



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/79)

MINING INDUSTRY AWARD 2010

[MA000011]

Mining industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

4 yearly review of modern awards – Mining Industry Award 2010 – modern award varied.

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

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

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

PRESIDENT

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Mining Industry Award 20XX

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Part 1— Application and Operation of this Award

1. Title and commencement

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

2. Definitions

In this award, unless the contrary intention appears:

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

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

afternoon shift means any shift finishing after 7.00 pm and at or before midnight

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

base rate of pay has the meaning in the [NES](#)

casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 15—Minimum rates and classifications plus the casual loading and the industry allowance. Where an employee is entitled to an additional all-purpose allowance, this allowance forms part of that employee's ordinary hourly rate.

continuous shiftworker means an employee engaged in a continuous process who is rostered to work regularly on Sundays and public holidays

default fund employee means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

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

employee means national system employee within the meaning of the [Act](#)

employer means national system employer within the meaning of the [Act](#)

minimum weekly rate means the minimum weekly rate of pay set out in clause 15—Minimum rates and classifications

mining industry is defined in clause 4.2

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

night shift means any shift finishing after midnight and at or before 8.00 am

ordinary hourly rate means the hourly rate for an employee's classification specified in clause 15—Minimum rates and classifications plus the industry allowance. Where an employee is entitled to an additional all-purpose allowance, this allowance forms part of that employee's ordinary hourly rate.

permanent night shift means a period of shiftwork where an employee works night shift only; remains on night shift for longer than 4 consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each cycle

remote work means a location that is operated by the employer where remote work is required to be performed, including but not limited to sites operating on a fly in/fly out, drive in/drive out or bus in/bus out basis

shiftworker means an employee for the time being engaged to work in a system of shifts, being afternoon shifts, night shifts or both, or a continuous shiftworker

standard rate means the minimum weekly wage for a Level 3 employee in clause 15—Minimum rates and classifications

work cycle means a roster cycle made up of working and non-working days

3. The National Employment Standards and this award

3.1 The [National Employment Standards](#) ([NES](#)) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.

3.3 The employer must ensure that copies of 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.

4. Coverage

4.1 This industry award covers employers throughout Australia in the mining industry and their employees in the classifications listed in clause 15—Minimum rates and classifications to the exclusion of any other modern award.

4.2 Definition of mining industry

For the purposes of clause 4 **mining industry** means:

- (a) extracting any of the following from the earth by any method including exploration, prospecting, development and land clearing, preparatory work and rehabilitation during the life of the mine:

- (i) any metals, minerals or ores;
 - (ii) phosphates and gemstones;
 - (iii) mineral sands;
 - (iv) uranium and other radioactive substances;
- (b) the processing, smelting and refining of any of the metals, minerals, ores or substances covered by clause 4.2(a);
- (c) the transportation, handling and loading of any of the metals, minerals, ores or substances covered by clause 4.2(a):
- (i) on a mining lease or tenement; or
 - (ii) by the mine operator, a related company or an entity principally engaged by the mine operator to do such work, using the plant or infrastructure (including rail and/or ports) of the mine operator or a related company;
- (d) the servicing, maintaining (including mechanical, electrical, fabricating or engineering) or repairing of plant and equipment used in the activities set out in clauses 4.2(a) to 4.2(c) by employees principally employed to perform work on an ongoing basis at a location where those activities are being performed; or
- (e) the provision of temporary labour services used in the activities set out in clauses 4.2(a) to 4.2(d), by temporary labour personnel principally engaged to perform work at a location where the activities described above are being performed.

4.3 This award does not cover:

- (a) employers in respect of their operations or activities in the following industries or occupations:
- (i) aluminium;
 - (ii) catering, accommodation, cleaning and incidental services (unless employed by a mine operator or a related company);
 - (iii) clerical or administrative;
 - (iv) information technology professionals, professional engineers, geologists and scientists;
 - (v) oil, gas and hydrocarbons;
 - (vi) quarrying of stone, crushed stone, sand and gravel, and land reclamation (including dredging);
 - (vii) salt;
 - (viii) security services (unless employed by a mine operator or a related company);
 - (ix) steel making;

- (x) prospecting and resource assessment for the purposes of potential mine development, which is not on a mining lease or tenement;
 - (xi) brown coal mining; and
 - (xii) melting and smelting of metals in connection with manufacturing activities covered by the *Manufacturing and Associated Industries and Occupations Award 20XX*;
- (b) employers in respect of their operations or activities covered by the *Black Coal Mining Industry Award 20XX*;
 - (c) employers in respect of their operations or activities covered by the *Manufacturing and Associated Industries and Occupations Award 20XX*, except for work covered by clause 4.2 above; and
 - (d) persons employed in the head office or town office of the employer.

4.4 This award covers employers which provide group training services for apprentices and trainees engaged in the mining industry and/or parts of industry; 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 in clause 4.2 are being performed. Clause 4.4 operates subject to the exclusions from coverage in this award.

4.5 This award does not cover:

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

4.6 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.

5. Individual flexibility arrangements

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

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

- (b) overtime rates; or
 - (c) penalty rates; or
 - (d) allowances; or
 - (e) annual leave loading.
- 5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 5.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 5.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 5.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
 - (b) identify the award term, or award terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and
 - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
 - (e) state the date the agreement is to start.
- 5.7** An agreement must be:
- (a) in writing; and
 - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 5.11** An agreement may be terminated:

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

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

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

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

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

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

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

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

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

6.2 Responding to the request

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

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

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

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

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

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

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

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

6.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 30—Dispute resolution.

