The Cemetery Industry Award—Exposure Draft was first published on 3 November 2016. Subsequent amendments to the draft are as follows:		
Publication date	**Reason for amendments**	**Clauses affected**
29 March 2019	Incorporates changes resulting from [2018] FWCFB 3500, PR606395, PR606550, PR606630	14, 16, Schedule B, Schedule C, Schedule E
	Incorporates changes resulting from [2018] FWCFB 3936, PR609388	22A
	Incorporates changes resulting from [2018] FWCFB 4695, PR700550	10.5
	Incorporates changes resulting from PR701683	Schedule I
	Incorporates changes resulting from [2018] FWCFB 6863, PR701473	6
	Incorporates changes resulting from [2018] FWCFB 4704, PR610234	5, 25, 26, 27, 28
	Administrative changes by Modern Awards team	14.7 (deleted), 15
	Incorporates changes resulting from [2018] FWCFB 4735, PR610099	15
	Incorporates changes resulting from [2015] FWCFB 4658	1.3
	Exposure Draft	
2 September 2019	Incorporating A clauses into the numbering of the exposure draft	6,15,26
	Incorporating changes resulting from [2015] FWCFB 4658 at [57]	16
	Incorporating changes resulting from [2019] FWCFB 1333 at [35]	1.4 (deleted)
	Incorporates changes resulting from [2019] FWCFB 2548 , PR706933	29
	Incorporating changes resulting from AWR 2018–19 Decision [2019] FWCFB 3500, PR707483, PR707709, PR709080	14, 14.7, 16, Schedule B, Schedule C, Schedule E,
	Incorporating changes resulting from [2019] FWCFB 5144	23
	Administrative changes made by Modern Awards team to the document structure and Part and clause titles in accordance with [2019] FWCFB 5409 at [6] and Attachment A	5 (deleted), 8, 9, 10, 10.5, 14, 14.4, 14.7, 15.2, 16, 18, 19, 19.5, 22, 28.1, Schedule C, Schedule I
	Incorporating changes resulting from [2019] FWCFB 5409	4.2, 4.3, 14

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EXPOSURE DRAFT

Cemetery Industry Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the ***Cemetery Industry Award 2010*** as at 3 November 2016 and incorporates award updates up to 20 June 2019. This exposure draft does not seek to amend any entitlements under the Cemetery Industry Award 2010 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 AM2014/262. 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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Part 1—Application and Operation of this Award

1. Title and commencement

Clause 1.4 deleted in accordance with [2019] FWCFB 1333 at [35].

1.1 This award is the *Cemetery Industry 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** 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)

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

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave (see clause 16.2(a))

AQF means the Australian Qualifications Framework

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

MySuper product has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

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NES means National Employment Standards as contained in sections 59 to 131 of the Act

ordinary hourly rate means the hourly rate for an employee's classification specified in clause 14.1, plus the industry allowance

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

standard rate means the minimum weekly rate for a Cemetery Employee Class 4 in clause 14.1

3. The National Employment Standards and this award

3.1 The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

3.3 The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

4. Coverage

Clause 4.2 and 4.3 amended in accordance with [2019] FWCFB 5409 at [118]

4.1 This industry award covers employers throughout Australia in the cemetery and crematorium industry and their employees in the classifications listed in clause 11—Classifications to the exclusion of any other modern award.

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

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

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4.4 This award does not cover:

(a) an employee 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 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.

~~**Effect of variations made by the Fair Work Commission**~~

~~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.~~

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.

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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 27—Dispute resolution.

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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:
12.3	Ordinary hours of work and rostering	An individual
18.2	Time off instead of payment for overtime	An individual
19.4	Annual leave in advance	An individual
Error! Reference source not found.	Cashing out of annual leave	An individual
24.2	Public holidays – substitution	An individual

Part 2—Types of Employment and Classifications

8. Full-time employees

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

9. Part-time employees

9.1 A part-time employee is engaged to work less than an average of 38 hours per week on a reasonably predictable basis.

9.2 Part-time employees are entitled on a pro rata basis to equivalent pay and conditions to those of full-time employees.

10. Casual employees

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

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

10.2 A casual employee must be paid per ordinary hour worked:

(a) the ordinary hourly rate appropriate to the employee's classification; and

(b) a loading of **25%** of the ordinary hourly rate.

