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Publication date	Reason for amendments	Clauses affected
15 January 2016	Exposure Draft	
29 July 2016	As agreed by the parties and in accordance to the Report to the Full Bench 3 June 2016	1.2, 2.3, 3.5, 3.6, 6.5(c)(ii), 8, 8.1(a)(iv), 9.1(a), 10.2, 10.3(b), 10.4(a), 11.3(a)(ii), 11.3(a)(iii) (deleted), 11.3(b)(i), 14.1(h), 15.4 (deleted), 20.3, B.2.3, Schedule G
	Incorporating changes resulting from PR580863	Schedule F
	Incorporating changes resulting from [2016] FWCFB 3500 , PR579790 , PR579534 , PR581528	10, 11.2, 11.3, Schedule B, Schedule C, Schedule D, Schedule E
	Exposure Draft	
2 November 2017	Incorporate changes resulting from PR583017	16, Schedule H, Schedule I
	Note added	Schedule B
	Incorporates changes resulting from [2017] FWCFB 3500 , PR592124 , PR592288 , PR592689 , PR593823	10, 11, Schedule B, Schedule C, Schedule D, Schedule E
	Incorporates changes resulting from [2017] FWCFB 3433	1, 3, Schedule G
	Incorporates changes resulting from [2017] FWCFB 3541	6, 8
	Incorporates changes resulting from [2017] FWCFB 5536	2, 3.5, 3.6, 5.2, 6.5, 8, 8.1, 9.1, 9.2, 9.3, 11.3, 14.1, 15.4 (deleted), 20.3, Schedule B, Schedule G

Changes agreed to by parties appear in red text. Red text indicates new text that is to be included. Strikethrough text in red indicates existing text that is to be deleted.

EXPOSURE DRAFT

Horticulture Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Horticulture Award 2010* (the Horticulture award) as at 15 January 2016. This exposure draft does not seek to amend any entitlements under the Horticulture award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/231](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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

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Part 1—Application and Operation

1. Title and commencement

1.1 This award is the *Horticulture Award 2016*.

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

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

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

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

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

2. The National Employment Standards and this award

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

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

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

Parties expressed a preference for the wording of this clause which departs from the Full Bench decision [\[2014\] FWCFB 9412](#) at [29].

The employer must ensure that copies of the award and the NES are available to all employees to whom they apply. This may be achieved by making them available electronically, on a noticeboard which is conveniently located at or near the workplace, or through some other reasonable accessible means.

3. Coverage

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

3.1 This industry award covers employers throughout Australia in the horticulture industry and their employees in the classifications listed in Schedule A—Classification Definitions, to the exclusion of any other modern award.

3.2 Horticulture industry means:

- (a) agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivating, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or
- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.

3.3 Horticulture industry does not mean:

- (a) the wine industry;
- (b) silviculture and afforestation;
- (c) sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals;
- (d) any work in or in connection with cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed;
- (e) plant nurseries; or
- (f) a broadacre mixed farming enterprise as defined in the *Pastoral Award 2016*.

3.4 This award does not cover:

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

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

- 3.5** This award covers any employer which supplies labour on an on-hire basis in the horticulture industry ~~set out in clauses 3.1 and 3.2~~ 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.
- 3.6** This award covers employers which provide group training services for trainees engaged in the horticulture industry ~~and/or parts of industry set out at clauses 3.1 and 3.2~~ 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.
- 3.7** 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.

Coverage under clause 3 referred to Full Bench - [AM2016/25](#) – see [report to Full Bench 3 June 2016](#) and [Transcript 6 June 2016](#) at [PN462 – PN464]

4. Award flexibility

- 4.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:
- (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances; and
 - (e) leave loading.
- 4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 4.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and

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

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

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

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

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

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

4.8 The agreement may be terminated:

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

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

4.9 The notice provisions in clause 4.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 4.8(a), subject to four weeks' notice of termination.

4.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

5. Facilitative provisions

5.2 varied as per [230] of [2017] FWCFB 5536

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

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

Clause	Provision	Agreement between an employer and:
8.1(a)(ii)	Ordinary hours of work—span of hours	The majority of employees
8.1(a)(iii)	Ordinary hours of work—number per day	The majority of employees
0	Meal breaks	An individual
9.2(b)	Rest breaks	An individual
10.2(a)	Minimum wages — pieceworkers	An individual
15.2(b)(i)	<u>Time off instead of payment for overtime</u>	<u>An individual</u>
15.3(c)	Payment of overtime — work on a Saturday	The majority of employees
16.3	Annual leave — conversion to hourly entitlement	The majority of employees
16.7	Annual leave — paid leave in advance	An individual
20.2	Substitution of certain public holidays by agreement	An individual or the majority of employees

Part 2—Types of Employment and Classifications

6. Types of employment

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

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

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

6.3 Full-time employees

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

6.4 Part-time employees

Parties expressed some concern that clause 6.4 does not provide enough certainty about the hours of work for part-time employees. This issue was not dealt with in the Casual employment and Part-time employment decision (see [AM2014/197](#) and [AM2014/196](#)); parties were asked to comment on how this matter should be progressed. See [\[2017\] FWCFB 3541](#).

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

Parties are to provide any comments/objections to the proposal at [197]–[198] cby **Friday, 24 November 2017**.

