

The Exposure Draft was first published on 3 October 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
2 November 2015	Incorporate changes resulting from [2014] FWCFCB 9412	1.1, 1.2, 1.5, 2.1, 2.3, 5.1, 6.3, 10.1, 11, 12, 13, 0, 15, 16, 21.2, 25,0, Schedule G
	Incorporate changes resulting from [2015] FWCFCB 3500 , PR566788 , and PR566917	21, 22, 25, 26, Schedule B, Schedule C
	Incorporate changes resulting from [2015] FWCFCB 4658	1, 3, 10, 21, 25, Schedule B, Schedule G
	Incorporate changes resulting from [2015] FWCFCB 6656	1.4
	Incorporate changes resulting from [2015] FWCFCB 3523 and PR571842	8
	Incorporate changes resulting from [2015] FWCFCB 7236	20, 0, 21.2(d), 24.1(a), 25.1(a), 25.2
	Separate out provisions relating to inshore and offshore divers in accordance with para [204] of [2015] FWCFCB 7236	8 – 23 (renumbering of clauses), 5.2, 0, 21.2(a), 25.2(a)
13 June 2017	Correct error	13.2, 15.3
	Incorporate changes resulting from [2016] FWCFCB 3500 , PR579899 and PR579613	21, 22, 25, 26, Schedule B, Schedule C
	Incorporate changes resulting from PR580863	Schedule F
	Incorporate changes resulting from PR583053	10.4
	Incorporate changes resulting from PR585482	23, Schedule H
	Incorporate changes resulting from PR588655	21.2(c)
	Incorporate changes resulting from PR588750	5.2(a), 5.2(b), 10.5, 10.6, Schedule D, Schedule E
	Incorporate changes resulting from [2017] FWCFCB 3177	19.1, 21.1, Schedule B.1, Schedule B.2

Changes agreed to by parties appear in red text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.

In accordance with paragraph [204] of [\[2015\] FWCFB 7236](#), this exposure draft has been separated into three sections. Provisions appearing in Section A have general application. Provisions in Sections B and C apply to inshore divers and offshore divers respectively. The text of the provisions remains largely unaffected by this change. However, please note that headings have been added to delineate between the different streams, and some headings have been amended to remove redundant references to inshore/offshore diving.

EXPOSURE DRAFT

Professional Diving (Industrial) Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Professional Diving (Industrial) Award 2010** (the Diving industrial award) as at 29 October 2015. This exposure draft does not seek to amend any entitlements under the Diving industrial 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 [AM2014/84](#). 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.

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SECTION A — GENERAL

Part 1—Application and Operation

1. Title and commencement

- 1.1 This award is the *Professional Diving Industry (Industrial) Award 2015*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- 1.4 Schedule G—Definitions sets out definitions that apply in this award.
- 1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2. The National Employment Standards and this award

- 2.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 2.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.
- 2.3 The employer must ensure that copies of this 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.

3. Coverage

- 3.1 This industry award covers employers throughout Australia in the provision of underwater services to industry, including offshore exploration and development diving and related shipboard services, and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award.
- 3.2 In clause 3.1, Australia means all areas within the Commonwealth of Australia or within the adjacent areas as defined in the Offshore Petroleum and Greenhouse Gas Storage Acts (State or Federal) and/or the Petroleum (Submerged Lands) Acts (State) and/or such areas that fall within the territorial jurisdiction of the Commonwealth of Australia.

- 3.3** The award does not cover employers and employees covered by the classifications listed in the *Professional Diving Industry (Recreational) Award 2015*.
- 3.4** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 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.
- 3.5** This award does not cover:
- (a) employees excluded from award coverage by the *Fair Work Act 2009* (Cth) (the Act);
 - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
 - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- 3.6** 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.

4. Award flexibility

- 4.1** 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.

- 4.2** 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.
- 4.3** 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 4.1; 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.
- 4.4** The agreement between the employer and the individual employee must also:
- (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.
- 4.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 4.6** Except as provided in clause 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 4.7** 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.
- 4.8** The agreement may be terminated: MA000016 - Security Services Industry Award 2010
- (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).

- 4.9** The notice provisions in clause 4.8(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 4.8(a), subject to four weeks' notice of termination.
- 4.10** 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.

5. Facilitative provisions

5.2(a) and (b) inserted in accordance with [PR588750](#)

- 5.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or the majority of employees in the enterprise or part of the enterprise concerned.
- 5.2** Facilitative provisions in this award are contained in the following clauses:
- (a) clause 10.5—Annual leave in advance
 - (b) clause 10.6—Cashing out of annual leave
 - (c) clause 19.1(e)—Ordinary hours of work and rostering;
 - (d) clause 21.2(a)—Payment of wages (inshore divers);
 - (e) clause 24.1(c)—Roster cycles for offshore divers; and
 - (f) clause 25.2(a)—Payment of wages (offshore divers).

Part 2—Types of Employment and Classifications

6. Types of employment

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

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

6.2 Full-time employees

- (a) A full-time employee is engaged to work an average of 38 ordinary hours per week.
- (b) Where employment is of less than four weeks' duration, employees will be paid casual rates.
- (c) Inshore divers must be employed by the week.
- (d) For offshore divers, employment for the first four weeks will be on a weekly basis and thereafter will be on a calendar month basis.

6.3 Casual employees

- (a) A casual employee is an employee who is engaged and paid as a casual employee.
- (b) A casual employee will be paid an hourly rate with a minimum payment of eight hours except as provided for in clause 6.3(d).

- (c) **Casual loading**

For each ordinary hour worked, a casual employee must be paid:

- (i) 1/38th of the minimum weekly rate; and
- (ii) a loading of 25% of the minimum hourly rate,
for the classification in which they are employed.

