

The Exposure Draft was first published on 18 December 2015. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
18 December 2015	Exposure Draft	
29 July 2016	As agreed by the parties and in accordance to the Report to the Full Bench dated 3 June 2016	3.2, 7.4(c)(ii), 6, 7.4(b), 7.4(c)(ii), 14.3, 15.3 (inserted), A.1.1(c), A.2.2(b), A.4.1, A.6.1, A.7.1, Schedule G
	Incorporate changes resulting from PR580863	Schedule F
	Incorporate changes resulting from [2016] FWCFB 3500 , PR579600 , PR579880 and PR581528	10, 11, Schedule B, Schedule C, Schedule D, Schedule E,
	Exposure Draft	
2 November 2017	Incorporate changes resulting from PR583004	15, Schedule H, Schedule I
	Incorporate changes resulting from PR584102	14.4, Schedule J
	Incorporate changes resulting from [2017] FWCFB 3500 , PR592195 , PR592349 , PR592689 and PR593869	10, 11, Schedule B, Schedule C, Schedule D, Schedule E
	Incorporate changes resulting from [2017] FWCFB 3433	1, 3, 10, 15, 22, Schedule G
	Incorporate changes resulting from [2017] FWCFB 5536	3.3, 3.4, 6.2, 7.4, 11.1, 14.3, 15.3, 18.3, 19.3, Schedule A, Schedule G
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

Fitness Industry Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Fitness Industry Award 2010* (the Fitness Award) as at 18 December 2015. This exposure draft does not seek to amend any entitlements under the Fitness 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 [AM2014/227](#). Additionally a number of common issues are being dealt with by

the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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

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DRAFT

Part 1—Application and Operation

1. Title and commencement

1.1 This award is the *Fitness Industry Award 2015*.

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

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

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

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

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

2. The National Employment Standards and this award

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

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

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

3. Coverage

3.1 This industry award covers employers throughout Australia engaged in the fitness industry and their employees in the classifications in this award to the exclusion of any other modern award.

Definition of the **fitness industry** retained in coverage clause in accordance with [\[2017\] FWCFB 3433](#) at [339].

Clause 3.2 varied as per [\[2017\] FWCFB 5536](#) at [143].

3.2 The **fitness industry** means the operation or provision of:

- (a) fitness centres;
- (b) fitness services or classes;
- (c) group fitness organisations;
- (d) weight loss/control centres;
- (e) aquatic centres;
- (f) aquatic services or classes;
- (g) indoor sports centres;
- (h) golf driving ranges;
- (i) dance centres;
- (j) martial arts centres; ~~and~~
- (k) recreational camps;
- (l) tennis clubs and centres;
- (m) tennis coaching or classes; and
- (n) gymnastic services, activities or classes.

3.3 This award does not cover employers or employees covered by the following awards:

- (a) the *Amusement, Events and Recreation Award 2015*;
- (b) the *Children’s Services Award 2015*;
- (c) the *Cleaning Services Award 2015*;
- (d) the *Hospitality Industry (General) Award 2015*;
- (e) the *Local Government Industry Award 2015*;
- (f) the *Registered and Licensed Clubs Award 2015*; or
- (g) the *Security Services Industry Award 2015*.

Clause 3.4 varied as per [\[2017\] FWCFB 5536](#) at [143].

3.4 ~~This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of a fitness centre.~~ This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of centres, group fitness organisations, weight loss/control centres, aquatic centres, indoor sports centres, golf driving ranges, dance centres, martial arts centres, recreational camps, tennis clubs and centres.

- 3.5** 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.
- 3.6** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at 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 herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 3.7** This award does not cover:
- (a) employees excluded from award coverage by the *Fair Work Act 2009* (Cth) (the Act);
 - (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
 - (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- 3.8** 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 normally performed by the employee and to the environment in which the employee normally performs the work.

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

4. Award flexibility

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

- (e) leave loading.
- 4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 4.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and
 - (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.
- 4.4** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 4.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 4.6** Except as provided in clause 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 4.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 4.8** The agreement may be terminated:
- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.

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

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

5. Facilitative provisions

- 5.1** 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:
8.6(a)	Rostered days off	The majority of employees
8.7	Make-up time	An individual
10.3(a)	Payment of wages	The majority of employees
11.3(e)(v)	Sleepover allowance—duration	An individual
14.4	Time off instead of overtime	An individual
18.2	Substitution of public holidays	An individual

Part 2—Types of Employment and Classifications

6. Classifications

- 6.1** The classification structure and definitions for this award are set out in Schedule A—Classification Definitions.
- 6.2** An employer must advise an employee in writing of their classification:
- (a) on commencement of employment; and
 - (b) ~~of~~ on any subsequent changes to their classification.