- (b) For each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate for the relevant classification in clause 10—Minimum wages.
- (c) An employer must inform a part-time employee of their ordinary hours of work and starting and finishing times.
- (d) All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate in accordance with clause 15—Overtime.

6.5 Casual employees

Uncertain whether casual employees are entitled to overtime rates. Interaction of provisions may cause uncertainty amongst award users regarding whether overtime rates in 8.1 and 8.1(a) (iv) apply to casuals. See [AM2014/197](#) and [AM2014/196](#)

A Full Bench determined that penalty rates for casuals should be prescribed see [\[2017\] FWCFB 3541](#) at [PN748].

- (a) A casual employee is an employee who is engaged and paid as a casual employee.

The Full Bench found that the ordinary hours of casual employees should be no more than 12 hours per day. Parties are invited to make further submissions by 2 August 2017 on whether the ordinary daily hours of casual employees should be limited to the period of 6 am to 6 pm as it is for part-time and full-time employees. See [\[2017\] FWCFB 3541](#) at [752].

- (b) A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours the employer requires the employee to work.

(c) Casual loading

- (i) For each ~~ordinary~~ hour worked, a casual employee must be paid:
- the ordinary hourly rate; and
 - a loading of **25%** of the ordinary hourly rate,
- for the classification in which they are employed.
- (ii) The casual loading is paid instead of annual leave, paid personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment under this award.

7. Classifications

Employees will be classified in accordance with the classification descriptions contained in Schedule A—Classification Definitions.

Part 3—Hours of Work

Parties in dispute as to whether there can be casual shift workers under the award – see [Report to Full Bench](#) – 25/08/2016. Parties to advise the Commission as to whether they wish to pursue the issue further.

Further submissions sought by **Friday, 24 November 2017** about whether casuals can be shiftworkers.

8. Ordinary hours of work and rostering (day workers)

8.1 Ordinary hours and roster cycles

- (a) The ordinary hours of work for all full-time and part-time employees other than shiftworkers will not exceed 152 hours over a four week period provided that:
- (i) The ordinary hours will be worked:
- between Monday and Friday inclusive; or
 - between Monday and Saturday inclusive by arrangement between the employer and the majority of employees in the section/s concerned.
- (ii) The ordinary hours will be worked between 6.00 am and 6.00 pm except if varied by arrangement between the employer and the majority of the employees in the section/s concerned.
- (iii) The ordinary hours will not exceed eight hours per day except by arrangement between the employer and the majority of employees in the section/s concerned in which case ordinary hours should not exceed 12 hours on any day.

Addition of ‘in excess of or outside of the ordinary hours’ not yet resolved. Parties to provide view

on proposal. See [AWU submissions 17/04/2016](#) at [7] and [Report to Full Bench 25/08/2017](#)

8.1(a)(iv) varied as per [232] of [\[2017\] FWCFB 5536](#)

- (iv) All time worked by full-time and part-time employees in excess of the ordinary hours or outside of the ordinary hours will be deemed overtime ~~and paid in accordance with clause 15—Overtime.~~

9. Breaks

9.1 Meal break

- ~~(a) A meal break of between 30 minutes and one hour will be allowed each day, to be taken not later than five hours after starting ordinary hours of work.~~

- (a) A meal break of not less than 30 minutes and not more than one hour will be allowed each day, to be taken not later than five hours after commencing ordinary hours of work. Provided that where there is agreement between the employer and an individual employee, the meal break may be taken at a time agreed.

~~Where there is agreement between the employer and an individual employee, the meal break may be taken at a time agreed.~~

- (b) All work performed on the instruction of the employer during a recognised meal break will be paid for at **200%** of the appropriate ordinary hourly rate. Such payment will continue until the employee is released for a meal break of not less than 30 minutes.

9.2(a) varied as per [219] of [\[2017\] FWCFB 5536](#)

9.2 Rest break

- (a) Employees will be allowed a paid rest break of 10 minutes each ~~morning~~ day or shift.
- (b) Where agreement is reached between the employer and employee for an additional rest break, such rest break will be unpaid and in addition to the employee's ordinary hours of work.

9.3 Ten hour break after ceasing work for the day

9.3(a) varied as per [223] of [\[2017\] FWCFB 5536](#)

- (a) An employee is entitled to a break of 10 hours between finishing work on one day and commencing work on the next day or shift.
- (b) Overtime rates will be paid in accordance with clause 15—Overtime for work required to be performed where an employee has not had the 10 hour break until such time as the employee is released and able to take the 10 hour break.

Part 4—Wages and Allowances

10. Minimum wages

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

10.1 Adult employee minimum wages

Parties are to provide any comments/objections to the proposal at [197]–[198] of [\[2017\] FWCFB 5536](#) by Friday, 24 November 2017.

- (a) The classifications and minimum wages for an adult employee are set out in the following table:

Classification	Minimum weekly wage	Minimum hourly rate ¹
	\$	\$
Level 1	694.90	18.29
Level 2	714.90	18.81
Level 3	735.50	19.36
Level 4	763.30	20.09
Level 5	809.10	21.29

¹Consistent with the definition for **ordinary hourly rate** in Schedule G—Definitions all purpose allowances need to be added to the rates in the table where they are applicable.

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

- (b) For the purposes of clause 10.1(a), any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.

10.2 Pieceworkers

Parties are to provide any comments/objections to the proposal at [227]–[228] of [\[2017\] FWCFB 5536](#) by Friday, 24 November 2017.

