

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

Publication date	Reason for amendments	Clauses affected
08 March 2019	Incorporate changes resulting from PR598110	Schedule E
	Incorporate changes resulting from [2018] FWCFCB 3500 , PR606375 , PR606531	14, 16, Schedule A, Schedule B
	Incorporates changes resulting from [2018] FWCFCB 3936 , PR609367	19 (deleted)
	Incorporates changes resulting from [2018] FWCFCB 4695 , PR700582 , PR700666	11.4, 11.5
	Incorporates changes resulting from PR701683	Schedule E
	Incorporates changes resulting from [2018] FWCFCB 6863 , PR701452	6
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	Incorporates changes resulting from [2018] FWCFCB 4735 , PR610076 Exposure Draft	15, 18.3
29 January 2020	Incorporating changes resulting from [2015] FWCFCB 4658 at [57]	16
	Incorporating changes resulting from [2019] FWCFCB 1333 at [35]	1.5 (deleted)
	Incorporates changes resulting from [2019] FWCFCB 2548 , PR706983 .	30
	Incorporating changes resulting from [2019] FWCFCB 3500 , PR707462 , PR707663	14, 16
	Incorporating changes resulting from [2019] FWCFCB 5144 at [13].	24
	Administrative changes made by Modern Awards team to the document structure, Part and clause titles and content in accordance with [2019] FWCFCB 5409 at [6] and Attachment A	Part 1—, 2, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, Part 5—, 18, 19, 20, 25, Part 6—, 20, Part 8—, 29, 30, Schedule B, Schedule F (moved), Schedule E
	Incorporates changes resulting from [2019] FWCFCB 5409	4.4, 14, B.1.1
Incorporates changes resulting from [2019] FWCFCB 5409 , PR711483 .	5, 26, 27, 28, 29	

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Publication date	Reason for amendments	Clauses affected
	Incorporating changes resulting from [2019] FWCFB 7173 at [23].	Schedule A
	Incorporates changes resulting from [2019] FWCFB 8398	4.3
	Incorporating changes resulting from [2019] FWCFB 8491, PR715190	Schedule E
	Administrative changes made by Modern Awards team.	2, 11.5(j), 16
	Administrative changes made by Modern Awards team to incorporate previous A clauses into the numbering of the exposure draft	6, 15

EXPOSURE DRAFT

Marine Towage Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Marine Towage Award 2010* as at 15 January 2016 and incorporates award updates up to 19 December 2019. This exposure draft does not seek to amend any entitlements under the Marine Towage Award 2010. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award in accordance with section 156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/235](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Some transitional provisions have been deleted as a result of decisions made during the review.

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

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DRAFT

Part 1—Application and Operation of this Award

1. Title and commencement

Clause 1.4 deleted as a result of re-structure [2019] FWCFB 5409 at [6]. Clause 1.5 deleted in accordance with [2019] FWCFB 1333 at [35].

- 1.1 This award is the *Marine Towage 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.
- ~~1.4 Schedule F—Definitions sets out definitions that apply in this award.~~
- ~~1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.~~

2. Definitions

In this award, unless the contrary intention appears:

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

contract towage means when a tug is towing a vessel from one location to another location, where that tow or other services of a non-emergency nature has been contracted for and pre-planned by the employer.

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

employee means national system employee within the meaning of the [Act](#).

employer means national system employer within the meaning of the [Act](#).

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

free running voyage and **delivery voyage** means when a tug proceeds from one port to another either interstate or intrastate and is not engaged in towing between ports or on a nominated voyage. In addition, this definition will apply to a tug proceeding from its home port to another port to commence a contract tow or when returning to its home port on completion of a contract tow.

Marine towage industry has the meaning given in clause 4.2.

minimum hourly rate means 1/35th of the minimum weekly rate.

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](#).

nominated voyage means an intrastate tug voyage from one port to another that is undertaken for operational reasons, to cover towage requirements in the other port.

officer means a master, a mate or engineer of a tug.

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.

outside work means work on a tug which proceeds to sea on a special voyage outside the limits of bays, rivers or regulated port boundaries or limits but within Australian territorial waters.

special voyage means a voyage for which it is necessary to set watches and will include a free running voyage and delivery voyage, contract towage or emergency operations, but does not include a nominated voyage.

standard rate means the minimum weekly rate for the classification of Rating in clause 14.1.

tonnage/power units means the sum of the gross registered tonnage figure of a tug and of the brake horse power figure of the main engine(s) only of the tug (including super charged power where applicable).

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

Clause 4 is being considered in matter AM2016/5, see draft determination in [\[2019\] FWCFB 8721](#). Comments are due by 31 January 2020.

Clause 4.4 amended in accordance with [\[2019\] FWCFB 5409](#) at [6] and [118].

Clause 4.3 amended in accordance with [\[2019\] FWCFB 8398](#) at [8]

4.1 This industry award covers employers throughout Australia in the marine towing industry and their employees in the classifications listed in clause 14.1 to the exclusion of any other modern award.

4.2 **Marine towing industry** means:

- (a) any work on tug boats, in conjunction with ship-assist operations and voyages, at or about, or to or from, a port in Australia (**harbour towing operations**);
- (b) movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia (**tug and barge operations**).