10.3 The casual loading is paid instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.

10.4 Casual employees are entitled to a minimum payment of ~~two~~ 2 hours' work at the appropriate rate.

10.5 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 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 10.5(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.

(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 27—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 ~~this~~ clause 10.5, 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 employee's hours of work fixed in accordance with clause 9—Part-time employees.

(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 ~~this~~ clause 10.5.

(o) Nothing in ~~this~~ clause 10.5 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 ~~this~~ clause 10.5 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~~clause 10.5 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of ~~this subclause~~clause 10.5 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 ~~paragraph (q)~~ clause 10.5(q).

11. Classifications

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

Part 3—Hours of work

12. Ordinary hours of work and rostering

12.1 Ordinary hours of work will be an average of 38 hours per week over a maximum ~~four~~ 4 week cycle.

12.2 Ordinary hours will be worked between the hours of 7.00 am and 6.00 pm, Monday to Friday.

12.3 By mutual arrangement between an employer and employee, ordinary hours may be arranged to allow the accrual of a rostered day off.

(a) Under clause 12.3, ordinary working hours will be worked as a 20 day, ~~four~~ 4 week cycle of ~~eight~~ 8 hours each with 24 minutes each day worked accruing as an entitlement to take one rostered day off, paid for as though worked.

(b) Subject to clause 12.3(c), a rostered day off will be taken on a day allocated by the employer within the ~~four~~ 4 week cycle.

(c) An employer and employee may agree to substitute a rostered day off for an alternate day or in the case of a breakdown in machinery or a failure or a shortage of electric power or some other emergency situation, substitution may be at the direction of the employer.

(d) Rostered days off may accrue to a maximum of ~~five~~ 5 days. The accrued days are to be taken at a time mutually agreed between the employer and the employee, but within 12 months of the date the first rostered day off accrued under clause 12.3.

12.4 An employee 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, during the spread of ordinary hours in clause 12.2, at the ordinary rate of pay.

13. Breaks

13.1 Unpaid meal break

(a) Subject to clause 13.1(b), employees will be allowed an unpaid meal break of between 30 and 60 minutes at a time mutually agreed or, if there is no agreement, at a time nominated by the employer.

(b) An employee will not be required to work more than ~~five~~ 5 consecutive hours without being allowed a meal break under clause 13.1(a).

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13.2 Paid rest break

Full-time and part-time employees will be allowed two 10 minute rest breaks each day without deduction of pay as follows:

(a) The first rest break of 10 minutes is to be allowed between the time of starting work and the usual meal break.

(b) The second rest break of 10 minutes is to be allowed between the usual meal break and the time of finishing work.

(c) Rest breaks will be taken at a mutually agreed time and place or, if there is no agreement, at a time and place nominated by the employer to ensure minimal interference with work being undertaken on any day.

Part 4—Wages and Allowances

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked.
Minimum wage table amended in accordance with [2019] FWCFB 5409 at [114].

14. Minimum rates

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

Classification	**Minimum weekly rate** **(full-time employee)**	**Minimum hourly rate**
	$	**$**
Cemetery Employee Class 1	740.80	19.49
Cemetery Employee Class 2	791.30	20.82
Cemetery Employee Class 3	818.50	21.54
Cemetery Employee Class 4	862.50	22.70
Cemetery Employee Class 5	907.50	23.88
Cemetery Employee Class 6	932.20	24.53

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

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14.2 Apprentice rates

(a) The minimum weekly rates of pay to be paid to apprentices who commenced their apprenticeship before 1 January 2014 will be the following:

Year of apprenticeship	% of minimum rate for Cemetery Employee Class 4
1st year	47.5
2nd year	60
3rd year	75
4th year	95

(b) The minimum weekly rates of pay to be paid to apprentices who commenced their apprenticeship on or after 1 January 2014 will be the following:

Year of apprenticeship	Apprentices who have not completed Year 12	Apprentices who have completed Year 12
	% of minimum rate for Cemetery Employee Class 4	
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	95	95

14.3 Adult apprentice rates

(a) The minimum rate for an adult apprentice who commenced their apprenticeship on or after 1 January 2014 and is in the first year of their apprenticeship will be **80%** of the minimum wage for Cemetery Employee Class 4, or the rate prescribed by clause 14.2(b) for the relevant year of the apprenticeship, whichever is the greater.

(b) The minimum rate for an adult apprentice who commenced their apprenticeship on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship will be the rate for the lowest adult classification in clause 14.1 or the rate prescribed by clause 14.2(b) for the relevant year of the apprenticeship, whichever is the greater.