7. Types of employment

7.1 An employee may be employed in one of the following categories:

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

7.2 Full-time employees

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

7.3 Part-time employees

- (a) A part-time employee is an employee who:
 - (i) works less than the full-time hours of 38 hours per week;
 - (ii) has reasonably predictable hours of work; and
 - (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least:
 - (i) the hours worked each day;
 - (ii) which days of the week the employee will work; and
 - (iii) the actual starting and finishing times each day.
- (c) Any agreed variation to the hours of work will be recorded in writing.
- (d) An employer is required to roster a part-time employee for a minimum of three consecutive hours on a shift or a minimum of three hours, exclusive of meal breaks, on a broken shift.
- (e) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 7.4—Casual employees.
- (f) All time worked in excess of the hours as agreed under clause 7.3(b) or varied under clause 7.3(c) will be overtime and paid for at the rates prescribed in clause 14—Overtime.
- (g) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the minimum hourly rate prescribed in clause 10—Minimum wages for the work performed.

7.4 Casual employees

Variation proposed to clause 7.4(a) requires determination by a separate Full Bench as per [\[2017\] FWCFB 5536](#) at [165].

- (a) A casual employee is an employee engaged and paid as a casual employee.
- (b) **Casual loading**
- (i) For each ordinary hour worked on Monday to Friday, a casual employee must be paid in accordance with Schedule B (B.2) Casual employees:
- the minimum hourly rate; and
 - a loading of **25%** of the minimum hourly rate,
- for the work being performed.
- (ii) For each ordinary hour worked on Saturday, Sunday or a public holiday, a casual employee must be paid in accordance with Schedule B—Summary of Hourly Rates of Pay (B.2—Casual employees):
- the minimum hourly rate; and
 - a loading of **30%** of the minimum hourly rate,
- for the work being performed.
- (c) **Minimum engagement**
- (i) Subject to clauses 7.4(c)(ii) and 18.3, a casual employee must be engaged for a minimum period of three hours' work at the appropriate rate or be paid per engagement for a minimum of three hours at the appropriate rate.
- (ii) Notwithstanding clause 7.4(c)(i) and subject to clause 18.3, a casual employee who is classified as a Level 2, 3, 3A, 4, ~~or~~ 4A or 5 instructor, ~~or~~ trainer or tennis coach or as a student undertaking practical work involvement may be engaged for a minimum period of one hour's work at the appropriate rate or be paid per engagement for a minimum of one hour's work at the appropriate rate.

Part 3—Hours of Work

8. Ordinary hours of work and rostering

Variation proposed to clause 8 require determination by a separate Full Bench as per [\[2017\] FWCFB 5536](#) at [165].

- 8.1 Ordinary hours may be worked over any five days of the week, between the hours of:
- (a) 5.00 am and 11.00 pm, Monday to Friday; and

(b) 6.00 am and 9.00 pm, Saturday and Sunday.

8.2 Ordinary hours of work must not exceed an average of 38 hours per week over a period of four weeks.

8.3 The ordinary hours of work for a full-time or part-time employee must not exceed 10 hours on any one day.

8.4 An employee may be rostered to work a broken shift on any day provided that:

(a) the shift is not broken into more than two parts;

(b) the total length of the shift is not less than three hours, exclusive of meal breaks; and

(c) the span of hours from the start of the first part of the shift to the end of the second part of the shift is not more than 12 hours.

8.5 An employee must be notified by their employer of their rostered hours. At least seven days' notice must be given by the employer to an employee of any change in their rostered hours, except in the case of an emergency.

8.6 Rostered days off (RDO)

(a) The employer and the majority of employees at an enterprise may agree to establish a system of RDO.

(b) The terms of any agreement to introduce a system of RDO must be set out in the time and wages records.

(c) Following the introduction of a system of RDO:

(i) An employee may elect, with the consent of the employer, to:

- take a RDO at any time;
- take RDOs in part day amounts; and/or
- accrue some or all RDOs for the purpose of creating a bank to be drawn on by the employee at a time mutually agreed between the employer and the employee.

(ii) An employer must record RDO arrangements in the time and wages record.

8.7 Make-up time

An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in this award. An employer must record make-up time arrangements in the time and wages record.

9. Breaks

9.1 Unpaid meal break

- (a) An employee must be given an unpaid meal break of between 30 minutes and 60 minutes no later than five hours after commencing work and five hours after the resumption of work from a previous meal break.
- (b) An employee required to work through a meal break must be paid **200%** of the minimum hourly rate for all time so worked until a meal break is allowed.

9.2 Paid rest break

- (a) An employee must be allowed a paid 10 minute rest break between:
 - (i) their time of commencing work and their meal break; and
 - (ii) their meal break and their time of ceasing work for the day.
- (b) A casual employee who works three hours or less per shift is not entitled to a paid rest break.