4.3 This award does not cover:

- (a) employers and employees wholly or substantially covered by:
 - (i) the *Dredging Industry Award 20XX*;
 - (ii) the *Maritime Offshore Oil and Gas Award 20XX*;
 - (iii) the *Ports, Harbours and Enclosed Water Vessels Award 20XX*; and
 - (iv) the *Seagoing Industry Award 20XX*.
- (b) maintenance contractors covered by:
 - (i) the *Manufacturing and Associated Industries and Occupations Award 20XX*; or
 - (ii) the *Electrical, Electronic and Communications Contracting Award 20XX*.
- (c) employees excluded from award coverage by the [Act](#);
- (d) 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
- (e) 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.

- 4.4 This award covers any employer which supplies labour on an on-hire basis in the marine towing industry ~~set out in clauses 4.1 and 4.2~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. ~~This subclause~~ Clause 4.4 operates subject to the exclusions from coverage in this award.
- 4.5 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**

Clause 5 (previously clause 4) substituted in accordance with [\[2019\] FWCFB 5409](#) and [PR711483](#).

- 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:

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- (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 28—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:
12.2(b)	Span of hours	The majority of employees
14.2	Aggregate wage or annual salary	The majority of employees
20.7	Annual leave in advance	An individual
20.8	Cashing out of annual leave	An individual

Part 2—Types of Employment

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.

9. Full-time employees

A full-time employee is an employee who is engaged to work an average of 35 ordinary hours per week.

10. Part-time employees

10.1 A part-time employee is an employee who:

- (a) is engaged to work ordinary hours which are less than the average number of ordinary hours of a full-time employee; 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 For each ordinary hour worked, a part-time employee will be paid not less than the minimum hourly rate for their classification as prescribed by clause 14.1.

10.3 Before an employee commences part-time employment, an employer must inform the employee in writing of any rostered periods of duty to be worked by the employee.

10.4 Any agreed variation of the rostered periods of duty must be recorded in writing.

11. Casual employees

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals.

11.1 A casual employee is an employee who is engaged and paid as a casual employee.

11.2 Casual loading

- (a) For each hour worked, a casual employee must be paid no less than:
 - (i) the minimum hourly rate; and
 - (ii) a loading of 25% of the minimum hourly rate, for the classification in which they are employed.
- (b) 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.

11.3 A casual employee on a special voyage will be paid in accordance with clause 14.3(b)(vi).

11.4 A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

11.5 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.

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- (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 this ~~subclause~~ clause 11.5 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 ~~paragraph (b)~~ clause 11.5(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;
 - (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; or
 - (v) acceptance of the request by a local government would contravene a merit selection employment requirement contained in State or Territory legislation applicable to local governments.
- (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. If the employee

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does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 28—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.

- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in ~~this~~ clause 11.5, 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 ~~10.3~~ 10.
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (l) 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.
- (m) 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 ~~this~~ clause 11.5.
- (n) Nothing in ~~this~~ clause 11.5 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.
- (o) Nothing in ~~this~~ clause 11.5 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of ~~this subclause~~ clause 11.5 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 ~~this subclause~~ clause 11.5 by 1 January 2019.
- (q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in ~~paragraph (p)~~ clause 11.5(p).

Part 3—Hours of Work

12. Ordinary hours of work

12.1 Ordinary hours of work

- (a) For the purposes of the [NES](#), the ordinary hours of work for full-time employees are 35 hours per week, which may be averaged over a period of up to one year.
- (b) The 35 hour week is given effect by the accrual of annual leave in the manner provided under clause 20.2(c)(iv).

12.2 Span of hours

- (a) Ordinary hours may be worked between the hours of 0700 and 1700.
- (b) The employer may agree with a majority of affected employees in a port to alter this span of hours.

12.3 Maximum hours of work

- (a) No employee will be required to perform work continuously in excess of 16 hours, except as provided in clause 12.3(b).
- (b) An employer may require an employee to perform work continuously in excess of 16 hours (extended hours) where:
 - (i) it is reasonably necessary to meet operational requirements;
 - (ii) the employer endeavours to terminate the period of continuous work as soon as practicable; and
 - (iii) the employer grants the employee a rest period of no less than 10 hours before requiring the employee to resume duty.
- (c) An employee's continuity of work is not broken by meal breaks taken in accordance with clause 13—Breaks and any other authorised period off duty of less than ~~four~~ 4 hours' duration.

13. Breaks

13.1 Meal breaks

- (a) An employee is entitled to a meal break of at least 30 minutes after every ~~five~~ 5 hours worked.
- (b) Breaks will be scheduled by the employee's supervisor based upon operational requirements to ensure continuity of operations.
- (c) The employer will not require an employee to work more than ~~five~~ 5 hours before the first meal is taken or between any subsequent meal breaks.

13.2 Minimum breaks

- (a) No break in duty will be of less than ~~six~~-6 hours duration from the time the employee is relieved from work.
- (b) In calculating a break of duty in relation to clause 13.2(a), time off duty before the ordinary finishing time of the day up to 1600 hours will not count except on Saturdays, Sunday and public holidays.
- (c) An employee who is required to resume duty after the ordinary finishing time of the day, when possible, will be given details of the work expected to be done up to and including the ordinary starting time the next day.

Part 4—Wages and Allowances

14. Minimum rates

Rates adjusted as a result of AWR 2019 – changes not tracked.

Clause 14 amended in accordance with [\[2019\] FWCFB 5409](#) at [114], [141] to [145].

