



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards**

(AM2014/238)

### **NURSERY AWARD 2010**

[MA000033]

Nursery industry

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

*4 yearly review of modern awards – Nursery Award 2010 – modern award varied.*

A. Further to the decision [[YEAR] FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX MONTH YEAR, the *Nursery Award 2010* is varied as follows:

1. By deleting all clauses, schedules and appendices.
2. By inserting the clauses and schedules attached.

B: This determination comes into operation from [XX MONTH YEAR]. In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect until the start of the first full pay period that starts on or after [XX MONTH YEAR].

PRESIDENT

Printed by authority of the Commonwealth Government Printer

# Nursery Award 20XX

## Table of Contents

	Page
<b>Part 1— Application and Operation of this Award .....</b>	<b>3</b>
1. Title and commencement .....	3
2. Definitions.....	3
3. The National Employment Standards and this award.....	4
4. Coverage .....	4
5. Individual flexibility arrangements .....	5
6. Requests for flexible working arrangements .....	7
7. Facilitative provisions .....	8
<b>Part 2— Types of Employment and Classifications.....</b>	<b>9</b>
8. Types of employment.....	9
9. Full-time employees.....	9
10. Part-time employees.....	9
11. Casual employees.....	10
12. Classifications .....	13
<b>Part 3— Hours of Work .....</b>	<b>13</b>
13. Ordinary hours of work and rostering.....	13
14. Breaks.....	13
<b>Part 4— Wages and Allowances .....</b>	<b>14</b>
15. Minimum rates .....	14
16. Payment of wages .....	16
17. Apprentices .....	17
18. Allowances.....	19
19. Superannuation.....	20
<b>Part 5— Overtime and Penalty Rates .....</b>	<b>22</b>
20. Overtime.....	22
21. Penalty rates .....	24
<b>Part 6— Leave and Public Holidays.....</b>	<b>24</b>
22. Annual leave .....	24
23. Personal/carer’s leave and compassionate leave.....	29
24. Parental leave and related entitlements .....	29
25. Community service leave.....	29

26.	Unpaid family and domestic violence leave .....	29
27.	Public holidays .....	29
<b>Part 7— Consultation and Dispute Resolution.....</b>		<b>30</b>
28.	Consultation about major workplace change .....	30
29.	Consultation about changes to rosters or hours of work .....	31
30.	Dispute resolution .....	31
<b>Part 8— Termination of Employment and Redundancy .....</b>		<b>32</b>
31.	Termination of employment.....	32
32.	Redundancy.....	33
<b>Schedule A —Classification Definitions .....</b>		<b>35</b>
<b>Schedule B —Summary of Hourly Rates of Pay .....</b>		<b>40</b>
<b>Schedule C —Summary of Monetary Allowances .....</b>		<b>43</b>
<b>Schedule D —School-based Apprentices.....</b>		<b>44</b>
<b>Schedule E —Supported Wage System.....</b>		<b>45</b>
<b>Schedule F —Agreement for Time Off Instead of Payment for Overtime .....</b>		<b>48</b>
<b>Schedule G —Agreement to Take Annual Leave in Advance .....</b>		<b>49</b>
<b>Schedule H —Agreement to Cash Out Annual Leave .....</b>		<b>50</b>
<b>Schedule I —Part-day Public Holidays .....</b>		<b>51</b>

## Part 1—Application and Operation of this Award

### 1. Title and commencement

- 1.1 This award is the *Nursery Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

### 2. Definitions

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

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave (see clause 18.1)

**associated nursery products** means all items required for the propagation, growing, maintenance and sales of plants and plant material. This includes products used in the garden environment for the planting, growing, maintenance and care of plants

**casual employee** means an employee who is engaged as a casual under the terms of clause 8—Types of employment of this award

**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 [Act](#)

**nursery industry** has the meaning given in clause 4.2

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

**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 15.1, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

**plant material** means organisms defined under the *Kingdom Plantae*

**plant nursery** means a business involved in the nursery industry

**standard rate** means the minimum hourly rate for the Grade 2 classification in clause 15.1. This rate is to be used for the purposes of calculating the various allowances that are linked to the [standard rate](#).

