

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

Publication date	Reason for amendments	Clauses affected
15 January 2016	<a href="#">Exposure Draft</a>	
29 July 2016	As agreed by the parties and in accordance to the Report to the Full Bench dated <a href="#">3 June 2016</a>	1.2, 2.2, 3.3, 3.5(a), 5.2, 6.4(a)(i), 6.5(a), 8.3, 8.6(a)(i), 8.6(a)(ii), 8.6(b)(i), 8.5(b)(iii) (deleted), 9.2(a), 9.3(a), 10.1, 10.2, 11.3(j)(iii), 12.4, 12.4(e)12.6, 12.12, 16.4(a)(ii), 18.1(c) (deleted), 18.2 (inserted), 19.3(a), 20.8, 20.9 (deleted) Schedule H
	Incorporate changes resulting from <a href="#">PR580863</a>	Schedule G
	Incorporate changes resulting from <a href="#">[2016] FWCFB 3500</a> , <a href="#">PR579595</a> , <a href="#">PR579875</a> , <a href="#">PR581528</a>	10, 16, Schedule B, Schedule C, Schedule E, Schedule F,
	Incorporate changes resulting from <a href="#">[2016] FWCFB 4566</a> , <a href="#">PR582656</a>	16.4(c)
	Incorporate changes resulting from <a href="#">[2015] FWCFB 3523</a> , <a href="#">PR571850</a>	16.3
	<a href="#">Exposure Draft</a>	
2 November 2017	Incorporate changes resulting from <a href="#">PR583098</a>	20, Schedule I, Schedule J
	Incorporate changes resulting from <a href="#">PR584174</a>	19.5, Schedule K
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3500</a> , <a href="#">PR592190</a> , <a href="#">PR592345</a> , <a href="#">PR592689</a> , <a href="#">PR593865</a>	10, 14, 16, Schedule B, Schedule C, Schedule E, Schedule F
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a>	1, 3, 18, 20, 28, Schedule H
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3541</a>	6
	Incorporates changes resulting from <a href="#">[2017] FWCFB 5536</a>	8.8, 9.4, 16.2(d), 19.1(b), 24.3(a)(i)

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

# EXPOSURE DRAFT

## Wine Industry Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Wine Industry Award 2010** (the Wine award) as at 15 January 2016. This exposure draft does not seek to amend any entitlements under the Wine 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 [AM2014/249](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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

### Table of Contents

	Page
<b>Part 1— Application and Operation .....</b>	<b>4</b>
1. Title and commencement .....	4
2. The National Employment Standards and this award.....	4
3. Coverage .....	4
4. Award flexibility.....	6
5. Facilitative provisions.....	7
<b>Part 2— Types of Employment and Classifications .....</b>	<b>8</b>
6. Types of employment .....	8
7. Classifications.....	10
<b>Part 3— Hours of Work .....</b>	<b>11</b>
8. Ordinary hours of work and rostering.....	11
9. Breaks .....	12
<b>Part 4— Wages and Allowances .....</b>	<b>13</b>
10. Minimum wages .....	13
11. Apprentices .....	15
12. Piecework rates .....	17
13. School-based apprentices.....	19

**Wine Industry Award 2010**

14.	National training wage .....	19
15.	Supported wage system .....	19
16.	Allowances .....	19
17.	Superannuation .....	23
<b>Part 5— Penalties and Overtime.....</b>		<b>25</b>
18.	Penalty rates .....	25
19.	Overtime .....	26
<b>Part 6— Leave, Public Holidays and Other NES Entitlements .....</b>		<b>29</b>
20.	Annual leave .....	29
21.	Personal/carer’s leave and compassionate leave .....	34
22.	Parental leave and related entitlements .....	34
23.	Community service leave .....	34
24.	Public holidays .....	34
25.	Termination of employment.....	35
26.	Redundancy .....	36
<b>Part 7— Consultation and Dispute Resolution.....</b>		<b>36</b>
27.	Consultation.....	36
28.	Dispute resolution.....	38
<b>Schedule A —Classification Structure and Definitions .....</b>		<b>39</b>
<b>Schedule B —Summary of Hourly Rates of Pay .....</b>		<b>60</b>
<b>Schedule C —Summary of Monetary Allowances .....</b>		<b>63</b>
<b>Schedule D —School-based Apprentices.....</b>		<b>65</b>
<b>Schedule E —National Training Wage.....</b>		<b>66</b>
<b>Schedule F —Supported Wage System .....</b>		<b>67</b>
<b>Schedule G —2016 Part-day Public Holidays.....</b>		<b>70</b>
<b>Schedule H — Definitions .....</b>		<b>71</b>
<b>Schedule I —Agreement to Take Annual Leave in Advance .....</b>		<b>73</b>
<b>Schedule J —Agreement to Cash Out Annual Leave .....</b>		<b>74</b>
<b>Schedule K —Agreement for Time Off Instead of Payment for Overtime.....</b>		<b>75</b>

## Part 1—Application and Operation

### 1. Title and commencement

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

- 1.1 This award is the *Wine Industry Award 2016*.
- 1.2 This modern award, ~~as varied,~~ commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- 1.4 Schedule H—Definitions sets out definitions that apply in this award.
- 1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

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

- 2.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 2.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.  
~~The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.~~
- 2.3 The employer must ensure that copies of the award and NES are available to all employees to whom they apply. This may be achieved by making them available electronically, on a noticeboard which is conveniently located at or near the workplace, or through some other reasonable, accessible means.

### 3. Coverage

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

- 3.1 This industry award covers employers throughout Australia in the **wine industry** and their employees in the classifications in this award to the exclusion of any other award.

- 3.2** The **wine industry** means the industry of growing and processing wine grapes and includes:
- (a) the preparation of land for the planting of wine grape vines, the planting of wine grape vines, the pruning of wine grape vines, the care, growing, treating, picking, harvesting and forwarding of wine grapes and other activities associated with a wine grape vineyard; and/or
  - (b) processing wine grapes, producing wine juice or grape spirit, the bottling, packaging, storage or dispatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice and other activities associated with a winery or wine distillery including but not limited to cellar door sales, laboratory activities and making or repairing barrels, vats, casks and like articles; and/or
  - (c) packaging, storing and dispatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery.
- 3.3** This award covers any employer which supplies labour on an on-hire basis in the wine industry set out in clauses 3.1 and 3.2 in respect of ~~the~~ 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.
- 3.4** This award covers employers which provide group services for apprentices and/or trainees engaged in the wine industry and/or parts of the wine industry set out at clauses 3.1 and 3.2 and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 3.5** This award does not cover:
- (a) employees excluded from award coverage by the Act ~~the Fair Work Act 2009~~ (Cth) (the Act);
  - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
  - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- 3.6** 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 the 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 the majority of employees in the enterprise or part of the enterprise concerned.

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

Clause	Provision	Agreement between an employer and:
6.6(c)(iii)	Casual conversion to full-time or part-time employment	An individual
8.5	Ordinary hours of work	The majority of employees
8.6(c)	Spread of hours	The majority of employees
8.7	Ordinary working hours	The majority of employees
8.9	Make-up time	An individual
9.2(b)	Shiftworkers—meal breaks	An individual
19.5	Time off instead of payment for overtime	An individual
20.3	Annual leave—conversion to hourly entitlement	The majority of employees

Clause	Provision	Agreement between an employer and:
20.5	Annual leave in advance of accrued entitlement	An individual
24.2	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 At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are a full-time, part-time or casual employee.

#### 6.3 Full-time employees

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

#### 6.4 Part-time employees

- (a) A part-time employee:
  - (i) works up to 38 ordinary hours per week; and
  - (ii) receives on a pro rata basis, equivalent pay and terms and conditions of employment to those of a full-time employee who does the same kind of work.
- (b) At the time of engagement the employer and the part-time employee must agree in writing to a pattern of work. Any agreed variation to the pattern of work must be recorded in writing.
- (c) Except in the case of pieceworkers, ~~a~~A part-time employee must be paid for ordinary hours worked at the minimum hourly rate prescribed in clause 10—Minimum wages for the work performed.

#### 6.5 Casual employees

- (a) A casual employee is an employee who is engaged and paid by the hour ~~as a casual employee~~.



**(b) Casual loading**

Except in the case of pieceworkers, for ~~For~~ each ordinary hour worked, a casual employee must be paid:

- (i) the minimum hourly rate; and
- (ii) a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.

