

# EXPOSURE DRAFT

## Seafood Processing Award 2014

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Seafood Processing Award 2010** (the Seafood award) as at 8 December 2014. This exposure draft does not seek to amend any entitlements under the Seafood 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 [AM2014/213](#). 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.

Note: there are a number of general drafting/technical issues common to multiple exposure drafts that are currently being considered by the Full Bench and a decision is pending. These issues include:

- Supersession clause (clause 1.2)
- Inclusion of NES summaries
- Inclusion of index of facilitative provisions
- Inclusion of payslips provision
- Relationship between award and NES (clause 2.1)
- Inclusion of examples that clarify the operation of provisions
- Inclusion of 'ordinary hourly rates' for awards with an all purpose allowance
- Inclusion of summary wages tables

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

- 1.1 This award is the *Seafood Processing Award 2014*.
- 1.2 This award supersedes the *Seafood Processing Award 2010* but this does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the superseded award.
- 1.3 Schedule F—Definitions sets out definitions that apply in this award.
- 1.4 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

### 2. The National Employment Standards and this award

- 2.1 The [National Employment Standards](#) (NES) and entitlements in 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 definitions applies.
- 2.3 The employer must ensure that copies of this award and the NES are available to all employees to whom they apply.

### 3. Coverage

- 3.1 This industry award covers employers throughout Australia in the seafood processing industry and their employees who are covered by the classifications listed in clause 7—Classifications to the exclusion of any other modern award.
- 3.2 **Seafood processing** means the following industries and parts of industries conducted on land post harvesting:
- (a) the receipt, sorting and handling of fish, seafood and marine products whether wild or farmed, freshwater or saltwater including but not limited to scale fish, crustaceans, molluscs, and other marine species;
  - (b) the preparing, cooking, preserving, filleting, gutting, shucking, drying, smoking, freezing, refrigerating, washing, grading, processing and/or canning of fish, seafood and marine products;
  - (c) the packaging, labelling, palletising, cold storage, chilling and/or freezing, preparing for sale, packing and despatching of fish, seafood and marine products;
  - (a) the cleaning and sanitising of tools, equipment and machinery used to process fish, seafood and marine products; and

- (b) the marketing in fish markets and selling by wholesale of fish, seafood and marine products

**3.3** This award does not cover:

- (a) employers and employees covered by the:
  - (i) *Fast Food Industry Award 2014*;
  - (ii) *Food, Beverage and Tobacco Manufacturing Award 2014*;
  - (iii) *General Retail Industry Award 2014*;
  - (iv) *Hospitality Industry (General) Award 2014*;
  - (v) *Meat Industry Award 2014*;
  - (vi) *Poultry Processing Award 2014*; or
- (b) an employee employed on an oyster farm.

**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 in clauses 3.1 and 3.2 are being performed. This subclause operates subject to the exclusions from coverage in this award.

**3.6** The award does not cover:

- (a) an employee excluded from award coverage by the *Fair Work Act 2009* (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; or

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

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

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

#### **4. Award flexibility**

- 4.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:
- (a) arrangements for when work is performed;
  - (b) overtime rates;
  - (c) penalty rates;
  - (d) allowances; and
  - (e) leave loading.
- 4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 4.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and
  - (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.
- 4.4** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
  - (b) state each term of this award that the employer and the individual employee have agreed to vary;
  - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
  - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
  - (e) state the date the agreement commences to operate.
- 4.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

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

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

**4.8** The agreement may be terminated:

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

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

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

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

## **5. Facilitative provisions**

**5.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned. Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award.

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

Clause	Provision	Agreement between an employer and:
6.3(b)	Part-time employment	An individual
8.2	Ordinary hours of work—day workers	An individual or the majority of employees
8.5(a)	Ordinary hours of work—rosters	The majority of employees
9.1(a)(ii)	Unpaid meal breaks	An individual or the majority of employees
10.3(b)	Payment of wages	An individual or the majority of employees

Clause	Provision	Agreement between an employer and:
13.4	Span of hours—shiftwork	An individual or the majority of employees
13.7(e)	Rate for working on Sunday and public holiday shifts	The majority of employees
14.3(d)	Rest period after overtime	An individual
14.7(d)	Paid rest break	An individual
15.3	Conversion to hourly entitlement	The majority of employees
15.7(a)	Paid leave in advance of accrued entitlement	An individual
15.8(a)	Cashing out of annual leave	An individual
18.4	Substitution of certain public holidays	The majority of employees

## Part 2—Types of Employment and Classifications

### 6. Types of employment

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

- (a) full-time;
- (b) part-time; or
- (c) casual.

#### 6.2 Full-time employment

- (a) Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in this award.
- (b) A full-time employee works an average of 38 ordinary hours per week.

#### 6.3 Part-time employment

- (a) A part-time employee:
  - (i) is engaged to work an average of less than 38 ordinary hours per week;
  - (ii) has reasonably predictable hours of work; 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 must be engaged for a minimum of three consecutive hours per shift. In order to meet their personal circumstances, a part-time employee may request and the employer may agree to an engagement for less than the minimum of three hours.

- (c) Before commencing part-time employment, the employee and the employer must agree in writing:
  - (i) on the hours to be worked by the employee, the days on which they will be worked and the commencing and finishing times for the work; and
  - (ii) on the classification applying to the work to be performed in accordance with clause 7—Classifications.
- (d) The terms of the agreement in clause 6.3(c) may be varied by consent in writing.
- (e) The agreement under clause 6.3(c) or any variation to it under clause 6.3(d) must be retained by the employer and a copy of this agreement and any variation to it must be provided to the employee by the employer.
- (f) Except as otherwise provided in this award, a part-time employee must be paid for the hours agreed on in accordance with clauses 6.3(c) and 6.3(d).
- (g) A part-time employee who is required by the employer to work in excess of the hours agreed under clauses 6.3(c) and 6.3(d) must be paid overtime in accordance with clause 14—Overtime.
- (h) Where the part-time employee’s normal paid hours fall on a public holiday prescribed in the NES and work is not performed by the employee, such employee must not lose pay for the day. Where the part-time employee works on the public holiday, the part-time employee must be paid in accordance with clauses 13.7 and 14.6.