Part 4—Wages and Allowances

10. Minimum wages

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

Rates updated as a result of AWR 2017

Employee classification level	Minimum weekly rate	Minimum hourly rate
	\$	\$
Level 1	694.90	18.29
Level 2	714.90	18.81
Level 3	767.80	20.21
Level 3A	809.10	21.29
Level 4	842.30	22.17
Level 4A	882.80	23.23
Level 5	930.40	24.48
Level 6	922.40	24.27
Level 7	958.30	25.22

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

10.2 Juniors

The minimum wages for a junior employee are the following percentages of the adult minimum wage for the classification appropriate to the work performed:

Age	%
16 years of age and under	55
17 years of age	65
18 years of age	75
19 years of age	85
20 years of age	100

10.3 Payment of wages

(a) Frequency of payment

Wages must be paid weekly or fortnightly or, by agreement between the employer and the majority of employees, monthly.

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

(b) Method of payment

Wages must be paid by:

- (i) cash;
- (ii) cheque; or
- (iii) electronic funds transfer into the bank or financial institution account nominated by the employee,

as determined by the employer.

(c) Day off coinciding with payday

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

(d) Absences from duty under an averaging system

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

- (i) The employee accrues a credit for each day the employee works ordinary hours in excess of the daily average.
- (ii) The employee incurs a debit for each day of absence from duty other than when the employee is on paid leave, workers compensation or jury service.
- (iii) An employee absent for part of a day (other than when the employee is on paid leave, workers compensation or jury service) incurs a proportion of the debit for the day, based on the proportion of the working day that the employee was in attendance.

10.4 Higher duties

An employee appointed by the employer to perform the work of a classification higher than the employee’s usual classification must be paid at least the rate applicable to the higher classification for the hours worked at the higher level.

10.5 Supported wage system

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

10.6 National training wage

10.6 substituted per [PR593869](#)

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2017. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Fitness Industry Award 2010* and not the *Miscellaneous Award 2010*.

11. Allowances

Clause 11.1 varied as per [\[2017\] FWCFB 5536](#) at [152].

Monetary amounts in clause 11 adjusted as a result of AWR 2017

11.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment provided that employees engaged under clause 7.3—Part-time employees, shall be paid all allowances on a pro rata, hourly, basis. Employees engaged other than on a full-time basis under clause 7.2 shall be paid pro rata the wage related allowances detailed in paragraph (a) Leading hands and supervisors.

11.2 Wage related allowances

(a) **Leading hands and supervisors**

An employee at classification Level 4A or below in charge of the following number of employees must be paid:

Number of employees	\$ per week
1 to 5	23.03
6 to 10	31.48
More than 10	42.23

(b) **Broken shift allowance**

An employee working a rostered broken shift must be paid per day **\$13.05** extra and for excess fares an expense related allowance of **\$1.89** per day.

(c) **First aid allowance**

An employee who is rostered by an employer to be on first aid duty at a particular time must be paid **\$ 2.46** extra per day.

11.3 Expense related allowances

(a) **Meal allowance**

An employee required to work overtime for more than one and a half hours immediately after their ordinary hours of work must be paid a meal allowance of **\$ 11.37** unless the employer provides a meal.

(b) **Vehicle allowance**

(i) An employee who, by agreement with their employer, uses their own motor vehicle in the performance of duties must be paid **\$0.78** per kilometre travelled.

(ii) An employee who, by agreement with their employer, uses their own motorcycle in the performance of duties must be paid **\$0.26** per kilometre travelled.

(c) **Uniforms and protective clothing**

(i) An employee who is required to wear specific clothing as part of their employment must be reimbursed for the reasonable cost of:

- purchasing the clothing; and
- laundering or dry cleaning the clothing,

unless the clothing is provided by the employer without cost to the employee or is cleaned by the employer.

(ii) Where the clothing is provided by the employer it will remain the property of the employer.

(d) **Travelling time and fares**

- (i) An employee who is required by the employer to travel from one place of work to another must be reimbursed by the employer all fares necessarily incurred by the employee.
 - (ii) All time occupied in such travel is deemed to be working time and the employee must be paid at the appropriate rate.
- (e) **Sleepover allowance**
- (i) Sleepover means a continuous period of eight hours during which an employee is required to sleep at the workplace and be available to deal with any urgent situation which cannot be dealt with by another employee or be dealt with after the end of the sleepover period.
 - (ii) The employer must take all reasonable steps to enable the employee to sleep at the workplace including the provision of a bed with privacy. Access to a bathroom, toilet and a meal room must also be provided free of charge to the employee.
 - (iii) An employee will only sleep over if:
 - there is agreement between the employee and the employer with at least one week's notice in advance, except in the case of an emergency; and
 - the sleepover consists of eight continuous hours.
 - (iv) The sleepover allowance is equivalent to three hours payment at the employee's ordinary rate of pay. Such payment is compensation for the sleepover and for all necessary work of up to two hours duration during the sleepover period. Any necessary work in excess of two hours during the sleepover period must be compensated at overtime rates in addition to the sleepover allowance.
 - (v) An employee on a sleepover must not be required to work more than eight hours before, and/or more than eight hours after, a sleepover, unless provision has been made at a workplace to work longer hours for the purpose of providing more continuous leisure time within the roster and this arrangement has the genuine agreement of the employees affected and does not adversely affect the health and safety of the employee(s) involved.