- (a) An employer and a full-time, part-time or casual employee may enter into an agreement for the employee to be paid a piecework rate. An employee on a piecework rate is a **pieceworker**.
- (b) The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least **15%** more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.

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- (c) The calculation of piecework rates in clause 10.2(b) for casual employees will include the casual loading prescribed in clause 6.5(c)(i).
- (d) An agreed piecework rate is paid instead of the minimum wages specified in clause 10.1.
- (e) The following clauses of this award do not apply to an employee on a piecework rate:
 - (i) Clause 8—Ordinary hours of work and rostering;
 - (ii) Clause 14—Shiftwork
 - (iii) Clause 15—Overtime; and
 - (iv) Clause 11.3(c)—Meal allowances
 - ~~(iv) Clause 15.4—Meal allowance~~
- (f) The employer and the individual employee must have genuinely made the piecework agreement without coercion or duress.
- (g) The piecework agreement between the employer and the individual employee must be in writing and signed by the employer and the employee.
- (h) The employer must give the individual employee a copy of the piecework agreement and keep it as a time and wages record.
- (i) Nothing in this award guarantees an employee on a piecework rate will earn at least the minimum ordinary time weekly wage or hourly rate in this award for the type of employment and the classification level of the employee, as the employee's earnings are contingent on their productivity.
- (j) For the purposes of the NES:
 - (i) The base rate of pay for a pieceworker is the base rate of pay as defined in the NES.
 - (ii) The full rate of pay for a pieceworker is the full rate of pay as defined in the NES.

10.3 Juniors

- (a) The minimum wage payable to a junior employee will be the percentage of the adult rate prescribed for the classification upon which the employee is employed as set out in the following table:

Age	Percentage of appropriate adult rate %
Under 16 years of age	50
16 years of age	60
17 years of age	70
18 years of age	80

Age	Percentage of appropriate adult rate %
19 years of age	90
20 years of age	100

- (b) The wage payable to a junior will, in the case of a weekly employee, be calculated to the nearest \$0.10, and in the case of an hourly employee, be calculated to the nearest ~~quarter of one cent~~.

10.4 Payment of wages

(a) **Period of payment**

Wages must be paid weekly or fortnightly according to the actual **ordinary** hours worked each week or fortnight, or according to the applicable piecework payment.

(b) **Method of payment**

Wages must be paid by cash, cheque or electronic funds transfer into the employee’s bank or other recognised financial institution account.

(c) **Payment of wages on termination of employment**

Payment of wages on termination is being considered in matter [AM2016/8](#), see [draft determination](#) (at attachment A of Statement)

The Full Bench expressed provisional model term for payment of wage on termination. Parties are asked to consider whether the model term is appropriate for the *Horticulture Award*. See [\[2017\] FWCFB 2729](#) at [16].

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.

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.

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

10.6 Supported wage system

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

10.7 National training wage

Clause 10.7 substituted per [PR593823](#)

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

11. Allowances

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

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

11.2 Wage related allowances

(a) All-purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) leading hand allowance (clause 11.2(b));
- (ii) wet work allowance (clause 11.2(c)); and
- (iii) first aid allowance (clause 11.2(d)).

(b) Leading hand allowance

A leading hand will be paid a leading hand allowance based upon the following:

In charge of:	\$ per week
2 to 6 employees	21.63
7 to 10 employees	25.21
11 to 20 employees	35.93
More than 20 employees	45.14

(c) Wet work allowance

- (i) An employee who, on any one day, is required to work in a wet place must be paid **\$1.88** for each hour that they are required to work in the wet place, unless provided with adequate protection.

- (ii) A **wet place** will mean a place where the clothing of the employee becomes saturated or a place where the employee has to stand in water or slush so that the employee's feet become wet.

(d) **First aid allowance**

An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St John Ambulance or similar body must be paid an allowance of **\$9.59** per week if they are appointed by the employer to perform first aid duty.

11.3 Expense related allowances

(a) **Travelling allowance**

- (i) Where an employee is required to travel from one place to another, the time occupied in travelling will be counted as time worked and paid for as such.
- (ii) Where an employee is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee's normal place of sleeping during employment) the employer will reimburse the employee for the demonstrable cost of suitable accommodation, unless the employer provides the employee with suitable accommodation free of charge.
- ~~(iii) The provisions of this clause will not apply where the employer provides the employee with suitable accommodation free of charge.~~

(b) **Tool and equipment allowance**

- (i) The employer must reimburse the employee for the cost of supplying tools and equipment if the ~~employee is required~~ employer requires the employee to supply their own tools and equipment.
- (ii) The provisions of this clause do not apply where the tools and equipment are paid for by the employer.

(c) **Meal allowances**

- (i) An employee will be entitled to a payment of **\$12.18** or will be provided a suitable meal without cost if the employee:
- is required to work overtime for more than two hours after the employee's ordinary finishing time; and
 - was not notified before leaving work on the previous day that the employee will be required to work overtime.
- (ii) If the work extends into a second or subsequent meal break, this meal allowance will again apply.

See Schedule C for a summary of monetary allowances.

12. Accident pay

12.1 Definitions

For the purposes of this clause, the following definitions will apply:

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

12.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 26 weeks.

