

The Fitness Industry Award—Exposure Draft was first published on 18 December 2015. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
1 March 2019	Exposure Draft	
29 January 2020	Exposure Draft	
30 April 2020	Incorporating changes resulting from [2019] FWCFB 8569 at [7] - [8]	Award Title, 1.1, 4.3, 15.5
	Administrative changes made by Modern Awards team	4.7(a), 12.3(a), 17.3(e)(iv), 21.3(c), 21.6, A.2.1(b), A.2.1(c), A.2.1(d), A.3.3(a)(i), A.3.3(b), A.3.3(d), A.4.1(a)(i), A.4.1(a)(ii), A.5.3(b)(i), A.5.3(b)(ii), A.5.3(d), A.7.1(b), B.2, C.1.1
	Incorporating changes resulting from [2020] FWCFB 1837 ; PR718141	Schedule X
	Incorporating changes resulting from [2020] FWCFB 2124 at [90], [93], [96]	12.2(a), 12.2(b), 12.3(a), 12.3(b), C.1.1

EXPOSURE DRAFT

Fitness Industry Award 20~~20~~~~XX~~

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Fitness Industry Award 2010* (the Fitness Award) as at 18 December 2015 and incorporates award updates up to 8 April 2020. This exposure draft does not seek to amend any entitlements under the Fitness 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 [AM2014/227](#). 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 1.1 updated to incorporate changes resulting from [\[2019\] FWCFB 8569](#) at [7] – [8]

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

2. Definitions

In this award, unless the contrary intention appears:

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

centre means a venue or location at which operations in the fitness industry are conducted.

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).

fitness industry has the meaning given in clause 4.2.

minimum hourly rate means the minimum hourly rate prescribed in clause 15—Minimum rates.

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

NES means the National Employment Standards as contained in sections 59 to 131 of the [Act](#).

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.

pool means swimming pool.

standard rate means the minimum weekly rate for a Level 3 in clause 15.1—Minimum rates.

3. The National Employment Standards and this award

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

4. Coverage

Clause 4.3 updated to incorporate changes resulting from [2019] FWCFCB 8569 at [7] – [8]
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Administrative change made to clause 4.7(a) by Modern Awards team

- 4.1 This industry award covers employers throughout Australia engaged in the fitness industry and their employees in the classifications in this award to the exclusion of any other modern award.
- 4.2 The **fitness industry** means the operation or provision of:
- (a) fitness centres;
 - (b) fitness services or classes;
 - (c) group fitness organisations;
 - (d) weight loss/control centres;
 - (e) aquatic centres;
 - (f) aquatic services or classes;
 - (g) indoor sports centres;
 - (h) golf driving ranges;
 - (i) dance centres;
 - (j) martial arts centres;
 - (k) recreational camps;
 - (l) tennis clubs and centres;
 - (m) tennis coaching or classes; and
 - (n) gymnastic services, activities or classes.

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- 4.3** This award does not cover employers or employees covered by the following awards:
- (a) the *Amusement, Events and Recreation Award 20~~20XX~~*;
 - (b) the *Children's Services Award 20~~10XX~~*;
 - (c) the *Cleaning Services Award 20~~2020~~*;
 - (d) the *Hospitality Industry (General) Award 20~~2020~~*;
 - (e) the *Local Government Industry Award 20~~2020~~*;
 - (f) the *Registered and Licensed Clubs Award 20~~20XX~~*; or
 - (g) the *Security Services Industry Award 20~~20XX~~*.
- 4.4** This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of fitness centres, group fitness organisations, weight loss/control centres, aquatic centres, indoor sports centres, golf driving ranges, dance centres, martial arts centres, recreational camps, tennis clubs and centres.
- 4.5** This award covers any employer which supplies labour on an on-hire basis in the fitness industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. Clause 4.5 operates subject to the exclusions from coverage in this award.
- 4.6** This award covers employers which provide group training services for trainees engaged in the fitness industry and/or parts of that industry and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. Clause 4.6 operates subject to the exclusions from coverage in this award.
- 4.7** This award does not cover:
- (a) employees excluded from award coverage by ~~the *Fair Work Act 2009 (Cth)*~~ (the [Act](#));
 - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*), or employers in relation to those employees; or
 - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*), or employers in relation to those employees.
- 4.8** 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 normally performed by the employee and to the environment in which the employee normally performs the work.

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

5. Individual flexibility arrangements

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

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

5.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

5.3 An agreement may only be made after the individual employee has commenced employment with the employer.

5.4 An employer who wishes to initiate the making of an agreement must:

- (a) give the employee a written proposal; and
- (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

5.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

5.6 An agreement must do all of the following:

- (a) state the names of the employer and the employee; and
- (b) identify the award term, or award terms, the application of which is to be varied; and
- (c) set out how the application of the award term, or each award term, is varied; and
- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

5.7 An agreement must be:

- (a) in writing; and
- (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

5.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.

5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

5.11 An agreement may be terminated:

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

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

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

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

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

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

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

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

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

6.2 Responding to the request

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

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

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

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

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

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

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

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

6.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 28—Dispute resolution.

