

The Port Authorities 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
8 March 2019	Incorporates changes resulting from [2018] FWCFB 3500, PR606376, PR606630	15, 17, Schedule B, Schedule C, Schedule E
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	Incorporates changes resulting from [2018] FWCFB 6863, PR701453	6
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	Exposure Draft	
2 September 2019	Incorporating A clauses into the numbering of the exposure draft	6, 16, 27
	Administrative change by Modern Awards team to insert the term ‘ordinary’ in accordance with the definition in Schedule G.	B.3.2
	Incorporating changes resulting from [2015] FWCFB 4658 at [57]	17
	Administrative change by Modern Awards team to correct error made in incorporating changes resulting from [2017] FWCFB 3433 at [300]	B.2.3
	Incorporating changes resulting from [2019] FWCFB 1255 at [41]	N/A
	Incorporating changes resulting from [2019] FWCFB 1333 at [35]	1.5 (deleted)
	Incorporating changes resulting from [2019] FWCFB 2548, PR707010	30
	Incorporating changes resulting from AWR 2018–19 Decision [2019] FWCFB 3500, PR707463, PR709080	15, 17, Schedule B, Schedule C, Schedule E
Incorporating changes resulting from [2019] FWCFB 5144	24	
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The Port Authorities 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
	with [2019] FWCFCB 5409 at [6] and Attachment A	Training Wage (deleted), Schedule G—Definitions (moved)
	Incorporating plain language amendments to clause content resulting from [2019] FWCFCB 5409	1.4 (deleted), 2, 4.5, 4.6, 12.4, 14, 15, 19, 20, 25, Schedule B, Schedule C, Schedule D, Schedule E

EXPOSURE DRAFT

Port Authorities Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Port Authorities Award 2010* (the Port Authorities award) as at 15 January 2016 and incorporates award updates up to 20 June 2019. This exposure draft does not seek to amend any entitlements under the Port Authorities award. 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 [AM2014/240](#). 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 *Port Authorities 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 G—Definitions Clause 2—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)

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

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

afternoon shift means a shift that commences after 10.00 am and before 8.00 pm

casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 15—Classifications and minimum rates, inclusive of the casual loading which is payable for all purposes. Where an employee is entitled to an additional all-purpose allowance, this allowance forms part of that employee's casual ordinary hourly rate plus any allowances specified as being included in the employee's ordinary hourly rate

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

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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](#)

night shift means a shift that commences at or after 8.00 pm and before 5.00 am

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—Classifications and minimum rates plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

port operator has the meaning given in clause 4.2

port services includes:

- (a) infrastructure management and integration;
- (b) communications;
- (c) navigation services including channel marking and management and pilot transfers;
- (d) landside logistics, including loading and unloading facilities;
- (e) mooring and gangways;
- (f) sewage and waste disposal;
- (g) security;
- (h) emergency response;
- (i) dredging;
- (j) survey; and
- (k) passenger services.

shiftwork means work performed by shiftworkers

shiftworker means an employee who is a ~~seven~~7 day shiftworker who is regularly rostered to work on Sundays and public holidays

standard rate means the minimum weekly rate for a Level 4 employee in clause 15—Classifications and minimum rates

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

Clauses 4.5 and 4.6 amended in accordance with [\[2019\] FWCFB 5409](#) at [118].

- 4.1 This industry award covers employers throughout Australia who are port operators and their employees in the classifications listed in clause 15—Classifications and minimum rates to the exclusion of any other modern award.
- 4.2 **Port operator** means an employer that has a statutory or contractual right to manage or control a port, provides access to the port and that provides port services.
- 4.3 The award does not cover maintenance contractors covered by the following awards:
- (a) the *Manufacturing and Associated Industries and Occupations Award 20XX*; or
 - (b) the *Electrical, Electronic and Communications Contracting Award 20XX*.
- 4.4 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.
- 4.5 This award covers any employer which supplies labour on an on-hire basis ~~to a Port operator in the 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 4.5~~ operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for apprentices and/or trainees engaged ~~by a Port operator in the industry and/or parts of industry set out at clauses 4.1 and 4.2~~ and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. ~~This subclause—Clause 4.6~~ operates subject to the exclusions from coverage in this award.

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 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)	Ordinary hours—weekends	An individual or the majority of employees
12.2(c)(ii)	Ordinary hours—spread of hours	An individual or the majority of employees
12.5	Method of arranging ordinary working hours	Majority of employees
12.7	Make-up time	An individual
16	Payment of wages	An individual
19.6	Time off instead of overtime payment	An individual
20.4	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 An employee may be engaged on a full-time, part-time or casual basis.

9. Full-time employees

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

10. Part-time employees

10.1 A part-time employee is an employee who:

- (a) is engaged to work an average of fewer 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 For each hour worked, a part-time employee will be paid no less than the ordinary hourly rate of pay for their classification in clause 15—Classifications and minimum rates.

10.3 Before commencing part-time employment the employee and employer must agree upon the number of hours to be worked each day, the days of the week the employee will work and the starting and finishing times each day.