14.1 Minimum ~~rates~~wages

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

Employee classification	Minimum weekly rate (full-time employee)	Minimum daily rate ¹
	\$	\$
Rating and General Purpose Rating	844.80	120.69
Category 1 (0–1850 tonnage/power units)		
Mate	959.90	137.13
Master and Engineer	1152.00	164.57
Category 2 (1850 or more tonnage/power units)		
Mate	1002.70	143.24
Master and Engineer	1214.40	173.49

¹ The minimum daily rate = minimum weekly rate/7.

NOTE: See Schedule A—Summary of Hourly Rates of Pay [for a summary of hourly rates of pay, including overtime and penalty rates.](#)

~~See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay~~

~~including overtime and penalties.~~

14.2 Option for aggregate wage or annual salary—full-time and part-time employees

Clause 14.2 is being considered in matter [AM2016/13](#), see [draft determination](#)

- (a) As an alternative to being paid the minimum wage rate plus overtime and penalty payments (in accordance with clauses 19 and 25.2), an employer may agree to pay an aggregate wage or annual salary provided the employer obtains the agreement of a majority of its employees who are covered by this award.
- (b) The aggregate wage or annual salary paid by the employer to employees must be based on a rate equivalent to an aggregate wage or annual salary of at least 40% above the minimum wage rate prescribed in clause 14.1.
- (c) An employer will not be required to pay overtime and penalty payments provided that the aggregate wage or annual salary paid over the year was sufficient to cover what the employee would have been entitled to if the minimum wage rate plus overtime and penalty payments (as identified above) had been paid in that year.
- (d) Where payment is adopted in accordance with clause 14.2, the employer will keep a daily record of the hours worked by the employees which will show the date and daily start and finishing times of the employees. The record will be countersigned by the employee fortnightly, and will be kept at the place of employment for ~~six~~ 6 years.

14.3 Special voyages in harbour towage operations—rates of pay

(a) Application

- (i) Clause 14.3 applies to employers operating in, and employees working in, harbour towage operations.
- (ii) Clause 14.3 does not apply to an employee who is regularly or continuously engaged on outside work.
- (iii) The payments in clause 14.3(b) are payable instead of the daily minimum wage rate specified in clause 14.1 or clause 14.2, and the payments and ~~penalties~~ ~~penalty rates~~ for working overtime under clause 19—Overtime and penalty rates;
- (iv) The payments in clause 14.3(b) do not apply to employees on a nominated voyage.

(b) Payment for special voyages

- (i) For any day (including Saturdays, Sundays and public holidays) on which an employee is engaged on outside work, an employee will be entitled to the amount set out in the table below for their classification.

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Employee classification	Minimum daily rate
	\$
Free Running Voyage and Delivery Voyage	
General Purpose Rating	473.98
Mate (Casual or Tug Mate)	565.60
Mate (Permanent Tug Master) and Engineer	691.41
Master and Chief Engineer	733.26
Contract Towing	
General Purpose Rating	634.76
Mate (Casual or Tug Mate)	726.49
Mate (Permanent Tug Master) and Engineer	852.04
Master and Chief Engineer	890.12
Emergency Towing Operations	
General Purpose Rating	795.51
Mate (Casual or Tug Mate)	887.53
Mate (Permanent Tug Master) and Engineer	1013.85
Master and Chief Engineer	1060.50

- (ii) The amounts contained in clause 14.3(b)(i) will only be payable from the time that the tug leaves the wharf to proceed to sea on any special voyage until it ties up at the wharf at the termination of such special voyage.
- (iii) The amounts contained in clause 14.3(b)(i) are all inclusive and the total amount payable to an employee for all outside work performed in each 24 hours (midnight to midnight) or part thereof.
- (iv) Free running and contract voyages rates of pay will apply to each leg. The calculation for the first day's pay will commence when the vessel departs the wharf. The daily rate of pay will apply for the first day. If the voyage exceeds 24 hours, employees will be entitled to ~~eight~~ 8 hours pay, at the hourly rate, for each period or part period of ~~eight~~ 8 hours worked.
- (v) On any day on which an employee is put ashore sick or injured, they are entitled to the employee's daily minimum ~~wage~~ rate, for each period or part period of ~~eight~~ 8 hours worked on that day.
- (vi) A casual employee engaged on a special voyage will be paid the higher of:

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- the casual rate of pay under clause 11.2; or
 - the rate of pay payable to other employees of the same classification in respect of the special voyage, including any entitlement to proportionate leave. In this latter case, casual loading will be absorbed in the payment.
- (vii) A rest period may be given in the out-port depending on the circumstances of the voyage. In the case of a voyage of ~~seven-7~~ days or more, the maximum rest period will be 24 hours. In the case of a voyage of less than ~~seven-7~~ days, the rest period will be determined by the circumstances of the voyage and by discussion between the employer and employees.

15. Payment of wages

Frequency of payment of wages is being considered in matter [AM2016/8](#).

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.

15.1 The employer will pay the employee's wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee's bank (or other recognised financial institution) account nominated by the employee.

15.2 An employer may deduct from any amount required to be paid to an employee under ~~this clause 15~~, the amount of any overpayment of wages or allowances.

15.3 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 ~~paragraph (a) clause 15.3(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: ~~Paragraph (b) Clause 15.3(b)~~ allows the Commission to make an order delaying the requirement to make a payment under ~~this clause 15.3~~. 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.

16. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked.

Note inserted in accordance with [\[2015\] FWCFB 4658](#) at [57].

Administrative changes made by Modern Awards team to clause 16.

