

The Marine Towing Award—Exposure Draft was first published on 15 January 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
15 January 2016	Exposure Draft	
14 July 2017	Incorporate changes resulting from PR580863	Schedule E
	Incorporate changes resulting from [2016] FWCFB 3500 , PR579820 and PR579555	9, 10, Schedule A and Schedule B
	Incorporate change resulting from [2016] FWCFB 6178	13
	Incorporate changes resulting from PR588736	5.2, 14.7, 14.8, Schedule C, Schedule D
	Incorporate changes resulting from [2017] FWCFB 3500 , PR592148 , PR592310	9, 10, Schedule A, Schedule B
	Incorporate changes resulting from [2017] FWCFB 3541	6
	Incorporate changes resulting from [2017] FWCFB 3433	1, 3, 14, Schedule F
	Exposure Draft	
08 March 2019	Incorporate changes resulting from PR598110	Schedule E
	Incorporate changes resulting from [2018] FWCFB 3500 , PR606375 , PR606531	9, 10, Schedule A, Schedule B
	Incorporate changes resulting from [2018] FWCFB 3936 , PR609367	19
	Incorporate changes resulting from [2018] FWCFB 4695 , PR700582 , PR700666	6.4(d), 6.5
	Incorporate changes resulting from PR701683	Schedule E
	Incorporate changes resulting from [2018] FWCFB 6863 , PR701452	4A
	Administrative changes by Modern Awards team	9.4 (deleted), 9A
	Incorporate changes resulting from [2018] FWCFB 4735 , PR610076	9A, 19

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

Changes agreed to by parties appear in red text.

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

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

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

EXPOSURE DRAFT

Marine Towing Award 20XX

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

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/235](#). 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.

Table of Contents

	Page
Part 1— Application and Operation.....	4
1. Title and commencement.....	4
2. The National Employment Standards and this award.....	4
3. Coverage.....	4
4. Award flexibility.....	6
4A. Requests for flexible working arrangements.....	7
5. Facilitative provisions.....	9
Part 2— Types of Employment.....	9
6. Types of employment.....	9
Part 3— Hours of Work.....	12
7. Ordinary hours of work and rostering.....	12
8. Breaks.....	13
Part 4— Wages and Allowances.....	13
9. Minimum wages.....	13
9A. Payment of wages.....	16
10. Allowances.....	17
11. Accident Pay.....	22
12. Superannuation.....	23

Part 5— Penalties and Overtime 25
13. Overtime and penalty rates 25

Part 6— Leave, Public Holidays and Other NES Entitlements 26
14. Annual leave 26
15. Personal/carer’s leave and compassionate leave 28
16. Parental leave and related entitlements 28
17. Community service leave 28
18. Public holidays 28
19. Leave to deal with family and domestic violence 29
20. Termination of employment 31
21. Redundancy 32

Part 7— Consultation and Dispute Resolution 33
22. Consultation 33
23. Dispute resolution 34

Schedule A —Summary of Hourly Rates of Pay 36
Schedule B —Summary of Monetary Allowances 38
Schedule C —Agreement to Take Annual Leave in Advance 40
Schedule D —Agreement to Cash Out Annual Leave 41
Schedule E —Part-day Public Holidays 42
Schedule F —Definitions 44

Part 1—Application and Operation

1. Title and commencement

- 1.1 This award is the *Marine Towage Award 20XX*.
- 1.2 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 F—Definitions sets out definitions that apply in this award.
- 1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2. The National Employment Standards and this award

- 2.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 2.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 2.3 The employer must ensure that copies of the award and the [NES](#) are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

3. Coverage

Coverage issues referred to AM2016/5 Full Bench, see [\[2017\] FWCFB 3433](#) at [84].

- 3.1 This industry award covers employers throughout Australia in the marine towage industry and their employees in the classifications listed in clause 9.1 to the exclusion of any other modern award.
- 3.2 **Marine towage industry** means:
- (a) any work on tug boats, in conjunction with ship-assist operations and voyages, at or about, or to or from, a port in Australia (**harbour towage operations**);

- (b) movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia (**tug and barge operations**).

3.3 This award does not cover:

- (a) employers and employees wholly or substantially covered by:
 - (i) the *Dredging Industry Award 20XX*;
 - (ii) the *Maritime Offshore Oil and Gas Award 20XX*;
 - (iii) the *Ports, Harbours and Enclosed Water Vessels Award 20XX*; and
 - (iv) the *Seagoing Industry Award 20XX*.
- (b) maintenance contractors covered by:
 - (i) the *Manufacturing and Associated Industries and Occupations Award 20XX*; or
 - (ii) the *Electrical, Electronic and Communications Contracting Award 20XX*.
- (c) employees excluded from award coverage by the [Act](#);
- (d) 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
- (e) 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.