7. Facilitative provisions

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

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

Clause	Provision	Agreement between an employer and:
13.6(a)	Rostered days off	The majority of employees
13.7	Make-up time	An individual
16.1	Payment of wages	The majority of employees
17.3(e)(v)	Sleepover allowance—duration	An individual
19.4	Time off instead of overtime	An individual
21.4	Annual leave in advance	An individual
21.5	Cashing out of annual leave	An individual
25.2	Substitution of public holidays	An individual

Part 2—Types of Employment and Classifications

8. Classifications

8.1 The classification structure and definitions for this award are set out in Schedule A—Classification Definitions.

8.2 An employer must advise an employee in writing of their classification:

- (a) on commencement of employment; and
- (b) on any subsequent changes to their classification.

9. Types of employment

9.1 An employee may be employed in one of the following categories:

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

10. Full-time employees

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

11. Part-time employees

11.1 A part-time employee is an employee who:

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

11.2 At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least:

- (a) the hours worked each day;
- (b) which days of the week the employee will work; and
- (c) the actual starting and finishing times each day.

11.3 Any agreed variation to the hours of work will be recorded in writing.

11.4 An employer is required to roster a part-time employee for a minimum of 3 consecutive hours on a shift or a minimum of 3 hours, exclusive of meal breaks, on a broken shift.

11.5 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 12—Casual employees.

11.6 All time worked in excess of the hours as agreed under clause 11.2 or varied under clause 11.3 will be overtime and paid for at the rates prescribed in clause 19—Overtime.

11.7 A part-time employee employed under the provisions of clause 11 must be paid for ordinary hours worked at the minimum hourly rate prescribed in clause 15—Minimum rates for the work performed.

12. Casual employees

Clauses 12.2(a) and 12.2(b) updated to incorporate changes resulting from [\[2020\] FWCFCB 2124](#) at [93]

Clauses 12.3(a) and 12.3(b) updated to incorporate changes resulting from [\[2020\] FWCFCB 2124](#) at [90]

Administrative change made to clause 12.3(a) by Modern Awards team

12.1 A casual employee is an employee engaged and paid as a casual employee.

12.2 Casual loading

- (a) For each ordinary hour worked on Monday to Friday, a casual employee must be paid: ~~in accordance with 15.1 Minimum rates~~ ~~Schedule B Summary of Hourly Rates of Pay (B.2 Casual employees):~~
- (i) the minimum hourly rate; and
 - (ii) a loading of **25%** of the minimum hourly rate, for the work being performed.
- (b) For each ordinary hour worked on Saturday, Sunday or a public holiday, a casual employee must be paid: ~~in accordance with 15.1 Minimum rates~~ ~~Schedule B Summary of Hourly Rates of Pay (B.2 Casual employees):~~
- (i) the minimum hourly rate; and
 - (ii) a loading of **30%** of the minimum hourly rate, for the work being performed.

12.3 Minimum engagement

- (a) Subject to clauses ~~12.3(b) and 25.3~~, a casual employee must be engaged for a minimum period of 3 hours' work at the appropriate rate or be paid per engagement for a minimum of 3 hours' work at the appropriate rate.
- (b) ~~Notwithstanding clause 12.3(a) and subject to clause 25.3, a~~ A casual employee who is classified as a Level 2, 3, 3A, 4, 4A or 5 instructor, trainer or tennis coach or as a trainee student undertaking practical work involvement may be engaged for a minimum period of one hour's work at the appropriate rate or be paid per engagement for a minimum of one hour's work at the appropriate rate.

12.4 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.

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- (e) Any request under clause 12.4 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in clause 12.4(b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 28—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 12.4, the employer and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 11.2.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 12.4.
- (o) Nothing in clause 12.4 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 12.4 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 12.4 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 12.4 by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 12.4(q).

Part 3—Hours of Work

13. Ordinary hours of work and rostering arrangements

- 13.1 Ordinary hours may be worked over any 5 days of the week, between the hours of:
- (a) 5.00 am and 11.00 pm, Monday to Friday; and
 - (b) 6.00 am and 9.00 pm, Saturday and Sunday.
- 13.2 Ordinary hours of work must not exceed an average of 38 hours per week over a period of 4 weeks.
- 13.3 The ordinary hours of work for a full-time or part-time employee must not exceed 10 hours on any one day.
- 13.4 An employee may be rostered to work a broken shift on any day provided that:
- (a) the shift is not broken into more than 2 parts;
 - (b) the total length of the shift is not less than 3 hours, exclusive of meal breaks; and
 - (c) the span of hours from the start of the first part of the shift to the end of the second part of the shift is not more than 12 hours.

13.5 An employee must be notified by their employer of their rostered hours. At least 7 days' notice must be given by the employer to an employee of any change in their rostered hours, except in the case of an emergency.

13.6 Rostered days off (RDO)

- (a) The employer and the majority of employees at an enterprise may agree to establish a system of RDO.
- (b) The terms of any agreement to introduce a system of RDO must be set out in the time and wages records.
- (c) Following the introduction of a system of RDO:
 - (i) An employee may elect, with the consent of the employer, to:
 - take a RDO at any time;
 - take RDOs in part day amounts; and/or
 - accrue some or all RDOs for the purpose of creating a bank to be drawn on by the employee at a time mutually agreed between the employer and the employee.
 - (ii) An employer must record RDO arrangements in the time and wages record.