12.3 Calculation of the period

- (a) The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.
- (b) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

12.4 When not entitled to payment

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

12.5 Return to work

If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

12.6 Redemptions

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the employer to pay accident pay will cease from the date the employee receives that payment.

12.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.

12.8 Casual employees

For a casual employee, the weekly payment referred to in clause 12.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include overaward payments.

13. Superannuation

13.1 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.

13.2 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.

13.3 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 13.2.
- (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 13.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 13.3(a) or (b) was made.

13.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 13.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 13.2 and pay the amount authorised under clauses 13.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustSafe Super;
- (b) Prime Super;
- (c) Tasplan;
- (d) Sunsuper;
- (e) CareSuper;
- (f) 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
- (g) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Penalties and Overtime

14. Shiftwork

14.1 The ordinary hours of work for a shiftworker will not exceed 152 hours over a four week period provided that:

- (a) The ordinary hours will be worked between Monday and Friday inclusive.
- (b) For the purposes of this award:
 - (i) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight; and
 - (ii) **night shift** means any shift finishing after midnight and at or before 8.00 am.
- (c) If an employee is directed to work on shifts the shift must not exceed eight hours without the payment of overtime.

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- (d) Shiftworkers whilst on afternoon and night shifts will be paid **115%** of the ordinary hourly rate.
- (e) Where shiftwork is adopted, shifts will, as far as practicable, rotate regularly so that:
 - (i) where two shifts are worked, one will be regarded as day shift and the second as the afternoon or night shift; or
 - (ii) where three shifts are worked they will be divided into day, afternoon and night shifts.
- (f) The employer has the right to decide before the commencement of such shiftwork which of the shifts will be the day shift and will notify each employee accordingly.
- (g) The employer will keep a roster at the workplace that specifies the times which each shift will commence and finish and which shifts are deemed to be day shift.
- (h) All time worked in excess of the ordinary hours will be deemed overtime ~~paid in accordance with clause 15—Overtime.~~

15. Overtime

15.1 Definition

All time worked by employees in excess of their ordinary hours will be deemed overtime.

15.2 Time off instead of payment for overtime

This provision may be affected by [AM2014/300](#). The Commission issued a [draft determination](#) for parties' comments. Issue being dealt with by the Award Flexibility Full Bench – see [Transcript \[PN584-PN585\]](#). See also Full Bench Decision [\[2016\] FWCFB 7737](#)

- (a) An employee will be allowed time off duty, with pay for a period equal to the overtime worked.
- (b) Such time allowed off duty will be given and taken within the succeeding three weeks unless:
 - (i) the employer and employee mutually agree that it be taken at some other time; or
 - (ii) instead of taking time off duty the employee may elect to be paid for the overtime worked provided that this election is made clear to the employer or the employer's representative at the time that overtime is offered.

15.3 Payment of overtime

- (a) The rate of pay for overtime on Monday to Saturday will be **150%** of the ordinary hourly rate.

- (b) The rate of pay for overtime worked on a Sunday, except during harvest period, will be **200%** of the ordinary hourly rate.
- (c) Should employees be required to work on a Saturday and the majority of such employees elect not to work on the Saturday but rather on the Sunday then such work performed on that Sunday will be paid for at the rate prescribed for Saturday work.
- (d) During harvest period, the first eight hours of overtime in a week may include five hours work on a Sunday at the rate of **150%** of the ordinary hourly rate but all Sunday work in excess of the eighth overtime hour worked in the week, or in excess of five hours on a Sunday, will be paid at the rate of **200%** of the ordinary hourly rate.
- (e) All employees required to work on a Sunday will be paid for a minimum of three hours.

~~15.4 Meal allowance~~

~~An employee required to work overtime for more than two hours after the employee's ordinary ceasing time without having been notified before leaving work on the previous day that the employee will be required to work overtime, will be entitled to a meal allowance under clause 11.3(e).~~

Part 6—Leave, Public Holidays and Other NES Entitlements

16. Annual leave

16 amended in accordance with [PR583017](#). (16.5 – 16.8 renumbered as 16.6 to 16.9; new 16.5 inserted; 16.7 and 16.8 renamed and substituted; 16.9 renumbered as 16.11; new 16.9 inserted; 16.10 and 16.12 inserted); references to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350]

16.1 Annual leave is provided for in the NES. Annual leave does not apply to a casual employee.

16.2 This clause contains additional and supplementary provisions.

16.3 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in s.87 of the Act to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to four weeks' annual leave).

16.4 Payment for period of annual leave

Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

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

16.5 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in this clause, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

16.6 Annual leave loading

During a period of annual leave an employee must also be paid an annual leave loading equal to **17.5%** of the wages prescribed in clause 16.4.

16.7 Excessive leave accruals: general provision

Note: Clauses 16.7 to 16.9 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 16.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 16.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

16.8 Excessive leave accruals: direction by employer that leave be taken

Concern that proportion leave on termination clause is contrary to s 90(2) of *the Act*. Referred to Annual leave Full Bench - see [Report to Full Bench](#) 3 June 2016 and [Transcript](#) [PN592-PN604]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 16.7(a) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 16.7, 16.8 or 16.9 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 16.8(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.

16.9 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 16.7(a) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 16.8(a) that, when any other paid annual leave arrangements (whether made under clause 16.7, 16.8 or 16.9 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 16.7, 16.8 or 16.9 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.

- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

16.10 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 16.10 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 16.10 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 16.10, 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.