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 (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 12.3(a) or (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 (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper; or
- (b) CareSuper; or
- (c) First State Super; or
- (d) Nationwide Superannuation Fund; or
- (e) Sunsuper; or
- (f) Club Super; or
- (g) Intrust; or
- (h) AMP Superannuation Savings Trust; or
- (i) HESTA Super Fund; or

- (j) Statewide Superannuation Trust; or
- (k) Tasplan; or
- (l) HOSTPLUS Superannuation Fund; or
- (m) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees immediately 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
- (n) a superannuation fund or scheme which the employee is a defined benefit member of.

12.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 12.2 and pay the amount authorised under clauses 12.3(a) or (b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Penalties and Overtime

13. Penalty rates

13.1 Payment for working Saturdays and Sundays

A full-time or part-time employee must be paid at the following rates for all ordinary hours worked:

- (a) Saturday—**125%** of the minimum hourly rate; and
- (b) Sunday—**150%** of the minimum hourly rate.

13.2 Payment for working on a public holiday is dealt with in clause 18—Public holidays.

13.3 Payment for casual employees working on a Saturday, Sunday or public holiday is in accordance with clause 7.4(b)(ii).

14. Overtime

14 amended in accordance with [PR584102](#) (14.4 substituted)

Outstanding variations proposed to clause 14 require determination by a separate Full Bench as per [\[2017\] FWCFB 5536](#) at [165].

14.1 Definition of overtime

- (a) Overtime is all time worked by an employee:
 - (i) outside the spread of hours prescribed in clause 8.1; or
 - (ii) in excess of an average of 38 hours per week over a period of four weeks; or
 - (iii) in excess of 10 hours on any day.
- (b) For part-time employees, all time worked in excess of the hours as agreed under clause 7.3(b) or varied under clause 7.3(c) will be overtime.

14.2 Overtime rates

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

- (a) Monday to Saturday—**150%** of the minimum hourly rate for the first two hours and **200%** of the minimum hourly rate after two hours; and
- (b) Sunday—**200%** of the minimum hourly rate.
- (c) Public holiday—payment for working on a public holiday is dealt with in clause 18—Public holidays.

14.3 Break between shifts

~~An employee is entitled to a minimum 10 hour break between shifts. An employee required by the employer to resume work without having a break of at least 10 hours between rostered shifts must be paid at the rate of **200%** of the minimum hourly rate for all time worked until they have had a break from work of at least 10 hours.~~

- (a) Subject to clause 14.3(b), an employee is entitled to a minimum 10 hour break between shifts. An employee required by the employer to resume work without having a break of at least 10 consecutive hours between shifts (including overtime worked on either shift), must be paid at the rate of **200%** of the minimum hourly rate for all time worked until they have had a break from work of at least 10 hours.
- (b) An employee is not entitled to be paid at the rate of **200%** in accordance with clause 14.3(a) if they have worked 3 consecutive hours or less prior to the commencement of a break between shifts.

14.4 Time off instead of payment for overtime

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- (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 J. There is no requirement to use the form of agreement set out at Schedule J. 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 [PR583004](#). (15.5 – 15.8 inserted)

References to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350]

- 15.1 Annual leave is provided for in the NES.
- 15.2 During a period of annual leave an employee must also be paid an annual leave loading of **17.5%** of their minimum rate of pay.
- 15.3 **Close down**
 - (a) An employer may close down (or reduce to a nucleus) an enterprise or part of it for the purpose of allowing annual leave to the employees concerned or a majority of them, provided that:
 - (i) the employer gives the employees at least one month's notice of its intention to close down;
 - (ii) in the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.
 - (b) No more than one close down can occur in one 12 month period.

- (c) Where an employee has been given notice pursuant to clause 15.3(a)(i) or (ii) above and the employee has:
- (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of the close down;
 - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the close down; or
 - (iii) no accrued annual leave, the employee must take leave without pay for the full period of the close down.
- (d) Public holidays that fall within the period of close down will not count as a day of annual leave or leave without pay. Employees will be paid for any absence on such days in accordance with the NES.

15.4 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 15.4 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 15.4 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 15.4, 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.

15.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 15.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 15.5.

- (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 15.5 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 15.5 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 15.5 as an employee record.

Note 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 15.5.

Note 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 15.5.

Note 3: An example of the type of agreement required by clause 15.5 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

15.6 Excessive leave accruals: general provision

Note: Clauses 15.6 to 15.8 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 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 15.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

- (d) Clause 15.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

15.7 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 15.6(a) 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 15.6, 15.7 or 15.8 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 15.7(b)(i).

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

15.8 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 15.6(a) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

- (ii) the employee has not been given a direction under clause 15.7(a) that, when any other paid annual leave arrangements (whether made under clause 15.6, 15.7 or 15.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee’s excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
- (i) if granted, result in the employee’s remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 15.6, 15.7 or 15.8 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks’ paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

16. Personal/carer’s leave and compassionate leave

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

17. Community service leave

Community service leave is provided for in the NES.