13.7 Make-up time

An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in this award. An employer must record make-up time arrangements in the time and wages record.

14. Breaks

14.1 Unpaid meal break

- (a) An employee must be given an unpaid meal break of between 30 minutes and 60 minutes no later than 5 hours after commencing work and 5 hours after the resumption of work from a previous meal break.
- (b) An employee required to work through a meal break must be paid **200%** of the minimum hourly rate for all time so worked until a meal break is allowed.

14.2 Paid rest break

- (a) An employee must be allowed a paid 10 minute rest break between:
 - (i) their time of commencing work and their meal break; and
 - (ii) their meal break and their time of ceasing work for the day.

- (b) A casual employee who works 3 hours or less per shift is not entitled to a paid rest break.

Part 4—Wages and Allowances

15. Minimum rates

Clause 15.5 updated to incorporate changes resulting from [\[2019\] FWCFB 8569](#) at [7] – [8]

- 15.1** An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee:

Employee classification level	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Level 1	740.80	19.49
Level 2	762.10	20.06
Level 3	818.50	21.54
Level 3A	862.50	22.70
Level 4	898.00	23.63
Level 4A	941.10	24.77
Level 5	991.90	26.10
Level 6	983.30	25.88
Level 7	1021.60	26.88

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

15.2 Junior rates

The minimum rates for a junior employee are the following percentages of the adult minimum rate for the classification appropriate to the work performed:

Age	%
16 years of age and under	55
17 years of age	65
18 years of age	75
19 years of age	85
20 years of age	100

15.3 Higher duties

An employee appointed by the employer to perform the work of a classification higher than the employee's usual classification must be paid at least the rate applicable to the higher classification for the hours worked at the higher level.

15.4 Supported wage system

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

15.5 National training wage

- (a) Schedule E to the [Miscellaneous Award 2020XX](#) sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the [Miscellaneous Award 2020XX](#) as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the [Miscellaneous Award 2020XX](#) is to be read as referring to the *Fitness Industry Award 2020XX* and not the [Miscellaneous Award 2020XX](#).

16. Payment of wages

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

16.1 Frequency of payment

Wages must be paid weekly or fortnightly or, by agreement between the employer and the majority of employees, monthly.

16.2 Method of payment

Wages must be paid by:

- (a) cash;
- (b) cheque; or
- (c) electronic funds transfer into the bank or financial institution account nominated by the employee,

as determined by the employer.

16.3 Day off coinciding with payday

- (a) Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with payday, the employee must be paid no later than the working day immediately following payday.
- (b) If the employer is able to make suitable arrangements, wages may be paid on the working day preceding payday.

16.4 Absences from duty under an averaging system

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following applies:

- (a) The employee accrues a credit for each day the employee works ordinary hours in excess of the daily average.
- (b) The employee incurs a debit for each day of absence from duty other than when the employee is on paid leave, workers compensation or jury service.
- (c) An employee absent for part of a day (other than when the employee is on paid leave, workers compensation or jury service) incurs a proportion of the debit for the day, based on the proportion of the working day that the employee was in attendance.

16.5 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under clause 16.5(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: Clause 16.5(b) allows the Commission to make an order delaying the requirement to make a payment under clause 16.5. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

17. Allowances

Administrative change made to clause 17.3(e)(iv) by Modern Awards team

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

- 17.1** Employers must pay to an employee the allowances the employee is entitled to under clause 17.

NOTE: See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment. Employees engaged under clause 11—Part-time employees shall be paid all allowances on a pro rata, hourly, basis. Employees engaged other than on a full-time basis under clause 10—Full-time employees shall be paid pro rata the wage-related allowances detailed in clause 17.2(a).

17.2 Wage-related allowances

(a) Leading hands and supervisors

An employee at classification Level 4A or below in charge of the following number of employees must be paid:

Number of employees	\$ per week
1 to 5	24.56
6 to 10	33.56
More than 10	45.02

(b) Broken shift allowance

An employee working a rostered broken shift must be paid per day **\$13.91** extra and for excess fares an expense-related allowance of **\$1.94** per day.

(c) First aid allowance

An employee who is rostered by an employer to be on first aid duty at a particular time must be paid **\$2.62** extra per day.

17.3 Expense-related allowances

(a) Meal allowance

An employee required to work overtime for more than one and a half hours immediately after their ordinary hours of work must be paid a meal allowance of **\$ 11.98** unless the employer provides a meal.

(b) Vehicle allowance

(i) An employee who, by agreement with their employer, uses their own motor vehicle in the performance of duties must be paid **\$0.78** per kilometre travelled.

- (ii) An employee who, by agreement with their employer, uses their own motorcycle in the performance of duties must be paid **\$0.26** per kilometre travelled.

(c) Uniforms and protective clothing

- (i) An employee who is required to wear specific clothing as part of their employment must be reimbursed for the reasonable cost of:

- purchasing the clothing; and
- laundering or dry cleaning the clothing,

unless the clothing is provided by the employer without cost to the employee or is cleaned by the employer.

- (ii) Where the clothing is provided by the employer it will remain the property of the employer.

(d) Travelling time and fares

- (i) An employee who is required by the employer to travel from one place of work to another must be reimbursed by the employer all fares necessarily incurred by the employee.