[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 Employers must pay to an employee the allowances the employee is entitled to under ~~this~~ clause 16.

[NOTE:](#) See Schedule B—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

16.2 Application of allowances

- (a) The allowances in clause 16.3 apply to all employees.
- (b) The allowances in clause 16.4 only apply to employers operating in, and employees working in, harbour towing operations.
- (c) The allowances in clause 16.5 only apply to employers operating in, and employees working in, tug and barge operations.

16.3 Allowances—all employees—expense-related allowances

(a) Industrial and protective clothing

- (i) An employee required to wear industrial or protective clothing and equipment as stipulated by a relevant law or by the employer must be reimbursed by the employer for the full cost of purchasing the industrial or protective clothing and equipment.
- (ii) The provisions of clause 16.3(a)(i) do not apply where the industrial or protective clothing and equipment is, or has been, paid for or provided by the employer and the employer replaces items on a fair wear and tear basis.
- (iii) Employees will be paid an allowance of **\$51.60** per year towards the purchase of sunglasses for use during work.

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- (iv) Employees are responsible for the safekeeping of each item of protective clothing on board the vessel.
- (v) An employer may require an employee to sign a receipt for the issue of clothing and equipment.

(b) Loss of personal effects allowance

- (i) If an employee sustains damage to or loss of their personal effects or equipment by fire, explosion, foundering, shipwreck, collision or stranding, the employer will compensate the employee for the damage or loss by a payment equivalent to the value of the personal effects or equipment damaged or lost.
- (ii) The maximum total amount payable is **\$1754** (or **\$2799** if the damage or loss occurs on outside work).
- (iii) The maximum amount payable for any one item is **\$466.80**.

(c) Travelling allowance

- (i) An employee who, at the direction of the employer, is either travelling from their home port to another port, or travelling to their home port from another port, must be reimbursed the reasonable cost of the transport required by the employer to be used.
- (ii) This allowance is not payable where the employer provides and or pays for the cost of transport.
- (iii) Unless the employee is in receipt of an aggregate wage or annual salary under clause 14.2, time spent travelling under ~~this~~ clause 16.3(c) will be considered time worked. In the case of an employee who is in receipt of an aggregate wage or annual salary under to clause 14.2, no additional payment is payable for time spent travelling.

(d) Meals/victualling and accommodation in out-ports

- (i) Where an employee is not at their home port and is required to eat and/or sleep ashore the following allowances will be payable:

	Allowance
	\$
Breakfast	16.35
Lunch	19.15
Dinner	30.84
Accommodation	86.82
Total daily allowance	153.16

- (ii) An employee will only be entitled to the accommodation allowance if:

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- the place at which the employee sleeps is not their usual place of residence; and
 - the employee produces evidence to the reasonable satisfaction of the employer that the employee has properly incurred expenditure on the provision of accommodation for themselves for the night or nights in question.
- (iii) In the case of casual employees, the provisions of ~~this~~ clause 16.3(d) only apply if the casual employee is engaged to perform work on a vessel at a port which is not the home port of the permanent employees in the vessel's crew.
- (e) **Expenses**
- (i) The employer will reimburse an employee for any expenses reasonably incurred by the employee in the performance of their duties on behalf of the employer. Wherever possible, in order to be reimbursed the employee must seek the pre-approval of the employer to undertake the expense.
- (ii) As well as other expenses, ~~this~~ clause 16.3(e) will apply to enquiries about:
- casualties;
 - the conduct of employees; and
 - to proceedings for any alleged breach of any maritime or port or other regulations.
- (iii) Clause 16.3(e) does not apply where the authority conducting the enquiry, proceedings or appeal finds that the enquiry or proceedings claimed may be due to the default or misconduct of the employee.

16.4 Allowances—harbour towing operations

(a) Wage-related allowance—nominated voyages

- (i) A **nominated voyage** means an intrastate tug voyage from one port to another that is undertaken for operational reasons, to cover towing requirements in the other port.
- (ii) For each hour engaged on a nominated voyage, an employee will be paid **\$20.78** per hour.

(b) Wage-related allowance—cyclone (shipkeeping)

An employee will be paid **\$16.56** for each hour (including during Saturdays, Sundays and public holidays) an employee is on board a tug in port and available for the performance of any duty during a cyclone or cyclone alert.

(c) **Wage-related allowance—emergency maintenance**

- (i) In clause 16.4(c), **emergency maintenance** means work which is necessary to reinstate a tug into service which would otherwise be out of service.
- (ii) An employee who, at the request of the employer is required to perform emergency maintenance work on board a tug outside the span of ordinary hours, will be paid an allowance as set out in the table below:

Category	\$ per hour
General Purpose Rating	55.93
Category 1 (0–1850 tonnage/power units)	
Mate	69.70
Master and Engineer	88.79
Category 2 (1850 or more tonnage/power units)	
Mate	64.20
Master and Engineer	92.59

(d) **Expense-related allowance—telephone**

- (i) An employee who is required by their employer to telephone for orders will be entitled to be reimbursed an amount of **\$166.03** per year.
- (ii) The employer will reimburse full installation costs of a new service and pay transfer costs on one occasion during an employee’s period of service.

