

The Exposure Draft was first published on 16 November 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
13 July 2017	Incorporates changes in accordance with PR588653	25.4(c)
	Note added	Schedule B
	Incorporates changes summarised in the Final Report to the Full Bench 7 June 2017.	2, B.1.1, 7.2, 7.3, 7.4, 9.9, 10.2, 12.3, 12.5(d), 14.1, 20.1(e), 20.1(f)(iii), 20.2(d), 21, 23.2(b), 23.4, 23.11, 23.11, 25.11, 28.2, B.1.5, B.2.1, B.2.3
	Incorporates changes resulting from [2017] FWCFB 3500 , PR592171 , PR592331 and PR592689	14.1, 15, 20.1, 20.2, Schedule B, Schedule C, Schedule E, Schedule F
	Incorporates changes from [2017] FWCFB 3433	1.2, 10

Red text indicates changes made to the draft since the previous published version, or issues that remain unresolved. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.

EXPOSURE DRAFT

Food, Beverage and Tobacco Manufacturing Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Food, Beverages and Tobacco Manufacturing Award 2010* (the Food Manufacturing award) as at 16 November 2016. This exposure draft does not seek to amend any entitlements under the Food Manufacturing award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/268](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

No examples have been included in this exposure draft. Parties are asked to submit [examples](#) that clarify the operation of particular provisions.

Please note some structural changes in the Food Manufacturing exposure draft are based on changes made to equivalent clauses in the *Manufacturing and Associated Industries and Occupations Award 2010* following extensive consultation in [AM2014/75](#)

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Part 1—Application and Operation of this Award

1. Title and commencement

1.1 This award is the *Food, Beverage and Tobacco Manufacturing Award 2016*.

Clause 1.2 amended in accordance with [\[2017\] FWCFB 3433](#) at [328].

1.2 This modern award, ~~as varied, commenced operation on 1 January 2010, commenced operation on 1 January 2010. The terms of the award have been varied since then.~~

1.3 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

Placement of the *definitions* to be determined by Plain Language Process. See [\[2017\] FWCFB 3433](#) at [333].

In this award, unless the contrary intention appears:

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

adult apprentice means a person of 21 years of age or over at the time of entering into a training agreement for an apprenticeship

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance or loading, when calculating any penalties or loadings or payment while they are on annual leave (see clause 20.1(a))

applicable rate of pay means the ordinary hourly rate plus penalties and relevant loadings

casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification specified ~~in this award clause 14.1~~, inclusive of the casual loading which is payable for all purposes. Where an employee is entitled to an additional all purpose allowance, this allowance forms part of that employee's casual ordinary hourly rate.

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

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

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

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 plus any all purpose allowance to which an employee is entitled~~ means the hourly rate for the employee's classification specified in clause 14.1(a), plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

standard rate means the minimum hourly wage prescribed for the Level 5 classification in clause 14.1(a)

3. The National Employment Standards and this award

- 3.1 The [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 **food, beverage and tobacco manufacturing industry** and their employees in the classifications in this award to the exclusion of any other modern award.
- 4.2 **Food, beverage and tobacco manufacturing** means the preparing, cooking, baking, blending, brewing, fermenting, preserving, filleting, gutting, freezing, refrigerating, decorating, washing, grading, processing, distilling, manufacturing and milling of food, beverage and tobacco products, including stock feed and pet food, and ancillary activities such as:
 - (a) the receipt, storing and handling of ingredients and raw materials to make food, beverage and tobacco products, including stock feed and pet food;

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- (b) the bottling, canning, packaging, labelling, palletising, storing, preparing for sale, packing and despatching of food, beverage and tobacco products, including stock feed and pet food; and
- (c) the cleaning and sanitising of tools, equipment and machinery used to produce food, beverage and tobacco products, including stock feed and pet food.

4.3 This award does not cover employers or employees covered by:

- (a) the *Clerks—Private Sector Award 2016*;
- (b) the *Fast Food Industry Award 2016*;
- (c) the *General Retail Industry Award 2016*;
- (d) the *Horticulture Award 2016*;
- (e) the *Hospitality Industry (General) Award 2016*;
- (f) the *Manufacturing and Associated Industries and Occupations Award 2016*;
- (g) the *Meat Industry Award 2016*;
- (h) the *Poultry Processing Award 2016*;
- (i) the *Seafood Processing Award 2016*; or
- (j) the *Wine Industry Award 2016*.

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

4.5 This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry and/or parts of industry set out at clauses 4.1 and 4.2 and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

4.6 This award does not cover:

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

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.

- 4.7** 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. Effect of variations made by the Fair Work Commission

A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

6. Award flexibility for individual arrangements

- 6.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:

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

- 6.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

- 6.3** The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 6.1; and
- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

- 6.4** The agreement between the employer and the individual employee must also:

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- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

6.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

6.6 Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

6.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

6.8 The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

NOTE: If any of the requirements of [s.144\(4\)](#), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see [s.145](#) of the Act).

6.9 The notice provisions in clause 6.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 6.8(a), subject to four weeks' notice of termination.

6.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

7. Facilitative provisions for flexible working practices

7.1 Agreement to vary award provisions

- (a) This award contains facilitative provisions which allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or a section or sections of it. The facilitative provisions are identified in clauses 7.2, 7.3 and 7.4.
- (b) The specific award provisions establish both the standard award condition and the framework within which agreement can be reached as to how the particular provisions should be applied in practice.

7.2 Facilitation by individual agreement

- (a) The following facilitative provisions can be utilised by agreement between an employer and an individual employee:

Clause number	Provision
9.2	Minimum engagement for part-time employees
10.4	Minimum engagement for casuals
12.7	Make up time
13.5	Meal breaks
23.7	Time off instead of payment for overtime
23.9(d)	Rest break
23.10(d)	Rest period after overtime
25.10	Agreement to take annual leave in advance
25.13	Agreement to cash-out annual leave

- (b) The agreement reached must be kept by the employer as a time and wages record.

7.3 Facilitation by majority or individual agreement

- (a) The following facilitative provisions can be utilised by agreement between the employer and the majority of employees in the workplace or a section or sections of it, or the employer and an individual employee:

Clause number	Provision
10.6(f)	Period for casual election to convert
12.2(c)	Ordinary hours of work for day workers on weekends
12.2(d)	Variation to the spread of hours for day workers
12.5(a)	Methods of arranging ordinary working hours
13.1(b)	Working in excess of five hours without a meal break
19.1(b)	Payment of wages

Clause number	Provision
24.2	Variation to the spread of hours for shiftworkers
28.4	Substitution of public holidays

- (b) Where agreement is reached between the employer and the majority of employees in the workplace or a section or sections of it to implement a facilitative provision in clause 7.3(a), the employer must not implement that agreement unless:
- (i) agreement is also reached between the employer and each individual employee to be covered by the facilitative provision; and
 - (ii) the agreement reached is kept by the employer as a time and wages record.
- (c) Where no agreement has been sought by the employer with the majority of employees in accordance with clause 7.3(b), the employer may reach agreement with individual employees in the workplace or a section or sections of it and such agreement binds the individual employee provided the agreement reached is kept by the employer as a time and wages record and provided the agreement is only with an individual employee or a number of individual employees less than the majority in the workplace or a section or sections of it.

7.4 Facilitation by majority agreement

- (a) The following facilitative provisions may only be utilised by agreement between the employer and the majority of employees in the workplace or a section or sections of it:

Clause number	Provision
12.3(d)	Ordinary hours of work, continuous shiftworkers
12.4(c)	Ordinary hours of work, non-continuous shiftworkers
12.5(c)	12 hour days or shifts
24.5(e)	Public holiday shifts
25.2	Conversion of annual leave to hourly entitlement
25.11(g)	Annual close down

- (b) Where agreement is reached with the majority of employees in the workplace or a section or sections of it to implement a facilitative provision in clause 7.4(a), that agreement binds all such employees provided the agreement reached is kept by the employer as a time and wages record.
- (c) **Additional safeguard**
- (i) An additional safeguard applies to:

Clause number	Provision
<u>12.3(d)</u>	Ordinary hours of work, continuous shiftworkers

Clause number	Provision
12.4(c)	Ordinary hours of work, non-continuous shiftworkers
19.1(b)	Payment of wages

- (ii) The additional safeguard requires that the unions which have members employed at an enterprise covered by this award must be informed by the employer of the intention to use the facilitative provision and be given a reasonable opportunity to participate in the negotiations regarding its use. Union involvement in this process does not mean that the consent of the union is required prior to the introduction of agreed facilitative arrangements at the enterprise.

7.5 Majority vote at the initiation of the employer

A vote of employees in the workplace or a section or sections of it, which is taken in accordance with clauses 7.3 and 7.4 to determine if there is majority employee support for the implementation of a facilitative provision, is of no effect unless taken with the agreement of the employer.

Part 2—Types of Employment and Classifications

8. Full-time employment

Any employee not specifically engaged as a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified.