(c) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least ~~six~~ 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 14.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

14.4 Apprentice conditions of employment

(a) Except as provided in ~~this~~ clause 14.4 or where otherwise stated, all conditions of employment specified in this award apply to apprentices.

(b) 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. Provided that ~~this~~ clause 14.4 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.

(c) For the purposes of clause 14.4(b) 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. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

(d) The amount payable by an employer under clause 14.4(b) 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.

(e) 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.

(f) An employer may meet its obligations under clause 14.4(e) by paying any fees and/or cost of textbooks directly to the RTO.

(g) 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.

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(h) 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 operates subject to the provisions of Schedule D—School-based Apprentices

(i) 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.

14.5 Junior rates

The minimum weekly rates of pay to be paid to juniors will be the following percentages of the minimum rate of pay for the appropriate classification as set out in clause 14.1 of this award.

Age	% of the appropriate classification rate
At 16 years	50
At 17 years	60
At 18 years	70
At 19 years	90
20 years and over	100

14.6 Higher duties

An employee who is required to perform work or relieve in a position of a higher class for which a higher rate of pay is prescribed in this award, will be paid the higher rate for time spent performing work at the higher class.

14.7 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 2018~~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 *Cemetery Industry Award 2010* and not the *Miscellaneous Award 2010*.

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15. 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.

15.1 Wages may be paid weekly or fortnightly by cash, cheque or into the employee's nominated bank (or other recognised financial institution) account at the option of the employer.

15.2 Payment on termination of employment

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee under this award and the NES.

(b) The requirement to pay wages and other amounts under ~~paragraph (a)~~ clause 15.2(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

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

NOTE 2: ~~Paragraph (b)~~ Clause 15.2(b) allows the Commission to make an order delaying the requirement to make a payment under ~~this~~ clause 15.2. 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.

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16. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked
Note inserted in accordance with [2015] FWCFB 4658 at [57].

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

16.1 Employers must pay to an employee the allowances the employee is entitled to under ~~this~~ clause 16. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

16.2 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 following allowance is paid for all purposes under this award:

(i) industry allowance (clause 16.2(b)).

(b) Industry allowance

In addition to the rates prescribed in clause 14—Minimum rates, an employee must be paid an industry allowance of **$32.78** per week.

(c) Leading hand allowance

(i) An employee, other than an employee classified at Class 5 or above, appointed by the employer to be in charge of between ~~two~~ 2 and ~~six~~ 6 employees, will be paid an allowance of **$18.11** per week.

(ii) An employee, other than an employee classified at Class 5 or above, appointed by the employer to be in charge of more than ~~six~~ 6 employees will be paid an allowance of **$39.68** per week.

(d) First aid allowance

An employee will be paid an allowance of **$10.35** per week if they:

(i) are appointed by the employer to perform first aid duty;

(ii) have been trained to provide first aid; and

(iii) hold a current first aid qualification.

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(e) Exhumation allowance

An employee required to do any work in an exhumation will be paid an allowance for each body exhumed in addition to their ordinary wage as follows:

(i) Where a body has been buried for 14 days or less—**$76.76** per body;

(ii) Where a body has been buried for more than 14 days but less than ~~seven~~ 7 years and had been arterially embalmed and sealed in a metal, polythene or other approved plastic container—**$92.29** per body;

(iii) Where a body has been buried for more than 14 days but less than ~~seven~~ 7 years and has not been arterially embalmed and inserted in a metal, polythene or other approved plastic container—**$153.53** per body; and

(iv) Where a body has been buried longer than ~~seven~~ 7 years—**$76.76** per body.

(f) Lift and deepen allowance

For each occasion an employee performs work in a lift and deepen procedure, the employee will be paid a lift and deepen allowance as follows:

Age of grave since last burial (years)				
	5 but less than 10	10 but less than 25	25 but less than 50	more than 50
	$	$	$	$
Per occasion	75.04	56.06	37.09	18.98

NOTE: This procedure is distinct from an exhumation in that it is performed at the request of the person with authority over the grant in order to accommodate further burials within an existing grave site. Unlike an exhumation, a lift and deepen can only occur after ~~five~~ 5 years has elapsed from the date of the last burial in the grave site (or at such longer period as prescribed by the cemetery authority). This procedure is the disinterment of the remains from a grave, wherein an authorised employee must physically recover the remains from a grave and reinter the remains into the same grave at a greater depth.

