



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

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

(AM2014/279)

## **PEST CONTROL INDUSTRY AWARD 2010**

[MA000097]

Building services

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

*4 yearly review of modern awards – Pest Control Industry Award 2010 – modern award varied.*

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

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

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

PRESIDENT

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# Pest Control Industry Award 20XX

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## Part 1—Application and Operation of this Award

### 1. Title and commencement

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

### 2. Definitions

In this award, unless the contrary intention appears:

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

**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).

**leading hand** is an employee who is directed to control, supervise and take responsibility for the work performed by 2 or more employees.

**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.

**pest control industry** has the meaning given in clause 4.2.

**standard rate** means the minimum weekly rate for a Level 3 employee in clause 16.1—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

- 4.1 This industry award covers employers throughout Australia in the pest control industry and their employees in the classifications listed in clause 12—Classifications to the exclusion of any other modern award.
- 4.2 **Pest control industry** means the industry of the control and/or eradication of pests, vermin, feral animals and weeds in domestic, commercial and civic buildings or facilities and includes:
- (a) the inspection of buildings, structures, trees, commodities and stored products or items for pest activity, and reporting on pest activity in domestic, commercial and civic buildings or any situation where pest activity may be of concern; and
  - (b) the installation, maintenance or inspection of termite, bird or other pest barriers or management systems in new or existing buildings or structures including the use of fumigants in all forms.
- 4.3 The award does not cover employers covered by the following modern awards:
- (a) *Clerks—Private Sector Award 2020*;
  - (b) *Local Government Industry Award 2020*; or
  - (c) *Manufacturing and Associated Industries and Occupations Award 2020*.
- 4.4 This award covers any employer which supplies labour on an on-hire basis in the pest control industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. Clause 4.4 operates subject to the exclusions from coverage in this award.
- 4.5 This award covers employers which provide group training services for trainees engaged in the pest control 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 4.5 operates subject to the exclusions from coverage in this award.
- 4.6 This industry award does not cover:
- (a) an employee excluded from award coverage by the [Act](#);

- (b) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
- (c) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

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

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

## **5. Individual flexibility arrangements**

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

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

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

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

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

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

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

**5.6** An agreement must do all of the following:

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

**5.7** An agreement must be:

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

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

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

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

**5.11** An agreement may be terminated:

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

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

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

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

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

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

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

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

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

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

## **6.2 Responding to the request**

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

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

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

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

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

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



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

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

**6.5 Dispute resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 31—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:
14.1(b)	Rostering	The majority of employees
14.4	Substitution of public holidays	An individual
14.5	12-hour shifts	The majority of employees
20.8	Time off instead of payment for overtime	An individual
23.5	Annual leave in advance	An individual
23.10	Cashing out of annual leave	An individual
28.2	Substitution of public holidays	An individual

**Part 2—Types of Employment and Classifications**

**8. Types of employment**

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

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

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

## **9. Full-time employees**

- 9.1** A full-time employee is engaged to work 38 ordinary hours per week.
- 9.2** Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in the award.

## **10. Part-time employees**

- 10.1** A part-time employee:
- (a) is engaged to work less than 38 ordinary 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.
- 10.2** At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least:
- (a) the hours worked each day;
  - (b) which days of the week the employee will work; and
  - (c) the actual starting and finishing times for each day.
- 10.3** Any agreed variation to the hours of work in clause 10.2 will be in writing.
- 10.4** A part-time employee must be engaged for a minimum of 3 consecutive hours per start including if called in for a separate engagement for overtime.
- 10.5** All time worked in excess of the hours agreed under clause 10.2 or varied under clause 10.3 will be overtime and paid for at the overtime rates prescribed in clause 20—Overtime.
- 10.6** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 11—Casual employees.
- 10.7** A part-time employee under the provisions of clause 10 must be paid for each ordinary hour worked at the minimum hourly rate prescribed for the appropriate classification.

