



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/228)

GARDENING AND LANDSCAPING SERVICES AWARD 2010

[MA000101]

GARDENING SERVICES

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

4 yearly review of modern awards – Gardening and Landscaping Services 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 *Gardening and Landscaping Services 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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Gardening and Landscaping Services Award 20XX

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Part 1—Application and Operation of this Award

1. Title and commencement

- 1.1 This award is the Gardening and Landscaping Services 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)

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

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave (see clause 17.1)

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)

gardening and landscaping services industry has the meaning given in clause 4.2

leading hand means an employee who is required to supervise, direct or be in charge of another employee or 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

ordinary hourly rate means the minimum hourly rate for an employee's classification specified in clause 15.1 plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

standard rate means the minimum weekly wage for a Level 4 employee in clause 15.1. This rate is to be used for the purposes of calculating various allowances that require a designated [standard rate](#)

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 gardening and landscaping services industry and their employees in the classifications listed in Schedule A—Classification Structure to the exclusion of any other modern award.

4.2 **Gardening and landscaping services industry** means:

- (a) the design, preparation and installation of pavements, landscape features, and/or associated lawns and gardens in parklands, public domain and recreation areas;
- (b) maintenance or horticultural establishment work following practical completion of work;
- (c) the laying-out, construction, cultivation or keeping in order of gardens in connection with private houses;
- (d) landscape and environmental rehabilitation and restoration works on private or public lands; or
- (e) the preparation and maintenance of gardens and grounds including related turf and renovation works in sports fields.

4.3 The award does not cover employers or employees covered by the following awards:

- (a) *Aged Care Award 20XX*;
- (b) *Amusement, Events and Recreation Award 20XX*;
- (c) *Building and Construction General On-site Award 20XX*;
- (d) *Cemetery Industry Award 20XX*;

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- (e) *Educational Services (Schools) General Staff Award 20XX*;
- (f) *Health Professionals and Support Services Award 20XX*;
- (g) *Local Government Industry Award 20XX*;
- (h) *Racing Industry Ground Maintenance Award 20XX*; or
- (i) *Registered and Licensed Clubs Award 20XX*.

4.4 This award covers any employer which supplies labour on an on-hire basis in the gardening and landscaping services 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 apprentices and trainees engaged in the gardening and landscaping industry and/or parts of the industry and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award does not cover:

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

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

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

5. Individual flexibility arrangements

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

- (a) arrangements for when work is performed; or

- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

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

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

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

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

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

5.6 An agreement must do all of the following:

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

5.7 An agreement must be:

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

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

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

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

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

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

- 5.12** An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 5.13** The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

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

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

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

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

6.2 Responding to the request

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

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

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

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

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

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

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

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

6.5 Dispute resolution

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

7. Facilitative provisions

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

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

Clause	Provision	Agreement between an employer and:
13.4(c)	Rostered days off	An individual

Clause	Provision	Agreement between an employer and:
14.2(c)	Overtime breaks	An individual
14.3	Unpaid rest breaks	An individual
19.6	Time off instead of payment for overtime	An individual
20.5	Annual leave in advance	An individual
20.10	Cashing out of annual leave	An individual
25.3	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;
- (b) part-time; or
- (c) casual.

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

9. Full-time employees

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

10. Part-time employees

10.1 A part-time employee:

- (a) is engaged to work less than an average of 38 ordinary hours per week; and
- (b) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

10.2 At the time of engagement, the employer and the regular part-time employee will agree in writing on a regular pattern of work specifying the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day. These hours can only be varied by mutual agreement in writing.

10.3 For each for each hour worked, a part-time employee will be paid no less than the ordinary hourly rate of pay for the relevant classification in clause 15—Minimum rates.

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 entitled to a minimum period of engagement of 3 hours.

11.3 Casual loading

(a) For each hour worked, a casual employee must be paid at least:

(i) the ordinary hourly rate; and

(ii) a loading of **25%** of the ordinary hourly rate,

for the classification in which they are employed.

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

11.4 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.

(e) Any request under clause 11.4 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:

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- (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 11.4(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 11.4, 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 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 11.4.

- (o) Nothing in clause 11.4 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 11.4 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 11.4 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 11.4 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 11.4(q).

12. Classifications

Employees will be classified in accordance with the classification descriptions contained in Schedule A—Classification Structure.

Part 3—Hours of Work

13. Ordinary hours of work and rostering

13.1 The ordinary working hours will be 38, or an average of 38, hours per week. Ordinary hours may be averaged over a 4 week cycle in accordance with clause 13.4.