#### 6.4 Casual employment

- (a) A casual employee is an employee who is engaged and paid as a casual employee.
- (b) **Casual loading**
  - (i) For each ordinary hour worked, a casual employee must be paid:
    - the minimum hourly rate; and
    - a loading of **25%** of the minimum hourly rate,for the classification in which they are employed.
  - (ii) The loading constitutes part of the casual employee’s all purpose rate.
  - (iii) The casual loading is paid instead of annual leave, paid personal/carers’ leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.
  - (iv) The following provisions of this award do not apply to casual employees:

Parties are asked to provide a list of provisions that do not apply to casual employees.

- (c) On each occasion a casual employee is required to attend work the employee must be paid for a minimum of three hours’ work. In order to meet their



personal circumstances a casual employee may request and the employer may agree to an engagement for less than the minimum of three hours.

- (d) When engaging a casual employees, the employer must inform the employee
  - (i) that they are employed as a casual;
  - (ii) by whom the employee is employed;
  - (iii) the employee’s classification level;
  - (iv) the employee’s rate of pay; and
  - (v) the likely number of hours required.

## **7. Classifications**

### **7.1 Process Attendant Level 1**

(a) **Point of entry**

New employee.

(b) **Skills/duties—indicative tasks**

An employee in the first three months of duty undertakes training for any task including but not limited to sorting, grading, trimming, washing and packaging of fish, seafood and marine products and is under direct supervision.

(c) **Promotional criteria**

An employee remains at this level for the first three months or until they are capable of demonstrating competency in the tasks required at this level so as to enable them to progress to Level 2.

### **7.2 Process Attendant Level 2**

(a) **Point of entry**

- (i) Process Attendant Level 1; or
- (ii) Proven and demonstrated skills, including industry certification as appropriate, at Level 2.

(b) **Skills/duties—indicative tasks**

Indicative of the tasks which an employee at Level 2 may perform are the following:

- (i) Filleting,
- (ii) Weighing,
- (iii) Cleaning of fish and/or shellfish,
- (iv) Precise grading, marking and inspection,
- (v) Draining, tailing, pickling, crumbing and cooking of seafood,

- (vi) Chilling of fish and shellfish,
- (vii) Sealing, stopping and stamping of cartons,
- (viii) Bulk packaging and operation of single function fish processing equipment,
- (ix) Operation of a can closure machine,
- (x) Packing in a standard container,
- (xi) Recording and documentation as required,
- (xii) Cold storage chiller and freezer operations.

(c) **Promotional criteria**

An employee remains at this level until they have developed the skills to allow the employee to effectively perform the tasks required at this level and are assessed by the employer to be competent to perform effectively at a higher level so as to enable them to progress as a position becomes available.

**7.3 Process Attendant Level 3**

(a) **Point of entry**

- (i) Process Attendant Level 2; or
- (ii) Proven and demonstrated skills, including industry certification as appropriate, at Level 3.

(b) **Skills/duties—indicative tasks**

Indicative of the tasks which an employee at Level 3 may perform are the following:

- (i) Any or all of the tasks described at Level 2,
- (ii) Operation of refrigeration equipment,
- (iii) Operation of a forklift of up to 4500 kilograms,
- (iv) Operation of steam raising equipment,
- (v) Specialist filleting (by hand),
- (vi) Setting and operation of a retort to a scheduled process,
- (vii) Setting up and monitoring of can closure operations,
- (viii) Recording, documentation of production processes and distribution,
- (ix) Specialist shucking.

(c) **Promotional criteria**

An employee remains at this level until they have developed the skills to allow the employee to effectively perform the tasks required at this level and are

assessed by the employer to be competent to perform effectively at a higher level so as to enable them to progress as a position becomes available.

#### **7.4 Process Attendant Level 4**

##### **(a) Point of entry**

- (i) Process Attendant Level 3; or
- (ii) Proven and demonstrated skills, including industry certification as appropriate, at Level 4.

##### **(b) Skills/duties—indicative tasks**

Indicative of the tasks which an employee at Level 4 may perform are the following:

- (i) Any or all of the tasks described at Level 3,
- (ii) Supervising and/or co-ordinating of a single processing section or table, whilst being directly answerable to the team leader/room supervisor,
- (iii) Quality assurance officer.

### **Part 3—Hours of Work**

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

**8.1** Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.

##### **8.2 Ordinary hours of work—day workers**

- (a) Subject to clause 8.6, the ordinary hours of work for a full-time employee are an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours of work for a day worker are worked between 6.00 am and 6.00 pm, Monday to Saturday.
- (c) The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or, in appropriate circumstances, between the employer and an individual employee.
- (d) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer.
- (e) The ordinary hours of work may be worked on any day or all of the days, Monday to Saturday, provided that a day worker must not be required to work more than five and a half days of ordinary hours in a week.
- (f) The days on which ordinary hours are worked may include Sunday subject to agreement between the employer and the majority of employees concerned.

Agreement in this respect may also be reached between the employer and an individual employee.

- (g) Any work performed outside the spread of hours must be paid for at overtime rates in accordance with clause 14. However, any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the plant in a state of readiness for production work is to be regarded as part of the 38 ordinary hours of work.

### 8.3 Ordinary hours of work—continuous shiftworkers

- (a) **Continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (b) Subject to clause 8.5(a), the ordinary hours of work for a continuous shiftworker are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days.
- (c) **Paid meal break**

A continuous shiftworker is entitled to a 20 minute meal break on each shift which must be counted as time worked.

### 8.4 Ordinary hours of work—non-continuous shiftworkers

- (a) Subject to clause 8.5(a) the ordinary hours of work for a non-continuous shiftworker are an average of 38 per week and must not exceed 152 hours in 28 consecutive days.
- (b) The ordinary hours of work must be worked continuously, except for meal breaks, at the discretion of the employer.