10.4 All time worked in excess of the agreed hours will be paid at the appropriate overtime rate.

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 engaged and paid as a casual employee.

11.2 A casual employee's ordinary hours of work are the lesser of 38 hours per week or the hours required to be worked by the employer.

11.3 Casual loading

- (a) For each ordinary hour worked, a casual employee must be paid:
 - (i) the ordinary hourly rate; and
 - (ii) a loading of **25%** of the ordinary 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.
- (c) The loading constitutes part of the casual employee's all purpose-rate.

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.
- (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; 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.

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- (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 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.
- (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 11.5, 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.
- (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 11.5.
- (o) Nothing in 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.
- (p) Nothing in clause 11.5 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 this subclause 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 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 11.5(q).

Part 3—Hours of Work

12. Ordinary hours of work

12.1 ~~This clause~~ 12 supplements Division 3 of the [NES](#) which deals with maximum weekly hours.

12.2 Day workers

- (a) Subject to clause 12.5, the ordinary hours of work for day workers are an average of 38 hours per week but not exceeding 608 hours over a period of 16 weeks.
- (b) The ordinary hours of work may be worked on any day of the week including Saturday and Sunday provided that work on a Saturday or Sunday has been agreed between the employer and an employee or between the employer and the majority of a group of employees.
- (c) **Spread of hours**
 - (i) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 7.00 pm.
 - (ii) The spread of hours of 6.00 am and 7.00 pm may be altered by agreement between the employer and an employee or between the employer and the majority of a group of employees.

12.3 Continuous shiftworkers

- (a) **Continuous shiftwork** means work carried out:
 - (i) on continuous shifts of employees;
 - (ii) over 24 hours a day;
 - (iii) on each day in the week; and
 - (iv) without interruption, except for breakdowns or due to unavoidable causes beyond the control of the employer.
- (b) The ordinary hours of continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 608 hours in 16 weeks.
- (c) Continuous shiftworkers may be required to work shifts up to 12 ordinary hours of work subject to clause 12.5(e) and provided that a continuous shiftworker will not work more than one shift in any day other than for a regular changeover of shifts.

12.4 Non-continuous shiftworkers

- (a) The ordinary hours of non-continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week and must not exceed 608 hours in 16 weeks.
- (b) The ordinary hours of work must be worked continuously, except for meal breaks, at the discretion of the employer.
- (c) Non-continuous shiftworkers may be required to work shifts up to 12 ordinary hours of work subject to clause 12.5(e) and provided that a non-continuous shiftworker will not work more than one shift in any day other than for a regular changeover of shifts.

12.5 Methods of arranging ordinary working hours

- (a) The arrangement of ordinary working hours in clause 12.5(a) is subject to the employer's right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in clause 12.2(c) and the employer's right to fix the starting and finishing time of shifts from time to time.
- (b) The arrangement of ordinary working hours must be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned.
- (c) This does not preclude the employer reaching agreement with individual employees about how their working hours are to be arranged.
- (d) The matters on which agreement may be reached include:
 - (i) how the hours are to be averaged within a work cycle established in accordance with clauses 12.2, 12.3 and 12.4;
 - (ii) the duration of the work cycle for day workers provided that such duration does not exceed ~~three~~3 months;
 - (iii) rosters which specify the starting and finishing times of working hours;
 - (iv) a period of notice of a rostered day off which is less than ~~four~~4 weeks;
 - (v) substitution of rostered days off;
 - (vi) accumulation of rostered days off;
 - (vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and
 - (viii) any arrangements of ordinary hours which exceed ~~eight~~8 hours in any day.
- (e) **12 hour shift**
 - (i) Subject to clauses 12.3(c) and 12.4(c), by agreement between an employer and the majority of employees in the enterprise or part of the

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enterprise concerned, 12 hour days or shifts may be introduced subject to:

- (ii) proper health monitoring procedures being introduced;
- (iii) suitable roster arrangements being made;
- (iv) proper supervision being provided;
- (v) adequate breaks being provided; and
- (vi) a trial or review process being jointly implemented by the employer and the employees or their representatives.

(f) Shifts other than a rostered shift

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

- (i) if employed on continuous work, be paid at the rate of **200%** of the ordinary hourly rate; or
 - (ii) if employed on other shiftwork, be paid at the rate of **150%** of the ordinary hourly rate for the first ~~three~~3 hours and **200%** thereafter.
- (g)** Clause 12.5(f) does not apply when the time is worked:
- (i) by arrangement between the employees themselves;
 - (ii) for the purposes of effecting the customary rotation of shifts; or
 - (iii) on a shift to which the employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment in accordance with section 524 of the [Act](#).

12.6 Daylight saving

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

12.7 Make-up time

- (a) An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.
- (b) An employee on shiftwork may elect, with the consent of their employer, to work make-up time under which the employee takes time off during ordinary

hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.

13. Rostering arrangements

13.1 Rostering

- (a) Subject to clause 27—Consultation about changes to rosters or hours of work, the employer may change shift rosters or require an employee to work a different shift roster where operational circumstances require. The employer will provide the employee with as much notice as practicable prior to any change in the roster and, wherever possible, the employer will consult with the employee before any change to the roster is made.
- (b) The employer will arrange overtime work or shiftwork in a manner that ensures employees are provided with a break between work on successive days or shifts. The minimum break will reflect the operational requirements and conform to the principles of fatigue management.