(g) Excavation allowance

An employee who is required to excavate around a coffin below the level of the lid and to place bars, tapes or ropes under the coffin so it may be lifted from the grave (and is not required to actually perform an exhumation or lift and deepen procedure) will be paid an allowance of:

(i) **$46.58** for the first body; and

(ii) **$23.29** for each additional body from the same grave.

16.3 Expense-related allowances

(a) Meal allowance

An employee who is required to work overtime for more than ~~two~~ 2 hours after their ordinary finishing time on any day, and who has not been advised of the requirement the day before, will be paid a meal allowance of **$13.01** for each meal.

(b) Vehicle allowance

An employee who reaches agreement with their employer to use their own motor vehicle on the employer's business will be paid an allowance of **$0.78** per kilometre travelled.

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

17. Superannuation

17.1 Superannuation legislation

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

(b) The rights and obligations in these clauses supplement those in superannuation legislation.

17.2 Employer contributions

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

17.3 Voluntary employee contributions

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 17.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

(c) The employer must pay the amount authorised under clauses 17.3(a) or 17.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or 17.3(b) was made.

17.4 Superannuation fund

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

(a) AustralianSuper;

(b) Sunsuper;

(c) CareSuper;

(d) Statewide Superannuation Trust;

(e) 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

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

Part 5—Overtime

18. Overtime

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

18.1 Payment for overtime

(a) All time worked outside ordinary hours specified in clause 12—Ordinary hours of work and rostering, worked at the direction of the employer, will be paid as follows:

(i) Monday to Saturday—**150%** of the ordinary hourly rate for the first ~~two~~ 2 hours, and **200%** of the ordinary hourly rate thereafter; and

(ii) Sunday—**200%** of the ordinary hourly rate.

(b) In calculating overtime each day's work will stand alone.

18.2 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 18.2.

(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 18.2(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 18.2 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 18.2 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 18.2 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 18.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.

(g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in ~~paragraph (e)~~clause 18.2(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.

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(h) The employer must keep a copy of any agreement under clause 18.2 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 18.2 will apply, including the requirement for separate written agreements under ~~paragraph (b)~~clause 18.2(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 18.2 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 18.2.

Part 6—Leave and Public Holidays

19. Annual leave

19.1 Annual leave is provided for in the NES.

19.2 When taking a period of annual leave for which they have become entitled an employee will be paid a loading of **17.5%** of the ordinary hourly rate in addition to payment provided by the NES for such leave.

Issue remains outstanding with further decision to be issued – see [2019] FWCFB 5409 at [247].

19.3 An employee must take a period of annual leave when directed by the employer to do so during a period when the employer's operations are closed or partially closed.

19.4 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 19.4 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.

(c) The employer must keep a copy of any agreement under clause 19.4 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 19.4, 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.

19.5 Cashing out of annual leave

(a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 19.5.

(b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 19.5.

(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 19.5 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 19.5 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

(g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

(h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.

(i) The employer must keep a copy of any agreement under clause 19.5 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 19.5.

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 19.5.

NOTE 3: An example of the type of agreement required by clause 19.5 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.

19.6 Excessive leave accruals: general provision

NOTE: Clauses 19.6 to 19.8 contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

(a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.

(b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.

(c) Clause 19.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

(d) Clause 19.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

(a) If an employer has genuinely tried to reach agreement with an employee under clause 19.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

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(b) However, a direction by the employer under ~~paragraph (a)~~ clause 19.7(a):

(i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 19.6, 19.7 or 19.8 or otherwise agreed by the employer and employee) are taken into account; and

(ii) must not require the employee to take any period of paid annual leave of less than one week; and

(iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and

(iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.

(c) The employee must take paid annual leave in accordance with a direction under ~~paragraph (a)~~clause 19.7(a) that is in effect.

(d) An employee to whom a direction has been given under ~~paragraph (a)~~clause 19.7(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in ~~paragraph (d)~~clause 19.7(d) may result in the direction ceasing to have effect. See clause 19.7(b)(i).

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

19.8 Excessive leave accruals: request by employee for leave

(a) If an employee has genuinely tried to reach agreement with an employer under clause 19.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

(b) However, an employee may only give a notice to the employer under ~~paragraph (a)~~clause 19.8(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 19.7(a) that, when any other paid annual leave arrangements (whether made under clause 19.6, 19.7 or 19.8 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 19.8(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 19.6, 19.7 or 19.8 or otherwise agreed by the employer and employee) are taken into account; or

(ii) provide for the employee to take any period of paid annual leave of less than one week; or

(iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

(iv) be inconsistent with any leave arrangement agreed by the employer and employee.