18. Public holidays

Public holidays provisions may be affected by [AM2014/301](#)

18.1 Public holiday entitlements are provided for in the NES.

18.2 An employer and an employee may by agreement substitute another day for a public holiday.

18.3 Payment for working on a public holiday

Variation proposed to clause 18.3 requires determination by a separate Full Bench as per as per [\[2017\] FWCFB 5536](#) at [165].

- (a) A full-time or part-time employee must be paid at the rate of **250%** of the minimum hourly rate for all hours worked on a public holiday. An employee required to work on a public holiday must be engaged or be paid for at least four hours' work ~~at the rate of 250% of the minimum hourly rate.~~
- (b) Payment for a casual employee working on a public holiday is in accordance with clause 7.4(b)(ii).

18.4 Part-day public holidays

18 4 inserted on 16 September 2016

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

19. Termination of employment

19.1 Notice of termination is provided for in the NES

19.2 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.

19.3 Job search entitlement

Variation proposed to clause 19.3 requires determination by Plain language Full Bench as per [\[2017\] FWCFB 5536](#) at [159]–[160].

Where an employer has given notice of termination to an employee, an employee, other than a casual 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.

20. Redundancy

20.1 Redundancy pay is provided for in the NES.

20.2 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.

20.3 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.

20.4 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 19.3.

Part 7—Consultation and Dispute Resolution

21. Consultation

21.1 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 21.1(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 21.1(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.

21.2 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.

22. Dispute resolution

Parties are to consider the proposed variations regarding 'occupational health and safety'. See [\[2017\] FWCFB 3433](#) at [\[382\]](#)

- 22.1 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.

- 22.2** 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 22.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 22.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 22.4** 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.
- 22.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 22.6** 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~~ work 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—Classification Definitions

A number of variations proposed to Schedule A require determination by a separate Full Bench as per [2017] FWCFCB 5536 at [165].

A.1 Level 1

A.1.1 An employee at this level works under direct supervision with specific instructions and procedures and after appropriate in-house training. Duties may include any or all of the following:

- (a) general counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison;
- (b) general tidying/cleaning of immediate work area;
- (c) undertaking structured training/learning in the following areas:
 - (i) clerical assistant duties including switchboard operation, reception, information services, taking bookings;
 - (ii) providing general assistance to employees of a higher grade, not including cooking or direct service to customers;
 - (iii) cleaning, tidying and setting up of kitchen, food preparation and customer service areas, including cleaning of equipment, crockery and general utensils;
 - (iv) assembly and preparation of ingredients for cooking;
 - (v) handling pantry items and linen;
 - (vi) setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
 - (vii) general cleaning, gardening and labouring tasks; ~~and~~
 - (viii) door duties, attending a cloakroom or car park not involving the handling of cash; and
 - (ix) providing general assistance to tennis coaches in the delivery of tennis coaching or classes; and
 - (x) swimming and water safety teaching.

A.2 Level 2

A.2.1 An employee at this level has completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level or has a swim teacher or coach qualification or holds a Gymnastics Australia Coach Accreditation.

An employee at this level has a qualified as a swimming and water safety teacher (which can include specialist qualifications relating to the likes of babies and

toddlers, learners with disability, and towards competitive swimming), or swimming coach, or a pool plant operator, or has completed 456 hours within the scope of Level 1 or holds a Gymnastics Australia Coach Accreditation.

A.2.2 An employee at this level:

- (a) performs work above and beyond the skills of an employee at Level 1 and to the level of their training; and
- (b) works from instructions or procedures and under direct supervision either individually or in a team environment, and is primarily engaged in one or more of the following duties:
 - (i) assisting with classes and directing activities in a centre;
 - (ii) attending to equipment and displays, e.g. pool attendant;
 - (iii) providing customer advice, sales and services;
 - (iv) operating a switchboard and/or telephone paging system;
 - (v) clerical duties, involving intermediate keyboard skills with instructions;
 - (vi) program/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic swipe input devices;
 - (vii) laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;
 - (viii) maintaining general presentation of grounds;
 - (ix) door duties, attending a cloak room or car park;
 - (x) serving from a snack bar, buffet or meal counter;
 - (xi) supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
 - (xii) non-cook duties in a kitchen;
 - (xiii) ~~beginner swimming and water safety teacher, being a holder of any current qualification with the following competencies teaching swimming and water safety, being the holder of a current qualification (with the relevant industry Competencies), coaching 'junior' squad level swimmers, being the holder of a current recognised swimming coaching qualification.~~

~~*SRC AQU 003B Respond to an aquatic emergency using basic water rescue techniques;*~~

~~*SRC AQU 008B Apply the principles of movement in water to aquatic activities;*~~

~~SRC AQU 010B Instruct water safety and survival skills;~~

~~SRC AQU 009B Instruct the strokes of swimming; and~~

~~SRC CRO 007B Operate in accordance with accepted instructional practises, styles and legal and ethical responsibilities.~~

- (xiv) coaching beginner swimmers (including mini and junior squads), being a holder of a current Australian Swimming Coaches and Teachers Association (ASCTA) “Junior Squad and Assistant Coach” qualification or equivalent;
- (xv) coaching beginner tennis or providing general assistance to tennis coaches in the delivery of tennis coaching or classes, having completed an introductory coaching course or equivalent; or
- (xvi) coaching gymnastics, being a holder of a current Gymnastics Australia Coach Accreditation or equivalent.

