification specified in clause 9, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

ports, harbours and enclosed water vessels industry has the meaning given in [clause 3.2](#)

standard rate means the minimum weekly rate for a General Purpose Hand in [clause 9.1](#)