### 8.5 Ordinary hours of work—rosters

- (a) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (b) Except at changeover of shifts an employee must not be required to work more than one shift in each 24 hours.
- (c) Where an employee works on a shift other than a rostered shift, they are to be paid in accordance with clause 13.7.

### 8.6 Methods of arranging ordinary working hours

- (a) The arrangement of ordinary working hours must be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude the employer reaching agreement with individual employees about how their working hours are to be arranged.

- (b) The matters on which agreement may be reached include:
  - (i) how the hours are to be averaged within a work cycle established in accordance with clauses 8.2, 8.3 and 8.4;
  - (ii) the duration of the work cycle for day workers provided that such duration does not exceed 12 months;
  - (iii) rosters which specify the starting and finishing times of working hours;
  - (iv) a period of notice of a rostered day off which is less than four weeks;
  - (v) substitution of rostered days off;
  - (vi) accumulation of rostered days off;
  - (vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and
  - (viii) any arrangements of ordinary hours which exceed eight hours in any day but not exceeding 12 hours in a day or shift.
- (c) Nothing in clause 8.6 affects the employer's right to determine the daily hours of work for day workers from time to time within the spread of hours referred to in clause 8.2(b), 8.2(c) and 8.2(d) and the employer's right to determine the commencing and finishing time of shifts from time to time.
- (d) By agreement between an employer and the majority of employees in the enterprise or part of the enterprise concerned, 12 hour days or shifts may be introduced subject to:
  - (i) proper health monitoring procedures being introduced;
  - (ii) suitable roster arrangements being made;
  - (iii) proper supervision being provided;
  - (iv) adequate breaks being provided; and
  - (v) a trial or review process being jointly implemented by the employer and the employees or their representatives.

#### 8.7 Daylight saving

- (a) For work performed which spans the start or finish of a system of daylight saving as prescribed by relevant state or territory legislation, an employee will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work).
- (b) The terms **standard time** and **summer time** have the same meaning as in the relevant State or Territory legislation.

#### 8.8 Make-up time

- (a) An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours, and

works those hours at a later time, during the spread of ordinary hours provided in this award.

- (b) An employee on shiftwork may elect, with the consent of their employer, to work make-up time under which the employee takes time off during ordinary hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.

## **9. Breaks**

### **9.1 Unpaid meal breaks**

- (a) An employee must not be required to work for more than five hours without a break for a meal except in the following circumstances:
  - (i) in cases where canteen or other facilities are limited to the extent that meal breaks must be staggered and as a result it is not practicable for all employees to take a meal break within five hours, an employee must not be required to work for more than six hours without a break for a meal; or
  - (ii) by agreement between an employer and an individual employee or the majority of employees in an enterprise or part of an enterprise concerned, an employee or employees may be required to work in excess of five hours but not more than six hours at the ordinary time rate without a meal break.
- (b) The time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations.
- (c) An employer may stagger the time of taking meal and rest breaks to meet operational requirements.
- (d) Subject to clause 9.1, an employee must work during meal breaks at the ordinary time rate whenever instructed to do so for the purpose of making good any breakdown of plant or for routine maintenance of plant which can only be done while the plant is idle.
- (e) The rate of **150%** of the minimum hourly rate must be paid for all work done during meal hours and thereafter until a meal break is taken, unless otherwise provided in this clause or except where any alternative arrangement is entered into by agreement between the employer and the employee concerned.

### **9.2 Paid rest breaks**

- (a) An employee is entitled to two 10 minute rest breaks on each day or shift, which are to be counted as time worked without deduction of pay.
- (b) The employer may determine the time at which rest breaks are to be taken.

## Part 4—Wages and Allowances

### 10. Minimum wages

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

Classification level	Minimum weekly wage \$	Minimum hourly rate \$	Casual hourly rate <sup>1</sup> \$
Process Attendant Level 1	640.90	16.87	21.09
Process Attendant Level 2	650.00	17.11	21.39
Process Attendant Level 3	711.20	18.72	23.40
Process Attendant Level 4	746.20	19.64	24.55

<sup>1</sup> **Casual hourly rate** is based on the minimum hourly rate and includes the casual loading which constitutes part of the casual employee's all purpose rate.

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

- (a) The following adult employees are not entitled to the minimum wages set out in the table in clause 10.1:
  - (i) a trainee (see Schedule C—); and
  - (ii) an employee receiving a supported wage (see Schedule D—Supported Wage System).
- (b) The classification definitions are set out in clause 7—Classifications.

### 10.2 Unapprenticed junior minimum wages

The minimum wages for an unapprenticed junior employee are to be calculated in accordance with the percentages set out below applied to the corresponding adult classification minimum wage in clause 10.1:

Age	%
Under 17 years of age	55
17 years of age	65
18 years of age	75
19 years of age and over	100

### 10.3 Payment of wages

- (a) Except as provided in clause 10.3(b), wages must be paid weekly or fortnightly, either:
  - (i) according to the actual ordinary hours worked each week or fortnight; or

- (ii) according to the average number of ordinary hours worked each week or fortnight.
- (b) The employer and the majority of employees may agree that wages will be paid every three or four weeks, or monthly. Agreement in this respect may also be reached between the employer and an individual employee.
- (c) Section [536](#) of the Act requires the employer to give a pay slip to an employee within one working day of paying an amount to the employee in relation to the performance of work. The [Fair Work Regulations 2009](#) specify the information that must be included in a pay slip.
- (d) **Method of payment**

Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account.
- (e) **Payment of wages on termination of employment**

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee within 48 hours.
- (f) **Wages to be paid during working hours**
  - (i) Where an employee is paid wages by cash or cheque such wages must be paid during ordinary working hours.
  - (ii) If an employee is paid wages by cash and is kept waiting for their wages on pay day after the usual time for ceasing work, the employee must be paid at overtime rates for the period they are kept waiting.
- (g) **Day off coinciding with pay day**

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with pay day, such employee must:

  - (i) be paid no later than the working day immediately following pay day; or
  - (ii) if the employer is able to make suitable arrangements, be paid on the working day preceding pay day.

