

**The Professional Diving (Recreational) Award—Exposure Draft was first published on 7 October 2014. Subsequent amendments to the draft are as follows:**

<b>Publication date</b>	<b>Reason for amendments</b>	<b>Clauses affected</b>
13 February 2019	Incorporates changes resulting from <a href="#">[2017] FWCFB 3176, PR593881</a>	20, Schedule B
	Incorporate changes resulting from <a href="#">PR593881</a>	Schedule C (deleted)
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a>	1.2, 4.2, 4.6, 28.5
	Incorporate changes resulting from <a href="#">PR598110</a>	Schedule C
	Incorporates changes resulting from <a href="#">[2018] FWCFB 1548</a>	7.2
	Incorporate change resulting from <a href="#">[2018] FWCFB 3500, PR606435, PR606585</a>	15, 17, Schedule A, Schedule B
	Incorporate changes resulting from <a href="#">[2018] FWCFB 3802</a>	11.3, 15.1, 15.2(d), 16, 15.4, 17.3(e)
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	Incorporates changes resulting from <a href="#">PR701683</a>	Schedule C
	Incorporates changes resulting from <a href="#">[2018] FWCFB 6863, PR701512</a>	6
	Administrative changes by Modern Awards team <a href="#">Exposure Draft</a>	10.3 (deleted), 16
14 October 2019	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a> . Administrative changes by Modern Awards team.	4.3, 2 (relocated)
	Incorporating changes from <a href="#">[2018] FWCFB 4695, PR700601</a>	11.4
	Incorporating changes resulting from <a href="#">[2019] FWCFB 1333</a> at [35]	1.5 (deleted)
	Incorporates changes resulting from <a href="#">[2019] FWCFB 2548, PR707015</a>	30
	Incorporating changes resulting from <a href="#">[2019] FWCFB 3500, PR707528, PR707754</a>	15, 17, Schedule A, Schedule B

Exposure Draft—Professional Diving (Recreational) Award 20XX

The Professional Diving (Recreational) Award—Exposure Draft was first published on 7 October 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5144</a>	24
	Incorporating changes resulting from <a href="#">[2019] FWCFB 5409</a>	4.5, 15
	Incorporating changes resulting from <a href="#">[2019] FWCFB 6935</a>	A.4 (deleted)
	Administrative changes made by Modern Awards team to the document structure and Part and clause titles in accordance with <a href="#">[2019] FWCFB 5409</a> at [6] and Attachment A	Part 1—, 2, 9, 10, 11, 13, 15, 15.4, 16.4, 17, 19.4, Part 6—20, 20.7, 23, 23, Part 8—, 29, 30, Schedule B, Schedule C—National Training Wage (deleted), Schedule E—Definitions (moved), Schedule C, Schedule F
	Administrative change to correct error	B.2.2
	Administrative changes made by Modern Awards team to incorporate previous A clauses into the numbering of the exposure draft	6, 16, 27
	Administrative changes to correct clause numbering of the exposure draft	12.2, 12.3, 18.4

## EXPOSURE DRAFT

### Professional Diving (Recreational) Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Professional Diving Industry (Recreational) Award 2010* (the Professional Diving (Recreational) Award) as at 29 October 2015 and incorporates award updates up to 20 June 2019. This exposure draft does not seek to amend any entitlements under the Diving recreational award. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award in accordance with section 156 of the *Fair Work Act 2009* is being dealt with in matters [AM2014/76](#) and [AM2014/85](#). Additionally, a number of common issues are being dealt with by the Commission which may affect this award. Some transitional provisions have been deleted as a result of decisions made during the review.

This draft does not represent the concluded view of the Commission in this matter.

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Draft

## Part 1—Application and Operation of this Award

### 1. Title and commencement

Clause 1.4 deleted as a result of re-structure [\[2019\] FWCFB 5409](#) at [6]. Clause 1.5 deleted in accordance with [\[2019\] FWCFB 1333](#) at [35].