9. Part-time employment

Part-time employment provisions may be affected by [AM2014/196](#)

- 9.1 An employee may be engaged to work on a part-time basis involving a regular pattern of hours which average less than 38 ordinary hours per week.
- 9.2 A part-time employee must be engaged for a minimum of three consecutive hours a shift. In order to meet their personal circumstances, a part-time employee may request and the employer may agree to an engagement for less than the minimum of three hours.
- 9.3 Before starting part-time employment, the employee and employer must agree in writing on:
- (a) the hours to be worked by the employee;
 - (b) the days on which they will be worked;
 - (c) the starting and finishing times for the work; and

- (d) the classification applying to the work to be performed in accordance with Schedule A—Classification Structure and Definitions.

- 9.4** The terms of the agreement in clause 9.3 may be varied by consent in writing.
- 9.5** The agreement under clause 9.3 or any variation to it under clause 9.4 must be retained by the employer. A copy of the agreement and any variation to it must be provided to the employee by the employer.
- 9.6** Except as otherwise provided in this award, a part-time employee must be paid for the hours agreed on in accordance with clauses 9.3 and 9.4.
- 9.7** The terms of this award will apply pro rata to part-time employees on the basis that ordinary weekly hours for full-time employees are 38.
- 9.8** A part-time employee who is required by the employer to work in excess of the hours agreed under clauses 9.3 and 9.4 must be paid overtime in accordance with clause 23—Overtime.
- 9.9** Where the part-time employee’s normal paid hours fall on a public holiday prescribed in the NES and work is not performed by the employee, the employee must not lose pay for the day. Where the part-time employee works on the public holiday, the part-time employee must be paid in accordance with clauses 12.2(g), ~~20.2(f)(iv)~~ **24.5** and 23.6.

10. Casual employment

Casual employment provisions may be affected by [AM2014/197](#).

A Full Bench expressed the provisional view that there was to be a 2 hour minimum engagement for casual employees in awards that do not contain daily minimum engagement. Any further written submissions concerning this view are to be filed on or by 2 August 2017. See [\[2017\] FWCFB 3541](#) at [408].

A Full Bench found a model casual conversion clause should be inserted into modern awards without existing conversion clauses. Any further written submissions, including whether a conversion clause requires adaptation to meet the circumstances of particular awards, are to be filed by 2 August 2017. See [\[2017\] FWCFB 3541](#) at [381]-[382].

- 10.1** A casual employee is one engaged and paid as a casual employee.
- 10.2** A casual employee working ordinary time must be paid:
- (a) the ordinary hourly rate prescribed in clause 14 for the work being performed; plus
 - (b) a casual loading of 25% of the ~~ordinary~~ **minimum** hourly rate.
- 10.3** The loading constitutes part of the casual employee’s all purpose rate.
- 10.4** On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours’ work. In order to meet their personal

circumstances a casual employee may request and the employer may agree to an engagement for less than the minimum of four hours.

10.5 When engaging a casual employee, the employer must inform the employee:

- (a) that the employee is employed as a casual;
- (b) of the name of the employer;
- (c) of their classification level and rate of pay; and
- (d) of the likely number of hours they will be required to perform.

10.6 Casual conversion to full-time or part-time employment

(a) Eligible casual employee

An eligible casual employee is a casual employee:

- (i) who works on a regular and systematic basis;
- (ii) who is employed for a sequence of periods of six months; and
- (iii) whose employment is to continue beyond the period of six months.

(b) An eligible casual employee has the right, after six months, to elect to have their contract of employment converted to full-time or part-time employment.

(c) Notice and election of casual conversion

(i) An employer of an eligible casual employee must give the employee notice in writing of the provisions of clause 10.6 within four weeks of the employee having become an eligible employee.

(ii) The employee retains their right of election under clause 10.6 if the employer fails to comply with clause 10.6(c)(i).

(iii) An eligible casual employee may give four weeks' notice in writing to the employer that they seek to elect to convert their contract of employment to full-time or part-time employment either:

- upon receiving notice under clause 10.6(c)(i); or
- after the expiry of the time for giving notice.

(iv) An eligible casual employee who does not elect to convert their contract of employment to full-time or part-time employment within four weeks of receiving written notice is deemed to have elected against any conversion.

(d) Full-time or part-time conversion

(i) An eligible casual employee who has worked on a full-time basis throughout their period of employment has the right to elect to convert

their contract of employment to full-time employment on the basis of the same number of hours and times of work as previously worked.

- (ii) An eligible casual employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment on the basis of the same number of hours and times of work as previously worked.
 - (iii) However, the employer and the employee may agree on an alternative arrangement.
 - (iv) If an eligible casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 10.6(c)(iii), the employer and employee must, subject to clause 7—Facilitative provisions for flexible working practices, discuss and agree on:
 - which form of employment the employee will convert to, being full-time or part-time; and
 - if the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 9.3.
 - (v) Following agreement being reached the employee converts to full-time or part-time employment.
- (e) **Employer consent or refusal to casual conversion**
- (i) The employer must consent or refuse the election within four weeks of receiving notice of the eligible casual employee's election. The employer must not unreasonably refuse consent to the election.
 - (ii) Where an employer refuses an election to convert, the reasons for doing so must be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.
 - (iii) After an employee has converted to a full-time or part-time employee, they may only revert to casual employment by written agreement with the employer.
- (f) **Variation of the casual conversion six-month eligibility period**
- (i) Clause 10.6(a) may be varied as if the reference to six months is a reference to 12 months by agreement between the employer and the majority of the employees in the relevant workplace or a section or sections of it, or with the casual employee concerned.
 - (ii) An agreement to vary the six-month period with an individual employee must be reached within the two months before the period of six months referred to in clause 10.6(a).
 - (iii) The employer may only make an agreement with an individual employee or group of employees who are currently engaged.

- (iv) Any agreement reached must be kept by the employer as a time and wages record.

10.7 An employee must not be engaged and re-engaged to avoid any obligation under this award.

11. Apprentices

11.1 The terms of this award apply to apprentices, including adult apprentices, except where otherwise stated.

11.2 Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and 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. Clause 11.2 will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.

11.3 For the purposes of clause 11.2, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

11.4 The amount payable by an employer under clause 11.2 may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.

11.5 All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, will be reimbursed by the employer within six months of starting the apprenticeship or the relevant stage of the apprenticeship, or within three months of starting the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

11.6 An employer may meet its obligations under clause 11.5 by paying any fees and/or cost of textbooks directly to the RTO.

11.7 An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

11.8 Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the

employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This subclause operates subject to the provisions of Schedule D—School-based Apprentices.

11.9 No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

11.10 School-based apprentices

See Schedule D—School-based Apprentices

Part 3—Hours of Work

12. Ordinary hours of work

12.1 Hours of work

- (a) Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.
- (b) Facilitative provisions in clauses 12.2 to 12.5 operate in conjunction with clause 7.3

12.2 Ordinary hours of work—day workers

- (a) Subject to clause 12.5, the ordinary hours of work for day workers are an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours for day workers will not exceed 8 per day unless otherwise agreed in accordance with clause 12.5.
- (c) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday. The days on which ordinary hours are worked may include Saturday and Sunday subject to agreement between the employer and the majority of employees concerned. Agreement in this respect may also be reached between the employer and an individual employee.
- (d) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (6.00 am to 6.00 pm) may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or, in appropriate circumstances, between the employer and an individual employee.
- (e) Any work performed outside the spread of hours must be paid for at overtime rates. However, any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the plant in a state of readiness for production work is to be regarded as part of the 38 ordinary hours of work.

- (f) Where agreement is reached in accordance with clause 12.2(c), the rate to be paid to a day worker for ordinary time worked is:
 - (i) between midnight on Friday and midnight on Saturday—150% of the ordinary hourly rate; and
 - (ii) between midnight on Saturday and midnight on Sunday—200% of the ordinary hourly rate.
- (g) A day worker required to work on a public holiday must be paid for a minimum of three hours' work at the rate of 250% of the ordinary hourly rate. The 250% rate must be paid to the employee until the employee is relieved from duty.

12.3 Ordinary hours of work—continuous shiftworkers

- (a) **Continuous shiftwork** means work~~ed~~ carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (b) Subject to clause 12.3(d), the ordinary hours of continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Continuous shiftworkers are entitled to a 20 minute meal break on each shift which must be counted as time worked.
- (c) The ordinary hours for continuous shiftworkers will not exceed 8 per shift unless otherwise agreed in accordance with clause 12.5.
- (d) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours ~~are~~ **is** achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (e) Except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.

12.4 Ordinary hours of work—non-continuous shiftworkers

- (a) Subject to clause 12.4(c), the ordinary hours of work for non-continuous shiftworkers are an average of 38 per week and must not exceed 152 hours in 28 consecutive days.
- (b) The ordinary hours for non-continuous shiftworkers will not exceed 8 per shift unless otherwise agreed in accordance with clause 12.5.
- (c) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.