3.4 This award covers any employer which supplies labour on an on-hire basis in the 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.

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

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

4. Award flexibility

- 4.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:
- (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances; and
 - (e) leave loading.
- 4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 4.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and
 - (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.
- 4.4** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 4.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 4.6** Except as provided in 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.

4A. Requests for flexible working arrangements

Clause 4A inserted in accordance with [PR701452](#).

4A.1 Employee may request change in working arrangements

Clause 4A applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](#).

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

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

Note 3: Clause 4A is an addition to s.65.

4A.2 Responding to the request

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

- (a) the needs of the employee arising from their circumstances;

- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

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

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

4A.3 What the written response must include if the employer refuses the request

Clause 4A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 4A.2.

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

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

If the employer and the employee reached an agreement under clause 4A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

4A.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 4A, can be dealt with under clause 23—Dispute resolution.

5. Facilitative provisions

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

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

Clause	Provision	Agreement between an employer and:
7.2(b)	Span of hours	The majority of employees
9.2	Aggregate wage or annual salary	The majority of employees
14.7	Annual leave in advance	An individual
14.8	Cashing out of annual leave	An individual

Part 2—Types of Employment

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 Full-time employees

A full-time employee is an employee who is engaged to work an average of 35 ordinary hours per week.

6.3 Part-time employees

- (a) A part-time employee is an employee who:
 - (i) is engaged to work ordinary hours which are less than the average number of ordinary hours of a full-time employee; 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.
- (b) For each ordinary hour worked, a part-time employee will be paid not less than the minimum hourly rate for their classification as prescribed by clause 9.1.
- (c) Before an employee commences part-time employment, an employer must inform the employee in writing of any rostered periods of duty to be worked by the employee.

- (d) Any agreed variation of the rostered periods of duty must be recorded in writing.

6.4 Casual employees

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

(b) **Casual loading**

- (i) For each hour worked, a casual employee must be paid no less than:

- the minimum hourly rate; and
 - a loading of 25% of the minimum 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.

- (c) A casual employee on a special voyage will be paid in accordance with clause 9.3(b)(vi).

Clause 6.4(d) inserted in accordance with [PR700662](#).

- (d) A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work

6.5 Right to request casual conversion

Clause 6.5 inserted in accordance with [PR700580](#).

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.

- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.

- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.

- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.

- (e) Any request under this subclause must be in writing and provided to the employer.

- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months;
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work; or
 - (v) acceptance of the request by a local government would contravene a merit selection employment requirement contained in State or Territory legislation applicable to local governments.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 23. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 6.3(c).
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

- (l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- (n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.
- (q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).

Part 3—Hours of Work

7. Ordinary hours of work and rostering

7.1 Ordinary hours of work

- (a) For the purposes of the [NES](#), the ordinary hours of work for full-time employees are 35 hours per week, which may be averaged over a period of up to one year.
- (b) The 35 hour week is given effect by the accrual of annual leave in the manner provided under clause 14.2(c)(iv).

7.2 Span of hours

- (a) Ordinary hours may be worked between the hours of 0700 and 1700.
- (b) The employer may agree with a majority of affected employees in a port to alter this span of hours.

7.3 Maximum hours of work

- (a) No employee will be required to perform work continuously in excess of 16 hours, except as provided in clause 7.3(b).
- (b) An employer may require an employee to perform work continuously in excess of 16 hours (extended hours) where:

- (i) it is reasonably necessary to meet operational requirements;
 - (ii) the employer endeavours to terminate the period of continuous work as soon as practicable; and
 - (iii) the employer grants the employee a rest period of no less than 10 hours before requiring the employee to resume duty.
- (c) An employee's continuity of work is not broken by meal breaks taken in accordance with clause 8—Breaks and any other authorised period off duty of less than four hours' duration.

8. Breaks

8.1 Meal breaks

- (a) An employee is entitled to a meal break of at least 30 minutes after every five hours worked.
- (b) Breaks will be scheduled by the employee's supervisor based upon operational requirements to ensure continuity of operations.
- (c) The employer will not require an employee to work more than five hours before the first meal is taken or between any subsequent meal breaks.

8.2 Minimum breaks

- (a) No break in duty will be of less than six hours duration from the time the employee is relieved from work.
- (b) In calculating a break of duty in relation to clause 8.2(a), time off duty before the ordinary finishing time of the day up to 1600 hours will not count except on Saturdays, Sunday and public holidays.
- (c) An employee who is required to resume duty after the ordinary finishing time of the day, when possible, will be given details of the work expected to be done up to and including the ordinary starting time the next day.

Part 4—Wages and Allowances

9. Minimum wages

Rates adjusted as a result of AWR 2018.