(d) An employee is not entitled to request by a notice under ~~paragraph (a)~~clause 19.8(a) more than 4 weeks' paid annual leave in any period of 12 months.

(e) The employer must grant paid annual leave requested by a notice under ~~paragraph (a)~~clause 19.8(a).

20. Personal/carer's leave and compassionate leave

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

21. Parental leave and related entitlements

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

22. Community service leave

Community service leave is provided for in the NES.

23. Unpaid family and domestic violence leave

Clause 23 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.

24. Public holidays

24.1 Public holiday entitlements are provided for in the NES.

24.2 An employer and employee may agree to substitute a public holiday for an alternate day by agreement.

24.3 All work performed on a public holiday at the direction of the employer will be paid for at **250%** of the ordinary hourly rate with a minimum payment of ~~four~~ 4 hours.

24.4 Part-day public holidays

For provisions relating to part-day public holidays see Schedule I—Part-day Public Holidays

Part 7—Consultation and Dispute Resolution

25. Consultation about major workplace change

25.1 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.

25.2 For the purposes of the discussion under clause 25.1(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.

25.3 Clause 25.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

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25.4 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 25.1(b).

25.5 In clause 25 **significant effects**, on employees, includes any of the following:

(a) termination of employment; or

(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

(c) loss of, or reduction in, job or promotion opportunities; or

(d) loss of, or reduction in, job tenure; or

(e) alteration of hours of work; or

(f) the need for employees to be retrained or transferred to other work or locations; or

(g) job restructuring.

25.6 Where this award makes provision for alteration of any of the matters defined at clause 25.5, such alteration is taken not to have significant effect.

26. Consultation about changes to rosters or hours of work

26.1 Clause 26 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.

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

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

(a) provide to the employees and representatives mentioned in clause 26.2 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.

26.4 The employer must consider any views given under clause 26.3(b).

26.5 Clause 26 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

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27. Dispute resolution

27.1 Clause 27 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES.

27.2 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.

27.3 If the dispute is not resolved through discussion as mentioned in clause 27.2, 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.

27.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 27.2 and 27.3, a party to the dispute may refer it to the Fair Work Commission.

27.5 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.

27.6 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.

27.7 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 27.

27.8 While procedures are being followed under clause 27 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.

27.9 Clause 27.8 is subject to any applicable work health and safety legislation.

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Part 8—Termination of Employment and Redundancy

28. Termination of employment

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

28.1 Notice of termination by an employee

(a) Clause 28.1 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 ~~paragraph (b)~~ clause 28.1(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 ~~paragraph (b)~~clause 28.1(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 ~~paragraph (b)~~clause 28.1(b), then no deduction can be made under ~~paragraph (d)~~clause 28.1(d).

(f) Any deduction made under ~~paragraph (d)~~clause 28.1(d) must not be unreasonable in the circumstances.

28.2 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 28.2 is to be taken at times that are convenient to the employee after consultation with the employer.

29. Redundancy

Clause 29 amended in accordance with [2019] FWCFB 2548 at [6] and PR706933.

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

29.1 Transfer to lower paid duties on redundancy

(a) Clause 29.1 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 29.1(c).

(c) If the employer acts as mentioned in clause 29.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

29.2 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 29 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.

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29.3 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 29.3(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 29.3(b).

(d) An employee who fails to produce proof when required under clause 29.3(b) is not entitled to be paid for the time off.

(e) This entitlement applies instead of clause 28.2.

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Schedule A—Classification Structure and Definitions

A.1 Classification structure

All employees engaged at Class 2 and above (other than Class 2—Assistant Gravedigger) will have completed, hold and utilise an appropriate licence other than motor car, motorcycle and light truck; and an accredited short course certificate.

A.2 Cemetery Employee Class 1

- less than ~~six~~ 6 months service with an employer;
- works under routine supervision either individually or in a team environment;
- is responsible for their own work subject to routine supervision.

