

The Exposure Draft was first published on 5 September 2014. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
9 October 2014	Correct minor drafting and technical errors.	6.4, 9.4, 10.1, 20, Schedule C
2 February 2015	Incorporate changes in accordance with [2014] FWCFB 9412	1.2, 2, 5, 8.1, 8.2, 14.2, 15, 16, 17, 18, 19, 20, 21, Schedule D, Schedule E
9 September 2016	Incorporate further changes in accordance with [2014] FWCFB 9412 .	1.6, 3.4, 6.5(b), 10.2(d)
	Incorporate changes proposed by parties' agreed position – Parties' report to Full Bench 25 March 2015	3.1, 5.2, 6.5(d) (deleted), 8.3(a), 9.4(b), 14.2, 18.2, 20.2
	Incorporates changes resulting from [2015] FWCFB 4658 .	1, 10, 15.2, Schedule A, Schedule E
	Incorporate changes resulting from [2016] FWCFB 3500 , PR579786 , PR579530 and PR581528	10, 11, Schedule A, Schedule B, Schedule C, Schedule D
	Incorporate changes resulting from PR582992	15, Schedule F, Schedule G
	Incorporate changes resulting from PR584093	14.4, Schedule H
Changes agreed to by parties appear in red text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.		

EXPOSURE DRAFT

Cotton Ginning Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Cotton Ginning Award 2010** (the Cotton Ginning award) as at 5 September 2014. This exposure draft does not seek to amend any entitlements under the Cotton Ginning award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/71](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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Part 1—Application and Operation

1. Title and commencement

1.1 amended in accordance with para [4] [\[2015\] FWCFB 4658](#)

1.1 This award is the *Cotton Ginning Award 2014-2015*.

1.2 amended in accordance with para [8] [\[2015\] FWCFB 4658](#)

1.2 This modern award, as varied, commenced operation on 1 January 2010.

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

1.4 Schedule E—Definitions sets out definitions that apply in this award.

1.5 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

1.6 inserted in accordance with para [16] of [\[2014\] FWCFB 9412](#)

1.6 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2. The National Employment Standards and this award

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

2.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

2.3 The employer must ensure that copies of this award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

3. Coverage

3.1 This industry award covers employers throughout Australia operating cotton ginneries and their employees in the classifications listed in clause 7—Classifications ~~to the exclusion of any other modern award.~~

- 3.2** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 3.3** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out in clause 3.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause 3.1 are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 3.4** This award does not cover:
- (a) an employee excluded from award coverage by the *Fair Work Act 2009* (Cth) (the Act);
 - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
 - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)) or employers in relation to those employees.

Note deleted in accordance with para [29] [\[2014\] FWCFB 9412](#)

~~NOTE: Section [143\(7\)](#) of the Act describes classes of employees who are excluded from being covered by a modern award.~~

- 3.5** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

4. Award flexibility

- 4.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:
- (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances; and

(e) leave loading.

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

4.3 The agreement between the employer and the individual employee must:

(a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and

(b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

4.4 The agreement between the employer and the individual employee must also:

(a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

(b) state each term of this award that the employer and the individual employee have agreed to vary;

(c) detail how the application of each term has been varied by agreement between the employer and the individual employee;

(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and

(e) state the date the agreement commences to operate.

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

4.6 Except as provided in 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

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

4.8 The agreement may be terminated:

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

(b) at any time, by written agreement between the employer and the individual employee.

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

- 4.9** The notice provisions in 4.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with 4.8(a) subject to four weeks' notice of termination.
- 4.10** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

5. Facilitative provisions

- 5.1** 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 an employer and the majority of employees in the enterprise or part of the enterprise concerned.
- 5.2** Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
6.5(f)	Payment to casual employees	An individual or the majority of employees
9.2(b)	Paid rest breaks—day workers	The majority of employees
10.2(a)	Payment of wages	The majority of employees

Part 2—Types of Employment and Classifications

6. Types of employment

- 6.1** Employees under this award will be employed in one of the following categories:
- (a) full-time;
 - (b) part-time;
 - (c) casual; or
 - (d) seasonal.
- 6.2** At the time of engagement, an employer must advise each employee, other than casuals, in writing whether they are to be full-time, part-time or seasonal.
- 6.3 Full-time employees**
A full-time employee is engaged to work an average of 38 ordinary hours per week.
- 6.4 Part-time employees**
- (a) A part-time employee:

- (i) is engaged to work an average of less than 38 ordinary hours per week;
 - (ii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work; and
 - (iii) is paid no less than the hourly rate for the relevant classification.
- (b) An employer must inform a part-time employee of their ordinary hours of work and starting and finishing times.
- (c) All time worked in excess of the part-time employee's mutually agreed ordinary hours will be overtime and paid for in accordance with clause 14—Overtime.