- (ii) All time occupied in such travel is deemed to be working time and the employee must be paid at the appropriate rate.

(e) Sleepover allowance

- (i) Sleepover means a continuous period of 8 hours during which an employee is required to sleep at the workplace and be available to deal with any urgent situation which cannot be dealt with by another employee or be dealt with after the end of the sleepover period.

- (ii) The employer must take all reasonable steps to enable the employee to sleep at the workplace including the provision of a bed with privacy. Access to a bathroom, toilet and a meal room must also be provided free of charge to the employee.

- (iii) An employee will only sleep over if:

- there is agreement between the employee and the employer with at least one week's notice in advance, except in the case of an emergency; and
- the sleepover consists of 8 continuous hours.

- (iv) The sleepover allowance is equivalent to 3 hours' payment at the employee's ordinary rate of pay. Such payment is compensation for the sleepover and for all necessary work of up to 2 hours' duration during the sleepover period. Any necessary work in excess of 2 hours during the sleepover period must be compensated at overtime rates in addition to the sleepover allowance.

- (v) An employee on a sleepover must not be required to work more than 8 hours before, and/or more than 8 hours after, a sleepover, unless provision has been made at a workplace to work longer hours for the purpose of providing more continuous leisure time within the roster and this arrangement has the genuine agreement of the employees affected and does not adversely affect the health and safety of the employee(s) involved.

18. Superannuation

18.1 Superannuation legislation

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

18.2 Employer contributions

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

18.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 18.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 18.3(a) or 18.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or 18.3(b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another

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

- (a) AustralianSuper; or
- (b) CareSuper; or
- (c) First State Super; or
- (d) Nationwide Superannuation Fund; or
- (e) Sunsuper; or
- (f) Club Super; or
- (g) Intrust; or
- (h) AMP Superannuation Savings Trust; or
- (i) HESTA Super Fund; or
- (j) Statewide Superannuation Trust; or
- (k) Tasplan; or
- (l) HOSTPLUS Superannuation Fund; or
- (m) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees immediately 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
- (n) a superannuation fund or scheme which the employee is a defined benefit member of.

18.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or 18.3(b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Overtime and Penalty Rates

19. Overtime

19.1 Definition of overtime

- (a) Overtime is all time worked by an employee:
 - (i) outside the spread of hours prescribed in clause 13.1; or
 - (ii) in excess of an average of 38 hours per week over a period of 4 weeks; or
 - (iii) in excess of 10 hours on any day.
- (b) For part-time employees, all time worked in excess of the hours as agreed under clause 11.2 or varied under clause 11.3 will be overtime.

19.2 Overtime rates

Where an employee works overtime the employer must pay the employee overtime rates as follows:

- (a) Monday to Saturday—**150%** of the minimum hourly rate for the first 2 hours and **200%** of the minimum hourly rate after 2 hours; and
- (b) Sunday—**200%** of the minimum hourly rate.
- (c) Public holiday—payment for working on a public holiday is dealt with in clause 25—Public holidays.

19.3 Break between shifts

- (a) Subject to clause 19.3(b), an employee is entitled to a minimum 10 hour break between shifts. An employee required by the employer to resume work without having a break of at least 10 consecutive hours between shifts (including overtime worked on either shift), must be paid at the rate of **200%** of the minimum hourly rate for all time worked until they have had a break from work of at least 10 hours.
- (b) An employee is not entitled to be paid at the rate of **200%** in accordance with clause 19.3(a) if they have worked 3 consecutive hours or less prior to the commencement of a break between shifts.

19.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.4.
- (c) An agreement must state each of the following:

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- (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 clause 19.4(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 19.4 is set out at Schedule E—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule E—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 19.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 19.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.4 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 19.4(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 19.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.4 will apply,

including the requirement for separate written agreements under clause 19.4(b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.4.

20. Penalty rates

20.1 Payment for working Saturdays and Sundays

A full-time or part-time employee must be paid at the following rates for all ordinary hours worked:

- (a) Saturday—**125%** of the minimum hourly rate; and
(b) Sunday—**150%** of the minimum hourly rate.

20.2 Payment for working on a public holiday is dealt with in clause 25—Public holidays.

20.3 Payment for casual employees working on a Saturday, Sunday or public holiday is in accordance with clause 12.2(b).

Part 6—Leave and Public Holidays

21. Annual leave

Administrative change made to clauses 21.3(c) and 21.6 by Modern Awards team

21.1 Annual leave is provided for in the [NES](#).

21.2 During a period of annual leave an employee must also be paid an annual leave loading of **17.5%** of their minimum rate of pay.

21.3 Close down

- (a) An employer may close down (or reduce to a nucleus) an enterprise or part of it for the purpose of allowing annual leave to the employees concerned or a majority of them, provided that:

- (i) the employer gives the employees at least one month's notice of its intention to close down;

- (ii) in the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.
- (b) No more than one close down can occur in one 12 month period.
- (c) Where an employee has been given notice pursuant to clause 21.3(a)(i) or 21.3(a)(ii)~~21.3(e)(ii)~~ and the employee has:
 - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of the close down;
 - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the close down; or
 - (iii) no accrued annual leave, the employee must take leave without pay for the full period of the close down.
- (d) Public holidays that fall within the period of close down will not count as a day of annual leave or leave without pay. Employees will be paid for any absence on such days in accordance with the [NES](#).