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

The Full Bench found there should be a variation to reduce the minimum engagement provision from 4 hours to 2 hours in circumstances where a weather event not expected at the start of a pruning or harvesting shift prevents the completion of 4 hours' work. SAWIA was directed a draft a determining giving effect to the decision and other interested parties will be given an opportunity to make submissions. See [\[2017\] FWCFCB 3541](#) at paras [794] and [796]

- (c) On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours' work.

**6.6 Casual conversion to full-time or part-time employment**

**(a) Eligible casual employee**

An eligible casual employee is a casual employee:

- (i) who works on a regular and systematic basis;
- (ii) who is employed for a sequence of periods of 12 months; and
- (iii) whose employment is to continue beyond the period of 12 months.

An eligible casual employee has the right, after six months, to elect to have their contract of employment converted to full-time or part-time employment.

**(b) Notice and election of casual conversion**

- (i) An employer of an eligible casual employee must give the employee notice in writing of the provisions of clause 6.6 within four weeks of the employee having reached the six month period.
- (ii) The eligible casual employee retains their right of election under clause 6.6 if the employer fails to comply with clause 6.6(b)(i).
- (iii) An eligible casual employee may give four weeks' notice in writing to the employer that they seek to elect to convert their contract of employment to full-time or part-time employment either:
  - upon receiving notice under clause 6.6(b)(i); or
  - after the expiry of the time for of the time for giving such notice.
- (iv) An eligible casual employee who does not elect to convert their contract of employment to full-time or part-time employment within four weeks of receiving written notice is deemed to have elected against any conversion.

**(c) Full-time or part-time conversion**

- (i) An eligible casual employee who has worked on a full-time basis throughout their period of employment has the right to elect to convert their contract of employment to full-time employment.
- (ii) An eligible casual employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked.
- (iii) However, the employer and the employee may agree on an alternative arrangement.
- (iv) If an eligible casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 6.6(b)(iii), the employer and employee must, subject to clause 6.6(b)(iii), discuss and agree on:
  - which form of employment the employee will convert to, being full-time or part-time; and
  - if the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 6.4(b)
- (v) Following agreement being reached, the employee converts to full-time or part-time employment.

**(d) Employer consent or refusal to casual conversion**

- (i) The employer must consent or refuse the election within four weeks of receiving notice of the eligible casual employee's election. The employer must not unreasonably refuse consent to the election.
  - (ii) Where an employer refuses an election to convert, the reasons for doing so must be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.
  - (iii) After an employee has converted to a full-time or part-time employee, they may only revert to casual employment by written agreement with the employer.
- (e) An employee must not be engaged and re-engaged to avoid any obligation under this award.

## **7. Classifications**

A description of the classifications under this award is set out in Schedule A—Classification Structure and Definitions.

## Part 3—Hours of Work

### 8. Ordinary hours of work and rostering

8.1 The following provisions in clause 8 apply to day workers and shift workers except for clause 8.5

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

8.3 Subject to clause 8.7, the ordinary hours for a day worker or shiftworker are an average of up to 38 per week.

8.4 Ordinary hours are to be worked continuously, except for meal breaks.

8.5 Ordinary hours must not exceed 10 hours on any day, except where there is agreement between the employer and the majority of employees in the relevant workplace or section of it, in which case the daily maximum may be extended to up to 12 hours.

### 8.6 Ordinary hours of work—day workers

(a) Ordinary hours are worked between the hours of 6.00 am and 6.00 pm, Monday to Friday, subject to the following exceptions:

(i) ordinary hours for an employee rostered to perform work in the cellar door ~~may~~ are to be worked between 6.00 am and 6.00 pm, Monday to Friday, and 8.00 am and 6.00 pm on Saturday and Sunday; and

(ii) ordinary hours for an employee rostered to perform work in the vineyard ~~may~~ are to be worked between 5.00 am and 6.00 pm, Monday to Saturday, during the period of the vintage.

### (b) Vineyard employees during the vintage

(i) For the purposes of ~~this~~ clause 8.6, **vintage** means a period not exceeding six months between November and June inclusive, which starts on the date when the harvest of wine grapes begins at a particular vineyard and ends on the date the last wine grapes are harvested at that vineyard.

(ii) The employer must make and retain a record of the beginning and end of each vintage in conjunction with relevant time and wages records.

~~(iii) Where at the commencement of this provision an employer was utilising the extended ordinary hours for vineyard employees under the former clause 28.2(d) of this award, the terms of that provision will apply until the commencement of the vintage as defined in clause 28.2(d)(ii) above.~~

(c) The spread of hours may be varied by agreement between an employer and the majority of employees in the relevant workplace or the section or sections of it.

### 8.7 Methods of arranging ordinary working hours

The following provisions in clause 8 apply to day workers and shift workers except for clause 8.5 The method of working the 38 hour week must be agreed between the

employer and the majority of employees in the relevant workplace or section or sections of it and may be worked in one of the following arrangements:

- (a) 19 days of eight hours in each four week period, with either a fixed or rostered day off;
- (b) nine days of eight hours and one day of four hours in each fortnight with either a fixed half-day off or a rostered half-day off at the beginning or end of the working week;
- (c) four days of eight hours and one day of six hours in each week, with the six hour day being at the beginning or end of the working week; or
- (d) any other arrangement agreed to by the employer and the majority of employees directly affected.

## 8.8 Daylight saving

Parties given until 4.00pm Friday, 24 November 2017 to advise whether proposal to vary clause 8.8 is being pursued and whether any agreement has been reached – see [\[2017\] FWCFB 5536](#) at [555].

For work performed on a shift that spans the time when daylight saving begins or ends, 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).

## 8.9 Make-up time

This provision may be affected by [AM2014/300](#)

- (a) An employee may elect, with the consent of the employer, to work make-up time, under which the employee takes times off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided for in clause 8—Ordinary hours of work and rostering.
- (b) On each occasion the employee elects to use this provision the resulting agreement must be recorded in the time and wages records at the time when the agreement is made.

## 9. Breaks

### 9.1 Meal break—day workers

A day worker must not be required to work for more than five hours without an unpaid meal break of between 30 and 60 minutes.

### 9.2 Meal break—shiftworkers

- (a) A shiftworker must not be required to work for more than four and a half hours without a paid meal break of 30 minutes.
- (b) By agreement with the employee concerned, up to six hours may be worked without the paid meal break where the shiftworker is:
  - (i) a casual employee or a part-time employee engaged to work no more than six hours in any one shift; or

- (ii) working their ordinary hours on the basis of a short day each week.

**9.3 Overtime meal break**

An employee required to work more than two hours’ overtime immediately after finishing their ordinary hours on a day or shift must be given a 30 minute paid meal break in addition to the meal breaks provided in clauses 9.1 and 9.2:

- ~~(a) prior to commencing overtime—paid at the employee’s minimum hourly rate; and~~
- (a) prior to commencing overtime—paid at the rate then applying to the employee for ordinary hours of work; and
- (b) after each four hours of overtime worked thereafter—paid at the applicable overtime rate.

**9.4 Working through meal break**

Clause 9.4 amended in accordance with [\[2017\] FWCFB 5536](#) at [556]-[566].

An employee not given a meal break in accordance with clauses 9.1, 9.2 and 9.3 must be paid from then on at **150% of the rate of pay applying immediately before the meal break was due** ~~with an additional loading of 50% of the minimum hourly rate~~ until the meal break is given.

**9.5 Rest break**

In addition to the meal break provisions in clauses 9.1 and 9.2, an employee must be given a paid rest break of ten minutes on each day or shift.

**Part 4—Wages and Allowances**

**10. Minimum wages**

- 10.1** An employer must pay adult employees, other than those listed in clause 10.3, the following minimum wages for ordinary hours worked by the employee:

Rates updated as a result of AWR 2017

Employee classification	Minimum weekly wage <u>(full-time employees)</u>	Minimum hourly rate
	\$	\$
Grade 1	704.90	18.55
Grade 2	735.50	19.36
Grade 3	766.00	20.16
Grade 4	809.10	21.29
Grade 5	859.80	22.63

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

**10.2** For the purposes of clause 10.1, any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 ordinary hours of work.

**10.3** The following adult employees are not entitled to the minimum wages set out in the table in clause 10.1:

- (a) an adult apprentice (see clause 11—Apprentices); or
- (b) a trainee (see Schedule E—~~National Training Wage~~); or
- (c) an employee receiving a supported wage (see Schedule F—Supported Wage System).

**10.4** Clause 10.3(a) does not apply to adult apprentices who commenced on or after 1 January 2014 and are in the second and subsequent years of their apprenticeship.