13.2 Ordinary hours may be worked:

- (a) Monday to Friday between 6.00 am and 6.00 pm; and
- (b) Saturday between 6.00 am and 12.00 noon.

13.3 Ordinary hours will not exceed 10 hours per day.

13.4 Rostered days off

- (a) An employer may employ a system of rostered days off (instead of working 38 hours per week) by any of the following methods:
 - (i) by fixing one weekday in a particular working cycle on which all employees will be off; or
 - (ii) by rostering employees off on various days in a particular work cycle so that each employee has one day off during that cycle; or
 - (iii) by any other method which best suits the workplace and is agreed to by the employer and a majority of employees affected.

- (b) Provided that, subject to clause 27—Consultation about changes to rosters or hours of work, any existing arrangement will not be altered without the agreement of a majority of employees in the affected workplace.
- (c) Where any rostered day off prescribed by clause 13.4 falls on a public holiday according to the [NES](#), the next working day will be taken instead of the rostered day off unless an alternative day in that 4 week cycle or the next is agreed in writing between the employer and the employee.
- (d) Where agreement has been reached between the employee and employer, up to 10 rostered days off may be accumulated and taken at an agreed time.
- (e) Each day of paid leave taken (except a rostered day off) and any public holiday according to the [NES](#) occurring during any cycle of 4 weeks will be regarded as a day worked for accrual purposes.

13.5 Water restrictions

- (a) Where an employer is subject to water restrictions, the employer may require any employee to perform their ordinary hours of work (or any such ordinary hours) at any time on any day other than a Saturday after 12 noon or on a Sunday.
- (b) Where the ordinary hours are performed outside the spread of hours specified in clause 13.2, those hours will be paid at **150%** of the ordinary hourly rate.
- (c) For the purpose of clause 13.5, **water restrictions** means restriction or rationing in the use of water in accordance with orders or regulations approved by the appropriate lawful authority.

14. Breaks

14.1 Meal breaks

- (a) An unpaid meal break of not less than 30 minutes will be allowed no later than 5 hours after starting work.
- (b) An employee required to work through their normal meal break will be paid at **150%** of the ordinary hourly rate until such time as they receive a meal break of the usual length.

14.2 Overtime breaks

- (a) An employee working overtime will be allowed a paid break of 20 minutes duration without deduction of pay after each 4 hours of overtime worked if the employee continues work after the break.
- (b) Where the period of overtime is to be for more than one and a half hours, an employee will be allowed a meal break of 20 minutes after ordinary hours before starting overtime, paid for at the ordinary hourly rate.
- (c) An employer and employee may agree to any variation of the provisions of clause 14.2 to meet the circumstances of the work in hand provided that the

employer will not be required to make payment in respect of any time allowed in excess of 20 minutes.

14.3 Rest breaks

Employees will be allowed a paid rest break of 10 minutes each morning or at an appropriate time if water restrictions are in place. Where agreement is reached between the employer and employee for an additional rest break, the rest break will be unpaid and exclusive of the employee’s ordinary hours of work.

Part 4—Wages and Allowances

15. Minimum rates

15.1 Adult rates

The classifications and minimum rates for an adult employee are set out in the following table:

Classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Gardener/Landscaper		
Introductory Level	740.80	19.49
Level 1	762.10	20.06
Level 2	791.30	20.82
Level 3	827.90	21.79
Level 4	862.50	22.7
Level 5	889.50	23.41

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

15.2 Junior rates

(a) The minimum wage payable to a junior employee will be the percentage of the adult rate prescribed for the classification in which the employee is employed as set out in the following table:

Age	% of adult rate
17 years and under	70
18 years	80
19 years	90

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Age	% of adult rate
20 years	100

- (b) The wage payable to a junior will, in the case of a weekly employee, be calculated to the nearest \$0.10, and in the case of an hourly employee, be calculated to the nearest cent.

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

15.3 Apprentice rates

- (a) Apprentices who commenced their apprenticeship before 1 January 2014 must be paid the following minimum percentage of the minimum wage rates for the tradesperson classification:

Year of apprenticeship	% of Level 4 rate
1st year	47.5
2nd year	60
3rd year	75
4th year	95

- (b) Apprentices who commenced their apprenticeship on or after 1 January 2014 must be paid the following minimum percentage of the minimum wage rates for the tradesperson classification:

Year of apprenticeship	Have not completed year 12	Have completed year 12
	% of Level 4 rate	
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	95	95

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

15.4 Adult apprentice rates

- (a) Adult apprentices who commenced their apprenticeship on or after 1 January 2014 must be paid the following minimum wage rates:

Year of apprenticeship	Minimum wage rate
1st year	80% of Level 4 rate
2nd year	Introductory rate

Year of apprenticeship	Minimum wage rate
3rd year	Introductory rate
4th year	95% of Level 4 rate

- (b) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least 6 months as a full-time employee or 12 months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 15 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

15.5 Apprentice conditions of employment

- (a) Except as provided in clause 15.5 or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- (b) **Block release training**
- (i) Clause 15.5(b) applies to apprentices required to attend block release training identified in or associated with their training contract.
- (ii) Where the training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from the training.
- (iii) Clause 15.5(b)(ii) does not apply where the apprentice could attend a closer Registered Training Organisation (RTO), and use of the more distant RTO is not agreed between the employer and the apprentice.
- (c) For the purposes of clause 15.5(b)(ii), excess reasonable travel costs include:
- (i) the total costs of reasonable transportation (including transportation of tools where required);
- (ii) accommodation costs incurred while travelling (where necessary); and
- (iii) reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work.
- (d) Excess reasonable travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (e) **Reduction of payment**
- (i) Payment under clause 15.5(b) may be reduced where an apprentice is eligible to receive travel costs to attend the block release training under a Government apprentice assistance scheme.

- (ii) The payment may be reduced by the amount the apprentice is entitled to receive under the scheme.
- (iii) A payment reduction will only apply if an apprentice has either received assistance under the scheme or their employer has advised them in writing of the availability of the assistance.

(f) Reimbursements of course fees and materials

An employer must reimburse an apprentice for the following costs paid by the apprentice:

- (i) all training fees charged by an RTO for prescribed courses; and
 - (ii) all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship.
- (g)** An employer must make the reimbursements in clause 15.5(f) at the later of:
- (i) within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship; or
 - (ii) within 3 months of starting training provided by the RTO.
- (h)** Reimbursement under clause 15.5(f) is not payable when there is unsatisfactory progress.
- (i)** An employer may meet its obligations under clauses 15.5(f) and 15.5(g) by paying any fees and/or cost of textbooks directly to the RTO.
- (j)** Attending training
- (i) An apprentice will be released from work to attend any training and assessment specified in, or associated with, the training contract.
 - (ii) An apprentice's attendance at training must be without loss of continuity of employment and be paid at the appropriate wages.
 - (iii) Time spent attending training will be counted as time worked for the purposes of calculating the apprentice's wages and determining their employment conditions.
- (k)** Clause 15.5(j)(iii) operates subject to the provisions of Schedule E—School-based Apprentices.
- (l)** Except in an emergency, an apprentice must not be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

15.6 Higher duties

- (a) An employee who is required to perform work for which a higher classification rate is fixed than that provided for in their ordinary duties will, if the work exceeds a total of 3 hours on any day, be paid for all work done on that day at the higher classification rate.

- (b) Where less than 3 hours' work is performed at the higher classification rate, the employee will be paid at the higher classification rate for the actual time worked.

15.7 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.

15.8 School-based apprentices

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

15.9 National training wage

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Gardening and Landscaping Services Award 2010* and not the *Miscellaneous Award 2010*.

16. Payment of wages

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

16.1 Period of payment

Wages must be paid weekly or fortnightly.

16.2 Method of payment

Wages must be paid by cash, cheque or electronic funds transfer into the employee's bank or other nominated financial institution account.

16.3 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (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 16.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: Clause 16.3(b) allows the Commission to make an order delaying the requirement to make a payment under clause 16.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

17. Allowances

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.

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

17.1 All-purpose allowances

- (a) Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave.
- (b) The following allowances are paid for all purposes under this award:
 - (i) Leading hand allowance (clause 17.2(a)); and
 - (ii) Tool allowance (clause 17.3(a)).

17.2 Wage-related allowances

(a) Leading hand allowance

- (i) A leading hand (as defined in clause 2—Definitions) must be paid a weekly allowance as follows:

In charge of:	\$ per week
1–2 employees	17.25
3–6 employees	34.50
7–9 employees	43.13
10 or more employees	60.38

- (ii) These allowances are in addition to any other wage specified for the employee.

(b) Vehicles and/or plant

An employee will be paid an allowance of **\$5.18** per day when required to drive a work vehicle (which requires a licence for a truck or tractor) or operate plant in the course of their work, but not when the employee merely assists a fitter or engineer to do such.

(c) First aid allowance

An employee holding a first aid qualification from St John Ambulance or equivalent and who is appointed by the employer to perform first aid duties will be paid an allowance of **\$17.25** per week.