21.4 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 21.4 is set out at Schedule F—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 21.4 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 21.4, 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.

21.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 21.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 21.5.
- (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 21.5 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 21.5 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 21.5 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 21.5.

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 21.5.

NOTE 3: An example of the type of agreement required by clause 21.5 is set out at Schedule G—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Cash Out Annual Leave.

21.6 Excessive leave accruals: general provision

NOTE: Clauses 21.6 to 21.8 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 21.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 21.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

21.7 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 21.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 21.7(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 21.6, 21.7 or 21.8 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 21.7(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 21.7(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 21.7(d) may result in the direction ceasing to have effect. See clause 21.7(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.

21.8 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 21.6(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 clause 21.8(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 21.7(a) that, when any other paid annual leave arrangements (whether made under clause 21.6, 21.7 or 21.8 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 clause 21.8(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 21.6, 21.7 or 21.8 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 clause 21.8(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 clause 21.8(a).

22. Personal/carer's leave and compassionate leave

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

23. Community service leave

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

24. Unpaid family and domestic violence leave

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

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

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

25. Public holidays

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

25.2 An employer and an employee may by agreement substitute another day for a public holiday.

25.3 Payment for working on a public holiday

(a) A full-time or part-time employee must be paid at the rate of **250%** of the minimum hourly rate for all hours worked on a public holiday. An employee required to work on a public holiday must be engaged or be paid for at least 4 hours' work.

(b) Payment for a casual employee working on a public holiday is in accordance with clause 12.2(b).

25.4 Part-day public holidays

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

Part 7—Consultation and Dispute Resolution

26. Consultation about major workplace change

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

(a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and

(b) discuss with affected employees and their representatives (if any):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or reduce the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

- 26.2** For the purposes of the discussion under clause 26.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
 - (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 26.3** Clause 26.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 26.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 26.1(b).
- 26.5** In clause 26 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or
 - (f) the need for employees to be retrained or transferred to other work or locations; or
 - (g) job restructuring.
- 26.6** Where this award makes provision for alteration of any of the matters defined at clause 26.5, such alteration is taken not to have significant effect.

27. Consultation about changes to rosters or hours of work

- 27.1** Clause 27 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 27.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 27.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 27.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and

- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

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

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

28. Dispute resolution

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

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

28.3 If the dispute is not resolved through discussion as mentioned in clause 28.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

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

28.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.

28.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.

28.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 28.

28.8 While procedures are being followed under clause 28 in relation to a dispute:

- (a) work must continue in accordance with this award and the [Act](#); and
- (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

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

Part 8—Termination of Employment and Redundancy

29. Termination of employment

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

29.1 Notice of termination by an employee

- (a) Clause 29.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

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

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

- (c) In clause 29.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 29.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week’s wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 29.1(b), then no deduction can be made under clause 29.1(d).
- (f) Any deduction made under clause 29.1(d) must not be unreasonable in the circumstances.

29.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

- (b) The time off under clause 29.2 is to be taken at times that are convenient to the employee after consultation with the employer.

30. Redundancy

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

30.1 Transfer to lower paid duties on redundancy

- (a) Clause 30.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
 - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
 - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 30.1(c).
- (c) If the employer acts as mentioned in clause 30.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

30.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 30 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

30.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.

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- (b) If an employee is allowed time off without loss of pay of more than one day under clause 30.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 30.3(b).
- (d) An employee who fails to produce proof when required under clause 30.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 29.2.

Schedule A—Classification Definitions

Administrative changes made to A.2.1(b), A.2.1(c), A.2.1(d), A.3.3(a)(i), A.3.3(b), A.3.3(d), A.4.1(a)(i), A.4.1(a)(ii), A.5.3(b)(i), A.5.3(b)(ii), A.5.3(d) and A.7.1(b) by Modern Awards team

A.1 Level 1

A.1.1 An employee at this level works under direct supervision with specific instructions and procedures and after appropriate in-house training. Duties may include any or all of the following:

- (a) general counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison;
- (b) general tidying/cleaning of immediate work area;
- (c) undertaking structured training/learning in the following areas:
 - (i) clerical assistant duties including switchboard operation, reception, information services, taking bookings;
 - (ii) providing general assistance to employees of a higher grade, not including cooking or direct service to customers;
 - (iii) cleaning, tidying and setting up of kitchen, food preparation and customer service areas, including cleaning of equipment, crockery and general utensils;
 - (iv) assembly and preparation of ingredients for cooking;
 - (v) handling pantry items and linen;
 - (vi) setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
 - (vii) general cleaning, gardening and labouring tasks;
 - (viii) door duties, attending a cloakroom or car park not involving the handling of cash;
 - (ix) providing general assistance to tennis coaches in the delivery of tennis coaching or classes; and
 - (x) swimming and water safety teaching. To avoid doubt, an employee is classified at Level 2 or above if their duties include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

A.2 Level 2

A.2.1 An employee at this level has:

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- (a) completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level;
- (b) a swim and water safety teacher or coach qualification; ~~or~~
- (c) duties which include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning; or
- (d) ~~or~~ holds a Gymnastics Australia Coach Accreditation.