## **11. Casual employees**

- 11.1** A casual employee is an employee who is engaged and paid as a casual employee.
- 11.2** A casual employee is engaged to work less than 38 hours per week.
- 11.3** An employer or casual employee may terminate the employment relationship with one hour's notice by either party.

**11.4** A casual employee must be paid at the minimum hourly rate prescribed for the appropriate classification plus a loading of **25%** for all hours worked.

**11.5** The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment provided for in this award.

**11.6** A casual employee must be paid for a minimum of 3 hours for each start on any day.

**11.7 Right to request casual conversion**

(a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.

(b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.

(c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.

(d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.

(e) Any request under clause 11.7 must be in writing and provided to the employer.

(f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.

(g) Reasonable grounds for refusal include that:

(i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in clause 11.7(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 31—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.7, the employer and employee must discuss and record in writing:
  - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.2.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.7.
- (o) Nothing in clause 11.7 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.7 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.7 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.7 by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.7(q).

## 12. Classifications

12.1 All employees covered by this award must be classified according to the following structure:

(a) **Level 1**

A Level 1 employee is a person who has entered the industry with no previous experience and has yet to apply for a licence. An employee at this level has been employed in the industry for less than 6 months.

(b) **Level 2**

A Level 2 employee is a person who has applied for a licence pursuant to relevant government regulation as either a Fumigator or a Pest Control Technician but has yet to be examined or licensed other than provisionally. Such an employee is presently undertaking an accredited course to obtain a pest operator's certificate.

(c) **Level 3**

A Level 3 employee is a person who has successfully obtained a pest operator's certificate and has been granted a licence to operate as either a Fumigator or Pest Control Technician.

(d) **Level 4**

A Level 4 employee is a person who has been granted licences to operate as both a Fumigator and a Pest Control Technician.

(e) **Level 5**

A Level 5 employee is a person who is qualified to operate as a Pest Inspector.

12.2 Employers must advise their employees in writing of their classification and any changes to their classification.

12.3 The classification must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

## Part 3—Hours of Work

### 13. Ordinary hours of work

13.1 The ordinary hours of work will be an average of 38 hours per week over a maximum work cycle of 4 weeks.

#### 13.2 Day workers

- (a) Except where ordinary hours of work are performed under an averaging system, ordinary hours of work for day workers will not exceed 38 hours per week.
- (b) The ordinary hours are to be worked in up to 5 shifts of 7.6 hours on any day.

- (c) Ordinary hours may be worked on Monday to Sunday, between the hours of 6.00 am and 6.00 pm.

### **13.3 Shiftworkers**

- (a) The standard ordinary hours of work for shiftworkers will not, except as provided elsewhere in clause 13, exceed 38 hours per week.
- (b) The ordinary hours are to be worked in up to 5 shifts of 7.6 hours on any day, Monday to Sunday.
- (c) These ordinary hours will be worked continuously except for meal breaks, crib breaks and rest periods as provided for in clause 15—Breaks.

## **14. Rostering arrangements**

**14.1** Where there is agreement between the employer and employee ordinary hours may be worked in one of the ways set out in clauses 14.1(a)–14.1(d).

- (a) Employees may work a 19 day, 4 week cycle of 8 hours per day, with 15 minutes per day worked accruing as an entitlement to take a rostered day off on what would otherwise be a working day in each 4 week cycle.
- (b) An employer and the majority of employees in an establishment may mutually agree to a roster providing for more than one rostered day off in a normal 4 week cycle. In these circumstances, an employer and employee may agree to working more than the standard daily hours and up to 10 ordinary hours in any one day to enable a rostered day off on a Monday to Friday to be taken more frequently than one per 4 week cycle.
- (c) Employees may work shorter hours on each day.
- (d) Employees may work shorter hours on one or more days of each week.

**14.2** The employer will notify the employee of their starting and finishing times. Work done outside the hours notified will be paid at overtime rates.

**14.3** Once set, the starting and finishing times will not be altered unless one week's notice is given. Changes to rosters or hours of work are subject to clause 30—Consultation about changes to rosters or hours of work.