- 1.1 This award is the *Professional Diving (Recreational) 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 this does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- ~~1.4 Schedule E—Definitions sets out definitions that apply in this award.~~
- ~~1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.~~

### 2. Definitions

In this award, unless the contrary intention appears:

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

**All-purpose rate** means the rate of pay of an employee who is entitled to an all-purpose loading. This rate is to be used when calculating any penalties, loadings or payment while they are on annual leave.

**casual hourly rate** means the hourly rate for a casual employee for the employee's classification specified in clause 15—Minimum rates, inclusive of the casual loading, which is payable for all purposes

**day trip** means a trip that takes place within a period of 24 hours, i.e. the employee leaves and returns within a period of 24 hours

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

**distant work** means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at a place other than their usual place of residence at the time of commencing work

**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)

**long trip** means a trip that exceeds a period of 24 hours

**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

**recreational diving industry** has the meaning given in clause 4.3

**standard rate** means the minimum weekly rate for a dive master in clause 15—  
Minimum rates

**working time for an instructor** means instruction time plus pre-dive and post-dive briefings of a maximum 30 minutes duration each

### 3. The National Employment Standards and this award

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

### 4. Coverage

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

- 4.1 This industry award covers employers throughout Australia engaged in the recreational diving industry and their employees in the classifications listed in clause 12—Classifications to the exclusion of any other modern award.
- 4.2 In clause 4.1, Australia includes all such areas as fall within the territorial jurisdiction of the Commonwealth or of a State.
- 4.3 The **recreational diving industry** means the provision of underwater services for the purposes of recreational diving and related shipboard services.
- 4.4 The award does not cover employers and employees covered by the classifications listed in the *Professional Diving Industry (Industrial) Award 20XX*.

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- 4.5 This award covers any employer which supplies labour on an on-hire basis in the recreational diving industry ~~set out in clauses 4.1 and 4.3~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. ~~This subclause~~ Clause 4.4 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

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- (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 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 clause:

- (a) clause 16—Payment of wages;
- (b) clause 19.4—Time off instead of payment for overtime,
- (c) clause 20.3—Annual leave in advance; and
- (d) clause 20.7—Cashing out of annual leave

**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** All employees except casual employees must be employed by the week.

8.3 Where employment is of less than ~~four~~4 weeks' duration, employees will be paid casual rates.

## 9. Full-time employees

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

## 10. Part-time employees

10.1 A part-time employee:

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

10.2 For each ordinary hour worked, a part-time employee will be paid no less than the minimum hourly rate for the relevant classification in clause 15.1.

10.3 An employer must inform a part-time employee prior to the commencement of employment of the ordinary hours of work and starting and finishing times.

## 11. Casual employees

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

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

11.2 Casual employment is to be terminated by ~~four~~4 hours' notice on either side, or by the payment or forfeiture of ~~four~~4 hours' wages as the case may be.

### 11.3 Casual loading

- (a) For each hour worked, a casual employee must be paid:
  - (i) the minimum hourly rate; and
  - (ii) a loading of 25% of the minimum hourly rate, for the classification in which they are employed.
- (b) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other conditions of full-time or part-time employment.
- (c) The loading constitutes part of the casual employee's all-purpose rate.

**11.4 Right to request casual conversion**

Clause 11.4 inserted in accordance with [\[2018\] FWCFB 4695](#) and [PR700601](#).

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

- (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

- 12.1 Employees may be required to carry out the duties of deckhands, cooks or skippers, in addition to instructing and supervising diving operations, shopwork, interviewing prospective clients and other undefined duties.