A.3 Level 3

A.3.1 An employee at this level works under general supervision which requires operation within defined areas of responsibility with adherence to established guidelines and procedures and who is employed to carry out work associated with the centre’s operations or holds a Gymnastics Australia Coach Accreditation.

A.3.2 An employee at this level is able to fulfil a role at Level 1 and 2 where relevant and supervises Level 1 and 2 employees where requested.

A.3.3 An employee at this level may also be:

- (a) ~~an intermediate swimming and water safety teacher, being a holder of any current qualification with the competencies detailed in clause A.2.2(b)(xiii) above, who has a swimming and water safety teacher being a holder of any current qualification with the relevant Industry Competencies, who has:~~
 - (i) ~~performed 12 hours per year of recognised workshops and 250 hours of swimming and water safety teaching and who holds a second recognised instructing qualification, attended five hours per year of professional development (as recognised by a national industry body) and 350 hours of teaching at Level 2, or~~
 - (ii) ~~delivered 350 hours of swimming and water safety teaching who holds a second recognised swimming and water safety teaching qualification and delivered 350 hours of swimming and water safety teaching; or~~
- (b) ~~a coach of beginner swimmers (including mini and junior squads), being a holder of a current ASCTA “Bronze Licence for Coaching” or equivalent coaching swimmers being a holder of a current recognised swimming coaching qualification;~~
- (c) ~~a pool lifeguard who has completed a nationally recognised Lifeguarding qualification, and has been appointed to the position of pool lifeguard by the employer~~ a pool lifeguard who has been appointed to the position of pool

lifeguard by the employer and has completed a nationally-recognized Lifeguarding qualification; or

- (d) a holder of a current Gymnastics Australia Coach Accreditation or equivalent who has participated in 12 hours per year of recognised professional development and performed 1 ,500 hours of coaching.

Any dispute concerning an employee’s entitlement to be paid at Level 3 as a swimming teacher or swimming coach may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge required at this level.

A.4 Level 3A

A.4.1 An employee at this level performs the duties of a Level 3 and who:

- (a) holds a:
- (i) Fitness Industry AQF Certificate Level III qualifications relevant to the classification in which they are employed or equivalent; Fitness Industry or Sport Coaching (specialising in tennis) AQF Certificate Level III qualifications relevant to the classification in which they are employed or equivalent; or
 - (ii) in respect to gymnastics coaches, holds a current Gymnastics Coach Accreditation and Sport Coaching AQF certificate Level III; and
- (b) utilises the skills and knowledge derived from the Fitness Industry AQF Certificate Level III competencies relevant to the work undertaken at this level. utilises the skills and knowledge derived from the Sport Coaching (specialising in tennis) or relevant AQF Certificate Level III competencies relevant to the work undertaken at this level.

A.4.2 Any dispute concerning an employee’s entitlement to be paid at Level 3A may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge derived from the Fitness Industry Certificate III competencies, and that these are relevant to the work the employee is doing.

A.5 Level 4

A.5.1 An employee at this level works under limited supervision and guidance and is required to exercise initiative and judgment in the performance of their duties and who is employed to carry out work associated with the centre’s operations or holds a Gymnastics Australia Coach Accreditation.

A.5.2 An employee at this level receives broad instructions and their work is checked intermittently.

A.5.3 An employee at this level may also be:

- (a) ~~an experienced swimming and water safety teacher, being a holder of any current qualification with the competencies detailed in clause A.2.2(b)(xiii)~~

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above, who has a swimming and water safety teacher, being a holder of any current qualification with the Industry Competencies:

- ~~(i) performed 12 hours per year of recognised workshops and 500 hours of swimming and water safety teaching and who holds a third recognised teaching qualification, attended five hours per year of professional development (as recognised by a national industry body) and performed 500 hours of swimming teaching at level 3, or~~
- ~~(ii) delivered 700 hours of swimming and water safety teaching who holds a third recognised swimming and water safety teaching qualification and performed 500 hours of swimming teaching at level 3; or~~
- ~~(b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current ASCTA “Bronze Licence for Coaching” or equivalent, who has a swimming coach being a holder of a current recognised swimming coaching qualification, who has:~~
 - (i) performed 12 hours per year of recognised workshops and 500 hours of coaching beginners and attended a recognised seminar/conference within the past 12 months, or
 - (ii) delivered 700 hours of coaching beginners to swimmers.
- ~~(c) a senior pool lifeguard, being a holder of industry-recognised pool lifeguard qualifications as detailed in 3.3(c) and who has been appointed by the employer to lead a team comprised of qualified pool lifeguards, and/or persons undertaking a nationally-recognised course of lifeguarding to become pool lifeguards; or~~
- ~~(d) A gymnastics coach being the holder of a current Gymnastics Australia Coach Accreditation, who has participated in 12 hours per year of recognised professional development and 3,000 hours of coaching gymnastics.~~