**14.4** Where a rostered day off falls on a public holiday as prescribed in clause 28—Public holidays the next working day will be taken as the rostered day off. Another day may be substituted by agreement between the employer and employee.

### **14.5 Twelve-hour shifts**

By agreement between an employer, and the majority of employees in an establishment or the work location concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- (a) proper health monitoring procedures being introduced;
- (b) suitable roosting arrangements being made; and

- (c) proper supervision being provided (where applicable).

## 15. Breaks

### 15.1 Meal and crib breaks

- (a) An employee will be entitled to an unpaid meal break of at least 30 minutes per day or shift. The break must commence no later than 5 hours after the start of the employee’s ordinary working hours.
- (b) An employee who is required to work for more than 2 hours beyond their normal finishing time on any day will be allowed a crib break of 20 minutes at ordinary rates. After each further 4 hours worked an employee will be entitled to a further crib break of 20 minutes without deduction of pay, if the employee continues working after such crib break.
- (c) An employer may organise breaks to be taken at times that will not interfere with the continuity of work provided that the requirements of clause 15.1(a) are observed.

### 15.2 Rest breaks

An employee will be entitled to one paid rest break of 10 minutes to be taken before the meal break and a further rest break of 10 minutes after the meal break where the employee is required to work more than 6 hours on any day or shift. The rest breaks will be taken at times that will not interfere with the continuity of work. These breaks are to be counted as time worked.

### 15.3 Washing time

An employee will be entitled to 10 minutes before each meal break and a further 10 minutes before finishing work each day for the purpose of washing and changing their clothes. These periods are to be counted as time worked.

## Part 4—Wages and Allowances

### 16. Minimum rates

- 16.1 The employer must pay employees the following minimum rates for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Level 1	748.70	19.70
Level 2	767.10	20.19
Level 3	791.30	20.82
Level 4	807.80	21.26



Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
Level 5	870.40	22.91

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

## 16.2 Supported wage system

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

## 16.3 National training wage

- (a) Schedule E to the [Miscellaneous Award 20XX](#) sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the [Miscellaneous Award 20XX](#) as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the [Miscellaneous Award 20XX](#) is to be read as referring to the *Pest Control Industry Award 20XX* and not the [Miscellaneous Award 20XX](#).

## 17. 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.

### 17.1 Frequency of pay

Wages including overtime, penalties and allowances must be paid weekly or fortnightly.

### 17.2 Method of payment

The employer may pay an employee’s wages by electronic funds transfer (EFT) into a bank or financial institution nominated by the employee or by cash or cheque.

### 17.3 Time of payment—cash or cheque

If payment is by cash or cheque, wages will be paid during ordinary working hours.

### 17.4 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 17.4(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 17.4(b) allows the Commission to make an order delaying the requirement to make a payment under clause 17.4. 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.

## 18. Allowances

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

- 18.1** Employers must pay to an employee the allowances the employee is entitled to under clause 18.

See Schedule B—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

### 18.2 Wage-related allowances

- (a) **Leading hand allowance**

A leading hand will be paid the rate prescribed for the highest class of work supervised or their own classification rate plus the following additional allowance, whichever is higher:

In charge of:	\$ per week
2 to 10 employees	31.57
11 to 21 employees	47.24
More than 21 employees	64.17

- (b) **Verminous/decomposed human body allowance**

An employee required to treat a verminous or decomposed human body will be paid an additional **\$94.64** on each occasion.

(c) **Work performed in fumigation depot allowance**

An additional **\$7.36** will be paid for each day on which work is performed in, or in connection with, fumigation depots carrying out the process of tent, vacuum tank or container fumigation. This allowance is paid in recognition of all disabilities encountered by employees working in fumigation depots.

(d) **First aid allowance**

- (i) A full-time employee will be paid an additional **\$16.78** per week if they:
- have been trained to perform first aid;
  - hold a current first aid qualification; and
  - are appointed by the employer to perform first aid duty.
- (ii) Employees will be reimbursed for the cost of maintenance of a first aid kit upon presentation of receipts, if the kit is not provided by the employer.

