

# EXPOSURE DRAFT

## Mobile Crane Hiring Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Mobile Crane Hiring Award 2010** (the Mobile Crane award) as at 25 May 2016. This exposure draft does not seek to amend any entitlements under the Mobile Crane 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 [AM2014/278](#). 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 of this Award

### 1. Title and commencement

- 1.1 This award is the *Mobile Crane Hiring Award 2016*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010.
- 1.3 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

### 2. Definitions

In this award, unless the contrary intention appears:

**accident pay** means a weekly payment made to an employee by the employer that is the difference between the amount of workers' compensation received by the employee and the employee's minimum weekly rate (including industry allowance) prescribed by clause 16.1. Where the incapacity caused by the injury which leads to workers' compensation becoming payable is for a period less than one week, the payment is the difference between the amount of compensation and the employee's minimum weekly rate (including industry allowance) for that period. The minimum weekly rate does not include:

- (a) overaward payments;
- (b) shift loadings;
- (c) overtime;
- (d) attendance payments;
- (e) bonus payments;
- (f) fares and travelling allowance;
- (g) site allowance; or
- (h) other such rates.

**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

**crane crew** means workers with the qualifications and flexibility to perform the duties of crane operators and dogger/riggers on an interchangeable basis, provided that the crane operator will be regarded as the employee in charge of the crane crew

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

**dogger** means a worker who carries out the work of slinging loads and who controls the movement of such loads when handled by lifting appliances. It is also the dogger's responsibility to control loads when out of view of the crane operator. A dogger must hold the current certificates issued in accordance with statutory requirements.

**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)

**injury**, for the purposes of clause 18–Accident pay, has the same meaning as that contained in the applicable workers' compensation legislation covering the employer in respect of a claim made by the employee

**MCE** means mobile crane employees in the mobile crane hiring industry

**mobile crane** means a crane having its own propulsion which includes tractor and crawler cranes

**mobile crane hire industry** means the service industry involving the hiring of mobile cranes, mobile elevated work platforms and like equipment and operating personnel to clients whose requirements include but are not limited to the provision and service of materials handling equipment, lifting and machinery movement equipment, earthmoving and construction plant hire and civil contracting, plant and mobile units for quarrying and mining projects, dig load and haul projects. Hiring can be on an hour by hour, day by day, or contract basis depending on the nature of the task.

**mobile crane operator** means the operator who is the link between the operation of the mobile crane and its motive power and who controls the apparatus inside the crane's cabin to regulate its movements i.e. 'luffing' (raising or lowering the jib or boom), 'slewing' (turning the crane on its axis) and/or 'hoisting' (raising or lowering) the hook. A crane operator must hold the current certificates in accordance with statutory requirements.

**mobile elevated work platform** means a vehicle mounted unit with a telescoping device, hinged device, or articulated device or any combination of these used to support a platform on which personnel, equipment, or materials may be elevated to perform work

**mobile elevating work platform operator** means an employee required to perform, alone or as part of a crew, tasks including:

- driving/relocating the platform between work locations;
- setting up the platform;

- operating the platform in a safe and efficient manner; and
- holding the current certificates in accordance with statutory requirements

**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)

**ordinary hourly rate** means the hourly rate for an employee's classification specified in clause 16.1, plus the industry allowance

**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

**rigger** means a worker who in addition to the work of a dogger, is directly in charge of the initial work of setting up the crane and who ensures that all rigging work is carried out in a safe and efficient manner in accordance with statutory requirements. A rigger must hold the current certificates in accordance with statutory requirements.

**standard rate** means the minimum hourly rate for a mobile crane employee (MCE) level 1 in clause 16.1

### 3. The National Employment Standards and this award

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

### 4. Coverage

- 4.1 This industry award covers employers throughout Australia engaged in the **mobile crane hire industry** and their employees in the classifications within Schedule A—Classification Structure to the exclusion of any other modern award.
- 4.2 **Mobile crane hire industry** means the service industry involving the hiring of mobile cranes, mobile elevated work platforms and like equipment and operating personnel to clients whose requirements include but are not limited to the provision and service of materials handling equipment, lifting and machinery movement equipment, earthmoving and construction plant hire and civil contracting, plant and mobile units for quarrying and mining projects, dig load and haul projects. Hiring can be on an hour by hour, day by day, or contract basis depending on the nature of the task.

**4.3** This award does not cover:

- (a) clerical and administrative occupations; or
- (b) an employer bound by:
  - (i) the *Manufacturing and Associated Industries and Occupations Award 2016*; or
  - (ii) the *Building and Construction General On-site Award 2016*.