14. Breaks

- 14.1 An employee, other than a continuous shiftworker on shifts greater than 10 hours, may be rostered for an unpaid meal break between 30 and 60 minutes during the course of an ~~eight~~8 hour shift provided that it does not interfere with operational requirements. Where an unpaid meal break is provided, the employee, where practical, should not be required to work more than ~~five~~5 hours without a break.
- 14.2 An employee, other than a continuous shiftworker, who works ~~eight~~8 hours or more during any shift will be entitled to two 10 minute paid rest breaks, one in the morning and one in the afternoon.
- 14.3 An employee, other than a continuous shiftworker, who works less than ~~eight~~8 hours during any shift but more than ~~five~~5 hours will be entitled to one 10 minute paid rest break at a time agreed with the employer.
- 14.4 A continuous shiftworker employee on a shift of greater than 10 hours will be entitled to one paid 20 minute meal break during the first ~~five~~5 hours of each shift and a further paid 10 minute break within each subsequent period of ~~four~~4 hours, provided that such breaks do not interfere with operational requirements.

Part 4—Wages and Allowances

15. Classifications and minimum rates

15.1 Adult employee rates

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

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Minimum rates table amended in accordance with [\[2019\] FWCFB 5409](#) at [114].

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

Employee classification	Minimum weekly rate \$ <u>(full-time employee)</u>	Minimum hourly rate \$
Level 1	740.80	19.49
Level 2	780.90	20.55
Level 3	818.50	21.54
Level 4	862.50	22.70
Level 5	889.50	23.41
Level 6	916.60	24.12
Level 7	941.10	24.77
Level 8	995.50	26.20
Level 9	1067.00	28.08
Level 10	1132.00	29.79
Level 11	1274.90	33.55
Level 12	1440.00	37.89
Level 13	2094.40	55.12
Level 14	2195.70	57.78
Level 15	2297.20	60.45

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

- (b) The classification structure and definitions for the above classifications are contained in Schedule A—Classification Structure.

15.2 Junior employee rates

Where the law permits junior employees to perform work covered by this award, the junior employee will be entitled to the percentage of the applicable adult weekly rate (in the case of part-time or casual employees the hourly rate) for their classification as set out in the table below.

Age	Percentage of adult rate
	%
16 years or under	75
At 17 years	85

At 18 years	100
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15.3 Apprentices and trainees

(a) The terms of this award apply to apprentices and trainees, subject to the provisions of an applicable contract of apprenticeship or training agreement operating under federal, State or Territory apprenticeship or training legislation.

~~(b) National training wage~~

~~(i) Schedule E to the Miscellaneous Award 2010 sets out minimum wage rates and conditions for employees undertaking traineeships.~~

~~(ii) This award incorporates the terms of Schedule E to the Miscellaneous Award 2010 as at 1 July 2018. Provided that any reference to “this award” in Schedule E to the Miscellaneous Award 2010 is to be read as referring to the Port Authorities Award 2010 and not the Miscellaneous Award 2010.~~

(b) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the minimum ~~wage~~ rate for the Level 4 classification, or the rate prescribed by clause 15.3(a) or 15.3(a) for the relevant year of the apprenticeship, whichever is the greater.

(c) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 15.1—Adult employee ~~rates~~, or the rate prescribed by clause 15.3(a) or 15.3(a) for the relevant year of the apprenticeship, whichever is the greater.

(d) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least ~~six~~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 15.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

15.4 Apprentice conditions of employment

(a) Block release training

(i) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such 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 such training.

- (ii) Provided that ~~this clause~~ 15.4 will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- (iii) For the purposes of 15.4(a)(i) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work.
- (iv) For the purposes of ~~this subclause clause~~ 15.4(a)(i), excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(b) Reduction of payment

- (i) The amount payable by an employer under 15.4(a)(i) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
- (ii) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer:
 - within ~~six~~6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship; or
 - within ~~three~~3 months of the commencement of the training provided by the RTO.whichever is the later, unless there is unsatisfactory progress.
- (iii) An employer may meet its obligations under 15.4(b)(ii) by paying any fees and/or cost of textbooks directly to the RTO.

(c) Attending training

- (i) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- (ii) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the

apprentice's wages and determining the apprentice's employment conditions. ~~This subclause—Clause 15~~ operates subject to the provisions of Schedule D—School-based Apprentices.

- (d) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

15.5 School-based apprentices

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

15.6 Higher duties

An employee performing the tasks, role and responsibilities of an employee at a higher classification on a temporary basis for one shift or day, must be paid at the higher wage rate for the period they perform those duties

~~**School-based apprentices**~~

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

15.7 Supported wage system

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

15.8 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 *Port Authorities 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 Wages will be paid weekly or fortnightly unless otherwise agreed between the employer and the employee.

