

The Funeral Industry Award—Exposure Draft was first published on 3 November 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
31 March 2017	Incorporates feedback following conference on 29 March 2017 (Transcript)	2, 7.2, 15.6, 18.4(c), 18.6(a), 19.1(b), 19.1(c), Schedule E
	Exposure draft	
26 March 2018	Incorporates changes resulting from [2017] FWCFB 3500 , PR592207 , PR592359 , PR592689 , PR593878	15.4, 16, Schedule A, Schedule B, Schedule C, Schedule D (deleted)
	Incorporates change resulting from PR583006	21.7(a)
	Incorporates changes resulting from [2017] FWCFB 3433	1.2, 2, 4, 21, 27
	Incorporates changes resulting from [2017] FWCFB 3541	11
	Incorporate changes resulting from PR598110	Schedule G
	Incorporates change resulting from [2018] FWCFB 1548	2, 7.2, 15.6 (deleted), 16, 18, 18.4, 18.6, 19, 20, Schedule E (deleted)
	Exposure Draft	
29 March 2019	Incorporates changes resulting from [2018] FWCFB 3500 , PR606431 , PR606630	15, 16, Schedule A, Schedule B, Schedule C
	Incorporates changes resulting from [2018] FWCFB 3936 , PR609434	25A
	Incorporates changes resulting from [2018] FWCFB 4695 , PR700565	11.5
	Incorporates changes resulting from PR701683	Schedule G
	Incorporates changes resulting from [2018] FWCFB 4175 and [2018] FWCFB 6852	18.6, 18.7, A.1.5
	Incorporates changes resulting from [2018] FWCFB 6863 , PR701508	6A
	Incorporates changes resulting from [2018] FWCFB 4704 , PR610271	6, 26, 26A, 27, 28
	Administrative changes by Modern Awards team	15.3 (deleted), 15A
	Incorporates changes resulting from [2018] FWCFB 4735 , PR610139	15A
	Incorporates changes resulting from [2015] FWCFB 4658	1.3

A text box indicates that the Exposure Draft has been amended.

Changes agreed to by parties appear in red text.

Underlined text indicates new text that is to be included as a result of a technical and drafting decision.

Strikethrough text indicates existing text that is to be deleted as a result of a technical and drafting decision.

Changes resulting from a determination are incorporated without any underlined text or strikethrough text.

EXPOSURE DRAFT

Funeral Industry Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Funeral Industry Award 2010* as at 16 November 2016. This exposure draft does not seek to amend any entitlements under the Funeral Industry Award 2010 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 [AM2014/269](#). 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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DRAFT

Part 1—Application and Operation of this Award

1. Title and commencement

- 1.1 This award is the *Funeral Industry Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.

Clause 1.3 inserted in accordance with [\[2015\] FWCFB 4658](#) at [4].

- 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 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. Definitions

In this award, unless the contrary intention appears:

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

coffin without limiting its general meaning, will include any coffin irrespective of the material used in its construction and manufactured for the purpose of the transfer, cremation or interment of a deceased person

conductor means an employee engaged for more than half of their working time to supervise the carrying out of funerals from any place to a cemetery or crematorium and the return from that place

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

embalmer means a full-time or part-time employee or a duly qualified casual employee engaged for more than half of their working time in the work of sterilisation and/or preservation of human remains and who may also be employed to do other work covered by this award

embalmer qualified means a person who is:

- (a) eligible for membership of the Australian Institute of Embalming or other equivalent institute; and
- (b) qualified to carry out tasks such as:

- (i) reconstructive artistry;
- (ii) cosmetic enhancements; and
- (iii) embalming of bodies for funerals and transshipment within Australia and internationally

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)

funeral director's assistant means an employee who performs tasks associated with:

- (a) preparing for funerals, including:
 - (i) assisting with the conduct of the funeral service,
 - (ii) collection and transfer of deceased persons; and
 - (iii) basic body preparation and other mortuary tasks;
- (b) cleaning duties, including mortuary cleaning; and
- (c) driving tasks; including driving hearses, mourning cars and transfer vehicles

funeral industry has the meaning given in clause 4.2

funeral services means the preparation, arrangement and assistance in conducting a ceremony to mark a person's death and/or disposing of a person's remains, including but not limited to the removal of human bodies and remains, preparing human bodies and remains for disposal, burial, or cremation

mortuary assistant means an employee who carries out embalming tasks under supervision

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](#).

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

removal means the transfer, including a transfer requested by police, of deceased human remains to the mortuary of a funeral director from any of the following places:

- (a) the place of death;

- (b) a cemetery;
- (c) a hospital;
- (d) a crematorium; or
- (e) a city mortuary.

Removal does not include any subsequent transfer of remains between a funeral director's premises or coffined remains to or from:

- (a) a funeral director's premises;
- (b) a church;
- (c) a chapel;
- (d) a residence; or
- (e) an airline, railway or shipping terminal.

standard rate means the minimum weekly wage for a Grade 5 in clause 15.1

3. The National Employment Standards and this award

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

4. Coverage

- 4.1 This industry award covers employers throughout Australia in the funeral industry and their employees in the classifications listed in 12—Classifications to the exclusion of any other modern award.
- 4.2 **Funeral industry** means the provision of funeral services, coffin manufacturing, the removal of deceased human remains and any ancillary services.
- 4.3 The award does not cover employers in the cemetery industry.
- 4.4 This award does not cover:
 - (a) an employee excluded from award coverage by the [Act](#);
 - (b) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and*

Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees; or

- (c) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*), or employers in relation to those employees.