**12.2 Dive instructor** means an employee who is trained to train other divers in accordance with the following standards:

- (a) for the training and certification of recreational divers:
  - (i) ISO 24801–3 Recreational Diving Services—Safety Related Minimum Requirements for the Training of Recreational Scuba Divers—Level 3 Dive Leader; and
  - (ii) ISO 24802–1 Requirements for Training Scuba Instructors—Level 1 Assistant Instructor; and
  - (iii) ISO 24802–2 Requirements for Training Scuba Instructors—Level 2 Instructor; and

in keeping with the provisions of ISO 24803 Recreational Diving Services—Requirements for Recreational Scuba Diving Service Providers.

**12.3 Dive master** means an employee trained to the level required of:

- (a) ISO 24801–3 Recreational Diving Services—Safety Related Minimum Requirements for the Training of Recreational Scuba Divers—Level 3 Dive Leader; or
- (b) ISO 24802–1 Requirements for Training Scuba Instructors—Level 1 Assistant Instructor; or
- (c) ISO 24802–2 Requirements for Training Scuba Instructors—Level 2 Instructor; and

in keeping with the provisions of ISO 24803 Recreational Diving Services—Requirements for Recreational Scuba Diving Service Providers.

### Part 3—Hours of Work

#### 13. Ordinary hours of work

**13.1** ~~This e~~Clause 13 supplements Division 3 of the [NES](#) which deals with maximum weekly hours provided in [section 62](#) of the [Act](#).

**13.2** The ordinary hours of work are an average of 38 hours per week but not exceeding 152 hours over a period of 28 days.

**13.3** The ordinary hours of work may be worked on any day of the week to a maximum of 12 hours on any one day.

**14. Breaks**

**14.1 Unpaid meal breaks**

An employee is entitled to an unpaid meal break at a time fixed by agreement between the employer and the majority of employees concerned, provided that no employee works more than ~~five~~5 hours without a meal break.

**14.2 Paid rest breaks**

An employee is entitled to a 10 minute paid rest break during the morning or the afternoon without loss of pay at a time agreed between the employer and the employee.

**Part 4—Wages and Allowances**

**15. Minimum rates**

Monetary amounts have been adjusted as a result of AWR 2019 – changes not tracked.  
 Minimum rates table amended in accordance with [\[2019\] FWCFCB 5409](#) at [114].

**15.1 Adult rates**

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

Employee classification	Minimum annual rate	Minimum weekly rate <sup>1</sup> <b>(full-time employee)</b>	Minimum hourly rate
	\$	\$	\$
Dive master	41,957	804.70	21.18
Dive instructor	44,647	856.30	22.53

<sup>1</sup> **Minimum weekly rate** is determined by dividing the minimum annual rate by 52.1429.

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

**15.2 Minimum payments**

**(a) Boat trips—full-time and part-time employees**

- (i) A **day trip** means a trip that takes place within a period of 24 hours, i.e. the employee leaves and returns within a period of 24 hours.
- (ii) A **long trip** means a trip that exceeds a period of 24 hours.

**(b) Full-time employees**

- (i) When a full-time employee is engaged on a day trip, the employee is entitled to a minimum payment of ~~six-6~~ hours at the minimum hourly rate.
- (ii) When a full-time employee is engaged on a long trip, the employee is entitled to a minimum payment of ~~six-6~~ hours at the minimum hourly rate for each 24 hour period of the trip.

**(c) Part-time employees**

- (i) When a part-time employee is engaged on a day trip, the employee is entitled to a minimum payment of ~~three-3~~ hours at the minimum hourly rate.
- (ii) When a part-time employee is engaged on a long trip, the employee is entitled to a minimum payment of ~~six-6~~ hours at the minimum hourly rate for each 24 hour period of the trip.

**(d) Casual employees**

- (i) When a casual employee is engaged on a day trip that exceeds ~~six-6~~ hours, the employee is entitled to a minimum payment of ~~six-6~~ hours at the casual hourly rate.
- (ii) When a casual employee is engaged on a day trip of less than ~~six-6~~ hours, the employee is to be paid the actual hours worked at the casual hourly rate.
- (iii) When a casual employee is engaged in dive shop work which includes classroom instruction, the employee is entitled to a minimum payment of ~~two-2~~ hours at the casual hourly rate.
- (iv) When a casual employee is engaged in field work that takes place within a period of 24 hours, the employee is entitled to a minimum payment of ~~four-4~~ hours at the casual hourly rate.