17.3 Expense-related allowances

(a) Tool allowance

- (i) Tradespersons must be paid a tool allowance of **\$13.52** per week, for all purposes of the award.
- (ii) This allowance does not apply where the employer provides all the tools reasonably required by the tradesperson to perform all the functions of the tradesperson's employment.
- (iii) An employee provided with tools of the trade by the employer is not responsible for the loss of such tools if outside the control of the employee.
- (iv) An employee provided with tools of the trade by the employer will replace all or any tools of trade lost due to negligence of the employee.

(b) Vehicle allowance

- An employee will be paid an allowance of **\$0.78** per kilometre travelled when directed by the employer to use the employee's motor vehicle for any purpose. The time spent travelling will be paid for at ordinary rates provided that an employee will not be paid more than an ordinary day's wages for any time not exceeding 24 hours spent in travelling.

(c) Meal allowance

An employee will be paid a meal allowance of **\$15.07** per occasion when required to work overtime:

- (i) for 1.5 hours or more immediately after the completion of their ordinary hours of work on an ordinary working day; or
- (ii) immediately after the completion of 8 hours of work on a Saturday, Sunday or public holiday.

(d) Clothing and equipment allowance

- (i)** An employee who is required to wear protective clothing (e.g. oilskins, gumboots, overalls, goggles, safety boots, bowling shoes etc.) must be reimbursed by the employer for the cost of purchasing the special clothing and equipment. The provisions of this paragraph do not apply where the clothing and equipment is paid for by the employer.
- (ii)** If a uniform must be worn, the employer will provide the employee with a uniform at the commencement of employment, to be replaced on a fair wear and tear basis.
- (iii)** The employer may deduct an agreed amount from the wages due to an employee over 18 years old to cover the cost of the initial uniform issue.
- (iv)** The employee will have that amount reimbursed by the employer when the employee returns the uniform on termination of employment or at the expiration of 6 months from the commencement of employment.

(e) Travel and accommodation allowance

- (i)** An employee who is required to work away from their usual place of residence, will be provided reasonable board and lodging or the employer will pay the demonstrable cost of such lodging.
- (ii)** An employee who is required to work away from their usual place of employment will, at the direction of the employer, present themselves for work on the job at the usual starting time.
- (iii)** For all time reasonably spent in reaching and returning from such a job in excess of the time normally spent in travelling, they will be paid travel time at the ordinary rate of pay and fares reasonably incurred in excess of those normally incurred in travelling between home and the depot.

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

18. Superannuation

18.1 Superannuation legislation

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

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

18.2 Employer contributions

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

18.3 Voluntary employee contributions

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

18.4 Superannuation fund

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

- (a) AustralianSuper;
- (b) HOSTPLUS;
- (c) Cbus Super;
- (d) CareSuper;
- (e) Statewide Superannuation Trust;
- (f) AustSafe Super;
- (g) 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
- (h) 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 (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

19. Overtime

19.1 Payment for working overtime

All time worked in excess of 38 ordinary hours in a week or outside the spread of hours set out in clause 13—Ordinary hours of work and rostering, or in excess of 10 hours per day will be paid for at **150%** of the ordinary hourly rate for the first 2 hours and at **200%** of the ordinary hourly rate after that.

19.2 Breaks during overtime

An employee may be entitled to breaks during overtime in accordance with clause 14.2.

19.3 Rest period after overtime duty

- (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 on successive days.
- (b) Where an employee (other than a casual employee) works so much overtime that there is less than 10 hours between finishing overtime on one day and starting their ordinary work on the next day, the employee will be released, subject to clause 19.3(c) until they have had at least 10 consecutive hours off without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instructions of the employer, an employee resumes work or continues work without having had 10 consecutive hours off duty they will be paid at **200%** of the ordinary hourly rate until the employee is released from duty for such period and the employee can then be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during that absence.

19.4 Transport after overtime work

An employee who finishes overtime work at a time when reasonable means of transport are not available, will be provided with transport to their home by their employer.

19.5 Call-back

An employee required to attend for work after leaving the place of employment will be paid a minimum of 4 hours' pay at the appropriate rate for each attendance, provided that the employee will not be required to work a full 4 hours' work if the job they were recalled to perform is completed within a shorter period.

19.6 Time off instead of payment for overtime

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

NOTE: An example of the type of agreement required by clause 19.6 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave. An agreement under clause 19.6 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

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

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and

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

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

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

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

Part 6—Leave and Public Holidays

20. Annual leave

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

20.2 For the purpose of the [NES](#), a **shiftworker** means an employee whose ordinary working period includes Saturdays, Sundays and/or public holidays which the employee may be regularly rostered to work.