A.2.1 Indicative of the tasks which an employee at this level may perform on a daily or periodic basis include but are not limited to the following:

- general maintenance;
- plant equipment and property maintenance;
- fencing;
- concreting and bitumen work;
- lawn mowing;
- raking leaves;
- sweeping;
- use of weed eater;
- wheel barrow;
- digging trenches, removal of trees;
- walk behind i.e. domestic/industrial mowers.

A.3 Cemetery Employee Class 2

- more than ~~six~~ 6 months service with the employer;
- works from more detailed instructions and procedures;
- works under general supervision either individually or in a team environment;
- is responsible for assuring the quality of their own work.

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A.3.1 Indicative of tasks which an employee at this level may perform on a daily or periodic basis including all tasks listed under Class 1 and include, but are not limited to the following:

- use of jack hammer, concrete mixer;
- use of hand tools including, power drill, pitchfork, electric saw, garden tools;
- digging trenches;
- lawn mowing including ride-on i.e. tractor driver (without implements);
- fertilising, spraying including, herbicides, pesticides;
- carting soil, material;
- clipping hedges, edges, pruning;
- removal of tree cuttings;
- use of light motors i.e. pumps, generator, chainsaw, post-hole digger and ability to maintain equipment in proper working order.

A.3.2 Assistant Gravedigger

Assists Gravedigger in some of the following tasks:

- digging, timbering graves under supervision;
- carting dirt, placing mats;
- cleaning/trimming around site;
- assist in lowering of coffin/casket;
- prepare area for funeral including surface reparation;
- tops up soil and cleans up after burial.

A.4 Cemetery Employee Class 3

A.4.1 Uncertificated Gravedigger

- no direct supervision;
- digs and backfills graves by hand or with mechanical equipment;
- includes identification of sites;
- preparation of graves;
- dresses graves for burial (i.e. placement of artificial lawn, lowering machine or bearers and generally tidying the area and approach to the grave).

A.4.2 Operator Assistant

- carries out the duties of a crematorium operator, but under direct supervision;

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- removes coffin/casket from chapel;
- removes flowers/fittings;
- conveys coffin/casket to furnace.

A.4.3 Memorial Person

- preparation of plaques and remains for memorialisation;
- marking beds and construction of concrete bases;
- awareness/knowledge of maps, grounds etc;
- miscellaneous paperwork.

A.4.4 Funeral Assistant

- assistant to Funeral Supervisor;
- under general/routine supervision;
- dresses graves for burial (i.e. placement of artificial lawn, lowering machine or bearers and generally tidying the area and approach to the grave);
- prepares chapels for service;
- cleans/maintains chapels;
- gives instruction in the use of chapel equipment;
- assists with placing of coffin/casket over the grave;
- assists with lowering of coffin/casket into the grave.

A.5 Cemetery Employee Class 4

Employee who has completed an appropriate and relevant trade certificate i.e. Certificated Gardener, Certificated Gravedigger or other qualified tradesperson.

A.5.1 Funeral Supervisor

Carries out one or more of the following:

- supervising funeral;
- able to authorise paperwork as required by the relevant State or Territory legislation;
- keeps appropriate paperwork, records;
- supervise conduct of funeral;
- assist with purchase/allocation of graves and memorials;
- control traffic;

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- conveyance of remains other than cremated remains within and between cemeteries controlled by the employing trust;
- advise public on locations of graves/memorials and funerals;
- may be required to hold and utilise appropriate motor licence.

A.5.2 Crematorium Operator

- operate crematorium equipment;
- maintain crematorium equipment;
- keep appropriate administrative records;
- authorises paperwork as required by the relevant State or Territory legislation.

A.5.3 This classification level will also apply to an employee:

(a) with a minimum of ~~two~~ 2 years industry experience; and

(b) who has not received the opportunity to be formally accredited; and

(c) can demonstrate knowledge and skills in the following areas:

- identifying and/or checking accurately, the location of a grave site;
- digging graves by hand or using appropriate machinery in full monument and law burial areas in a wide variety of soil conditions;
- directing backhoe/excavator in digging graves as in Class 2 above;
- assessing soil conditions and the installation of appropriate shoring for individual graves;
- preparing a grave site and surrounds for a funeral;
- assisting at a funeral including the use of lowering devices/tapes;
- backfilling and clean-up of grave site;
- assisting in the training and education of other gravediggers,

provided that, at the first available opportunity, the employee will undertake the necessary steps to achieve accreditation.