4.5 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 4.1 and 4.2 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.

4.6 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 4.1 and 4.2 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.

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

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

5. Effect of variations made by the Fair Work Commission

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.

6. Individual flexibility arrangements

Clause 6 substituted in accordance with [PR610271](#).

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

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

- 6.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 6.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 6.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 6.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 6.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
 - (b) identify the award term, or award terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and
 - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
 - (e) state the date the agreement is to start.
- 6.7** An agreement must be:
- (a) in writing; and
 - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.
- 6.8** Except as provided in clause 6.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 6.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 6.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 6.11** An agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee; or

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

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

- 6.12** An agreement terminated as mentioned in clause 6.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 6.13** The right to make an agreement under clause 6 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6A. Requests for flexible working arrangements

Clause 6A inserted in accordance with [PR701508](#).

6A.1 Employee may request change in working arrangements

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

Note 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

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

Note 3: Clause 6A is an addition to s.65.

6A.2 Responding to the request

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

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

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

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

6A.3 What the written response must include if the employer refuses the request

Clause 6A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6A.2.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause 6A.2, the written response under s.65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee’s circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

6A.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 6A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

6A.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6A, can be dealt with under clause 27—Dispute resolution.

7. Facilitative provisions for flexible working practices

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

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

Clause	Provision	Agreement between an employer and:
13.2(c)	Spread of ordinary hours of work – alteration to spread	The majority of employees
13.2(d)	Spread of ordinary hours of work – arrangement of ordinary hours in excess of eight hours	The majority of employees

Clause	Provision	Agreement between an employer and:
13.3(b)	Rostered days off – substitute day	An individual or the majority of employers
13.3(d)	Rostered days off – banking system	Any or all employees
15A.4	Payment of wages – fortnightly pay periods	The majority of employees
18.2(b)	Ordinary hours of shiftworkers – period within which weekly average hours calculated	The majority of employees
18.2(d)	Ordinary hours of shiftworkers – arrangement of ordinary hours in excess of eight hours	An individual or the majority of employees
18.4(a)	Method of working shifts	An individual or the majority of employees
18.4(b)	Method of working shifts – time of commencing and finishing shifts	An individual or the majority of employees
19.5	Time off instead of payment for overtime	An individual
21.3	Annual leave in advance	An individual
21.4	Cashing out of annual leave	An individual

Part 2—Types of Employment and Classifications

8. Types of employment

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

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

8.2 At the time of engagement an employer will inform each employee in writing of the terms of their engagement and whether they are to be full-time, part-time or casual.

9. Full-time employment

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

9.2 Hours are to be arranged in accordance with Part 3—Hours of Work.

10. Part-time employment

- 10.1** An employer may employ part-time employees in any classification in this award.
- 10.2** A part-time employee is an employee who:
- (a) works less than 38 hours per week;
 - (b) has reasonably predictable hours of work; and
 - (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- 10.3** 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:
- (a) the hours worked each day;
 - (b) which days of the week the employee will work; and
 - (c) the starting and finishing times each day.
- 10.4** Any agreed variation to the regular pattern of work in clause 10.3 will be recorded in writing.
- 10.5** A part-time employee must be rostered for a minimum of three consecutive hours on any shift.
- 10.6** 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 11.
- 10.7** All time worked in excess of the hours as agreed under clause 10.3 or 10.4 will be overtime and paid for at the rates prescribed in clause 19—Overtime.
- 10.8** A regular part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the minimum hourly rate prescribed for the class of work performed.
- 10.9** Where a public holiday falls on a day an employee normally works, that employee will be paid the appropriate rate for the number of hours normally worked on that day. An employee's regular roster will not be altered to avoid this obligation.

11. Casual employment

- 11.1** A casual employee is engaged by the hour and paid as a casual employee.
- 11.2** For each ordinary hour worked a casual employee must be paid:
- (a) the minimum hourly rate for the appropriate classification; and
 - (b) a loading of **25%** of the minimum hourly rate.

11.3 A casual employee must be paid for a minimum of four hours' work each time the employee is required to attend work, including when engaged more than once in any day.

11.4 The minimum payment in clause 11.3 is made whether the casual employee is required to work the full four hours or not.

11.5 Right to request casual conversion

Clause 11.5 inserted in accordance with [PR700565](#).

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

- (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 27. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.3.
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- (n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.

- (q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).

12. Classifications

Employees must be classified in accordance with the classification descriptions set out in this clause.

12.1 Grade 1

- (a) Funeral director's assistant;
- (b) coffin draper; or
- (c) adult employee not mentioned elsewhere in any of Grades 2 to 6.

12.2 Grade 2

- (a) Funeral director's assistant engaged in preparation work;
- (b) unqualified embalmer in training or under supervision; or
- (c) adult employee engaged in coffin staining, including puttying, filling and sanding or buffing by mechanical means or operating a spray gun, applying stains, fillers and/or undercoats.