#### **10.4 Absences from duty under an averaging system**

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following is to apply:

- (a) the employee accrues a credit for each day they work ordinary hours in excess of the daily average;
- (b) the employee does not accrue a credit for each day of absence from duty, other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, paid compassionate leave, paid training leave or jury service; and



- (c) an employee absent for part of a day, other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, paid compassionate leave, paid training leave or jury service, accrues a proportion of the credit for the day, based on the proportion of the working day that the employee was in attendance.

#### **10.5 Higher duties**

- (a) An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift.
- (b) If the employee is engaged for two hours or less during one day or shift, they must be paid the higher minimum wage for the time so worked.

#### **10.6 National training wage**

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

#### **10.7 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.

### **11. Allowances**

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

#### **11.2 Wage related allowances**

##### **(a) First aid allowance**

An allowance of **\$14.85** per week must be paid to an employee who:

- (i) has been trained to perform first aid; and
- (ii) is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body; and
- (iii) is appointed by their employer to perform first aid duty.

##### **(b) Special rates—cold places**

- (i) An allowance of **\$0.55** per hour must be paid to an employee who works for more than one hour in places where the temperature is reduced by artificial means below zero degrees Celsius.
- (ii) Where the work continues in the cold place for more than two hours, the employee is entitled to 20 minutes' rest after every two hours' work without loss of pay.

### 11.3 Expense related allowances

#### (a) Meal allowance

- (i) An employee must be paid a meal allowance of **\$13.23** on each occasion the employee is entitled to a rest break in accordance with clause 14.7.
- (ii) The meal allowance is not payable:
  - if the employee is a day worker and was notified no later than the previous day that they would be required to work such overtime; or
  - if the employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work such overtime; or
  - if the employee lives in the same locality as the enterprise and could reasonably return home for meals; or
  - if the employee is provided with an adequate meal by the employer.
- (iii) If an employee has provided a meal or meals on the basis that they have been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, they must be paid the prescribed meal allowance for the meal or meals which they have provided but which are surplus.

#### (b) Damage to clothing, spectacles and hearing aids

Where an employee as a result of performing any duty required by the employer, and as a result of the negligence of the employer, suffers any damage to or soiling of their clothing or other personal equipment, including spectacles and hearing aids, then the employer must replace, repair or clean the clothing or other personal equipment.

#### (c) Protective clothing and equipment

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

### 11.4 Extra rates not cumulative

The extra rates in this award, except the rate prescribed in clause 11.2(b) (Special rates—cold places) and the rates for work on public holidays, are not cumulative so as to exceed the maximum of double ordinary time rates.

It is unclear what 'extra rates' this clause refers to. Parties are asked to clarify the operation of this provision (see also clause 13.7(f)).

## **12. Superannuation**

### **12.1 Superannuation legislation**

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

### **12.2 Employer contributions**

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

### **12.3 Voluntary employee contributions**

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

### **12.4 Superannuation fund**

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

- (a) AustralianSuper;
- (b) AustSafe Super;
- (c) LUCRF Super;
- (d) Statewide Superannuation Trust;

- (e) Tasplan;
- (f) CareSuper;
- (g) 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 superannuation fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (h) a superannuation fund or scheme which the employee is a defined benefit member of.

## 12.5 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 12.2 and pay the amount authorised under clauses 12.3(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

### 13. Penalties and shiftwork

#### 13.1 Saturday and Sunday work—day worker

The rate to be paid to a day worker for ordinary time worked:

- (a) before noon on a Saturday is **125%** of the minimum hourly rate; and
- (b) after noon on a Saturday is **150%** of the minimum hourly rate.
- (c) If the spread of hours is altered in accordance with clause 8.2(d), the rate to be paid to a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday is **200%**.

#### 13.2 Work on a public holiday—day worker

- (a) A day worker required to work on a public holiday must be paid for a minimum of three hours' work at the rate of **250%** of the minimum hourly rate.
- (b) The **250%** rate must be paid to the employee until the employee is relieved from duty.

### 13.3 Definitions of shiftwork

For the purposes of this award:

- (a) **rostered shift** means any shift of which the employee concerned has had at least 48 hours' notice;
- (b) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight; and
- (c) **night shift** means any shift finishing after midnight and at or before 8.00 am.

13.4 By agreement between the employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

### 13.5 Afternoon and night shift allowances

(a) An employee who works on afternoon or night shift must be paid **115%** of the minimum hourly rate for such shift.

(b) **Non-rotating night shift**

An employee who works on an afternoon or night shift which does not continue:

- (i) for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise (where no more than eight ordinary hours are worked on each shift); or
- (ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with clauses 8.3 or 8.4);

must be paid for each shift **150%** of the minimum hourly rate for the first three hours and **200%** of the minimum hourly rate for the remaining hours.

(c) **Permanent night shift**

An employee who:

- (i) during a period of engagement on shift, works night shift only; or
- (ii) remains on night shift for a longer period 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 the employee at least one third of their working time off night shift in each shift cycle;

must, during such engagement, period or cycle, be paid **130%** of the minimum hourly rate for all time worked during ordinary working hours on such night shift.

### 13.6 Rate for working on Saturday shifts

The rate at which a shiftworker must be paid for work performed between midnight on Friday and midnight on Saturday is **150%** of the minimum hourly rate. The extra

rate is in substitution for and not cumulative upon the shift allowances prescribed in clause 13.5.

### 13.7 Rate for working on Sunday and public holiday shifts

- (a) The rate at which a continuous shiftworker must be paid for work on a rostered shift the major portion of which is performed on a Sunday or public holiday is **200%** of the minimum hourly rate.
- (b) The rate at which a shiftworker, on other than continuous shiftwork, must be paid for all time worked is:
  - on a Sunday is **200%** of the minimum hourly rate; and
  - on a public holiday is **250%** of the minimum hourly rate.
- (c) Where shifts commence between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift.
- (d) The time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday must be regarded as time worked on the Sunday or public holiday.
- (e) Where shifts fall partly on a public holiday, the shift which has the major portion falling on the public holiday must be regarded as the public holiday shift. By agreement between the employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the public holiday shift instead.
- (f) The extra rates in clause 13.7 are in substitution for and not cumulative upon the shift allowances prescribed in clause 13.5.