16.11 Proportionate leave on termination

On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 16.4.

16.12 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 16.12.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 16.12.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 16.12 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.

- (e) An agreement under clause 16.12 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 16.12 as an employee record.

Note 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 16.12.

Note 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 16.12.

Note 3: An example of the type of agreement required by clause 16.12 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

17. Personal/carer's leave and compassionate leave

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

18. Parental leave and related entitlements

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

19. Community service leave

19.1 Community service leave is provided for in the NES.

19.2 Reimbursement for jury service

- (a) A full-time employee required to attend for jury service during their ordinary hours of work must be reimbursed by the employer an amount equal to the difference between the amount paid to the employee in respect of the employee's attendance for such jury service and the wages the employee would have received in respect of the ordinary hours the employee would have worked had the employee not been on jury service.
- (b) Where a part-time employee is required to attend for jury service and such attendance coincides with a day on which the employee would normally be

required to work, payment must be made to the employee in accordance with clause 19.2(a).

20. Public holidays

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

20.1 Public holidays are provided for in the NES.

20.2 Substitution of certain public holidays by agreement at the enterprise

- (a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days.
- (b) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.

20.3 Public holiday rates

All work performed on public holidays will be paid for at the rate of **200%** of the ordinary hourly rate or 200% of the piecework rate for a pieceworker.

20.4 Part-day public holidays

20.4 inserted on 16 September 2016

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

21. Termination of employment

Current award states at 19.3 that wages must be paid on day of termination or forwarded by post next working day. Alternative wording sought as per *Vehicle Manufacturing Repair, Service and Retail Award 2010*. Referred to payment of wages Full Bench [AM2016/8](#). See [Report to Full Bench](#) 3 June 2016 and [Transcript](#) [PN607]–[PN619].

21.1 Notice of termination is provided for in the NES.

21.2 Notice of termination by an employee

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

21.3 Job search entitlement

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

22. Redundancy

22.1 Redundancy pay is provided for in the NES.

22.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as 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.

22.3 Employee leaving during notice period

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

22.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 21.3.

Part 7—Consultation and Dispute Resolution

23. Consultation

23.1 Consultation regarding major workplace change

(a) Employers to notify

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology

that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 23.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 23.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

23.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and

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

24. Dispute resolution

- 24.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 24.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 24.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 24.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 24.4 Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 24.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

Reference to ‘occupational health and safety’ change to ‘work health and safety’. See [\[2017\] FWCFB 3433](#) [382]

- 24.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable ~~work occupational~~ health-and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Schedule A—Classification Definitions

A.1 Level 1

A.1.1 Level 1 employee means an employee classified in accordance with the following criteria:

A.1.2 General description

An employee at this level:

- undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance;
- performs routine duties essentially of a manual nature and to the level of their training;
- exercises minimal judgment;
- works under direct supervision;
- is responsible for the quality of their own work;
- is a new employee; or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2.

A.1.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties;
- fruit or vegetable picking, thinning or pruning;
- operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- performing a range of housekeeping tasks in premises and grounds;
- sorting, packing or grading of produce where this requires the exercise of only minimal judgment;
- performing basic recording functions related to work performed at this level;
- providing assistance within the scope of this level to other employees as required;
- undertaking structured training so as to enable advancement to Level 2.

A.2 Level 2 employee

A.2.1 Level 2 employee means an employee classified in accordance with the following criteria:

A.2.2 General description

An employee at this level:

- has completed up to three months structured training so as to enable the performance of work within the scope of this level;
- works under general supervision either individually or in a team environment;
- works with established routines, methods and procedures;
- performs a range of tasks involving the use of skills above and beyond those of Level 1 and to the level of their training;
- exercises limited discretion;
- is responsible for the quality of their own work;
- receives training in occupational health and safety standards and practices relevant to the site;
- performs lower level tasks as required without loss of pay unless re-engaged to perform tasks at predominantly a lower skill level.

A.2.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment;
- repetition work on automatic, semi-automatic or single purpose machines or equipment;
- assembling/dismantling components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- irrigation, spraying or pruning under general supervision;
- sorting, packing and grading beyond the scope of Level 1 duties;
- maintaining simple records;
- using hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence;
- operating tractors with engine capacity of up to 70 kW;
- general and routine product testing;
- providing assistance within the scope of this level to other employees as required;
- assisting in the provision of on-the-job training in conjunction with supervisors, tradespersons or trainers;
- undertaking further training so as to enable advancement to Level 3.

A.3 Level 3 employee

A.3.1 Level 3 employee means an employee classified in accordance with the following criteria:

A.3.2 General description

An employee at this level:

- performs work above and beyond the skills of an employee at Level 2 and to the level of their training;
- works under routine supervision either individually or in a team environment;
- exercises discretion with their level of skills and training;
- is responsible for the quality of their own work;
- receives training in occupational health and safety standards and practices in work areas relevant to the site and appropriate to this award;
- may perform any lower level task as required without loss of pay.

A.3.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- driving motor lorries or mechanical harvesters or forklifts;
- operating tractors with engine capacity of over 70 kW;
- minor maintenance of plant;
- irrigation, spraying, pruning without supervision;
- assisting in the training, instruction and coordination of employees;
- recording detailed information on production and quality indicators;
- providing assistance within the scope of this level to other employees;
- undertaking further training so as to enable advancement to Level 4.