**vineyard** means a place where wine grapes are grown for processing into wine.

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

- 3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 3.3 The employer must ensure that copies of the award and the [NES](#) are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

### 4. Coverage

- 4.1 This industry award covers employers throughout Australia in the nursery industry and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other award.
- 4.2 **Nursery industry** means:
- (a) the propagation, planting, growing, cultivation, maintenance, sale, distribution or treating of plant material and associated nursery products in plant nurseries, flower, turf and tree farms or other similar enterprises;
  - (b) the production and modification of growing media and clearing, treating or preparing of land for the propagation, planting, growing, cultivation, maintenance, sales and distribution or treating of plant material and associated products;
  - (c) the processing, grading, packing or storing of plant material and associated products as part of a nursery; and
  - (d) the despatching and distribution of plant material and associated products in connection with work under clauses 4.2(a) to (c).

**4.3** Nursery industry **does not** mean:

- (a) the general retail industry as defined in the *General Retail Industry Award 20XX*;
- (b) the wine industry as defined in the *Wine Industry Award 20XX*;
- (c) silviculture and afforestation as defined in the *Silviculture Award 20XX*; or
- (d) sugar industry as defined in the *Sugar Industry Award 20XX*

**4.4** This award covers any employer which supplies labour on an on-hire basis in the nursery industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. Clause 4.4 operates subject to the exclusions from coverage in this award.

**4.5** This award covers employers which provide group training services for apprentices and/or trainees engaged in the nursery industry and/or parts of that industry 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. Clause 4.5 operates subject to the exclusions from coverage in this award.

**4.6** This award does not cover:

- (a) employees excluded from award coverage by 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.

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

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

## **5. Individual flexibility arrangements**

**5.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or

- (b) overtime rates; or
  - (c) penalty rates; or
  - (d) allowances; or
  - (e) annual leave loading.
- 5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 5.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 5.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
  - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 5.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
  - (b) identify the award term, or award terms, the application of which is to be varied; and
  - (c) set out how the application of the award term, or each award term, is varied; and
  - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
  - (e) state the date the agreement is to start.
- 5.7** An agreement must be:
- (a) in writing; and
  - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

**5.11** An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](#)).

**5.12** An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.

**5.13** The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

## **6. Requests for flexible working arrangements**

### **6.1 Employee may request change in working arrangements**

Clause 6 applies where an employee has made a request for a change in working arrangements under section 65 of the [Act](#).

NOTE 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 6 supplements or deals with matters incidental to the [NES](#) provisions.

NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 6 is an addition to section 65.

### **6.2 Responding to the request**

Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.



NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)).

NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)).

### **6.3 What the written response must include if the employer refuses the request**

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must:
  - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
  - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

### **6.4 What the written response must include if a different change in working arrangements is agreed**

If the employer and the employee reached an agreement under clause 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

### **6.5 Dispute resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 30—Dispute resolution.

## **7. Facilitative provisions**

- 7.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

7.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
11.3(b)	Casual employees	An individual
13.2(c)	Ordinary hours of work and rostering	An individual
14.1(a)	Meal breaks	An individual
14.2(b)	Paid rest breaks	An individual
20.3	Time off instead of payment for overtime	An individual
22.2	Conversion to hourly entitlement	An individual
22.9	Annual leave in advance	An individual
22.12	Cashing out of annual leave	An individual
27.2	Substitution of public holidays	An individual

## Part 2—Types of Employment and Classifications

### 8. Types of employment

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

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

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

### 9. Full-time employees

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

9.2 A full-time employee will be provided with a written statement setting out their classification, applicable pay and terms of engagement.

### 10. Part-time employees

10.1 A part-time employee:

- (a) is engaged to work less than 38 ordinary hours per week; and
- (b) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