**10.5 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 appropriate adult classification minimum wage in clause 10.1:

Age	% of adult rate
Under 17 years	80
At 17 years	90
At 18 years	100

**10.6 Payment of wages**

- (a) Wages must be paid either weekly or fortnightly. Alternative intervals of payment may be used for so long as the employee agrees in writing.
- (b) Wages must be paid by cash or electronic funds transfer (EFT) into the employee’s account at their nominated bank or other recognised financial institution.

Payment of wages on termination is being considered in matter [AM2016/8](#).

- (c) On termination of employment, wages due to an employee must be paid on the day of such termination or be forwarded to the employee on the next working day.

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

**10.7 Higher duties**

- (a) An employee engaged for two or more hours during one day on duties carrying a higher minimum wage than the employee’s ordinary classification must be paid the higher minimum wage for the day.

- (b) If engaged for less than two hours during the day on higher duties, the employee must be paid the higher minimum wage for the time worked at the higher rate.

## 11. Apprentices

### 11.1 Apprentice minimum wages

- (a) Except as provided for in clause 13—School-based apprentice, the minimum wages for an apprentice cooper, who commenced before 1 January 2014, are to be calculated in accordance with the percentages set out below applied to the Grade 4 classification minimum weekly wage in clause 10.1:

Stage of apprenticeship	% of Grade 4 rate
First year	42
Second year	55
Third year	75
Fourth year	88

- (b) Except as provided for in clause 13, the minimum wages for an apprentice cooper, who commenced on or after 1 January 2014, are to be calculated in accordance with the percentages set out below applied to the Grade 4 classification minimum weekly wage in clause 10.1:

Stage of apprenticeship	Apprentices who have not completed year 12	Apprentices who have completed year 12
	% of Grade 4 rate	
First year	50	55
Second year	60	65
Third year	75	75
Fourth year	88	88

### 11.2 Adult apprentices

- (a) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be **80%** of the Grade 4 rate, or the rate prescribed by clause 11.1(b) for the relevant year of the apprenticeship, whichever is the greater.
- (b) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification clause 10—Minimum wages, or the rate prescribed by clause 11.1(b) for the relevant year of the apprenticeship, whichever is the greater.
- (c) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or 12 months as a

part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 10.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

### 11.3 Apprenticeship conditions of employment

- (a) Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- (b) **Block release training**
  - (i) This clause applies to apprentices required to attend block release training identified in or associated with their training contract.
  - (ii) Where the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training.
  - (iii) Clause 11.3(b)(ii) does not apply where the apprentice could attend a closer Registered Training Organisation (RTO), and use of the more distant RTO is not agreed between the employer and the apprentice.
- (c) For the purposes of clause 11.3(b)(ii), excess reasonable travel costs include:
  - (i) the total costs of reasonable transport (including transporting tools where required);
  - (ii) accommodation costs incurred while travelling (where necessary); and
  - (iii) reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work.
- (d) Excess reasonable travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (e) **Reduction of payment**
  - (i) Payment under clause 11.3(b) may be reduced where an apprentice is eligible to receive travel costs to attend the block release training under a Government apprentice assistance scheme.
  - (ii) The payment may be reduced by the amount the apprentice is entitled to receive under the scheme.
  - (iii) A payment reduction will only apply if an apprentice has either received assistance under the scheme or their employer has advised them in writing of the availability of the assistance.
- (f) **Reimbursements of course fees and materials**

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

- (i) all training fees charged by an RTO for prescribed courses; and



- (ii) all prescribed textbooks (excluding those textbooks which are available in the employer’s technical library) for the apprenticeship.
- (g) An employer must make the reimbursements in clause 11.3(f) at the later of:
  - (i) within six months of starting the apprenticeship or the relevant stage of the apprenticeship; or
  - (ii) within three months of starting training provided by the RTO.
- (h) Reimbursement under clause 11.3(f) is not payable when there is unsatisfactory progress.
- (i) An employer may meet its obligations under clauses 11.3(f) and 11.3(g) by paying any fees and/or cost of textbooks directly to the RTO.
- (j) **Attending training**
  - (i) An apprentice will be released from work to attend any training and assessment specified in, or associated with, the training contract.
  - (ii) An apprentice’s attendance at training must be without loss of continuity of employment and be paid at the appropriate wages.
  - ~~(iii) Time spent attending training will be counted as time worked for the purposes of calculating the apprentice’s wages and determining their employment conditions.~~
  - (iii) Time spent attending training specified in, or associated with, the training contract, will be counted as time worked for the purposes of calculating the apprentice’s wages and determining their employment conditions.
- (k) Clause 11.3(j)(iii) operates subject to the provisions of Schedule D—School-based Apprentices.
- (l) Except in an emergency, an apprentice must not be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

## 12. Piecework rates

The issue of whether the casual loading applies to piecework rates raised by the Fair Work Ombudsman (see [Correspondence](#)) remains outstanding.

- 12.1 An employer and a full-time, part-time or casual employee may enter into an agreement for the employee to be paid a piecework rate. An employee on a piecework rate is a pieceworker.
- 12.2 The piecework rate fixed by agreement between the employer and the employee must enable an employee of average capacity to earn at least **20%** more per hour than the minimum hourly wage for ordinary hours of work which is prescribed in this award for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.

- 12.3** An agreed piecework rate is paid instead of the minimum wages specified in clause 10—Minimum wages.
- 12.4** The following clauses of this award do not apply to an employee on a piecework rate:
- (a) clause 8—Ordinary hours of work and rostering;
  - (b) clause 16.4(c)—Meal allowance;
  - (c) clause 18.3—Shiftworkers;
  - (d) clause 18.1—Day workers; and
  - ~~(e) clause 19.2—Overtime rates.~~
  - (e) clause 19—Overtime.
- 12.5** The employer and the individual employee must have genuinely made the piecework agreement without coercion or duress.
- 12.6** The piecework agreement between the employer and the individual employee must:
- (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) detail the piecework rate;
  - (c) set out that the piecework rate will be paid instead of the minimum wages specified in clause 10—Minimum wages of the *Wine Industry Award 2016*;
  - (d) set out that the following clauses of the *Wine Industry Award 2016* do not apply to the employee as the employee is on a piecework rate:
    - (i) clause 8—Ordinary hours of work and rostering;
    - (ii) clause 16.4(c)—Meal allowance;
    - (iii) clause 18.1—Day workers
    - (iv) clause 18.3—Shiftworkers; and
    - ~~(v) clause 19.2—Overtime rates;~~
    - (v) clause 19—Overtime;
  - (e) state the date the agreement commences to operate.
- 12.7** The employer must give the individual employee a copy of the piecework agreement and keep it as a time and wages record.
- 12.8** Except where the employee is under 18 years of age the piecework agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 12.9** An employer seeking to enter into a piecework agreement with an employee must provide the proposed written agreement 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 proposed piecework agreement.

- 12.10** Nothing in this award guarantees an employee on a piecework rate will earn at least the minimum weekly or hourly rate in this award for the type of employment and the classification level of the employee, as the employee’s earnings are contingent on their productivity.
- 12.11** The base rate of pay in relation to entitlements under the National Employment Standards for an employee on a piecework rate is the minimum wage in clause 10.1 for the employee’s classification level.
- 12.12** The full rate of pay in relation to entitlements under the National Employment Standards for an employee on a piecework rate is the minimum wage in clause 10.1 for the employee’s classification level plus a loading of **20%** of the minimum hourly rate.

### **13. School-based apprentices**

For school-based apprentices, see Schedule D—School-based Apprentices

### **14. National training wage**

Clause 14 substituted per [PR593865](#)

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

### **15. Supported wage system**

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

### **16. Allowances**

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

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

**16.2 Wage related allowances**

**(a) Leading hands**

**(i) Coopers stream leading hands**

A leading hand in charge of coopers stream employees, except an employee engaged in the Grade 5 classification, must be paid:

<b>In charge of</b>	<b>\$ per week</b>
3–10 employees	29.19
11–20 employees	44.16
more than 20 employees	56.72

**(ii) Other leading hands**

A leading hand in charge of other employees, except an employee engaged in the Grade 5 classification, must be paid:

<b>In charge of</b>	<b>\$ per week</b>
1–4 employees	19.67
5–10 employees	31.66
more than 10 employees	48.48

**(b) Mobile crane operations**

An employee engaged in operating a mobile crane must be paid an allowance of **\$0.26** per hour while they are engaged on such work.

**(c) First aid allowance**

An employee who is the current holder of appropriate first aid qualifications, such as a certificate from the St John Ambulance or similar body and is appointed by the employer to perform first aid duty must be paid an allowance of **\$16.10** per week or **\$3.21** per day.