20.3 Payment for annual leave

Before the start of the 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 normal hours, exclusive of overtime, had they not been on leave; and
- (b) an additional loading of **17.5%** of the minimum hourly rate prescribed in clause 15—Minimum rates.

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the [Act](#)).

20.4 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 17, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

20.5 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 20.5 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 20.5 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 20.5, 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.

20.6 Excessive leave accruals: general provision

NOTE: Clauses 20.6 to 20.8 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 20.2).
- (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 20.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 20.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

20.7 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 20.6(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 20.7(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 20.6, 20.7 or 20.8 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 20.7(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 20.7(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 20.7(d) may result in the direction ceasing to have effect. See clause 20.7(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.

20.8 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.6(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 20.8(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 20.7(a) that, when any other paid annual leave arrangements (whether made under clause 20.6, 20.7 or 20.8 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 20.8(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 20.6, 20.7 or 20.8 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 20.8(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 20.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 20.8(a).

20.9 Annual 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 20.9. 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.

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- (b) Where an employee has been given notice pursuant to clause 20.9(a) 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.
- (c) 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.

20.10 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.10.
- (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 20.10 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 20.10 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 20.10 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 20.10.

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 20.10.

NOTE 3: An example of the type of agreement required by clause 20.10 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.

21. Personal/carer’s leave and compassionate leave

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

22. Parental leave and related entitlements

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

23. Community service leave

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

24. Unpaid family and domestic violence leave

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 Public holiday work

An employee required to work on a public holiday will be paid at **250%** of the ordinary hourly rate with a minimum of 4 hours’ payment.

25.3 Substitution of certain public holidays by agreement in the workplace

- (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.

25.4 Part-day public holidays

For provisions in relation to part-day public holidays see Schedule I—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 Employee’s period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

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

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

29.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 29.2 is to be taken at times that are convenient to the employee after consultation with the employer.

30. Redundancy

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

30.1 Transfer to lower paid duties on redundancy

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

30.2 Employee leaving during redundancy notice period

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

30.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 30.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 30.3(b).
- (d) An employee who fails to produce proof when required under clause 30.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 29.2.

Schedule A—Classification Structure

A.1 Introductory level

A.1.1 This is an entry level position.

A.1.2 An employee at this level is undertaking training for a period of not more than 3 months which may include information on the workplace, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, workplace layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurances.

A.1.3 An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

- (a) performs general labouring and cleaning duties;
- (b) exercises minimal judgment;
- (c) works under direct supervision;
- (d) undertakes training so as to enable them to work at Level 1; and
- (e) assists on trade works and routine landscape tasks.

A.2 Level 1

An employee at this level performs simple or routine tasks essentially of a manual nature and to the level of their training:

- (a) exercises minimal skills, knowledge and decision-making;
- (b) works under direct supervision, and is given regular direction or guidance and results are constantly monitored; and
- (c) undertakes general gardening/landscaping duties.

A.3 Level 2

An employee at this level performs work above and beyond the skills of an employee at Level 1 and to the level of their skills, competence and training:

- (a) works in accordance with standard operating procedures and established criteria;
- (b) works under direct supervision either individually or in a team environment;
- (c) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
- (d) understands and utilises basic statistical process control procedures;
- (e) follows safe work practices and can report workplace hazards; and
- (f) uses, and performs routine maintenance on, gardening tools and equipment.

A.4 Level 3

An employee at this level will have completed a course in horticulture at a recognised training institution and performs work above and beyond the skills of an employee at Level 2 and to the level of their skills, competence and training:

- (a) is responsible for the quality of their own work subject to routine supervision;
- (b) works under routine supervision either individually or in a team environment;
- (c) exercises discretion within their level of skills and training;
- (d) assists in the provision of on-the-job training; and
- (e) is experienced in gardening work and has demonstrated competence in plant and lawn maintenance and development, tree and shrub identification and the use and care of lawn mowers, edging machines and rotary hoes.

A.5 Level 4

A.5.1 An employee at this level will have:

- (a) completed a satisfactory period of apprenticeship in horticulture and possesses a recognised trade qualification;
- (b) completed a Parks and Gardens Certificate III, a Landscaping Certificate III, a Greenkeeping Certificate III or equivalent; or
- (c) not less than 3 years' experience in practical horticulture and possesses the skills, knowledge and experience to perform work within the scope of this level.