A.4 Level 4 employee

A.4.1 Level 4 employee means an employee classified in accordance with the following criteria:

A.4.2 General description

An employee at this level:

- performs work above and beyond the skills of an employee at Level 3 and to the level of their training;
- coordinates work in a team environment or works individually under general supervision;

- exercises discretion with their level of skills and training;
- is responsible for the quality of their own work;
- has knowledge of the employer's operation as it relates to the production process;
- monitors the application of occupational health and safety standards in work areas relevant to the site and appropriate to this level;
- may perform any lower level task as required without loss of pay.

A.4.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- using precision measuring instruments;
- machine setting, loading and operation;
- inventory and store control;
- licensed operation of all appropriate materials handling equipment;
- basic engineering and fault handling;
- basic non-trades maintenance involving the use of tools and equipment within the scope of this award;
- licensed and certified to operate forklifts, engine driving and crane driving operation;
- furnace/boiler operator;
- performing quality checks on the work of others;
- quality assurance/control;
- assisting in provision of on-the-job training;
- monitoring variables affecting production yields, detecting errors, investigating causes and recommending collective/preventative action;
- providing assistance within the scope of this level to other employees;
- undertaking further training so as to enable advancement to Level 5.

A.5 Level 5 employee

A.5.1 Level 5 employee means an employee classified in accordance with the following criteria:

A.5.2 General description

An employee at this level:

- works above and beyond the skills of an employee at Level 4 and to the level of their training;
- performs work under minimal supervision either individually or in a team environment;
- coordinates and schedules approved work in a team environment;
- exercises good interpersonal communication skills;
- exercises discretion within the scope of this grade;
- possesses and uses a trade qualification in the course of their duties;
- has a sound knowledge of the employer's operation as it relates to the production process;
- undertakes lower level tasks as required without loss of pay.

A.5.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- inspecting products and/or materials for conformity with established operational standards and approves/passes first off samples;
- operating, setting up and adjusting maintenance functions including (but not limited to):
 - removing equipment fastenings including use of destructive cutting equipment;
 - running adjustments to production equipment;
- operating all lifting equipment;
- basic production scheduling and materials handling within the scope of production process or directly related functions;
- exercising high level stores and inventory responsibilities;
- providing on-the-job training;
- providing assistance within the scope of this level to other employees.

Schedule B—Summary of Hourly Rates of Pay

B.1.2 amended, note added to the tables; monetary amounts in this clause adjusted as a result of AWR 2017.

Full Bench considered whether Schedule B should reference ‘ordinary hourly rate’ or ‘minimum hourly rate’. The issue is discussed at [360] – [361] of [\[2017\] FWCFB 3433](#). The Full Bench intends on adopting approach proposed at [360] - [361]. Parties to provide further comment.

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

B.1 Ordinary hourly rate

B.1.1 Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 11.2(a), this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

B.1.2 The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 10.1(a). Consistent with clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.

B.2 Full-time and part-time adult employees

B.2.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Public holidays
	% of ordinary hourly rate ¹	
	100%	200%
	\$	\$
Level 1	18.29	36.58
Level 2	18.81	37.62
Level 3	19.36	38.72
Level 4	20.09	40.18
Level 5	21.29	42.58

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.2.2 Full-time and part-time shiftworkers—ordinary and penalty rates

	Ordinary hours	Afternoon shift	Night shift	Public holidays
	% of ordinary hourly rate ¹			
	100%	115%	115%	200%
	\$	\$	\$	\$
Level 1	18.29	21.03	21.03	36.58
Level 2	18.81	21.63	21.63	37.62
Level 3	19.36	22.26	22.26	38.72
Level 4	20.09	23.10	23.10	40.18
Level 5	21.29	24.48	24.48	42.58

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.2.3 Full-time and part-time employees—overtime rates

	Monday to Saturday	Sunday outside of harvest season	Sunday during harvest season		Public holidays
			First 5 hours within the first 8 hours of overtime	Overtime in excess of 8 hours in the week or 5 hours on Sunday	
	% of ordinary hourly rate ¹				
	150%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
Level 1	27.44	36.58	27.44	36.58	36.58
Level 2	28.22	37.62	28.22	37.62	37.62
Level 3	29.04	38.72	29.04	38.72	38.72
Level 4	30.14	40.18	30.14	40.18	40.18
Level 5	31.94	42.58	31.94	42.58	42.58

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.3 Casual adult employees

Uncertain whether casual employees are entitled to overtime rates. See [AM2014/197](#) and [AM2014/196](#)

B.3.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Public holidays
	% of ordinary hourly rate ¹	
	125%	225%
	\$	\$
Level 1	22.86	41.15
Level 2	23.51	42.32
Level 3	24.20	43.56
Level 4	25.11	45.20
Level 5	26.61	47.90

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.4 Junior employees

The **junior hourly rate** is based on a percentage of the appropriate adult weekly rate and rounded to the nearest 10 cents in accordance with clause 10.3, then divided by 38. Adult rates apply from 20 years of age in accordance with clause 10.3.