**4.4** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

**4.5** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

**4.6** This award does not cover:

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

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

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

## **5. Effect of variations made by the Fair Work Commission**

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

## **6. Award flexibility for individual arrangements**

- 6.1** 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.
- 6.2** 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.
- 6.3** 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 6.1; 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.
- 6.4** 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.
- 6.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 6.6** Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 6.7** 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.

**6.8** 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).

**6.9** The notice provisions in clause 6.8(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 6.8(a), subject to four weeks' notice of termination.

**6.10** 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.

## **7. Facilitative provisions for flexible working practices**

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

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

Clause	Provision	Agreement between an employer and:
9.7(g)	Casual conversion to full time employment	The majority of employees
13.3	Method for arranging rostered days off	Individual employee
13.4	Substitution of industry rostered day off	The majority of employees
14	Make-up time	The majority of employees
21.9	Time off instead of payment for overtime	The majority of employees
26.1(b)	Substitution of public holidays	The majority of employees



## Part 2—Types of Employment and Classifications

### 8. Types of employment

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

- (a) full-time weekly hire employees; or
- (b) casual employees.

8.2 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 a full-time weekly hire or casual employee.

### 9. Casual employment

Casual employment provisions may be affected by [AM2014/197](#)

9.1 A casual employee is engaged and paid in accordance with the provisions of this clause.

9.2 A casual employee will be entitled to all of the applicable rates and conditions of employment prescribed by this award except annual leave, paid personal leave, paid parental leave, paid community service leave, public holidays, notice of termination and redundancy.

9.3 An employer when engaging a person for casual employment must inform the employee in writing that the employee is to be employed as a casual, stating:

- (a) By whom the employee is employed;
- (b) the job to be performed;
- (c) the classification level;
- (d) the actual or likely number of hours to be worked; and
- (e) the relevant rate of pay.

9.4 In addition to the rate appropriate for the type of work, a casual employee must be paid a **25%** loading of the ordinary hourly rate.

9.5 A casual employee required to work overtime, or on a Saturday, or on a Sunday, or on a public holiday, will be entitled to the relevant penalty rates prescribed by clause 21—Overtime, in addition to the **25%** casual loading as follows:

Relevant penalty for full-time & part-time employees	Rate for casual employee (inclusive of 25% casual loading)
% of ordinary hourly rate	
150	175

Relevant penalty for full-time & part-time employees	Rate for casual employee (inclusive of 25% casual loading)
200	225
250	275

**9.6** Casual employees will be engaged for a minimum period of four hours per day.

**9.7 Casual conversion to full-time employment**

- (a) A casual employee, other than an **irregular casual employee**, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to elect to have their contract of employment converted to full-time weekly hire employment if the employment is to continue beyond the conversion process.
- (b) Every employer of such an employee must give the employee notice in writing of the provisions of clause 9.7(a) within four weeks of the employee having attained such period of six months. The employee retains their right of election under clause 9.7(a) if the employer fails to comply with this subclause.
- (c) Any such casual employee who does not within four weeks of receiving written notice elect to convert their contract of employment to full-time weekly hire employment is deemed to have elected against any such conversion.
- (d) Any casual employee who has a right to elect under clause 9.7(a), on receiving notice under clause 9.7(b) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that they seek to elect to convert their contract of employment to full-time weekly hire employment, and within four weeks of receiving such notice the employer must consent to or refuse the election but must not unreasonably so refuse.
- (e) Once a casual employee has elected to become and been converted to full-time weekly hire employment, the employee may only revert to casual employment by written agreement with the employer.
- (f) Where, in accordance with clause 9.7(d) an employer refuses an election to convert, the reasons for doing so must be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.
- (g) By agreement between the employer and the majority of the employees in the relevant workplace or a section or sections of it, or with the casual employee concerned, the employer may apply clause 9.7(a) as if the reference to six months is a reference to 12 months, but only in respect of a currently engaged individual employee or group of employees. Any such agreement reached must be kept by the employer as a time and wages record. Any such agreement reached with an individual employee may only be reached within the two months prior to the period of six months referred to in clause 9.7(a).
- (h) For the purposes of clause 9.7(a), an **irregular casual employee** is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

- (i) An employee must not be engaged and re-engaged to avoid any obligation under this award.

## **10. Loss of validation of licences/certificates**

- 10.1** An employee will notify the employer in the event of cancellation or suspension of licences and/or certificates required in the performance of their duties.
- 10.2** Should either a licence or certificate held by an employee be cancelled or suspended and the employee has notified the employer in accordance with clause 10.1, all possible alternate employment options will be examined and where practicable provided by the employer.

## **11. Classifications**

A description of the classifications under this award is set out in Schedule A—Classification Structure.