### 13.8 Non-rostered shiftwork

Where an employee works on a shift other than a rostered shift, the employee must:

- (a) if employed on continuous work, be paid at the rate of **200%** of the minimum hourly rate; or
- (b) if employed on other shiftwork:
  - (i) be paid at the rate of **150%** of the minimum hourly rate for the first three hours; and
  - (ii) **200%** of the minimum hourly rate thereafter.
- (c) Clause 13.8 does not apply when the time is worked:
  - (i) by arrangement between the employees themselves;
  - (ii) for the purposes of effecting the customary rotation of shifts; or
  - (iii) on a shift to which the employee is transferred on short notice as an alternative to standing the employee off in circumstances which would

entitle the employer to deduct payment in accordance with the stand down provisions in Part 3-5 of the Act.

## 14. Overtime

### 14.1 Payment for working overtime

- (a) For all time worked outside the spread of ordinary hours on any day or shift, the overtime rates are:
- (i) **150%** for the first three hours; and
  - (ii) **200%** thereafter until the completion of the overtime work; or
  - (iii) **200%** for a continuous shiftworker;
- except as provided for in clauses 14.1(d), 14.1(e), 14.5 and 14.6.
- (b) For the purposes of this clause, **ordinary hours** means the hours worked in an enterprise, fixed in accordance with clause 8—Ordinary hours of work and rostering.
- (c) The hourly rate, when calculating overtime, is determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.
- (d) An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer, provided that:
- (i) overtime taken as time off during ordinary hours must be taken at the ordinary time rate, that is an hour for each hour worked; and
  - (ii) an employer must, if requested by an employee, provide payment, at the rate provided for the payment of overtime in this award, for any overtime worked which has not been taken as time off instead of payment for overtime within four weeks of accrual.
- (e) An unrelieved shiftworker must be paid at the rate of **200%** of the minimum hourly rate when:
- (i) not less than 7.6 hours' notice has been given to the employer by a relief shiftworker that the relief shiftworker will be absent from work; and
  - (ii) the shiftworker whom that person should relieve is not relieved; and
  - (iii) the shiftworker is required to continue work on their rostered day off.
- (f) In calculating overtime each day's work stands alone.

### 14.2 One in, all in does not apply

The assignment of overtime by an employer to an employee is to be based on specific work requirements and the practice of one in, all in overtime must not apply.

### 14.3 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that an employee has at least 10 consecutive hours off duty between the work of successive working days.
- (b) An employee, who has not had at least 10 consecutive hours off duty between the termination of their ordinary hours on one day and the commencement of their ordinary hours the next day must be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during such absence. Provided that:
  - (i) this clause is subject to the other provisions of clause 14.3.
  - (ii) this provision does not apply to casual employees.

Should clause 14.3(b) refer to “the termination of their ordinary hours” or “the completion of overtime”?

- (c) If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off duty the employee is entitled:
  - (i) to be paid at the rate of **200%** of the minimum hourly rate until the employee is released from duty for such period; and
  - (ii) Once released from duty, to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.
- (d) By agreement between the employer and individual employee, the 10 hour break provided for in clause 14.3 may be reduced to a period of no less than eight hours.
- (e) The provisions of clause 14.3 will apply in the case of a shiftworker as if eight hours were substituted for 10 hours when overtime is worked:
  - (i) for the purpose of changing shift rosters; or
  - (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or
  - (iii) where a shift is worked by arrangement between the employees themselves.

### 14.4 Saturday work

A day worker required to work overtime on a Saturday must be paid for a minimum of three hours' work at the rate of **150%** for the first three hours and **200%** thereafter, except where the overtime is continuous with overtime commenced on the previous day.

### 14.5 Sunday work

An employee required to work overtime on a Sunday must be paid for a minimum of three hours' work at the rate of **200%** of the minimum hourly rate. The **200%** is to be paid until the employee is relieved from duty.



**14.6 Public holiday work**

- (a) A day worker required to work overtime on a public holiday must be paid for a minimum of three hours' work at the rate of **250%** of the minimum hourly rate. The **250%** is to be paid until the employee is relieved from duty.
- (b) A continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of three hours' work at the rate of **200%** of the minimum hourly rate.
- (c) A non-continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of three hours' work at the rate of **250%** of the minimum hourly rate. The **250%** is to be paid until the employee is relieved from duty.

**14.7 Paid rest break**

- (a) An employee working overtime must be allowed a rest break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee is to continue work after the rest break.
- (b) Where a day worker is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break must be paid at the employee's ordinary time rate.
- (c) Where overtime is to be worked immediately after the completion of ordinary hours on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes to be paid at the employee's minimum hourly rate.
- (d) An employer and employee may agree to any variation of clause 14.7 to meet the circumstances of the work in hand provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under clause 14.7.
- (e) An employee entitled to a paid rest break may be entitled to a meal allowance in accordance with clause 10.3(a).

**14.8 Transport of employees**

When an employee, after having worked overtime or a shift for which they have not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the employer must provide the employee with a conveyance home, or pay the employee at the overtime rate for the time reasonably occupied in reaching home.

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

### 15. Annual leave

This annual leave provision may be affected by [AM2014/47](#)

**15.1** Annual leave is provided for in the NES. Casual employees are not entitled to paid annual leave. The NES provides for the accrual of four weeks paid leave per year (five weeks paid leave per year for certain shiftworkers). For the full NES annual leave entitlement see [ss.86–94](#) of the Act.

### 15.2 Additional leave for certain shiftworkers

- (a) A **shiftworker**, for the purposes of the additional week's leave referred to in clause 15.1, is an employee who is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.
- (b) Where an employee with 12 months' continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

### 15.3 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in s.87 of the Act to an hourly entitlement for administrative ease (i.e. 152 hours for a full-time employee entitled to four weeks of annual leave and 190 hours for a shiftworker as defined in clause 15.2(a)).