- 10.2** At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours to be worked each day and which days of the week the employee will work.
- 10.3** Changes in hours may only be made by agreement between the employer and employee. Any agreed variation to the regular pattern of work will be recorded in writing.
- 10.4** A part-time employee will be entitled to payment for annual leave, long service leave, public holidays, personal/carer's leave and bereavement leave pursuant to this award on a pro rata basis to that of the equivalent full-time employee.
- 10.5** An employer is required to roster a part-time employee for a minimum of 3 consecutive hours on any shift.
- 10.6** The spread of ordinary working hours will be the same as those prescribed for full-time employees in clause 13.2.
- 10.7** A part-time employee employed under the provisions of clause 10 must be paid for ordinary hours worked at the ordinary hourly rate prescribed for the class of work performed in clause 15—Minimum rates.
- 10.8** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 11—Casual employees.
- 10.9 Rosters**
- (a) A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of notice in writing of 7 days or in the case of an emergency, 48 hours, by the employer to the employee.
  - (b) The rostered hours of part-time employees may be altered at any time by mutual agreement between the employer and the employee.
  - (c) Rosters will not be changed except as provided in clause 10.9(a) from week to week, or fortnight to fortnight, nor will they be changed to avoid any award entitlements.
- 11. Casual employees**
- 11.1** A casual employee is an employee who is engaged and paid by the hour as a casual employee.
- 11.2** An employer, when engaging a casual, must inform the employee that they are employed as a casual, stating by whom the employee is employed, their classification level and their rate of pay.
- 11.3 Casual loading**
- (a) For each hour worked, a casual employee must be paid at least:
    - (i) the ordinary hourly rate; and

- (ii) a loading of **25%** of the ordinary hourly rate, for the classification in which they are employed.
  - (iii) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.
- (b) Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
  - (c) On each occasion a casual employee is required to attend for work, casual employees are entitled to a minimum payment of 3 hours' work at the appropriate rate.

#### **11.4 Right to request casual conversion**

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under clause 11.4 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
  - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in clause 11.4(b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;

- (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
- (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 30—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.4, the employer and employee must discuss and record in writing:

  - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.2.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.4.
- (o) Nothing in clause 11.4 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.4 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.4 within the first 12 months of the employee's first engagement to perform work. In respect of

casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.4 by 1 January 2019.

- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.4(q).

## **12. Classifications**

Employees will be classified in accordance with the classification descriptions contained in Schedule A—Classification Definitions of this award.

## **Part 3—Hours of Work**

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

**13.1** Maximum weekly hours and requests for flexible working arrangements are provided for in the [NES](#).

#### **13.2 Ordinary hours of work**

- (a) The ordinary hours of work for full-time employees are an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours of work may be worked between the hours of 6.00 am and 6.00 pm on any 5 out of 7 days. Provided that the ordinary hours of work may be worked between 6.00 am and 9.00 pm on one day per week between Monday and Friday.
- (c) The ordinary hours of work will not exceed 8 hours on any day, provided that by arrangement between an employer and an employee ordinary working hours greater than 8 but not exceeding 10 on any day may be worked subject to:
  - (i) the employer and employee concerned being guided by relevant work health and safety provisions;
  - (ii) suitable roster arrangements being made; and
  - (iii) proper supervision being provided.

### **14. Breaks**

#### **14.1 Meal breaks**

- (a) An unpaid meal break of not less than 30 minutes and not more than one hour will be allowed each day, to be taken no later than 5 hours after commencing ordinary hours of work. Where there is mutual agreement between employer and the individual employee, the meal break may be taken as agreed.

- (b) All work performed on the instruction of the employer during a meal break will be paid for at the rate of **200%** of the ordinary hourly rate. Payment will continue until the employee is released for a meal break of not less than 30 minutes.

**14.2 Paid rest breaks**

- (a) Employees will be allowed a paid rest break of 10 minutes each day.
- (b) Where agreement is reached between the employer and employee for additional rest breaks, such rest breaks will be unpaid and in addition to the employee’s ordinary hours of work.

**Part 4—Wages and Allowances**

**15. Minimum rates**

**15.1 Minimum rates**

- (a) The minimum rates for an adult employee, other than one specified in clause 15.1(c), are set out in the following table:

<b>Classification</b>	<b>Minimum weekly rates \$ (full-time employees)</b>	<b>Minimum hourly rate \$</b>
Grade 1A	740.80	19.49
Grade 1B	762.10	20.06
Grade 2	776.10	20.42
Grade 3	813.60	21.41
Grade 4	862.50	22.70
Grade 5	952.90	25.08
Grade 6	1037.40	27.30

See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalties

- (b) For the purposes of clause 15.1(a), minimum weekly rate means any entitlement which an employee would receive for performing 38 ordinary hours of work.
- (c) The following employees are not entitled to the minimum rates set out in the table in clause 15.1(a):
  - (i) an employee receiving a supported wage (refer to Schedule E—Supported Wage System); or

- (ii) an employee covered by:
- clause 17—Apprentices (unless they are an adult apprentice who commences on or after 1 January 2014);
  - clause 15.2—Junior rates; or
  - clause 15.6—National training wage
  - Schedule D—School-based Apprentices;

**15.2 Junior rates**

Junior employees must be paid the following percentage of the appropriate adult rate in clause 15—Minimum rates.