A.6 Cemetery Employee Class 5

A.6.1 Indicative experience and/or qualifications

Possession of an AQF III qualification or completion of an apprenticeship or traineeship at AQF III or equivalent consistent with the Funeral Services Training Package, Horticulture Training Package or other relevant qualification and has progress towards an AQF IV qualification or higher relevant to the industry.

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A.6.2 Indicative level of responsibility

An employee at this class would require remote supervision and who:

- demonstrates understanding of a broad knowledge base incorporating some theoretical concepts;
- applies solutions to a defined range of unpredictable problems;
- identifies, analyses and evaluates information from a variety of sources;
- identifies and applies skill and knowledge to a variety of contexts with some depth in some areas;
- takes responsibility for their own outputs in relation to specified human resource standards; and
- provides hands on management direction for a work team usually on site.

A.7 Cemetery Employee Class 6

A.7.1 Indicative experience and/or qualifications

Possession of an AQF IV qualification or higher relevant to the industry.

A.7.2 Indicative level of responsibility

An employee at this class would require remote supervision and who:

- demonstrates understanding of a broad knowledge base incorporating some theoretical concepts;
- applies solutions to a defined range of unpredictable problems;
- identifies, analyses and evaluates information from a variety of sources;
- identifies and applies skill and knowledge to a variety of contexts with some depth in some areas;
- takes responsibility for their own outputs in relation to specified human resource standards;
- provides guidance and direction in the overall management; and
- acts as a liaison officer with senior management to ensure company standards are implemented and maintained.

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Schedule B—Summary of Hourly Rates of Pay

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

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

B.1 Ordinary hourly rate

Ordinary hourly rate includes the industry allowance (clause 16.2(b)) which is payable for all purposes.

B.2 Adult full-time and part-time employees

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

	Ordinary hours	Public holiday
	% of ordinary hourly rate [1]	
	100%	250%
	$	$
Cemetery Employee Class 1	20.35	50.88
Cemetery Employee Class 2	21.68	54.20
Cemetery Employee Class 3	22.40	56.00
Cemetery Employee Class 4	23.56	58.90
Cemetery Employee Class 5	24.74	61.85
Cemetery Employee Class 6	25.39	63.48

[1] **Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.

Commented [FWC1]: (Minimum hourly rate in cl. 14.1) + (all-purpose industry allowance in cl. 16.2(b) divided by 38). See also cl. C.1.1.

Rates in table include the all-purpose industry allowance.

Commented [FWC2]: See clause 24.3.

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

	Ordinary hours	Monday to Saturday –first 2 hours	Monday to Saturday –after 2 hours	Sunday	Public holiday
	% of ordinary hourly rate [1]				
	100%	150%	200%	200%	250%
	$	$	$	$	$
Cemetery Employee Class 1	20.35	30.53	40.70	40.70	50.88
Cemetery Employee Class 2	21.68	32.52	43.36	43.36	54.20
Cemetery Employee Class 3	22.40	33.60	44.80	44.80	56.00
Cemetery Employee Class 4	23.56	35.34	47.12	47.12	58.90
Cemetery Employee Class 5	24.74	37.11	49.48	49.48	61.85

Commented [FWC3]: (Minimum hourly rate in cl. 14.1) + (all-purpose industry allowance in cl. 16.2(b) divided by 38). See also cl. C.1.1.

Rates in table include the all-purpose industry allowance.

Commented [FWC4]: Relevant percentage in cl 18.1

Commented [FWC5]: See cl 24.3.

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	Ordinary hours	Monday to Saturday –first 2 hours	Monday to Saturday –after 2 hours	Sunday	Public holiday
	% of ordinary hourly rate [1]				
	100%	150%	200%	200%	250%
	$	$	$	$	$
Cemetery Employee Class 6	25.39	38.09	50.78	50.78	63.48

[1] **Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.

Commented [FWC3]: (Minimum hourly rate in cl. 14.1) + (all-purpose industry allowance in cl. 16.2(b) divided by 38). See also cl. C.1.1.

Rates in table include the all-purpose industry allowance.

Commented [FWC4]: Relevant percentage in cl 18.1

Commented [FWC5]: See cl 24.3.

B.3 Adult casual employees

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

B.3.1 Casual adult employees—ordinary and penalty rates

	Ordinary hours	Public holiday
	% of ordinary hourly rate [1]	
	125%	275%
	$	$
Cemetery Employee Class 1	25.44	55.96
Cemetery Employee Class 2	27.10	59.62
Cemetery Employee Class 3	28.00	61.60
Cemetery Employee Class 4	29.45	64.79
Cemetery Employee Class 5	30.93	68.04
Cemetery Employee Class 6	31.74	69.82

[1] **Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.