12.3 Grade 3

- (a) Funeral conductor;
- (b) funeral arranger; or
- (c) adult employee who operates a wood working machine but is not required to and does not perform the duties of a Grade 5 employee.

12.4 Grade 4

- (a) Embalmer; or
- (b) adult employee who does not possess appropriate qualifications and is engaged in and capable of performing functions in excess of Grade 3 skills.

12.5 Grade 5

An adult employee who:

- (a) is engaged in the polishing section and who is capable of performing all functions in that section including finishing off and pulling up and is not solely employed on the operations of a spray hand; or
- (b) is capable of operating all wood working machines in the factory and is required to grind cutters, sharpen knives and set knives or blades and set up and make necessary adjustments to such machinery; or

- (c) has appropriate qualifications and is engaged in and capable of performing all functions in the making of coffins.

12.6 Grade 6—Embalmer qualified

An adult employee who is eligible for membership of the Australian Institute of Embalming or other equivalent institute and is qualified to carry out tasks such as:

- (a) reconstructive artistry,
- (b) cosmetic enhancements; and
- (c) embalming of bodies for funerals and transshipment within Australia and internationally.

Part 3—Hours of Work

13. Ordinary hours of work—other than shiftworkers

13.1 The ordinary hours of work will be an average of 38 hours per week to be worked on one of the following bases:

- (a) 38 hours within a work cycle not exceeding seven consecutive days;
- (b) 76 hours within a work cycle not exceeding 14 consecutive days;
- (c) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (d) 152 hours within a work cycle not exceeding 28 consecutive days.

13.2 Spread of ordinary hours of work

- (a) The ordinary hours of work may be worked on Monday to Friday between 7.00 am and 7.00 pm.
- (b) The ordinary hours of work will be worked continuously, except for meal breaks, at the discretion of the employer.
- (c) The spread of hours may be altered by up to one hour at either end of the spread by agreement between an employer and the majority of employees concerned.
- (d) The number of ordinary hours worked in a day will not exceed 10 hours. Where the ordinary hours worked in a day exceed eight hours, the arrangement of hours will be subject to the agreement of the employer and a majority of employees concerned.

13.3 Rostered days off

- (a) Where an employee is entitled to a rostered day off during the work cycle, the employer will give the employee at least four weeks notice of the date they are entitled to take off.

- (b) An employer, with the agreement of the majority of employees concerned or with an individual employee, may substitute the day the employee is to take as a rostered day off for another day.
- (c) An employer, with the agreement of a majority of employees concerned or with an individual employee, may substitute the day an employee is to take as a rostered day off for another day in the case of:
 - (i) a breakdown in machinery;
 - (ii) a failure or shortage of electric power;
 - (iii) to meet the requirements of the business in the event of rush orders; or
 - (iv) some other emergency situation.
- (d) **Banking system**
 - (i) An employer and any or all of the employees in the establishment concerned may agree to a banking system of rostered day(s) off in order to cover peak demand.
 - (ii) Under the banking system, employees would work on what would normally have been their rostered day off and accrue an entitlement to bank a rostered day off over an agreed period not exceeding 10 months.
 - (iii) The day(s) off must be taken at a mutually convenient time for both the employee and the employer; provided that at least seven days' notice is given before taking the banked rostered day(s) off.

13.4 Make-up time

An employee may, with the consent of the employer elect to work make-up time, where the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours at ordinary rates.

14. Breaks

14.1 Rest after early morning work

An employee engaged for a period of four hours or more between midnight and 7.00 am is entitled to eight consecutive hours off duty after finishing work without loss of pay for ordinary hours occurring during this period.

14.2 Rest periods

Where practicable and where rest periods do not interfere with the normal running of funerals, all employees will be entitled to two paid rest periods each day as follows:

- (a) the first period of 10 minutes to be taken between the time of starting work and the usual meal break; and

- (b) the second period of 10 minutes to be taken between the usual meal break and the time of finishing work for the day.

14.3 Meal break—other than shiftworkers

- (a) A meal break of between 30 and 60 minutes will be allowed between the hours of 11.00 am and 2.30 pm.
- (b) An employee required to work during their normal meal break will be paid **150%** of the minimum hourly rate for all time worked during the meal break.

Part 4—Wages and Allowances

15. Minimum wages

Monetary amounts adjusted as a result of AWR 2018.

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

Classification	Minimum weekly rate	Minimum hourly rate
	\$	\$
Grade 1	719.20	18.93
Grade 2	739.90	19.47
Grade 3	768.30	20.22
Grade 4	794.70	20.91
Grade 5	837.40	22.04
Grade 6	863.60	22.73

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

15.2 Higher duties

- (a) An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for that day or shift.
- (b) An employee engaged on higher duties for two hours or less during one day or shift, must be paid the higher minimum wage for the time worked at that higher level.

15.3 — Payment of wages

Clause 15.3 renumbered as clause 15A.

- ~~(a) — Wages will be paid weekly during ordinary working hours.~~
- ~~(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 or financial institution.~~
- ~~(d) — Subject to agreement between the majority of employees and the employer, fortnightly pay periods may be introduced.~~

~~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.~~

15.3 15.4 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.

15.4 15.5 National training wage

Clause 15.5 varied by [PR606431](#).