**(d) Boilers and flues**

Clause 16.2(d) amended in accordance with [\[2017\] FWCFB 5536](#) at [567]-[570].

An employee engaged in washing out and chipping boilers or in cleaning flues must be paid **150%** of the ~~minimum~~ hourly rate applying while they are engaged in such work.

**(e) Wet work**

An employee who on any day works in a wet place must be paid an allowance of **\$4.81** per day, unless provided with adequate protective clothing.

**(f) Wine vats**

An employee engaged in burning and/or waxing closed wine vats must be paid an allowance of **\$0.89** per hour.

**(g) Confined spaces**

An employee working in a confined space as a cooper must be paid an allowance of **\$0.30** per hour.

**(h) Dirty work**

An employee performing work as a cooper which is of an unusually dirty or offensive nature must be paid an allowance of **\$0.17** per hour.

**(i) Cask firing**

An employee engaged in the cask firing as a cooper must be paid an allowance of **\$5.07** per day or part thereof extra subject to a maximum of **\$25.38** per week.

**16.3 Accident pay**

**(a) Definitions**

For the purposes of this clause, the following definitions will apply:

- (i)** Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
- (ii)** Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
- (iii)** Injury will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

**(b) Entitlement to accident pay**

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 26 weeks.

**(c) Calculation of the period**

- (i)** The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.

- (ii) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.
- (iii) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

**(d) When not entitled to payment**

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

**(e) Return to work**

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

**(f) Redemptions**

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

**(g) Damages independent of the Acts**

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.

**(h) Casual employees**

For a casual employee, the weekly payment referred to in clause 24.8.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

**16.4 Expense related allowances**

**(a) Travel and expenses**

- (i) Where an employee is required by the employer to travel from one place of work to another:
  - the time occupied in such travel must be counted as time worked and paid for as such; and

- the transport and fares for such travel must be provided by the employer or the expense incurred by the employee for such travel must be reimbursed by the employer.
- (ii) An employee required by their duties to spend the night away from their home or the property on which they are employed, must be fully reimbursed for all fares and other expenses incurred during the period they are away from their usual place of residence.
- (iii) When an employee finishes overtime or shiftwork at any time when their usual means of transport is not available, the employer must reimburse the employee for the cost of transport for the employee to get home.

**(b) Vehicle allowance**

An employee who agrees with their employer to use their own motor vehicle on the employer's business, must be paid **\$0.78** per kilometre travelled.

**(c) Meal allowance**

An employee who works overtime must, in addition to the rates prescribed elsewhere in this award, be paid **\$13.96** as a meal allowance on each occasion they work overtime in excess of two hours following their ordinary day or shift. Provided that such meal allowance need not be made to an employee who can reasonably return home for a meal or who has been notified the day before that they will be required to work overtime or where the employee is provided with an adequate meal by the employer.

**(d) Loss or damage of tools**

An employer must compensate an employee for the loss or damage caused by fire on the employer's property of tools owned by an employee which are used by the employee in the course of their employment.

See Schedule C for a summary of monetary allowances.

## **17. Superannuation**

### **17.1 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.

## **17.2 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.

## **17.3 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 17.2.
- (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 17.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or (b) was made.

## **17.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 and pay the amount authorised under clauses 17.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) HOSTPLUS; or
- (b) CareSuper; or
- (c) AustralianSuper; or
- (d) AustSafe Super; or
- (e) MTAA Superannuation fund; or
- (f) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (g) a superannuation fund or scheme which the employee is a defined benefit member of.



## Part 5—Penalties and Overtime

### 18. Penalty rates

#### 18.1 Day workers

The following rates must be paid to a day worker working ordinary hours on:

- (a) Saturdays—**125%** of the minimum hourly rate;
- (b) Sundays—**200%** of the minimum hourly rate; and
- (c) ~~Public holidays—**250%** of the minimum hourly rate with a minimum payment of four hours.~~

Note: Parties have not agreed to insertion of clause 18.2 and deletion of clause 18.1(c). Variation in strikethrough pending determination

~~18.2 A day worker required to work on a public holiday must be paid for a minimum of four hours' work at the rate of 250% of the minimum hourly rate.~~

#### 18.3 Shiftworkers

Shiftwork provision affected by [\[2017\] FWCFB 3433](#).

A Full Bench commented that the term 'shift penalties' has been applied to exposure drafts instead of 'shift loadings', 'allowances' or 'rates', and that a consistent approach on to use of the terminology is appropriate. See [\[2017\] FWCFB 3433](#) at [367]-[377]. This approach has been adopted in drafting this exposure draft, despite the comments made at [16] of the same decision.

- (a) For the purposes of this award:
  - (i) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight; and
  - (ii) **night shift** means any shift finishing after midnight and at or before 8.00 am.

#### (b) ~~Afternoon and night shift allowances-penalties~~

##### (i) ~~Afternoon and night shift~~

~~An employee who works on afternoon or night shift must be paid at **115%** of the minimum hourly rate.~~

##### (ii) ~~Permanent night shift~~

~~An employee who:~~

- ~~during a period of engagement on shift, works night shift only; or~~
- ~~remains on night shift for a longer period than four consecutive weeks;~~  
or

- 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 be paid at **130%** of the minimum hourly rate for all time worked during ordinary working hours on such night shift.

**(c) Weekend and public holiday rates**

- (i) The following rates must be paid to a shiftworker working on:
- Saturdays—**150%** of the minimum hourly rate;
  - Sundays—**200%** of the minimum hourly rate; and
  - public holidays—**250%** of the minimum hourly rate.
- (ii) The extra rates in clause 18.3(c)(i) are in substitution for and not cumulative upon **shift** penalties prescribed in clause 18.3(b).

## 19. Overtime

19 amended in accordance with [PR584174](#) (19.5 substituted)

### 19.1 Definition of overtime

- (a) A full-time employee must be paid overtime for all time worked outside ordinary hours on any day or shift.

Parties given until 4.00 pm Friday, 24 November 2017 to advise whether proposal to vary clause 19.1(b) is being pursued – see [\[2017\] FWCFB 5536](#) at [571]-[572].

- (b) A part-time employee must be paid overtime rates in accordance with clause 19.2—Overtime rates for all time worked:
- (i) outside of the spread of ordinary hours in clause 8.6; and/or
  - (ii) in excess of 38 ordinary hours per week; and/or
  - (iii) in excess of the ordinary hours provided for in clause 8—Ordinary hours of work and rostering.
- (c) A casual employee must be paid overtime rates in accordance with clause 19.2—Overtime rates for all time worked:
- (i) outside of the spread of ordinary hours in clause 8.6; and/or
  - (ii) in excess of 38 ordinary hours per week; and/or
  - (iii) in excess of the ordinary hours provided for in clause 8—Ordinary hours of work and rostering.
- (d) The overtime rates for a casual employee must be applied to the minimum hourly rate in clause 10—Minimum wages for the work being performed. The casual loading of **25%** must also be paid for overtime on a Sunday or public holiday.

## 19.2 Overtime rates

### (a) Monday to Saturday work

All time worked outside ordinary hours on any day or shift on a Monday to Saturday must be paid for at **150%** of the minimum hourly rate for the first two hours on any day or shift and **200%** of the minimum hourly rate after two hours and until the completion of the overtime work.

### (b) Sunday work

An employee required to work overtime on a Sunday must be paid at **200%** of the minimum hourly rate until the completion of the overtime.

### (c) Public holiday work

An employee required to work overtime on a public holiday must be paid for a minimum of four hours' work at **250%** of the minimum hourly rate until the completion of the overtime.

## 19.3 Rest period after working overtime

### ~~(a) Length of the rest period~~

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

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

(i) The following conditions apply to an employee who works so much overtime that the employee has not had at least 10 consecutive hours off duty between the end of the employee's work on one day and the start of the employee's work on the next day:

- the employee must be released from duty after that overtime is finished until the employee has had 10 consecutive hours off duty, and
- there will be no loss of pay for ordinary hours of work time which occur during this absence.

(ii) The following conditions apply to an employee who, on the instructions of the employer, resumes or continues work without having had 10 consecutive hours off duty in accordance with clause 19.3(a)(i):

- the employee must be paid at **200%** of the minimum hourly rate ~~during~~ until the employee is released from duty;
- the employee is then entitled to be absent for 10 consecutive hours; and
- there will be no loss of pay for ordinary hours of work ~~time~~ which occur during this absence.

#### 19.4 Call back

Any employee recalled to work overtime after leaving the employer's premises must be paid for a minimum of four hours' work at the appropriate overtime rate, except where:

- (a) it is customary for an employee to return to their employer's premises to perform a specific task outside their ordinary working hours; or
- (b) the overtime commences, subject to a meal break, immediately after the end of ordinary working time, or immediately before the start of ordinary working time.