9.1 Minimum wages

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

Employee classification	Minimum weekly rate	Minimum daily rate ¹
	\$	\$
Rating and General Purpose Rating	820.20	117.17
<i>Category 1 (0–1850 tonnage/power units)</i>		
Mate	931.90	133.13
Master and Engineer	1118.40	159.77
<i>Category 2 (1850 or more tonnage/power units)</i>		
Mate	973.50	139.07
Master and Engineer	1179.00	168.43
¹ The minimum daily rate = minimum weekly rate/7		

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

9.2 Option for aggregate wage or annual salary—full-time and part-time employees

Annualised salaries are being reviewed in [AM2016/13](#).

- (a) As an alternative to being paid the minimum wage rate plus overtime and penalty payments (in accordance with clauses 13 and 18.2), an employer may agree to pay an aggregate wage or annual salary provided the employer obtains the agreement of a majority of its employees who are covered by this award.
- (b) The aggregate wage or annual salary paid by the employer to employees must be based on a rate equivalent to an aggregate wage or annual salary of at least **40%** above the minimum wage rate prescribed in clause 9.1.
- (c) An employer will not be required to pay overtime and penalty payments provided that the aggregate wage or annual salary paid over the year was sufficient to cover what the employee would have been entitled to if the minimum wage rate plus overtime and penalty payments (as identified above) had been paid in that year.
- (d) Where payment is adopted in accordance with clause 9.2, the employer will keep a daily record of the hours worked by the employees which will show the date and daily start and finishing times of the employees. The record will be countersigned by the employee fortnightly, and will be kept at the place of employment for six years.

9.3 Special voyages in harbour towage operations—rates of pay

(a) Application

- (i) Clause 9.3 applies to employers operating in, and employees working in, harbour towage operations.

- (ii) Clause 9.3 does not apply to an employee who is regularly or continuously engaged on outside work.
- (iii) The payments in clause 9.3(b) are payable instead of the daily minimum wage rate specified in clause 9.1 or clause 9.2, and the payments and penalties for working overtime under clause 13;
- (iv) The payments in clause 9.3(b) do not apply to employees on a nominated voyage.

(b) Payment for special voyages

- (i) For any day (including Saturdays, Sundays and public holidays) on which an employee is engaged on outside work, an employee will be entitled to the amount set out in the table below for their classification.

Employee classification	Minimum daily rate
	\$
<i>Free Running Voyage and Delivery Voyage</i>	
General Purpose Rating	460.17
Mate (Casual or Tug Mate)	549.13
Mate (Permanent Tug Master) and Engineer	671.27
Master and Chief Engineer	711.90
<i>Contract Towage</i>	
General Purpose Rating	616.27
Mate (Casual or Tug Mate)	705.33
Mate (Permanent Tug Master) and Engineer	827.22
Master and Chief Engineer	864.19
<i>Emergency Towage Operations</i>	
General Purpose Rating	772.34
Mate (Casual or Tug Mate)	861.68
Mate (Permanent Tug Master) and Engineer	984.32
Master and Chief Engineer	1029.61

- (ii) The amounts contained in clause 9.3(b)(i) will only be payable from the time that the tug leaves the wharf to proceed to sea on any special voyage until it ties up at the wharf at the termination of such special voyage.
- (iii) The amounts contained in clause 9.3(b)(i) are all inclusive and the total amount payable to an employee for all outside work performed in each 24 hours (midnight to midnight) or part thereof.
- (iv) Free running and contract voyages rates of pay will apply to each leg. The calculation for the first day's pay will commence when the vessel

departs the wharf. The daily rate of pay will apply for the first day. If the voyage exceeds 24 hours, employees will be entitled to eight hours pay, at the hourly rate, for each period or part period of eight hours worked.

- (v) On any day on which an employee is put ashore sick or injured, they are entitled to the employee's daily minimum wage rate, for each period or part period of eight hours worked on that day.
- (vi) A casual employee engaged on a special voyage will be paid the higher of:
 - the casual rate of pay under clause 6.4(b); or
 - the rate of pay payable to other employees of the same classification in respect of the special voyage, including any entitlement to proportionate leave. In this latter case, casual loading will be absorbed in the payment.
- (vii) A rest period may be given in the out-port depending on the circumstances of the voyage. In the case of a voyage of seven days or more, the maximum rest period will be 24 hours. In the case of a voyage of less than seven days, the rest period will be determined by the circumstances of the voyage and by discussion between the employer and employees.

9.4 — Payment of wages

Clause 9.4 renumbered as clause 9A.