**15.3 Higher duties**

- (a) Where employees perform the duties of a higher paid classification for a day or part thereof they will be paid at the higher rate for that day.
- (b) For the purposes of ~~this~~-clause\_15.3 a **higher paid classification** means a classification with salary and allowances at a higher paid classification than the employee's current classification.

**15.4 National training wage**

- (a) Schedule E to the *Miscellaneous Award 20~~10XX~~* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 20~~10XX~~* as at 1 July ~~2019~~2018. Provided that any reference to "this award" in Schedule E to the *Miscellaneous Award 20~~10XX~~* is to be read as

referring to the *Professional Diving Industry Award 20XX* and not the *Miscellaneous Award 20XX*.

## 16. Payment of wages

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

- 16.1** Wages will be paid either weekly or fortnightly, unless otherwise agreed between the employer and the employee.
- 16.2** Wages will be paid by cash or electronic funds transfer (EFT) into the employee's bank or nominated financial institution account.
- 16.3** Where an employee is paid by cash or cheque and the employee is kept waiting for their wages on pay day for more than 15 minutes after the usual time for ceasing work, the employee must be paid overtime rates after that 15 minutes for the duration spent waiting at the workplace.
- 16.4 Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
- (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under ~~paragraph (a) clause 16.4(a)~~ is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: ~~Paragraph (b) Clause 16.4(b)~~ allows the Commission to make an order delaying the requirement to make a payment under ~~this clause 16.4~~. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

## 17. Allowances

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

Note inserted in accordance with [\[2015\] FWCFB 4658](#) at [57].

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

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

### 17.2 Wage-related allowance—Language allowance

A language allowance of **\$48.28** per week is payable to an employee who is required by their employer to instruct in a language other than English.

### 17.3 Expense-related allowances

#### (a) Accommodation and meals—offshore

An employee will be reimbursed for all meals and accommodation purchased whilst onboard a vessel travelling offshore for a journey of one or more nights. This provision will not apply where meals and accommodation are provided by the employer.

#### (b) Vehicle allowance

A vehicle allowance of **\$0.78** per kilometre is payable to an employee who consents to use the employee's own vehicle for the transportation of themselves and their personal diving equipment for work purposes.

#### (c) Distant work onshore

(i) For the purpose of ~~this~~ clause 17.3 **distant work** means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at a place other than their usual place of residence at the time of commencing work.

(ii) If employees whilst employed on distant work change their usual place of residence, such new place of residence or any further change of residence (if made whilst employed on distant work) will be regarded as the employee's usual place of residence for determination of whether the work is distant work within the meaning of ~~this~~ clause 17.3.

#### (d) Travel to and from distant work

(i) Employees engaged on distant work, who are required to travel with equipment, to and from work will be reimbursed for the cost of such travel, unless the employer provides the means of travel.

(ii) Where an employee is recalled and required to return on more than one occasion to the place of distant work, the employer will reimburse the

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employee the cost of returning to work on each occasion, except where the employer provides the means of travel.

- (iii) The employer will not reimburse the cost of travel and travelling time of an employee who:
- chooses to leave the employment before the completion of the job or before being ~~three~~3 months in such employment, whichever happens first;
  - is discharged for unsatisfactory performance within one week of engagement; or
  - is discharged for misconduct.

**(e) Payment for travel to and from distant work**

- (i) Payment for time occupied in travelling to and from distant work will be at the minimum hourly rate, except on Sundays and public holidays when it will be paid for at **150%** of the minimum hourly rate.
- (ii) Employees will also be paid an amount of **\$5.91** per trip home to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (iii) The maximum travelling time to be paid for is:
- 12 hours out of every 24 hours; or
  - when a sleeping berth is provided by the employer for all night travel—~~eight~~8 hours out of every 24 hours.