(e) **Expense-related allowance—insurance—outside work**

- (i) An employee who is engaged on outside work is entitled to be paid an annual allowance equal to the annual premium paid by the employee to obtain an insurance policy which provides a benefit to the employee of **\$100,000** upon their death while engaged on outside work. The insurance policy must be approved in advance by the employer.
- (ii) ~~This clause~~ Clause 16.4(e) does not apply where the employee’s employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of **\$100,000** upon their death whilst engaged on outside work.
- (iii) Clause 16.4(e) does not apply to an employee regularly or continuously engaged on outside work.

(f) **Expense-related allowance—insurance—fire fighting insurance**

- (i) For the purposes of clause 16.4(f), **total and permanent disability** means incapacitation to the following extent:

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- the loss of ~~two~~2 limbs (where limbs include the whole of one hand or the whole of one foot) or the sight of both eyes or the loss of one limb and the sight of one eye; or
 - after a period of ~~six~~6 consecutive months' continuous absence from their employment on account of injury which is proved to the satisfaction of the insurer (after considering such medical or other evidence or advice as they may require from time to time) the employee is unable or unlikely ever again to be able to undertake any form of remunerative work for which they are reasonably fitted by education or training or experience.
- (ii) An employee who is engaged in fire fighting is entitled to be paid an annual allowance equal to the annual premium paid by the employee to obtain an insurance policy which provides a benefit to the employee of **\$130,000** in the case of death or total and permanent disability caused by bodily injury of the employee while engaged in fire fighting. The insurance policy must be approved in advance by the employer.
- (iii) Clause 16.4(f) does not apply if the employee's employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of **\$130,000** in the case of death or total and permanent disability caused by bodily injury of the employee whilst engaged in fire fighting.

(g) **Expense-related allowance—meals**

Each employee will receive a meal allowance of **\$14.73** for each day worked, unless the employer provides a meal or meal-making facilities.

16.5 Allowances—tug and barge operations

(a) **Wage-related allowance—multiple tow**

- (i) The following allowances will be paid where a vessel engages in a multiple tow for each day the vessel is at sea, in port or anchored from the time the tow is assigned until the time the vessel is berthed at its final destination.

Classification	\$ per day
Engineer, Mate and General Purpose Rating	49.93
Master and Chief Engineer	98.76

- (ii) On a changeover day the employees joining the vessel will be entitled to this allowance, and employees starting leave will not be entitled to this allowance.

(b) **Wage-related allowance—cooking**

Classification	\$ per week
Rating and General Purpose Rating acting as Cook	35.23

(c) **Wage-related allowance—additional skills**

Classification	\$ per week
Rating and General Purpose Rating holding qualifications as a Crane Driver, Able Seaman or Offshore Watch-keeper	105.68

(d) **Expense-related allowance—medicals and passport**

The employer will pay an allowance to the employee equal to the cost of any medical examination, eyesight or hearing test, passport (with associated vaccinations), visas, etc., required for the purpose of revalidating certificates of competency or as required by the employer.

~~See Schedule B—Summary of Monetary Allowances for a summary of monetary allowances.~~

17. Accident Pay

17.1 Definitions

For the purposes of ~~this~~ clause 17, the following definitions will apply:

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

17.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 52 weeks.

17.3 Calculation of the period

- (a) The 52 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 52 week period.
- (b) The termination by the employer of the employee's employment within the 52 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

17.4 When not entitled to payment

An employee will not be entitled to any payment under ~~this~~-clause 17 in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

17.5 Return to work

If an employee entitled to accident pay under ~~this~~-clause 17 returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

17.6 Redemptions

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

17.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under ~~this~~-clause 17 and the employee will not be entitled to any further accident pay thereafter.

17.8 Casual employees

For a casual employee, the weekly payment referred to in clause 17.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over-award payments.

18. Superannuation

18.1 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.

18.2 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.

18.3 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 18.2.
- (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 18.3(a) or ~~18.3(b)(b)~~ no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or ~~(b)(b)~~ was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or ~~(b)(b)~~ to one of the following superannuation funds or its successor:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust;
- (c) Sunsuper;
- (d) 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
- (e) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Overtime and Penalty Rates

19. Overtime and penalty rates

19.1 Payment for working overtime

- (a) Subject to any agreement under clause 14.2, overtime is payable for all time worked in excess of ordinary hours in clause 12.1, or outside the applicable span of hours in clause 12.2, overtime will be paid at the following rates:

Day	% of the minimum hourly rate
Monday to Saturday	
First 2 <u>two</u> hours	150
After 2 <u>two</u> hours	200
Sunday—all day	200

- (b) Employees performing overtime on Saturday or Sunday must be paid for a minimum of ~~four~~ 4 hours.

19.2 Penalty rates—extended hours

Subject to any agreement under clause 14.2, an employee who is required to perform work in excess of 16 hours, in accordance with clause 12.3(b), must be paid for such work at **200%** of the employee’s minimum hourly rate.

19.3 Calculating overtime and penalty rates

- (a) In calculating overtime payments under clause 19.1, and penalty rates under clause 19.2, any period:
- (i) less than half an hour will be counted as half an hour; and
 - (ii) greater than half an hour but less than an hour will be counted as an hour.
- (b) An employee who may have an entitlement under both clauses 19.1 and 19.2 will be paid whichever is the higher payment.

19.4 Resumption of duty

- (a) Clause 19.4 does not apply in any case where an employee is subject to an agreement in accordance with clause 14.2.
- (b) An employee who has ceased duty on any day then resumes duty other than in a consecutive extension after ordinary duty that day or before duty for the next day, will be entitled to a minimum payment of ~~four~~ 4 hours for each resumption.
- (c) An employee who has to resume duty on ~~two~~ 2 occasions during the hours between 1800 hours on the one day and 0500 hours on the following day will

be entitled to a payment for the whole of the time from the commencement of the first resumption to the termination of the last resumption.