- (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 2018. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Funeral Industry Award 2010* and not the *Miscellaneous Award 2010*.

15A. Payment of wages

Clause 15.3 renumbered as clause 15A; Note moved; Clause 15A varied in accordance with [PR610139](#).

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.

15A.1 Wages will be paid weekly during ordinary working hours.

15A.2 One day of each pay period will be recognised as pay day.

15A.3 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 or financial institution.

15A.4 Subject to agreement between the majority of employees and the employer, fortnightly pay periods may be introduced.

15A.5 Payment on termination of employment

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

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

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

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

16. Allowances

Monetary amounts adjusted as a result of AWR 2018.

16.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule B for a summary of monetary allowances and method of adjustment.

16.2 Wage-related allowances

(a) Stand-by allowance

For each period an employee is required to stand-by the employee will be paid the following allowance:

- (i) between normal finishing and starting time Monday to Friday—**\$12.56** per stand-by period; and/or

- (ii) on a Saturday, Sunday or any public holiday—**\$26.80** per stand-by period.

(b) Exhumations

An employee required to assist in an exhumation will be paid an allowance of **\$89.60** for each body exhumed.

(c) Leading hand allowance

An employee who is appointed by their employer to be a leading hand will be paid an allowance each week as follows:

In charge of	\$ per week
3–10 employees	33.50
11–19 employees	50.24

16.3 Expense-related allowances

(a) Meal allowance

An employee will either be supplied with a meal by the employer or paid **\$12.88** for each meal where the employee is required to:

- (i) continue work for more than two hours after the normal finishing time, Monday to Friday, without being notified on the previous day or earlier that they would be required to work; or
- (ii) travel in excess of 80 kilometres each way, for a funeral or removal, and is unable to take their midday meal break within the hours prescribed in clause 14.3(a) at the place normally provided by the employer or at the employee’s home.

(b) Tool allowance

Where an employer requires an employee engaged in coffin manufacturing to use their own tools and/or equipment, the employee must be paid a weekly tool allowance of **\$5.17** except where:

- (i) the employer provides an employee with all the tools reasonably required to perform all the functions of the employee’s employment; or
- (ii) the employer reimburses the employee the cost of providing the tools and/or equipment.

Uniform allowance issue referred to AM2018/23, see [\[2018\] FWCFB 4175](#) at [293] and [\[2018\] FWC 6107](#) at [3].

(c) Uniform allowance

Where a full-time employee is required to wear a uniform, the employer will reimburse the employee for the cost of purchasing and laundering the uniform.

(d) Vaccinations

- (i) The employer will reimburse the employee for costs of receiving vaccinations from a qualified medical practitioner that are necessary for health and safety at work.
- (ii) Vaccinations will include but not be limited to injections for Tetanus and Hepatitis B.
- (iii) The employee must be allowed the necessary time off work without loss of pay but must, if required by the employer, establish by production of a medical certificate from a registered medical practitioner, that the employee was receiving vaccinations in order to receive payment and reimbursement.
- (iv) Should the employee refuse vaccinations on medical or personal grounds, the employer reserves the right to redeploy the employee.

(e) Vehicle allowance

- (i) Vehicles (including hearses, mourning cars and transfer vehicles) provided by the employer will be fitted with air conditioning.
- (ii) For the purpose of removals only, vehicles will as far as practicable have the front compartment sealed from the rear compartment.
- (iii) Employees required by their employer to use their own motor vehicle in the performance of their duties will be paid **\$0.78** per kilometre.

See Schedule B for a summary of monetary allowances.

17. Superannuation

17.1 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.

17.2 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.

17.3 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 17.2.
- (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 17.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or (b) was made.

17.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 and pay the amount authorised under clauses 17.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) Sunsuper;
- (c) CareSuper;
- (d) 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
- (e) a superannuation fund or scheme which the employee is a defined benefit member of.

17.5 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 17.2 and pay the amount authorised under clauses 17.3(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—Overtime and Penalty Rates

18. Shiftwork

18.1 Definitions

- (a) **Afternoon shift** means any shift finishing after 7.00 pm and at or before midnight, Monday to Friday.
- (b) **Non-continuing afternoon shift** means any afternoon shift which does not continue:
 - (i) for at least five successive afternoons; or
 - (ii) for at least the number of ordinary hours prescribed by one of the alternative arrangements in clause 18.2.
- (c) **Rostered shift** means a shift for which the employee concerned has had at least 48 hours' notice.

18.2 Ordinary hours of shiftworkers

- (a) The ordinary hours of shiftworkers will not, subject to clause 18.2(c), exceed an average of 38 hours per week over a cycle of up to four weeks.
- (b) By agreement between the employer and a majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds four weeks.
- (c) The maximum hours worked in a shift will not exceed 10 hours.
- (d) Where the ordinary working hours will exceed eight on any shift, the arrangement of hours will be subject to the agreement of the employer and a majority of employees concerned or between the employer and an individual employee.

18.3 Rosters

Shift rosters will specify the commencing and finishing times of ordinary working hours of the respective shifts.

18.4 Method of working shifts

- (a) Subject to clause 18.2, the method of working shifts may be varied by agreement between the employer and a majority of employees or between the employer and an individual employee.