#### 19.5 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.5.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at 19.5. There is no requirement to use the form of agreement set out at 19.5. An agreement under clause 19.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 19.5 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.

- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 19.5 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.5 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.5.

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

### 20. Annual leave

20 amended in accordance with [PR583098](#). (20.5 and 20.6 renamed and substituted; 20.7 and 20.8 renumbered as 20.9 and 20.10; new 20.7 and 20.8 inserted; 20.11 inserted); references to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350].

- 20.1 Annual leave is provided for in the NES. Annual leave does not apply to a casual employee.

#### 20.2 Definition of a shiftworker

For the purposes of the additional week of annual leave provided for in s.87(1)(b) of the Act, a **shiftworker** is a seven day shiftworker who is regularly rostered on Sundays and public holidays.

### 20.3 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees in the relevant workplace or a section or sections of it to convert the annual leave entitlement in s.87 of the Act to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to four weeks of annual leave).

### 20.4 Annual leave loading

During a period of annual leave an employee must be paid a **loading shift penalty**, in addition to their base rate of pay as referred to in s.90(1) of the Act, as follows:

**(a) 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 their base rate of pay as referred to in s.90(1) of the Act or the relevant weekend penalty rates, whichever is the greater but not both.

**(b) 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 their base rate of pay as referred to in s.90(1) of the Act or the **shift-loading shift penalty** including relevant weekend penalty rates, whichever is the greater but not both.

**(c) Piecework**

An employee on a piecework rate must be paid a loading equal to **20%** of their base rate of pay.

### 20.5 Excessive leave accruals: general provision

Note: Clauses 20.5 to 20.7 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (a)** An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 20.2).
- (b)** If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c)** Clause 20.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d)** Clause 20.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

### 20.6 Excessive leave accruals: direction by employer that leave be taken

- (a)** If an employer has genuinely tried to reach agreement with an employee under clause 20.5(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 20.5, 20.6 or 20.7 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 20.6(b)(i).

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

## **20.7 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.5(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 20.6(a) that, when any other paid annual leave arrangements (whether made under clause 20.5, 20.6 or 20.7 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 20.5, 20.6 or 20.7

or otherwise agreed by the employer and employee) are taken into account; or

- (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 20.2 in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

## 20.8 Annual leave in advance

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

Note: An example of the type of agreement required by clause 20.8 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

- (c) The employer must keep a copy of any agreement under clause 20.8 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 20.8, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

## 20.9 Annual close down

Notwithstanding s.88 of the Act and clause 20.5, 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 relevant workplace or the section or sections of it, provided that:

- (a) the employer gives not less than four weeks' notice of the 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 rate in accordance with s.90(1) of the Act and clause 20.4; and
- (c) an employee who has not accrued sufficient leave to cover part or all of the close down, is allowed paid annual leave for the period for which they have accrued sufficient annual leave and given untaken accrued rostered days off, time off instead of overtime or unpaid leave for the remainder of the closedown; and
- (d) any leave taken by an employee as a result of a close down pursuant to clause 20.8 also counts as service by the employee with their employer; and
- (e) the employer may only close down the relevant workplace or the section or sections of it pursuant to clause 20.8 for one or two separate periods in a year; and
- (f) if the employer closes down the relevant workplace or the section or sections of it pursuant to clause 20.8 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 may close down the relevant workplace or the section or sections 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.

#### **20.10 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 rate in accordance with s.90(1) of the Act.

#### **20.11 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.11.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.11.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 20.11 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 20.11 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 20.11 as an employee record.

Note 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 20.11.

Note 2: Under section 345(1) of Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.11.

Note 3: An example of the type of agreement required by clause 20.11 is set out at Schedule J. There is no requirement to use the form of agreement set out at Schedule J.

#### **20.9 — 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.~~

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

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

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

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

### **23. Community service leave**

Community service leave is provided for in the NES.

### **24. Public holidays**

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

**24.1** Public holiday entitlements are provided for in the NES.

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

By agreement between the employer and the majority of employees in the relevant workplace or the section or sections of it, an alternative day may be taken as the public holiday instead of any of the prescribed days.

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

- (a) Except as provided for in clauses 24.3(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 that day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

Parties given until 4.00 pm Friday, 24 November 2017 to advise whether proposal to vary clause 24.3(a)(i) is being pursued and whether they consider further discussions may resolve the issue – see [\[2017\] FWCFB 5536](#) at [573]-[574].

- (i) 7.6 hours of pay at the minimum hourly 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 8.7, 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 8.7 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 24.3(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 24.3(a) applies to such days off.

### **24.4 Part-day public holidays**

24.4 inserted on 21 September 2016

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

## **25. Termination of employment**

**25.1** Notice of termination is provided for in the NES.

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

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

### **25.3 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.

## **26. Redundancy**

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

### **26.2 Transfer to lower paid duties**

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

### **26.3 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under clause 26—Redundancy had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

### **26.4 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 25.3.

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

## **27. Consultation**

### **27.1 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 27.1(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 27.1(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.

**27.2 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.

## 28. Dispute resolution

- 28.1** 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.
- 28.2** 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 28.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 28.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 28.4** 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.
- 28.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

References to 'occupational health and safety' change to 'work health and safety'. See [\[2017\] FWCFB 3433](#) at [382].

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

## Schedule A—Classification Structure and Definitions

For the purposes of this award, the classification structure and definitions in the bottling, cellar, cellar door sales, laboratory, vineyard, warehouse and supply and coopers streams are as follows:

### A.1 Bottling stream

#### A.1.1 Grade 1—Bottling stream

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

#### A.1.2 Grade 2—Bottling stream

##### (a) Point of entry

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in all the following modules:
  - attending packaging equipment;
  - performing repetitive tasks such as:
    - binning/debinning unlabelled wines
    - application of capsules
    - hand labelling
    - carton making
    - packing wines
    - depalletising/palletising,
  - bottling hygiene/housekeeping; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

##### (b) Duties

A Grade 2 employee performs the tasks associated with the modules essential to Grade 2 while demonstrating a safe and responsible approach and requiring little supervision in the performance of those tasks.

**(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

**A.1.3 Grade 3—Bottling stream**

**(a) Point of entry**

(i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in two or more of the following modules:

- forklift driving (certificate required);
- set up and efficient operation of one or more machines in:
  - set up for production
  - adjustments required during production
  - close down and clean at the end of production,
- change over of one or more machines;
- operation of service equipment related to packaging lines;
- boiler attendant (certificate required); or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected to perform the tasks appropriate to the modules forming the basis of this grade and assists with the training of new employees. A Grade 3 employee may also be required to lead a packaging line on a relief or seasonal basis, provided they have received or are taking training in the modules essential to the Supervisor level.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in the modules essential to Grade 4, even if only on a relief basis.

**A.1.4 Grade 4—Bottling stream**

**(a) Point of entry**

(i) A Grade 3 employee who has successfully completed training and assessment in:

- operation and adjustment of equipment that requires a higher level of skill (as specified by the employer); or
- preparation of filling equipment which includes:



## Exposure draft – Wine Industry Award 2016

- sterilisation and sanitation of filling machines
- sterile wine filtration
- wine transfer; or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

### (b) Duties

A Grade 4 employee performs the tasks appropriate to the modules forming the basis of this grade and assists with the training of new employees. The Grade 4 employee may also take on the responsibility of leading a section or department within the winery in which the employee is employed.

### (c) Training and promotion

For promotion to the level of Grade 5, a Grade 4 employee will be trained in all modules.

## A.1.5 Grade 5—Bottling stream

### (a) Point of entry

(i) A Grade 4 employee who has successfully completed training and assessment in the following modules:

- supervision in the workplace (relevant recognised qualification)
- bottling course (relevant recognised qualification)
- maintaining production records
- report writing; or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

### (b) Duties

A Grade 5 employee co-ordinates the work of employees within a department or a packaging line and maintains company standards relating to safety, quality and production volume. The duties include instructing employees in the modules which are essential to operations in the winery in which the employees are employed, with a conscious effort to continuously improve employee skills.

### (c) Training and promotion

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions.