## **Part 3—Hours of Work**

### **12. Ordinary hours of work**

- 12.1** The ordinary hours of work will be 38 per week, Monday to Friday, worked continuously at the discretion of the employer, between 6.00 am and 6.00 pm, except for meal breaks, arranged in accordance with clause 15—Breaks.
- 12.2** The method of working the 38 hour week may be any one of the following:
  - (a) by employees working less than eight ordinary hours each day; or
  - (b) by employees working less than eight ordinary hours on one or more days each week; or
  - (c) by fixing one week day on which all employees will be off during a particular work cycle; or
  - (d) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.
- 12.3** A regular starting and finishing time will be fixed at each depot, which will not be changed, except after notice of at least a week.
- 12.4** An employee/s starting time for a particular day may be altered to suit the business requirements of the employer by mutual agreement with the employee/s concerned.
- 12.5** The ordinary hours of work prescribed will not exceed 10 hours on any day provided that any arrangement of ordinary working hours in excess of eight hours in any one day will be with the agreement of the majority of employees involved.
- 12.6** An assessment should be made as to which method of implementation best suits the business and the proposal will be discussed with the employees concerned.

- 12.7 Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the establishment concerned.

### 13. Rostering arrangements

- 13.1 Where the hours of work are arranged in accordance with clause 12.2(c) and 12.2(d) the ordinary working hours will be worked in a 20 day cycle, Monday to Friday inclusive, with eight hours worked for each of 19 days and with 0.4 of an hour on each of those days accruing toward the 20th day which will be taken as a paid day off and known as a **rostered day off**.
- 13.2 An employee will be entitled to 13 rostered days off per year provided that the number of rostered days off will be reduced to the extent of any annual leave taken on the basis of one day for each four weeks of annual leave taken.
- 13.3 By mutual agreement between the employer and employee, rostered days off may be accumulated to a maximum of five days over a 20 week period. Accumulated rostered days off must be taken no later than the 14 day period commencing at the time of the fifth accumulated rostered day off of the 20 week cycle.
- 13.4 Where an employer and a majority of employees at an enterprise agree, another day may be substituted for the nominated industry rostered day off.
- 13.5 Where a majority of the employees request that their representative is to be consulted, consultation will take place at least five days prior to the alternate rostered day off being implemented.
- 13.6 An employee who agrees to work on the rostered day off to satisfy the employer's business requirements will take an alternative rostered day off on a mutually convenient day prior to the next rostered day off. Where agreement cannot be reached it will be taken in conjunction with the next rostered day off.
- 13.7 Except in the case of an emergency circumstance no employee will be required to work on a rostered day off. Where an emergency circumstance does occur the employee will be paid an additional day's pay at ordinary rates for that week (that is 45 hours and 36 minutes pay for that week at the ordinary rate instead of 38 hours' pay) in addition to being given a substitute rostered day off. An emergency will mean where less than 24 hours' notice of the requirement to work on the rostered day off has been given.
- 13.8 In the case of termination an employee who has not worked a completed 19 day four week cycle will receive pro rata accrued entitlements for each day worked in such cycle.

### 14. Make-up time

- 14.1 Subject to a majority of employees at a workplace agreeing to introduce this provision an employee, other than an employee on shiftwork, may elect, with the consent of the employer, to work make-up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

- 14.2** Subject to a majority of employees at a workplace agreeing to introduce this provision an employee on shiftwork may elect, with the consent of their employer, to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time, at the shiftwork rate which would have been applicable to the hours taken off.

## **15. Breaks**

### **15.1 Meal break**

- (a) A set meal break will be established in each depot by mutual agreement between the employer and employees which may be altered by the employer by giving one week's notice.
- (b) An employee will cease work for a meal break of 30 minutes on all working days, except Saturday and Sunday, between the hours of 11.30 am and 1.00 pm, inclusive.
- (c) An employee may be required to change the meal break to suit the requirements of the employer or client.
- (d) An employee who has not completed their meal break after six hours from the normal starting time on any day to suit the requirements of the employer or the client will be paid at the overtime rates prescribed in clause 21—Overtime for the period from six hours after normal starting time until a meal break is allowed.

### **15.2 Meal break during overtime**

- (a) If the period of overtime is more than 1.5 hours after working ordinary hours an employee, before starting such overtime, will be allowed a meal break of 20 minutes, which will be paid for at their ordinary hourly rate.
- (b) If agreement is reached between the employer and employee for variation of this provision to meet the circumstances of work in hand, then the employer will not be required to make payment in excess of 20 minutes.
- (c) An employee working overtime will be allowed a meal break of 20 minutes for each four hours of overtime worked provided that the employee continues to work after the meal break.
- (d) An employee required to work overtime for more than 1.5 hours after working ordinary hours will either be supplied meals by the employer, or be paid **\$14.27** for the first and subsequent meals.
- (e) An employee required to start work two or more hours prior to the normal commencement time will be paid **\$14.27** meal allowance and be allowed a 20 minute meal break as soon as is practicable.