6.5 Casual employees

- (a) A casual employee is engaged and paid on an hourly basis.

6.5(b) deleted in accordance with para [69] [\[2014\] FWCFB 9412](#)

- ~~(b) The provisions of the following clauses in this award will not apply to casual employees:~~

- ~~(i) clause 15 Annual leave;~~
- ~~(ii) clause 20 Termination of employment; and~~
- ~~(iii) clause 21 Redundancy.~~

(c) Casual loading

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

- (i) the ordinary hourly rate; and
 - (ii) a loading of 25% of the ordinary hourly rate, for the classification in which they are employed.
- ~~(d) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.~~
- (e) In the case of a penalty rate and loading applying, the casual employee will only receive the penalty rate and not the loading. Further, in the case of more than one loading applying, a casual employee will receive only one loading and, where loadings are at a different rate, casual employees will receive the loading at the greater rate.
- (f) Casual work may, by mutual agreement, be paid for on the employer's normal pay day or on completion of each engagement. Casual employees will be paid during ordinary working hours.

6.6 Casual conversion

(a) Eligible casual employee

- (i) An **eligible casual employee** is a casual employee:

- who works on a regular and systematic basis;
 - who is employed for a sequence of periods under this award over 12 months; and
 - whose employment is to continue beyond the period of 12 months.
- (ii) An eligible casual employee has the right, after 12 months, to elect to have their contract of employment converted to full-time or part-time employment.

(b) Notice and election of casual conversion

- (i) An employer of an eligible casual employee will give the employee notice in writing of the provisions of clause 6.6(a)(ii) within four weeks of the employee having reached the 12 month period.
- (ii) The employee retains their right of election under clause 6.6(b) if the employer fails to comply with 6.6(b)(i).
- (iii) An eligible casual employee may give four weeks' notice in writing to the employer that they seek to elect to convert their contract of employment to full-time or part-time employment either:
- upon receiving notice under 6.6(b)(i); or
 - after the expiry of the time for giving notice.
- (iv) An eligible casual employee who does not elect to convert their contract of employment to full-time or part-time employment within four weeks of receiving written notice is deemed to have elected against any conversion.

(c) Full-time or part-time conversion

- (i) An eligible casual employee who has worked on a full-time basis throughout their period of employment has the right to elect to convert their contract of employment to full-time employment.
- (ii) An employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked.
- (iii) However, the employer and the employee may agree on an alternative arrangement.
- (iv) If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 6.6(b)(iii), the employer and employee must, subject to clause 6.6(b)(iii), discuss and agree on:
- whether the employee will convert to full-time or part-time employment; and

- if the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 6.4—Part-time employment.
 - (v) Following agreement being reached, the employee converts to full-time or part-time employment.
- (d) Employer consent or refusal to casual conversion**
- (i) The employer must consent to or refuse the election within four weeks of receiving notice of the eligible casual employee's election. The employer must not unreasonably refuse consent to the election.
 - (ii) Where an employer refuses an election to convert, the reasons for doing so must be fully stated and discussed with the employee concerned and a genuine attempt made to reach agreement.
 - (iii) After an employee has converted to a full-time or part-time employee, they may only revert to casual employment by written agreement with the employer.
- (e) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this award.
- (f) Any dispute about the arrangements that apply to an employee converting from casual employment to full-time or part-time employment will be dealt with under clause 23—Dispute resolution.

6.7 Seasonal employees

A **seasonal employee** means an employee who is engaged from time to time to supplement the permanent workforce. Upon termination of employment, such employees will be entitled to payment of an amount equal to the value of the pro rata accumulation of benefits of a full-time employee for the period of the seasonal employment.