- (d) The ordinary hours of work must be worked continuously, except for meal breaks, at the discretion of the employer.
- (e) Except at changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.

12.5 Methods of arranging ordinary working hours

- (a) Subject to the employer's right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in clause 12.2(d) and the employer's right to fix the commencing and finishing time of shifts from time to time, the arrangement of ordinary working hours must be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude the employer reaching agreement with individual employees about how their working hours are to be arranged.
- (b) The matters on which agreement may be reached include:
 - (i) how the hours are to be averaged within a work cycle established in accordance with clauses 12.2, 12.3 and 12.4;
 - (ii) the duration of the work cycle for day workers provided that the duration does not exceed three months;
 - (iii) rosters which specify the starting and finishing times of working hours;
 - (iv) a period of notice of a rostered day off which is less than four weeks;
 - (v) substitution of rostered days off;
 - (vi) accumulation of rostered days off;
 - (vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and
 - (viii) any arrangements of ordinary hours which exceed eight hours in any day.
- (c) **Twelve hour days or shifts**

By agreement between an employer and the majority of employees in the enterprise or part of the enterprise concerned, 12 hour days or shifts may be introduced subject to:

- (i) proper health monitoring procedures being introduced;
- (ii) suitable roster arrangements being made;
- (iii) proper supervision being provided;
- (iv) adequate breaks being provided; and
- (v) a trial or review process being jointly implemented by the employer and the employees or their representatives.

- (d) Payment for work on a shift other than a rostered shift is in accordance with clause 24.3(e).

12.6 Daylight saving

For work performed which spans the start or finish of a system of daylight saving as prescribed by relevant State or territory legislation, an employee will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work).

12.7 Make up time

- (a) An employee may elect, with the consent of the employer, to work make up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.
- (b) An employee on shiftwork may elect, with the consent of their employer, to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.

13. Meal breaks

13.1 An employee must not be required to work for more than five hours without a break for a meal except in the following circumstances:

- (a) in cases where canteen or other facilities are limited and require that meal breaks be staggered and as a result it is not practical for all employees to take a meal break within five hours, an employee must not be required to work for more than six hours without a break for a meal; or
- (b) by agreement between an employer and an individual employee or the majority of employees in an enterprise or part of an enterprise concerned, an employee or employees may be required to work in excess of five hours but not more than six hours at the applicable rate of pay without a meal break.

13.2 The time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations.

13.3 An employer may stagger the time of taking meal and rest breaks to meet operational requirements.

13.4 Subject to clause 13.1, an employee must work during meal breaks at the applicable rate of pay whenever instructed to do so for the purpose of making good any breakdown of plant or for routine maintenance of plant which can only be done while the plant is idle.

13.5 Except as otherwise provided in clause 13—Meal breaks and except where any alternative arrangement is entered into by agreement between the employer and the

employee concerned, the rate of **150%** of the applicable rate of pay must be paid for all work done during meal hours and thereafter until a meal break is taken.

Part 4—Wages and Allowances

14. Minimum wages and classifications

14.1 Adult employee minimum wages

Rates updated as a result of AWR 2017

- (a) An employer must pay adult employees (other than one specified in clause 14.1(c)) the following minimum wages for ordinary hours worked by the employee.

Classification level	Minimum weekly rate wage	Minimum hourly rate
Level 1	\$694.90	\$18.29
Level 2	\$714.90	\$18.81
Level 3	\$742.30	\$19.53
Level 4	\$767.80	\$20.21
Level 5	\$809.10	\$21.29
Level 6	\$834.40	\$21.96

- (b) For the purposes of clause 14.1(a), any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.
- (c) The following adult employees are not entitled to the minimum wages in clause 14.1(a):
- (i) an adult apprentice (see clause 16—Adult apprentice minimum wages);
 - (ii) a trainee (see clause Schedule E—National Training Wage); and
 - (iii) an employee receiving a supported wage (see Schedule F—Supported Wage System).
- (d) The definitions of the classifications referred to in clause 14.1(a) are set out in Schedule A—Classification Structure and Definitions.

See Schedule B for a summary of hourly rates of pay, including overtime and penalties.

14.2 Unapprenticed junior minimum wages

The minimum wages for an unapprenticed junior are:

Age	% of Level 2
Under 16 years	60
At 16 years	70
At 17 years	80
At 18 years	90

14.3 Higher duties

- (a) An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for the day or shift.
- (b) If an employee is engaged on duties carrying a higher minimum wage for two hours or less during one day or shift, they must be paid the higher minimum wage for the time worked at the higher level.

15. Apprentice minimum wages

Rates updated as a result of AWR 2017

- 15.1 The minimum wages for an apprentice who started their apprenticeship before 1 January 2014 except as provided for in clause 16—Adult apprentice minimum wages are set out in the following table:

Relevant attribute of the person at the time of entering into a training agreement as an apprentice								
Stage of apprenticeship	Column 1		Column 2		Column 3		Column 4	
	Completed Year 10 or less		Completed Year 11		Completed Year 12		Adult (21 years or over)	
	Minimum weekly wage	Minimum hourly wage	Minimum weekly wage	Minimum hourly wage	Minimum weekly wage	Minimum hourly wage	Minimum weekly wage	Minimum hourly wage
Stage 1	\$339.82	\$8.94	\$388.37	\$10.22	\$396.50	\$10.43	\$614.92	\$16.18
Stage 2	\$445.01	\$11.71	\$445.01	\$11.71	\$461.40	\$12.14	\$694.90	\$18.29
Stage 3	\$606.83	\$15.97	\$606.83	\$15.97	\$606.83	\$15.97	\$714.90	\$18.81
Stage 4	\$712.01	\$18.74	\$712.01	\$18.74	\$742.30	\$19.53	\$742.30	\$19.53

- 15.2 The minimum wages in the table in clause 15.1 are established on the following basis:

Exposure draft – Food, Beverage and Tobacco Manufacturing Award 2016

Relevant attribute of the person at the time of entering into a training agreement as an apprentice				
Stage of apprenticeship	Column 1	Column 2	Column 3	Column 4
	Completed Year 10 or less	Completed Year 11	Completed Year 12	Adult (21 years or over)
Stage 1	42% of the Level 5 rate	48% of the Level 5 rate	The relevant rate applicable to a trainee commencing after year 12 under National Training Wage Skill Level A.	76% of the Level 5 rate
Stage 2	55% of the Level 5 rate	55% of the Level 5 rate	The relevant rate applicable to a trainee commencing at year 12 plus one year under National Training Wage Skill Level A.	Level 1 rate
Stage 3	75% of the Level 5 rate	75% of the Level 5 rate	75% of the Level 5 rate	Level 2 rate
Stage 4	88% of the Level 5 rate	88% of the Level 5 rate	Level 3 rate	Level 3 rate

15.3 The minimum wages for an apprentice who started their apprenticeship on or after 1 January 2014 except as provided for in clause 16—Adult apprentice minimum wages are set out in the following table:

Relevant attribute of the person at the time of entering into a training agreement as an apprentice									
Stage of apprenticeship	Has not completed Year 12			Has completed Year 12			Adult apprentice aged 21+		
	% of Level 5	Min weekly wage	Min hourly wage	% of Level 5	Min weekly wage	Min hourly wage	Wage rate	Min weekly wage	Min hourly wage
Stage 1	50%	\$404.55	\$10.65	55%	\$445.01	\$11.71	80% of Level 5	\$647.28	\$17.03
Stage 2	60%	\$485.46	\$12.77	65%	\$525.92	\$13.84	Level 1 rate	\$694.90	\$18.29
Stage 3	75%	\$606.83	\$15.97	75%	\$606.83	\$15.97	Level 2 rate	\$714.90	\$18.81
Stage 4	88%	\$712.01	\$18.74	88%	\$712.01	\$18.74	Level 3 rate	\$742.30	\$19.53

15.4 An employee who is under 21 years of age on the expiration of their apprenticeship and thereafter works as a minor in the occupation to which the employee was appointed must be paid not less than the adult minimum wage prescribed for the classification.

15.5 For school-based apprentices see Schedule D.

16. Adult apprentice minimum wages

- 16.1** 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. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 14.1(a) in which the adult apprentice was engaged immediately prior to entering into the training agreement.
- 16.2** Subject to clause 16.1, the minimum wages for an adult apprentice are set out in clause 15.

17. Trainee minimum wages

For employees undertaking a traineeship, see Schedule E—National Training Wage.

18. Supported wage system

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

19. Payment of wages

19.1 Period of payment

- (a) Except as provided in clause 19.1(b), wages must be paid weekly or fortnightly, either:
- (i) according to the actual ordinary hours worked each week or fortnight; or
 - (ii) according to the average number of ordinary hours worked each week or fortnight.
- (b) By agreement between the employer and the majority of employees in the relevant enterprise, wages may be paid three weekly, four weekly or monthly. Agreement in this respect may also be reached between the employer and an individual employee.

19.2 Method of payment

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

19.3 Payment of wages on termination of employment

Payment of wages on termination is being considered in matter [AM2016/8](#).