- (b) The time of starting and finishing shifts may be varied by agreement between the employer and a majority of employees to suit the circumstances of the establishment or in the absence of agreement, by the employer giving the employees seven days' notice of the variation.
- (c) Changes to an employee's regular roster or ordinary hours of work will be subject to clause 26A—Consultation about changes to rosters or hours of work.

18.5 Afternoon shift penalties

- (a) A shiftworker whilst on afternoon shift will be paid **120%** of the minimum hourly rate.
- (b) A shiftworker on a non-continuing afternoon shift will be paid **150%** of the minimum hourly rate for all ordinary hours worked during the shift.

18.6 Overtime for shiftworkers—Afternoon shiftworker

Clause 18.6 amended in accordance with [\[2018\] FWCFB 4175](#) at [270], [275] and [\[2018\] FWCFB 6852](#) at [54].

~~(a) All time worked in excess of, or outside the ordinary working hours in clause 18.2, or on a shift other than a rostered shift, will be paid at 150% of the applicable rate minimum hourly rate for the first three hours and 200% thereafter.~~

~~(b) When less than 7 hours 36 minutes' notice has been given to the employer by a relief employee that they will be absent from work, and the employee whom the relief employee should relieve is not relieved and is required to continue to work on the employee's rostered day off, the unrelieved employee will be paid 200% of the applicable rate minimum hourly rate.~~

(a) All time worked in excess of, or outside the ordinary working hours in clause 18.2 by a shiftworker, or on a shift other than a rostered shift, will be paid at 170% of the minimum hourly rate for the first three hours and 220% thereafter.

(b) When less than 7 hours 36 minutes' notice has been given to the employer by a relief employee that they will be absent from work, and the employee whom the relief employee should relieve is not relieved and is required to continue to work on the employee's rostered day off, the unrelieved employee will be paid 220% of the minimum hourly rate.

(c) This clause operates to the exclusion of clause 18.5

Clause 18.7 inserted in accordance with [\[2018\] FWCFB 4175](#) at [270], [275] and [\[2018\] FWCFB 6852](#) at [54].

18.7 Overtime for shiftworkers—Non-continuing afternoon shiftworker

(a) All time worked in excess of, or outside the ordinary working hours in clause 18.2 by a shiftworker on a non-continuing afternoon shift, or on a shift other than a rostered shift, will be paid at 200% of the minimum hourly rate for the first three hours and 250% thereafter.

- (b) When less than 7 hours 36 minutes' notice has been given to the employer by a relief employee that they will be absent from work, and the employee whom the relief employee should relieve is not relieved and is required to continue to work on the employee's rostered day off, the unrelieved employee will be paid 250% of the minimum hourly rate.

- (c) This clause operates to the exclusion of clause 18.5.

Clauses 18.7 to 18.9 renumbered in accordance with [\[2018\] FWCFB 4175](#) at [275] and [\[2018\] FWCFB 6852](#) at [54].

18.8 ~~18.7~~ Rest periods on afternoon shift

A shiftworker working on afternoon shift will be entitled to rest periods in accordance with clause 14.2.

18.9 ~~18.8~~ Unpaid meal break

An employee who works for more than five consecutive hours will be given an unpaid meal break of at least 30 minutes' duration.

18.10 ~~18.9~~ Public holidays

For work performed on a rostered shift on a public holiday, shiftworkers will be paid in accordance with clause 20.1(c).

19. Overtime

Payment for overtime—other than shift workers issue referred to AM2018/23, see [\[2018\] FWCFB 4175](#) at [292] and [\[2018\] FWC 6107](#) at [3].

19.1 Payment for overtime—other than shiftworkers

- (a) For work performed outside the hours fixed as the times for starting and finishing work in clause 13.2, an employee will be paid **150%** of the minimum hourly rate for the first three hours worked and **200%** of the minimum hourly rate thereafter.
- (b) Where an employee is recalled to work before 7.00 am or after 7.00 pm for other than arranged overtime, the employee will be paid a minimum of one hour's pay at the applicable overtime or penalty rate specified in either clause 19.1(a) or clause 20.1 on each occasion the employee is recalled to work overtime.
- (c) The base hourly rate for calculating overtime will be the employee's minimum hourly rate in clause 15.1.

19.2 Work on a rostered day off—other than shiftworkers

An employee will be paid **150%** of the minimum hourly rate for work performed on an employee's rostered day off.

19.3 Overtime for shiftworkers

Overtime for shiftworkers will be paid in accordance with clause 18.6.

19.4 Removals

Removals issue referred to AM2018/23, see [\[2018\] FWCFB 4175](#) at [292] and [\[2018\] FWC 6107](#) at [3].

- (a) Where an employee is called to undertake removals between the hours of 7.00 pm and midnight and work is completed at or prior to midnight, the employee will be paid **150%** of the minimum hourly rate for the first three hours of work and **200%** of the minimum hourly rate thereafter with a minimum payment of two hours.
- (b) Where an employee is called to undertake a removal, any portion of which occurs between the hours of midnight and 7.00 am, the employee will be paid **200%** of the minimum hourly rate with a minimum payment of two hours.
- (c) If a removal starts between the starting and finishing times as prescribed in clause 13.2, the employee will be paid at the rate prescribed in clause 19.1. If a subsequent removal is requested after 7.00 pm, although the original removal started before that time, the employee will be paid at the rate as prescribed in clause 19.4, for the subsequent removal.