B.4.1 Full-time and part-time junior employees—ordinary and penalty rates

Age	Junior weekly rate	Junior hourly rate—ordinary hours	Shiftworkers		All employees
			Afternoon shift	Night shift	Public holidays
% of junior hourly rate ¹					
		100%	115%	115%	200%
	\$	\$	\$	\$	\$
Level 1					
Under 16 years	347.50	9.14	10.51	10.51	18.28
16 years	416.90	10.97	12.62	12.62	21.94
17 years	486.40	12.80	14.72	14.72	25.60
18 years	555.90	14.63	16.82	16.82	29.26
19 years	625.40	16.46	18.93	18.93	32.92

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Age	Junior weekly rate	Junior hourly rate—ordinary hours	Shiftworkers		All employees	
			Afternoon shift	Night shift	Public holidays	
			% of junior hourly rate ¹			
			100%	115%	115%	200%
	\$	\$	\$	\$	\$	
Level 2						
Under 16 years	357.50	9.41	10.82	10.82	18.82	
16 years	428.90	11.29	12.98	12.98	22.58	
17 years	500.40	13.17	15.15	15.15	26.34	
18 years	571.90	15.05	17.31	17.31	30.10	
19 years	643.40	16.93	19.47	19.47	33.86	
Level 3						
Under 16 years	367.80	9.68	11.13	11.13	19.36	
16 years	441.30	11.61	13.35	13.35	23.22	
17 years	514.90	13.55	15.58	15.58	27.10	
18 years	588.40	15.48	17.80	17.80	30.96	
19 years	662.00	17.42	20.03	20.03	34.84	
Level 4						
Under 16 years	381.70	10.04	11.55	11.55	20.08	
16 years	458.00	12.05	13.86	13.86	24.10	
17 years	534.30	14.06	16.17	16.17	28.12	
18 years	610.60	16.07	18.48	18.48	32.14	
19 years	687.00	18.08	20.79	20.79	36.16	
Level 5						
Under 16 years	404.60	10.65	12.25	12.25	21.30	
16 years	485.50	12.78	14.70	14.70	25.56	
17 years	566.40	14.91	17.15	17.15	29.82	
18 years	647.30	17.03	19.58	19.58	34.06	
19 years	728.20	19.16	22.03	22.03	38.32	

Age	Junior weekly rate	Junior hourly rate—ordinary hours	Shiftworkers		All employees	
			Afternoon shift	Night shift	Public holidays	
			% of junior hourly rate ¹			
			100%	115%	115%	200%
	\$	\$	\$	\$	\$	

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.4.2 Full-time and part-time junior employees—overtime rates

Age	Monday to Saturday	Sunday outside of harvest season	Sunday during harvest season		Public holidays
			First 5 hours within the first 8 hours of overtime	Overtime in excess of 8 hours in the week or 5 hours on Sunday	
			% of junior hourly rate ¹		
	150%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
Level 1					
Under 16 years	13.71	18.28	13.71	18.28	18.28
16 years	16.46	21.94	16.46	21.94	21.94
17 years	19.20	25.60	19.20	25.60	25.60
18 years	21.95	29.26	21.95	29.26	29.26
19 years	24.69	32.92	24.69	32.92	32.92
Level 2					
Under 16 years	14.12	18.82	14.12	18.82	18.82
16 years	16.94	22.58	16.94	22.58	22.58
17 years	19.76	26.34	19.76	26.34	26.34
18 years	22.58	30.10	22.58	30.10	30.10
19 years	25.40	33.86	25.40	33.86	33.86
Level 3					

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Age	Monday to Saturday	Sunday outside of harvest season	Sunday during harvest season		Public holidays
			First 5 hours within the first 8 hours of overtime	Overtime in excess of 8 hours in the week or 5 hours on Sunday	
% of junior hourly rate ¹					
	150%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
Under 16 years	14.52	19.36	14.52	19.36	19.36
16 years	17.42	23.22	17.42	23.22	23.22
17 years	20.33	27.10	20.33	27.10	27.10
18 years	23.22	30.96	23.22	30.96	30.96
19 years	26.13	34.84	26.13	34.84	34.84
Level 4					
Under 16 years	14.58	19.44	14.58	19.44	19.44
16 years	17.51	23.34	17.51	23.34	23.34
17 years	20.42	27.22	20.42	27.22	27.22
18 years	23.34	31.12	23.34	31.12	31.12
19 years	26.25	35.00	26.25	35.00	35.00
Level 5					
Under 16 years	15.06	20.08	15.06	20.08	20.08
16 years	18.08	24.10	18.08	24.10	24.10
17 years	21.09	28.12	21.09	28.12	28.12
18 years	24.11	32.14	24.11	32.14	32.14
19 years	27.12	36.16	27.12	36.16	36.16

¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

B.4.3 Casual junior employees—ordinary and penalty rates

Age	Casual hourly rate	Public holidays
	% of junior hourly rate ¹	
	125%	225%
	\$	\$
Level 1		
Under 16 years	11.43	20.57
16 years	13.71	24.68
17 years	16.00	28.80
18 years	18.29	32.92
19 years	20.58	37.04
Level 2		
Under 16 years	11.76	21.17
16 years	14.11	25.40
17 years	16.46	29.63
18 years	18.81	33.86
19 years	21.16	38.09
Level 3		
Under 16 years	12.10	21.78
16 years	14.51	26.12
17 years	16.94	30.49
18 years	19.35	34.83
19 years	21.78	39.20
Level 4		
Under 16 years	12.55	22.59
16 years	15.06	27.11
17 years	17.58	31.64
18 years	20.09	36.16
19 years	22.60	40.68
Level 5		

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Age	Casual hourly rate	Public holidays
	% of junior hourly rate ¹	
	125%	225%
	\$	\$
Under 16 years	13.31	23.96
16 years	15.98	28.76
17 years	18.64	33.55
18 years	21.29	38.32
19 years	23.95	43.11
¹ Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.		