~~and/or persons undertaking a nationally-recognised course of lifeguarding to become pool lifeguards.~~

~~Any dispute concerning an employee’s entitlement to be paid at Level 4 as a swimming teacher or swimming coach may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge required at this level.~~

A.6 Level 4A

A.6.1 An employee at this level performs the duties of a Level 4:

- (a) holds an:
 - (i) Fitness Industry or Sport Coaching (specialising in tennis) AQF Certificate Level IV qualifications relevant to the classification in which they are employed or equivalent; or
 - (ii) in respect of gymnastics coaches, holds a current Gymnastics Australia Coach Accreditation and Sport Coaching AQF Certificate Level IV; and

- (b) utilises the skills and knowledge derived from the Fitness Industry Sport Coaching (specialising in tennis) or relevant AQF Certificate Level III competencies relevant to the work undertaken at this level;
- (c) is employed to carry out work associated with the classification of tennis centre Club Professional.

A.6.2 Any dispute concerning an employee's entitlement to be paid at Level 4A may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge derived from the AQF Certificate Level IV competencies, and that these are relevant to the work the employee is doing.

A.7 Level 5

A.7.1 An employee at this level:

- (a) holds a Fitness Industry or Management (specialising in tennis) or Sport Coaching AQF Diploma level or equivalent;
- (b) utilises the skills and knowledge derived from the Fitness Industry or Sport Coaching or Management (specialising in tennis) AQF Diploma Level relevant to the work undertaken at this level;
- (c) is employed to carry out work associated with the classification of Fitness Trainer, ~~or Fitness Specialist,~~ tennis centre Master Club Professional or tennis centre High Performance Coach; and
- (d) has demonstrated an ability to train or develop programs for special groups.

A.7.2 An employee at this level exercises high levels of initiative and judgment with broad instruction in the performance of their duties. An employee at this level would be able to supervise Level 4 employees where requested.

A.8 Level 6

A.8.1 An employee at this level has duties which include but are not limited to:

- (a) supervision of front desk, including customer liaison and rostering of front office staff;
- (b) supervision, training and co-ordination (including rostering) of employees within their respective work area to ensure delivery of service;
- (c) those of a trade qualified person in a single trade stream and the giving of trade directions to Level 1 to 5 employees;
- (d) supervision of floor staff; or
- (e) overseeing the day to day activities and operations of the business.

A.9 Level 7

A.9.1 An employee at this level is engaged in supervising, training and coordinating employees, is responsible for the maintenance of service and operational

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standards and exercises substantial responsibility and independent initiative and judgment with a requisite knowledge of their specific field and of the employer's business.

A.9.2 An employee at this level has:

- (a) worked or studied in a relevant field and/or has specialist knowledge, qualifications and experience;
- (b) formal trade or technical qualifications relevant to the employer in more than one trade or technical field, which are required by the employer to perform the job; or
- (c) specialist post-trade qualifications which are required by the employer to perform the job and organisation or industry specific knowledge sufficient for them to give advice and/or guidance to their organisation and/or clients in relation to specific areas of their responsibility.

A.9.3 Indicative duties at this level are:

- (a) general supervision of catering or retail functions;
- (b) centre administration involving supervision of staff and systems and co-ordinating events; or
- (c) development of in-house training programs for instructors and co-ordinators.

A.10 ~~Employees classified under the provisions of A.2.2(a), A.2.2(b), A.3.3, A.4.1, A.5.3, A.6.1, A.7.1, A.8.1, A.9.2 will hold, at all times, the relevant accreditations required by both this award's classification descriptors and State and Territory legislation permitting work with children (e.g. Child Protection Police Checks). In the event of any employee losing, having suspended, or being refused such accreditation, they will advise their employer(s) within 14 days of such loss, refusal or suspension.~~ Employees classified under the provisions of this classification structure will hold, at all times, the relevant accreditations required by both this award's classification descriptors and state and territory legislation permitting work with children (e.g. Child Protection Police Checks). In the event of any employee losing, having suspended, or being refused such accreditation, they will advise their employer(s) within 14 days of such loss, refusal or suspension.

