



FAIR WORK
AUSTRALIA

ORDER

Fair Work Act 2009

s.285—Annual wage review

Annual Wage Review 2009–10 (C2010/1)

JUSTICE GIUDICE, PRESIDENT
SENIOR DEPUTY PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT HARRISON
COMMISSIONER RAFFAELLI
MR VINES
PROFESSOR RICHARDSON
MR DWYER

MELBOURNE, 29 JUNE 2010

Further to the decision made by the Minimum Wage Panel on 3 June 2010¹, it is ordered that the National Minimum Wage Order 2010 be made in the form of Appendix A and that the order come into operation on 1 July 2010.

PRESIDENT

¹ [2010] FWAFB 4000.

APPENDIX A

NATIONAL MINIMUM WAGE ORDER 2010

1. TITLE

This is the National Minimum Wage Order 2010.

2. COMMENCEMENT

2.1 This order comes into operation on 1 July 2010 and takes effect in relation to a particular employee from the start of the employee's first full pay period that starts on or after 1 July 2010.

2.2 This order, which replaces the transitional national minimum wage, transitional casual loading and transitional special national minimum wages 1 and 2, continues in operation until the next national minimum wage order comes into operation.

3. DEFINITIONS AND INTERPRETATION

3.1 In this order, unless the contrary intention appears, the following expressions have the meaning in the *Fair Work Act 2009* (the Act):

award/agreement free employee

employee with a disability

junior employee

training arrangement

3.2 In this order, unless the contrary intention appears:

employee means a national system employee as defined in the Act

employer means a national system employer as defined in the Act

4. NATIONAL MINIMUM WAGE

4.1 The national minimum wage is \$569.90 per week, calculated on the basis of a week of 38 ordinary hours, or \$15 per hour (rounded to the nearest 10 cents).

4.2 The national minimum wage applies to an award/agreement free employee other than:

(a) a junior employee;

(b) an employee to whom a training arrangement applies; or

(c) an employee with a disability.

4.3 An employer of an employee to whom the national minimum wage applies must pay the employee a base rate of pay that at least equals the national minimum wage.

5. CASUAL LOADING

5.1 The casual loading for award/agreement free employees is 21 per cent.

5.2 An employer of an award/agreement free casual employee must pay the employee a casual loading that at least equals the casual loading for award/agreement free employees (as applied to the employee's base rates of pay).

6. SPECIAL NATIONAL MINIMUM WAGE 1

6.1 Special national minimum wage 1 is \$569.90 per week, calculated on the basis of a week of 38 ordinary hours, or \$15 per hour (rounded to the nearest 10 cents).

6.2 Special national minimum wage 1 applies to an award/agreement free employee with a disability whose disability does not affect their productivity and who is not:

(a) a junior employee; or

(b) an employee to whom a training arrangement applies.

6.3 An employer of an employee to whom special national minimum wage 1 applies must pay the employee a base rate of pay that at least equals special national minimum wage 1.

7. SPECIAL NATIONAL MINIMUM WAGE 2

7.1 Special national minimum wage 2 applies to an award/agreement free employee with a disability who is:

(a) unable to perform the range of duties to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of a disability on their productive capacity; and

(b) who meets the impairment criteria for receipt of a Disability Support Pension.

7.2 Special national minimum wage 2 does not apply to an award/agreement free employee with a disability who is:

(a) a junior employee;

(b) an employee to whom a training arrangement applies; or

(c) an existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation.

- 7.3** An employer of an employee to whom special national minimum wage 2 applies must pay the employee a base rate of pay that at least equals special national minimum wage 2, calculated in accordance with Schedule A.

SCHEDULE A—SPECIAL NATIONAL MINIMUM WAGE 2

A.1 This schedule deals with the calculation of special national minimum wage 2 in relation to an employee to whom that wage applies.

A.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*, as amended from time to time, or any successor to that scheme

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 Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

A.3 Supported wage rates

A.3.1 Special national minimum wage 2 must be calculated as a percentage of the national minimum wage in cl.4.1 of the National Minimum Wage Order 2010 according to the following table:

Assessed capacity (Clause A.4)	National minimum wage in cl. 4.1
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

A.3.2 Provided that the minimum amount payable to an employee to whom special national minimum wage 2 applies is not less than \$73 per week.

A.3.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

A.4 Assessment of capacity

A.4.1 For the purpose of establishing the applicable percentage in cl.A.3.1, 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.

A.4.2 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.

A.5 Lodgement of SWS wage assessment agreement

A.5.1 All SWS wage assessment agreements under this schedule, including the applicable percentage of the national minimum wage to be paid to the employee, must be lodged by the employer with Fair Work Australia.

A.5.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment.

A.6 Review of assessment

A.6.1 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.

A.7 Workplace adjustment

A.7.1 An employer wishing to employ a person under the provisions of special national minimum wage 2 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.

A.8 Trial period

A.8.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of special national minimum wage 2 for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

A.8.2 During that trial period the assessment of capacity will be undertaken and the applicable percentage of the national minimum wage for a continuing employment relationship will be determined.

- A.8.3** The minimum amount payable to the employee during the trial period must be no less than \$73 per week.
- A.8.4** Work trials should include induction or training as appropriate to the job being trialled.
- A.8.5** 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 A.4 of this schedule.

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