- ~~(a) The employer will pay the employee's wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee's bank (or other recognised financial institution) account nominated by the employee.~~
- ~~(b) An employer may deduct from any amount required to be paid to an employee under this clause, the amount of any overpayment of wages or allowances.~~

~~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.~~

9A. Payment of wages

Clause 9.4 renumbered as clause 9A; Note moved; Clause 9A varied in accordance with [PR610076](#).

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.

- 9A.1** The employer will pay the employee's wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee's bank (or other recognised financial institution) account nominated by the employee.

9A.2 An employer may deduct from any amount required to be paid to an employee under this clause, the amount of any overpayment of wages or allowances.

9A.3 Payment on termination of employment

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

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

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

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

10. Allowances

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

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

10.2 Application of allowances

- (a) The allowances in clause 10.3 apply to all employees.
- (b) The allowances in clause 10.4 only apply to employers operating in, and employees working in, harbour towing operations.
- (c) The allowances in clause 10.5 only apply to employers operating in, and employees working in, tug and barge operations.

10.3 Allowances—all employees—expense related allowances

(a) Industrial and protective clothing

- (i) An employee required to wear industrial or protective clothing and equipment as stipulated by a relevant law or by the employer must be reimbursed by the employer for the full cost of purchasing the industrial or protective clothing and equipment.
- (ii) The provisions of clause 10.3(a)(i) do not apply where the industrial or protective clothing and equipment is, or has been, paid for or provided by the employer and the employer replaces items on a fair wear and tear basis.
- (iii) Employees will be paid an allowance of **\$51.60** per year towards the purchase of sunglasses for use during work.
- (iv) Employees are responsible for the safekeeping of each item of protective clothing on board the vessel.
- (v) An employer may require an employee to sign a receipt for the issue of clothing and equipment.

(b) Loss of personal effects allowance

- (i) If an employee sustains damage to or loss of their personal effects or equipment by fire, explosion, foundering, shipwreck, collision or stranding, the employer will compensate the employee for the damage or loss by a payment equivalent to the value of the personal effects or equipment damaged or lost.
- (ii) The maximum total amount payable is **\$1754** (or **\$2799** if the damage or loss occurs on outside work).
- (iii) The maximum amount payable for any one item is **\$466.80**.

(c) Travelling allowance

- (i) An employee who, at the direction of the employer, is either travelling from their home port to another port, or travelling to their home port from another port, must be reimbursed the reasonable cost of the transport required by the employer to be used.
- (ii) This allowance is not payable where the employer provides and or pays for the cost of transport.
- (iii) Unless the employee is in receipt of an aggregate wage or annual salary under clause 9.2, time spent travelling under this clause will be considered time worked. In the case of an employee who is in receipt of an aggregate wage or annual salary under to clause 9.2, no additional payment is payable for time spent travelling.

(d) Meals/victualling and accommodation in out-ports

- (i) Where an employee is not at their home port and is required to eat and/or sleep ashore the following allowances will be payable:

	Allowance
	\$
Breakfast	15.85
Lunch	18.56
Dinner	29.89
Accommodation	85.68
Total daily allowance	149.98

- (ii) An employee will only be entitled to the accommodation allowance if:
- the place at which the employee sleeps is not their usual place of residence; and
 - the employee produces evidence to the reasonable satisfaction of the employer that the employee has properly incurred expenditure on the provision of accommodation for themselves for the night or nights in question.
- (iii) In the case of casual employees, the provisions of this clause only apply if the casual employee is engaged to perform work on a vessel at a port which is not the home port of the permanent employees in the vessel's crew.

(e) Expenses

- (i) The employer will reimburse an employee for any expenses reasonably incurred by the employee in the performance of their duties on behalf of the employer. Wherever possible, in order to be reimbursed the employee must seek the pre-approval of the employer to undertake the expense.
- (ii) As well as other expenses, this clause will apply to enquiries about:
- casualties;
 - the conduct of employees; and
 - to proceedings for any alleged breach of any maritime or port or other regulations.
- (iii) Clause 10.3(e) does not apply where the authority conducting the enquiry, proceedings or appeal finds that the enquiry or proceedings claimed may be due to the default or misconduct of the employee.

10.4 Allowances—harbour towage operations

(a) Wage related allowance—nominated voyages

- (i) A **nominated voyage** means an intrastate tug voyage from one port to another that is undertaken for operational reasons, to cover towage requirements in the other port.
- (ii) For each hour engaged on a nominated voyage, an employee will be paid **\$20.18** per hour.

(b) Wage related allowance—cyclone (shipkeeping)

An employee will be paid **\$16.08** for each hour (including during Saturdays, Sundays and public holidays) an employee is on board a tug in port and available for the performance of any duty during a cyclone or cyclone alert.