~~Parties are asked to clarify whether casual rates should be based on a 33-hour week (in accordance with the hours of work specified in clause 19.1(b) or a 38-hour week in accordance with [clause 10.3\(c\)](#) of the current award. Clause 29.3 of the pre-reform award, *Professional Divers' – Maritime Union of Australia Award 2002* [[AP814932](#)] provided a divisor of 33 when calculating the hourly rate for casual employees.~~

~~Issue to be dealt with by DP Bull in accordance with para [226] of [\[2015\] FWCFB 7236](#).~~

- (iii) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.
 - (iv) The loading constitutes part of the casual employee's all purpose rate.
- (d) Where casual inshore divers are required to attend for work at the usual starting time and are not required to start work, they must be paid four hours' pay plus fares and travelling time in accordance with clause 22.3(b).
 - (e) Casual employment is to be terminated by four hours' notice on either side, or by the payment or forfeiture of four hours' wages as the case may be.

7. Classifications

The classification structure and definitions under this award are set out at Schedule A—**Classification Definitions**.

Part 3—Wages and Allowances

8. Accident pay

8.1 For the purposes of this clause, the following definitions will apply:

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the

weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.

- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

8.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 52 weeks.

8.3 Calculation of the period

- (a) The 52 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 52 week period.
- (b) The termination by the employer of the employee's employment within the 52 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

8.4 When not entitled to payment

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

8.5 Return to work

If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

8.6 Redemptions

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers compensation legislation, the liability of the employer to pay accident pay as herein provided will cease from the date the employee receives that payment.

8.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.

8.8 Casual employees

For a casual employee, the weekly payment referred to in clause 7A.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the

period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

9. Superannuation

9.1 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.

9.2 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.

9.3 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 9.2.
- (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 9.3(a) or 9.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 9.3(a) or 9.3(b) was made.

9.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 9.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 9.2, and pay the amount authorised under clauses 9.3(a) or 9.3(b), to one of the following superannuation funds or its successor:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust;

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

Part 4—Leave, Public Holidays and Other NES Entitlements

10. Annual leave

10 amended in accordance with [PR583053](#); further amended in accordance with [PR588750](#).

10.1 Annual leave is provided for in the NES.

10.2 Payment for annual leave

- (a) Before the start of an employee's annual leave, the employer must pay the employee the amount the employee would have been paid for working ordinary hours during the period of annual leave.

- (b) **Leave loading—inshore divers**

In addition, the employer must pay inshore divers an annual leave loading of 17.5% calculated at the employee's minimum hourly rate.

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

10.3 Leave for offshore divers is provided for in clause 24.1—Ordinary hours and roster cycles.

10.4 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.

10.5 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

- (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.

Note: An example of the type of agreement required by clause 10.5 is set out at Schedule D. There is no requirement to use the form of agreement set out at Schedule D.

- (c) The employer must keep a copy of any agreement under clause 10.5 as an employee record.
- (d) If, on the termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 10.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

10.6 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 10.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 10.6.
- (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 10.6 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 10.6 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 10.6 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 10.6.

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 10.6.

Note 3: An example of the type of agreement required by clause 10.6 is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E.

11. Personal/carer’s leave and compassionate leave

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

12. Parental leave and related entitlements

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

13. Public holidays

13.1 Public holidays are provided for in the NES.

13.2 An inshore diver required to work on a public holiday will be paid at the rate of **250%** of the ~~casual~~ ordinary hourly rate, with a minimum payment for four hours’ work.

13.3 Part-day public holidays

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

14. Community service leave

Community service leave is provided for in the NES.

15. Termination of employment

15.3 amended to reflect wording in current award

15.1 Notice of termination is provided for in the NES.

15.2 Termination of casual employees is in accordance with clause 6.3(e).

15.3 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 ~~money~~ 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.

15.4 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one days' 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.

16. Redundancy

16.1 Redundancy pay is provided for in the NES.

16.2 Transfer to lower paid duties

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

16.3 Employee leaving during 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.

16.4 Job search entitlement

- (a) 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) 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.
- (c) This entitlement applies instead of clause 15.4.

Part 5—Consultation and Dispute Resolution

17. Consultation

17.1 Consultation regarding major workplace change

(a) Employers to notify

- (i) 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.

- (ii) **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.

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 17.1(a), 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.
- (ii) 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 17.1(a).
- (iii) 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.

17.2 Consultation about changes to rosters or hours of work

- (a) 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.
- (b) The employer must:
 - (i) 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);
 - (ii) 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
 - (iii) 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.

- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

18. Dispute resolution

- 18.1** 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.
- 18.2** 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 18.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 18.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 18.4** 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.
- 18.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 18.6** 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.

SECTION B — INSHORE DIVERS

Part 6—Hours of Work

19. Ordinary hours of work and rostering

19.1 updated to reflect change in number of hours for inshore divers in [\[2017\] FWCFB 3177](#).

19.1 Ordinary hours and roster cycles

- (a) Ordinary hours are worked between 6.00 am to 6.00 pm, Monday to Friday.
- (b) The ordinary hours of work for a full-time employee will not exceed 38 hours per week.
- (c) The ordinary hours of work for a casual employee will be in accordance with clause 6.3.
- (d) Work undertaken prior to the spread of hours provided by clause 19.1(a) for which overtime rates are payable will be deemed for the purposes of this clause to be part of the ordinary hours of work.
- (e) The spread of hours provided by clause 19.1(a) may be altered by up to one hour by mutual agreement between the employer and employees.
- (f) Where employees are not employed on diving operations during their ordinary hours, the employer may use their services on other work for any time remaining.