16.2 Wages will be paid by cash or electronic funds transfer (EFT).

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:

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- (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 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: ~~Paragraph (b) Clause 16.3(b)~~ allows the Commission to make an order delaying the requirement to make a payment under ~~this 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. 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].

[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.](#)

17.1 Employers must pay to an employee the allowances the employee is entitled to under ~~this clause 17~~. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

17.2 Wage-related allowances

(a) All-purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The electrician’s licence allowance (clause 17.2(b)) is paid for all purposes under this award.

(b) Electrician’s licence allowance

An electrical worker who is an electrical mechanic who holds and in the course of their duties may be required to use an unrestricted electrician licence must be paid an all-purpose allowance of **\$39.24** per week.

(c) 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 **\$15.53** per week, if appointed by the employer as a first aid officer.

17.3 Expense-related allowances

(a) Motor vehicle/motorcycle reimbursement rate

(i) Where approval has been given for the use of the private motor vehicle/motorcycle by the employer, employees will be paid an allowance of **\$0.78** per kilometre.

(ii) Reimbursement for the use of a private motor vehicle/motorcycle will only occur where the employer has given approval prior to the actual use of the private motor vehicle/motorcycle by the employee.

(b) Protective clothing and equipment

(i) An employee who is required to wear protective clothing and equipment as stipulated by the relevant law operating in a State or Territory covered by this award must be reimbursed for the cost of purchasing the special clothing and equipment by the employer.

(ii) The provisions of clause 17.3(b)(i) do not apply where the clothing and equipment is supplied by the employer.

(c) Tools

A qualified tradesperson (Level 4 and above) who is required by the employer to provide tools will be paid **\$15.29** per week for supplying and maintaining tools ordinarily required for the performance of their work as tradespersons.

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 (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or (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 18.3(b) to one of the following superannuation funds or its successor:

- (a) First State Super (NSW);
- (b) Sunsuper;
- (c) QSuper;
- (d) Tasplan;
- (e) Equisuper;
- (f) M.T.A.A. Super Fund;
- (g) Statewide Superannuation Trust (SST);
- (h) Maritime Super;

- (i) AMP Superannuation Savings Trust;
- (j) Westscheme
- (k) 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
- (l) 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

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

Clause 19 amended in accordance with [\[2019\] FWCFB 5409](#) at [141] to [145].

19.1 Overtime and ~~penalty rates~~ ~~penalties~~—Monday to Friday

- (a) Overtime is payable to employees for any time worked outside of ordinary hours on a Monday to Friday (except a public holiday) at the following rates:
 - (i) 150% of the ordinary hourly rate for the first ~~three~~3 hours; and
 - (ii) 200% of the ordinary hourly rate after ~~three~~3 hours.

19.2 Minimum payment for recall to work overtime

An employee will be paid for a minimum of ~~four~~4 hours if recalled to work overtime after leaving the employer's premises.

19.3 Ordinary hours and overtime—Saturday

- (a) An employee will be paid 150% of the ordinary hourly rate for all ordinary hours and the first ~~three~~3 hours of overtime worked between midnight Friday and midnight Saturday; and
- (b) An employee will be paid 200% of the ordinary hourly rate after ~~three~~3 hours of overtime worked between midnight Friday and midnight Saturday.

19.4 Ordinary hours and overtime—Sunday

An employee will be paid 200% of the ordinary hourly rate for all ordinary hours and overtime worked on a Sunday.

19.5 Ordinary hours and overtime—Public holidays

An employee will be paid 250% of the ordinary hourly rate ~~or for~~ all ordinary hours and overtime worked on a public holiday.

19.6 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.6.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in ~~subparagraph (iii) clause~~ 19.6(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by ~~this clause~~ 19.6 is set out at Schedule H—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule H—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 19.6 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 19.6 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.6 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.

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- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in ~~paragraph (e) clause~~ 19.6(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 19.6 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.6 will apply, including the requirement for separate written agreements under ~~paragraph (b) clause~~ 19.6(b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.6 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.6.

19.7 Shiftwork ~~penalty rates~~penalties

- (a) An employee whilst on afternoon shift as defined will be paid a ~~penalty rate loading~~ of **112.5%** of the employee's ordinary hourly minimum rate of pay.
- (b) An employee whilst on night shift as defined will be paid a ~~penalty rate loading~~ of **115%** of the employee's ordinary hourly minimum rate of pay.

Part 6—Leave and Public Holidays

20. Annual leave

- 20.1** The following provisions supplement the [NES](#).
- 20.2** For the purpose of the [NES](#) a shiftworker as defined in this award and a permanent night shiftworker are entitled to ~~five~~ **5** weeks of paid annual leave.
- 20.3** Subject to clause 20.4 when an employee takes a period of paid annual leave, the employee will be paid an annual leave loading of **17.5%** of the minimum rate of pay

for the period in addition to the payment required to be made under the [NES](#). The annual leave loading for a shiftworker is 20%.

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](#)).