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee on the next working day.

19.4 Day off coinciding with pay day

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

19.5 Wages to be paid during working hours

Penalties upon late payment of wages is being considered in matter [AM2016/8](#)

- (a) Where an employee is paid wages by cash or cheque such wages are to be paid during ordinary working hours.
- (b) If an employee is paid wages by cash and is kept waiting for their wages on pay day, after the usual time for ceasing work, the employee is to be paid at overtime rates for the period they are kept waiting.

19.6 Absences from duty under an averaging system

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

- (a) the employee will accrue a credit for each day they work ordinary hours in excess of the daily average;
- (b) the employee will not accrue a credit for each day of absence from duty, other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, paid compassionate leave, paid training leave or jury service; and
- (c) an employee absent for part of a day, other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, paid compassionate leave, paid training leave or jury service, accrues a proportion of the credit for the day, based on the proportion of the working day that the employee was in attendance.

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.

20. Allowances and special rates

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

20.1 Wage-related allowances

Rates updated as a result of AWR 2017

(a) All purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) Leading hand allowance (clause 20.1(b));
- (ii) Heavy vehicle driving allowance (clause 20.1(c)); and
- (iii) Boiler attendants allowance (clause 20.1(d)).

(b) Leading hands

A leading hand in charge of three or more people must be paid:

In charge of	per week extra
3–10 employees	\$35.41
11–20 employees	\$52.88
more than 20 employees	\$67.32

(c) Heavy vehicle driving allowance

An employee who is required to drive a vehicle of more than three tonnes Gross Vehicle Weight (GVW) must be paid while they are engaged on such work:

Vehicle size	per hour extra
over 3 tonnes GVW and up to 4.5 tonnes GVW	\$0.13
over 4.5 tonnes GVW and up to 14.95 tonnes GVW	\$1.06
over 14.95 tonnes GVW	\$1.41
a semi-trailer	\$2.53

(d) Boiler attendants allowance

An employee holding a Boiler Attendants Certificate and appointed by the employer to act as a boiler attendant must be paid **\$18.20** per week extra.

(e) First aid allowance

An employee must be paid **\$16.10** per week extra if they are:

- (i) the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar **body**; and

(ii) appointed by their employer to perform first aid duty.

(f) **Special rates**

Subject to clause 20.1(f)(i), the following special rates must be paid to an employee including a junior:

(i) **Special rates are not subject to penalty additions**

The special rates in clause 20.1(f) must be paid irrespective of the times at which the work is performed, and are not subject to any premium or penalty additions.

(ii) **Cold places**

An employee who works for more than one hour in places where the temperature is reduced by artificial means below 0 degrees Celsius must be paid **\$0.60** per hour extra. In addition, where the work continues for more than two hours, the employee is entitled to 20 minutes' rest after every two hours' work without loss of pay.

(iii) **Hot places**

(A) An employee who works for more than one hour in the shade in places where the temperature is raised by artificial means must be paid:

Temperature	per hour extra
Between 46 and 54 degrees Celsius	\$0.62
In excess of 54 degrees Celsius	\$0.81

(B) In addition, where work continues for more than two hours in temperatures exceeding 54 degrees Celsius, the employee is entitled to 20 minutes' rest after every two hours work without loss of pay.

(C) The temperature is to be determined by the supervisor after consultation with the employee who claims the extra rate.

(iv) **Wet places**

(A) An employee working in any place where their clothing or boots become saturated by water, oil or another substance, must be paid **\$0.62** per hour extra. Any employee who becomes entitled to this extra rate must be paid this rate only for the part of the day or shift that they are required to work in wet clothing or boots.

(B) Clause 20.1(f)(iv) does not apply to an employee who is provided by the employer with suitable and effective protective clothing and/or footwear.

(v) **Confined spaces**

An employee working in a confined space must be paid **\$0.81** per hour extra.

(vi) **Dirty or dusty work**

An employee who performs work of an unusually dirty, dusty or offensive nature must be paid **\$0.62** per hour extra.

(vii) **Fumigation gas**

An employee using methyl bromide gas in fumigation work must be paid **\$8.13** per day extra for any day on which the employee is required to use this gas.

20.2 Expense-related allowances

Rates updated as a result of AWR 2017

(a) **Meal allowance**

An employee must be paid a meal allowance of **\$13.96** on each occasion the employee is entitled to a rest break in accordance with clause 23.9, except in the following circumstances:

- (i) if the employee is a day worker and was notified no later than the previous day that they would be required to work such overtime; or
- (ii) if the employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work such overtime; or
- (iii) if the employee lives in the same locality as the enterprise and could reasonably return home for meals; or
- (iv) if the employee is provided with an adequate meal by the employer.

- (b) If an employee has provided a meal or meals on the basis that they have been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, they must be paid the prescribed meal allowance for the meal or meals which they have provided but which are surplus.

(c) **Vehicle allowance**

An employee who reaches agreement with their employer to use their own motor vehicle on the employer's business, must be paid **\$0.78** per kilometre travelled.

(d) **Damage to clothing, spectacles and hearing aids**

Where an employee suffers any damage to, or soiling of, clothing or other personal equipment, including spectacles and hearing aids, as a result of

- (i) performing any duty required by the employer; and
- (ii) negligence of the employer;

then the employer is liable for the replacement, repair or cleaning of any such clothing or personal equipment.

~~The employer is liable for the replacement, repair or cleaning of any clothing or personal equipment including spectacles and hearing aids where an employee suffers any damage to, or soiling of clothing or other personal equipment, including spectacles and hearing aids, as a result of:~~

- ~~(iii) performing any duty required by the employer; and~~
- ~~(iv) negligence of the employer.~~

(e) Special clothing and equipment allowance

Where an employee is required to wear special clothing and equipment, the employer must reimburse the employee for the cost of purchasing and laundering such special clothing and equipment unless the clothing and equipment is paid for and/or laundered by the employer.

(f) Transfers, travelling and working away from usual place of work

(i) Excess travelling and fares

An employee required to start and/or finish work at a job away from the employer's usual workplace must be paid:

- travelling time for all time reasonably spent by the employee in reaching and/or returning from the job which is in excess of the time normally spent by the employee in travelling between the employee's usual residence and the employee's usual workplace; and
- any fares reasonably incurred by the employee which are in excess of those normally incurred in travelling between the employee's residence and the employee's usual workplace,
- or if the employee used their own means of transport, any fares which would have been incurred by the employee had the employee not used their own means of transport, except where the employee has an arrangement with their employer for a regular allowance.

(ii) Distant work

- An employee required to remain temporarily away from the employee's usual residence because the employee is working temporarily in a locality away from the employee's usual workplace must be paid travelling time for necessary travel between the locality and the employee's usual workplace and expenses.

- After each four week period on distant work an employee is entitled to be paid for a return fare reasonably incurred for personal travel between the locality and the employee's usual residence, unless such distant work is inherent in the normal work of the employee.

(iii) Transfer involving change of residence

An employee required to transfer permanently from the employee's usual workplace to another locality must be paid travelling time for necessary travel between the employee's usual workplace and the new locality and expenses for a period not exceeding three months or, where the employee is in the process of buying a residence in the new locality, for a period not exceeding six months. Payment for travel time and expenses ceases after the employee has taken up permanent residence in the new locality.

(iv) Travelling time payment

The rate of pay for travelling time is:

- the applicable rate of pay on Monday to Saturday, and
- 150% of the applicable rate of pay on Sundays and public holidays.

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 hours out of every 24 hours.

(v) Expenses for the purposes of clause 20.2(f) means:

- all fares reasonably incurred;
- reasonable expenses incurred while travelling including \$13.96 for each meal taken; and
- a reasonable allowance to cover the cost incurred for board and lodging.

(g) Training costs

This provision may be affected by [AM2016/14](#)

- (i)** Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred by an employee in connection with training agreed to by the employer must be reimbursed by the employer on the production of evidence of such expenditure by the employee, provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress.
- (ii)** Travel costs incurred by an employee undertaking training agreed to by the employer, which exceed those normally incurred in travelling to and from work, must be reimbursed by the employer.

- (iii) Clause 20.2(g) does not apply to costs associated with training that are in connection with an apprentice’s training contract. Such costs are subject to clause 11 and not this clause.

21. Extra rates not cumulative

The extra rates in this award, except rates prescribed in clause 20.1(f)—Special rates and rates for work on public holidays, are not cumulative so as to exceed the maximum of double the applicable rate of pay.

See Schedule B for a summary of monetary allowances.

22. Superannuation

22.1 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.

22.2 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.

22.3 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 22.2.
- (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 22.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 22.3(a) or (b) was made.

22.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 22.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustSafe Super; or
- (b) AustralianSuper; or
- (c) CareSuper; or
- (d) HOSTPLUS; or
- (e) LUCRF Super; or
- (f) Statewide Superannuation Trust; or
- (g) Sunsuper; or
- (h) Tasplan; or
- (i) 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
- (j) a superannuation fund or scheme which the employee is a defined benefit member of.