(c) Wage related allowance—emergency maintenance

- (i) In clause 10.4(c), **emergency maintenance** means work which is necessary to reinstate a tug into service which would otherwise be out of service.
- (ii) An employee who, at the request of the employer is required to perform emergency maintenance work on board a tug outside the span of ordinary hours, will be paid an allowance as set out in the table below:

Category	\$ per hour
General Purpose Rating	54.30
<i>Category 1 (0–1850 tonnage/power units)</i>	
Mate	67.67
Master and Engineer	86.20
<i>Category 2 (1850 or more tonnage/power units)</i>	
Mate	62.34
Master and Engineer	89.89

(d) Expense related allowance—telephone

- (i) An employee who is required by their employer to telephone for orders will be entitled to be reimbursed an amount of **\$166.03** per year.
- (ii) The employer will reimburse full installation costs of a new service and pay transfer costs on one occasion during an employee’s period of service.

(e) Expense related allowance—insurance—outside work

- (i) An employee who is engaged on outside work is entitled to be paid an annual allowance equal to the annual premium paid by the employee to obtain an insurance policy which provides a benefit to the employee of

\$100,000 upon their death while engaged on outside work. The insurance policy must be approved in advance by the employer.

- (ii) This clause does not apply where the employee's employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of **\$100,000** upon their death whilst engaged on outside work.
- (iii) Clause 10.4(e) does not apply to an employee regularly or continuously engaged on outside work.

(f) Expense related allowance—insurance—fire fighting insurance

(i) For the purposes of clause 10.4(f), **total and permanent disability** means incapacitation to the following extent:

- the loss of two limbs (where limbs include the whole of one hand or the whole of one foot) or the sight of both eyes or the loss of one limb and the sight of one eye; or
- after a period of six consecutive months' continuous absence from their employment on account of injury which is proved to the satisfaction of the insurer (after considering such medical or other evidence or advice as they may require from time to time) the employee is unable or unlikely ever again to be able to undertake any form of remunerative work for which they are reasonably fitted by education or training or experience.

(ii) An employee who is engaged in fire fighting is entitled to be paid an annual allowance equal to the annual premium paid by the employee to obtain an insurance policy which provides a benefit to the employee of **\$130,000** in the case of death or total and permanent disability caused by bodily injury of the employee while engaged in fire fighting. The insurance policy must be approved in advance by the employer.

(iii) Clause 10.4(f) does not apply if the employee's employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of **\$130,000** in the case of death or total and permanent disability caused by bodily injury of the employee whilst engaged in fire fighting.

(g) Expense related allowance—meals

Each employee will receive a meal allowance of **\$14.28** for each day worked, unless the employer provides a meal or meal-making facilities.

10.5 Allowances—tug and barge operations

(a) Wage related allowance—multiple tow

(i) The following allowances will be paid where a vessel engages in a multiple tow for each day the vessel is at sea, in port or anchored from the time the tow is assigned until the time the vessel is berthed at its final destination.

Exposure Draft—Marine Towage Award 20XX

Classification	\$ per day
Engineer, Mate and General Purpose Rating	48.47
Master and Chief Engineer	95.88

(ii) On a changeover day the employees joining the vessel will be entitled to this allowance, and employees starting leave will not be entitled to this allowance.

(b) Wage related allowance—cooking

Classification	\$ per week
Rating and General Purpose Rating acting as Cook	34.20

(c) Wage related allowance—additional skills

Classification	\$ per week
Rating and General Purpose Rating holding qualifications as a Crane Driver, Able Seaman or Offshore Watch-keeper	102.61

(d) Expense related allowance—medicals and passport

The employer will pay an allowance to the employee equal to the cost of any medical examination, eyesight or hearing test, passport (with associated vaccinations), visas, etc., required for the purpose of revalidating certificates of competency or as required by the employer.

See Schedule B for a summary of monetary allowances.

11. Accident Pay

11.1 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.

11.2 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 52 weeks.

11.3 Calculation of the period

- (a) The 52 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 52 week period.
- (b) The termination by the employer of the employee's employment within the 52 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 Casual employees

For a casual employee, the weekly payment referred to in clause 11.1(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.

12. Superannuation

12.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act*

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

- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

12.2 Employer contributions

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

12.3 Voluntary employee contributions

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

12.4 Superannuation fund

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

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust;
- (c) Sunsuper;
- (d) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or

- (e) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Penalties and Overtime

13. Overtime and penalty rates

13.1 Payment for working overtime

- (a) Subject to any agreement under clause 9.2, overtime is payable for all time worked in excess of ordinary hours in clause 7.1, or outside the applicable span of hours in clause 7.2, overtime will be paid at the following rates:

Day	% of the minimum hourly rate
Monday to Saturday	
First two hours	150
After two hours	200
Sunday—all day	200

- (b) Employees performing overtime on Saturday or Sunday must be paid for a minimum of four hours.