20.4 Annual leave in advance

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

NOTE: An example of the type of agreement required by clause 20.4 is set out at Schedule F—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 20.4 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 20.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

20.5 Excessive leave accruals: general provision

NOTE: Clauses 20.5 to 20.7 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 (or 10 weeks' paid annual leave for a shiftworker, as defined by ~~Schedule G clause 2~~—Definitions).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 20.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

- (d) Clause 20.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

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

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

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

20.7 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.5(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under ~~paragraph (a)~~ clause 20.7(a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

- (ii) the employee has not been given a direction under clause 20.6(a) that, when any other paid annual leave arrangements (whether made under clause 20.5, 20.6 or 20.7 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under ~~paragraph (a) clause~~ 20.7(a) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 20.5, 20.6 or 20.7 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under ~~paragraph (a) clause~~ 20.7(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by ~~Schedule G clause 2—~~Definitions) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under ~~paragraph (a) clause~~ 20.7(a).

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
 - (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.

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- (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 G—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule G—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 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.

25. Public holidays

- 25.1 Public holiday entitlements are provided for in Division 10 of the [NES](#).
- 25.2 An employee will be paid at the rate of **250%** of the ordinary hourly rate with a minimum of ~~four~~4 hours work when required to work on a public holiday.

Part 7—Consultation and Dispute Resolution

26. Consultation about major workplace change

- 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:
- (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:

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- (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.
- (h) 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

- 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

- 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

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

29.1 Notice of termination by an employee

- (a) Clause 29.1 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

Column 1 Employee’s period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice
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 29.1(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 29.1(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 29.1(b), then no deduction can be made under clause 29.1(d).
- (f) Any deduction made under clause 29.1(d) must not be unreasonable in the circumstances.

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.

30. Redundancy

Clause 30 amended in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR707010](#).

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, shift rates 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, shift rates 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—Classification Structure

Preamble

Employees at each level may be required to have the competencies for the level or levels below their level. When required, employees at each level will undertake lower level duties as well as performing tasks incidental to work at their level. The employer will ensure employees undertake duties which are within the limits of the employee's skills, competence and training. The level of an employee's position will be determined by the employer based on the substantive duties and functions of the employee's position. An employee being required to undertake minor activities from a higher level will not result in a change in the position classification.

A.1 Level 1

- Completed induction
- Works under detailed instruction
- Basic civil/maintenance work, mooring deckhand, cleaning wharves and sheds
- Operating small plant, fork lifts (up to 10,000 kg), bob cats, sweepers, line markers

A.2 Level 2

- Perform duties above Level 1
- Carry out basic computer functions including secure logins, reading and composing basic electronic mail and finding documents within the company's intranet or electronic file storage systems
- Works under close direction
- Responsible for quality of work and exercises discretion
- Operates small to medium size plant (over 10,000 kg), installs wharf infrastructure bollards, fenders etc.
- Concrete pouring and finishing
- Handles emergency equipment including oil booms and collecting gear
- Handles tapes and surveying equipment, winches and fixed cranes for heavy floating
- Provides basic security functions including patrols, crowd control, and traffic management
- Entry level for hospitality staff
- Basic dredge maintenance work on minor plant, loading stores and watch keeping

A.3 Level 3

- Perform activities above Level 2
- Assists in on-the-job training
- Carry out more advanced computer functions such as creating documents, basic spreadsheets, saving and retrieving files and basic document formatting. Completing data entry activities relating to the work performed
- Basic clerical skills and administrative activities working within a routine and to administrative procedures
- May require direction
- Rigging and scaffolding certificate
- Servicing of minor plant (non-trade work)
- Inventory control and maintenance of records
- Work may be subject to progress and final checking
- Provides security functions including those at Level 2 and Control Room and or CCTV

A.4 Level 4

- Perform activities above Level 3
- Working knowledge of office operating procedures
- Works under guidelines and instructions
- Performs skilled trade or port related activities such as boat master for vessels not exceeding 24 metres
- Operating light capacity cranes and or ships' gear, heavy mechanical plant and equipment, operating trucks, operating bulk handling gantries/loaders, and basic servicing and maintenance of such equipment
- Perform maintenance and construction duties requiring specialised knowledge and skills
- Qualified tradesperson
- May provide assistance or guidance to lower level employees
- May exercise limited judgment and initiative within the range of their skills, training and knowledge
- Maintains radio and visual watch of shipping traffic
- Provide information on shipping movements

- Operate and maintain dredge equipment, within the requirements of an Integrated Rating qualification (certificate III)

A.5 Level 5

- Performs activities above Level 4
- Using company information systems to access and enter information relating to port activities which could include schedules, meteorology information and technical databases, and retrieve and analyse data related to the work performed.
- Requires general guidance
- May assist in the training of lower level employees
- Supervises small work groups
- Prepares technical reports to their level of competence
- Complies with quality and cost targets
- Understands and implements quality control techniques
- Assists in the co-ordination of port services to ships
- Supervision of general purpose hands on dredges

A.6 Level 6

- Performs activities above Level 5
- Requires limited guidance or direction and normally reports to more senior staff as required
- Exercises initiative, discretion and judgment at times in the performance of their duties within approved guidelines
- Understands and implements quality control techniques
- Operation and servicing of heavy shorebased cranes and equipment
- Installing, repairing and maintaining, testing, modifying, commissioning or fault finding on complex machinery and equipment
- Exercise knowledge of procedures, instructions and regulations relating to general administration and customer enquiries
- Undertake a range of duties requiring the use of written and verbal communications using a variety of computer applications
- Responsible for ensuring the safe navigation and operation of a dredge in both confined waters and open seas (Master Class IV)
- Organise, carry out and supervise routine dredge maintenance including electrical and electronic equipment. Must possess relevant engineering qualifications for this role.