### 15.4 Payment for period of annual leave

- (a) An employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period. This will be paid instead of the **base rate of pay** as referred to in s.90(1) of the Act.
- (b) The wages to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including:
- (i) allowances, loadings and penalties paid for all purposes of the award;
  - (ii) first aid allowance; and
  - (iii) any other wages payable under the employee's contract of employment including any overaward payment.
- (c) The employee is not entitled to annual leave payments in respect of:
- overtime;
  - special rates; or

- any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

#### **15.5 Annual leave loading**

- (a) During a period of annual leave an employee must also be paid a loading calculated on the wages prescribed in clause 15.4.
- (b) The loading must be as follows:
  - (i) **Day work**

An employee who would have worked on day work only had they not been on leave must be paid a loading equal to **17.5%** of the wages prescribed in clause 15.4 or the relevant weekend penalty rates, whichever is the greater but not both.

- (ii) **Shiftwork**

An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to **17.5%** of the wages prescribed in clause 15.4 or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.

#### **15.6 Excessive leave**

Notwithstanding s.88 of the Act, if an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take annual leave by giving not less than four weeks' notice of the time when such leave is to be taken if:

- (a) at the time the direction is given, the employee has eight weeks or more of annual leave accrued; and
- (b) the amount of annual leave the employee is directed to take is less than or equal to a quarter of the amount of leave accrued.

#### **15.7 Paid leave in advance of accrued entitlement**

- (a) By agreement between an employer and an employee a period of annual leave may be taken in advance of the entitlement accruing.
- (b) If leave is taken in advance and the employment terminates before the entitlement has accrued, the employer may make a corresponding deduction from any money due to the employee on termination.

#### **15.8 Cashing out of annual leave**

- (a) An employee and an employer can agree to cash out any accrued annual leave of the employee provided that does not result in the employee's remaining accrued entitlement to paid annual leave being less than four weeks.
- (b) Upon agreement being reached for each cashing out of a particular amount of paid annual leave then that agreement must be recorded by a separate agreement in writing between the employer and the employee.

- (c) The employee must be paid at least the full agreed amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.

### **15.9 Annual close-down**

An employer may close down an enterprise or part of it for the purpose of allowing annual leave to all, or the majority of the employees in the enterprise or part concerned under the following conditions:

- (a) the employer gives not less than four weeks' notice of intention to do so; and
- (b) an employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 15.4 and 15.5; and
- (c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and
- (d) any leave taken by an employee as a result of a close-down pursuant to clause 15.9 also counts as service by the employee with their employer; and
- (e) the employer may only close down the enterprise or part of it pursuant to clause 15.9 for one or two separate periods in a year; and
- (f) if the employer closes down the enterprise or part of it pursuant to clause 15.9 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days; and
- (g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 15.9 for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and
- (h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.
- (i) Clause 15.9 applies despite s.88 of the Act and clause 15.6.

### **15.10 Transfer of business**

Where a business is transferred from one employer to another, the period of continuous service that an employee had with the old employer must be deemed to be service with the new employer and taken into account when calculating annual leave. However an employee is not entitled to leave or payment instead for any period in respect of which leave has been taken or paid for.

### **15.11 Proportionate leave on termination**

On termination of employment, an employee must be paid for annual leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 15.4.

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

**16.1** Personal/carer's leave and compassionate leave are provided for in the NES. Casual employees are not entitled to paid personal/carer's leave or paid compassionate leave. The NES provides for:

- the accrual of 10 days' paid personal/carer's leave per year;
- 2 days' unpaid carer's leave (as required); and
- 2 days' paid (unpaid for casuals) compassionate leave (as required).

**16.2** For the full NES entitlement to personal/carer's leave and compassionate leave see [ss.95–107](#) of the Act.

**16.3** Personal/carer's leave and compassionate leave are not paid on termination of employment.

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

Parental leave and related entitlements are provided for in the NES. The NES provides up to 12 months' unpaid leave to eligible employees, plus a right to request an additional 12 months' unpaid leave, plus other forms of maternity, paternity and adoption-related leave. For the full NES parental leave entitlement see [ss.67–85](#) of the Act.

## **18. Public holidays**

**18.1** Public holiday entitlements are provided for in the NES. The NES provides a paid day off on each public holiday, except where reasonably requested to work. For the full NES public holiday entitlement see [ss.114–116](#) of the Act.

**18.2** A casual employee who does not work on a public holiday is not entitled to a paid day off.

**18.3** Where an employee works on a public holidays they will be paid in accordance with clauses 13.7 and 14.6.

### **18.4 Substitution of certain public holidays by agreement at the enterprise**

- (a) The employer and the majority of employees in an enterprise or part of the enterprise concerned may agree to substitute another day for a public holiday.
- (b) An employer and an individual employee may agree to substitute another day for the day being observed as the public holiday in the enterprise or part of the enterprise concerned.

### **18.5 Rostered day off falling on public holiday**

- (a) Except as provided for in clauses 18.5(b) and (c) and where the rostered day off falls on a Saturday or a Sunday, where a full-time employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

- (i) 7.6 hours of pay at the ordinary time rate; or
  - (ii) 7.6 hours of extra annual leave; or
  - (iii) a substitute day off on an alternative week day.
- (b) Where an employee has credited time accumulated pursuant to clause 10.4, then such credited time should not be taken as a day off on a public holiday.
- (c) If an employee is rostered to take credited time accumulated pursuant to clause 10.4 as a day off on a week day and such week day is prescribed as a public holiday after the employee was given notice of the day off, then the employer must allow the employee to take the time off on an alternative week day.
- (d) Clauses 18.5(b) and (c) do not apply in relation to days off which are specified in an employee's regular roster or pattern of ordinary hours as clause 18.5(a) applies to such days off.

## **19. Community service leave**

Community service leave is provided for in the NES. The NES provides unpaid leave for voluntary emergency activities and up to 10 days' paid leave for jury service (after 10 days, leave is unpaid). For the full NES community service leave entitlement see [ss.108–112](#) of the Act.