19.2 Work on first day of off-duty period

To allow a smooth changeover of on-duty and off-duty crews, employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

20. Breaks

An inshore diver is entitled to an unpaid meal break of a duration and at a time fixed by agreement, provided that no employee will work more than three hours without such a break.

Part 7—Wages and Allowances

21. Minimum wages

Rates updated as a result of AWR 2016.

21.1 updated to reflect change in number of hours for inshore divers in [\[2017\] FWCFB 3177](#).

21.1 An employer must pay ~~adult~~ inshore divers the following minimum wages for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate	Minimum hourly rate
	\$	\$
Diving Supervisor	1,268.40	38.44 33.38
Hyperbaric Welder	984.10	29.82 25.90
Diver	940.90	28.51 24.76
Diver's Attendant	773.60	23.44 20.36

~~Parties are asked to clarify whether hourly rates should be based on a 33 hour week (in accordance with the hours of work specified in clause 19.1(b) or a 38 hour week in accordance with clause 6.3(c)(i). Clause 29.3 of the pre-reform award, *Professional Divers' - Maritime Union of Australia Award 2002* [[AP814932](#)] provided a divisor of 33 when calculating the hourly rate for casual employees. Issue to be dealt with by DP Bull in accordance with para [226] of [\[2015\] FWCFB 7236](#).~~

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

21.2 Payment of wages

21.2 amended in accordance with [PR588655](#).

- (a) Wages will be paid either weekly or fortnightly, unless otherwise agreed between the employer and the employee.
- (b) Wages will be paid by cash, bank cheque or electronic funds transfer (EFT).

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

- (c) Where an employee is paid by cash or cheque and the employee is kept waiting for their wages on pay day for more than 15 minutes after the usual time for ceasing work, the employee must be paid overtime rates after that 15 minutes for the duration spent waiting at the workplace.

Payment of wages on termination is being considered in matter [AM2016/8](#), see [draft determination \(at attachment A of Statement\)](#)

- (d) On termination of employment, wages due to employees must be paid to them by EFT on the day of such termination or forwarded to them by post on the next working day.

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.

21.3 Higher duties

- (a) Where employees perform the duties of a higher paid classification for a day or part day they will be paid at the higher rate for that day and paid at the higher rate for an equivalent day in their off-duty period.
- (b) For the purposes of clause 21.3(a), a higher paid classification means a classification where the total salary and allowances payable are greater than the total salary and allowances payable at the employee's current classification.

22. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016
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22.1 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.

22.2 Wage related allowances

(a) Diving allowance

A Diver will be paid a diving allowance of **\$4.05** per metre or **\$1.22** per foot of water or equivalent pressure. The allowance will be payable once in respect of the greatest depth or equivalent pressure incurred each day.

(i) The allowance will:

- only apply to dives made in excess of 50 feet or 15 metres of water or equivalent pressure or when decompression is necessary whichever will occur first; and
- be calculated from the surface to the maximum depth or equivalent pressure attained during the dive.

(ii) The allowance will not be paid to persons performing practice or training dives. Underwater services will not be performed for the employer during practice or training dives.

(iii) Diving Supervisors will receive 20% of the average diving allowance paid to Divers under their control. Average diving allowance will be calculated daily by *dividing* the total diving allowance earned by divers whilst under the control of a Diving Supervisor *by* the number of divers who earned a diving allowance on that day.

(b) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography will be paid an allowance of **\$61.25** per day for each day or part day on which they are engaged in such duties.

(c) Hyperbaric welding allowance

- (i)** The Hyperbaric Welder rate as specified in clause 22.2(c)(ii) will apply from the date an employee is required to carry out such duties. The payment will cease when the employee is no longer required by the employer to carry out those duties.
- (ii)** A Hyperbaric Welder will be entitled to a payment of **\$4.61** per linear millimetre for a successfully completed weld. For the purpose of this clause, **successfully completed** means a weld which has been accepted by the client without the necessity for repair.
- (iii)** Provided that instead of clause 22.2(c)(ii) a Hyperbaric Welder will be entitled to payment of **\$3.10** per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv)** The payments prescribed in clauses 22.2(c)(ii) and (iii) will apply only to members of the nominated hyperbaric welding team who have been coded for the particular hyperbaric welding task.

(d) Annual medical exam allowance

Employees who are subjected to greater than atmospheric pressure will be reimbursed the cost of an annual medical examination which will include, but not be limited to, the requirement set out in Appendix A of the Standards Association of Australia Underwater Air Breathing Operations Standard AS 2299. The provisions of clause 22.2(d) do not apply where the employer provides for the service.

22.3 Expense related allowances

(a) Meal allowance

- (i)** A meal allowance of **\$8.53** is payable to employees:
 - who are required to work overtime for more than two hours on any day after the usual finishing time; or
 - are notified that they will be required to work overtime the following day and such order is cancelled after they have left work on the day on which they were notified.
- (ii)** The meal allowance is not payable when:
 - an employee is notified the previous day that their services are required; or
 - a hot meal is provided by the employer.

(b) Fares and travelling time allowance

- (i)** Employees who start and finish work within a 50 km radius of the General Post Office in the city or town in which the employer's business address is situated will receive a fare allowance of **\$11.63** per day.
- (ii)** Where employees start and finish work beyond the 50 km radius referred to in clause 22.3(b)(i) they will be reimbursed for the actual fares

incurred and all time spent travelling beyond this radius will be paid at ordinary rates.