7. Classifications

7.1 Cotton ginning employee level 1 (CG1)

Employees at this level:

- (a) are general workers involved in the cleaning of the yard and gin, general delivery work or manual labour; and
- (b) require minimal training or experience to competently function in the role.

7.2 Cotton ginning employee level 2 (CG2)

Employees at this level:

- (a) are workers who are in charge of operating a piece of machinery (mobile plant or gin machinery) where greater OH&S considerations exist compared with CG1 roles; and

- (b) may require external tickets or internal assessment before operating this kind of machinery, excluding the requirement of a standard driver's licence.

7.3 Cotton ginning employee level 3 (CG3)

Employees at this level:

- (a) are machine operators (as per CG2) with two or more seasons of experience at CG2 within the cotton industry including returning seasonal employees; or
- (b) are assistant/trainee ginners who are required to understand the use of and assist with the maintenance of the gin equipment and do not possess Certificate III in Ginning or equivalent experience.

7.4 Cotton ginning employee level 4 (CG4)

Employees at this level:

- (a) are weighbridge operators;
- (b) are assistant ginners who have completed the Certificate III in Ginning or possess the equivalent experience; or
- (c) are experienced and/or qualified maintenance people operating gin equipment.

7.5 Cotton ginning employee level 5 (CG5)

Employees at this level:

- (a) are ginners who are responsible for the operation of the gin; and
- (b) may supervise and run a team of employees.

Part 3—Hours of Work

8. Ordinary hours of work and rostering

8.1 Ordinary hours—day workers

- (a) Ordinary hours for day workers are worked in five days each week between 6.00 am and 8.00 pm, Monday to Friday.
- (b) The ordinary hours of work must not exceed 38 hours per week worked in accordance with clause 8.1(c).
- (c) The ordinary hours of day work will be determined by the employer. They will be worked on either of the following bases:
 - (i) not to exceed seven hours and 36 minutes continuous per day; or
 - (ii) not to exceed eight hours continuous per day, provided that 24 minutes of that time will accrue toward a rostered day off (RDO).
- (d) All work done in excess of ordinary hours will be overtime and paid in accordance with clause 14—Overtime.

- (e) The ordinary hours of work for a part-time employee will be in accordance with clause 6—Types of employment.

8.2 Ordinary hours—night workers

- (a) Ordinary hours for night workers are worked in five nights each week between 6.00 pm and 8.00 am, Monday to Friday.
- (b) The ordinary hours of night work must not exceed 38 hours per week worked in accordance with clause 8.2(d).
- (c) The ordinary hours of work for a part-time employee will be in accordance with clause 6—Types of employment.
- (d) The ordinary hours of night work will be determined by the employer. They will be worked on either of the following bases:
 - (i) seven hours and 36 minutes continuous per night; or
 - (ii) eight hours continuous per night, provided 24 minutes of that time accrues toward a rostered day off.
- (e) All time worked in excess of ordinary hours will be overtime and paid in accordance with clause 14—Overtime.
- (f) Night work on Saturday or Sunday will be overtime and paid in accordance with clause 14—Overtime.

8.3 Rostered days off

- (a) An employer may operate a system where rostered days off (RDOs) are accumulated, and paid at the ordinary rates when taken based on the following provisions:
 - (i) RDOs may be accrued on a time for time basis (not penalty rates), ~~that is.~~ For example, one hour accrues for every additional hour worked;
 - (ii) RDOs may be taken from Monday to Friday;
 - (iii) RDOs may accumulate;
 - (iv) RDOs may be taken up to a maximum of five consecutive days; and
 - (v) the RDO must be rostered as an RDO and agreed by the employer.
- (b) An employer must not require an employee to work on an RDO unless:
 - (i) the employer gives a clear seven days' notice and provides an alternative day within the next 20 working days or otherwise entitles that employee to accumulate the RDO;
 - (ii) where the employer fails to provide seven days' notice for whatever reason, the employee will be paid at overtime rates for all time worked on the RDO.
- (c) An employer will not require an RDO to be taken on a Saturday or Sunday or on a public holiday.

- (d) An RDO will be regarded as a day worked for accrual purposes.
- (e) Accrued days or payment for pro rata accruals will be paid out on termination on a time for time basis at the ordinary rate for pay.

9. Breaks

9.1 Unpaid meal breaks—day workers

An employee will not work for more than five hours without a meal break. The time without a meal break may be extended to six hours with the consent of the employee. Meal breaks will be no less than 30 minutes and are unpaid.