## **20. Termination of employment**

**20.1** Notice of termination is provided for in the NES. The NES provides between one and four weeks' notice of termination based on length of service. Employees over 45 years old who have been with the employer for at least two years are entitled to an extra week's notice. For the full NES notice of termination entitlement see [ss.117–118](#) of the Act.

### **20.2 Notice of termination by an employee**

The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement for employees over 45 years old to give additional notice. If an employee fails to give the required notice, the employer may withhold any money due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause, less any period of notice actually given by the employee.

### **20.3 Job search entitlement**

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

## **21. Redundancy**

**21.1** Redundancy pay is provided for in the NES. The NES provides between zero and 16 weeks' redundancy pay upon redundancy, depending on length of service. Small business employers are excluded from the obligation to pay redundancy pay. For the full NES redundancy pay entitlement see [ss.119–122](#) of the Act.

**21.2** A **small business employer** is defined in the Act as an employer that employs fewer than 15 employees. The way that the number of employees is calculated is set out in [s.23](#) of the Act.

### **21.3 Transfer to lower paid duties**

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

### **21.4 Employee leaving during notice period**

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

### **21.5 Job search entitlement**

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

## **Part 7—Consultation and Dispute Resolution**

### **22. Consultation**

#### **22.1 Consultation regarding major workplace change**

##### **(a) Employers to notify**

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer

must notify the employees who may be affected by the proposed changes and their representatives, if any.

- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

**(b) Employers to discuss change**

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

**22.2 Consultation about changes to rosters or hours of work**

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
  - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.



- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## **23. Dispute resolution**

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

**Schedule A—Summary of Hourly Rates of Pay**

**A.1 Full-time and part-time employees**

**A.1.1 Full-time and part-time day workers—ordinary and penalty rates**

	Ordinary hours	Saturday		Sunday	Public holiday
		Before noon	After noon		
	<b>% of minimum hourly rate</b>				
	<b>100%</b>	<b>125%</b>	<b>150%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Process Attendant Level 1	16.87	21.09	25.31	33.74	42.18
Process Attendant Level 2	17.11	21.39	25.67	34.22	42.78
Process Attendant Level 3	18.72	23.40	28.08	37.44	46.80
Process Attendant Level 4	19.64	24.55	29.46	39.28	49.10

**A.1.2 Full-time and part-time day workers—overtime rates**

	Monday to Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Process Attendant Level 1	25.31	33.74	33.74	42.18
Process Attendant Level 2	25.67	34.22	34.22	42.78
Process Attendant Level 3	28.08	37.44	37.44	46.80
Process Attendant Level 4	29.46	39.28	39.28	49.10

**A.1.3 Full-time and part-time shiftworkers—penalty rates**

	Afternoon & night	Non-rotating afternoon or night <sup>1</sup>		Permanent night <sup>2</sup>	Non-continuous shiftworker		Continuous shiftworker
		First 3 hours	After 3 hours		Sunday	Public holiday	Sunday or public holiday
% of minimum hourly rate							
	115%	150%	200%	130%	200%	250%	200%
	\$	\$	\$	\$	\$	\$	\$
Process Attendant Level 1	19.40	25.31	33.74	21.93	33.74	42.18	33.74
Process Attendant Level 2	19.68	25.67	34.22	22.24	34.22	42.78	34.22
Process Attendant Level 3	21.53	28.08	37.44	24.34	37.44	46.80	37.44
Process Attendant Level 4	22.59	29.46	39.28	25.53	39.28	49.10	39.28
<sup>1</sup> Non-rotating afternoon or night is defined in clause 13.5(b).							
<sup>2</sup> Permanent night is defined in clause 13.5(c).							

**A.1.4 Full-time and part-time shiftworkers—overtime**

	Non-continuous shiftworkers		Continuous shiftworker
	First 3 hours	After 3 hours	All day
% of minimum hourly rate			
	150%	200%	200%
	\$	\$	\$
Process Attendant Level 1	25.31	33.74	33.74
Process Attendant Level 2	25.67	34.22	34.22
Process Attendant Level 3	28.08	37.44	37.44
Process Attendant Level 4	29.46	39.28	39.28

**A.2 Casual employees**

**A.2.1 Casual ordinary hourly rate** includes the casual loading which is payable for all purposes.

**A.2.2 Casual employees—ordinary and penalty rates**

	Ordinary hours	Saturday		Sunday	Public holiday
		Before noon	After noon		
	<b>% of casual ordinary hourly rate</b>				
	<b>100%</b>	<b>125%</b>	<b>150%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Process Attendant Level 1	21.09	26.36	31.64	42.18	52.73
Process Attendant Level 2	21.39	26.74	32.09	42.78	53.48
Process Attendant Level 3	23.40	29.25	35.10	46.80	58.50
Process Attendant Level 4	24.55	30.69	36.83	49.10	61.38

**A.2.3 Casual employees—overtime rates**

	Monday to Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
	<b>% of casual ordinary hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Process Attendant Level 1	31.64	42.18	42.18	52.73
Process Attendant Level 2	32.09	42.78	42.78	53.48
Process Attendant Level 3	35.10	46.80	46.80	58.50
Process Attendant Level 4	36.83	49.10	49.10	61.38

## Schedule B—Summary of Monetary Allowances

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

### B.1 Wage related allowances

The wage related allowances in clause 11.2 of this award are based on the [standard rate](#) as defined in Schedule F—Definitions as the minimum hourly wage rate for Process Attendant Level 4 in clause 10.1 = **\$19.64**.

Allowance	Clause	% of <a href="#">standard rate</a> \$19.64	\$
First aid allowance	11.2(a)	75.6	14.85 per week
Cold places allowance	11.2(b)	2.8	0.55 per hour

#### B.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.

### B.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	11.3(a)	13.23 per occasion

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

At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group

## Schedule C—National Training Wage

### C.1 Title

This is the *National Training Wage Schedule*.