(c) Distant work allowance

- (i)** For the purpose of 22.3(c) **distant work** is work in which the distances, or the travelling facilities to and from places of work, make it reasonably necessary that employees will live and sleep at some place other than their usual place of residence at the time of starting work. Provided that if employees, whilst employed on distant work, change their usual place of residence, the new place of residence or any further change thereof (if made whilst employed on distant work) will be their usual place of residence for determination of whether the work is distant work.
- (ii)** Employees engaged on distant work will be conveyed with equipment to and from work at their employer's expense. Such conveyance will be made each time the employee is recalled and sent again to the place of work. Provided that return fares and travelling time need not be paid to employees who:
- leave the employment of their own free will before the completion of the job or before being employed for three months, whichever happens first; or
 - are discharged for incompetence within one week of engagement; or
 - are discharged for misconduct.
- (iii)** The rate of pay for time occupied in travelling to and from distant work will be ordinary rates, except on Sundays and public holidays when an employee will be paid 150% of the minimum hourly rate. Employees will also be paid an amount of **\$6.37** to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (iv)** The maximum travelling time to be paid for will be 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)** On distant work employees may be paid, by agreement with the employer, an allowance of **\$333.09** per week, or if agreed upon, a greater amount, in return for which employees will be responsible for securing their own accommodation and meals.
- (vi)** In the case of broken parts of the week occurring at the beginning or ending of the employment on a distant job the allowance will be **\$47.63** per day or one seventh of any other weekly amount agreed upon.
- (vii)** The provisions of 22.3(c)(v) and (vi) do not apply if the employer provides reasonable board and lodging.
- (viii)** Employees who consent to use their own vehicle in the course of their employment will be paid an allowance of **\$0.78** per kilometre. This allowance is for the use of the vehicle by the employee for transporting the employee and the employee's personal diving equipment.

(d) Diving clothing and equipment allowance

Employees who supply their own wet suits and personal diving equipment including weightbelt and diving knife will be paid, in addition to the ordinary rate, an allowance of **\$7.08** per day on each day on which the equipment is used.

(e) Protective clothing, footwear and equipment allowance

(i) Employees will be reimbursed for the cost of all required industrial protective clothing, footwear and safety equipment other than that prescribed in clause 22.3(d). This provision does not apply if the clothing and the equipment is supplied by the employer.

(ii) Casual employees may, instead of the provision of footwear by the employer, be paid an amount of **\$2.53** per day of employment for the purchase of approved safety footwear. This allowance will not be payable where safety footwear is not required to be worn.

Part 8—Penalties and Overtime

23. Overtime

23 amended in accordance with [PR585482](#) (23.4 inserted)

23.1 Definition of overtime

For an inshore diver, overtime is any time worked:

- (a) in excess of six hours and 36 minutes per day; or
- (b) outside the spread of hours in clause 19.1(a).

23.2 Overtime rates

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

For overtime worked on	Overtime rate % of minimum hourly rate	Casual overtime rate % of the casual hourly rate¹
Monday to Saturday—first 2 hours	150	150
Monday to Saturday—after 2 hours	200	200
Sunday—all day	200	200
Public holiday—all day	250	250

¹ **Casual hourly rate** is in clause 6.3 and includes the casual loading which constitutes part of the casual employee’s all purpose rate.

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

23.3 Call back

An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) must be engaged and paid for a minimum of four hours' work at the overtime rates even when the employee is not required to work for the full four hours.

23.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 23.4.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) 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 H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 23.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 23.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 23.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), 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 23.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 23.4 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 23.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 23.4.

SECTION C — OFFSHORE DIVERS

Part 9—Hours of Work

24. Ordinary hours of work and rostering

24.1 Ordinary hours and roster cycles

- (a) The average daily hours of work for an offshore diver will be no greater than 12 hours.
- (b) **Leave accrual**

For each on-duty day worked, employees (other than casual employees) will receive one paid off-duty leave day.

- (c) **Rosters**

Starting and finishing times will be in accordance with a nominated regularly recurrent roster schedule. The employer will establish a regularly recurring roster of equal on-duty and off-duty periods for each work site. The on-duty and off-duty periods will each be of 14 days' duration, provided that other

equal periods may be worked by agreement between the employer and a majority of affected employees.

(d) On-duty period

The on-duty period for employees (other than casual employees) will commence on the day of arrival at the designated point of embarkation to the work site.

(e) Off-duty period

(i) The off-duty period for employees (other than casual employees) will commence on the day of departure from the work site.

(ii) If the employee is held over beyond midnight on their crew change day and/or subsequent days, they will be paid one day's pay at 20% of the minimum weekly wage rate in clause 25.1, but they will not accrue a subsequent leave day.

(f) Not attending for duty

Employees not attending for duty in a rostered on-duty period other than as provided for elsewhere in this clause will not receive payment nor accrue off-duty leave days in respect of such period.

(g) Authorised paid leave

Employees who are absent during a rostered on-duty period, for reasons provided for in clause 11—Personal/carer's leave and compassionate leave will be paid as if on-duty for the period of such absence.

(h) Authorised unpaid leave

Where requested by an employee, the employer may grant authorised unpaid leave to that employee. The employee will not receive payment nor accrue or use paid off-duty leave days in respect of such period of absence. The granting of authorised unpaid leave will be at the sole discretion of the employer.

(i) Roster changes by the employer

Where a roster is changed by the employer and the commencement of an employee's on-duty period is brought forward, the employee will be considered to be on duty from the day of arrival at the designated point of embarkation.

(j) Roster changes by the employee

Where a roster is changed at the request of an employee, the employee will be either on-duty and accruing off-duty leave days or off-duty and using off-duty leave days as provided in clauses 24.1(d) and 24.1(e).

(k) Returning to work early

Where an employee commences duty prior to the commencement of the employee's rostered on-duty period, the employee will be considered to be on-duty from the day of arrival at the designated point of embarkation.