13.2 Penalty rates—extended hours

Subject to any agreement under clause 9.2, an employee who is required to perform work in excess of 16 hours, in accordance with clause 7.3(b), must be paid for such work at **200%** of the employee’s minimum hourly rate.

13.3 Calculating overtime and penalty rates

- (a) In calculating overtime payments under clause 13.1, and penalty rates under clause 13.2, any period:
 - (i) less than half an hour will be counted as half an hour; and
 - (ii) greater than half an hour but less than an hour will be counted as an hour.
- (b) An employee who may have an entitlement under both clauses 13.1 and 13.2 will be paid whichever is the higher payment.

13.4 Resumption of duty

- (a) Clause 13.4 does not apply in any case where an employee is subject to an agreement in accordance with clause 9.2.
- (b) An employee who has ceased duty on any day then resumes duty other than in a consecutive extension after ordinary duty that day or before duty for the next day, will be entitled to a minimum payment of four hours for each resumption.

- (c) An employee who has to resume duty on two occasions during the hours between 1800 hours on the one day and 0500 hours on the following day will be entitled to a payment for the whole of the time from the commencement of the first resumption to the termination of the last resumption.
- (d) For each resumption of duty on any day under clause 13.4, other than in a consecutive extension before or after ordinary duty for the day, travelling time of up to one hour will be considered as time worked.

Part 6—Leave, Public Holidays and Other NES Entitlements

14. Annual leave

14.1 Clause 14 operates in conjunction with the [NES](#). The provisions of this clause are intended to satisfy the provisions in the [NES](#) concerning maximum weekly hours of work, annual leave and public holidays.

14.2 Entitlement to leave

- (a) A permanent full-time employee will be entitled to 168 days free of duty in each year, or to proportionate leave for any continuous service of less than a year.
- (b) A part-time employee's entitlement to days free of duty will be determined in accordance with clause 6.3.
- (c) The leave prescribed in clause 14.2(a) above includes:
 - (i) 104 days of leave, being instead of weekends;
 - (ii) five weeks of paid annual leave for shiftworkers under the [NES](#) (employees under this award are considered to be shiftworkers for the purposes of the [NES](#));
 - (iii) public holiday entitlements under the [NES](#); and
 - (iv) an additional 28 days' leave, to give effect to a 35 hour week.

14.3 Employees will not be entitled to leave from duty under clause 14 in relation to a period of absence from service on account of workers compensation, or leave without pay. An employee's leave entitlement under clause 14.1 will be debited by 0.857 of a day for each day of absence referred to in this clause.

14.4 Employers will consult with their employees and prepare a roster providing for the taking of leave from duty. Where practicable, the roster should provide notice of the timing of 140 days of leave from duty in each year (or the proportion of the employee's entitlement to rostered leave days in a year that 140 bears to 168).

14.5 Despite the provisions of this clause, the value of any leave given to the employee in advance will be deducted, upon termination of employment, from any money owing to an employee.

14.6 Continuous service

For the purposes of clause 14, a permanent employee will be deemed to have served continuously for the aggregate of their service although the service may have been temporarily interrupted (by up to 21 days) by transfer to some other work of their employer, or for the convenience of the employer, or by suspension of operations, or the need to carry out repairs or maintenance on a tug that the employee is rostered to work on.

14.7 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 14.7 is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C.

- (c) The employer must keep a copy of any agreement under clause 14.7 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 14.7, 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.

14.8 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.8.
- (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 14.8 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 14.8 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 14.8 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 14.8.

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 14.8.

Note 3: An example of the type of agreement required by clause 14.8 is set out at Schedule D. There is no requirement to use the form of agreement set out at Schedule D.

15. Personal/carer's leave and compassionate leave

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

16. Parental leave and related entitlements

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

17. Community service leave

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

18. Public holidays

18.1 Public holiday entitlements are provided in accordance with the [NES](#).

18.2 In ports where clause 9.2 is not invoked, employees required to work on any of the public holidays specified in the [NES](#) will be paid:

- (a) for all hours worked within ordinary hours at **150%** of the minimum hourly rate for their classification; and

- (b) outside ordinary hours at **250%** of the minimum hourly rate for their classification,

with a minimum payment of four hours.

- 18.3** In ports where clause 9.2 is invoked, an agreement under clause 9.2 recognises that harbour towage operations require tugs to be available on any day of the year. Entitlements to public holidays under the [NES](#) are incorporated in the applicable port rosters developed under clause 14.4 and the aggregated entitlements to leave from duty.

18.4 Part-day public holidays

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

19. Leave to deal with family and domestic violence

Clause 19 inserted in accordance with [PR610076](#).

- 19.1** This clause applies to all employees, including casuals.