A.7 Level 7

- Performs duties above Level 6
- The ability to apply detailed knowledge of enterprise operations and structures to complex issues and arrangements
- Work involves diagnosis and the implementation of modification techniques
- Assist in programming of work and projects and development of estimates
- Undertake and accept responsibility for more detailed and complex clerical duties than Level 6
- Supervises employees below Level 7, including in allocation of duties and counselling on performance matters
- Are able to train employees below Level 7
- Able to assist in the delivery of training courses
- Accept responsibility for part of a major clerical function
- Exercise initiative, discretion and judgment in the performance of their duties
- Operate with some autonomy

A.8 Level 8

- Perform duties above Level 7
- Provides technical guidance and advice
- Prepares reports of technical nature
- Has operating knowledge of systems and equipment relative to a marine environment
- Acts as a team leader and assists in the provision of on-the-job training in conjunction with supervisors and trainers
- Accept the responsibility for the delivery of an administrative function through the provision of a level of relevant skills, knowledge and experience in a specific area of operations
- Have delegated responsibility for work under their control, in terms of scheduling workloads, resolving operational problems and monitoring quality of output
- Regular liaison with business unit managers
- Supervises and provides on-the-job training for lower level employees
- May be required to counsel staff for performance and work related matters
- Holds an Associate Diploma qualification or equivalent in a relevant discipline

- Applies standardised practices and procedures in the conduct of a range of technical activities
- Undertake activities on an individual basis
- Provides written calculation and records of test results

A.9 Level 9

- Perform duties above Level 8
- Provides high level of practical skills and experience in a specialist administrative function
- Has a sound knowledge of organisational programs, policies, activities, structures and function
- Work within broadly defined guidelines under limited direction
- Sets up, commissions, maintains and operates sophisticated electronic equipment or control systems
- Specialises in a single technical function
- Responsible for the accuracy and timeliness of their work without direct supervision
- Has a high level of verbal and written communication skills and interpersonal skills
- Supervises and co-ordinates the work of a group of technical and other personnel
- Practical application of a very high level of field operational skills related to the marine environment
- Provides reports and recommendations to management on technical suitability of equipment, procedures, processes and test results
- Undertakes planning and design projects with increasing levels of operational independence
- Reports on findings and investigative results of minor projects or elements of a larger projects
- Financial delegation responsibilities
- Oversees elements of project budget
- Performs technical duties in a specific field
- Possesses additional skills in another technical field

A.10 Level 10

- Perform duties above Level 9
- Responsible for a wide range of administrative support services

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- Typically will have worked or studied in a relevant field to enable them to provide specialist advice
- Provides advice and assistance to managers and internal clients in a range of areas
- Hold relevant tertiary qualifications
- Has ability to analyse situations and take corrective action where required
- Responsible for decision making, exercising judgment and delegated authority
- Determines standards and work objectives
- Train and supervise lower level employees and deliver training courses
- Required to counsel employees at lower levels for performance and work related matters
- Provides specialist consultancy services
- Exercise significant technical responsibilities on an individual basis
- A senior member of a single technical discipline project team with varying degrees of subordinate complexity
- Determines and develops standardised methodology
- Conducts research into technological and other development which will impact on Section operations
- Operate as a team leader under professional supervision
- Analyse and develop equipment utilising a combination of professional expertise
- Undertake project studies independently
- Possesses a general knowledge and awareness of the administrative, business, and marketing strategies of the enterprise
- Plans, writes and delivers training programs for clerical employees, production employees, apprentices, trainees, trade and lower technical levels

A.11 Level 11

- Responsible for the management and administration of significant work programs/projects
- Work under broad direction
- Exercise significant level of responsibility and decision making which impacts on organisation programs
- Provide expert advice through the application of extensive administrative knowledge and experience
- Exercise significant resource delegations

- Supervise day to day activities of others and manage rosters and relief
- Liaise with senior managers on complex matters
- Have strong interpersonal skills and an ability to work autonomously
- High level of knowledge of specialised computer systems

A.12 Level 12

(a) Duties

This is the first level of direct and sustained supervision of other professionals or full specialisation. It requires application of mature professional knowledge in planning and conducting projects having scope for independent accomplishment and coordination of the difficult and responsible assignments. Assigned problems make it necessary to modify established guides, devise new approaches, apply existing criteria in new manners, and draw conclusions from comparative situations.

(b) Recommendations and decisions

Recommendations reviewed for soundness of judgment, but usually accepted as technically accurate and feasible.

(c) Supervision received

Work is assigned in terms of objectives, relative priorities and critical areas that impinge on work of other units. Work is carried out within broad guidelines, but informed guidance is available.