22.5 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 22.2 and pay the amount authorised under clauses 22.3(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 in total) 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 statutory requirements; and
- (ii) the employee remains employed by the employer.

Part 5—Overtime and Penalty Rates

23. Overtime

23.1 Definition of overtime

- (a) Overtime work is any work performed outside the ordinary hours on any day or shift as defined by clauses 12.2, 12.3 and 12.4.
- (b) For the purposes of clause 23, **ordinary hours** means the hours worked in an enterprise, fixed in accordance with clause 12—Ordinary hours of work.
- (c) Overtime work for a part-time employee is any work performed in excess of the hours agreed under clauses 9.3 and 9.4.
- (d) The hourly rate, when computing overtime, is determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.
- (e) In computing overtime each day's work stands alone.

23.2 Payment for overtime—other than continuous shiftworkers

- (a) Employees will be paid the following rates for overtime worked (except as otherwise provided in clauses 23.2(b), 23.5, 23.6 and 23.7):
 - (i) **150%** of the ordinary hourly rate for the first three hours; and
 - (ii) **200%** of the ordinary hourly rate thereafter.
- (b) **Unrelieved shiftwork on rostered day off**

~~(i)~~ When not less than 7.6 hours notice has been given to the employer by a relief shiftworker that the relief shiftworker will be absent from work and the shiftworker whom that person should relieve is not relieved and is required to continue work on their rostered day off, the unrelieved shiftworker must be paid at the rate of 200% of the ordinary hourly rate.

~~(ii) If an employee is be required to work on their rostered day off because of the absence of a relieving employee, the unrelieved shiftworker must be paid 200% of the ordinary hourly rate for all hours worked on their rostered day off.~~

~~(iii) Clause 23.2(b) applies when not less than 7.6 hours' notice has been given to the employer by a relief shiftworker that the relief shiftworker will be absent from work.~~

23.3 Payment for overtime—continuous shiftworkers

A continuous shiftworker working overtime will be paid **200%** of the ordinary hourly rate.

23.4 Saturday work—day worker

A day worker required to work overtime on a Saturday must be paid **150%** of the ordinary hourly rate for the first three hours and **200%** of the ordinary hourly rate thereafter with a minimum payment of four hours—except where the overtime is continuous with overtime commenced on the previous day.

23.5 Sunday work

An employee required to work overtime on a Sunday must be paid **200%** of the ordinary hourly rate until the employee is relieved from duty with a minimum payment of three hours.

23.6 Public holiday work

- (a) A day worker required to work overtime on a public holiday must be paid **250%** of the ordinary hourly rate until the employee is relieved from duty with a minimum payment of three hours.
- (b) A continuous shiftworker required to work overtime on a public holiday must be paid **200%** of the ordinary hourly rate with a minimum payment of three hours.
- (c) A non-continuous shiftworker required to work overtime on a public holiday must be paid **250%** of the ordinary hourly rate until the employee is relieved from duty with a minimum payment of three hours.

23.7 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 23.7.
- (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) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule A. There is no requirement to use the form of agreement set out at Schedule A. An agreement under clause 23.7 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 23.7 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 23.7 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), 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 23.7 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 23.7 will apply, including the requirement for separate written agreements under paragraph (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 23.7 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 23.7.

23.8 One in, all in does not apply

The assignment of overtime by an employer to an employee is to be based on specific work requirements. The practice of one in, all in overtime must not apply.

23.9 Rest break

- (a) An employee working overtime must be allowed a rest break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee is to continue work after the rest break.
- (b) Where a day worker is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break must be paid at the employee's applicable rate of pay.
- (c) Where overtime is to be worked immediately after the completion of ordinary hours on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes to be paid at the employee's applicable rate of pay.
- (d) An employer and employee may agree to any variation of clause 23.9 to meet the circumstances of the work in hand provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under clause 23.9.
- (e) An employee entitled to a rest break in clause 23.9 may be entitled to a meal allowance in accordance with clause 20.2(a).

23.10 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that an employee has at least 10 consecutive hours off duty between the work of successive working days.
- (b) An employee, other than a casual employee, who works so much overtime between the end of work on one day and the start of work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to the other provisions of clause 23.10, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.
- (c) If on the instructions of the employer an employee resumes or continues work without having had 10 consecutive hours off duty the employee must be paid at

200% of the ordinary hourly rate until the employee is released from duty. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.

- (d) By agreement between the employer and individual employee, the 10 hour break provided for in clause 23.10 may be reduced to a period of no less than eight hours.
- (e) The provisions of clause 23.10 will apply in the case of a shiftworker as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purpose of changing shift rosters; or
 - (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or
 - (iii) where a shift is worked by arrangement between the employees themselves.

23.11 Call back

An employee recalled to work overtime after leaving the employer's enterprise, whether notified before or after leaving the enterprise, must be paid for a minimum of four hours work at the rate of 150% of the ordinary rate for the first three hours and 200% of the ordinary rate thereafter or, if a continuous shiftworker, at the rate of 200% of the ordinary rate for the full period provided that:

- (a) Where an employee is required to regularly hold themselves in readiness for a call back they must be paid for a minimum of three hours' work at the appropriate overtime rate, subject to clause 23.12 which deals with the conditions for standing by.
- (b) If the employee is recalled on more than one occasion between the termination of their ordinary hours on one day and the commencement of their ordinary hours on the next working day they are entitled to the three or four hour minimum overtime payment provided for in clause 23.11 for each call back. However, in such circumstances, it is only the time which is actually worked during the previous call or calls which is to be taken into account when determining the overtime rate for subsequent calls.
- (c) Except in the case of unforeseen circumstances arising, an employee must not be required to work the full three or four hours as the case may be if the job they were recalled to perform is completed within a shorter period.
- (d) This clause does not apply in cases where it is customary for an employee to return to the enterprise to perform a specific job outside the employee's ordinary hours or where the overtime is continuous, subject to a meal break, with the commencement or completion of ordinary hours.
- (e) Overtime worked in the circumstances specified in this clause is not to be regarded as overtime for the purposes of clause 23.10 concerning rest periods

after overtime, when the actual time worked is less than three hours on the call back or on each call back.

23.12 Standing by

Subject to any custom prevailing at an enterprise, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee must be paid standing by time at the employee's applicable rate of pay for the time they are standing by.

23.13 Transport of employees

When an employee, after having worked overtime or a shift for which they have not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the employer must provide the employee with ~~a conveyance~~ suitable transport home, or pay the employee at the overtime rate for the time reasonably occupied in reaching home.

24. Special provisions for shiftworkers

24.1 For the purposes of this award:

- (a) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight
- (b) **early morning shift** means any shift commencing between 3.00 am (2.00 am for baking production employees) and 6.00 am (or 5.00 am if the span of ordinary hours is varied pursuant to clause 12.2(d))
- (c) **night shift** means any shift finishing after midnight and at or before 8.00 am or any shift commencing between midnight and 3.00 am (2.00 am for baking production employees)
- (d) **non-continuous afternoon or night shift** means an afternoon or night shift that does not continue:
 - (i) for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day workshop (where no more than eight ordinary hours are worked on each shift); or
 - (ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with clauses 12.3 or 12.4)
- (e) **permanent night shift** means a period of engagement on shiftwork where an employee:
 - (i) works night shift only;
 - (ii) remains on night shift for a longer period than four consecutive weeks; or

(iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each shift cycle

(f) **rostered shift** means any shift of which the employee concerned has had at least 48 hours' notice

24.2 By agreement between the employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

24.3 Rates for shiftworkers

(a) An employee who works on early morning shift must be paid **112.5%** of the ordinary hourly rate for that shift.

(b) An employee who works on afternoon or night shift must be paid **115%** of the ordinary hourly rate for that shift.

(c) An employee who works on a non-continuous afternoon or night shift must be paid **150%** of the ordinary hourly rate for the first three hours and **200%** of the ordinary hourly rate after three hours.

(d) An employee who works on permanent night shift must be paid **130%** of the ordinary hourly rate for all time worked during ordinary working hours on an engagement, period or cycle on permanent night shifts.

(e) Work on shifts other than rostered shifts

Where an employee works on a shift other than a rostered shift, the employee must:

(i) if employed on continuous work, be paid at **200%** of the ordinary hourly rate; or

(ii) if employed on other shiftwork, be paid at **150%** of the ordinary hourly rate for the first three hours and **200%** of the ordinary hourly rate thereafter.

(f) Clause 24.3(e) does not apply when the time is worked:

(i) by arrangement between the employees themselves;

(ii) for the purposes of effecting the customary rotation of shifts; or

(iii) on a shift to which the employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment in accordance with [Part 3–5](#) of the Act.

24.4 Rate for working on Saturday shifts

A shiftworker must be paid **150%** of the ordinary hourly rate for work performed between midnight on Friday and midnight on Saturday. The extra rate is in substitution for and not cumulative upon the shift rates prescribed in clause 24.3.