Parties are asked to advise whether or not the breaks in clauses 15.2(c) and 15.2(e) are paid.

- (f) This allowance will be payable in any event where an employee is required to start work at or prior to 5.00 am.

- (g) Where an employee is required to work overtime on a Saturday or Sunday the first prescribed meal break will be between 10.00 am and 1.00 pm and be paid at ordinary rates.

## Part 4—Wages and Allowances

### 16. Minimum wages

- 16.1 The minimum weekly rate of pay to employees in the mobile crane hiring industry will total the following weekly base rates of pay and the industry allowance set out in clause 16.2 for each classification level as described in Schedule A.

Level Mobile Crane Employee (MCE)	Minimum weekly rate	Minimum hourly rate
	\$	\$
Level 1 (MCE1)	764.90	20.13
Level 2 (MCE2)	788.80	20.76
Level 3 (MCE3)	812.80	21.39
Level 4 (MCE4)	834.60	21.96
Level 5 (MCE5)	876.90	23.08
Level 6 (MCE6)	894.80	23.55
Level 7 (MCE7)	918.80	24.18

- 16.2 All employees will be paid an all purpose industry allowance of **\$43.60** per week in addition to the minimum classification rates set out in clause 16.1.

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

### 16.3 Higher duties

Where an employee on any day performs work in a classification attracting a higher rate of pay than the higher rate of pay will apply for the whole day.

### 16.4 Payment of wages

#### (a) Methods of payment

Wages will be paid in cash, cheque or direct transfer into the employee's bank (or other recognised financial institution) account either weekly or fortnightly.

#### (b) Wages to be paid during working hours

- (i) Where an employee is paid wages by cash or cheque such wages are to be paid during ordinary working hours.
- (ii) If an employee is paid wages by cash and is kept waiting for their wages on pay day, after the usual time for finishing work, the employee is to be paid at overtime rates for the period they are kept waiting.

**(c) Payment by cheque**

In the case of an employee paid by cheque, if the employee requires it, the employer is to have a facility available during ordinary hours for the employee to cash their cheque.

**(d) Day off coinciding with pay day**

(i) In the event that an employee, by virtue of the arrangement of ordinary working hours, is to take a day off on a day which coincides with pay day, the employee will be paid no later than the working day immediately following pay day.

(ii) Where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

**(e) Termination of employment**

Upon termination of employment, wages due will be paid on the day of such termination or forwarded by electronic transfer or post on the next working day.

**(f) Casual employees**

Where a casual employee is engaged for a work period which includes the designated pay day, wages will be paid in accordance with such arrangements. This will not affect the employee's status as a casual. If a casual is engaged on a daily basis, then the payment will be made on a daily basis unless otherwise mutually agreed.

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.

**16.5 Supported wage system**

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

**16.6 National training wage**

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

**17. Allowances**

**17.1** 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.

**17.2 Wage-related allowances**

**(a) All purpose allowances**

Allowances paid for all purpose are included in the rate of pay of an employee who is entitled to the allowance when calculating any penalties or loadings or

payments while they are on annual leave. The industry allowance in clause 16.2 is paid for all purposes under this award.

**(b) Multi crane lift allowance**

Where more than one crane is engaged on any single lift the following additional payments will be made to the drivers:

Number of cranes	\$ per day
Two cranes	3.24
Three cranes	6.42
Four cranes	9.60
More than four cranes	12.84

**(c) Pile driving allowance**

An employee performing pile driving or extraction will receive **\$15.72** per day or part thereof.

**17.3 Expense related allowances**

**(a) Protective clothing and equipment**

- (i)** Where an employee is required to work in a place where in the absence of protective clothing or footwear, the employees' clothing or footwear will become wet, the employee will provide waterproof clothing, safety helmet and footwear, as necessary, and be reimbursed by the employer for the cost of the clothing and protective equipment. Alternatively the employer may provide the clothing and protective equipment.
- (ii)** The purchase of safety footwear will be subsidised by the employer and will be replaced when required due to wear, loss or damage. On each occasion that an employee obtains safety footwear, the employer will subsidise the cost of such footwear to an amount of **\$62.27**.
- (iii)** The employee will purchase the approved type safety footwear and will present the receipt in order to obtain the subsidy.
- (iv)** All employees will be eligible for the subsidy after one month qualifying service with the employer.
- (v)** The purchase of a Tasmanian Bluey Jacket will be subsidised by the employer and will be replaced when required due to wear, loss or damage. On each occasion the employer will subsidise the cost of such jacket to an amount of **\$62.27**.

Parties are asked to advise whether clause 17.3(a)(iv) applies to 17.3(a)(ii), 17.3(a)(iii) and 17.3(a)(v).