(l) Prevented from commencing an on-duty period

Where an employee reports for duty at a designated assembly point but cannot be transported to the offshore work site due to weather conditions, insufficient work or other circumstances beyond the employer's control, the period of such delay will be regarded as an on-duty period provided that the employer may gainfully employ the employee onshore.

(m) Prevented from remaining on duty

Where during an on-duty period an employee cannot remain at the offshore work site due to circumstances beyond the employer's control, such days will be considered to be on-duty days provided that the employer may gainfully employ the employee onshore.

(n) Prevented from commencing off-duty period

Where due to weather conditions or other circumstances an employee is delayed offshore and prevented from commencing a rostered off-duty period the employee will be on duty and accruing off-duty leave days until the employee actually commences an off-duty period.

(o) Imbalance of off-duty leave days owed and actually taken

- (i)** Subject to 24.1, an employee may accrue more off-duty leave days than are taken or take more off-duty leave days than have been accrued.
- (ii)** Where the employee accrues more off-duty leave days than are taken the balance will be recorded and taken at another time.
- (iii)** Where the employee takes more off-duty leave days than are accrued they will be deducted from any balance of off-duty days yet to be taken. Where that results in a negative balance of off-duty leave days that number of days will be subtracted from the employee's pay for that month.
- (iv)** A positive balance of off-duty days owed to the employee on termination will be paid to the employee at that time.

24.2 Work on first day of off-duty period

To allow a smooth changeover of on-duty and off-duty crews, employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

Part 10—Wages and Allowances

25. Minimum wages

25.1 Minimum wages

Rates updated as a result of AWR 2016

- (a) An employer must pay offshore divers the following wages for ordinary hours worked by the employee:

Employee classification	Full-time employees		
	Minimum weekly rate	Aggregate weekly factor (percentage of minimum weekly rate)	Total weekly rate (minimum weekly rate plus aggregate weekly factor)
	\$	%	\$
Diving Superintendent	1034.00	117	2,243.78
Diving Supervisor	966.30	116	2,087.21
Supervisor (ADS Operations)	966.30	116	2,087.21
Hyperbaric Welder	932.70	116	2,014.63
Life Support Technician	884.20	114	1,892.19
Senior Operator (OMB Operations)	884.20	114	1,892.19
Systems Maintenance Technician	827.90	113	1,763.43
Diver	778.20	111	1,642.00
Operator (ADS Operations)	778.20	111	1,642.00
Diver's Attendant	677.00	108	1,408.16

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

- (b) A full-time employee engaged in offshore diving must be paid the total weekly rate which is the minimum weekly rate plus the aggregate weekly factor.
- (c) The aggregate weekly factor specified in clause 25.1(a) includes payment for the various rosters that may be worked, overtime, the nature of the industry and penalties and conditions of employment applicable to the work performed.
- (d) Total monthly rates are calculated by multiplying the total weekly rate specified in clause 25.1(a) by 4.35.

25.2 Payment of wages

- (a) Wages will be paid either weekly or fortnightly, unless otherwise agreed between the employer and the employee.
- (b) Wages will be paid by cash, bank cheque or electronic funds transfer (EFT).

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

- (c) Employees kept waiting for their wages on pay day for more than 15 minutes after the usual time for ceasing work must be paid overtime rates after that 15 minutes.

Payment of wages on termination is being considered in matter [AM2016/8](#), see [draft determination \(at attachment A of Statement\)](#)

- (d) On termination of employment, wages due to employees must be paid by EFT to them on the day of such termination or forwarded to them by post on the next working day.

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.

25.3 Higher duties

- (a) Where employees perform the duties of a higher paid classification for a day or part day they will be paid at the higher rate for that day and paid at the higher rate for an equivalent day in their off-duty period.
- (b) For the purposes of clause 25.3(a), a higher paid classification means a classification where the total salary and allowances payable are greater than the total salary and allowances payable at the employee's current classification.

26. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016

26.1 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.

26.2 Wage related allowances

(a) Disability allowance

For each on-duty day on a support vessel whether dynamically positioned or anchor moored:

- (i) employees other than casual employees will receive an allowance of **\$62.26** per day; and
- (ii) casual employees will receive an allowance of **\$73.85** per day.

The allowance in clause 26.2(a) is paid in recognition of all disabilities and work requirements associated with living and working from such a vessel. The amounts in this clause reflect payment for the on-duty and off-duty period.

(b) Diving allowances

(i) Diving other than ADS Operations

A Diver will be paid a diving allowance of **\$3.66** per metre or **\$1.09** per foot or equivalent pressure as follows:

- a minimum of **\$54.50** (50 times the diving allowance per foot) will be paid for dives using other than saturation techniques; or
- a minimum of **\$272.50** (calculated as 250 times the diving allowance per foot) will be paid where the employee is engaged in a dive using saturation techniques.
- The allowance will be payable once in respect of the greatest depth or equivalent pressure incurred in each period worked.
- For the purposes of this allowance, a period worked will begin from the time the Diver enters the water or is subject to greater than atmospheric pressure and will end 12 hours later. If at the end of a period worked, or a further period worked, a Diver is still subject to greater than atmospheric pressure, further periods worked will begin again each 12 hours.

(ii) ADS Operations

A Senior Operator (OMB Operations) and Operator (ADS Operations) will be paid a diving allowance of **\$1.79** per metre or **\$0.54** per foot.

- A minimum of **\$135.00** will be paid (calculated as 250 times the diving allowance per foot).
- The allowance will be payable only once in respect of dives commenced within a 12 hour period.

(iii) Practice or training dives

The diving allowances in clauses 26.2(b)(i) and 26.2(b)(ii) must not be paid to:

- persons performing practice or training dives; or
- an Operator (ADS Operations) during the first 12 month period of training.