## **A.2 Cellar stream**

### **A.2.1 Grade 1—Cellar stream**

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

### **A.2.2 Grade 2—Cellar stream**

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

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in the following modules:

- cellar hygiene
- transferring of product including road tankers and racking if required
- additions
- wine blending
- safety regulations including confined space procedure and chemical handling; or

- (ii) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with training in more than one stream and successful assessment in the following modules:

- cellar hygiene
- transferring of product
- safety regulations including confined space procedure and chemical handling; and
- two modules essential to one or two other streams such as:
  - palletising (bottling hall)
  - carton making (bottling hall)
  - forklift driving (warehouse/bottling hall)
  - heavy vehicle driving (warehouse); or

- (iii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 2 employee performs the tasks associated with the modules essential to Grade 2 while demonstrating a safe and responsible approach and requiring little supervision in the performance of those tasks and, subject to training, performs other duties as required, such as:

- tank waxing
- vintage operations such as:
  - crushing
  - press house work
  - tank cleaning (removing skins, etc),
- barrel washing
- forklift driving (certificate required); and
- wood stacking and transferring product to/from wood.

**(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

**A.2.3 Grade 3—Cellar stream**

**(a) Point of entry**

- (i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in three of the following modules:
- forklift driving (certificate required)
  - filtration (pad/cartridge/membrane, or earth or lees)
  - centrifugation
  - fortification
  - ion exchange
  - de-sulphurising
  - juice concentration
  - heat exchange
  - spirit bond
  - boiler attendant (certificate required)

- distiller (limited to equipment operation, including boiler)
- sparkling wine production; or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected, under limited supervision, to perform the duties required of a Grade 2 employee plus the duties appropriate to the three modules forming the basis of the qualifications for Grade 3. A Grade 3 employee may also be required to perform the duties appropriate to the operation of all other equipment following a period of training.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in the operation of all equipment within the winery in which the employee is employed, with the exception of distillery and boilers.

**A.2.4 Grade 4—Cellar stream**

**(a) Point of entry**

(i) A Grade 3 employee who has successfully completed training and assessment in the duties appropriate to the operation of all the equipment within the winery in which the employee is employed (except distillery and boiler equipment) and in the following:

- cellar procedures course (external)
- health, safety and welfare course (external or internal – on-going); or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 4 employee performs any task without supervision in the winery in which the employee is employed.

**(c) Training and promotion**

For promotion to Grade 5, a Grade 4 employee will be trained to take on the responsibilities of leading a section or department within the winery in which the employee is employed.

**A.2.5 Grade 5—Cellar stream**

**(a) Point of entry**

(i) A Grade 4 employee who has successfully completed training and assessment in the following:

- supervision and methods of instruction

- report writing
  - such additional modules as required by the employer; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 5 employee co-ordinates the work of employees within a department and maintains company standards relating to safety, quality and production volume. The employees required to carry out these duties are those responsible for, but not limited to, departments such as output filtration, distillery and sparkling wines. The duties include instructing employees in the modules which are essential to operations in the winery in which the employees are employed, with a conscious effort to continuously improve employee skills.

**(c) Training and promotion**

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions.

**A.3 Cellar door sales stream**

**A.3.1 Grade 1—Cellar door sales stream**

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

**A.3.2 Grade 2—Cellar door sales stream**

**(a) Point of entry**

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in all of the following modules:
- wine appreciation and tasting
  - sales/service
  - tour guide
  - office procedures; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 2 employee performs the tasks associated with the modules essential to Grade 2 while demonstrating a safe and responsible approach and requiring little supervision in the performance of those tasks.

**(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

**A.3.3 Grade 3—Cellar door sales stream**

**(a) Point of entry**

(i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in the following modules:

- wine appreciation (external course)
- competency in the use of a visual display unit or PC and keyboard
- stock control/ordering
- invoicing—licensed, private and sample accounts
- banking procedures; or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected to perform the duties required of a Grade 2 employee plus the duties appropriate to the modules forming the basis of the qualifications for Grade 3. A Grade 3 employee may also be required to perform the duties appropriate to the operation of other duties following a period of training.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in modules essential to Grade 4, even if only on a relief basis.

**A.3.4 Grade 4—Cellar door sales stream**

**(a) Point of entry**

(i) A Grade 3 employee who has successfully completed training and assessment in the following disciplines:

- resource management and work planning
- point of sale
- accident prevention and investigation

- state and national regulations appertaining to public places
  - public relations—hospitality industry (external course); or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 4 employee plans and co-ordinates the activities within the cellar door sales department in which the Supervisor is employed while upholding company standards. Other duties include the responsibility for security in the absence of the cellar door sales manager.

**(c) Training and promotion**

An employee at this level may undertake further training for the purpose of updating their skills and knowledge. For promotion to Grade 5, a Supervisor will be trained in the disciplines necessary to take on those responsibilities, even if only on a relief basis.

**A.4 Laboratory stream**

**A.4.1 Grade 1—Laboratory stream**

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

**A.4.2 Grade 2—Laboratory stream**

**(a) Point of entry**

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in three of the following modules:
- routine chemical analysis
  - basic light microscopy and identification of micro-organisms
  - sterility testing of bottled wine
  - basic analytical or packaging instrumentation skills
  - routine trial work
  - on-line packaging quality monitoring
  - incoming packaging materials assessment
  - media or reagent preparation; or

- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 2 employee performs the tasks associated with the modules essential to Grade 2 and, subject to training, other duties as required while demonstrating a safe and responsible approach and requiring little supervision in the performance of those tasks.

**(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

**A.4.3 Grade 3—Laboratory stream**

**(a) Point of entry**

- (i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in two of the following modules:

- propagation of micro-organisms
- non-routine trials
- two Grade 2 modules in which the employee has not yet been assessed
- advanced analytical, packaging or microbiological instrumentation
- reconciliation of results with standards; or

- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected to perform the duties required of a Grade 2 employee plus the duties appropriate to the two modules forming the basis of the qualifications for Grade 3. A Grade 3 employee may also be required to perform other duties following a period of training.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in modules essential to Grade 4.

**A.4.4 Grade 4—Laboratory stream**

**(a) Point of entry**

- (i) A Grade 3 employee who:

- has successfully completed training and assessment in:
  - health, safety and welfare (external or internal course—on-going),



## Exposure draft – Wine Industry Award 2016

- plant monitoring and trouble shooting,
- working without direct supervision,
- training personnel in Grade 1 and Grade 2 modules,
- collating and recording information to supervisors within the department;

- is fully competent in all modules pertaining to one of the following areas:

- analytical chemistry,
- microbiology,
- packaging quality control; and

- has commenced the chemistry or microbiology certificate or equivalent and understands all principles and practices which apply to the candidate's chosen field; or

- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

### (b) Duties

A Grade 4 employee performs any task associated with the modules in which the employee has been assessed while undertaking to learn those modules in which the employee has not been assessed.

### (c) Training and promotion

For promotion to Grade 5, a Grade 4 employee will be trained to take on the responsibilities of supervising a section or department within the winery in which the employee is employed.

## A.4.5 Grade 5 (Supervisory)—Laboratory stream

### (a) Point of entry

- (i) A Grade 4 employee who has successfully completed training and assessment in the following disciplines:

- supervision
- report writing
- communication with other departments
- certificate or diploma applicable to the field of speciality; or

- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

- (i) A Grade 5 (Supervisory) employee co-ordinates the work of employees within a department and maintains company standards relating to safety, quality and production volume. The employees required to carry out these duties are those responsible for but not limited to departments such as quality control, analytical quality control, vintage laboratory and microbiology laboratory.
- (ii) The duties include instructing employees in the modules which are essential to operations in the laboratory in which the employees are employed, with a conscious effort to continuously improve employee skills. Other duties include non-routine trial work and designing new tests/trials as required, investigating analytical exceptions and special projects.

**(c) Training and promotion**

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions.

**A.4.6 Grade 5 (Technical)—Laboratory stream**

**(a) Point of entry**

- (i) A Grade 4 employee who has successfully completed training and assessment in the following disciplines:
- advanced chemical, microbiological or packaging skills certification,
  - appropriate qualification to the field of speciality,
  - advanced and detailed knowledge of areas of research and product development; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

- (i) A Grade 5 (Technical) employee:
- carries out advanced analytical, microbiological or packaging activities, and/or
  - works without supervision on projects or product development, and/or
  - reports on aspects of work in the area of speciality to management and other departments, and/or
  - carries out complex network development or evaluation; and/or
  - carries out complex processing trials.

**(c) Training and promotion**

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions. Advancement from Grade 5 (Technical) will be associated with the acquisition of supervisory skills.