A.5.2 An employee at this level performs work above and beyond a Level 3 employee and to the level of their skills, competence and training:

- (a) understands and applies quality control techniques;
- (b) exercises good interpersonal and communications skills;
- (c) exercises discretion within the scope of this classification level;
- (d) performs work under limited supervision either individually or in a team environment;
- (e) performs work which while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training; and
- (f) is able to inspect products and/or materials for conformity with established operational standards.

A.6 Level 5

A.6.1 An employee at this level:

- (a) is a trades qualified person who has completed relevant post trade training at Certificate IV or Diploma level from a recognised Registered Training Organisation; or
- (b) holds a trade certificate and/or possesses the skills, knowledge and experience to perform work within the scope of this level.

A.6.2 An employee at this level performs work above and beyond a Level 4 employee, and to the level of their skills, competence and training:

- (a) works from complex instructions and procedures;
- (b) assists in the provision of on-the-job training;
- (c) co-ordinates work in a team environment or works individually under general supervision; and
- (d) is responsible for assuring the quality of their own work.

A.6.3 An employee at this level may be in charge of gardens, engaged in maintenance and/or development of suburban areas, parks, gardens and specialised horticultural construction work.

Schedule B—Summary of Hourly Rates of Pay

B.1.1 Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 17.1, this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

B.1.2 The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 15.1. Consistent with clause B.1.1, all-purpose allowances need to be added to the rates in the table where they are applicable.

B.2 Full-time and part-time adult employees

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

	Ordinary hours	Where an employer is subject to water restrictions		Public holidays
		Monday to Friday—outside 6 am to 6 pm	Saturday—before 6 am	
	% of ordinary hourly rate ¹			
	100%	150%	150%	250%
	\$	\$	\$	\$
Introductory Level	19.49	29.24	29.24	48.73
Level 1	20.06	30.09	30.09	50.15
Level 2	20.82	31.23	31.23	52.05
Level 3	21.79	32.69	32.69	54.48
Level 4	22.7	34.05	34.05	56.75
Level 5	23.41	35.12	35.12	58.53

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

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

	Monday to Sunday		Public holidays
	First 2 hours	After 2 hours	
	% of ordinary hourly rate ¹		
	150%	200%	250%
	\$	\$	\$
Introductory Level	29.24	38.98	48.73
Level 1	30.09	40.12	50.15
Level 2	31.23	41.64	52.05

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	Monday to Sunday		Public holidays
	First 2 hours	After 2 hours	
	% of ordinary hourly rate ¹		
	150%	200%	250%
	\$	\$	\$
Level 3	32.69	43.58	54.48
Level 4	34.05	45.40	56.75
Level 5	35.12	46.82	58.53

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.3 Casual adult employees

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

B.3.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Where an employer is subject to water restrictions		Public holidays
		Monday to Friday—outside 6 am to 6 pm	Saturday—before 6 am	
	% of ordinary hourly rate ¹			
	125%	175%	175%	275%
	\$	\$	\$	\$
Introductory Level	24.36	34.11	34.11	53.60
Level 1	25.08	35.11	35.11	55.17
Level 2	26.03	36.44	36.44	57.26
Level 3	27.24	38.13	38.13	59.92
Level 4	28.38	39.73	39.73	62.43
Level 5	29.26	40.97	40.97	64.38

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.3.2 Casual employees—overtime rates

	Ordinary hours	Overtime		
		Monday to Sunday		Public holidays
		First 2 hours	After first 2 hours	All overtime hours
% of ordinary hourly rate ¹				
	125%	175%	225%	275%
	\$	\$	\$	\$
Introductory Level	24.36	34.11	43.85	53.60
Level 1	25.08	35.11	45.14	55.17
Level 2	26.03	36.44	46.85	57.26
Level 3	27.24	38.13	49.03	59.92
Level 4	28.38	39.73	51.08	62.43
Level 5	29.26	40.97	52.67	64.38

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.4 Junior employees

The **junior hourly rate** is based on a percentage of the appropriate adult weekly rate and rounded to the nearest cent in accordance with clause 15.2 divided by 38. Adult rates apply from 20 years of age in accordance with clause 15.2.