Underwater services must not be performed for the employer during practice or training dives.

(iv) Diving Superintendents, Diving Supervisors, Supervisors (ADS Operations) and Life Support Technicians

- Diving Superintendents, Diving Supervisors and Supervisors (ADS Operations) will receive 20% and Life Support Technicians will receive 15% of the average diving allowance paid to Divers or Operators (ADS Operations) under their control.

- The average diving allowance will be calculated daily by dividing the total diving allowance earned in each day (or part thereof) by Divers or Operators (ADS Operations) under the control of a Diving Superintendent, Diving Supervisor or Supervisor (ADS Operations) by the number of Divers or Operators (ADS Operations) who earned a diving allowance in that day.
- Surface oriented dives made in conjunction with saturation diving operations must be calculated separately for the purpose of calculating the average diving allowance.

(c) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography will be paid an allowance of **\$54.79** per day for each day or part day on which they are engaged in such duties.

(d) Hyperbaric welding allowance

- (i) The minimum wage for a Hyperbaric Welder as specified in clause 25.1(a) will apply from the date an employee is required to carry out such duties. The payment will cease when the employee is no longer required by the employer to carry out those duties.
- (ii) A Hyperbaric Welder will be entitled to a payment of **\$4.51** per linear millimetre for a successfully completed weld. For the purpose of this clause, **successfully completed** means a weld which has been accepted by the client without the necessity for repair.
- (iii) Provided that instead of clause 26.2(d)(ii) a Hyperbaric Welder will be entitled to payment of **\$3.03** per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv) The payments prescribed in clauses 26.2(d)(ii) and (iii) will apply only to members of the nominated hyperbaric welding team who have been coded for that particular hyperbaric welding task.

26.3 Expense related allowances

(a) Loss of personal effects reimbursement

- (i) An employee will be reimbursed up to **\$2420.00** for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge.
- (ii) No payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

(b) Living away from home allowance

- (i) An allowance of **\$51.68** per day will be paid to each employee for each day or part thereof of their duty period offshore or in circumstances where employees would normally be working offshore and are temporarily accommodated onshore away from their home.

- (ii) With the exception of annual leave, the allowance will not be payable during periods of leave or authorised absences nor during periods in which the employee is specifically engaged on shore-based duties including equipment mobilisation or demobilisation where the employee is able to live at home.

(c) Transportation and accommodation allowances

- (i) At the beginning and end of each on-duty period, the employer must provide transport between the designated assembly point and the designated point of embarkation.
- (ii) Employees are required to present themselves at the designated point of embarkation by use of the transport provided by the employer or otherwise at their own expense.
- (iii) If the transport provided by the employer is in the form of a hired vehicle the employee will be responsible for the care of the vehicle and if an accident occurs while the employee is in charge of the vehicle and is proven to be under the influence of illegal drugs or alcohol, the employer will have the right to recover from the employee any cost incurred by the employer resulting from such accident.
- (iv) During the period of duty, employees who cannot reasonably return to their usual residence will be reimbursed the cost of reasonable accommodation and meals. Where such accommodation and meals are provided by the employer the provisions of clause 26.3(c) do not apply.
- (v) The employer will notify the employees of the designated assembly point and designated point of embarkation for each job.

(d) Clothing and equipment allowances

- (i) Employees will be reimbursed for the purchase of clothing and equipment required for the performance of duties. The provisions of clause 26.3(d) do not apply if the employer provides the clothing and equipment.
- (ii) Where a full-time employee is required to supply and maintain their own wetsuit and approved safety footwear, they will be paid an allowance of **\$108.61** per calendar month.
- (iii) A casual employee will be paid an allowance of **\$8.75** per day.

(e) Medical examination allowance

- (i) Where the employer requests that a prospective employee undertake a pre-employment medical examination, the employee will be reimbursed for the costs of attending the examination.
- (ii) Where Commonwealth, State or Territory legislation requires that employees bound by this award must submit to medical examination, then upon employees complying with such Act or Regulation, the employer will reimburse the employee for all costs associated with such examination.

(f) Insurance policy reimbursement

- (i)** Where the employee elects to obtain insurance cover against death from any cause with a sum insured of **\$123,593.00** to apply during the period of their employment, then upon presentation of verifiable evidence of the purchase of the insurance policy, the employer will reimburse the employee for the cost of the policy.
- (ii)** The insurance policy reimbursement does not apply if the employer provides the insurance coverage directly.