Schedule C—Summary of Monetary Allowances

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

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

C.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule G as the minimum hourly rate for a Level 2 in clause 10.1(a) = **\$18.81**

Allowance	Clause	% of standard rate \$18.81	\$ per week unless stated otherwise
Leading hand allowance ¹	11.2(b)		
2 to 6 employees		115.0	21.63
7 to 10 employees		134.0	25.21
11 to 20 employees		191.0	35.93
More than 20 employees		240.0	45.14
Wet work allowance—unless provided with adequate protection ¹	11.2(c)	10.0	1.88 per hour
First aid allowance ¹	11.2(d)	51.0	9.59

¹ These allowances apply for all purposes of this award

C.1.1 Adjustment of wage related allowances

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

C.2 Expense related allowances

Allowance	Clause	\$
Meal allowance—more than two hours' overtime after ordinary ceasing time without a day's notification	11.3(c)	12.18 per meal

C.2.1 Adjustment of expense related allowances

At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group

Schedule D—Supported Wage System

Rates updates as per PR592689

D.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

D.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, 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 means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee’s productive capacity and agreed wage rate

D.3 Eligibility criteria

D.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

D.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

D.4 Supported wage rates

D.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause D.5)	Relevant minimum wage
%	%

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

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

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

D.5 Assessment of capacity

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

D.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

D.6 Lodgement of SWS wage assessment agreement

D.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

D.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

D.7 Review of assessment

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

D.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

D.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

D.10 Trial period

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

D.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

D.10.3 The minimum amount payable to the employee during the trial period must be no less than **\$84** per week.

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

D.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.

Schedule E—National Training Wage

Schedule E deleted by [PR593823](#)

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Schedule F—2016 Part-day Public Holidays

The part-day public holidays schedule may be affected by [AM2014/301](#)

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

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

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

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

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

Schedule G—Definitions

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

Definition of **horticulture industry** has been changed in accordance with [\[2017\] FWCFB 3433](#) at [339]. References to Fair Work Act changed to ‘Act’. See [\[2017\] FWCFB 3433](#) at [350].

In this award, unless the contrary intention appears:

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

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave (see clause 11.2(a))

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

harvest period means the period of time during which the employees of the particular employer are engaged principally in the harvesting, grading or packing of horticultural crops

Definition of ‘horticultural crops’ may need to be revisited following change to the definition of ‘broadacre field crops’ made during the review of the *Pastoral Award 2010*. May be addressed by separate Full Bench [AM2016/25](#) – see [Report to Full Bench](#) 25/08/2016

horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a **broadacre field crop** in the *Pastoral Award 2016*

horticulture industry has the meaning given in clause 3.2

horticulture industry means:-

- (a) ~~agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivating, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or~~
- (b) ~~clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables~~

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 *Fair Work Act 2009 (Cth)*

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

ordinary hourly rate means the hourly rate for the employee's classification specified in clause 10.1(a) and 10.3(a), plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

plant nurseries means the principal business of the employer is the preparation of growing media for the growing of plant material, propagation, preparation and presentation of plant material for sale

silviculture and afforestation means the planting, pruning, fertilising and any other activities in or in connection with the establishment or cultivation of trees in forests

standard rate means the minimum hourly rate for a Level 2 in clause 10.1. This rate is to be used for the purposes of calculating various allowances that require a designated standard rate

vineyard means a place where wine grapes are grown exclusively or predominantly for processing into wine

Definition of **wine industry** varied as per [190] of [\[2017\] FWCFB 5536](#)

~~**wine industry** means:-~~

- ~~(a) the preparation of land for planting of wine grape vines; care, growing, treating, picking, harvesting, forwarding of wine grapes; and pruning of wine grape vines and other activities associated with a wine grape vineyard;~~
- ~~(b) processing wine grapes; producing wine juice or grape spirit; bottling, packaging, storage or dispatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice and other activities associated with a winery or wine distillery including but not limited to cellar door sales, coopers, machinists, labourers making or repairing barrels, vats, casks, and like articles and laboratories; and~~
- ~~(c) the packaging, storage and dispatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery~~

wine industry means the industry of growing and processing wine grapes and includes:

- (d) the preparation of land for the planting of wine grape vines, the planting of wine grape vines, the pruning of wine grape vines, the care, growing, treating, picking, harvesting and forwarding of wine grapes and other activities associated with a wine grape vineyard; and/or
- (e) processing wine grapes, producing wine juice or grape spirit, the bottling, packaging, storage or dispatch of wine, brandy or other potable spirit, liqueurs,

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vinegar or grape juice and other activities associated with a winery or wine distillery including but not limited to cellar door sales, laboratory activities and making or repairing barrels, vats, casks and like articles; and/o

- (f) packaging, storing and dispatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery

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Schedule H—Agreement to Take Annual Leave in Advance

Schedule H—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583017](#)

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule I—Agreement to Cash Out Annual Leave

Schedule I—Agreement to Cash Out Annual Leave inserted in accordance with [PR583017](#)

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____