### C.2 Definitions

In this schedule:

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

**approved training** means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

**trainee** is an employee undertaking a traineeship under a training contract

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

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

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

**year 10** includes any year before Year 10

### **C.3 Coverage**

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

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

**C.3.3** This schedule does not apply to:

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

Parties are asked to identify “any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997” that they consider should not be covered by this Schedule.

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

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

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

### **C.4 Types of Traineeship**

The following types of traineeship are available under this schedule:

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

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

## **C.5 Minimum Wages**

### **C.5.1 Minimum wages for full-time traineeships**

#### **(a) Wage Level A**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	287.90	317.10	377.80
Plus 1 year out of school	317.10	377.80	439.60
Plus 2 years out of school	377.80	439.60	511.60
Plus 3 years out of school	439.60	511.60	585.80
Plus 4 years out of school	511.60	585.80	
Plus 5 or more years out of school	585.80		

#### **(b) Wage Level B**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>Per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	287.90	317.10	367.60
Plus 1 year out of school	317.10	367.60	422.80
Plus 2 years out of school	367.60	422.80	495.80
Plus 3 years out of school	422.80	495.80	565.60
Plus 4 years out of school	495.80	565.60	
Plus 5 or more years out of school	565.60		



**(c) Wage Level C**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	287.90	317.10	367.60
Plus 1 year out of school	317.10	367.60	413.80
Plus 2 years out of school	367.60	413.80	462.20
Plus 3 years out of school	413.80	462.20	515.00
Plus 4 years out of school	462.20	515.00	
Plus 5 or more years out of school	515.00		

**(d) AQF Certificate Level IV traineeships**

(i) Subject to clause C.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

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

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>
Wage Level A	608.30	631.90
Wage Level B	586.90	609.50
Wage Level C	534.10	554.30

**C.5.2 Minimum wages for part-time traineeships**

**(a) Wage Level A**

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

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	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.47	10.44	12.43
Plus 1 year out of school	10.44	12.43	14.47
Plus 2 years out of school	12.43	14.47	16.83
Plus 3 years out of school	14.47	16.83	19.26
Plus 4 years out of school	16.83	19.26	
Plus 5 or more years out of school	19.26		

**(b) Wage Level B**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.47	10.44	12.10
Plus 1 year out of school	10.44	12.10	13.91
Plus 2 years out of school	12.10	13.91	16.32
Plus 3 years out of school	13.91	16.32	18.61
Plus 4 years out of school	16.32	18.61	
Plus 5 or more years out of school	18.61		

**(c) Wage Level C**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.47	10.44	12.10
Plus 1 year out of school	10.44	12.10	13.61
Plus 2 years out of school	12.10	13.61	15.20

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 3 years out of school	13.61	15.20	16.94
Plus 4 years out of school	15.20	16.94	
Plus 5 or more years out of school	16.94		

**(d) School-based traineeships**

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

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.47	10.44

**(e) AQF Certificate Level IV traineeships**

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

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

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	20.01	20.79
Wage Level B	19.29	20.04
Wage Level C	17.57	18.24

**(f) Calculating the actual minimum wage**

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

schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

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

### C.5.3 Other minimum wage provisions

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

### C.5.4 Default wage rate

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

## C.6 Employment conditions

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

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

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

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## C.7 Allocation of Traineeships to Wage Levels

Parties are asked to review the packages listed to ensure the lists are complete and up-to-date.

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

### C.7.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I II III
Beauty	III
Business Services	I II III
Chemical, Hydrocarbons and Refining	I II III
Civil Construction	III
Coal Training Package	II III
Community Services	II III
Construction, Plumbing and Services Integrated Framework	I II III
Correctional Services	II III
Drilling	II III
Electricity Supply Industry—Generation Sector	II III (in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I II III (in Western Australia only)
Financial Services	I II III
Floristry	III
Food Processing Industry	III

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<b>Training package</b>	<b>AQF certificate level</b>
Gas Industry	III
Information and Communications Technology	I II III
Laboratory Operations	II III
Local Government (other than Operational Works Cert I and II)	I II III
Manufactured Mineral Products	III
Manufacturing	I II III
Maritime	I II III
Metal and Engineering (Technical)	II III
Metalliferous Mining	II III
Museum, Library and Library/Information Services	II III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I II III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

**C.7.2 Wage Level B**

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



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

**C.7.3 Wage Level C**

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

## Schedule D—Supported Wage System

**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 Education, Employment and Workplace Relations 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:

<b>Assessed capacity (clause D.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
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 \$80 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 \$80 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—2014 Part-day public holidays**

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

**E.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2014) or New Year's Eve (31 December 2014) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause E.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
- (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause E.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- (h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

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

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

## Schedule F—Definitions

In this award, unless the contrary intention appears:

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

**all purpose rate** means the rate of pay of an employee who is entitled to an all purpose loading. This rate is to be used when calculating any penalties or loadings or payment while they are on leave.

**casual hourly rate** means the hourly rate for a casual employee for the employee's classification specified in clause 10.1, inclusive of the casual loading, which is payable for all purposes

**continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer

**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

**seafood processing** means the following industries and parts of industries conducted on land post harvesting:

- (a) the receipt, sorting and handling of fish, seafood and marine products whether wild or farmed, freshwater or saltwater including but not limited to scale fish, crustaceans, molluscs, and other marine species;
- (b) the preparing, cooking, preserving, filleting, gutting, shucking, drying, smoking, freezing, refrigerating, washing, grading, processing and/or canning of fish, seafood and marine products;
- (c) the packaging, labelling, palletising, cold storage, chilling and/or freezing, preparing for sale, packing and despatching of fish, seafood and marine products;
- (a) the cleaning and sanitising of tools, equipment and machinery used to process fish, seafood and marine products; and

- (b) the marketing in fish markets and selling by wholesale of fish, seafood and marine products

**small business employer** is defined in the Act as an employer that employs fewer than 15 employees. The way that the number of employees is calculated is set out in [s.23](#) of the Act

**standard rate** means the minimum hourly wage prescribed for the Process Attendant Level 4 classification in clause 10.1

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