A.2.2 An employee at this level:

- (a) performs work above and beyond the skills of an employee at Level 1 and to the level of their training; and
- (b) works from instructions or procedures and under direct supervision either individually or in a team environment, and is primarily engaged in one or more of the following duties:
 - (i) assisting with classes and directing activities in a centre;
 - (ii) attending to equipment and displays, e.g. pool attendant, pool plant operating, including basic pool plant duties (e.g. water quality testing) unless this work is performed by an employee at a higher classification level;
 - (iii) providing customer advice, sales and services;
 - (iv) operating a switchboard and/or telephone paging system;
 - (v) clerical duties, involving intermediate keyboard skills with instructions;
 - (vi) program/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic swipe input devices;
 - (vii) laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;
 - (viii) maintaining general presentation of grounds;
 - (ix) door duties, attending a cloak room or car park;
 - (x) serving from a snack bar, buffet or meal counter;
 - (xi) supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
 - (xii) non-cook duties in a kitchen;
 - (xiii) beginner swimming and water safety teacher, being a person who provides any part of swimming and water safety teaching without being

directly supervised as part of structured training/learning or the holder of any current qualification with the following competencies:

- *SISCAQU002* Perform basic water rescues
- *SISCAQU008* Instruct water familiarisation, buoyancy and mobility skills
- *SISCAQU009* Instruct water safety and survival skills
- *SISCAQU010* Instruct swimming strokes

These competencies reflect the Australian Skills Quality Authority's (ASQA) approved skill set for a Swimming and Water Safety Teacher. Any amendments to these competencies made by ASQA will apply for the purposes of interpreting this award.

- (xiv) a coach of beginner swimmers (including mini and junior squads), being a holder of a current recognised "Junior Coach and Assistant Coach" swimming coaching qualification or equivalent;
- (xv) coaching beginner tennis or providing general assistance to tennis coaches in the delivery of tennis coaching or classes, having completed an introductory coaching course or equivalent; or
- (xvi) coaching gymnastics, being a holder of a current Gymnastics Australia Coach Accreditation or equivalent.

A.3 Level 3

A.3.1 An employee at this level works under general supervision which requires operation within defined areas of responsibility with adherence to established guidelines and procedures and who is employed to carry out work associated with the centre's operations or holds a Gymnastics Australia Coach Accreditation.

A.3.2 An employee at this level is able to fulfil a role at Level 1 and 2 where relevant and supervises Level 1 and 2 employees where requested.

A.3.3 An employee at this level may also be:

- (a) a swimming and water safety teacher being a holder of any current qualification with the relevant Industry Competencies, who has:
 - (i) performed 12 hours per year of recognised workshops and 250 hours of paid swimming and safety teaching under this award and who holds a second recognised instructing qualification; or
 - (ii) delivered 350 hours of paid swimming and water safety teaching under this award; or
- (b) a coach of beginner swimmers (including mini and junior squads), being a holder of current recognised "Bronze Licence for Coaching" swimming coaching qualification or equivalent; or

- (c) a pool lifeguard who has been appointed to the position of pool lifeguard by the employer and has completed a nationally-recognised Lifeguarding qualification; or
- (d) a holder of a current Gymnastics Australia Coach Accreditation or equivalent who has participated in 12 hours per year of recognised professional development and performed 1,500 hours of coaching.

A.3.4 Any dispute concerning an employee's entitlement to be paid at Level 3 as a swimming teacher or swimming coach may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge required at this level.

A.4 Level 3A

A.4.1 An employee at this level performs the duties of a Level 3 and who:

- (a) holds a:
 - (i) Fitness Industry or Sport Coaching (specialising in tennis) AQF Certificate Level III qualifications relevant to the classification in which they are employed or equivalent; or
 - (ii) in respect to gymnastics coaches, holds a current Gymnastics Coach Accreditation and Sport Coaching AQF ~~certificate~~ Certificate Level III; and
- (b) utilises the skills and knowledge derived from the Sport Coaching (specialising in tennis) or relevant AQF Certificate Level III competencies relevant to the work undertaken at this level.

A.4.2 Any dispute concerning an employee's entitlement to be paid at Level 3A may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge derived from the Fitness Industry Certificate III competencies, and that these are relevant to the work the employee is doing.

A.5 Level 4

A.5.1 An employee at this level works under limited supervision and guidance and is required to exercise initiative and judgment in the performance of their duties and who is employed to carry out work associated with the centre's operations or holds a Gymnastics Australia Coach Accreditation.

A.5.2 An employee at this level receives broad instructions and their work is checked intermittently.