**18.3 Expense-related allowances**

(a) **Meal allowance**

- (i) The employer will either supply a meal or pay a meal allowance of **\$14.55** for the first and subsequent meals to an employee where the employee is required to work overtime for more than 2 hours without being notified on the previous day or earlier that they will be required to work.
- (ii) If notice has been provided and the employee is not required to work overtime or is required to work less than the amount advised, the employer will pay the employee the meal allowance in clause 18.3(a)(i) for each meal the employee has provided themselves.

(b) **Motor vehicle allowance**

An employee who by agreement with the employer uses the employee's own motor vehicle in the course of the employer's business will be paid an allowance of **\$0.78** per kilometre travelled.

(c) **Country work**

- (i) **Country work** means employment at a place which requires the employee to live away from their usual place of residence.
- (ii) An employee sent to country work will be paid an allowance of **\$93.31** per night to cover the costs of lodging and all meals or provided with board and lodging as agreed between the employer and employee.
- (iii) Time occupied in travelling to and from country work will be paid for at ordinary rates in addition to wages otherwise earned, provided that an employee will not be paid for more than 8 hours occupied in travelling on any one day. A day for the purposes of clause 18.3(c) means from midnight on one day to midnight on the next day.

- (iv) An employee required to undertake **country work** will be paid a meal allowance of **\$9.00** for each meal occurring during the travel time described in clause 18.3(c)(iii). This allowance will not be payable if the employee is otherwise entitled to a meal allowance pursuant to clause 18.3(a) or 18.3(c)(ii).
- (v) Where transport is not provided by the employer, all employees will be entitled to travel to and from country work on terms agreed between the employer and the employee.

#### **18.4 Safety clothing and equipment**

- (a) An employer will provide and maintain all equipment required for carrying out a job.
- (b) The equipment will include suitable respirators, goggles, boots and/or gloves, where reasonably required.
- (c) This equipment will remain the property of the employer and will be replaced by the employee if lost by them or destroyed through the employee's negligence provided that reasonable facilities are to be made available by the employer for the safe keeping of such equipment.
- (d) The employer will provide, and maintain free of charge, all necessary protective clothing for the use of employees. This clothing will be issued in good condition and be retained by the employees during the period of their employment. It will be replaced by the employer when required. Such protective clothing will, among other things, include overalls and/or dust coats.
- (e) Employees will use the appropriate protective clothing and equipment provided and required to be used by the employer in the proper manner, and will comply with any other specified safe working requirements.

### **19. Superannuation**

#### **19.1 Superannuation legislation**

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

## **19.2 Employer contributions**

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

## **19.3 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 19.3(a) or 19.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or 19.3(b) was made.

## **19.4 Superannuation fund**

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

- (a) CareSuper;
- (b) AustralianSuper;
- (c) Statewide Superannuation Trust;
- (d) Sunsuper;
- (e) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (f) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Overtime, Penalty Rates and Shiftwork

### 20. Overtime

**20.1** All time worked in excess of, or outside the ordinary hours of work will be paid for at **150%** of the minimum hourly rate for the first 2 hours and **200%** of the minimum hourly rate after 2 hours.

**20.2** In calculating overtime each day's work will stand alone.

**20.3** Work done outside the hours notified in accordance with clause 14.2 will be paid at overtime rates.

**20.4** An employee required to work overtime which is not continuous with ordinary hours will be paid a minimum of 4 hours at the appropriate overtime rate.

**20.5** An employee required to work during their meal break will be paid at overtime rates until the meal break is taken.

### 20.6 Rest period after overtime

(a) When overtime work is necessary it will, wherever reasonably practicable be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) An employee, other than a casual employee, who works so much overtime between finishing work on one day and starting work on the next day that the employee has not had at least 10 consecutive hours off duty between those times will, subject to clause 20.6, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the rest period.