Commented [FWC6]: (Minimum hourly rate in cl. 14.1) + (all-purpose industry allowance in cl. 16.2(b) divided by 38). See also cl. C.1.1.

Rates in table include the all-purpose industry allowance.

Commented [FWC7]: Ordinary hourly rate + 25% casual loading in cl. 10.2(b)

Commented [FWC8]: Percentage in clause 24.3 + 25% casual loading in cl 10.2(b).

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Schedule C—Summary of Monetary Allowances

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

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

C.1 Wage-related allowances

C.1.1 The following wage-related allowances are based on the weekly standard rate defined in clause 2—Definitions as the minimum weekly rate for a Cemetery Employee Class 4 in clause 14.1 = **$862.50**

Allowance	Clause	% of standard rate ~~$862.50~~	$ ~~per week unless stated otherwise~~	Payable
Industry allowance[1]	16.2(b)	3.8	32.78	per week
Leading hand—Class 5 and above—in charge of:	16.2(c)			
2 to 6 employees	16.2(c)(i)	2.1	18.11	per week
More than 6 employees	16.2(c)(ii)	4.6	39.68	per week
First aid allowance	16.2(d)	1.2	10.35	per week
Exhumation allowance:	16.2(e)			
Body buried for 14 days or less	16.2(e)(i)	8.9	76.76 ~~per body~~	per body
Body buried for 14 days to ~~seven~~ 7 years and arterially embalmed and sealed in approved container	16.2(e)(ii)	10.7	92.29 ~~per body~~	per body
Body buried for 14 days to ~~seven~~ 7 years and not arterially embalmed and sealed in approved container	16.2(e)(iii)	17.8	153.53 ~~per body~~	per body
Body buried for more than ~~seven~~ 7 years	16.2(e)(iv)	8.9	76.76 ~~per body~~	per body
Lift and deepen allowance—age of grave since last burial:	16.2(f)			
5 to 10 years		8.7	75.04 ~~per occasion~~	per occasion
10 to 25 years		6.5	56.06 ~~per occasion~~	per occasion
25 to 50 years		4.3	37.09 ~~per occasion~~	per occasion
More than 50 years		2.2	18.98 ~~per occasion~~	per occasion

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Allowance	Clause	% of standard rate ~~$862.50~~	$ ~~per week unless stated otherwise~~	Payable
Excavation allowance:				
First body	16.2(g)(i)	5.4	46.58 ~~for first body~~	for first body
Each additional body from the same grave	16.2(g)(ii)	2.7	23.29 ~~per additional body~~	per additional body

[1] This allowance applies for all purposes

C.1.2 Adjustment of wage–related allowances

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

C.2 Expense-related allowances

C.2.1 The following expense-related allowances will be payable to employees in accordance with clause 16.3:

Allowance	Clause	$	Payable
Meal allowance—overtime of more than ~~two~~ 2 hours after ordinary finishing time	16.3(a)	13.01 ~~per meal~~	per meal
Vehicle allowance	16.3(b)	0.78 ~~per km~~	per km

C.2.2 Adjustment of expense-related allowances

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

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

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

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Schedule E—Supported Wage System

Monetary amounts in this clause 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 Social Services that records the employee's productive capacity and agreed wage rate

E.3 Eligibility criteria

E.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

E.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

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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.

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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~~ 4 weeks) may be needed.

E.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

E.10.3 The minimum amount payable to the employee during the trial period must be no less than **$87** per week.

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

E.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause E.5.

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

Link to PDF copy of Agreement for Time Off Instead of Payment for Overtime.

Name of employee: _____

Name of employer: _____

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

Date and time overtime started: ___/___/20___ ____ am/pm

Date and time overtime ended: ___/___/20___ ____ am/pm

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

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Schedule G—Agreement to Take Annual Leave in Advance

Link to PDF copy of Agreement to Take Annual Leave in Advance.

Name of employee: _____

Name of employer: _____

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

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

The leave in advance will commence on: ___/___/20___

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

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Schedule H—Agreement to Cash Out Annual Leave

Link to PDF copy of Agreement to Cash Out Annual Leave.

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

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Schedule I—Part-day Public Holidays

I.1 This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

I.2 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause I.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.

(g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause I.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

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