**(b) Damage to clothing**

After one month's service with the employer, compensation to the extent of any damage sustained to personal clothing will be made where, during the course of the work, clothing is damaged.

**(c) Fares and travel allowance**

- (i)** \$17.43 per day will be paid to compensate for travel patterns and costs peculiar to the nature of employment in the mobile crane hiring industry i.e. paid only once per day.
- (ii)** This allowance will be payable for every day upon which an employee works or reports for work in accordance with the employer's requirements but will not be taken into account in calculating overtime, penalty rates, annual leave, sick leave or rostered days off.
- (iii)** An employee directed to a work site where there is no reasonable means of transport available on cessation of work will be reimbursed the cost of, or be supplied with, transport by the employer to return to the depot or point where work was commenced.
- (iv)** Clause 17.3(c)(iii) will apply only on the first day of engagement on any work site.

**(d) Car allowance**

- (i)** An employee directed by an employer to use a private vehicle during working time will be paid \$0.78 per kilometre measured to and from respective sites, in addition to payment for the time travelling at the appropriate ordinary time or overtime rate.
- (ii)** The time spent travelling from home to the initial work site and travelling from the final work site to home on any day will not be paid unless the employee travels beyond a radius of 50 kilometres from the employer's depot.
- (iii)** An employee travelling beyond the 50 kilometre radius on any day will be paid travelling time at the appropriate rate for the time taken travelling to and from the site to the 50 kilometre radius line.

**(e) Accommodation and overnight allowance**

- (i)** An employee who is required by the employer to be away from home overnight will be reimbursed the cost of, or be provided with, first class accommodation, including full board, by the employer.
- (ii)** In addition \$14.77 will be paid for each night the employee is required to be away from home.

**(f) Meal allowance**

An employee will be paid a meal allowance in accordance with clauses 15.2(d), (e) and (f).

See Schedule C for a summary of monetary allowances.

## **18. Accident pay**

**18.1** This clause commences on 15 October 2015.

**18.2** The employer must pay an employee accident pay.

### **18.3 Definitions**

**(a) Accident pay** means a weekly payment made to an employee by the employer that is the difference between the amount of workers' compensation received by the employee and the employee's minimum weekly rate (including industry allowance) prescribed by clause 16.1. Where the incapacity caused by the injury which leads to workers' compensation becoming payable is for a period less than one week, the payment is the difference between the amount of compensation and the employee's minimum weekly rate (including industry allowance) for that period. The minimum weekly rate does not include:

- (i)** overaward payments;
- (ii)** shift loadings;
- (iii)** overtime;
- (iv)** attendance payments;
- (v)** bonus payments;
- (vi)** fares and travelling allowance;
- (vii)** site allowance; or
- (viii)** other such rates.

**(b) Injury**, for the purposes of clause 18–Accident pay, has the same meaning as that contained in the applicable workers' compensation legislation covering the employer in respect of a claim made by the employee.

**18.4** Subject to the relevant workers' compensation claim being accepted, accident pay is payable from the time of the injury for which workers' compensation is paid for a total of 52 weeks in respect to the employee's incapacity from that injury, regardless of whether the incapacity is in one continuous period or not.

**18.5** The termination of the employee's employment whilst the employee is receiving accident pay will not affect the liability of the employer to pay accident pay in accordance with clause 18.4. Such payment shall continue to apply except where the termination is due to serious and/or wilful misconduct. To qualify for the continuation of accident pay on termination, an employee shall if required provide evidence to the employer of the continuation of weekly compensation payments.

**18.6** Where 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 of receipt of the lump sum by the employee.

**18.7** If an employer has a scheme for the payment of accident pay that contains provisions generally not less favourable to employees than the provisions of this clause, the

employer may apply to the Fair Work Commission for that scheme to apply instead of this clause.

- 18.8** For a casual employee the weekly payment as defined in clause 18.3 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 over award payments, shift loadings, overtime, attendance payments, bonus payments, fares and travelling allowance, site allowance, or other such rates.
- 18.9** Accident pay will not apply in respect of any injury during the first five ordinary working days of incapacity.
- 18.10** Accident pay will not apply to any incapacity occurring during the first three weeks of employment unless such incapacity extends beyond the first three weeks. In this situation accident pay will apply only to the period of incapacity after the first three weeks. Provided that industrial diseases contracted by gradual process or injuries subject to recurrence, aggravation or acceleration will not be subject to accident pay unless the employee has been employed at the time of the incapacity for a minimum period of one month.
- 18.11** An employee on engagement may be required to declare all workers' compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit the entitlement to accident pay provided by this clause.
- 18.12** 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.
- 18.13** For the avoidance of doubt, an employee will not be entitled to any payment under this clause in respect of any period of workers' compensation where the statutory payment for the period exceeds the amount the employee would have received for working ordinary time hours for the same period.
- 18.14** An employee shall not be entitled to accident pay in respect of any period of other paid leave.
- 18.15** An employee upon receiving an injury for which the employee claims to be entitled to receive accident pay shall give notice in writing of the said injury to the employer as soon as reasonably practicable after the occurrence; provided that such notice may be given by a representative of the employee.
- 18.16** In order to receive accident pay, an employee shall conform to the requirements of the applicable workers' compensation legislation as to medical examination. Where, in accordance with the applicable workers' compensation legislation, a medical referee gives a certificate as to the condition of the employee and the employee's fitness for work, or specifies work for which the employee is fit, and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