(c) If, on the instructions of the employer, an employee resumes or continues work without having had the 10 consecutive hours off duty the employee will be paid at **200%** of the minimum hourly rate until they are released from duty for such period. The employee is then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(d) The provisions of clause 20.6 will apply in the case of shiftworkers as if 8 hours were substituted for 10 hours when overtime is worked in the following circumstances:

(i) for the purpose of changing shift rosters; or

(ii) where a shift is worked by arrangement between the employees themselves.

### 20.7 Call-back

An employee recalled to work overtime after leaving the employer's business premises, whether notified before or after leaving the premises, will be paid for a minimum of 4 hours' work at the appropriate overtime rate for each time they are recalled.

**20.8 Time off instead of payment for overtime**

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 20.8.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in clause 20.8(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 20.8 is set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 20.8 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 20.8 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 20.8 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 20.8(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

- (h) The employer must keep a copy of any agreement under clause 20.8 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 20.8 will apply, including the requirement for separate written agreements under clause 20.8(b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 20.8 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.8.

## 21. Penalty rates

### 21.1 Weekend work

- (a) An employee who works ordinary hours on a Saturday will be paid at **150%** of the minimum hourly rate. The employee will be paid for a minimum of 3 hours' work.
- (b) An employee who works ordinary hours on a Sunday will be paid at **200%** of the minimum hourly rate. The employee will be paid for a minimum of 4 hours' work.

### 21.2 Public holiday work

An employee who works on a public holiday will be paid at **250%** of the minimum hourly rate. The employee will be paid for a minimum of 4 hours' work.

## 22. Shiftwork

### 22.1 Definitions

- (a) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight where the majority of time worked is between the hours of 6.00 pm and midnight.



- (b) **Night shift** means any shift finishing after midnight and at or before 8.00 am or where the majority of time worked is between the hours of midnight and 8.00 am.
- 22.2 An employee who works an afternoon shift must be paid at **115%** of the minimum hourly rate.
- 22.3 An employee who works a night shift must be paid at **120%** of the minimum hourly rate.
- 22.4 An employee who works a night shift which does not rotate or alternate with another shift or day work must be paid at **125%** of the minimum hourly rate.
- 22.5 The shiftwork penalty rates in clauses 22.2, 22.3 and 22.4 are not payable where an employee is entitled to another penalty rate for overtime, weekends or public holidays.

## Part 6—Leave and Public Holidays

### 23. Annual leave

23.1 Annual leave is provided for in the [NES](#). Clause 23 supplements or deals with matters incidental to the [NES](#) provisions.

### 23.2 Seven day shiftworkers

For the purpose of the additional week of annual leave for shiftworkers provided for in the [NES](#), a **shiftworker** is a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays.

### 23.3 Payment and loading

Before the start of an employee's annual leave the employer must pay the employee:

- (a) instead of the base rate of pay referred to in the [NES](#), the amount the employee would have earned for working their ordinary hours had they not been on leave; and
- (b) an additional loading of **17.5%** of the employee's minimum hourly rate prescribed in clause 16—Minimum rates, plus the first aid allowances where appropriate or, if they were a shiftworker prior to entering leave, their shift penalty, whichever is greater.

### 23.4 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 23, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

### 23.5 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 23.5 is set out at Schedule E—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 23.5 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 23.5, 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.

### 23.6 Excessive leave accruals: general provision

NOTE: Clauses 23.6 to 23.8 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 (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 23.2).
- (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 23.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 23.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

### 23.7 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 23.6(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 23.7(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 23.6, 23.7 or 23.8 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 23.7(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 23.7(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 23.7(d) may result in the direction ceasing to have effect. See clause 23.7(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.

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

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 23.6(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 23.8(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 23.7(a) that, when any other paid annual leave arrangements (whether made under clause 23.6, 23.7 or 23.8 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 23.8(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 23.6, 23.7 or 23.8 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 23.8(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 23.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 23.8(a).