7. Facilitative provisions

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

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

- (a) clause 12.4(b)—Ordinary hours of work—employees other than shiftworkers;
- (b) clause 12.5(c)—Ordinary hours of work—shiftworkers
- (c) clause 13.2—Variations to rosters;
- (d) clause 20.5—Time off instead of payment for overtime;
- (e) clause 20.6—Rest breaks during overtime;

- (f) clause 22.11(a)—Taking of annual leave over an extended period
- (g) clause 22.12—Cashing out of annual leave;
- (h) clause 22.6—Annual leave in advance; and
- (i) clause 27.3—Substitution of public holidays by agreement.

Part 2—Types of Employment and Classifications

8. Types of employment

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

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

9. Full-time employees

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

10. Part-time employees

10.1 A part-time employee:

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

10.2 An employer must inform a part-time employee of:

- (a) the employee's ordinary hours of work; and
- (b) the starting and finishing times of their work.

10.3 All time worked in excess of the hours under clause 10.2 will be paid at the appropriate overtime rate.

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

11. Casual employment

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

11.2 A casual employee's ordinary hours of work are the lesser of:

- (a) an average of 38 hours per week; or
- (b) the hours the employer requires the employee to work.

11.3 A casual employee will be paid:

- (a) the ordinary hourly rate for the classification in which they are employed; plus
- (b) a casual loading of 25%.

11.4 The casual loading constitutes part of the employee's all-purpose rate.

11.5 The casual loading in clause 11.3(b) is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

11.6 A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

11.7 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under clause 11.7 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award—that is, the casual employee is not truly a regular casual employee as defined in clause 11.7(b);

- (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
- (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
- (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 30—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.7, the employer and employee must discuss and record in writing:

 - (i) the form of employment to which the employee will convert—that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.2.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.7.
- (o) Nothing in clause 11.7 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.7 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.

- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.7 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.7 by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.7(q).

Part 3—Hours of Work

12. Ordinary hours of work

12.1 A full-time employee's ordinary hours of work will be an average of 38 hours per week.

12.2 The ordinary hours of part-time and casual employees will be in accordance with clause 8—Types of employment.

12.3 Clause 12 provides industry specific detail and supplements the [NES](#) which deals with maximum weekly hours. For the purposes of [section 63](#) of the [Act](#), an employee's ordinary weekly hours may be averaged over a period of up to 26 weeks.

12.4 Ordinary hours of work—employees other than shiftworkers

(a) Subject to clause 12.4(c) an employee who is not a shiftworker may be required to work up to 10 ordinary hours per day, between the hours of 6.00 am and 6.00 pm Monday to Sunday.

(b) The employer may agree with a majority of affected employees to:

(i) alter the span of hours in clause 12.4(a); and/or

(ii) increase the ordinary hours per day to a maximum of 12.

(c) Where an employee was required to work 12 hour shifts under roster and working hours arrangements which were in place before 1 January 2010 those arrangements may continue to operate in respect of an existing employee and a new employee.

12.5 Ordinary hours of work—shiftworkers

(a) Subject to clause 12.5(d), an employee who is a shiftworker may be required to work a shift of up to 10 consecutive ordinary hours (including meal breaks).

(b) Shiftwork may be worked on any day of the week.

(c) The employer may agree with a majority of affected employees to:

(i) alter the span of hours in clause 12.5(a); and/or

(ii) increase the ordinary hours per day to a maximum of 12.

- (d) Where employees were required to work 12 hour shifts under roster and working hours arrangements which were in place before 1 January 2010 those arrangements may continue to operate in respect to both existing employees and new employees.

13. Rostering arrangements

13.1 Special arrangements for cycle work

Regardless of any other provision of this award, the following arrangements apply to employees who are required to undertake a work cycle.

- (a) Employees may be engaged to work on a work cycle made up of working and non-working days.
- (b) The total ordinary hours of work during a work cycle must not exceed 38 hours multiplied by the total number of working (on-duty period) and non-working (off-duty period) days in the cycle, divided by 7.
 - (i) The **on-duty period** commences at the time the employee reports to the point designated by the employer for commencement of work at the workplace.
 - (ii) The **off-duty period** commences at the conclusion of the employee's last rostered shift.

13.2 Variations to rosters

- (a) The employer may vary an employee's days of work or start and finish times to meet the needs of the business by giving the employee at least 48 hours' notice, or any shorter period agreed between the employer and the individual employee.
- (b) Where an employee is performing shiftwork, the employer may change shift rosters or require the employee to work a different shift roster by giving the employee 48 hours' notice.
- (c) The notice period in clause 13.2(b) may be reduced:
 - (i) where agreed by the employer and the employee; or
 - (ii) where operational circumstances require it, at the direction of the employer.
- (d) The employer must consult with directly affected employees about any changes made under clause 13.2 in accordance with clause 29—Consultation about changes to rosters or hours of work.

13.3 Emergency arrangements

Regardless of any other provision of clause 13, the employer may vary or suspend any roster arrangement immediately in an emergency.