- (d) For each resumption of duty on any day under clause 19.4, other than in a consecutive extension before or after ordinary duty for the day, travelling time of up to one hour will be considered as time worked.

Part 6—Leave and Public Holidays

20. Annual leave

20.1 Clause 20 operates in conjunction with the [NES](#). The provisions of ~~this~~ clause 20 are intended to satisfy the provisions in the [NES](#) concerning maximum weekly hours of work, annual leave and public holidays.

20.2 Entitlement to leave

- (a) A permanent full-time employee will be entitled to 168 days free of duty in each year, or to proportionate leave for any continuous service of less than a year.
- (b) A part-time employee's entitlement to days free of duty will be determined in accordance with clause 10—Part-time employees.
- (c) The leave prescribed in clause 20.2(a) above includes:
 - (i) 104 days of leave, being instead of weekends;
 - (ii) ~~five~~ 5 weeks of paid annual leave for shiftworkers under the [NES](#) (employees under this award are considered to be shiftworkers for the purposes of the [NES](#));
 - (iii) public holiday entitlements under the [NES](#); and
 - (iv) an additional 28 days' leave, to give effect to a 35 hour week.

20.3 Employees will not be entitled to leave from duty under clause 20 in relation to a period of absence from service on account of workers compensation, or leave without pay. An employee's leave entitlement under clause 20.1 will be debited by 0.857 of a day for each day of absence referred to in ~~this~~ clause 20.3.

20.4 Employers will consult with their employees and prepare a roster providing for the taking of leave from duty. Where practicable, the roster should provide notice of the timing of 140 days of leave from duty in each year (or the proportion of the employee's entitlement to rostered leave days in a year that 140 bears to 168).

20.5 Despite the provisions of ~~this~~ clause 20, the value of any leave given to the employee in advance will be deducted, upon termination of employment, from any money owing to an employee.

20.6 Continuous service

For the purposes of clause 20, a permanent employee will be deemed to have served continuously for the aggregate of their service although the service may have been temporarily interrupted (by up to 21 days) by transfer to some other work of their employer, or for the convenience of the employer, or by suspension of operations, or the need to carry out repairs or maintenance on a tug that the employee is rostered to work on.

20.7 Annual leave in advance

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

NOTE: An example of the type of agreement required by clause 20.7 is set out at Schedule C—~~Agreement to Take Annual Leave in Advance—Agreement to Take Annual Leave in Advance~~. There is no requirement to use the form of agreement set out at Schedule C—~~Agreement to Take Annual Leave in Advance—Agreement to Take Annual Leave in Advance~~.

- (c) The employer must keep a copy of any agreement under clause 20.7 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 20.7, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

20.8 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.8.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 20.8 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and

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- (ii) the date on which the payment is to be made.
- (e) An agreement under clause 20.8 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee’s remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 20.8 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 20.8.

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 20.8.

NOTE 3: An example of the type of agreement required by clause 20.8 is set out at Schedule D—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule D—Agreement to Cash Out Annual Leave.

21. Personal/carer’s leave and compassionate leave

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

22. Parental leave and related entitlements

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

23. Community service leave

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

24. Unpaid family and domestic violence leave

Clause 24 inserted in accordance with [2019] FWCFB 5144 at [13].

Unpaid family and domestic violence leave is provided 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.

25. Public holidays

25.1 Public holiday entitlements are provided in accordance with the [NES](#).

25.2 In ports where clause 14.2 is not invoked, employees required to work on any of the public holidays specified in the [NES](#) will be paid:

- (a) for all hours worked within ordinary hours at **150%** of the minimum hourly rate for their classification; and
- (b) outside ordinary hours at **250%** of the minimum hourly rate for their classification,

with a minimum payment of ~~four~~ 4 hours.

25.3 In ports where clause 14.2 is invoked, an agreement under clause 14.2 recognises that harbour towing operations require tugs to be available on any day of the year. Entitlements to public holidays under the [NES](#) are incorporated in the applicable port rosters developed under clause 20.4 and the aggregated entitlements to leave from duty.

25.4 Part-day public holidays

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

Part 7—Consultation and Dispute Resolution

26. Consultation about major workplace change

Clause 26 renamed and substituted in accordance with [2019] FWCFB 5409 and PR711483.

26.1 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:

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- (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.
- 26.2 For the purposes of the discussion under clause 26.1(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.
- 26.3 Clause 26.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 26.4 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 26.1(b).
- 26.5 In clause 26 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.
- 26.6 Where this award makes provision for alteration of any of the matters defined at clause 26.5, such alteration is taken not to have significant effect.

27. Consultation about changes to rosters or hours of work

Clause 27 inserted in accordance with [\[2019\]FWCFB 5409](#) and [PR711483](#).

27.1 Clause 27 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.

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

27.3 For the purpose of the consultation, the employer must:

(a) provide to the employees and representatives mentioned in clause 27.2 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.

27.4 The employer must consider any views given under clause 27.3(b).

27.5 Clause 27 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

28. Dispute resolution

Clause 28 substituted in accordance with [\[2019\]FWCFB 5409](#) and [PR711483](#).

28.1 Clause 28 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES.

28.2 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.