### **23.9 Close-down**

- (a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, among others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of clause 23.9.
- (b) In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.
- (c) Where an employee has been given notice pursuant to clauses 23.9(a) or 23.9(b) 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 closing;
  - (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 closing; or
  - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.
- (d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

### **23.10 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 23.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 23.10.
- (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 23.10 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 23.10 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 23.10 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 23.10.

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 23.10.

NOTE 3: An example of the type of agreement required by clause 23.10 is set out at Schedule F—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Cash Out Annual Leave.

## **24. Personal/carer's leave and compassionate leave**

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

## **25. Parental leave and related entitlements**

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

## **26. Community service leave**

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

## **27. 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.

## **28. Public holidays**

**28.1** Public holiday entitlements are provided for in the [NES](#). Clause 28 supplements or deals with matters incidental to the [NES](#) provisions.

### **28.2 Substitution of public holidays by agreement**

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the [NES](#).
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).

### **28.3 Part-day public holidays**

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

**28.4** An employee required to work on a public holiday will be paid in accordance with clause 21.2.

## **Part 7—Consultation and Dispute Resolution**

### **29. Consultation about major workplace change**

**29.1** 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.

**29.2** For the purposes of the discussion under clause 29.1(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.

**29.3** Clause 29.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

**29.4** 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 29.1(b).

**29.5** In clause 29 **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.

**29.6** Where this award makes provision for alteration of any of the matters defined at clause 29.5, such alteration is taken not to have significant effect.

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

**30.1** Clause 30 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.

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

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

- (a) provide to the employees and representatives mentioned in clause 30.2 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.

**30.4** The employer must consider any views given under clause 30.3(b).

**30.5** Clause 30 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **31. Dispute resolution**

**31.1** Clause 31 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**31.2** 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.

**31.3** If the dispute is not resolved through discussion as mentioned in clause 31.2, 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.

**31.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 31.2 and 31.3, a party to the dispute may refer it to the Fair Work Commission.

**31.5** 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.

**31.6** 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.

**31.7** 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 31.

**31.8** While procedures are being followed under clause 31 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.

**31.9** Clause 31.8 is subject to any applicable work health and safety legislation.

## **Part 8—Termination of Employment and Redundancy**

### **32. Termination of employment**

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

#### **32.1 Notice of termination by an employee**

- (a) Clause 32.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).



- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

**Table 1—Period of notice**

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

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

- (c) In clause 32.1(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 32.1(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 32.1(b), then no deduction can be made under clause 32.1(d).
- (f) Any deduction made under clause 32.1(d) must not be unreasonable in the circumstances.

**32.2 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 32.2 is to be taken at times that are convenient to the employee after consultation with the employer.

**33. Redundancy**

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

**33.1 Transfer to lower paid duties on redundancy**

- (a) Clause 33.1 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 33.1(c).
- (c) If the employer acts as mentioned in clause 33.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

### **33.2 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 33 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.

### **33.3 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 33.3(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 33.3(b).
- (d) An employee who fails to produce proof when required under clause 33.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 32.2.

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

**A.1 Full-time and part-time employees**

**A.1.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>			
	<b>100%</b>	<b>150%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	19.70	29.55	39.40	49.25
Level 2	20.19	30.29	40.38	50.48
Level 3	20.82	31.23	41.64	52.05
Level 4	21.26	31.89	42.52	53.15
Level 5	22.91	34.37	45.82	57.28

**A.1.2 Full-time and part-time shiftworkers—ordinary and penalty rates**

	Day shift	Afternoon shift	Night shift	Permanent night shift	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>						
	<b>100%</b>	<b>115%</b>	<b>120%</b>	<b>125%</b>	<b>150%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	19.70	22.66	23.64	24.63	29.55	39.40	49.25
Level 2	20.19	23.22	24.23	25.24	30.29	40.38	50.48
Level 3	20.82	23.94	24.98	26.03	31.23	41.64	52.05
Level 4	21.26	24.45	25.51	26.58	31.89	42.52	53.15
Level 5	22.91	26.35	27.49	28.64	34.37	45.82	57.28