**(f) Accommodation and meals—distant work**

- (i) The employee will be reimbursed for all meals and accommodation purchased whilst on distant work. The provision will not apply where meals and accommodation are provided by the employer or where the provisions of clauses 17.3(f)(ii) and ~~(iii)~~17.3(f)(iii) apply.
- (ii) An employee, by agreement with the employer, may be paid a minimum of **\$349.98** per week in return for the employee being responsible for securing their own accommodation and meals.
- (iii) In the case of parts of the week occurring at the beginning or end of employment on distant work, the allowance is **\$50.06** per day or one seventh of any other weekly amount agreed on.

**(g) Loss of personal effects allowance**

- (i) An employee will be reimbursed up to **\$2493.00** for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge.

- (ii) No payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

## **18. Superannuation**

### **18.1 Superannuation legislation**

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

### **18.2 Employer contributions**

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

### **18.3 Voluntary employee contributions**

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

### **18.4 Superannuation fund**

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

- (a) Maritime Super; or

- (b) AMP Superannuation Savings Trust,
- (c) 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
- (d) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Overtime

### 19. Overtime

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

- 19.1 All time worked on any one day in excess of 12 hours will be paid as overtime.
- 19.2 Overtime will be paid for at the rate of **150%** of the minimum hourly rate for the first ~~two~~2 hours and **200%** of the minimum hourly rate thereafter.
- 19.3 Employees including casual employees who are called back to work after the usual finishing time will be paid for a minimum of ~~four~~4 hours' work at overtime rates.
- 19.4 **Time off instead of payment for overtime**
  - (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
  - (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.4.
  - (c) An agreement must state each of the following:
    - (i) the number of overtime hours to which it applies and when those hours were worked;
    - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
    - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
    - (iv) that any payment mentioned in ~~subparagraph (iii)~~clause 19.4(c)(iii) must be made in the next pay period following the request.

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

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

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

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

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

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

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

## Part 6—Leave and Public Holidays

### 20. Annual leave

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

### 20.2 Payment for annual leave

In addition to the payment required to be made under the [NES](#), the employee will be paid an annual leave loading of 17.5% of the ordinary rate of pay for the period of annual leave.

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](#)).

### 20.3 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 20.3 is set out at Schedule D—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule D—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 20.3 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 20.3, 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.

~~20.4~~ **Cashing out of annual leave**

~~20.5~~**20.4** Excessive leave accruals: general provision

NOTE: Clauses 20.4 to 20.6 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 20.5 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 20.6 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

~~20.6~~**20.5** 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 20.4(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under ~~paragraph (a)~~[clause 20.5\(a\)](#):
  - (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 20.4, 20.5 or 20.6 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 20.5\(a\)](#) that is in effect.
- (d) An employee to whom a direction has been given under [clause 20.5\(a\)](#) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in ~~paragraph (d)~~[clause 20.5\(d\)](#) may result in the direction ceasing to have effect. See clause 20.5(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.

**20.720.6 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.4(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under ~~paragraph (a)~~ clause 20.6(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 20.5(a) that, when any other paid annual leave arrangements (whether made under clause 20.4, 20.5 or 20.6 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under ~~paragraph (a)~~ clause 20.6(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 20.4, 20.5 or 20.6 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under ~~paragraph (a)~~ clause 20.6(a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under ~~paragraph (a)~~ clause 20.6(a).

**20.7 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.7.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.7.
- (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 20.7 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 20.7 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 20.7 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 20.7.

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 20.7.

NOTE 3: An example of the type of agreement required by clause 20.7 is set out at Schedule E—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Cash Out Annual Leave.

## **21. Personal/carer’s leave and compassionate leave**

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

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

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

## **23. Community service leave**

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

**24. Unpaid family and domestic violence leave**

Clause 24 inserted in accordance with [\[2019\] FWCFCB 5144](#) at [13].