Age	% of appropriate adult rate
Under 16 years of age	50
16 years of age	60
17 years of age	70
18 years of age	80
19 years of age	90
20 years of age	100

**15.3 Higher duties**

- (a) An employee engaged for more than 2 hours during one day on duties carrying a higher minimum rate than their ordinary classification must be paid the higher minimum rate for that day or shift.
- (b) An employee engaged for 2 hours or less during one day on duties carrying a higher minimum rate than their ordinary classification must be paid the higher minimum rate for the actual time worked at the higher level.

**15.4 Supported wage system**

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

**15.5 School-based apprentices**

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

**15.6 National training wage**

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2019. Provided that any reference to “this award” in Schedule



E to the *Miscellaneous Award 2010* is to be read as referring to the *Nursery Award 2010* and not the *Miscellaneous Award 2010*.

## 16. Payment of wages

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.

### 16.1 Period of payment

Wages must be paid weekly, fortnightly or monthly.

### 16.2 Method of payment

Wages must be paid by cash, cheque or electronic funds transfer into the employee's nominated account at a bank or other recognised financial institution.

### 16.3 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under clause 16.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: Clause 16.3(b) allows the Commission to make an order delaying the requirement to make a payment under clause 16.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

## 17. Apprentices

### 17.1 Apprentice minimum rates

- (a) An apprentice who commenced before 1 January 2014 must be paid the following percentage of the Grade 4 rate of pay:

<b>Year of apprenticeship</b>	<b>% of the Grade 4 rate</b>
1st year	50
2nd year	63
3rd year	75
4th year	90

- (b) An apprentice who commenced on or after 1 January 2014 must be paid the following percentage of the Grade 4 rate of pay:

<b>Year of apprenticeship</b>	<b>% of Grade 4 rate – Apprentices who have not completed year 12</b>	<b>% of Grade 4 rate – apprentices who have completed year 12</b>
1st year	50	55
2nd year	63	65
3rd year	75	75
4th year	90	90

### 17.2 Adult apprentice rates

- (a) Any adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be paid 80% of the Grade 4 rate, or the rate prescribed by clause 17.1(b) for the relevant year of the apprenticeship, whichever is the greater.
- (b) Any adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the rate for the lowest adult classification in clause 15—Minimum rates, or the rate prescribed by clause 17.1(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 6 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 15—Minimum rates in which the adult apprentice was engaged immediately prior to entering into the training agreement.

### 17.3 Apprenticeship conditions of employment

- (a) Except as provided in clause 17.3 or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- (b) **Block release training**
  - (i) Clause 17.3(b) 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 17.3(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 17.3(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 17.3(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 17.3(f) at the later of:

- (i) within 6 months of starting the apprenticeship or the relevant stage of the apprenticeship; or
  - (ii) within 3 months of starting training provided by the RTO.
- (h) Reimbursement under clause 17.3(f) is not payable when there is unsatisfactory progress.
- (i) An employer may meet its obligations under clauses 17.3(f) and 17.3(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.
- (k) Clause 17.3(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.

## 18. Allowances

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.

**18.1** Employers must pay to an employee the allowances the employee is entitled to under clause 18. See Schedule B for a summary of monetary allowances and method of adjustment.

### 18.2 All-purpose allowances

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

- (a) first aid allowance (clause 18.3(a)).

### 18.3 Wage-related allowances

#### (a) First aid allowance

An employee who has been trained to provide first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body must be paid a weekly allowance of **\$14.29** if appointed by their employer to perform first aid duty.

### 18.4 Expense-related allowances

#### (a) Meal allowance

- (i) An employee will be provided with a suitable meal or be paid **\$13.76** per meal when required to work overtime in excess of 2 hours after their usual ceasing time and without being notified before leaving work on the previous day.
- (ii) If the overtime work extends into a second or subsequent meal break, the employee will be provided with another meal or be paid **\$13.76** per meal.