9.2 Paid rest breaks—day workers

- (a) A paid rest break (or breaks) must be provided as follows:

Rest break	Minimum rest break
Morning tea	10 minutes
Afternoon tea	10 minutes

- (b) The majority of employees and the employer may agree that:
 - (i) the morning and afternoon tea breaks be consolidated into one longer break; or
 - (ii) one or both rest breaks may be added to the meal break.

9.3 Paid meal breaks—night workers

Night workers will be allowed a paid meal break of at least 20 minutes, which will be counted as time worked.

9.4 Minimum break after ceasing work for the day

- (a) An employee is entitled to at least 10 hours break between finishing work on one day and commencing work on the next day.
- (b) ~~If an employee resumes~~ If an employee is required to perform work without having had the 10 hour break, the employee must be paid overtime rates in accordance with clause 14—Overtime until the employee is released from duty and able to take the 10 hour break.

Part 4—Wages and Allowances

10. Minimum wages

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

10.1 amended in accordance with para [54] [\[2015\] FWCFB 4658](#); rates updated as a result of AWR 2016

Employee classification	<u>Minimum Weekly base rate</u> (Full-time employees)	<u>Minimum Hourly base rate</u>	<u>Ordinary hourly rate</u> ¹	<u>Casual hourly rate</u> ¹
	\$	\$	\$	\$
CG1	679.40	17.88	18.13	22.66
CG2	714.80	18.81	19.04	23.80
CG3	728.60	19.17	19.39	24.24
CG4	751.20	19.77	19.98	24.98
CG5	783.30	20.61	20.80	26.00

¹This rate includes the industry allowance payable to all employees for all purposes. Other all purpose allowances may also be payable, see clause 11.2(a).

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

10.2 Payment of wages

- (a) Wages will be paid weekly in the employer's time. If the majority of employees and the employer agree, wages may be paid fortnightly.
- (b) One day of each pay period will be recognised as pay day.
- (c) At the option of the employer, the method of payment will be by cash, electronic funds transfer or cheque drawn on an account with a local bank.

10.2(d) deleted in accordance with para [35] [\[2014\] FWCFB 9412](#)

- (d) ~~Section [536](#) of the Act requires the employer to give a pay slip to an employee within one working day of paying an amount to the employee in relation to the performance of work. The [Fair Work Regulations 2009](#) specify the information that must be included in a pay slip.~~

10.3 Higher duties

- (a) An employee required by the employer to perform the duties of a position at a higher classification level for four hours in any one day or longer will be paid the rate applicable for that higher level for the whole day.
- (b) If the work is less than four hours, the employee will be paid the higher rate for the actual time worked at the higher level.
- (c) An employee who is required to perform work for which a lower rate is paid will not have their own rate of pay reduced.

10.4 Supported wage system

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

10.5 National training wage

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

11. Allowances

11.1 Employers must pay to an employee such allowances as the employee is entitled to under this clause. See Schedule B for a summary of monetary allowances.

11.2 Wage related allowances

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

(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 leave. The following allowances are paid for all purposes under this award:

- (i) Disabilities allowance (clause 11.2(b)); and
- (ii) Leading hand allowance (clause 11.2(c)).

(b) Disabilities allowance

- (i) Employees will be paid an allowance of **\$25.96** per week. This allowance will be in compensation for all disabilities experienced in this particular industry.
- (ii) This amount will be in addition to all other amounts payable, and is payable for all purposes under this award.

(c) Leading hand

An employee who is appointed by the employer to be a leading hand will be paid an allowance each week as follows. This allowance is payable for all purposes.

In charge of	\$ per week
3–10 employees	31.22
11–20 employees	46.65
more than 20 employees	59.44

(d) First aid allowance

An employee who has been trained to provide first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body must be paid an additional amount of **\$14.11** per week if appointed by their employer to perform first aid duty.

(e) **Special allowance—bulk liquid tanks**

A special allowance of **\$0.56** per hour will be paid to employees who are required to work in bulk liquid tanks. This special allowance will be paid for the purposes of confined space and will be paid for a minimum of four hours.