28.3 If the dispute is not resolved through discussion as mentioned in clause 28.2, 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.

28.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 28.2 and 28.3, a party to the dispute may refer it to the Fair Work Commission.

28.5 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.

28.6 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.

28.7 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 28.

28.8 While procedures are being followed under clause 28 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.

28.9 Clause 28.8 is subject to any applicable work health and safety legislation.

Part 8—Termination of Employment and Redundancy

29. Termination of employment

Clause 29 substituted in accordance with [\[2019\]FWCFB 5409](#) at [51] and [PR711483](#).

NOTE: Sections 117 and 123 of the Act set out requirements for notice of termination by an employer under the NES. Clause 29.1 requires an employer to give a greater minimum period of notice than that generally required under the NES.

29.1 Notice of termination by an employee—permanent employees

(a) Despite the terms of the NES, in order to terminate the employment of an officer the employer must give to the employee the following written notice:

<u>Period of continuous service</u>	<u>Period of notice</u>
<u>1 year or less</u>	<u>2 weeks</u>
<u>More than 1 year but less than 4 years</u>	<u>6 weeks</u>
<u>More than 4 years</u>	<u>8 weeks</u>

(b) Payment instead of the notice prescribed in clause 29.1(a) may be made.

(c) An employer may terminate an employee's employment by giving part of the notice prescribed in clause 29.1(a) and part payment instead of notice.

(d) In calculating any payment instead of notice, the wages an employee would have received in respect of ordinary time the employee would have worked during the period of notice if the employee's employment had not been terminated must be used.

29.2 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 29.2 is to be taken at times that are convenient to the employee after consultation with the employer.

29.3 Return to place of engagement

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

29.4 Termination without notice

Despite clauses 29.1 to 29.3, an employer may terminate an employee's employment without notice, or payment instead of notice, for serious misconduct.

29.5 Notice of termination by employee—permanent employee

- (a) Clause 29.5 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.
- (b) An employee may terminate their employment by giving the employer the following notice in writing:
 - (i) in the case of officers, 2 weeks' notice; or
 - (ii) in the case of ratings, one week's notice.
- (c) If an employee does not give the period of notice required under clause 29.5(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.
- (d) If the employer has agreed to a shorter period of notice than that required under clause 29.5(b), then no deduction can be made under clause 29.5(c).
- (e) Any deduction under clause 29.5(c) must not be unreasonable in the circumstances.

29.6 Casual employees

The employment of a casual employee terminates at the end of each period of duty.

30. Redundancy

Clause 30 substituted in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR706983](#).

NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.

30.1 Transfer to lower paid duties on redundancy

- (a) Clause 30.1 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 30.1(c).~~

~~(c) If the employer acts as mentioned in clause 30.1(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.~~

30.2 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 30 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.~~

30.3 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 30.3(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 30.3(b).~~

~~(d) An employee who fails to produce proof when required under clause 30.3(b) is not entitled to be paid for the time off.~~

~~(e) This entitlement applies instead of clause 29.2.~~

Schedule A—Summary of Hourly Rates of Pay

Rates adjusted as a result of AWR 2019 – changes not tracked.

NOTE at the beginning of Schedule A deleted in accordance with [2019] FWCFB 7173 at [23].

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

NOTE: The hourly rates in this schedule are based on a 35 hour week.

A.1 Full-time and part-time employees

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

	Ordinary hours	Public holidays (ordinary hours)	Extended hours ¹
	% of minimum hourly rate		
	100%	150%	200%
	\$	\$	\$
Rating and General Purpose Rating	24.14	36.21	48.28
Category 1 (0–1850 tonnage/power units)			
Mate	27.43	41.15	54.86
Master and Engineer	32.91	49.37	65.82
Category 2 (1850 or more tonnage/power units)			
Mate	28.65	42.98	57.30
Master and Engineer	34.70	52.05	69.40

Commented [FWC1]: Minimum weekly rate in cl 14.1 ÷ 35.

Commented [FWC2]: Relevant percentage in cl 25.2.

Commented [FWC3]: Relevant percentage in cl 19.2.

¹ **Extended hours** means work performed continuously in excess of 16 hours, pursuant to clause 19.2.

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A.1.2 Full-time and part-time employees—overtime

	Monday to Saturday – first two 2 hours	Monday to Saturday – after two 2 hours	Sunday – all day	Public holidays – all day
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Rating and General Purpose Rating	36.21	48.28	48.28	60.35
Category 1 (0–1850 tonnage/power units)				
Mate	41.15	54.86	54.86	68.58
Master and Engineer	49.37	65.82	65.82	82.28
Category 2 (1850 or more tonnage/power units)				
Mate	42.98	57.30	57.30	71.63
Master and Engineer	52.05	69.40	69.40	86.75

Commented [FWC4]: Minimum weekly rate in cl 14.1 ÷ 35.

Commented [FWC5]: Relevant percentage in cl 19.1.

Commented [FWC6]: Relevant percentage in cl 25.2.

A.2 Casual employees

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals.

A.2.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Public holidays (ordinary hours)	Extended hours ¹
	% of minimum hourly rate		
	125%	175%	225%
	\$	\$	\$
Rating and General Purpose Rating	30.18	42.25	54.32
Category 1 (0–1850 tonnage/power units)			
Mate	34.29	48.00	61.72
Master and Engineer	41.14	57.59	74.05

Commented [FWC7]: Minimum weekly rate in cl 14.1 ÷ 35.