**A.5 Vineyard stream**

**A.5.1 Grade 1—Vineyard stream**

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

**A.5.2 Grade 2—Vineyard stream**

**(a) Point of entry**

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in all of the following modules:
- pruning
  - vine training
  - basic machinery training
  - irrigation
  - harvesting
  - safety and safety regulations (on-going)
  - chemicals handling
  - grafting; or
- (ii) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with training in more than one stream and successful training and assessment in general viticulture (internal or external) and two modules essential to one or two other streams such as:
- forklift driving (certificate required)
  - heavy vehicle driving
  - basic machinery maintenance; or

- (iii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 2 employee performs the tasks associated with the modules essential to Grade 2 while demonstrating a safe and responsible approach and requiring little supervision in the performance of those tasks and, subject to training, performs other duties as required, such as mechanical harvester operations and general vineyard machinery repair and maintenance.

**(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

**A.5.3 Grade 3—Vineyard stream**

**(a) Point of entry**

- (i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in three of the following modules:

- mechanical harvesting operations
- routine repairs and maintenance
- pruning
- vine training
- planting
- trellising
- irrigation
- chemicals handling
- grafting; or

- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected to perform the duties required of a Grade 2 employee plus the duties appropriate to the three modules forming the basis of the qualifications for Grade 3. The Grade 3 employee may also be required to perform other duties following a period of training.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in the handling of all equipment and duties within the vineyard in which the employee is employed.

#### **A.5.4 Grade 4—Vineyard stream**

**(a) Point of entry**

(i) A Grade 3 employee who has successfully completed training and assessment in the duties appropriate to the operation of all the equipment within the vineyard in which the employee is employed and in the following:

- rural studies certificate or equivalent
- health, safety and welfare course (external or internal—on-going); or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 4 employee performs any task without supervision in the vineyard in which the employee is employed.

**(c) Training and promotion**

For promotion to a Grade 5, a Grade 4 employee will be trained to take on the responsibilities of leading a section or department within the winery in which the employee is employed.

#### **A.5.5 Grade 5—Vineyard stream**

**(a) Point of entry**

(i) A Grade 4 employee who has successfully completed training and assessment in the following disciplines:

- supervision and methods of instruction
- report writing; or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 5 employee co-ordinates the work of employees within a section of the vineyard and maintains company standards relating to safety, quality and production volume. The duties include instructing employees in the modules which are essential to operations in the vineyard in which the employees are employed, with a conscious effort to continuously improve employee skills.

**(c) Training and promotion**

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions.

## **A.6 Warehouse and supply stream**

### **A.6.1 Grade 1—Warehouse and supply stream**

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

### **A.6.2 Grade 2—Warehouse and supply stream**

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

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in the following modules:
  - forklift operations (certificate required)
  - basic physical layout within locations
  - basic warehouse or supply procedures
  - basic warehouse or supply operations; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

#### **(b) Duties**

A Grade 2 employee performs, under supervision, a minimum period of six months on each of any two of the following duties:

##### **(i) Supply**

- bottle yard operation
- scrap yard operation
- order receipt
- material issue
- stock checks/control
- truck driver's licence.

##### **(ii) Warehouse**

- production line forklift duties
- loading bay operations

- warehouse movements—as directed
- truck driver’s licence.

**(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

**A.6.3 Grade 3—Warehouse and supply stream**

**(a) Point of entry**

- (i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in the following modules:
- the Grade 2 modules
  - competent in the use of a computer
  - a health, safety and welfare course; or
- (ii) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful assessment in the following modules:
- vintage cellar operations
  - bottling hall operation; or
- (iii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected to perform the duties required of a Grade 2 employee plus the duties appropriate to two of the modules forming the basis of the qualifications for Grade 3. A Grade 3 employee may also be required to perform the duties appropriate to the operation of all other equipment following a period of training.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in the operation of all equipment and operations within the warehouse area in which the employee is employed.

**A.6.4 Grade 4—Warehouse and supply stream**

**(a) Point of entry**

- (i) A Grade 3 employee who has completed an accredited assessment in the operation of all work performed in the warehouse or supply at Grades 2 and 3 level plus emergency procedures—in house and a health, safety and welfare course; or

- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 4 employee performs any task associated with the equipment within the warehouse area in which the employee is employed and is able to perform any task without supervision in the warehouse in which the employee is employed.

**(c) Training and promotion**

For promotion to Grade 5, a Grade 4 employee will be trained in the duties of supervising a section or area in which the employee is employed in the warehouse.

**A.6.5 Grade 5—Warehouse and supply stream**

**(a) Point of entry**

- (i) A Grade 4 employee who has completed an accredited assessment in the following disciplines:
- Supervision—approved course (internal/external)
  - forklift operators examiner’s course
  - report writing
  - warehouse—overall knowledge of despatch office procedures
  - supply—overall knowledge of supply office procedures; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 5 employee co-ordinates the work of those within their area of responsibility in the warehouse including maintaining the employer’s standards relating to safety, quality and production volume, and instructing other employees in modules essential to the operations of the warehouse in which the employees are employed.

**(c) Training and promotion**

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions.



## **A.7 Coopers stream**

### **A.7.1 Grade 1—Coopers stream**

- (a) An employee at this level is a trainee undertaking a three month induction training program, followed by training in the modules essential to the Grade 2 level.
- (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.

### **A.7.2 Grade 2—Coopers stream**

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

- (i) A Grade 1 employee who has passed an accredited assessment for progression from Grade 1 to Grade 2 with successful completion of training and assessment in the following modules:
  - basic supply procedures
  - basic supply operations
  - basic wood storage/knowledge
  - forklift driver's licence
  - basic machinery use
  - basic safety regulations and procedures; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

#### **(b) Duties**

A Grade 2 employee performs tasks associated with the modules essential to Grade 2 while demonstrating a safe and responsible approach and requiring little supervision.

#### **(c) Training and promotion**

It is expected that training for Grade 3 will be completed and assessed within 24 months of appointment to Grade 2. Appointment to the Grade 3 classification will be automatic upon passing the accredited assessment.

### **A.7.3 Grade 3—Coopers stream**

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

- (i) A Grade 2 employee who has passed an accredited assessment for progression from Grade 2 to Grade 3 with successful completion of training and assessment in three of the following modules:
  - setting up and efficient operation of one or more machines

- safety regulations including confined space procedure
- forklift driving
- basic machine maintenance
- product storage and transfer
- health, safety and welfare course (internal or external); or

(ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 3 employee is expected to perform the duties required of a Grade 2 employee and also the operation and adjustment of equipment that requires a higher skill. A Grade 3 employee also performs duties appropriate to the modules forming the basis of the qualifications of Grade 3.

**(c) Training and promotion**

To prepare for a position as a Grade 4, a Grade 3 employee will be trained and assessed in the operation of all equipment and operations within the area in which the employee is employed.

**A.7.4 Grade 4—Coopers stream**

**(a) Point of entry**

(i) A person who has completed a recognised apprenticeship as a Trades Cooper; or

(ii) A Grade 3 employee who has successfully completed training and assessment in the following:

- resource management and work planning
- accident prevention and investigation
- supervision and methods of instruction
- report writing
- such additional modules as required by the employer; or

(iii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

(i) A Grade 4 employee performs tasks in all aspects of the manufacture and maintenance of casks, barrels and vats including:

- making or repairing any cask or any article composed of staves and hoops
- preparing and shaping timber with hand tools for casks or vats

- putting together and/or finishing casks or vats with hand tools
- heading casks
- grading or classifying timber to be used for the purpose of building casks or vats
- performing any other work relating to coopering as directed
- being responsible for directing a trades assistant and/or an apprentice
- co-ordinating the work of employees
- maintaining appropriate standards relating to safety, quality and production volumes; and
- co-ordination and instruction of Grade 1, 2 and 3 employees.

**(c) Training and promotion**

For promotion to Grade 5, a Grade 4 employee will be trained to take on the responsibilities of supervision, co-ordination and instruction.

**A.7.5 Grade 5—Coopers stream**

**(a) Point of entry**

- (i) A Grade 4 employee who has successfully completed training and assessment in:
- supervision and instruction
  - forklift drivers examiner's course
  - report writing
  - restructuring
  - overall knowledge of supply and production procedures; or
- (ii) A person deemed by the employer to have the necessary skills and competence to satisfactorily perform duties at this level.

**(b) Duties**

A Grade 5 employee co-ordinates the work of those within any area of responsibility, including on safety standards, quality standards, production standards and/or works without supervision on projects and product development.

**(c) Training and promotion**

An employee at this level may be required to undertake further training for the purpose of updating their skills and knowledge. An employee at this level may also be required to undertake further management training for promotion to salaried positions.