14. Breaks

14.1 Meal breaks

- (a) An employee who is not a shiftworker is entitled to an unpaid meal break of at least 30 minutes after every 5 hours worked.
- (b) A shiftworker working 10 hours or less will be entitled to a paid meal break of 20 minutes per shift.
- (c) A shiftworker working longer than 10 hours will be entitled to paid meal breaks totalling 40 minutes per shift.
- (d) Meal breaks will be scheduled by an employee's supervisor based upon operational requirements so as to ensure continuity of operations.
- (e) The employer will not require an employee to work more than 5 hours before the first meal break is taken or between subsequent meal breaks (if any).

14.2 Rest breaks during overtime

Clause 20.6 provides for rest periods during overtime.

14.3 Minimum break between work on successive days or shifts

(a) Employees other than shiftworkers

- (i) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off work between work on successive working days.
- (ii) An employee (other than a casual employee) who works so much overtime between the end of ordinary work on one day and the start of ordinary work on the next day that the employee has not had at least 10 consecutive hours off work between those times must be released after completion of the overtime until the employee has had 10 consecutive hours off work without loss of pay for ordinary working time occurring during such absence.
- (iii) If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off work, the employee must be paid at the relevant overtime rate until released from work for such period. The employee is then entitled to be absent until they have had 10 consecutive hours off work without loss of pay for ordinary working time occurring during the absence.

(b) Shiftworkers

Clause 14.3(a) applies to an employee who is a shiftworker as if a reference to 10 consecutive hours were a reference to 8 consecutive hours.

Part 4—Wages and Allowances

15. Minimum rates and classifications

15.1 Adult employee rates

- (a) An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee:

Level	Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
		\$	\$
Entry Level	Introductory	768.00	20.21
Level 1	Basic	805.90	21.21
Level 2	Intermediate	837.00	22.03
Level 3	Competent	862.50	22.70
Level 4	Advanced	920.20	24.22
Level 5	Advanced specialist	980.00	25.79
Level 6	Dual Trade	1028.00	27.05
Level 7	Dual trade instrumentation	1069.80	28.15

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

- (b) The classification structure and descriptors for the above classifications are contained in Schedule A—Classification Definitions and Structure.

15.2 Junior employee rates

- (a) Where the law permits junior employees to perform work in the mining industry, junior employees will be entitled to the percentage of the applicable adult weekly rate (or in the case of part-time or casual employees, the hourly rate) for their classification as follows:

Age	% of adult rate
16 years or less	75
At 17 years	85
At 18 years	100

15.3 School-based apprentice rates

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

15.4 Apprentices and trainee rates

(a) The terms of this award apply to apprentices and trainees, subject to the provisions of an applicable contract of apprenticeship or training agreement operating under federal, state or territory apprenticeship or training legislation.

(b) **National training wage**

(i) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.

(ii) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2018. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Mining Industry Award 2010* and not the *Miscellaneous Award 2010*.

(c) Apprentices who commenced before 1 January 2014 will be entitled to the percentage of the applicable adult weekly wage for their classification as set out in the table below.

Year of apprenticeship	% of adult rate
1st year	45
2nd year	55
3rd year	75
4th year	88

(d) Apprentices who commenced their apprenticeship on or after 1 January 2014 will be entitled to the following minimum percentage of the Level 3 rate for their classification:

Year of apprenticeship	% of Level 3 rate for apprentices who have not completed year 12	% of Level 3 rate for apprentices who have completed year 12
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	88	88

15.5 Adult apprentices

(a) An adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship will be entitled to the greater of:

(i) 80% of the Level 3 rate in clause 15.1; or

(ii) the rate prescribed by clause 15.4(d) for the relevant year of the apprenticeship.

- (b) An adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship will be entitled to the greater of:
 - (i) the lowest adult classification in clause 15.1; or
 - (ii) the rate prescribed by clause 15.4(d) for the relevant year of the apprenticeship.
- (c) A person employed by an employer under this award in that enterprise for at least 6 months as a full-time employee (or 12 months as a part-time or regular and systematic casual employee) immediately prior to 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 15.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

15.6 Apprentice conditions of employment

- (a) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such 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 such training. Provided that clause 15.6 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.
- (b) For the purposes of clause 15.6(a) above, 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 clause 15.6, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (c) The amount payable by an employer under clause 15.6(a) 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.
- (d) 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, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

- (e) An employer may meet its obligations under clause 15.6(d) by paying any fees and/or cost of textbooks directly to the RTO.
- (f) 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.
- (g) 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. Clause 15.6 operates subject to the provisions of Schedule D—School-based Apprentices.
- (h) 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.

15.7 Supported wage system

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

16. Payment of wages

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

- 16.1 Wages, penalties and allowances will be paid at a frequency of not longer than monthly.
- 16.2 The employer must pay an employee's wages by electronic funds transfer into a bank or financial institution nominated by the employee.
- 16.3 The employer may deduct from any amount required to be paid to an employee the amount of any overpayment of wages or allowances.
- 16.4 **Payment on termination of employment**

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

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required

minimum period of notice or “has paid” to the employee payment instead of giving notice.