19.5 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.5.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in 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 D. There is no requirement to use the form of agreement set out at Schedule D. An agreement under clause 19.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 19.5 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
- (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in 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 19.5 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.5 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 19.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.5.

20. Penalty rates

Penalty rates issue referred to AM2018/23, see [\[2018\] FWC 6107](#) at [3] and [\[2018\] FWCFB 6852](#) at [49].

20.1 Work on Saturday, Sunday or public holidays

With the exception of removals, payment for work performed on a Saturday, Sunday or public holiday (or day substituted for a public holiday) will be as follows:

(a) Saturday

- (i) For work performed on a Saturday, employees will be paid **150%** of the minimum hourly rate for the first three hours worked, and **200%** of the minimum hourly rate thereafter, with a minimum of two hours' pay.
- (ii) Where an employee is engaged in the carrying out of a funeral on a Saturday, the employee will receive a minimum of four hours' pay at the following rates:
 - if the work is completed in three hours or less, the total minimum payment will be paid at **150%** of the minimum hourly rate; and/or
 - if the work exceeds three hours, all additional time will be paid at **200%** of the minimum hourly rate.

(b) Sunday

For all time worked on a Sunday an employee will be paid **200%** of the minimum hourly rate, with a minimum payment of two hours' pay.

(c) Public holidays

- (i) **200%** of the employee's minimum hourly rate will be paid for all work performed on a public holiday.
- (ii) The rates prescribed in clause 20.1(c) for shiftworkers are in substitution for, and not cumulative on, the shift penalty prescribed in clause 18.5.

Clause 20.1(d) referred to AM2018/23, see [\[2018\] FWCFB 4175](#) at [298].

- (d) Work performed by part-time and casual employees, as prescribed in clauses 20.1(a)-(c), is subject to the applicable minimum engagement periods prescribed at clauses 10.5 and 11.3.

Part 6—Leave and Public Holidays

21. Annual leave

21.1 Annual leave is provided for in the [NES](#).

21.2 Leave loading

During a period of annual leave an employee will receive a loading of **17.5%** of the appropriate rate prescribed in clause 15—Minimum wages.

21.3 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 21.3 is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E.

- (c) The employer must keep a copy of any agreement under clause 21.3 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 21.3, 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.

21.4 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 21.4.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 21.4.
- (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 21.4 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 21.4 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 21.4 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 21.4.

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 21.4.

Note 3: An example of the type of agreement required by clause 21.4 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

21.5 Excessive leave accruals: general provision

Note: Clauses 21.5 to 21.7 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks’ paid annual leave.
- (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 21.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 21.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

21.6 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 21.5(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 21.5, 21.6 or 21.7 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 21.6(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.

21.7 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 21.5(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.
- (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 21.6(a) that, when any other paid annual leave arrangements (whether made under clause 21.5, 21.6 or 21.7 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 21.5, 21.6 or 21.7 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.
- (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).

22. Personal/carer's leave and compassionate leave

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

23. Parental leave and related entitlements

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

24. Public holidays

24.1 Public holiday entitlements are provided for in the [NES](#).

24.2 An employee who works on a public holiday will be paid in accordance with clause 20.1(c)—Public holidays.

24.3 Part-day Public Holidays

For provisions relating to part-day public holidays see Schedule G—Part-day Public Holidays.

25. Community service leave

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

25A. Leave to deal with family and domestic violence

Clause 25A inserted in accordance with [PR609434](#).

25A.1 This clause applies to all employees, including casuals.

25A.2 Definitions

- (a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member in clause 25A.2(a) includes a former spouse or de facto partner.

25A.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note 1: A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

Note 2: The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

25A.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

25A.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

25A.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 26A. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause 26A must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 26A.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

26A.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 26A.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 26A prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

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

26A.8 Compliance

An employee is not entitled to take leave under clause 26A unless the employee complies with clause 26A.

Part 7—Consultation and Dispute Resolution

26. Consultation about major workplace change

Clause 26 substituted in accordance with [PR610271](#).

- 26.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
 - (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
 - (c) commence discussions as soon as practicable after a definite decision has been made.
- 26.2** For the purposes of the discussion under clause 26.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
 - (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 26.3** Clause 26.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 26.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 26.1(b).
- 26.5** In clause 26 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or

- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

26.6 Where this award makes provision for alteration of any of the matters defined at clause 26.5, such alteration is taken not to have significant effect.

26A. Consultation about changes to rosters or hours of work

Clause 26A inserted in accordance with [PR610271](#).

26A.1 Clause 26A applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

26A.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).

26A.3 For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 26A.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

26A.4 The employer must consider any views given under clause 26A.3(b).

26A.5 Clause 26A is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

27. Dispute resolution

Clause 27 substituted in accordance with [PR610271](#).

27.1 Clause 27 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

27.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

27.3 If the dispute is not resolved through discussion as mentioned in clause 27.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

- 27.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 27.2 and 27.3, a party to the dispute may refer it to the Fair Work Commission.
- 27.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 27.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 27.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 27.
- 27.8 While procedures are being followed under clause 27 in relation to a dispute:
 - (a) work must continue in accordance with this award and the [Act](#); and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 27.9 Clause 27.8 is subject to any applicable work health and safety legislation.