(d) Authority and/or supervision exercised

Assigns and outlines work; advises on technical problems; reviews work on technical accuracy and adequacy. Supervision may call for recommendations concerning selection, training and discipline of staff.

A.13 Level 13

A Marine Pilot Level 1

A.14 Level 14

A Marine Pilot Level 2

A.15 Level 15

A Marine Pilot Level 3

Schedule B—Summary of Hourly Rates of Pay

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

B.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 17.2(a) this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

B.1.1 The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 15.1. Consistent with clause B.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 adult employees

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

	Ordinary hours	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	100%	150%	200%	250%
	\$	\$	\$	\$
Level 1	19.49	29.24	38.98	48.73
Level 2	20.55	30.83	41.10	51.38
Level 3	21.54	32.31	43.08	53.85
Level 4	22.70	34.05	45.40	56.75
Level 5	23.41	35.12	46.82	58.53
Level 6	24.12	36.18	48.24	60.30
Level 7	24.77	37.16	49.54	61.93
Level 8	26.20	39.30	52.40	65.50
Level 9	28.08	42.12	56.16	70.20
Level 10	29.79	44.69	59.58	74.48
Level 11	33.55	50.33	67.10	83.88
Level 12	37.89	56.84	75.78	94.73
Level 13	55.12	82.68	110.24	137.80
Level 14	57.78	86.67	115.56	144.45
Level 15	60.45	90.68	120.90	151.13

Commented [FWC1]: (Minimum weekly rate in cl 15.1, divided by 38) + (any all-purpose allowance payable to an employee under clause 17.2(a), divided by 38).

Rates in table do not include any all-purpose allowances.

Commented [FWC2]: Relevant percentage in accordance with cl. 19.3, cl. 19.4 and cl. 19.5

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

B.2.2 Full-time and part-time shiftworkers—shiftwork rates

	All shiftworkers			Work on a shift other than a rostered shift—continuous shiftworkers	Work on a shift other than a rostered shift—other than continuous shiftworkers	
	Ordinary hours	Afternoon shift ¹	Night shift ²	If employed on continuous shiftwork	First 3 hours	After first 3 hours
	% of ordinary hourly rate ³					
	100%	112.5%	115%	200%	150%	200%
	\$	\$	\$	\$	\$	\$
Level 1	19.49	21.93	22.41	38.98	29.24	38.98
Level 2	20.55	23.12	23.63	41.10	30.83	41.10
Level 3	21.54	24.23	24.77	43.08	32.31	43.08
Level 4	22.70	25.54	26.11	45.40	34.05	45.40
Level 5	23.41	26.34	26.92	46.82	35.12	46.82
Level 6	24.12	27.14	27.74	48.24	36.18	48.24
Level 7	24.77	27.87	28.49	49.54	37.16	49.54
Level 8	26.20	29.48	30.13	52.40	39.30	52.40
Level 9	28.08	31.59	32.29	56.16	42.12	56.16
Level 10	29.79	33.51	34.26	59.58	44.69	59.58
Level 11	33.55	37.74	38.58	67.10	50.33	67.10
Level 12	37.89	42.63	43.57	75.78	56.84	75.78
Level 13	55.12	62.01	63.39	110.24	82.68	110.24
Level 14	57.78	65.00	66.45	115.56	86.67	115.56
Level 15	60.45	68.01	69.52	120.90	90.68	120.90

Commented [FWC3]: (Minimum weekly rate in cl 15.1, divided by 38) + (any all-purpose allowance payable to an employee under clause 17.2(a), divided by 38).

Rates in table do not include any all-purpose allowances.

Commented [FWC4]: Relevant percentage in cl 19.7.

Commented [FWC5]: Relevant percentage in cl 12.5(f).

¹ Afternoon shift means a shift that commences after 10.00 am and before 8.00 pm

² Night shift means a shift that commences at or after 8.00 pm and before 5.00 am

³ Rates in table are calculated based on the minimum hourly rate, see clauses B.1 and B.1.1.

B.2.3 Full-time and part-time employees—overtime

	Monday to Saturday first three 3 hours	Monday to Saturday after three 3 hours	Sunday	Public holiday
	% of ordinary hourly rate¹			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 1	29.24	38.98	38.98	48.73
Level 2	30.83	41.10	41.10	51.38
Level 3	32.31	43.08	43.08	53.85
Level 4	34.05	45.40	45.40	56.75
Level 5	35.12	46.82	46.82	58.53
Level 6	36.18	48.24	48.24	60.30
Level 7	37.16	49.54	49.54	61.93
Level 8	39.30	52.40	52.40	65.50
Level 9	42.12	56.16	56.16	70.20
Level 10	44.69	59.58	59.58	74.48
Level 11	50.33	67.10	67.10	83.88
Level 12	56.84	75.78	75.78	94.73
Level 13	82.68	110.24	110.24	137.80
Level 14	86.67	115.56	115.56	144.45
Level 15	90.68	120.90	120.90	151.13

Commented [FWC6]: (Minimum weekly rate in cl 15.1, divided by 38) + (any all-purpose allowance payable to an employee under clause 17.2(a), divided by 38).