Schedule B—Summary of Hourly Rates of Pay

Rates updated as a result of AWR 2017

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

B.1 Full-time and part-time employees

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

	Ordinary hours	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	100%	125%	150%	250%
	\$	\$	\$	\$
Level 1	18.29	22.86	27.44	45.73
Level 2	18.81	23.51	28.22	47.03
Level 3	20.21	25.26	30.32	50.53
Level 3A	21.29	26.61	31.94	53.23
Level 4	22.17	27.71	33.26	55.43
Level 4A	23.23	29.04	34.85	58.08
Level 5	24.48	30.60	36.72	61.20
Level 6	24.27	30.34	36.41	60.68
Level 7	25.22	31.53	37.83	63.05

B.1.2 Full-time and part-time employees—overtime rates

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 1	27.44	36.58	36.58	45.73
Level 2	28.22	37.62	37.62	47.03
Level 3	30.32	40.42	40.42	50.53
Level 3A	31.94	42.58	42.58	53.23
Level 4	33.26	44.34	44.34	55.43

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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 4A	34.85	46.46	46.46	58.08
Level 5	36.72	48.96	48.96	61.20
Level 6	36.41	48.54	48.54	60.68
Level 7	37.83	50.44	50.44	63.05

B.2 Casual employees

B.2.1 Casual employees—ordinary, overtime and penalty rates

	Ordinary hours	Saturday, Sunday & public holidays	Overtime			
			Monday to Saturday		Sunday	Public holiday
			First 2 hours	After 2 hours		
	% of minimum hourly rate					
	125%	130%	150%	200%	200%	250%
	\$	\$	\$	\$	\$	\$
Level 1	22.86	23.78	27.44	36.58	36.58	45.73
Level 2	23.51	24.45	28.22	37.62	37.62	47.03
Level 3	25.26	26.27	30.32	40.42	40.42	50.53
Level 3A	26.61	27.68	31.94	42.58	42.58	53.23
Level 4	27.71	28.82	33.26	44.34	44.34	55.43
Level 4A	29.04	30.20	34.85	46.46	46.46	58.08
Level 5	30.60	31.82	36.72	48.96	48.96	61.20
Level 6	30.34	31.55	36.41	48.54	48.54	60.68
Level 7	31.53	32.79	37.83	50.44	50.44	63.05

Schedule C—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2017

See clause 11 for full details of allowances payable under this award.

C.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule G as the minimum weekly wage for a Level 3 employee in clause 10 = **\$ 767.80**.

Allowance	Clause	% of <u>standard rate</u> \$767.80	\$ per week unless otherwise stated
Leading hands and supervisors, in charge of:	11.2(a)		
1 to 5 employees		3.00	23.03
6 to 10 employees		4.10	31.48
More than 10 employees		5.50	42.23
Broken shift allowance	11.2(b)	1.70	13.05 per day
First aid allowance	11.2(c)	0.32	2.46 per day

C.1.1 Adjustment of wage related allowances

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

C.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clause 11.3:

Allowance	Clause	\$
Meal allowance—overtime for more than one and a half hours	11.3(a)	11.37 per occasion
Vehicle allowance:	11.3(b)	
Own motor vehicle		0.78 per km
Own motorcycle		0.26 per km
Broken shift allowance—excess fares	11.2(b)	1.89 per day

C.2.1 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.

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

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

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Schedule D—Supported Wage System

Schedule D amended in accordance with [PR581528](#)

D.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.

D.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

D.3 Eligibility criteria

D.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.

D.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.

D.4 Supported wage rates

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

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

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

D.5 Assessment of capacity

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

D.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.

D.6 Lodgement of SWS wage assessment agreement

D.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.

D.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.

D.7 Review of assessment

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

D.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.

D.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.

D.10 Trial period

- D.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.
- D.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.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$84** per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.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 D.5.

Schedule E—National Training Wage

Schedule E deleted by [PR593869](#)

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Schedule F—2016 Part-day Public Holidays

Schedule F amended in accordance with [PR580863](#)

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

F.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
- (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

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

Schedule G—Definitions

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

In this award, unless the contrary intention appears:

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

Definition of ‘centre’ inserted as per [\[2017\] FWCFB 5536](#) at [144]

centre means a venue or location at which operations in the fitness industry are conducted

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)

fitness industry has the meaning given in 3.2.

Definition of **fitness industry** has been changed in accordance with [\[2017\] FWCFB 3433](#) at [339].

~~**minimum hourly rate** means the minimum hourly rate prescribed in clause 10—
Minimum wages~~

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

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

References to Fair Work Act changed to ‘Act’. See [\[2017\] FWCFB 3433](#) at [350]

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

pool means swimming pool

standard rate means the minimum weekly rate for a Level 3 in clause 10.1—
Minimum wages

Schedule H—Agreement to Take Annual Leave in Advance

Schedule H—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583004](#).

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule I—Agreement to Cash Out Annual Leave

Schedule I—Agreement to Cash Out Annual Leave inserted in accordance with [PR583004](#).

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

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

Schedule J— Agreement for time off instead of payment for overtime inserted in accordance with [PR584102](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___