#### (b) Tool and equipment allowance

- (i) An employee who is required by the employer to supply their own tools and equipment must be reimbursed by the employer for the cost of supplying the tools and equipment.
- (ii) Clause 18.4(b) does not apply where the tools and equipment are paid for by the employer.

#### (c) Travelling allowance

- (i) An employee who is required to travel from one place to another will have the time occupied in travelling counted as time worked and paid for.
- (ii) An employee who is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee's normal place of sleeping during employment) will be reimbursed the demonstrable cost of suitable accommodation by the employer.
- (iii) Clause 18.4(c) will not apply where the employer provides the employee with suitable accommodation free of charge.

## 19. Superannuation

### 19.1 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.

## **19.2 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.

## **19.3 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 19.2.
- (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 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

## **19.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Primesuper;
- (b) AustSafe Super
- (c) Tasplan;
- (d) Sunsuper;
- (e) CareSuper;
- (f) Westscheme;
- (g) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008,

provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or

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

## Part 5—Overtime and Penalty Rates

### 20. Overtime

#### 20.1 Payment for working overtime

The rate of pay for overtime will be:

Ordinary hours worked:		% of ordinary hourly rate
Monday to Saturday	First 3 hours	150
	After 3 hours	200
Sunday		200

#### 20.2 Call-back

- (a) An employee recalled to work overtime after leaving the employer’s business premises will be paid for a minimum of 3 hours work at the appropriate rate for each time so recalled.
- (b) Clause 20.2(a) does not apply in cases where it is customary for an employee to return to the employer’s premises to perform a specific job outside the employee’s ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

#### 20.3 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 20.3.
- (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;

## Nursery Award 20XX

- (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 clause 20.3(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 20.3 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 20.3 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 20.3 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 20.3 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 20.3(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 20.3 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 20.3 will apply, including the requirement for separate written agreements under clause 20.3(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 20.3 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.3.

## 21. Penalty rates

- 21.1 The rate of pay for ordinary hours worked on a Saturday will be at the rate of **125%** of the ordinary hourly rate.
- 21.2 The rate of pay for ordinary hours worked on a Sunday will be at the rate of **200%** of the ordinary hourly rate.
- 21.3 All time worked outside the ordinary hours of work will be overtime and paid in accordance with clause 20—Overtime.
- 21.4 Payment for working on public holidays
- (a) All work performed on public holidays will be paid for at the rate of **250%** of the ordinary hourly rate.
- (b) All employees required to work on a public holiday will be paid for a minimum of 4 hours.

## Part 6—Leave and Public Holidays

### 22. Annual leave

- 22.1 Annual leave is provided for in the [NES](#). Annual leave does not apply to a casual employee.

### 22.2 Conversion to hourly entitlement

An employer may reach agreement with an employee to convert the annual leave entitlement in the [NES](#) to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to 4 weeks annual leave).

### 22.3 Payment for period of annual leave

An employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

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

**22.4 Annual leave loading**

During a period of annual leave an employee must also be paid a loading of 17.5% of the wages prescribed in clause 22.3.

**22.5 Electronic funds transfer (EFT) payment of annual leave**

Despite anything else in clause 22, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

**22.6 Excessive leave accruals: general provision**

NOTE: Clauses 22.6 to 22.8 contain provisions, additional to the [NES](#), 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.
- (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 22.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee

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

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 22.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 22.7(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 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and

- (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 22.7(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 22.7(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 clause 22.7(d) may result in the direction ceasing to have effect. See clause 22.7(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.

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

- (a) Clause 22.8 comes into operation from 20 December 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 22.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a clause notice to the employer under clause 22.8(b) if:
- (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 22.7(a) that, when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under clause 22.8(b) must not:
- (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

- (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under clause 22.8(b) more than 4 weeks' paid annual leave in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under clause 22.8(b).

#### **22.9 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 22.9 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 22.9 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 22.9, 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.

#### **22.10 Proportionate leave on termination**

On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 22.3.

#### **22.11 Time of taking leave**

The employer may require annual leave to be taken during periods of business close-down or when the business cannot open due to restrictions on opening hours due to State or Federal legislation. The employer may also require leave to be taken at certain times of the year because of particular seasonal requirements.

**22.12 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.12.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.12.
- (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 22.12 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 22.12 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 22.12 as an employee record.