## Schedule B—Summary of Hourly Rates of Pay

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

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

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

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

	Ordinary hours	Saturday— cellar door or vineyard	Sunday—cellar door	Public holiday
	<b>% of minimum hourly rate</b>			
	<b>100%</b>	<b>125%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1	18.55	23.19	37.10	46.38
Grade 2	19.36	24.20	38.72	48.40
Grade 3	20.16	25.20	40.32	50.40
Grade 4	21.29	26.61	42.58	53.23
Grade 5	22.63	28.29	45.26	56.58

#### B.1.2 Full-time and part-time shiftworkers—ordinary and penalty rates

	Ordinary hours	Afternoon shift <sup>1</sup> and night shift <sup>2</sup>	Permanent night shift <sup>3</sup>	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>115%</b>	<b>130%</b>	<b>150%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1	18.55	21.33	24.12	27.83	37.10	46.38
Grade 2	19.36	22.26	25.17	29.04	38.72	48.40
Grade 3	20.16	23.18	26.21	30.24	40.32	50.40
Grade 4	21.29	24.48	27.68	31.94	42.58	53.23
Grade 5	22.63	26.02	29.42	33.95	45.26	56.58

<sup>1</sup> **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight

<sup>2</sup> **night shift** means any shift finishing after midnight and at or before 8.00 am

<sup>3</sup> **permanent night shift** is night shift worked in accordance with clause 18.3(b)(ii)

**B.1.3 Full-time and part-time employees—overtime**

	Monday to Saturday		Sunday	Public holiday
	First two hours	After two hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Grade 1	27.83	37.10	37.10	46.38
Grade 2	29.04	38.72	38.72	48.40
Grade 3	30.24	40.32	40.32	50.40
Grade 4	31.94	42.58	42.58	53.23
Grade 5	33.95	45.26	45.26	56.58

**B.2 Casual adult employees**

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

	Ordinary hours	Saturday— cellar door or vineyard	Sunday—cellar door	Public holiday
	% of minimum hourly rate			
	125%	150%	225%	275%
	\$	\$	\$	\$
Grade 1	23.19	27.83	41.74	51.01
Grade 2	24.20	29.04	43.56	53.24
Grade 3	25.20	30.24	45.36	55.44
Grade 4	26.61	31.94	47.90	58.55
Grade 5	28.29	33.95	50.92	62.23

**B.2.2 Casual shiftworkers—ordinary and penalty rates**

	Ordinary hours	Afternoon shift <sup>1</sup> and night shift <sup>2</sup>	Permanent night shift <sup>3</sup>	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>					
	<b>125%</b>	<b>140%</b>	<b>155%</b>	<b>175%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1	23.19	25.97	28.75	32.46	41.74	51.01
Grade 2	24.20	27.10	30.01	33.88	43.56	53.24
Grade 3	25.20	28.22	31.25	35.28	45.36	55.44
Grade 4	26.61	29.81	33.00	37.26	47.90	58.55
Grade 5	28.29	31.68	35.08	39.60	50.92	62.23
<sup>1</sup> <b>afternoon shift</b> means any shift finishing after 6.00 pm and at or before midnight						
<sup>2</sup> <b>night shift</b> means any shift finishing after midnight and at or before 8.00 am						
<sup>3</sup> <b>permanent night shift</b> is night shift worked in accordance with clause 18.3(b)(ii)						

**B.2.3 Casual adult employees—overtime**

	Monday to Saturday		Sunday	Public holiday
	First two hours	After two hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1	27.83	37.10	41.74	51.01
Grade 2	29.04	38.72	43.56	53.24
Grade 3	30.24	40.32	45.36	55.44
Grade 4	31.94	42.58	47.90	58.55
Grade 5	33.95	45.26	50.92	62.23

## Schedule C—Summary of Monetary Allowances

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

See clause 16 for full details of allowances payable under this award.

### C.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule H as the minimum hourly rate for the Grade 4 classification in clause 10.1 = **\$21.29**

Allowance	Clause	% of standard rate \$21.29	per week unless stated otherwise
Coopers stream leading hand, in charge of:	16.2(a)		
3 to 10 employees		137.1	29.19
11 to 20 employees		207.4	44.16
More than 20 employees		266.4	56.72
Other leading hand, in charge of:	16.2(a)		
1 to 4 employees		92.4	19.67
5 to 10 employees		148.7	31.66
More than 10 employees		227.7	48.48
Mobile crane operator's allowance	16.2(b)	1.2	0.26 per hour
First aid allowance	16.2(c)		
Per week OR		75.6	16.10
Per day		15.1	3.21 per day
Wet work allowance	16.2(e)	22.6	4.81 per day
Wine vats allowance	16.2(f)	4.2	0.89 per hour
Confined spaces allowance	16.2(g)	1.4	0.30 per hour
Dirty work allowance	16.2(h)	0.8	0.17 per hour
Cask firing allowance:	16.2(i)		
Per day or part thereof		23.8	5.07 per day or part thereof
Maximum per week		119.2	Up to 25.38

#### C.1.1 Adjustment of wage related allowances

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

## C.2 Expense related allowances

The expense related allowances will be payable to employees in accordance with clause 16.4:

Allowance	Clause	
Vehicle allowance	16.4(b)	0.78 per km
Meal allowance—overtime in excess of two hours	16.4(c)	13.96 per occasion

### C.2.1 Adjustment of expense related allowances

At the time of any adjustment to the **standard rate**, each expense related allowance must 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
Vehicle allowance	Private motoring sub-group
Meal allowance	Take away and fast foods sub-group



## **Schedule D—School-based Apprentices**

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

**Schedule E—National Training Wage**

Schedule F deleted by [PR593865](#)

DRAFT

## Schedule F—Supported Wage System

Rates updated as per [PR592689](#)

**F.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.

**F.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**supported wage system (SWS)** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

### **F.3 Eligibility criteria**

**F.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.

**F.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.

## F.4 Supported wage rates

F.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause F.5) %	Relevant minimum wage %
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

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

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

## F.5 Assessment of capacity

F.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.

F.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.

## F.6 Lodgement of SWS wage assessment agreement

F.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.

F.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.

## **F.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.

## **F.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.

## **F.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.

## **F.10 Trial period**

**F.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.

**F.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.

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

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

**F.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 F.5.

## Schedule G—2016 Part-day Public Holidays

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

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

**G.1** Where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm 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 7.00pm 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 7.00pm 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 7.00pm 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 G.1(f) applies, where an employee works any hours between 7.00pm 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 7.00pm and midnight.
- (g) An employee not rostered to work between 7.00pm and midnight, other than an employee who has exercised their right in accordance with clause G.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

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

## Schedule H— Definitions

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

Definition of wine industry has been changed in accordance with [\[2017\] FWCFB 3433](#) at [339]; references to Fair Work Act changed to ‘Act’. See [\[2017\] FWCFB 3433](#) at [350].

In this award, unless the contrary intention appears:

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

**adult apprentice** means an apprentice who is 21 years of age or over at the commencement of their apprenticeship

**confined space** means an enclosed or partially enclosed space that is at atmospheric pressure during occupancy and is not intended or designed primarily as a place of work and is liable at any time to have an atmosphere which contains potentially harmful levels of contaminant or to have an oxygen deficiency or excess, or to cause engulfment, and which also could have restricted means for entry and exit

**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

**standard rate** means the minimum hourly rate prescribed for the Grade 4 classification in clause 10.1

**wet place** means a place where the employee’s clothing becomes wet or where the employee has to stand in water or slush so that the employee’s feet become wet

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

**wine industry** has the meaning given in clause 3.2.

~~**wine industry** means the industry of growing and processing wine grapes and includes:~~

~~(a) the preparation of land for the planting of wine grape vines, the planting of wine grape vines, the pruning of wine grape vines, the care, growing, treating,~~

Exposure draft – Wine Industry Award 2016

~~picking, harvesting and forwarding of wine grapes and other activities associated with a wine grape vineyard; and/or~~

- ~~(b) processing wine grapes, producing wine juice or grape spirit, the bottling, packaging, storage or dispatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice and other activities associated with a winery or wine distillery including but not limited to cellar door sales, laboratory activities and making or repairing barrels, vats, casks and like articles; and/or~~
- ~~(c) packaging, storing and dispatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery~~

DRAFT



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

Schedule I—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583098](#)

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

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

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

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

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

**I agree that:**

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

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

### Schedule J—Agreement to Cash Out Annual Leave

Schedule J—Agreement to Cash Out Annual Leave inserted in accordance with [PR583098](#)

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

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

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

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

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

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule K—Agreement for Time Off Instead of Payment for Overtime

Schedule K— Agreement for time off instead of payment for overtime inserted in accordance with [PR584174](#)

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

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

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

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_