Unpaid family and domestic violence leave is provided for in the NES.

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

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

**25. Public holidays**

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

**25.2 Part-day public holidays**

For provisions relating to part-day public holidays see Schedule F—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**

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

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

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

## 29.2 Job search entitlement

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

## 30. Redundancy

Clause 30 amended in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR707015](#).

**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—Summary of Hourly Rates of Pay—Recreational Diving Industry

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals. See [\[2019\] FWCFCB 6935](#)

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

Clause A.4 deleted in accordance with [\[2019\] FWCFCB 6935](#).

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

### A.1 Full-time and part-time employees—ordinary rates

	Monday to Sunday \$
Dive master	21.18
Dive instructor	22.53

**Commented [FWC1]:** (Minimum weekly rate ÷ 38) in cl 15.1.

### A.2 Full-time and part-time employees—overtime rates

	Monday to Sunday	
	First 2 hours	After 2 hours
	% of minimum hourly rate	
	150%	200%
	\$	\$
Dive master	31.77	42.36
Dive instructor	33.80	45.06

**Commented [FWC2]:** (Minimum weekly rate ÷ 38) in cl 15.1.

**Commented [FWC3]:** Relevant percentage in cl 19.2.

### A.3 Casual employees (and other employees where duration of employment is less than ~~four~~ 4 weeks)—ordinary rates

	Monday to Sunday \$
Dive master	26.48
Dive instructor	28.16

**Commented [FWC4]:** (Minimum weekly rate ÷ 38) in cl 15.1 + 25% all-purpose casual loading in clause 11.3.

~~A.4 Casual employees (and other employees where duration of employment is less than four 4 weeks) overtime rates~~

-	Monday to Sunday	
	First 2 hours	After 2 hours
	% of casual hourly rate	
-	150%	200%
	\$	\$
Dive master	39.72	52.96
Dive instructor	42.24	56.32

Draft

## Schedule B—Summary of Monetary Allowances

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

See clause 17—Allowances [for full details of allowances payable under this award.](#)

### B.1 Wage-related allowances

#### B.1.1 Allowances

B.1.2 The wage-related allowances in this award are based on the [standard rate](#) as defined in [clause 2](#)—Definitions as the minimum weekly wage for a dive master in clause 15—Minimum rates = **\$804.70**

Allowance	Clause	% of <a href="#">standard rate</a>	\$ per week
Language allowance	17.2	6.0	48.28

#### B.1.3 Adjustment of wage-related allowances

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

### B.2 Expense-related allowances

B.2.1 The expense-related allowances in this award will be adjusted by reference to the Consumer Price Index (CPI) as per the following:

#### B.2.2 Expense-related allowances

Administrative change to correct allowance description and clause reference

Allowance	Clause	\$	Payable
Accommodation and meals allowance— <del>offshore</del> <a href="#">distant work</a>	17.3(f)(ii)	349.98	per week
Accommodation and meals allowance— <a href="#">distant work</a> —broken parts of the week	17.3(f)(iii)	50.06	per day
Vehicle allowance	17.3(b)	0.78	per km
Travel to and from distant work	17.3(e)(ii)	5.91	per occasion
Loss of personal effects allowance— <del>maximum—</del> <a href="#">an amount of up to</a>	17.3(g)	2493.00	per occasion

#### B.2.3 Adjustment of expense-related allowances

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

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

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Accommodation and meals	All groups
Vehicle and travel allowances	Private motoring sub-group
Distant work	Transport group
Loss of personal effects	All groups

Draft

**Schedule C—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 D—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 E—Agreement to Cash Out Annual Leave

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

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

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

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

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

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule F—Part-day Public Holidays

- F.1** This schedule operates in conjunction with award provisions dealing with public holidays.
- F.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 F.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 F.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
  - (h)** Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.
- F.3** This schedule is not intended to detract from or supplement the [NES](#).