Commented [FWC8]: Minimum hourly rate + 25% casual loading in cl. 11.2(a)(ii).

Commented [FWC9]: Relevant percentage in cl 25.2 + 25% casual loading in cl 11.2(a)(ii).

Commented [FWC10]: Relevant percentage in cl 19.2 + 25% casual loading in cl 11.2(a)(ii).

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	Ordinary hours	Public holidays (ordinary hours)	Extended hours ¹
	% of minimum hourly rate		
	125%	175%	225%
	\$	\$	\$
Category 2 (1850 or more tonnage/power units)			
Mate	35.81	50.14	64.46
Master and Engineer	43.38	60.73	78.08

Commented [FWC7]: Minimum weekly rate in cl 14.1 ÷ 35.

Commented [FWC8]: Minimum hourly rate + 25% casual loading in cl. 11.2(a)(ii).

Commented [FWC9]: Relevant percentage in cl 25.2 + 25% casual loading in cl 11.2(a)(ii).

Commented [FWC10]: Relevant percentage in cl 19.2 + 25% casual loading in cl 11.2(a)(ii).

¹ **Extended hours** means work performed continuously in excess of 16 hours, pursuant to clause 19.2.

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Schedule B—Summary of Monetary Allowances

Rates adjusted as a result of AWR 2019 – changes not tracked.
B.1.1 amended in accordance with [2019] FWCFB 5409 at [141] to [145].

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

B.1 Wage-related allowances

B.1.1 The wage-related allowances in this award are based on the [standard rate](#) as defined in [clause 2](#)—Definitions as the minimum weekly ~~wage~~ rate for Rating in clause 14. = **\$844.80**

Allowance	Clause	% of standard rate	\$	Payable
Nominated voyages allowance	16.4(a)(ii)	2.46	20.78	per hour
Cyclone (shipkeeping) allowance	16.4(b)	1.96	16.56	per hour
Emergency maintenance allowance—general purpose rating	16.4(c)(ii)	6.62	55.93	per hour
Emergency maintenance allowance—category 1—Mate	16.4(c)(ii)	8.25	69.70	per hour
Emergency maintenance allowance—category 1—Master and Engineer	16.4(c)(ii)	10.51	88.79	per hour
Emergency maintenance allowance—category 2—Mate	16.4(c)(ii)	7.60	64.20	per hour
Emergency maintenance allowance—category 2—Master and Engineer	16.4(c)(ii)	10.96	92.59	per hour
Multiple tow allowance — Engineer, Mate and General Purpose Rating	16.5(a)(i)	5.91	49.93	per day
Multiple tow allowance—Master and Chief Engineer	16.5(a)(i)	11.69	98.76	per day
Cooking allowance—Rating and General Purpose Rating acting as cook	16.5(b)	4.17	35.23	per week

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Additional skills allowance— Rating and General Purpose Rating holding qualification as a Crane Driver, Able Seaman or Offshore Watch-keeper	16.5(c)	12.51	105.68	per week
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B.1.2 Adjustment of wage-related allowances

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

B.2 Expense-related allowances

B.2.1 The following expense-related allowances will be payable to employees in accordance with clause 16—Allowances.

Allowance	Clause	\$	Payable
Industrial and protective clothing— sunglasses	16.3(a)(iii)	51.60	per annum
Loss of personal effects allowance— maximum	16.3(b)(ii)	1754.00	per occasion
Loss of personal effects—where damage or loss occurs on outside work—maximum	16.3(b)(ii)	2799.00	per occasion
Loss of personal effects—maximum payable for one article	16.3(b)(iii)	466.80	per article per occasion
Victualling and accommodation allowance in out-ports—breakfast	16.3(d)(i)	16.35	per occasion
Victualling and accommodation allowance in out-ports—lunch	16.3(d)(i)	19.15	per occasion
Victualling and accommodation allowance in out-ports—dinner	16.3(d)(i)	30.84	per occasion
Victualling and accommodation allowance in out-ports— accommodation	16.3(d)(i)	86.82	per occasion
Victualling and accommodation allowance in out-ports—total daily allowance	16.3(d)(i)	153.16	per day
Telephone allowance	16.4(d)(i)	166.03	per annum
Meal allowance	16.4(g)	14.73	per day

B.2.2 Adjustment of expense-related allowances

(a) At the time of any adjustment to the [standard rate](#), each expense-related allowance in clauses 16.3, 16.3(d) and 16.4(g) will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the

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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
Industrial and protective clothing	Clothing and footwear group
Telephone allowance	Telecommunication equipment and services sub-group
Loss of personal effects allowance	Household appliances, utensils and tools sub-group
Victualling and accommodation allowance in out-ports	All groups

Schedule C—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 D—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 E—Part-day Public Holidays

E.2 amended in accordance with [\[2019\] FWCFB 8491](#) and [PR715190](#)

E.1 This schedule operates in conjunction with award provisions dealing with public holidays.

E.2 Where a part-day public holiday is declared or prescribed between 6.00 pm and midnight, or 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 on the declared or prescribed part-day public holiday 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 on the declared or prescribed part-day public holiday but as a result of being on annual leave does not work, they will be taken not to be on annual leave during the hours of the declared or prescribed part-day public holiday 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 on the declared or prescribed part-day public holiday, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause E.2(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday 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 on the declared or prescribed part-day public holiday.
- (g) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause E.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.
- (h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

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

E.3 This schedule is not intended to detract from or supplement the NES.