24.5 Rate for working on Sunday and public holiday shifts

- (a) A continuous shiftworker must be paid **200%** of the ordinary hourly rate for work on a rostered shift the major portion of which is performed on a Sunday or public holiday.
- (b) A shiftworker, on other than continuous shiftwork, must be paid **200%** of the ordinary hourly rate for all time worked on a Sunday and **250%** of the ordinary hourly rate on a public holiday.
- (c) Where shifts commence between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift.
- (d) The time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday must be regarded as time worked on the Sunday or public holiday.
- (e) Where shifts fall partly on a holiday, the shift which has the major portion falling on the public holiday must be regarded as the holiday shift. By agreement between the employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the holiday shift instead.
- (f) The extra rates in clause 24.5 are in substitution for and not cumulative upon the shift rates prescribed in clause 24.3.

Part 6—Leave and Public Holidays

25. Annual leave

25.1 Annual leave is provided for in the NES. Annual leave does not apply to a casual employee.

25.2 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in s.87 of the Act to an hourly entitlement for administrative ease (i.e. 152 hours for a full-time employee entitled to four weeks of annual leave and 190 hours for a shiftworker as defined in clause 25.3).

25.3 Definition of shiftworker

For the purpose of the additional week of annual leave provided for in s.87(1)(b) of the Act, a shiftworker is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.

25.4 Payment for period of annual leave

25.4 amended in accordance with [PR588653](#)

- (a) Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.
- (b) Subject to clause 25.4(c), the wages to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid allowance and any other wages payable under the employee's contract of employment including any overaward payment.
- (c) Subject to clause 25.5, the employee is not entitled to payments in respect of overtime, shift loading, weekend penalty rates, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

25.5 Annual leave loading

Payment of annual leave loading is being considered in matter [AM2016/8](#)

During a period of annual leave an employee must also be paid a loading calculated on the wages prescribed in clause 25.4. The loading must be as follows:

(a) Day work

An employee who would have worked on day work only had they not been on leave must be paid a loading equal to **17.5%** of the wages prescribed in clause 25.4 or the relevant weekend penalty rates, whichever is the greater but not both.

(b) Shiftwork

An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to **17.5%** of the wages prescribed in clause 25.4 or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.

25.6 Electronic funds transfer (EFT) payment of annual leave

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

25.7 Excessive leave accruals: general provision

Note: Clauses 25.7 to 25.9 contain provisions, additional to the National Employment Standards, 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 Fair Work 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 25.3).
- (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 25.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 25.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

25.8 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 25.7(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):
 - (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 25.7, 25.8 or 25.9 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (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) may result in the direction ceasing to have effect. See clause 25.8(b)(i).

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

25.9 Excessive leave accruals: request by employee for leave

- (a) Clause 25.9 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 25.7(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.
- (c) However, an employee may only give a notice to the employer under paragraph (b) 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 25.8(a) that, when any other paid annual leave arrangements (whether made under clause 25.7, 25.8 or 25.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) 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 25.7, 25.8 or 25.9 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.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 25.3) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

25.10 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 25.10 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 25.10 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 25.10, 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.

25.11 Annual close-down

Notwithstanding s.88 of the Act and clause [25.7](#), an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:

- (a) the employer gives not less than four weeks' notice of intention to do so; and
- (b) an employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clauses 25.4 and 25.5; and
- (c) an employee who has not accrued sufficient leave to cover part or all of the close-down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down; and
- (d) any leave taken by an employee as a result of a close-down pursuant to clause 25.11 also counts as service by the employee with their employer; and
- (e) the employer may only close down the enterprise or part of it pursuant to clause 25.11 for one or two separate periods in a year; and

- (f) if the employer closes down the enterprise or part of it pursuant to clause 25.11 in two separate periods, one of the periods must be for a period of at least 14 consecutive days including non-working days; and
- (g) the employer and the majority of employees concerned may agree to the enterprise or part of it being closed down pursuant to clause 25.11 for three separate periods in a year provided that one of the periods is a period of at least 14 days including non-working days; and
- (h) the employer may close down the enterprise or part of it for a period of at least 14 days including non-working days and allow the balance of any annual leave to be taken in one continuous period in accordance with a roster.

25.12 Proportionate leave on termination

On termination of employment, an employee must be paid for annual leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 25.4.

25.13 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 25.13.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 25.13.
- (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 25.13 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 25.13 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 25.13 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 25.13.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 25.13.

Note 3: An example of the type of agreement required by clause 25.13 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

26. Personal/carer's leave and compassionate leave

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

26.2 If an employee is terminated by their employer and is re-engaged by the same employer within a period of six months, the employee's unclaimed balance of paid personal/carer's leave continues from the date of re-engagement.

27. Parental leave and related entitlements

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

28. Public holidays

28.1 Public holiday entitlements are provided for in the NES.

28.2 Where an employee works on a public holiday they will be paid in accordance with clauses 12.2(g), ~~20.2(f)(iv) and~~ 23.6 and 24.5.

28.3 Clause 9.9 applies in relation to part-time employees and public holidays.

28.4 Substitution of certain public holidays by agreement at the enterprise

(a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days.

(b) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.

28.5 Rostered day off falling on public holiday

(a) Except as provided for in clauses 28.5(b) and (c) and where the rostered day off falls on a Saturday or a Sunday, where a full-time employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

- (i) 7.6 hours of pay at the applicable rate of pay; or
 - (ii) 7.6 hours of extra annual leave; or
 - (iii) a substitute day off on an alternative week day.
- (b) Where an employee has credited time accumulated pursuant to clause 19.6, then such credited time should not be taken as a day off on a public holiday.
- (c) If an employee is rostered to take credited time accumulated pursuant to clause 19.6 as a day off on a week day and such week day is prescribed as a public holiday after the employee was given notice of the day off, then the employer must allow the employee to take the time off on an alternative week day.
- (d) Clauses 28.5(b) and (c) do not apply in relation to days off which are specified in an employee's regular roster or pattern of ordinary hours as clause 28.5(a) applies to such days off.

28.6 Part-day Public Holidays

For provisions relating to part-day public holidays see Schedule J—2016 Part-day Public Holidays

29. Community service leave

Community service leave is provided for in the NES.

Part 7—Consultation and Dispute Resolution

30. Consultation about major workplace change

30.1 Employers to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

30.2 Employers to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 30.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 30.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

31. Consultation about changes to rosters or hours of work

31.1 Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.

31.2 The employer must:

- (a) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
- (b) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
- (c) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

31.3 The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

31.4 These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

32. Dispute resolution

- 32.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 32.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 32.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 32.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 32.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 32.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 32.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 8—Termination of Employment and Redundancy

33. Termination of employment

33.1 Notice of termination is provided for in the NES.

33.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

34. Redundancy

Redundancy pay is provided for in the NES.

35. Transfer to lower paid job on redundancy

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former applicable rate of pay and the applicable rate of pay for the number of weeks of notice still owing.

36. Employee leaving during redundancy notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

37. Job search entitlement

37.1 Job search entitlement for notice of termination of employment

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

37.2 Job search entitlement—redundancy

(a) Time off for seeking other employment

An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) Proof of attendance

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

Schedule A—Classification Structure and Definitions

A.1 The classification structure and definitions set out in this Schedule apply to employees covered by this award, except where otherwise specified.

A.2 Classification structure and definitions

A.2.1 Level 1 (78% relativity to the tradesperson)

(a) An employee at Level 1 has less than three months' experience in the industry or enterprise, and does not possess recognised enterprise or industrial or prior learning experience and/or skills sufficient for appointment to Level 2 or above. Provided that the length of service required to advance to Level 2 for a seasonal employee is four weeks and for a casual employee is 152 hours.

(b) Competencies

An employee at Level 1 performs general duties essentially of a manual nature, and:

- (i) exercises minimal judgment;
- (ii) works under direct supervision; and
- (iii) is undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance.

A.2.2 Level 2 (82% relativity to the tradesperson)

(a) An employee at Level 2 is an employee who has either:

- (i) completed a structured induction program over three months or for such shorter period as is necessary to reach the required level of competency for appointment to Level 2; or
- (ii) has recognised enterprise or industrial experience, training or prior learning experience or skills to Level 2.

(b) Competencies

An employee at Level 2 performs a range of general duties essentially of a manual nature and to the level of the employee's competency, and:

- (i) exercises limited judgment;
- (ii) works under direct supervision;
- (iii) is undertaking structured training to enable the employee to work at Level 3.

A.2.3 Level 3 (87.4% relativity to the tradesperson)

- (a) An employee at Level 3 is an employee who has either:
- (i) completed an Australian Qualifications Framework (AQF) Certificate 1 in Food Processing; or
 - (ii) has equivalent recognised enterprise or industrial experience, training or prior learning experience or skills to Level 3.