19.2 Definitions

- (a) In this clause:

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

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member in clause 19.2(a) includes a former spouse or de facto partner.

19.3 Entitlement to unpaid leave

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

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

(c) is available in full to part-time and casual employees.

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

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

19.4 Taking unpaid leave

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

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

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

19.5 Service and continuity

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

19.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 19. The notice:

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

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause 19 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 19.4.

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

19.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 19.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 19 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

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

19.8 Compliance

An employee is not entitled to take leave under clause 19 unless the employee complies with clause 19.

20. Termination of employment

20.1 Notice of termination is provided for in the [NES](#).

20.2 Notice of termination by employer—permanent employees

- (a) Notwithstanding the terms of the [NES](#), in order to terminate the employment of an officer the employer must give to the employee the following written notice:

Period of continuous service	Period of notice
1 year or less	2 weeks
More than 1 year but less than 4 years	6 weeks
More than 4 years	8 weeks

- (b) Payment instead of the notice prescribed in clause 20.2(a) may be made.
- (c) An employer may terminate an employee’s employment by giving part of the notice prescribed in clause 20.2(a) and part payment instead.
- (d) In calculating any payment instead of notice, the wages an employee would have received in respect of ordinary time the employee would have worked during the period of notice if the employee’s employment had not been terminated must be used.

20.3 Job search entitlement

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

20.4 Return to place of engagement

If the employment of an employee is terminated by the employer elsewhere than at the employee's home port or place of engagement for any reason other than misconduct, the employer will be responsible for transporting the employee to the employee's home port or place of engagement.

20.5 Termination without notice

Despite the above provisions, an employer may terminate an employee's employment without notice, or payment instead of notice, for serious misconduct.

20.6 Notice of termination by employee—permanent employees

- (a) An employee may terminate their employment by giving the employer the following notice in writing:
 - (i) in the case of officers, two weeks' notice; or
 - (ii) in the case of ratings, one week's notice.
- (b) If an employee fails to give the required notice, the employer may withhold money due to the employee not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by clause 20.6, less any period of notice actually given by the employee.

20.7 Casual employees

The employment of a casual employee terminates at the end of each period of duty.

21. Redundancy

21.1 Redundancy pay is provided for in the [NES](#).

21.2 Transfer to lower paid duties

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

21.3 Employee leaving during notice period

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

21.4 Job search entitlement

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

Part 7—Consultation and Dispute Resolution

22. Consultation

22.1 Consultation regarding major workplace change

(a) Employers to notify

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

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 22.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 22.1(a).

- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

22.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

23. Dispute resolution

23.1 In the event of a dispute about a matter under this award, or a dispute in relation to the [NES](#), in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

23.2 If a dispute about a matter arising under this award or a dispute in relation to the [NES](#) is unable to be resolved at the workplace, and all appropriate steps under clause 23.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

- 23.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 23.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the [Act](#) that it considers appropriate to ensure the settlement of the dispute.
- 23.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

Provisional view to change references to ‘occupational health and safety legislation’ to ‘work health and safety legislation’ referred to Plain Language Full Bench”. See [\[2017\] FWCFB 5536](#) at [579].

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

Schedule A—Summary of Hourly Rates of Pay

Rates adjusted as a result of AWR 2018.

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

NOTE: The hourly rates in this schedule are based on a 35 hour week.

A.1 Full-time and part-time employees

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

	Ordinary hours	Public holidays (ordinary hours)	Extended hours ¹
	% of minimum hourly rate		
	100%	150%	200%
	\$	\$	\$
Rating and General Purpose Rating	23.43	35.15	46.86
<i>Category 1 (0–1850 tonnage/power units)</i>			
Mate	26.63	39.95	53.26
Master and Engineer	31.95	47.93	63.90
<i>Category 2 (1850 or more tonnage/power units)</i>			
Mate	27.81	41.72	55.62
Master and Engineer	33.69	50.54	67.38
¹ Extended hours means work performed continuously in excess of 16 hours, pursuant to clause 13.2.			

A.1.2 Full-time and part-time employees—overtime

	Monday to Saturday – first two hours	Monday to Saturday – after two hours	Sunday – all day	Public holidays – all day
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Rating and General Purpose Rating	35.15	46.86	46.86	58.58
<i>Category 1 (0–1850 tonnage/power units)</i>				
Mate	39.95	53.26	53.26	66.58
Master and Engineer	47.93	63.90	63.90	79.88
<i>Category 2 (1850 or more tonnage/power units)</i>				
Mate	41.72	55.62	55.62	69.53
Master and Engineer	50.54	67.38	67.38	84.23

A.2 Casual employees

A.2.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Public holidays (ordinary hours)	Extended hours¹
	% of minimum hourly rate		
	125%	175%	225%
	\$	\$	\$
Rating and General Purpose Rating	29.29	41.00	52.72
<i>Category 1 (0–1850 tonnage/power units)</i>			
Mate	33.29	46.60	59.92
Master and Engineer	39.94	55.91	71.89
<i>Category 2 (1850 or more tonnage/power units)</i>			
Mate	34.76	48.67	62.57
Master and Engineer	42.11	58.96	75.80

¹ **Extended hours** means work performed continuously in excess of 16 hours, pursuant to clause 13.2.