NOTE 1: Under section 44 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 22.12.

NOTE 2: 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 22.12.

NOTE 3: An example of the type of agreement required by clause 22.12 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.

**23. Personal/carer's leave and compassionate leave**

Personal/carer's leave and compassionate leave are provided for in the [NES](#).

**24. Parental leave and related entitlements**

Parental leave and related entitlements are provided for in the [NES](#).

**25. Community service leave**

Community service leave is provided for in the [NES](#).

**26. Unpaid family and domestic violence leave**

Unpaid family and domestic violence leave is provided for in the [NES](#).

NOTE 1: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

**27. Public holidays**

**27.1** Public holidays are provided for in the [NES](#).

**27.2 Substitution of public holidays**

An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. If either the public holiday or the substitute day is worked, public holiday penalties must be paid. If both days are worked, one day at the election of the employee must be paid at public holiday rates.

**27.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES. If either the partday public holiday or the substitute part-day is worked, public holiday penalties must be paid. If both part-days are worked, one part-day at the election of the employee must be paid at public holiday rates.

**27.4** Subject to clause 27.2, an employee who works on a public holiday will be paid in accordance with clause 21.4.

**27.5 Part-day public holidays**

For provisions in relation to part-day public holidays see Schedule I—Part-day Public Holidays.

## Part 7—Consultation and Dispute Resolution

### 28. Consultation about major workplace change

**28.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
  - (i) the introduction of the changes; and
  - (ii) their likely effect on employees; and
  - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

**28.2** For the purposes of the discussion under clause 28.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

**28.3** Clause 28.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

**28.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 28.1(b).

**28.5** In clause 28 **significant effects**, on employees, includes any of the following:

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or

- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

**28.6** Where this award makes provision for alteration of any of the matters defined at clause 28.5, such alteration is taken not to have significant effect.

## **29. Consultation about changes to rosters or hours of work**

**29.1** Clause 29 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

**29.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**29.3** For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 29.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

**29.4** The employer must consider any views given under clause 29.3(b).

**29.5** Clause 29 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **30. Dispute resolution**

**30.1** Clause 30 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**30.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

**30.3** If the dispute is not resolved through discussion as mentioned in clause 30.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

**30.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 30.2 and 30.3, a party to the dispute may refer it to the Fair Work Commission.



- 30.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 30.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 30.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 30.
- 30.8** While procedures are being followed under clause 30 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
  - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 30.9** Clause 30.8 is subject to any applicable work health and safety legislation.

## Part 8—Termination of Employment and Redundancy

### 31. Termination of employment

NOTE: The [NES](#) sets out requirements for notice of termination by an employer. See sections 117 and 123 of the [Act](#).

#### 31.1 Notice of termination by an employee

- (a) Clause 31.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

**Table 1—Period of notice**

<b>Column 1</b> <b>Employee’s period of continuous service with the employer at the end of the day the notice is given</b>	<b>Column 2</b> <b>Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In clause 31.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 31.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 31.1(b), then no deduction can be made under clause 31.1(d).
- (f) Any deduction made under clause 31.1(d) must not be unreasonable in the circumstances.

### 31.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 31.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## 32. Redundancy

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119 to 123 of the [Act](#).

### 32.1 Transfer to lower paid duties on redundancy

- (a) Clause 32.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
  - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
  - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 32.1(c).
- (c) If the employer acts as mentioned in clause 32.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

**32.2 Employee leaving during redundancy notice period**

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 32 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

**32.3 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 32.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 32.3(b).
- (d) An employee who fails to produce proof when required under clause 32.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 31.2.

## Schedule A—Classification Definitions

### A.1 Grade 1A

Employees in this grade have no previous experience in the industry and no formal qualifications. They carry out general nursery and labouring duties of a routine and repetitive and/or manual nature, mainly under supervision, for a period of no longer than 3 months.

### A.2 Grade 1B

**A.2.1** Employees in this grade have 3 months experience in the industry. They perform and are accountable for nursery tasks as directed within the skill levels set out below. They work within established routines, methods and procedures. Supervision is direct.

**A.2.2** Employees may be required to train other employees in the skills of their own grade by means of personal instruction and demonstration.