**A.1.3 Full-time and part-time employees—overtime—all employees**

	Monday to Sunday		Public holiday
	First 2 hours	After 2 hours	
	<b>% of minimum hourly rate</b>		
	<b>150%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	29.55	39.40	49.25
Level 2	30.29	40.38	50.48
Level 3	31.23	41.64	52.05
Level 4	31.89	42.52	53.15
Level 5	34.37	45.82	57.28

**A.2 Casual employees**

**A.2.1 Casual employees other than shiftworkers—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>			
	<b>125%</b>	<b>175%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	24.63	34.48	44.33	54.18
Level 2	25.24	35.33	45.43	55.52
Level 3	26.03	36.44	46.85	57.26
Level 4	26.58	37.21	47.84	58.47
Level 5	28.64	40.09	51.55	63.00

**A.2.2 Casual shiftworkers—ordinary and penalty rates**

	Day shift	Afternoon shift	Night shift	Permanent night shift	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>						
	<b>125%</b>	<b>140%</b>	<b>145%</b>	<b>150%</b>	<b>175%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	24.63	27.58	28.57	29.55	34.48	44.33	54.18
Level 2	25.24	28.27	29.28	30.29	35.33	45.43	55.52
Level 3	26.03	29.15	30.19	31.23	36.44	46.85	57.26

**Pest Control Industry Award 20XX**

	<b>Day shift</b>	<b>Afternoon shift</b>	<b>Night shift</b>	<b>Permanent night shift</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Public holiday</b>
	<b>% of minimum hourly rate</b>						
	<b>125%</b>	<b>140%</b>	<b>145%</b>	<b>150%</b>	<b>175%</b>	<b>225%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 4	26.58	29.76	30.83	31.89	37.21	47.84	58.47
Level 5	28.64	32.07	33.22	34.37	40.09	51.55	63.00

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## Schedule B—Summary of Monetary Allowances

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

### B.1 Wage-related allowances:

**B.1.1** The wage-related allowances in this award are based on the [standard rate](#) as defined in clause 2—Definitions as the minimum weekly rate for a Level 3 employee in clause 16.1= \$791.30.

Allowance	Clause	% of <a href="#">standard rate</a>	\$	Payable
Leading hand allowance—2 to 10 employees	18.2(a)	3.99	31.57	per week
Leading hand allowance—11 to 21 employees	18.2(a)	5.97	47.24	per week
Leading hand allowance—more than 21 employees	18.2(a)	8.11	64.17	per week
Verminous/decomposed human body allowance	18.2(b)	11.96	94.64	per occasion
Work performed in fumigation depot allowance	18.2(c)	0.93	7.36	per day
First aid allowance	18.2(d)(i)	2.12	16.78	per week

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

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

### B.2 Expense-related allowances

**B.2.1** The following expense-related allowances will be payable to employees in accordance with clause 18.3:

Allowance	Clause	\$	Payable
Meal allowance—overtime for more than 2 hours without proper notice	18.3(a)(i)	14.55	per meal
Motor vehicle allowance	18.3(b)	0.78	per km
Country work—board and lodging	18.3(c)(ii)	93.31	per night
Country work—meal allowance	18.3(c)(iv)	9.00	per meal

**B.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:

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Meal allowance	Take away and fast foods sub-group
Motor vehicle allowance	Private motoring sub-group
Country work—Board and lodging	Holiday travel and accommodation sub-group

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## Schedule C—Supported Wage System

**C.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.

**C.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](http://www.jobaccess.gov.au).

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate.

### **C.3 Eligibility criteria**

**C.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.

**C.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.

## C.4 Supported wage rates

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

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

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

## C.5 Assessment of capacity

C.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.

C.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](#).

## C.6 Lodgement of SWS wage assessment agreement

C.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.

C.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.



## **C.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.

## **C.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.

## **C.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.

## **C.10 Trial period**

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

## Schedule D—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 E—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 F—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 G—Part-day Public Holidays

- G.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- G.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 G.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 G.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.
- G.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).
- G.4** This schedule is not intended to detract from or supplement the [NES](#).