B.4.1 Full-time and part-time junior employees—ordinary and penalty rates

Age	Junior weekly rate	Junior hourly rate—ordinary hours	Where an employer is subject to water restrictions		Public holidays
			Monday to Friday—outside 6 am to 6 pm	Saturday—before 6 am	
			% of junior hourly rate ¹		
		100%	150%	150%	250%
	\$	\$	\$	\$	\$
Introductory level					
17 years and under	518.56	13.65	20.48	20.48	34.13
18 years	592.64	15.60	23.40	23.40	39.00
19 years	666.72	17.55	26.33	26.33	43.88
Level 1					
17 years and under	533.47	14.04	21.06	21.06	35.10

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Age	Junior weekly rate	Junior hourly rate—ordinary hours	Where an employer is subject to water restrictions		Public holidays	
			Monday to Friday—outside 6 am to 6 pm	Saturday—before 6 am		
			% of junior hourly rate ¹			
			100%	150%		150%
	\$	\$	\$	\$	\$	
18 years	609.68	16.04	24.06	24.06	40.10	
19 years	685.89	18.05	27.08	27.08	45.13	
Level 2						
17 years and under	553.91	14.58	21.87	21.87	36.45	
18 years	633.04	16.66	24.99	24.99	41.65	
19 years	712.17	18.74	28.11	28.11	46.85	
Level 3						
17 years and under	579.53	15.25	22.88	22.88	38.13	
18 years	662.32	17.43	26.15	26.15	43.58	
19 years	745.11	19.61	29.42	29.42	49.03	
Level 4						
17 years and under	603.75	15.89	23.84	23.84	39.73	
18 years	690.00	18.16	27.24	27.24	45.40	
19 years	776.25	20.43	30.65	30.65	51.08	
Level 5						
17 years and under	622.65	16.39	24.59	24.59	40.98	
18 years	711.60	18.73	28.10	28.10	46.83	
19 years	800.55	21.07	31.61	31.61	52.68	

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.4.2 Full-time and part-time junior employees—overtime rates

	Monday to Sunday		Public holidays
	First 2 hours	After 2 hours	
	% of junior hourly rate ¹		
	150%	200%	250%
	\$	\$	\$
Introductory level			
17 years and under	20.48	27.30	34.13

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	Monday to Sunday		Public holidays
	First 2 hours	After 2 hours	
	% of junior hourly rate ¹		
	150%	200%	250%
	\$	\$	\$
18 years	23.40	31.20	39.00
19 years	26.33	35.10	43.88
Level 1			
17 years and under	21.06	28.08	35.10
18 years	24.06	32.08	40.10
19 years	27.08	36.10	45.13
Level 2			
17 years and under	21.87	29.16	36.45
18 years	24.99	33.32	41.65
19 years	28.11	37.48	46.85
Level 3			
17 years and under	22.88	30.50	38.13
18 years	26.15	34.86	43.58
19 years	29.42	39.22	49.03
Level 4			
17 years and under	23.84	31.78	39.73
18 years	27.24	36.32	45.40
19 years	30.65	40.86	51.08
Level 5			
17 years and under	24.59	32.78	40.98
18 years	28.10	37.46	46.83
19 years	31.61	42.14	52.68

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.4.3 Casual junior employees—ordinary and penalty rates

Age	Casual junior hourly rate—ordinary hours	Where an employer is subject to water restrictions		Public holidays
		Monday to Friday—outside 6 am to 6 pm	Saturday—before 6 am	
	% of junior hourly rate ¹			
	125%	175%	175%	275%
	\$	\$	\$	\$
Introductory level				
17 years and under	17.06	23.89	23.89	37.54
18 years	19.50	27.30	27.30	42.90
19 years	21.94	30.71	30.71	48.26
Level 1				
17 years and under	17.55	24.57	24.57	38.61
18 years	20.05	28.07	28.07	44.11
19 years	22.56	31.59	31.59	49.64
Level 2				
17 years and under	18.23	25.52	25.52	40.10
18 years	20.83	29.16	29.16	45.82
19 years	23.43	32.80	32.80	51.54
Level 3				
17 years and under	19.06	26.69	26.69	41.94
18 years	21.79	30.50	30.50	47.93
19 years	24.51	34.32	34.32	53.93
Level 4				
17 years and under	19.86	27.81	27.81	43.70
18 years	22.70	31.78	31.78	49.94
19 years	25.54	35.75	35.75	56.18
Level 5				
17 years and under	20.49	28.68	28.68	45.07
18 years	23.41	32.78	32.78	51.51
19 years	26.34	36.87	36.87	57.94

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.5 Apprentices other than adult apprentices

The **apprentice hourly rate** is based on a percentage of the Level 4 adult rate in accordance with clause 15.3.