(f) **Special contingency payment**

(i) A special contingency payment will be made each week to full-time and seasonal employee as follows:

	Full-time employees	Seasonal employees
Location	\$ per week	\$ per week
Moura and Cecil Plains	44.96	13.49
Emerald and St George	65.27	19.58

- (ii) Part-time employees will be paid the allowance on a pro rata basis
- (iii) Employees engaged as seasonal workers will be paid 30% of the special contingency payment for full-time employees.
- (iv) The payment will be a flat payment.

11.3 Expense related allowances

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

(a) **Meal allowance**

A meal allowance of **\$12.98** per meal will be paid where an employee is required to work overtime for more than one hour after their ordinary finishing time and where that employee has not been notified the day before.

12. Superannuation

12.1 Superannuation legislation

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

12.2 Employer contributions

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

12.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 12.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 12.3(a) or 12.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 12.3(a) or 12.3(b) was made.

12.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 12.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 12.2, and pay the amount authorised under clauses 12.3(a) or 12.3(b), to one of the following superannuation funds or its successor:

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

Part 5—Penalties and Overtime

13. Penalty rates

13.1 An employee will be paid the following penalty rates for all ordinary hours worked by the employee during the following periods.

Ordinary hours worked:		Penalty rate	Casual penalty rate
		% of ordinary hourly rate (100%)	% of ordinary hourly rate (incl. casual loading)
Night work – 6.00 pm to 8.00 am	Monday to Friday	115%	125%
Public holiday	All hours	250%	250%

See Schedule A for a summary of hourly rates of pay including penalties.

13.2 An employee who works on a public holiday must be paid for a minimum of four hours.

13.3 Penalty rates are not payable for overtime hours worked by the employee.

14. Overtime

14 amended in accordance with [PR584087](#).(14.4 inserted)

14.1 Definition of overtime

- (a) For a full-time employee or casual employee, overtime is any time worked:
- (i) in excess of the employee’s ordinary hours on any one day; or
 - (ii) outside the employee’s span of ordinary hours set out in clauses 8.1 and 8.2.
- (b) For a part-time employee, hours worked in excess of the employee’s ordinary hours (in accordance with clauses 6.4(b)) will be paid at the appropriate overtime rate.

14.2 Overtime rates

- (a) Where an employee works overtime the employer must pay to the employee the overtime rates as follows:

For overtime worked on	Overtime rate % of ordinary hourly rate
Monday to Saturday—first 2 hours	150
Monday to Saturday—after 2 hours	200

For overtime worked on	Overtime rate
	% of ordinary hourly rate
Sunday all day	200
Public holiday all day	250

See Schedule A for a summary of hourly rates of pay including overtime. For the purpose of determining overtime rate, each day stands alone.

- (b) For overtime worked on a Sunday or public holiday, the employee will be paid a minimum payment of four hours.
- (c) A casual employee working overtime receives the overtime rate instead of the loading prescribed in clause 6.5(c)(ii).

This provision does not state whether overtime performed on each day stands alone

14.3 Where an employee is required to work overtime for more than one hour after ordinary ceasing time and where the employee is not notified the day before, they will be paid a meal allowance as set out in clause 11.3(a).

14.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 14.4.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 14.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 14.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 14.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 14.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 14.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 14.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.4.

Part 6—Leave, Public Holidays and Other NES Entitlements

15. Annual leave

15 amended in accordance with [PR582992](#) (15.3 to 15.7 inserted).

15.1 Annual leave entitlement

Annual leave entitlements are provided for in the NES. This clause supplements those entitlements and provides industry specific detail.

15.2 Payment for annual leave

- (a) During a period of annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) In addition, the employer must pay the employee a loading of 17.5% calculated at the employee's ordinary hourly rate including any leading hands allowance and/or any disabilities allowance. This loading is paid instead of a night work loading.

Note inserted in accordance with para [94] [\[2015\] FWCFB 4658](#)

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

15.3 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 15.3 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 15.3 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 15.3, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

15.4 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 15.4.

- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 15.4.
- (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 15.4 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 15.4 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 15.4 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 15.4.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 15.4.

Note 3: An example of the type of agreement required by clause 15.4 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

15.5 Excessive leave accruals: general provision

Note: Clauses 15.5 to 15.7 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (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 15.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

- (d) Clause 15.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

15.6 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 15.5(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 15.5, 15.6 or 15.7 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 15.6(b)(i).