Rates in table do not include any all-purpose allowances.

Commented [FWC7]: Relevant percentage in cl 19.1 and 19.3

Commented [FWC8]: See cl 19.4

Commented [FWC9]: See cl 19.5

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

B.3 Casual adult 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—minimum and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday
	% of casual ordinary hourly rate¹			
	100%	150%	200%	250%
	\$	\$	\$	\$

Commented [FWC10]: (Minimum weekly rate in cl 15.1, divided by 38) + (25% all-purpose casual loading in cl 11.3) + (any all-purpose allowance payable to an employee under clause 17.2(a), divided by 38).

Rates in table do not include any all-purpose allowances.

Commented [FWC11]: Relevant percentage in cl. 19.3, cl. 19.4 and cl. 19.5

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Level 1	24.36	36.54	48.72	60.90
Level 2	25.69	38.54	51.38	64.23
Level 3	26.93	40.40	53.86	67.33
Level 4	28.38	42.57	56.76	70.95
Level 5	29.26	43.89	58.52	73.15
Level 6	30.15	45.23	60.30	75.38
Level 7	30.96	46.44	61.92	77.40
Level 8	32.75	49.13	65.50	81.88
Level 9	35.10	52.65	70.20	87.75
Level 10	37.24	55.86	74.48	93.10
Level 11	41.94	62.91	83.88	104.85
Level 12	47.36	71.04	94.72	118.40
Level 13	68.90	103.35	137.80	172.25
Level 14	72.23	108.35	144.46	180.58
Level 15	75.56	113.34	151.12	188.90

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

B.3.2 Casual shiftworkers—shiftwork rates

	All shiftworkers			Work on a shift other than a rostered shift		
				continuous shiftworkers	other than continuous shiftworkers	
	% of casual ordinary hourly rate ¹					
	Day	Afternoon shift ³	Night shift ⁴	If employed on continuous shiftwork	First 3 hours	After first 3 hours
	100%	112.5%	115%	200%	150%	200%
	\$	\$	\$	\$	\$	\$
Level 1	24.36	27.41	28.01	48.72	36.54	48.72
Level 2	25.69	28.90	29.54	51.38	38.54	51.38
Level 3	26.93	30.30	30.97	53.86	40.40	53.86
Level 4	28.38	31.93	32.64	56.76	42.57	56.76
Level 5	29.26	32.92	33.65	58.52	43.89	58.52
Level 6	30.15	33.92	34.67	60.30	45.23	60.30
Level 7	30.96	34.83	35.60	61.92	46.44	61.92

Commented [FWC12]: (Minimum weekly rate in cl 15.1, divided by 38) + (25% all-purpose casual loading in cl 11.3) + (any all-purpose allowance payable to an employee under clause 17.2(a), divided by 38).
Rates in table do not include any all-purpose allowances.

Commented [FWC13]: Relevant percentage in cl 19.7.

Commented [FWC14]: Relevant percentage in cl 12.5(f).

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Level 8	32.75	36.84	37.66	65.50	49.13	65.50
Level 9	35.10	39.49	40.37	70.20	52.65	70.20
Level 10	37.24	41.90	42.83	74.48	55.86	74.48
Level 11	41.94	47.18	48.23	83.88	62.91	83.88
Level 12	47.36	53.28	54.46	94.72	71.04	94.72
Level 13	68.90	77.51	79.24	137.80	103.35	137.80
Level 14	72.23	81.26	83.06	144.46	108.35	144.46
Level 15	75.56	85.01	86.89	151.12	113.34	151.12

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

²Afternoon shift means a shift that commences after 10.00 am and before 8.00 pm

³Night shift means a shift that commences at or after 8.00 pm and before 5.00 am

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Schedule C—Summary of Monetary Allowances

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

See clause 17—Allowances for full details of allowances payable under this award.

C.1 Wage-related allowances

C.1.1 The wage-related allowances in this award are based on the [standard rate](#) as defined in ~~Schedule G clause 2~~ Definitions as the minimum weekly rate for a Level 4 employee in clause 15.1(a) = **\$862.50**

Allowance	Clause	% of standard rate \$837.40	\$ per week	<u>Payable</u>
Electrician’s licence allowance ¹	17.2(b)	4.55	39.24	<u>per week</u>
First aid allowance	17.2(c)	1.80	15.53	<u>per week</u>

¹ 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 expense-related allowances in this award will be adjusted by reference to the Consumer Price Index (CPI) as per the following:

Allowance	Clause	\$	<u>Payable</u>
Private motor vehicle/motorcycle allowance	17.3(a)	0.78 per km	<u>per km</u>
Tool allowance—tradesperson	17.3(c)	15.29 per week	<u>per week</u>

C.2.2 Adjustment of expense-related allowances

(e) 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.

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- (f) 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
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group

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Schedule D—School-based Apprentices

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

Schedule E—Supported Wage System

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

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* (Cth), as amended from time to time, or any successor to that scheme

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

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

SWS wage assessment agreement means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

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 ~~four~~ 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 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 G—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 H—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___