(b) Competencies

An employee at Level 3 performs a range of duties including specialised work, and:

- (i) may exercise judgment within defined procedures;
- (ii) works under general supervision;
- (iii) may undertake structured training to enable the employee to work at Level 4;
- (iv) is responsible for the quality of the employee's own work within the limits of Level 3;
- (v) assists in the provision of on-the-job training in conjunction with tradespersons and supervisor/trainers or an accredited training provider.

A.2.4 Level 4 (92.4% relativity to the tradesperson)

- (a) An employee at Level 4 is an employee who has either:
- (i) completed an AQF Certificate 2 in Food Processing; or
 - (ii) has equivalent recognised enterprise or industrial experience, training or prior learning experience or skills to Level 4.

(b) Competencies

An employee at Level 4 performs work above and beyond the competencies of a Level 3 employee, and:

- (i) exercises judgment;
- (ii) works under general supervision;
- (iii) may undertake structured training to enable the employee to work at Level 5 level;
- (iv) is responsible for assuring the quality of the employee's own work;
- (v) assists in the provision of on-the-job training in conjunction with tradespersons and supervisor/trainers or an accredited training provider.

A.2.5 Level 5 (100% relativity to the tradesperson)

- (a) An employee at Level 5 is an employee who has either:
- (i) completed an AQF Certificate 3 in Food Processing; or
 - (ii) has equivalent recognised enterprise or industrial experience, training or prior learning experience or skills to Level 5.

(b) Competencies

An employee at Level 5 performs work above and beyond the competencies of a Level 4 employee, and:

- (i) understands and applies quality control techniques;
- (ii) has good interpersonal and communication skills;
- (iii) is able to inspect products and/or materials for conformity with established operational standards;
- (iv) exercises judgment and decision making skills;
- (v) works under general supervision either individually or in a team environment;
- (vi) may undertake structured training to enable the employee to work at Level 6.

A.2.6 Level 6 (105% relativity to the tradesperson)

- (a) An employee at Level 6 is an employee who has completed the following training requirement above that for Level 5:

- (i) two competency units from the Associate Diploma of Food Technology (ADFT); or
- (ii) six competency units from the Advanced Certificate of Food Technology (ACFT); or
- (iii) six competency units above the requirement for Level 5; or
- (iv) equivalent.

(b) Competencies

An employee at Level 6 performs work above and beyond a Level 5 and to the level of the employee's training:

- (i) exercises skills attained through satisfactory completion of the training prescribed for Level 6;
- (ii) exercises discretion within the scope of Level 6;

- (iii) works under general supervision either generally or in a team environment;
- (iv) understands and implements quality control techniques;
- (v) provides technical guidance and assistance as part of a work team;
- (vi) exercises skills relevant to the specific requirements of the enterprise at a level higher than a Level 5.

A.3 The percentage wage relativities in clause A.2 reflect the percentages prescribed in 1990 in *Re Metal Industry Award 1984—Part I* (M039 [Print J2043](#)). The minimum wages in this award do not reflect these relativities because some wage increases since 1990 have been expressed in dollar amounts rather than percentages and as a result have reduced the relativities.

Schedule B—Summary of Hourly Rates of Pay

B.1.2 amended and note added to the tables.

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

B.1 Full-time and part-time adult employees

B.1.1 Ordinary hourly rate ~~means the hourly rate for the employee’s classification specified in clause 14.1(a), plus any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes. is the minimum hourly rate of pay for an employee’s classification prescribed by the award 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 20.1(a), 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 in the tables below are based on the **minimum hourly rates** in accordance with clause 14.1. Consistent with clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.

B.1.3 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	100%	150%	200%	250%
Level 1	\$18.29	\$27.44	\$36.58	\$45.73
Level 2	\$18.81	\$28.22	\$37.62	\$47.03
Level 3	\$19.53	\$29.30	\$39.06	\$48.83
Level 4	\$20.21	\$30.32	\$40.42	\$50.53
Level 5	\$21.29	\$31.94	\$42.58	\$53.23
Level 6	\$21.96	\$32.94	\$43.92	\$54.90

²Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.1.4 Full-time and part-time employees other than shiftworkers—overtime rates

	Monday to Saturday – first 3 hours	Monday to Saturday – after 3 hours	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 1	\$27.44	\$36.58	\$36.58	\$45.73
Level 2	\$28.22	\$37.62	\$37.62	\$47.03

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	Monday to Saturday – first 3 hours	Monday to Saturday – after 3 hours	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 3	\$29.30	\$39.06	\$39.06	\$48.83
Level 4	\$30.32	\$40.42	\$40.42	\$50.53
Level 5	\$31.94	\$42.58	\$42.58	\$53.23
Level 6	\$32.94	\$43.92	\$43.92	\$54.90

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

B.1.5 Full-time and part-time shiftworkers—ordinary and penalty rates

	All shiftworkers						Other than continuous shiftworkers		Continuous shiftworkers
	Early morning shift	Afternoon shift or night shift	Afternoon or night shift not continuing¹		Permanent night shift	Saturday	Sunday	Public holiday	Sunday & Public holiday
			First 3 hours	After 3 hours					
	% of ordinary hourly rate ²								
	112.5%	115%	150%	200%	130%	150%	200%	250%	200%
Level 1	\$20.58	\$21.03	\$27.44	\$36.58	\$23.78	\$27.44	\$36.58	\$45.73	\$36.58
Level 2	\$21.16	\$21.63	\$28.22	\$37.62	\$24.45	\$28.22	\$37.62	\$47.03	\$37.62
Level 3	\$21.97	\$22.46	\$29.30	\$39.06	\$25.39	\$29.30	\$39.06	\$48.83	\$39.06
Level 4	\$22.74	\$23.24	\$30.32	\$40.42	\$26.27	\$30.32	\$40.42	\$50.53	\$40.42
Level 5	\$23.95	\$24.48	\$31.94	\$42.58	\$27.68	\$31.94	\$42.58	\$53.23	\$42.58
Level 6	\$24.71	\$25.25	\$32.94	\$43.92	\$28.55	\$32.94	\$43.92	\$54.90	\$43.92

B.1.6 Full-time and part-time shiftworkers—overtime rates

	Other than continuous shiftworkers		Continuous shiftworkers	Sunday	Other than continuous shiftworkers	Continuous shiftworkers
	Monday to Saturday			All overtime worked	Public holiday	
	First 3 hours	After 3 hours	All overtime worked		All overtime worked	All overtime worked
	% of ordinary hourly rate ¹					
	150%	200%	200%	200%	250%	200%
Level 1	\$27.44	\$36.58	\$36.58	\$36.58	\$45.73	\$36.58
Level 2	\$28.22	\$37.62	\$37.62	\$37.62	\$47.03	\$37.62
Level 3	\$29.30	\$39.06	\$39.06	\$39.06	\$48.83	\$39.06
Level 4	\$30.32	\$40.42	\$40.42	\$40.42	\$50.53	\$40.42
Level 5	\$31.94	\$42.58	\$42.58	\$42.58	\$53.23	\$42.58
Level 6	\$32.94	\$43.92	\$43.92	\$43.92	\$54.90	\$43.92

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

B.2 Casual adult employees

B.2.1 Casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification specified in this award, inclusive of the casual loading which is payable for all purposes. ~~includes the casual loading which is payable for all purposes.~~ Where an additional allowance is payable for all purposes in accordance with clause 20.1(a), this forms part of the employee's casual ordinary hourly rate and must be added to the casual ordinary hourly rate prior to calculating penalties and overtime.

B.2.2 Casual employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday
	% of casual ordinary hourly rate ¹			
	100%	150%	200%	250%
Level 1	\$22.86	\$34.29	\$45.72	\$57.15
Level 2	\$23.51	\$35.27	\$47.02	\$58.78
Level 3	\$24.41	\$36.62	\$48.82	\$61.03
Level 4	\$25.26	\$37.89	\$50.52	\$63.15
Level 5	\$26.61	\$39.92	\$53.22	\$66.53
Level 6	\$27.45	\$41.18	\$54.90	\$68.63

¹ Rates in table include the casual loading payable to all employees for all purposes. Any all purpose

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	Ordinary hours	Saturday	Sunday	Public holiday
	% of casual ordinary hourly rate ¹			
	100%	150%	200%	250%
allowances applicable need to be added to these rates, see clause B.2.1.				

B.2.3 Casual shiftworkers—ordinary and penalty rates

	All shiftworkers					Other than continuous shiftworkers		Continuous shiftworkers	
	Early morning shift	Afternoon shift or night shift	Afternoon or night shift not continuing ¹		Permanent night shift	Saturday	Sunday	Public holiday	Sunday & Public holiday
			First 3 hours	After 3 hours					
	% of casual ordinary hourly rate ²								
	112.5%	115%	150%	200%	130%	150%	200%	250%	200%
Level 1	\$25.72	\$26.29	\$34.29	\$45.72	\$29.72	\$34.29	\$45.72	\$57.15	\$45.72
Level 2	\$26.45	\$27.04	\$35.27	\$47.02	\$30.56	\$35.27	\$47.02	\$58.78	\$47.02
Level 3	\$27.46	\$28.07	\$36.62	\$48.82	\$31.73	\$36.62	\$48.82	\$61.03	\$48.82
Level 4	\$28.42	\$29.05	\$37.89	\$50.52	\$32.84	\$37.89	\$50.52	\$63.15	\$50.52
Level 5	\$29.94	\$30.60	\$39.92	\$53.22	\$34.59	\$39.92	\$53.22	\$66.53	\$53.22
Level 6	\$30.88	\$31.57	\$41.18	\$54.90	\$35.69	\$41.18	\$54.90	\$68.63	\$54.90

Schedule C—Summary of Monetary Allowances

See clause 20—Allowances and special rates for full details of allowances payable under this award.