B.5.1 Apprentices other than adult apprentices commencing on or after 1 January 2014—ordinary and penalty rates

	Apprentice hourly rate—ordinary hours	Where an employer is subject to water restrictions		Public holidays
		Monday to Friday—outside 6 am to 6 pm	Saturday—before 6 am	
% of apprentice hourly rate ¹				
	100%	150%	150%	250%
	\$	\$	\$	\$
Have not completed year 12				
1st year	11.35	17.03	17.03	28.38
2nd year	13.62	20.43	20.43	34.05
3rd year	17.03	25.54	25.54	42.56
4th year	21.57	32.35	32.35	53.91
Have completed year 12				
1st year	12.49	18.73	18.73	31.21
2nd year	14.76	22.13	22.13	36.89
3rd year	17.03	25.54	25.54	42.56
4th year	21.57	32.35	32.35	53.91

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.5.2 Apprentices other than adult apprentices commencing on or after 1 January 2014—overtime

	Monday to Sunday		Public holidays
	First 2 hours	After 2 hours	
% of apprentice hourly rate ¹			
	150%	200%	250%
	\$	\$	\$
Have not completed year 12			
1st year	17.03	22.70	28.38
2nd year	20.43	27.24	34.05
3rd year	25.54	34.05	42.56
4th year	32.35	43.13	53.91

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	Monday to Sunday		Public holidays
	First 2 hours	After 2 hours	
	% of apprentice hourly rate ¹		
	150%	200%	250%
	\$	\$	\$
Have completed year 12			
1st year	18.73	24.97	31.21
2nd year	22.13	29.51	36.89
3rd year	25.54	34.05	42.56
4th year	32.35	43.13	53.91

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.6 Adult apprentices

B.6.1 Adult apprentices commencing on or after 1 January 2014—ordinary hours

		Minimum weekly rate	Minimum hourly rate
		\$	\$
1st year	80% of adult Level 4 rate	690.00	18.16
2nd and 3rd year	Introductory rate	740.80	19.49
4th year	95% of adult Level 4 rate	819.38	21.57

B.6.2 Adult apprentices commencing on or after 1 January 2014—penalty rates and overtime

	Penalty rates – Where an employer is subject to water restrictions		Overtime – Monday to Sunday		Public holidays – All hours (including overtime)
	Monday to Friday— outside 6 am to 6 pm	Saturday— before 6 am	First 2 hours	After first 2 hours	
	% of apprentice hourly rate ¹				
	150%	150%	150%	200%	250%
	\$	\$	\$	\$	\$
1st year	27.24	27.24	27.24	36.32	45.40
2nd and 3rd year	29.24	29.24	29.24	38.98	48.73
4th year	32.35	32.35	32.35	43.13	53.91

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

Schedule C—Summary of Monetary Allowances

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 4 Employee in clause 15.1 = \$862.50.

Allowance	Clause	% of standard rate	\$	Payable
Leading hand¹, in charge of:	17.2(a)(i)			
1 to 2 employees		2.0	17.25	per week
3 to 6 employees		4.0	34.50	per week
7 to 9 employees		5.0	43.13	per week
10 or more employees		7.0	60.38	per week
Vehicles and/or plant allowance	17.2(b)	0.6	5.18	per day
First aid allowance	17.2(c)	2.0	17.25	per week

¹ This allowance applies for all purposes

C.1.2 Adjustment of wage-related allowances

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

C.2 Expense-related allowances

C.2.1 The following expense-related allowances will be payable to employees in accordance with clause 17.3:

Allowance	Clause	\$	Payable
Tool allowance—Tradespersons ¹	17.3(a)	13.52	per week
Vehicle allowance	17.3(b)	0.78	per km
Meal allowance—overtime of one and a half hours or more immediately after ordinary hours	17.3(c)	15.07	per occasion

¹ This allowance applies for all purposes

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

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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
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group
Meal allowance	Take away and fast foods 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

Assessed capacity (clause D.5)	Relevant minimum wage
%	%
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—School-based Apprentices

- E.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- E.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- E.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- E.4** For the purposes of clause E.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- E.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- E.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- E.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.
- E.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency-based progression if provided for in this award.
- E.9** The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency based progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- E.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- E.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

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

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule G—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

<p><i>Include if the employee is under 18 years of age:</i></p> <p>Name of parent/guardian: _____</p> <p>Signature of parent/guardian: _____</p> <p>Date signed: ___/___/20___</p>
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Schedule I—Part-day Public Holidays

- I.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- I.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a)** All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b)** Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c)** Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d)** Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e)** Excluding annualised salaried employees to whom clause I.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f)** Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
 - (g)** An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause I.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- I.3** 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](#).
- I.4** This schedule is not intended to detract from or supplement the [NES](#).