DRAFT

Schedule A—Classification Definitions

An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

- A.1 Diver** means an employee trained and certified in accordance with AS 2815 Parts 1-3 and experienced in the use of Self-Contained Underwater Breathing Apparatus (SCUBA) and/or Surface Supplied Breathing Apparatus (SSBA) equipment, the physics and physiology of diving, underwater communication systems, use, inspection and maintenance of compressed air supplies, operation and maintenance of underwater tools, preparation and operation of compression chambers (Parts 1 and 2 under supervision), the performance of underwater work, first aid and the relevant legislation.
- A.2 Diver's Attendant** means an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures and equipment used in diving operations. The Diver's Attendant will carry out the functions of attending to a diver, including assisting the diver to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned by the diving supervisor but will not be required to perform underwater services.
- A.3 Diving Superintendent** means an employee placed in charge of a 24 hour diving operation to co-ordinate the diving work and to relieve Diving Supervisors engaged in that operation where and when necessary.
- A.4 Diving Supervisor** means a diver experienced in diving and diving techniques, appointed by the employer in writing to supervise diving operations, to instruct other divers and to be responsible for safe diving practices. The diving supervisor will also be competent to supervise all classes of hydrocarbon exploration and development diving applicable to and appropriate to the particular operation which may include using helium/oxygen or similar mixtures, using submarine observation chambers and operating from submarine working chambers. In addition, the diving supervisor is responsible to the employer for other on-site supervisory functions relating to matters within the scope of this award, including liaison with other companies, supervision of employees, keeping of appropriate records and reports ensuring that all equipment is kept and properly maintained to comply with all rules and regulations and that all expendable items are maintained at an acceptable stock level. An employee must have worked as a diver for a period of not less than six months before being designated as a diving supervisor.
- A.5 Hyperbaric Welder** means an employee who is a trained and certified diver and is a qualified welder appointed to perform work in such capacity by the employer.
- A.6 Life Support Technician** means an employee who will, under the supervision of a diving supervisor, control and monitor all the systems and functions which relate to the life support, safety and health of any person inside hyperbaric chambers used in saturation diving.
- A.7 Operator (ADS Operations)** means an operator in relation to ADS Operations as defined in Schedule G—Definitions.
- A.8 Senior Operator (OMB Operations)** means an employee appointed as such to operate an observation manipulator bell as OMB, ARMS or MOB.

- A.9 Supervisor (ADS Operations)** means a supervisor in relation to ADS Operations as defined in Schedule G—Definitions.
- A.10 Systems Maintenance Technician** means an employee engaged specifically to perform maintenance and repair tasks on diving and ancillary equipment. Such an employee will typically have a relevant trade qualification and be familiar with diving operations.

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Schedule B—Summary of Rates of Pay

Rates updated as a result of AWR 2016

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

B.1 Full-time employees—inshore divers

B.1 updated to reflect change in number of hours for inshore divers in [\[2017\] FWCFB 3177](#).

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

	Ordinary hours	Public holiday
	% of minimum hourly rate	
	100%	250%
	\$	\$
Diving Supervisor	33.38	83.45
Hyperbaric Welder	25.90	64.75
Diver	24.76	61.90
Diver's Attendant	20.36	50.90

B.1.2 Full-time employees—overtime rates

	Monday to Saturday— first 2 hours	Monday to Saturday— after 2 hours	Sunday—all day	Public holiday
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Diving Supervisor	50.07	66.76	66.76	83.45
Hyperbaric Welder	38.85	51.80	51.80	64.75
Diver	37.14	49.52	49.52	61.90
Diver's Attendant	30.54	40.72	40.72	50.90

B.2 Casual employees—inshore divers

B.2.1 Casual hourly rate includes the casual loading which is payable for all purposes.

B.2.2 Casual employees—ordinary and penalty rates

Casual rates for inshore divers have not been included in this schedule. They can be provided when the issue raised in clause 6.3(c) has been clarified.

B.2.2 updated to reflect change in number of hours for inshore divers in [\[2017\] FWCFB 3177](#).

	Ordinary hours	Public holiday
	% of minimum hourly rate	
	125%	275%
	\$	\$
Diving Supervisor	41.73	104.33
Hyperbaric Welder	32.38	80.95
Diver	30.95	77.38
Diver's Attendant	25.45	63.63

B.3 Full-time employees—offshore divers

B.3.1 Full-time employees—ordinary rates

	Total hourly rate	Total monthly rate ¹
	\$	\$
Diving Superintendent	59.05	9,760.44
Diving Supervisor	54.93	9,079.36
Supervisor (ADS Operations)	54.93	9,079.36
Hyperbaric Welder	53.02	8,763.64
Life Support Technician	49.79	8,231.03
Senior Operator (OMB Operations)	49.79	8,231.03
Systems Maintenance Technician	46.41	7,670.92
Diver	43.21	7,142.70
Operator (ADS Operations)	43.21	7,142.70
Diver's Attendant	37.06	6,125.50

B.4 Casual employees—offshore divers

B.4.1 Casual employees—ordinary rates

	Casual ordinary rate
	\$
Diving Superintendent	34.01
Diving Supervisor	31.79
Supervisor (ADS Operations)	31.79
Hyperbaric Welder	30.68
Life Support Technician	29.09
Senior Operator (OMB Operations)	29.09
Systems Maintenance Technician	27.24
Diver	25.60
Operator (ADS Operations)	25.60
Diver's Attendant	22.28

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Schedule C—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016

See clauses 22 and 26 for full details of allowances payable under this award.

C.1 Wage-related allowances—inshore divers

The following wage-related allowances are based on the weekly standard rate defined in Schedule G—Definitions as the minimum weekly wage for a Skill level 3 in clause 21 = \$918.80. These rates are to be paid in accordance with the clause 22.

Allowance	Clause	% of standard rate \$918.80	\$
Diving allowance:			
Per metre; OR	22.2(a)	0.43	4.05 per metre
Per foot of water or equivalent pressure	22.2(a)	0.13	1.22 per foot of water or equivalent pressure
Non-destructive testing allowance	22.2(b)	6.51	61.25 per day
Hyperbaric welding allowance	22.2(c)(ii)	0.49	4.61 per linear millimetre
Hyperbaric welding allowance—weld which requires repair	22.2(c)(iii)	0.33	3.10 per linear millimetre

C.2 Expense-related allowances—inshore divers

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

Allowance	Clause	\$
Meal allowance—overtime	22.3(a)	8.53 per occasion
Meal allowance—late cancellation of overtime	22.3(a)	8.53 per occasion
Fares and travelling time allowance	22.3(b)(i)	11.63 per day
Distant work allowance:		
Expenses	22.3(c)(iii)	6.37 per occasion
Accommodation and meals	22.3(c)(v)	333.09 per week by agreement
Accommodation and meals—broken parts of the week	22.3(c)(vi)	47.63 per day

Allowance	Clause	\$
Use of own vehicle allowance	22.3(c)(viii)	0.78 per km
Diving clothing and equipment allowance	22.3(d)	7.08 per day
Protective clothing, footwear and equipment allowance—casual employees	22.3(e)(ii)	2.53 per day

C.3 Wage-related allowances—offshore divers

The following wage-related allowances are based on the weekly standard rate defined in Schedule G—Definitions as the minimum weekly wage for a Skill level 3 in clause 25.1 = \$760.00. These rates are to be paid in accordance with the clause 26.