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

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

17. Annualised salaries

17.1 Annual salary instead of award provisions

- (a) An employer may pay an employee an annual salary to compensate for any or all of the following provisions of this award:
 - (i) clause 15—Minimum rates and classifications;
 - (ii) clause 18—Allowances
 - (iii) clause 20—Overtime; and
 - (iv) clause 21—Shiftwork and Penalty Rates
 - (v) clause 22.3(b)—Annual leave loading.
- (b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award are incorporated in the annual salary.
- (c) The annual salary must be no less than the amount the employee would have received under this award for the work performed over the year for which the salary is paid (or if the employment ceases earlier, over the time worked).
- (d) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are incorporated in the annual salary.

17.2 Base rate of pay for employees on annual salary arrangements

For the purposes of the [NES](#), the base rate of pay of an employee receiving an annual salary under clause 17 comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 15—Minimum rates and classifications and excludes any incentives-based payments, bonuses, loading, monetary allowances, overtime and penalties.

18. Allowances

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

18.1 Employers must pay to an employee the allowances the employee is entitled to under clause 18. Where an employee is paid by the hour, the allowance will be 1/38th of the weekly allowance. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

18.2 Wage-related allowances

(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, loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) industry allowance (clause 18.2(b));
- (ii) licence allowance—electricians (clause 18.2(c)); and
- (iii) drilling, prospecting and exploration—cooks and cooks' assistants—broken shift allowance (clause 18.2(d)(iii)).

(b) Industry allowance

- (i) Employees will be paid an allowance of **\$31.91** per week which will be paid for all purposes.
- (ii) The industry allowance recognises and is in payment for all aspects of work in the industry, including but not limited to the location and nature of mining operations, clothing, dirt, wet, height, fumes, heat, cold, confined space, and all other disabilities not expressly dealt with under clause 18.

(c) Licence allowance—electricians

Employees will be paid an allowance of **\$39.24** per week if they are required by their employer to hold an Electrical Technicians licence (or equivalent). This allowance will be paid for all purposes.

(d) Drilling, prospecting and exploration allowances

The following allowances apply only to employees who are required to perform drilling, prospecting and exploration duties.

- (i) Employees who are required to camp at remote locations (including remote from a mine site) and reasonable transport to and from their home is not provided by their employer, will be paid an allowance as follows:
 - **\$29.24** per day, where meals are not provided by the employer; and
 - **\$16.13** per day where meals are provided by the employer.

(ii) However, the allowance is not required to be paid where accommodation and meals are provided by the employer, or where the employer pays for, or reimburses the employee for, fares to return to and from home each weekend, or where the employee is engaged on a regular commute arrangement as part of a mining operation.

(iii) Employees who are classified as cooks and cooks assistants will be paid an allowance for all purposes of \$9.23 per week whilst they are required by their employer to work broken shifts.

(iv) Where an employee is required by the employer:

- to transfer from one place of employment to another place of employment; or
- to work away from their usual place of employment for a temporary period,

they will be reimbursed for the cost of transport, and they will be paid travelling time of up to 8 hours at the employee's ordinary hourly rate (provided that no reimbursement will be required to be made if the employer provides transport).

(e) First aid allowance

An employee who holds first aid qualifications from St John Ambulance or an equivalent body, and who is appointed by the employer to participate in the emergency response team or otherwise to perform first aid duty, will be paid a first aid payment of \$17.25 per week.

(f) Leading hand allowance

A leading hand must be paid a weekly allowance of:

In charge of	\$ per week
3–10 employees	37.95
11–20 employees	48.30
More than 20 employees	64.95

(g) Rail allowance

An employee who is assessed as being mainline competent and appointed by their employer as Locomotive Drivers and required to operate on the mainline will receive a rail allowance of 30% of the minimum rate of pay.

(h) Underground allowance

An employee, other than an employee classified as an underground miner, will be paid an allowance of \$1.59 per hour whilst required by their employer to work underground.

18.3 Expense-related allowances

(a) Meal allowance for overtime work

An employee will be paid a meal allowance of **\$16.93** on each occasion that the employee is entitled to a rest break during overtime work, provided that an allowance is not required to be paid if the employer provides a meal or meal-making facilities or if the employee was notified no later than the previous day or shift that the employee would be required to work the overtime.

(b) Tool allowance

An employee who is required by the employer to supply and maintain tools ordinarily required in the performance of work will be paid an allowance of **\$15.25** per week.

19. Superannuation

19.1 Superannuation contributions for defined benefit members

The employer is permitted to make superannuation contributions to a superannuation fund or scheme in relation to a default fund employee who is a defined benefit member of the fund or scheme.

Part 5—Overtime and Penalty Rates

20. Overtime

20.1 Overtime payments—employees other than continuous shiftworkers

Except where provided otherwise in clause 20, an employee who is not a continuous shiftworker will be paid for all work done in addition to their ordinary hours at the following rates:

For overtime worked on:	% of ordinary hourly rate
Monday to 12 noon on Saturday – first 3 hours	150%
Monday to 12 noon on Saturday – after 3 hours	200%
After 12 noon on Saturday and all hours on Sunday	200%
Public holiday	250%

20.2 Overtime—continuous shiftworkers

A continuous shiftworker will be paid for all hours worked in addition to their ordinary hours at the following rate:

For overtime worked on:	% of ordinary hourly rate
Monday to Sunday – all hours	200%

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

20.3 Recall—employees other than continuous shiftworkers

Where the employer requires an employee to return to work overtime after leaving the employer's premises (regardless of whether or the employee is notified before or after leaving) the employee will be:

- (a) engaged to work for a minimum of 4 hours; or
- (b) where the employee is engaged to work for less than 4 hours, paid for a minimum of 4 hours at the appropriate overtime rate.