**18.17 Civil damages claim**

- (a) An employee receiving or who has received accident pay shall advise the employer of any action the employee may institute or any claim the employee may make for damages. Further, the employee shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any verdict of settlement on that injury.
- (b) Where an employee obtains a verdict for damages in respect of an injury for which the employee has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict; provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer, the employee shall pay to the employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.
- (c) Where an employee obtains a verdict for damages against a person other than the employer in respect of an injury for which the employee has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict; provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer, the employee shall pay to the employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.

**18.18** Nothing in this award shall require an employer to insure against liability for accident pay.

**18.19** Any changes in compensation rates under the applicable workers' compensation legislation shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

**18.20** All rights to accident pay shall cease on the death of an employee.

**18.21** In the event of any dispute arising as to the entitlement of an employee to payment of accident pay, the matter shall be dealt with by clause 30—Dispute resolution.

**19. Inclement weather**

**19.1** Employees will not be entitled to payment for time lost due to inclement weather unless work has ceased by agreement with the employer provided that employees will not be required to work in unsafe conditions.

**19.2** Subject to clause 19.1, employees unable to work at a site due to inclement weather may be required to:

- (a) remain on site; or
- (b) transfer the crane to an alternative site; or
- (c) return to the depot;

until such inclement weather ceases or abates to allow safe work to continue.

- 19.3** Where cranes are left on site for five working days or more and employees are deemed to be part of the site, the procedures on the site will apply. A crane will not be removed from a site if it is unsafe to do so as a result of weather conditions.

**19.4 Definitions**

- (a) **Inclement weather** means the existence of abnormal climatic conditions (i.e. rain, hail, snow, high winds, cold, extreme high temperature of the like or any combination thereof) which mean it is not reasonable or safe to continue working whilst these conditions remain
- (b) **Employer** means owner, manager or recognised agent of the owner or manager of the company
- (c) **Site procedures** relate only to this inclement weather clause

**20. Superannuation**

**20.1 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, the superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

**20.2 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.

**20.3 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 20.2.
- (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 paragraph clauses 20.3(a) or 20.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or 20.3(b) was made.

## 20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b) to one of the following superannuation funds or its successor:

- (a) Construction and Building Industry Super (Cbus);
- (b) 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
- (c) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Overtime and Penalty Rates

### 21. Overtime

**21.1** An employee may be required to work reasonable overtime. Overtime need not be limited to one job only.

**21.2** An employee may be notified to work overtime prior to leaving the employer's premises or where the employee agrees, after having left the employer's premises.

**21.3** All time worked outside the ordinary hours of work will be overtime and paid at:

<b>For overtime worked on</b>	<b>Overtime rate % of ordinary hourly rate</b>
Monday to Saturday—first 2 hours	150
Monday to Saturday—after 2 hours	200
Saturday—after 12.00 pm	200
Sunday—all time worked	200
Public holidays—all time worked	250

**21.4** An employee will be paid a minimum of four hours at the appropriate penalty rates for working overtime on a Saturday, Sunday or public holiday.

**21.5** An employee travelling between the depot and nominated work site outside of ordinary hours will be paid at the appropriate overtime rates for the period of such travel.

**21.6** An employee travelling to and/or from home to start/finish overtime when reasonable means of transport are not available will either be provided with transport to and/or from home or paid ordinary rates for the time taken for such travel.

**21.7 10 hour break**

- (a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days or shifts. An employee who works so much overtime:
  - (i) between the finish of work on any day or shift and the commencement of work on the next day or shift, that the employee has not had at least 10 consecutive hours off duty between these times; or
  - (ii) on Saturdays, Sundays and holidays, not being ordinary working days, or on a rostered day off, without having had 10 consecutive hours off duty in the 24 hours preceding the employee's ordinary commencing time on the next ordinary day or shift

will, subject to clause 21.7(a), be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (b) If on the instruction of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, the employee will be paid at double rates until released from duty for such a period and will then be entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

**21.8 Call back**

- (a) An employee recalled to work after leaving the employer's premises will be paid a minimum of four hours at the appropriate penalty rates. The employee will not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period.
- (b) An employee directed to be on standby either at home, place of work or elsewhere, to work prior to or after ordinary hours, or on a Saturday, or on a Sunday or public holiday, will be paid standby time at the ordinary rate for the period from which the employee is directed to standby and until released by the employer.
- (c) Where overtime goes beyond midnight or commences between midnight and 2.00 am, a minimum of eight hours at the appropriate rate will be paid.