Part 8—Termination of Employment and Redundancy

28. Termination of employment

Clause 28 substituted in accordance with [PR610271](#).

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

28.1 Notice of termination by an employee

- (a) Clause 28.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

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

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

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

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

28.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 28.2 is to be taken at times that are convenient to the employee after consultation with the employer.

29. Redundancy

Redundancy provisions structure is subject to further consideration by the Plain Full Bench, see [\[2018\] FWCFB 6439](#).

~~Redundancy pay is provided for in the NES.~~

30. ~~Transfer to lower paid job on redundancy~~

~~Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer’s option, make payment instead of an amount 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.~~

31. ~~Employee leaving during redundancy 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 clause 29 – Redundancy had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.~~

32. ~~Job search entitlement~~

32.1 ~~Job search entitlement for notice of termination of employment~~

~~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.~~

32.2 ~~Job search entitlement – redundancy~~

(a) ~~Time off for seeking other employment~~

~~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) ~~Proof of attendance~~

~~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.~~

Schedule A—Summary of Hourly Rates of Pay

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

Monetary amounts in this clause adjusted as a result of AWR 2018.

A.1 Full-time and part-time employees

A.1.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Employees undertaking removals			Public holiday – all employees other than employees undertaking removals
		7.00 pm to midnight and 7.00 am to 7.00 pm		Midnight to 7.00 am – all hours worked	
		First 3 hours	After first 3 hours		
% of minimum hourly rate					
	100%	150%	200%	200%	200%
	\$	\$	\$	\$	\$
Grade 1	18.93	28.40	37.86	37.86	37.86
Grade 2	19.47	29.21	38.94	38.94	38.94
Grade 3	20.22	30.33	40.44	40.44	40.44
Grade 4	20.91	31.37	41.82	41.82	41.82
Grade 5	22.04	33.06	44.08	44.08	44.08
Grade 6	22.73	34.10	45.46	45.46	45.46

A.1.2 Full-time and part-time employees other than shiftworkers—overtime rates

	Monday to Saturday – first 3 hours	Monday to Saturday – after 3 hours	Sunday – all day	Public holiday – all day
% of minimum hourly rate				
	150%	200%	200%	200%
	\$	\$	\$	
Grade 1	28.40	37.86	37.86	37.86
Grade 2	29.21	38.94	38.94	38.94
Grade 3	30.33	40.44	40.44	40.44
Grade 4	31.37	41.82	41.82	41.82

	Monday to Saturday – first 3 hours	Monday to Saturday – after 3 hours	Sunday – all day	Public holiday – all day
	% of minimum hourly rate			
	150%	200%	200%	200%
	\$	\$	\$	
Grade 5	33.06	44.08	44.08	44.08
Grade 6	34.10	45.46	45.46	45.46

A.1.3 Full-time and part-time shiftworkers—ordinary and penalty rates

	Day shift	Afternoon	Non-continuing afternoon¹	Public holiday
	% of minimum hourly rate			
	100%	120%	150%	200%
	\$	\$	\$	\$
Grade 1	18.93	22.72	28.40	37.86
Grade 2	19.47	23.36	29.21	38.94
Grade 3	20.22	24.26	30.33	40.44
Grade 4	20.91	25.09	31.37	41.82
Grade 5	22.04	26.45	33.06	44.08
Grade 6	22.73	27.28	34.10	45.46

¹ **Non-continuing afternoon shift** means any afternoon shift which does not continue for at least five successive afternoons or for at least the number of ordinary hours prescribed by one of the alternative arrangements in clause 18.2 (see clause 18.5(b)).

A.1.4 Full-time and part-time shiftworkers—overtime

	Afternoon shift	Non-continuing afternoon shift¹	Monday to Friday – first 3 hours	Monday to Friday – after 3 hours
	% of minimum hourly rate			
	120%	150%	150%	200%
	\$	\$	\$	\$
Grade 1	22.72	28.40	28.40	37.86
Grade 2	23.36	29.21	29.21	38.94
Grade 3	24.26	30.33	30.33	40.44
Grade 4	25.09	31.37	31.37	41.82

	Afternoon shift	Non-continuing afternoon shift ¹	Monday to Friday – first 3 hours	Monday to Friday – after 3 hours
	% of minimum hourly rate			
	120%	150%	150%	200%
Grade 5	26.45	33.06	33.06	44.08
Grade 6	27.28	34.10	34.10	45.46

¹ **Non-continuing afternoon shift** means any afternoon shift which does not continue for at least five successive afternoons or for at least the number of ordinary hours prescribed by one of the alternative arrangements in clause 18.2. (see clause 18.5(b)).

A.1.5 Full-time and part-time shiftworkers—overtime from midnight Friday until midnight Sunday

Schedule A.1.5 inserted in accordance with [\[2018\] FWCFB 4175](#) at [277] and [\[2018\] FWCFB 6852](#) at [52] and [54].