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

15.7 Excessive leave accruals: request by employee for leave

- (a) Clause 15.7 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 15.5(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

- (ii) the employee has not been given a direction under clause 15.6(a) that, when any other paid annual leave arrangements (whether made under clause 15.5, 15.6 or 15.7 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:
- (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 15.5, 15.6 or 15.7 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

16. Personal/carer's leave and compassionate leave

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

17. Parental leave and related entitlements

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

18. Public holidays

18.1 Public holidays are provided for in the NES.

18.2 Where an employee works on a public holiday they will be paid in accordance with clauses ~~14.2-13~~ and 14.

19. Community service leave

Community service leave is provided for in the NES.

20. Termination of employment

20.1 Notice of termination is provided for in the NES.

20.2 Notice of termination by an employee

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

20.3 Job search entitlement

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

21. Redundancy

21.1 Redundancy pay is provided for in the NES.

21.2 Transfer to lower paid duties

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

21.3 Employee leaving during notice period

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

21.4 Job search entitlement

- (a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c)** This entitlement applies instead of clause 20.3.

Part 7—Consultation and Dispute Resolution

22. Consultation

22.1 Consultation regarding major workplace change

(a) Employers to notify

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

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 22.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 22.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

22.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information

about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);

- (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

23. Dispute resolution

- 23.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 23.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 23.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 23.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 23.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 23.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 23.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Schedule A—Summary of Hourly Rates of Pay

Rates updated as a result of AWR 2016; note inserted in accordance with para [63] [\[2015\] FWCFCB 4658](#)

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

See also clause 10—Minimum wages, clause 13—Penalty rates and clause 14—Overtime.

Additional allowances may be payable; see clause 11—Allowances.

A.1 Ordinary hourly rate

A.1.1 Ordinary hourly rate includes the disabilities allowance (clause 11.2(b)) which is payable for all purposes.

A.1.2 Where an additional allowance is payable for all purposes in accordance with clause 11.2(c), 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.

A.2 Full-time and part-time employees—ordinary and penalty rates

	Ordinary hours	Night work (Monday – Friday)	Public holiday
% of ordinary hourly rate			
	100%	115%	250%
	\$	\$	\$
CG1	18.56	21.34	46.40
CG2	19.49	22.41	48.73
CG3	19.85	22.83	49.63
CG4	20.45	23.52	51.13
CG5	21.29	24.48	53.23

A.3 Full-time and part-time employees—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day	Public holiday – all day
% of ordinary hourly rate				
	150%	200%	200%	250%
	\$	\$	\$	\$
CG1	27.84	37.12	37.12	46.40
CG2	29.24	38.98	38.98	48.73
CG3	29.78	39.70	39.70	49.63
CG4	30.68	40.90	40.90	51.13

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day	Public holiday – all day
% of ordinary hourly rate				
	150%	200%	200%	250%
	\$	\$	\$	\$
CG5	31.94	42.58	42.58	53.23

A.4 Casual employees—ordinary and penalty rates

	Ordinary hours	Night work (Monday – Friday)	Public holiday
% of ordinary hourly rate			
	125%	125%	250%
	\$	\$	\$
CG1	23.20	21.34	46.40
CG2	24.36	22.41	48.73
CG3	24.81	22.83	49.63
CG4	25.56	23.52	51.13
CG5	26.61	24.48	53.23

A.5 Casual employees—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday – all day	Public holiday
% of ordinary hourly rate				
	150%	200%	200%	250%
	\$	\$	\$	\$
CG1	27.84	37.12	37.12	46.40
CG2	29.24	38.98	38.98	48.73
CG3	29.78	39.70	39.70	49.63
CG4	30.68	40.90	40.90	51.13
CG5	31.94	42.58	42.58	53.23

Schedule B—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016
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See clause 11—Allowances for full details of allowances payable under this award.

B.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule E as the minimum hourly base rate for classification level CG2 in clause 10.1 = **\$18.81**.