20.4 Method of calculation

- (a) When calculating overtime payments, each day or shift worked will stand alone.
- (b) Overtime payments under clause 20 are in substitution for any other loadings or penalty rates.

20.5 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 20.5.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in clause 20.5(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 20.5 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 20.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 20.5 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 20.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 20.5(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 20.5 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 20.5 will apply, including the requirement for separate written agreements under clause 20.5(b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 20.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.5.

20.6 Rest breaks during overtime

- (a) An employee may take a paid rest break of 20 minutes after each 4 hours of overtime worked, if the employee is required to continue work after the rest break.
- (b) The employer and an employee may agree to vary clause 20.6 to meet the circumstances of the workplace, provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under clause 20.6.

20.7 Rest breaks after overtime

Clause 14.3 provides for a minimum rest period after overtime

21. Shiftwork and Penalty Rates

21.1 Definitions

afternoon shift means any shift finishing after 7.00 pm and at or before midnight

continuous shiftworker means an employee engaged in a continuous process who is rostered to work regularly on Sundays and public holidays

night shift means any shift finishing after midnight and at or before 8.00 am

permanent night shift means a period of shiftwork where an employee works night shift only; or remains on night shift for longer than 4 consecutive weeks; or works on night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift in each cycle

21.2 A shiftworker or a continuous shiftworker must be paid:

- (a) **115%** of their ordinary hourly rate of pay, while on afternoon shift or night shift; and
- (b) **130%** of their ordinary hourly rate of pay, while on permanent night shift.

21.3 Weekend work and public holiday rates

An employee will be paid the following rates for ordinary hours worked on a Saturday, a Sunday or a public holiday:

For ordinary hours worked on:	% of ordinary hourly rate
Saturday before 12 noon – first 3 hours	150%
Saturday before 12 noon – after 3 hours	200%
Saturday after 12 noon and all hours on Sunday	200%
Public holiday	250%

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

21.4 Payments under clause 21 are in substitution for any other loadings or penalty rates.

Part 6—Leave and Public Holidays

22. Annual leave

22.1 Clause 22 of the award supplements the provisions of the [NES](#) which deal with annual leave. Annual leave does not apply to casual employees.

22.2 For the purposes of the provisions of the [NES](#) which deal with annual leave, shiftworker means a continuous shiftworker.

22.3 Payment for annual leave

The amount to be paid to an employee prior to going on leave must be worked out on the basis of the greater of:

- (a) the amount the employee would have been paid for working ordinary hours during the period of annual leave including loadings, penalties and allowances paid for all purposes; but excluding payments in respect of overtime, or any other payment which might have been payable to the employee as a reimbursement for expenses incurred; or
- (b) the employee's minimum rate of pay for ordinary hours under clause 15— Minimum rates and classifications; plus an annual leave loading of 17.5%.

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

22.4 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 22, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave. The amount to be paid must be worked out in accordance with clause 22.3.

22.5 Arrangements for taking leave

- (a) Where an employee works in a remote location or on cycle work made up of working days and non-working days, a period of paid annual leave includes the working days and the non-working days during the period.
- (b) Where an employee works in a remote location or on cycle work made up of working days (on-duty period) and non-working days (off-duty period), the employer may reasonably require that:
 - (i) any period of annual leave taken by the employee is a multiple of the on-duty period and/or the off-duty period under the employee's work cycle; or
 - (ii) the employee takes annual leave in accordance with the work cycle.

22.6 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 22.6 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 22.6 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 22.6, 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.

22.7 Taking of annual leave during shut downs

- (a) An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works.
- (b) If an employee does not have sufficient accrued annual leave for the period of the shut down, then the employee may be required to take leave without pay.

22.8 Excessive leave accruals: general provision

NOTE: Clauses 22.8 to 22.10 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 22.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 22.9 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.10 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

22.9 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 22.8(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 22.9(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 22.8, 22.9 or 22.10 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 22.9(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 22.9(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 22.9(d) may result in the direction ceasing to have effect. See clause 22.9(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

22.10 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 22.8(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under clause 22.10(a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 22.9(a) that, when any other paid annual leave arrangements (whether made under clause 22.8, 22.9 or 22.10 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 22.10(a) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.8, 22.9 or 22.10 or otherwise agreed by the employer and employee) are taken into account; or

- (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under clause 22.10(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 22.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 22.10(a).

22.11 Taking of annual leave over an extended period

- (a) An employer and employee may agree that the employee can take a period of paid leave over a longer period.
- (b) Where an agreement under clause 22.11(a) is made, the payment for the leave will be reduced in proportion to the period of extension. For example, it may be agreed that the leave period is doubled and taken on half pay.

Example:

George is a full-time Grade 1 employee who makes an agreement with his employer that his 4 weeks of annual leave is to be taken over a period of 8 weeks. George will be paid for each of the 8 weeks at half the rates of pay he would have received under clause 22.3.

22.12 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.12.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.12.
- (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 22.12 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 22.12 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 22.12 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.12.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.12.

NOTE 3: An example of the type of agreement required by clause 22.12 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.

23. Personal/carer's leave and compassionate leave

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

24. Parental leave and related entitlements

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

25. Community service leave

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

26. Unpaid family and domestic violence leave

Unpaid family and domestic violence leave is provided for in the [NES](#).