Schedule B—Summary of Monetary Allowances

Rates adjusted as a result of AWR 2018.

See clause 10 for full details of allowances payable under this award.

B.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule F as the minimum weekly wage rate for Rating in clause 9.1 = **\$820.20**

Allowance	Clause	% of <u>standard rate</u> \$820.20	\$ per hour unless stated otherwise
Nominated voyages allowance	10.4(a)	2.46	20.18
Cyclone (shipkeeping) allowance	10.4(b)	1.96	16.08
Emergency maintenance allowance—general purpose rating	10.4(c)	6.62	54.30
Emergency maintenance allowance—category 1	10.4(c)		
Mate		8.25	67.67
Master and Engineer		10.51	86.20
Emergency maintenance allowance—category 2	10.4(c)		
Mate		7.60	62.34
Master and Engineer		10.96	89.89
Multiple tow allowance	10.5(a)		
Engineer, Mate and General Purpose Rating		5.91	48.47 per day
Master and Chief Engineer		11.69	95.88 per day
Cooking allowance—Rating and General Purpose Rating acting as cook	10.5(b)	4.17	34.20 per week
Additional skills allowance—Rating and General Purpose Rating holding qualification as a Crane Driver, Able Seaman or Offshore Watch-keeper	10.5(c)	12.51	102.61 per week

B.1.1 Adjustment of wage related allowances

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

B.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clause 10.

Allowance	Clause	\$
Industrial and protective clothing—sunglasses	10.3(a)	51.60 per annum
Loss of personal effects allowance—maximum	10.3(a)	1754.00 per occasion
Loss of personal effects—where damage or loss occurs on outside work—maximum	10.3(a)	2799.00 per occasion
Loss of personal effects—maximum payable for one article	10.3(a)	466.80 per article per occasion
Victualling and accommodation allowance in out-ports:	10.4(g)	
Breakfast		15.85 per occasion
Lunch		18.56 per occasion
Dinner		29.89 per occasion
Accommodation		85.68 per occasion
Total daily allowance		149.98 per day
Telephone allowance	10.4(d)	166.03 per annum
Meal allowance	10.4(g)	14.28 per day

B.2.1 Adjustment of expense related allowances

At the time of any adjustment to the [standard rate](#), each expense related allowance in clauses 10.3, 10.3(d) and 10.4(g) 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
Industrial and protective clothing	Clothing and footwear group
Telephone allowance	Telecommunication equipment and services sub-group
Loss of personal effects allowance	Household appliances, utensils and tools sub-group
Victualling and accommodation allowance in out-ports	All groups

Schedule C—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule D—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule E—Part-day Public Holidays

Schedule E amended in accordance with [PR701683](#)

This schedule operates in conjunction with award provisions dealing with public holidays.

- E.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause E.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 E.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.

- (h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

This schedule is not intended to detract from or supplement the [NES](#).

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Schedule F—Definitions

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

In this award, unless the contrary intention appears:

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

contract towage means when a tug is towing a vessel from one location to another location, where that tow or other services of a non-emergency nature has been contracted for and pre-planned by the employer

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)

free running voyage and **delivery voyage** means when a tug proceeds from one port to another either interstate or intrastate and is not engaged in towing between ports or on a nominated voyage. In addition, this definition will apply to a tug proceeding from its home port to another port to commence a contract tow or when returning to its home port on completion of a contract tow

Marine towage industry has the meaning given in clause 3.2

minimum hourly rate means 1/35th of the minimum weekly rate

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

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the [Act](#)

nominated voyage means an intrastate tug voyage from one port to another that is undertaken for operational reasons, to cover towage requirements in the other port

officer means a master, a mate or engineer of a tug

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

outside work means work on a tug which proceeds to sea on a special voyage outside the limits of bays, rivers or regulated port boundaries or limits but within Australian territorial waters

special voyage means a voyage for which it is necessary to set watches and will include a free running voyage and delivery voyage, contract towing or emergency operations, but does not include a nominated voyage

standard rate means the minimum weekly rate for the classification of Rating in clause 9.1

tonnage/power units means the sum of the gross registered tonnage figure of a tug and of the brake horse power figure of the main engine(s) only of the tug (including super charged power where applicable)

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