A.5.3 An employee at this level may also be:

- (a) a swimming and water safety teacher, being a holder of any current qualification with the Industry Competencies:

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- (i) performed 12 hours per year of recognised workshops and 500 hours of paid swimming and water safety teaching under this award and who holds a third recognised teaching qualification, or
- (ii) delivered 700 hours of paid swimming and water safety teaching under this award, or
- (b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current recognised “Bronze Licence for Coaching” swimming coaching qualification or equivalent, who has:
 - (i) performed 12 hours per year of recognised workshops and 500 hours of coaching beginners and attended a recognised seminar/conference within the past 12 months; or
 - (ii) delivered 700 hours of coaching to beginners ~~s to~~ swimmers.
- (c) a senior pool lifeguard, being a holder of industry-recognised pool lifeguard qualifications as detailed in clause A.3.3(c) and who has been appointed by the employer to lead a team comprised of qualified pool lifeguards, and/or persons undertaking a nationally-recognised course of lifeguarding to become pool lifeguards; or
- (d) ~~a~~ gymnastics coach being the holder of a current Gymnastics Australia Coach Accreditation, who has participated in 12 hours per year of recognised professional development and 3,000 hours of coaching gymnastics.

A.5.4 Any dispute concerning an employee’s entitlement to be paid at Level 4 as a swimming teacher or swimming coach may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge required at this level.

A.6 Level 4A

A.6.1 An employee at this level performs the duties of a Level 4:

- (a) holds a:
 - (i) Fitness Industry or Sport Coaching (specialising in tennis) AQF Certificate Level IV qualifications relevant to the classification in which they are employed or equivalent; or
 - (ii) in respect of gymnastics coaches, holds a current Gymnastics Australia Coach Accreditation and Sport Coaching AQF Certificate Level IV; and
- (b) utilises the skills and knowledge derived from the Sport Coaching (specialising in tennis) or relevant AQF Certificate Level III competencies relevant to the work undertaken at this level;
- (c) is employed to carry out work associated with the classification of tennis centre Club Professional.

A.6.2 Any dispute concerning an employee's entitlement to be paid at Level 4A may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge derived from the AQF Certificate Level IV competencies, and that these are relevant to the work the employee is doing.

A.7 Level 5

A.7.1 An employee at this level:

- (a) holds a Fitness Industry or Management (specialising in tennis) or Sport Coaching AQF Diploma level or equivalent;
- (b) utilises the skills and knowledge derived from the Fitness Industry or Management (specialising in tennis) or Sporting Coaching AQF Diploma ~~Level~~ level relevant to the work undertaken at this level;
- (c) is employed to carry out work associated with the classification of Fitness Trainer, Fitness Specialist, tennis centre Master Club Professional or tennis centre High Performance Coach; and
- (d) has demonstrated an ability to train or develop programs for special groups.

A.7.2 An employee at this level exercises high levels of initiative and judgment with broad instruction in the performance of their duties. An employee at this level would be able to supervise Level 4 employees where requested.

A.8 Level 6

A.8.1 An employee at this level has duties which include but are not limited to:

- (a) supervision of front desk, including customer liaison and rostering of front office staff;
- (b) supervision, training and co-ordination (including rostering) of employees within their respective work area to ensure delivery of service;
- (c) those of a trade qualified person in a single trade stream and the giving of trade directions to Level 1 to 5 employees;
- (d) supervision of floor staff; or
- (e) overseeing the day to day activities and operations of the business.

A.9 Level 7

A.9.1 An employee at this level is engaged in supervising, training and coordinating employees, is responsible for the maintenance of service and operational standards and exercises substantial responsibility and independent initiative and judgment with a requisite knowledge of their specific field and of the employer's business.

A.9.2 An employee at this level has:

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- (a) worked or studied in a relevant field and/or has specialist knowledge, qualifications and experience;
- (b) formal trade or technical qualifications relevant to the employer in more than one trade or technical field, which are required by the employer to perform the job; or
- (c) specialist post-trade qualifications which are required by the employer to perform the job and organisation or industry specific knowledge sufficient for them to give advice and/or guidance to their organisation and/or clients in relation to specific areas of their responsibility.

A.9.3 Indicative duties at this level are:

- (a) general supervision of catering or retail functions;
- (b) centre administration involving supervision of staff and systems and co-ordinating events; or
- (c) development of in-house training programs for instructors and co-ordinators.

A.10 Employees classified under the provisions of this classification structure will hold, at all times, the relevant accreditations required by both this award's classification descriptors and state and territory legislation permitting work with children (e.g. Child Protection Police Checks). In the event of any employee losing, having suspended, or being refused such accreditation, they will advise their employer(s) within 14 days of such loss, refusal or suspension.

A.11 Any dispute concerning the correct classification for a swimming and water safety teacher or swimming coach will be referred to the Fair Work Commission for determination.

Schedule B—Summary of Hourly Rates of Pay

Administrative changes made to B.2 by Modern Awards team

B.1 Full-time and part-time employees

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

	Ordinary hours	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	100%	125%	150%	250%
	\$	\$	\$	\$
Level 1	19.49	24.36	29.24	48.73
Level 2	20.06	25.08	30.09	50.15
Level 3	21.54	26.93	32.31	53.85
Level 3A	22.70	28.38	34.05	56.75
Level 4	23.63	29.54	35.45	59.08
Level 4A	24.77	30.96	37.16	61.93
Level 5	26.10	32.63	39.15	65.25
Level 6	25.88	32.35	38.82	64.70
Level 7	26.88	33.60	40.32	67.20