This provision may be affected by [AM2014/300](#) – see [draft determination](#)

**21.9 Time off instead of payment for overtime**

- (a) Subject to a majority of employees at a workplace agreeing to introduce this provision an employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer.
- (b) Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate, that is, an hour for each hour worked.

- (c) An employer will, if requested by an employee, provide payment, at the rate provided for the payment of overtime in this award, for any overtime worked under clause 21.9(a) where such time has not been taken within four weeks of accrual.

## **22. Shiftwork**

- 22.1** An employee may be required to work shiftwork.
- 22.2** Except as otherwise provided for in this clause, shiftworkers will be paid at **115%** of the ordinary hourly rate for such shifts.
- 22.3** Shiftworkers who work on any afternoon or night shift roster which does not continue for at least five successive afternoons or nights will be paid for each shift:
  - (a) **150%** of the ordinary hourly rate for the first two hours, and
  - (b) **200%** of the ordinary hourly rate for the remaining hours
- 22.4** Where on a site at which the employee is engaged the shift premiums for the majority of employees are higher than those provided in clause 22.2, the employee will receive such higher shift premiums.
- 22.5** Where an employee is engaged in shiftwork on a site where employees receive compensation by way of annual leave and annual leave loading or otherwise for working Saturday, holiday and/or Sunday shifts, the employee will be given similar compensation for working such shifts.
- 22.6** All time worked on Saturdays will be paid at the following overtime rates:
  - (a) for the first two hours—**150%** of the ordinary hourly rate;
  - (b) after two hours—**200%** of the ordinary hourly rate; and
  - (c) for all time worked after 12 noon—**200%** of the ordinary hourly rate.
- 22.7** All time worked on Sundays will be paid at **200%** of the ordinary hourly rate.
- 22.8** All time worked on public holidays will be paid at **250%** of the ordinary hourly rate.
- 22.9** All work outside the ordinary hours of shiftwork will be paid **200%** of the ordinary hourly rate.

Parties are asked to clarify whether clause 22.9 only applies on Monday–Friday as it is inconsistent with clauses 22.6 and 12.1

- 22.10** A day worker required to work shiftwork will receive one week's notice or payment of penalty rates.
- 22.11 Definitions:**
  - (a) **Day shift** means any shift starting at or after 6.00 am and before 10.00 am.
  - (b) **Afternoon shift** means any shift starting at or after 10.00 am and before 8.00 pm.



- (c) **Night shift** means any shift starting at or after 8.00 pm and before 6.00 am.

## Part 6—Leave and Public Holidays

### 23. Annual leave

This annual leave provision may be affected by [AM2014/47](#) – see [draft determination](#)

#### 23.1 Leave entitlement

- (a) Section 87 of the Act prescribes the entitlement to annual leave. It does not apply to casual employees.
- (b) For the purpose of the additional week of leave provided by the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.

#### 23.2 Arrangements for taking leave

- (a) Leave will be given and will be taken within six months from the date when the right to annual leave occurred and after not less than four weeks notice to the employee.
- (b) **Broken leave**
  - (i) The annual leave will be given and taken in one or two continuous periods. If given in two separate periods, then one of those two periods must be at least 21 consecutive days, including non-working days.
  - (ii) If the employer and an employee so agree, an annual leave entitlement may be given and taken in two separate periods, neither of which is of at least 21 consecutive days, including non-working days, or on three separate periods.
  - (iii) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
  - (iv) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
  - (v) The annual leave provided by this clause will be allowed and will be taken, and except in relation to proportionate leave entitlements upon termination, payment will not be made or accepted instead of annual leave.
- (c) **Leave allowed before due date**
  - (i) An employer may allow an employee to take annual leave prior to the employee's entitlement otherwise arising.

- (ii) Where an employer has allowed an employee to take annual leave prior to the employee's entitlement otherwise arising and the employee's services are terminated (by whatsoever cause) before the right thereto has accrued, the employer will be entitled to deduct from any remuneration payable any excess due on account of such annual leave payments.

### 23.3 Payment for annual leave

- (a) Section 90 of the Act prescribes the basis for payment for annual leave, including payment for untaken leave upon the termination of employment. Annual Leave is dealt with in Division 6 of the NES.