**A.2.3** Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- assisting with potting machines, seeding machines, bagging machines, transplanting machines, grading machines, etc.;
- assisting with spray application;
- cleaning;
- collecting cuttage, budwood or scions;
- flower bunching;
- general errands;
- general/labouring duties;
- grafting and budding;
- irrigation;
- labelling, stacking and preparation of stock for sale;
- mixing soil, container filling, container assembly;
- moving plants;
- order selection and assembly;
- packing shelves;
- packing plants and seedlings;

- picking and grading;
- plant care and ground maintenance;
- potting;
- preparing and sticking cuttings;
- spacing and moving plants;
- transplanting;
- tubing;
- unloading/receiving materials;
- using towing and/or carry-all vehicles etc.;
- watering; and
- weeding.

### **A.3 Grade 2**

**A.3.1** Employees in this grade are capable of performing Grade 1B duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 1B. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

**A.3.2** Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

**A.3.3** Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- answering phone;
- basic data entry;
- basic plant maintenance;
- control and maintenance of irrigation equipment;
- handling direct enquiries;
- disease and pest control;
- driving tractors with implements;
- fertigation;
- filing; and
- may be in charge of one assistant of a lower grade.

## **A.4 Grade 3**

- A.4.1** Employees in this grade are capable of performing Grade 1B and 2 duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 2. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.
- A.4.2** Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.
- A.4.3** Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:
- correspondence (handling);
  - customer service;
  - forklift operator;
  - invoicing;
  - order acceptance;
  - processing income;
  - receiving money; and
  - regular driver.

## **A.5 Grade 4—Certified tradesperson**

- A.5.1** Employees in this classification perform nursery duties using a more extensive range of skills and knowledge at a higher level than required of a Grade 3, having obtained and required to utilise the appropriate Accredited Trade Certificate or equivalent. They are responsible and accountable for their own work and may have responsibility for the work of up to 3 additional employees. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is minimal.
- A.5.2** Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.
- A.5.3** Additional duties may include:
- independent cultural decisions relevant to previous gradings (e.g. plant nutrition, merchandising, menus);
  - payroll; and
  - processing of incoming and outgoing invoices.

## **A.6 Grade 5**

**A.6.1** Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 4. They are responsible and accountable for their own work and may have responsibility for the work of a section or unit. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to senior management or proprietor.

**A.6.2** Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

**A.6.3** Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- ability to use a variety of computer packages (this may include, but not limited to, desktop publishing, spreadsheets, word processing, databases, etc.);
- allocation of accounts;
- co-ordination of production programs;
- creditor/debtor reconciliation;
- data reconciliation;
- design & implement fertiliser programs and pest control programs;
- design, install and use irrigation systems;
- landscape consultation and/or design;
- ordering stock;
- planning, co-ordination and implementation of nursery maintenance programs;
- preparation of daily reports;
- set targets; and
- set shift rosters.

## **A.7 Grade 6**

**A.7.1** Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 5. They are responsible and accountable for their own work and may have responsibility for the work of a section. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to management or proprietor.

**A.7.2** Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

**A.7.3** Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- analysing data;
- dispatch;
- key performance indicators for annual performance targets;
- monthly and annual reports;
- nursery manager;
- production planner;
- propagator (person appointed to take responsibility for control of propagating environments, scheduling propagation, selecting cuttage, budwood and other propagules); and
- senior grower or head grower.



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

**B.1 Ordinary hourly rate**

**B.1.1 Ordinary hourly rate** is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 18.1, this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

**B.1.2** The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 15.1. Consistent with clause B.1.1, all-purpose allowances need to be added to the rates in the table where they are applicable.

**B.2 Full-time and part-time employees**

**B.2.1 Full-time and part-time employees—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holiday
	<b>% of ordinary hourly rate <sup>1</sup></b>			
	<b>100%</b>	<b>125%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1A	19.49	24.36	38.98	48.73
Grade 1B	20.06	25.08	40.12	50.15
Grade 2	20.42	25.53	40.84	51.05
Grade 3	21.41	26.76	42.82	53.53
Grade 4	22.70	28.38	45.40	56.75
Grade 5	25.08	31.35	50.16	62.70
Grade 6	27.30	34.13	54.60	68.25