Allowance	Clause	% of standard rate \$760.00	\$
Disability allowance:			
Full-time/part-time employees	26.2(a)	8.00	62.26 per on-duty day
Casual employees	26.2(a)	9.49	73.85 per on-duty day
Diving allowance—other than ADS Operations:			
Per metre; OR	26.2(b)(i)	0.47	3.66 per metre
Per foot or equivalent pressure	26.2(b)(i)	0.14	1.09 per foot or equivalent pressure
Minimum payment—50 x Diving allowance per foot; OR	26.2(b)(i)		54.50 per 12 hour period
Minimum payment using saturation techniques—250 x Diving allowance per foot	26.2(b)(i)		272.50 per 12 hour period
Diving allowance—ADS Operations:			
Per metre; OR	26.2(b)(ii)	0.23	1.79 per metre
Per foot	26.2(b)(ii)	0.07	0.54 per foot
Minimum payment—250 x Diving allowance per foot	26.2(b)(ii)		135.00 per 12 hour period
Non-destructive testing allowance	26.2(c)	7.04	54.79 per day

Allowance	Clause	% of standard rate \$760.00	\$
Hyperbaric welding allowance	26.2(d)(ii)	0.58	4.51 per linear millimetre
Hyperbaric welding allowance—weld which requires repair	26.2(d)(iii)	0.39	3.03 per linear millimetre

C.4 Expense-related allowances—offshore divers

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

Allowance	Clause	\$
Loss of personal effects reimbursement—maximum	26.3(a)	Up to 2420.00 per claim
Living away from home allowance	26.3(b)	51.68 per day
Clothing and equipment allowances:		
Full-time employees	26.3(d)(ii)	108.61 per calendar month
Casual employees	26.3(d)(iii)	8.75 per day
Insurance policy—reimbursement of cost policy	26.3(f)	123,593.00 insured sum

C.5 Adjustment of wage-related allowances

Wage related allowances are adjusted in accordance with increases to wages and are based on percentage of the standard rate as specified.

C.6 Adjustment of expense related allowances

C.6.1 At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

C.6.2 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
Clothing, footwear and equipment allowances	Clothing and footwear group
Distant work allowance	Domestic holiday travel and accommodation sub-group
Fares allowance	Transport group
Insurance policy reimbursement	Insurance and financial services group

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Allowance	Applicable Consumer Price Index figure
Living away from home allowance	Domestic holiday travel and accommodation sub-group
Loss of personal effects reimbursement	Consumer price index – All groups
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

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Schedule D—Agreement to Take Annual Leave in Advance

Schedule D inserted in accordance with [PR588750](#).

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule E—Agreement to Cash Out Annual Leave

Schedule E inserted in accordance with [PR588750](#).

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule F—2016 Part-day Public Holidays

This provision is being reviewed in [AM2014/301](#)

Schedule F amended in accordance with [PR580863](#); renumbered following [PR588750](#).

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

- F.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) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
 - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause F.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.

Exposure draft – Professional Diving (Industrial) Award 2015

- (h) 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.

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Schedule G—Definitions

Schedule G renumbered following [PR588750](#).

In this award, unless the contrary intention appears:

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

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

atmospheric diving systems (ADS) means a manned diving system such as OMB, ARMS, MOB, JIM, WASP and similar systems which allow an operator to work underwater without being subjected to greater than atmospheric pressure

casual hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 25

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

designated assembly point means the point from which the employer provides transport to the designated point of embarkation

designated point of embarkation means the point from which transport to the offshore location is provided

distant work means work in which the distances, or the travelling facilities to and from such places of work, make it reasonably necessary that employees will live and sleep at some place other than their usual place of residence at the time of commencing such work. Provided that if employees, whilst employed on distant work, change their usual place of residence, such new place of residence or any further change thereof (if made whilst employed on distant work) will be their usual place of residence for determination of whether the work is distant work

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

inshore divers means employees qualified as ADS divers (parts 1, 2, 3 trained to the appropriate level of AS 2815.1, 2815.2, 2815.3) who undertake diving operations in coastal or inland waters under the jurisdiction of Australian State or Territory legislation and in keeping with the provisions of the operational standard AS/NZS 2299.1:2007

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

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

offshore divers means employees qualified as ADS divers (parts 3, 4 trained to the appropriate level of AS 2815.3 or 2815.4) who undertake an offshore petroleum

diving operation conducted outside the State or Territory boundaries but within the jurisdiction of the Commonwealth

offshore exploration and development diving means and includes all diving from oil drilling rigs, hydrocarbons exploration vessels or platforms and diving in or in connection with the construction and maintenance of platforms and associated submarine pipelines

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

saturation techniques means procedures in accordance with which a diver is continuously subjected to an ambient pressure greater than atmospheric pressure so that the body tissues and blood become saturated with the inert element of the breathing mixture

standard rate means the minimum weekly wage for an inshore or offshore diver, as the case may be, in clauses 21 or 25

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

Schedule H—Agreement for time off instead of payment for overtime inserted in accordance with [PR585482](#); renumbered following [PR588750](#).

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___