C.1 Wage-related allowances:

The wage-related allowances in this award are based on the standard rate as defined in Clause 2—Definitions as the minimum hourly wage prescribed for the Level 5 classification in clause 14.1(a) = **\$21.29**

Allowance	Clause	% of standard rate (\$21.29)	\$ per hour unless stated otherwise
Leading hand in charge of ¹ :	20.1(b)		
3 to 10 employees		166.3	35.41 per week
11 to 20 employees		248.4	52.88 per week
More than 20 employees		316.2	67.32 per week
Heavy vehicle driving allowance ² :	20.1(c)		
Over 3 tonnes GVW and up to 4.5 tonnes GVW		0.6	0.13
Over 4.5 tonnes GVW and up to 14.95 tonnes GVW		5.0	1.06
Over 14.95 tonnes GVW		6.6	1.41
A semi-trailer		11.9	2.53
Boiler attendants allowance ³	20.1(d)	85.5	18.20 per week
First aid allowance	20.1(e)	75.6	16.10 per week
Cold places allowance	20.1(f)(ii)	2.8	0.60
Hot places allowance:	20.1(f)(iii)		
Artificially raised to between 46°C and 54°C		2.9	0.62
Artificially raised to above 54°C		3.8	0.81
Wet places allowance	20.1(f)(iv)	2.9	0.62
Confined spaces allowance	20.1(f)(v)	3.8	0.81
Dirty, dusty or offensive work	20.1(f)(vi)	2.9	0.62
Using fumigation gas	20.1(f)(vii)	38.2	8.13 per day

^{1, 2, 3} These allowances apply for all purposes of this award

C.1.1 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

The following expense-related allowances will be payable to employees in accordance with clause 20.

Allowance	Clause	\$
Vehicle allowance	20.2(c)	0.78 per km
Travelling time payment—meal allowance	20.2(f)(v)	13.96 per meal
Meal allowance—overtime	20.2(a)	13.96 per rest break

C.2.1 Adjustment of expense-related allowances

At the time of any adjustment to the standard rate, each expense-related allowance must 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.

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

Schedule D—School-based Apprentices

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

Schedule E—National Training Wage

The National Training Wage schedule may be affected by [AM2016/17](#)

E.1 Title

This is the *National Training Wage Schedule*.

E.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

approved training means the training specified in the training contract

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (c) not include any period during a calendar year in which a year of schooling is completed

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

traineeship means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

Year 10 includes any year before Year 10

E.3 Coverage

- E.3.1** Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by clause E.7 to this schedule or by clause E.5.4 of this schedule.
- E.3.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause E.7 to this schedule.
- E.3.3** This schedule does not apply to:
- (a) the apprenticeship system;
 - (b) qualifications not identified in training packages; or
 - (c) qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.4** This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.5** Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.
- E.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

E.4 Types of Traineeship

The following types of traineeship are available under this schedule:

- E.4.1** a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and
- E.4.2** a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

E.5 Minimum Wages

E.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
School leaver	\$312.20	\$343.80	\$409.60
Plus 1 year out of school	\$343.80	\$409.60	\$476.60
Plus 2 years out of school	\$409.60	\$476.60	\$554.70
Plus 3 years out of school	\$476.60	\$554.70	\$635.10
Plus 4 years out of school	\$554.70	\$635.10	
Plus 5 or more years out of school	\$635.10		

(b) Wage Level B

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
School leaver	\$312.20	\$343.80	\$398.50
Plus 1 year out of school	\$343.80	\$398.50	\$458.40
Plus 2 years out of school	\$398.50	\$458.40	\$537.60
Plus 3 years out of school	\$458.40	\$537.60	\$613.20

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
Plus 4 years out of school	\$537.60	\$613.20	
Plus 5 or more years out of school	\$613.20		

(c) Wage Level C

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
School leaver	\$312.20	\$343.80	\$398.50
Plus 1 year out of school	\$343.80	\$398.50	\$448.60
Plus 2 years out of school	\$398.50	\$448.60	\$501.20
Plus 3 years out of school	\$448.60	\$501.20	\$558.40
Plus 4 years out of school	\$501.20	\$558.40	
Plus 5 or more years out of school	\$558.40		

(d) AQF Certificate Level IV traineeships

(i) Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
Wage Level A	\$659.60	\$685.10
Wage Level B	\$636.30	\$660.80
Wage Level C	\$579.10	\$601.00

E.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
School leaver	\$10.27	\$11.32	\$13.48
Plus 1 year out of school	\$11.32	\$13.48	\$15.69
Plus 2 years out of school	\$13.48	\$15.69	\$18.24
Plus 3 years out of school	\$15.69	\$18.24	\$20.88
Plus 4 years out of school	\$18.24	\$20.88	
Plus 5 or more years out of school	\$20.88		

(b) Wage Level B

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
School leaver	\$10.27	\$11.32	\$13.12
Plus 1 year out of school	\$11.32	\$13.12	\$15.08
Plus 2 years out of school	\$13.12	\$15.08	\$17.70
Plus 3 years out of school	\$15.08	\$17.70	\$20.18
Plus 4 years out of school	\$17.70	\$20.18	
Plus 5 or more years out of school	\$20.18		

(c) Wage Level C

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour

	per hour	per hour	per hour
School leaver	\$10.27	\$11.32	\$13.12
Plus 1 year out of school	\$11.32	\$13.12	\$14.75
Plus 2 years out of school	\$13.12	\$14.75	\$16.48
Plus 3 years out of school	\$14.75	\$16.48	\$18.37
Plus 4 years out of school	\$16.48	\$18.37	
Plus 5 or more years out of school	\$18.37		

(d) School-based traineeships

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by clause E.7 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$10.27	\$11.32

(e) AQF Certificate Level IV traineeships

(i) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
Wage Level A	\$21.69	\$22.54
Wage Level B	\$20.91	\$21.72
Wage Level C	\$19.05	\$19.78

(f) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by

multiplying the relevant minimum wage in clauses E.5.2(a)-(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

- (ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)-(e) of this schedule applies to each ordinary hour worked by the trainee.
- (iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2(a)-(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

E.5.3 Other minimum wage provisions

- (a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

E.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by clause E.7 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

E.6 Employment conditions

- E.6.1** A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer's leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.
- E.6.2** A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- E.6.3** Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause E.5.2(f)(ii) and not by this clause.

E.6.4 Subject to clause E.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

E.7 Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

E.7.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I, II, III
Beauty	III
Business Services	I, II, III
Chemical, Hydrocarbons and Refining	I, II, III
Civil Construction	III
Coal Training Package	II, III
Community Services	II, III
Construction, Plumbing and Services Integrated Framework	I, II, III
Correctional Services	II, III
Drilling	II, III
Electricity Supply Industry—Generation Sector	II, III (III in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I, II, III (III in Western Australia only)
Financial Services	I, II, III
Floristry	III
Food Processing Industry	III
Gas Industry	III
Information and Communications Technology	I, II, III
Laboratory Operations	II, III
Local Government (other than Operational Works Cert I and II)	I, II, III

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Training package	AQF certificate level
Manufactured Mineral Products	III
Manufacturing	I, II, III
Maritime	I, II, III
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Logistics	III
Water Industry (Utilities)	III

E.7.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III

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Training package	AQF certificate level
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

E.7.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I, II, III
Conservation and Land Management	I, II, III
Funeral Services	I, II, III
Music	I, II, III

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Racing Industry	I, II, III
Rural Production	I, II, III
Seafood Industry	I, II, III

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Schedule F—Supported Wage System

F.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.

F.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

F.3 Eligibility criteria

F.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.

F.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.

F.4 Supported wage rates

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

F.4.2 Provided that the minimum amount payable must be not less than **\$84** per week.

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

F.5 Assessment of capacity

F.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 Supported Wage System 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.

F.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.

F.6 Lodgement of SWS wage assessment agreement

F.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.

F.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.

F.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 supported wage system.

F.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.

F.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.

F.10 Trial period

- F.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- F.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.
- F.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$84** per week.
- F.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- F.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 F.5.

Schedule G—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 H—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 I—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 J—2016 Part-day Public Holidays

The part-day public holidays schedule may be affected by [AM2014/301](#)

This schedule operates in conjunction with award provisions dealing with public holidays.

J.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) 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) 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) 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 J.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- (g) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

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

This schedule is an interim provision and subject to further review.