<sup>1</sup>Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

**B.2.2 Full-time and part-time employees—overtime rates**

	First 3 hours Monday to Saturday	After first 3 hours Monday to Saturday	Sunday	Public holiday
	<b>% of ordinary hourly rate <sup>1</sup></b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1A	29.24	38.98	38.98	48.73
Grade 1B	30.09	40.12	40.12	50.15
Grade 2	30.63	40.84	40.84	51.05
Grade 3	32.12	42.82	42.82	53.53

	First 3 hours Monday to Saturday	After first 3 hours Monday to Saturday	Sunday	Public holiday
	<b>% of ordinary hourly rate <sup>1</sup></b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 4	34.05	45.40	45.40	56.75
Grade 5	37.62	50.16	50.16	62.70
Grade 6	40.95	54.60	54.60	68.25

<sup>1</sup>Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

### B.3 Casual employees

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals. The rates in the tables below dealing with overtime for casuals will not become operative until a decision is made in that matter and only to the extent that they are consistent with the decision.

#### B.3.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday
	<b>% of ordinary hourly rate <sup>1</sup></b>			
	<b>125%</b>	<b>150%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1A	24.36	29.24	43.85	53.60
Grade 1B	25.08	30.09	45.14	55.17
Grade 2	25.53	30.63	45.95	56.16
Grade 3	26.76	32.12	48.17	58.88
Grade 4	28.38	34.05	51.08	62.43
Grade 5	31.35	37.62	56.43	68.97
Grade 6	34.13	40.95	61.43	75.08

<sup>1</sup>Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

**B.3.2 Casual employees—overtime**

	<b>First 3 hours Monday to Saturday</b>	<b>After first 3 hours Monday to Saturday</b>	<b>Sunday</b>	<b>Public holiday</b>
	<b>% of ordinary hourly rate <sup>1</sup></b>			
	<b>175%</b>	<b>225%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Grade 1A	34.11	43.85	43.85	53.60
Grade 1B	35.11	45.14	45.14	55.17
Grade 2	35.74	45.95	45.95	56.16
Grade 3	37.47	48.17	48.17	58.88
Grade 4	39.73	51.08	51.08	62.43
Grade 5	43.89	56.43	56.43	68.97
Grade 6	47.78	61.43	61.43	75.08

<sup>1</sup>Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

DRAFT

## Schedule C—Summary of Monetary Allowances

See clause 18—Allowances for full details of allowances payable under this award.

### C.1 Wage-related allowances:

**C.1.1** The following wage-related allowances are based on the weekly standard rate defined in Clause 2—Definitions as the minimum hourly rate for the Grade 2 classification in clause 15.1 = **\$20.42**. These rates are to be paid in accordance with clause 18.3:

Allowance	Clause	% of standard rate	\$	Payable
First aid allowance <sup>1</sup>	18.3(a)	70	14.29	per week

<sup>1</sup> This allowance applies for all purposes of this award.

### C.1.2 Adjustment of wage-related allowances

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

### C.2 Expense-related allowances

**C.2.1** The following expense-related allowances will be payable to employees in accordance with clause 18.4:

Allowance	Clause	\$	Payable
Meal allowance	18.4(a)	13.76	per meal

### C.2.2 Adjustment of expense-related allowances

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

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

Allowance	Applicable Consumer Price Index figure
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 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 6 years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 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 4 years (unless the apprenticeship is of 3 years duration) or stages of competency 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—Supported Wage System

**E.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.

**E.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*, 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** 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

### **E.3 Eligibility criteria**

**E.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.

**E.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.

## E.4 Supported wage rates

E.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 E.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

E.4.2 Provided that the minimum amount payable must be not less than \$87 per week.

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

## E.5 Assessment of capacity

E.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 SWS 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.

E.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](#).

## E.6 Lodgement of SWS wage assessment agreement

E.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.

E.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.

## **E.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 SWS.

## **E.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.

## **E.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.

## **E.10 Trial period**

- E.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 4 weeks) may be needed.
- E.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.
- E.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.
- E.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- E.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 E.5.



**Schedule F—Agreement for Time Off Instead of Payment for Overtime**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 H—Agreement to Cash Out Annual Leave**

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 I—Part-day Public Holidays

- I.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- I.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
  - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
  - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
  - (e) Excluding annualised salaried employees to whom clause I.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
  - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause I.2(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.
- I.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.
- I.4** This schedule is not intended to detract from or supplement the [NES](#).