Allowance	Clause	% of standard rate (\$18.81)	\$ per week unless stated otherwise
Disabilities allowance ¹	11.2(b)	138	25.96
Leading hand ¹ in charge of:	11.2(c)		
3 to 10 employees		166	31.22
11 to 20 employees		248	46.65
more than 20 employees		316	59.44
First aid allowance	11.2(d)	75	14.11
Special allowance—bulk liquid tanks	11.2(e)	3	0.56 per hour
Special contingency payment—full-time employees ²	11.2(f)		
Moura and Cecil Plains		239	44.96
Emerald and St George		347	65.27

¹ This allowance applies for all purposes of this award

² Seasonal employees will be paid 30% of the relevant full-time special contingency rate

B.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.

B.3 Expense related allowances

Allowance	Clause	\$
Meal allowance	11.3(a)	12.98 per meal

B.4 Adjustment of expense related allowances

At the time of any adjustment to the [standard rate](#), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most

recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

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

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Schedule C—Supported Wage System

Rates updated as a result of AWR 2016

C.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.

C.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

C.3 Eligibility criteria

C.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.

C.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.

C.4 Supported wage rates

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

C.4.2 Provided that the minimum amount payable must be not less than \$82 per week.

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

C.5 Assessment of capacity

C.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.

C.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.

C.6 Lodgement of SWS wage assessment agreement

C.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.

C.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.

C.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.

C.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.

C.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.

C.10 Trial period

C.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

C.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.

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$82 per week.

C.10.4 Work trials should include induction or training as appropriate to the job being trialled.

C.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 C.5.

Schedule D—National Training Wage

Rates updated as a result of AWR 2016

This schedule is being reviewed in matter [AM2016/17](#)

D.1 Title

This is the *National Training Wage Schedule*.

D.2 Definitions

In this schedule:

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

approved training means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

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

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

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

year 10 includes any year before Year 10

D.3 Coverage

D.3.1 Subject to clauses D.3.2 to D.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by clause D.7 to this schedule or by clause D.5.4 of this schedule.

D.3.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause D.7 to this schedule.

D.3.3 This schedule does not apply to:

- (a) the apprenticeship system;
- (b) qualifications not identified in training packages; or
- (c) qualifications in training packages which are not identified as appropriate for a traineeship.

D.3.4 This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.

D.3.5 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

D.3.6 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

D.4 Types of Traineeship

The following types of traineeship are available under this schedule:

D.4.1 a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

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

D.5 Minimum Wages

D.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause D.7.1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

(b) Wage Level B

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause D.7.2 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

(c) Wage Level C

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause D.7.3 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

(d) AQF Certificate Level IV traineeships

- (i) Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii) Subject to clause D.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70
Wage Level C	560.60	581.80

D.5.2 Minimum wages for part-time traineeships**(a) Wage Level A**

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause D.7.1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

(b) Wage Level B

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause D.7.2 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

(c) Wage Level C

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause D.7.3 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 4 years out of school	15.95	17.78	
Plus 5 or more years out of school	17.78		

(d) School-based traineeships

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

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.94	10.96

(e) AQF Certificate Level IV traineeships

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

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

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

(f) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

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

D.5.3 Other minimum wage provisions

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

D.5.4 Default wage rate

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

D.6 Employment conditions

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

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

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

D.7 Allocation of Traineeships to Wage Levels

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

D.7.1 Wage Level A

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

Training package	AQF certificate level
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

D.7.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II

Training package	AQF certificate level
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	I, II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

D.7.3 Wage Level C

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

Schedule E—Definitions

In this award, unless the contrary intention appears:

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

Definition of ‘all purposes’ amended in accordance with para [35] and [91] [\[2015\] FWCFB 4658](#)

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

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

leading hand means an employee who is required to supervise, direct or be in charge of another employee or employees

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

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

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

Definition of ‘ordinary hourly rate’ amended in accordance with para [35] and [91] of [\[2015\] FWCFB 4658](#)

ordinary hourly rate means the hourly rate for the employee’s classification specified in clause 10, inclusive of 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

standard rate means the minimum hourly base rate for classification level CG2 in clause 10.1

Schedule F—Agreement to Take Annual Leave in Advance

Schedule F—Agreement to Take Annual Leave in Advance inserted in accordance with [PR582992](#).

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 G—Agreement to Cash Out Annual Leave

Schedule G—Agreement to Cash Out Annual Leave inserted in accordance with [PR582992](#).

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 H—Agreement for time off instead of payment for overtime

Schedule H— Agreement for time off instead of payment for overtime inserted in accordance with [PR584087](#).

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___