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

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

27. Public holidays

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

27.2 Where an employee works on a public holiday they will be paid in accordance with clauses 20—Overtime and 21.3—Weekend work and public holiday rates.

27.3 Substitution of public holidays by agreement

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

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

27.4 Part-day public holidays

For provisions relating to part-day public holidays see Schedule I—Part-day public holidays.

Part 7—Consultation and Dispute Resolution

28. Consultation about major workplace change

28.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

(a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and

(b) discuss with affected employees and their representatives (if any):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or reduce the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

28.2 For the purposes of the discussion under clause 28.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

28.3 Clause 28.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

- 28.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 28.1(b).
- 28.5** In clause 28 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or
 - (f) the need for employees to be retrained or transferred to other work or locations; or
 - (g) job restructuring.
- 28.6** Where this award makes provision for alteration of any of the matters defined at clause 28.5, such alteration is taken not to have significant effect.

29. Consultation about changes to rosters or hours of work

- 29.1** Clause 29 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 29.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 29.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 29.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 29.4** The employer must consider any views given under clause 29.3(b).
- 29.5** Clause 29 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

30. Dispute resolution

- 30.1** Clause 30 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).
- 30.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 30.3** If the dispute is not resolved through discussion as mentioned in clause 30.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 30.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 30.2 and 30.3, a party to the dispute may refer it to the Fair Work Commission.
- 30.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 30.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 30.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 30.
- 30.8** While procedures are being followed under clause 30 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 30.9** Clause 30.8 is subject to any applicable work health and safety legislation.

Part 8—Termination of Employment and Redundancy

31. Termination of employment

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

31.1 Notice of termination by an employee

- (a) Clause 31.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

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

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

- (c) In clause 31.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 31.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week’s wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 31.1(b), then no deduction can be made under clause 31.1(d).
- (f) Any deduction made under clause 31.1(d) must not be unreasonable in the circumstances.

31.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 31.2 is to be taken at times that are convenient to the employee after consultation with the employer.

32. Redundancy

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

32.1 Transfer to lower paid duties on redundancy

- (a) Clause 32.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
 - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or

- (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 32.1(c).
- (c) If the employer acts as mentioned in clause 32.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

32.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 32 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

32.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 32.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 32.3(b).
- (d) An employee who fails to produce proof when required under clause 32.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 31.2.

Schedule A—Classification Definitions and Structure

A.1 Classification and progression principles

A.1.1 Classification

In each of the classifications under this award it is a requirement that an employee must:

- (a) perform work in a fully flexible manner as reasonably required by the employer and in accordance with the employee's ability and competence;
- (b) acquire any skills as reasonably requested by the employer and, where necessary, undertake required training and assist with the training of others; and
- (c) use such tools and equipment as may be required, subject to the limit of the employee's skills and competence and provided that the employee has been properly trained in the use of such tools and equipment.

A.1.2 Progression

An employee will progress through the classification levels subject to:

- (a) possessing the applicable skills for the level; and
- (b) being required by the employer to perform work at that level.

Progression from Level 4 and above will be subject to the employee being appointed by the employer.

A.2 Classification groups

A.2.1 Mining Industry Services Employees

A Mining Industry Services Employee is designated as such by their employer and performs all tasks as directed by their employer which include but are not limited to:

- labouring;
- assisting work crews and tradespersons;
- operation of plant and equipment (including mobile plant);
- maintenance work on plant, equipment or buildings;
- performance of general plant, stores, workshop, warehouse, packaging, and marine interface tasks, resource assessment (including prospecting, drilling and exploration);
- preparing and cleaning equipment and materials; and
- on site catering cleaning and security.

This classification group also encompasses work performed by Laboratory Assistants, who do not hold tertiary qualifications.

A.2.2 Mining Industry Surface Mining and Haulage Employees

A Mining Industry Surface Mining and Haulage Employee is designated as such by their employer and performs all tasks as directed by their employer which include but are not limited to:

- open cut mining activities (including labouring, sampling, spotting);
- operating all forms of mining industry plant and equipment (including mobile plant);
- operating equipment used in the transportation handling and loading (or discharge) of ores, metals, minerals and/or product (including rail activities); and
- all tasks associated with drilling and blasting.

A.2.3 Mining Industry Processing Employees

A Mining Industry Processing Employee is designated as such by their employer and performs all tasks as directed by their employer which include but are not limited to:

- operating and adjusting all plant equipment (and associated control panels) utilised in mining industry production, processing, smelting and refining operations; and
- issuing clearances and permits as required.

A.2.4 Mining Industry Underground Mine Employees

A Mining Industry Underground Mine Employee is designated as such by their employer and performs all tasks as directed by their employer which include but are not limited to:

- underground mining activities (including labouring, sampling, drilling, blasting, mine ventilation, ground control and shaft activities); and
- operation and maintenance of underground mining plant and equipment (including mobile plant).

A.2.5 Mining Industry Maintenance Trades Employees

A Mining Industry Maintenance Trades Employee is designated as such by their employer, performs all tasks on the surface or underground as directed by their employer and is trade qualified.

A.3 Classification Structure

A.3.1 Entry Level—Introductory

An employee at this level is undertaking the standard induction training required for the operation or business. Such training covers:

- conditions of employment;
- mine and plant safety;
- first aid procedures;

- movement around the site;
- work and documentation procedures;
- quality control and quality assurance; and
- introduction to supervisors and fellow workers.