	<u>Day shift (minimum hourly rate)</u>	<u>Afternoon shift – Saturday and Sunday</u>		<u>Non-continuing afternoon shift¹ – Saturday and Sunday</u>	
		<u>First 3 hours</u>	<u>After 3 hours</u>	<u>First 3 hours</u>	<u>After 3 hours</u>
	<u>% of minimum hourly rate</u>				
	<u>100%</u>	<u>170%</u>	<u>220%</u>	<u>200%</u>	<u>250%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>Grade 1</u>	<u>18.93</u>	<u>32.18</u>	<u>41.65</u>	<u>37.86</u>	<u>47.33</u>
<u>Grade 2</u>	<u>19.47</u>	<u>33.10</u>	<u>42.83</u>	<u>38.94</u>	<u>48.68</u>
<u>Grade 3</u>	<u>20.22</u>	<u>34.37</u>	<u>44.48</u>	<u>40.44</u>	<u>50.55</u>
<u>Grade 4</u>	<u>20.91</u>	<u>35.55</u>	<u>46.00</u>	<u>41.82</u>	<u>52.28</u>
<u>Grade 5</u>	<u>22.04</u>	<u>37.47</u>	<u>48.49</u>	<u>44.08</u>	<u>55.10</u>
<u>Grade 6</u>	<u>22.73</u>	<u>38.64</u>	<u>50.01</u>	<u>45.46</u>	<u>56.83</u>

¹ **Non-continuing afternoon shift** means any afternoon shift which does not continue for at least five successive afternoons or for at least the number of ordinary hours prescribed by one of the alternative arrangements in clause 18.2. (see clause 18.5(b)).

A.2 Casual employees

A.2.1 Casual employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Employees undertaking removals			Public holiday – all employees other than employees undertaking removals
		7.00 pm to midnight and 7.00 am to 7.00 pm		Midnight to 7.00 am – all hours worked	
		First 3 hours	After first 3 hours		
% of minimum hourly rate					
	125%	175%	225%	225%	225%
	\$	\$	\$	\$	\$
Grade 1	23.66	33.13	42.59	42.59	42.59
Grade 2	24.34	34.07	43.81	43.81	43.81
Grade 3	25.28	35.39	45.50	45.50	45.50
Grade 4	26.14	36.59	47.05	47.05	47.05
Grade 5	27.55	38.57	49.59	49.59	49.59
Grade 6	28.41	39.78	51.14	51.14	51.14

A.2.2 Casual shiftworkers—ordinary and penalty rates

	Day shift	Afternoon shift	Non-continuing afternoon shift ¹	Monday to Friday – first 3 hours	Monday to Friday – after 3 hours
% of minimum hourly rate					
	125%	145%	175%	175%	225%
	\$	\$	\$	\$	\$
Grade 1	23.66	27.45	33.13	33.13	42.59
Grade 2	24.34	28.23	34.07	34.07	43.81
Grade 3	25.28	29.32	35.39	35.39	45.50
Grade 4	26.14	30.32	36.59	36.59	47.05
Grade 5	27.55	31.96	38.57	38.57	49.59
Grade 6	28.41	32.96	39.78	39.78	51.14

¹ **Non-continuing afternoon shift** means any afternoon shift which does not continue for at least five successive afternoons or for at least the number of ordinary hours prescribed by one of the alternative arrangements in clause 18.2. (see clause 18.5(b)).

Schedule B — Summary of Monetary Allowances

See clause 16—Allowances for full details of allowances payable under this award.

Monetary amounts in this clause adjusted as a result of AWR 2018.

B.1 Wage-related allowances:

The wage-related allowances in this award are based on the standard rate as defined in clause 2 as the minimum weekly wage for a Grade 5 in clause 15.1 = **\$837.40**

Allowance	Clause	% of standard rate \$837.40	\$ per week unless stated otherwise
Stand-by allowance:	16.2(a)		
Between normal finishing and starting time—Monday to Friday	16.2(a)(i)	1.5	12.56 per stand-by period
Saturday, Sunday and public holidays	16.2(a)(ii)	3.2	26.80 per stand-by period
Exhumation allowance	16.2(b)	10.7	89.60 per body
Leading hand, in charge of:	16.2(c)		
3 to 10 employees	16.2(c)	4.0	33.50
11 to 19 employees	16.2(c)	6.0	50.24

B.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.

B.2 Expense-related allowances

The following expense-related allowances will be payable to employees in accordance with clause 16.3:

Allowance	Clause	\$
Meal allowance—overtime of more than two hours after normal ceasing time without notice	16.3(a)(i)	12.88 per meal
Travelling meal allowance	16.3(a)(ii)	12.88 per meal
Tool allowance—employee engaged in coffin manufacturing	16.3(b)	5.17 per week
Vehicle allowance	16.3(e)	0.78 per km

B.2.1 Adjustment of expense-related allowances

- (c) 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.
- (d) 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 allowances	Take away and fast foods sub-group
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group

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Schedule C—Supported Wage System

Schedule amended in accordance with [PR606630](#).

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 **\$86** 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 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.

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 supported wage system.

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 \$86 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—Agreement for Time Off Instead of Payment for Overtime

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule E—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule F—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule G—Part-day Public Holidays

Schedule I amended in accordance with [PR701683](#).

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).

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

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause G.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 G.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](#).