B.1.2 Full-time and part-time employees—overtime rates

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 1	29.24	38.98	38.98	48.73
Level 2	30.09	40.12	40.12	50.15
Level 3	32.31	43.08	43.08	53.85
Level 3A	34.05	45.40	45.40	56.75
Level 4	35.45	47.26	47.26	59.08
Level 4A	37.16	49.54	49.54	61.93
Level 5	39.15	52.20	52.20	65.25
Level 6	38.82	51.76	51.76	64.70
Level 7	40.32	53.76	53.76	67.20

B.2 Casual employees—ordinary, overtime and penalty rates

~~Casual employees—ordinary, overtime and penalty rates~~

	Ordinary hours	Saturday, Sunday & public holidays
	% of minimum hourly rate	
	125%	130%
	\$	\$
Level 1	24.36	25.34
Level 2	25.08	26.08
Level 3	26.93	28.00
Level 3A	28.38	29.51
Level 4	29.54	30.72
Level 4A	30.96	32.20
Level 5	32.63	33.93
Level 6	32.35	33.64
Level 7	33.60	34.94

Schedule C—Summary of Monetary Allowances

C.1.1 updated to incorporate changes resulting from [2020] FWCFB 2124 at [96]
Administrative change made to C.1.1 by Modern Awards team

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

C.1 Wage-related allowances

C.1.1 The wage-related allowances in this award are based on the [standard rate](#) as defined in clause 2—Definitions as the minimum weekly rate for a Level 3 employee in clause 15—Minimum rates = **\$818.50**.

Allowance	Clause	% of standard rate	\$	Payable
Leading hands and supervisors, — , in charge of — 1 to 5 employees —Full-time	17.2(a)	3.00	24.56	per week
Leading hands and supervisors, in charge of—1 to 5 employees—Other than full-time	17.2(a)	Weekly allowance/ 38	0.65	per hour
Leading hands and supervisors, — , in charge of — 6 to 10 employees —Full-time	17.2(a)	4.10	33.56	per week
Leading hands and supervisors, in charge of 6 to 10 employees—Other than full-time	17.2(a)	Weekly allowance/ 38	0.88	per hour
Leading hands and supervisors, — , in charge of — More more than 10 employees —Full-time	17.2(a)	5.50	45.02	per week
Leading hands and supervisors, in charge of more than 10 employees—Other than full-time	17.2(a)	Weekly allowance/ 38	1.18	per hour
Broken shift allowance	17.2(b)	1.70	13.91	per day
First aid allowance	17.2(c)	0.32	2.62	per day

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 17.3:

Allowance	Clause	\$	Payable
Meal allowance—overtime for more than one and a half hours	17.3(a)	11.98	per occasion
Vehicle allowance—Own motor vehicle	17.3(b)(i)	0.78	per km
Vehicle allowance—Own motorcycle	17.3(b)(ii)	0.26	per km
Broken shift allowance—excess fares	17.2(b)	1.94	per day

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 allowance	Private motoring sub-group
Fares allowance	Urban transport fares sub-group

Schedule D—Supported Wage System

D.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.

D.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.

D.3 Eligibility criteria

D.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.

D.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.

D.4 Supported wage rates

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

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

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

D.5 Assessment of capacity

D.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.

D.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](#).

D.6 Lodgement of SWS wage assessment agreement

D.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.

D.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.

D.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.

D.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.

D.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.

D.10 Trial period

- D.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- D.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.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$87** per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.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 D.5.

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

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule F—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule G—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Part-day Public Holidays

- H.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- H.2** Where a part-day public holiday is declared or prescribed between 6.00 pm and midnight, or 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of being on annual leave does not work, they will be taken not to be on annual leave during the hours of the declared or prescribed part-day public holiday that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause H.2(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked on the declared or prescribed part-day public holiday.
 - (g) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause H.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- H.3** This schedule is not intended to detract from or supplement the [NES](#).

Schedule X—Additional Measures During the COVID-19 Pandemic

Schedule X inserted as a result of [\[2020\] FWCFCB 1837](#); [PR718141](#).

X.1 Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 8 April 2020 until 30 June 2020. The period of operation can be extended on application.

X.2 During the operation of Schedule X, the following provisions apply:

X.2.1 Unpaid pandemic leave

(a) Subject to clauses X.2.1(b), (c) and (d), any employee is entitled to take up to 2 weeks' unpaid leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.

(b) The employee must give their employer notice of the taking of leave under clause X.2.1(a) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).

(c) An employee who has given their employer notice of taking leave under clause X.2.1(a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause X.2.1(a).

(d) A period of leave under clause X.2.1(a) must start before 30 June 2020, but may end after that date.

(e) Leave taken under clause X.2.1(a) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this award and the NES.

NOTE: The employer and employee may agree that the employee may take more than 2 weeks' unpaid pandemic leave.

X.2.2 Annual leave at half pay

(a) Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay.

(b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.

(c) A period of leave under clause X.2.2(a) must start before 30 June 2020, but may end after that date.

EXAMPLE: Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking 2 weeks' annual leave on half pay. In this example:

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- the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under the Annual Leave clause of this award); and
- one week of leave is deducted from the employee's annual leave accrual.

NOTE 1: A employee covered by this award who is entitled to the benefit of clause X.2.1 or X.2.2 has a workplace right under section 341(1)(a) of the Act.

NOTE 2: Under section 340(1) of the Act, an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the Act, an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the Act, a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.