Employees at this level perform routine duties under direct supervision.

This level applies to the following classification groups:

- Mining Industry Services Employees;
- Mining Industry Surface Mining and Haulage Employees;
- Mining Industry Processing Employees; and
- Mining Industry Underground Mine Employees.

A.3.2 Level 1—Basic

An employee at this level will have completed the standard induction training and have been assessed to be able to competently carry out the basic and semi-skilled work required for this level.

This level applies to the following classification groups:

- Mining Industry Services Employees;
- Mining Industry Surface Mining and Haulage Employees;
- Mining Industry Processing Employees; and
- Mining Industry Underground Mine Employees.

A.3.3 Level 2—Intermediate

An employee at this level will have been assessed as being competent to carry out semi-skilled work on a broad range of plant and equipment functions. The employee exercises discretion within their level of skill and is responsible for the quality of the work subject to routine supervision.

This level applies to the following classification groups:

- Mining Industry Services Employees;
- Mining Industry Surface Mining and Haulage Employees;
- Mining Industry Processing Employees; and
- Mining Industry Underground Mine Employees.

A.3.4 Level 3—Competent

An employee at this level will have been assessed as being competent to apply skills and knowledge in complex but routine situations where discretion and judgment are involved. The skills and knowledge are acquired through the completion of a trade

certificate, or through practical experience, which has equipped the employee with an equivalent level of skills and knowledge.

An employee at this level can plan tasks, select equipment and appropriate procedures from known alternatives and takes responsibility for the work of others. An employee at this level requires only limited supervision or guidance.

An employee at this level:

- understands and applies quality control techniques;
- exercises discretion within the scope of this level;
- performs work under limited supervision;
- operates all equipment incidental to the work; and
- assists in the provision of on-the-job training.

This level applies to the following classification groups:

- Mining Industry Surface Mining and Haulage Employees;
- Mining Industry Processing Employees;
- Mining Industry Underground Mine Employees; and
- Mining Industry Maintenance Trades Employees.

A.3.5 Level 4—Advanced

An employee at this level will have met the requirements for Level 3 and been assessed as being competent to perform tasks which require in depth skill or knowledge, or the employee is assessed as having the integration of a broad range of skills. The work may be of a non-routine nature requiring the application of the relevant skills and knowledge to new but predictable situations.

The level of skills or knowledge required to perform this work will involve the completion of a post trade training appropriate for this level, or through the acquisition of practical skills and knowledge which has equipped the employee with the equivalent level of skills and knowledge.

An employee at this level will provide guidance and assistance to others.

This level applies to the following classification groups:

- Mining Industry Surface Mining and Haulage Employees;
- Mining Industry Processing Employees;
- Mining Industry Underground Mine Employees; and
- Mining Industry Maintenance Trades Employees.

A.3.6 Level 5—Advanced Specialist

An employee at this level will have met the requirements for Level 4 and holds a trade qualification used in the operation and has acquired additional knowledge by

having satisfactorily completed a prescribed post trade course appropriate for this level or the achievement to the satisfaction of the employer of a comparable standard of skill and knowledge by other means including in-plant training or on-the-job experience.

An employee at this level will provide guidance and assistance to others.

This level applies to the following classification groups:

- Mining Industry Underground Mine Employees; and
- Mining Industry Maintenance Trades Employees.

A.3.7 Level 6—Dual Trade

An employee at this level will have met the requirements for Level 5 and holds a dual trade qualification or equivalent prescribed post trade course used in the operation and has acquired additional knowledge enabling the employee to apply dual trade skills or an equivalent level of high precision specialised trade skills in one area.

An employee at this level:

- has high precision trade skills in more than one area;
- is qualified to work on machinery or equipment with complex mechanical, hydraulic, electrical circuitry or controls; and
- meets the skills requirements for Tradespersons in accordance with the [*Manufacturing and Associated Industries and Occupations Award 2010*](#) for this level.

This level applies to Mining Industry Maintenance Trades Employees.

A.3.8 Level 7—Dual Trade Instrument Technician

An employee at this level will have met the requirements for Level 6 and have acquired further additional knowledge by having satisfactorily completed a prescribed post trades course or an advanced trade equivalent enabling the employee to apply advanced dual trade instrument electrical technician skills.

This level applies to Mining Industry Maintenance Trades Employees.

Schedule B—Summary of Hourly Rates of Pay

B.1 Full-time and part-time employees

B.1.1 The ordinary hourly rate includes the industry allowance (clause 18.2(b)) which is payable for all purposes.

B.1.2 Where an additional allowance is payable for all purposes in accordance with clause 18.2(a), this forms part of the employee's ordinary hourly rate and must be added to the ordinary hourly rate prior to calculating penalties and overtime. 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—ordinary and penalty rates

	Day	Afternoon & night	Permanent night	Saturday before 12 noon		Saturday - after 12 noon & Sunday	Public holiday
				First 3 hours	After 3 hours		
% of ordinary hourly rate ¹							
	100%	115%	130%	150%	200%	200%	250%
	\$	\$	\$	\$	\$	\$	\$
Entry level	21.05	24.21	27.37	31.58	42.10	42.10	52.63
Level 1	22.05	25.36	28.67	33.08	44.10	44.10	55.13
Level 2	22.87	26.30	29.73	34.31	45.74	45.74	57.18
Level 3	23.54	27.07	30.60	35.31	47.08	47.08	58.85
Level 4	25.06	28.82	32.58	37.59	50.12	50.12	62.65
Level 5	26.63	30.62	34.62	39.95	53.26	53.26	66.58
Level 6	27.89	32.07	36.26	41.84	55.78	55.78	69.73
Level 7	28.99	33.34	37.69	43.49	57.98	57.98	72.48

¹**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes. Any additional all-purpose allowances applicable need to be added to these rates.

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

	Monday to Saturday noon		Saturday after 12 noon & Sunday	Public holiday
	First 3 hours	After 3 hours		
% of ordinary hourly rate ¹				
	150%	200%	200%	250%
	\$	\$	\$	\$
Entry level	31.58	42.10	42.10	52.63
Level 1	33.08	44.10	44.10	55.13
Level 2	34.31	45.74	45.74	57.18
Level 3	35.31	47.08	47.08	58.85
Level 4	37.59	50.12	50.12	62.65
Level 5	39.95	53.26	53.26	66.58
Level 6	41.84	55.78	55.78	69.73
Level 7	43.49	57.98	57.98	72.48

¹**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes. Any additional all-purpose allowances applicable need to be added to these rates.

B.1.5 Full-time and part-time employees—continuous shiftworkers—overtime

	Monday to Sunday
	% of ordinary hourly rate ¹
	200%
	\$
Entry level	42.10
Level 1	44.10
Level 2	45.74
Level 3	47.08
Level 4	50.12
Level 5	53.26
Level 6	55.78
Level 7	57.98

¹**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes. Any additional all-purpose allowances applicable need to be added to these rates.

B.2 Casual employees

B.2.1 Casual ordinary hourly rate includes the casual loading and industry allowance (clause 18.2(b)) which are payable for all purposes.

B.2.2 Where an additional allowance is payable for all purposes in accordance with clause 18.2(a), this forms part of the employee's ordinary hourly rate and must be added to the ordinary hourly rate prior to calculating penalties and overtime.

B.2.3 Casual employees—ordinary and penalty rates

	Day	Afternoon & night	Permanent night	Saturday before 12 noon		Saturday - after 12 noon & Sunday	Public holiday
				First 3 hours	After 3 hours		
% of casual ordinary hourly rate ¹							
	100%	115%	130%	150%	200%	200%	250%
	\$	\$	\$	\$	\$	\$	\$
Entry level	26.31	30.26	34.20	39.47	52.62	52.62	65.78
Level 1	27.56	31.69	35.83	41.34	55.12	55.12	68.90
Level 2	28.59	32.88	37.17	42.89	57.18	57.18	71.48
Level 3	29.43	33.84	38.26	44.15	58.86	58.86	73.58
Level 4	31.33	36.03	40.73	47.00	62.66	62.66	78.33
Level 5	33.29	38.28	43.28	49.94	66.58	66.58	83.23
Level 6	34.86	40.09	45.32	52.29	69.72	69.72	87.15
Level 7	36.24	41.68	47.11	54.36	72.48	72.48	90.60

¹**Casual ordinary hourly rate** includes the casual loading and industry allowance payable to all employees for all purposes. Any additional all-purpose allowances applicable need to be added to these rates.

Schedule C—Summary of Monetary Allowances

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

C.1 Wage-related allowances

C.1.1 The wage-related allowances in this award are based on the standard rate as defined in clause 2—Definitions as the minimum weekly base rate for classification level 3 in clause 15.1 = **\$862.50**

Allowance	Clause	% of standard rate	\$	Payable
Industry allowance ¹	18.2(c)	3.70	31.91	per week
Licence allowance—electricians ¹	18.2(c)	4.55	39.24	per week
Drilling, prospecting and exploration allowance:	18.2(d)			
Meals not provided		3.39	29.24	per day
Meals provided		1.87	16.13	per day
Cooks and cooks' assistants – broken shifts ¹		1.07	9.23	per week
First aid allowance	18.2(e)	2.00	17.25	per week
Leading hand allowance:	18.2(f)			
3 to 10 employees		4.40	37.95	per week
11 to 20 employees		5.60	48.30	per week
More than 20 employees		7.53	64.95	per week
Underground allowance—other than underground miners	18.2(h)	7.00	1.59	per hour

¹ This allowance is payable for all purposes

C.1.2 Adjustment of wage-related allowances

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

C.2 Expense-related allowances

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

Allowance	Clause	\$	Payable
Meal allowance for overtime work	18.3(a)	16.93	per meal
Tool allowance	18.3(b)	15.25	per week

C.2.2 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the standard rate, each expense-related allowance will be increased by the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take-away and fast foods sub-group
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

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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 6 years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency based progression if provided for in this award.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency based progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- 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—Supported Wage System

E.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.

E.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

E.3 Eligibility criteria

E.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.

E.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.

E.4 Supported wage rates

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

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

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

E.5 Assessment of capacity

E.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

E.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](#).

E.6 Lodgement of SWS wage assessment agreement

E.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.

E.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.

E.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

E.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.

E.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.

E.10 Trial periodss

- E.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- E.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.
- E.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.
- E.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- E.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 E.5.

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

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule G—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule I—Part-day public holidays

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