- (b) **Loading on annual leave**

- (i) An employer is required to pay an additional leave loading of **17.5%** of that payment.
- (ii) Where the employee would have received shift loadings prescribed by clause 22—Shiftwork, had they not been on leave and the loading would be of a greater amount than **17.5%**, then it will apply to the relevant weekly wage rate instead of **17.5%**.
- (iii) The loading prescribed above will also apply to proportionate leave on lawful termination.

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).

### 23.4 Annual close-down

- (a) Where an employer closes down the depot or a section thereof, for the purposes of allowing annual leave to all or the bulk of employees in the depot or section concerned:
  - (i) The employer will give not less than four weeks notice of the close-down.
  - (ii) An employer may stand off for the duration of the close-down all employees in the depot, or section concerned, and allow to those who are not then qualified for a full entitlement to annual leave paid leave on a proportionate basis.
  - (iii) An employee who has qualified for a full entitlement to annual leave will be allowed paid leave.
  - (iv) All time during which an employee is stood off without pay for the purposes of this subclause will be deemed to be time of service for the purpose of annual leave accrual.
  - (v) An employer may close down the depot for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the employer closes down the depot in two separate periods, one of those periods will be for a period of at least 21 consecutive days including non-working days.

- (vi) Where the majority of the employees in the depot or section concerned agree, the employer may close down the depot in accordance with this subclause in two separate periods either of which is of at least 21 consecutive days including non-working days, or in three separate periods. In such cases the employer will advise the employees concerned of the proposed dates of each close-down before asking them for their agreement.

### **23.5 Part close-down and part rostered leave**

- (a) An employer may close down the depot, or a section thereof, for a period of at least 21 consecutive days including non-working days and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.
- (b) An employer may close down the depot, or a section thereof for a period of less than 21 consecutive days including non-working days and allow the balance of the annual leave due to an employee in one or two continuous periods either of which may be in accordance with a roster. In such a case the granting and taking of annual leave will be subject to the agreement of the employer and the majority of employees in the depot, or a section thereof, and before asking the employees concerned for their agreement the employer will advise them of the proposed date of the close-down or close-downs and the details of the annual leave roster.

## **24. Personal/carer's leave and compassionate leave**

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

## **25. Parental leave and related entitlements**

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

## **26. Public holidays**

### **26.1 National Employment Standards**

- (a) Public holidays are provided for in the NES.
- (b) By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday instead of any of days prescribed in s.115 of the Act.
- (c) This clause supplements the NES entitlements. An employer who terminates the employment of an employee except for reasons of misconduct or incompetence (proof of which will lie upon the employer) will pay the employee a day's ordinary wages for each holiday prescribed in or each holiday in a group which falls within 10 consecutive calendar days after the day of termination.

**26.2 Part-day public holidays**

For provisions in relation to part-day public holidays see Schedule F—2015 Part-day Public Holidays.

**27. Community service leave**

**27.1** Community service leave is provided for in the NES. This clause provides additional provisions.

**27.2** A weekly hire employee required to attend for jury service during ordinary working hours will be reimbursed by the employer an amount equal to the difference between the amount paid in respect of attendance for jury service and the amount of wages the employee would have received in respect of the ordinary time (including fares and travel) the employee would have worked had the employee not been on jury service.

**Part 7—Consultation and Dispute Resolution**

**28. Consultation about major workplace change**

**28.1 Employers to notify**

- (a) 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.
- (b) **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.

**28.2 Employers to discuss change**

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 28.1, 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.
- (b) 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 28.1.
- (c) 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.

## **29. Consultation about changes to rosters or hours of work**

- 29.1** 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.
- 29.2** The employer must:
- (a)** 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);
  - (b)** 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
  - (c)** 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.
- 29.3** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- 29.4** These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## **30. Dispute resolution**

- 30.1** 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.
- 30.2** 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 30.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 30.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 30.4** 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.

- 30.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 30.6** 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.

## **Part 8—Termination of Employment and Redundancy**

### **31. Termination of employment**

**31.1** Notice of termination is provided for in the NES.

#### **31.2 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.

### **32. Job search entitlement for notice of termination of employment**

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

### **33. Industry specific redundancy scheme**

**33.1** The following redundancy clause for the mobile crane hiring industry is an industry specific redundancy scheme as defined in s.12 of the Act. In accordance with s.123(4)(b) of the Act the provisions of Subdivision B—*Redundancy pay* of Division 11 of the NES do not apply to employers and employees covered by this award.

#### **33.2 Definitions**

- (a) **Redundancy** means any employment situation where the number of employees reasonably required by the employer exceeds the number required to perform the work which is available.
- (b) Any one of the following factors may operate to reduce the amount of work which is available:
- (i) closure of a company;

- (ii) a decline in trade or business opportunities;
  - (iii) technological change or changes in the industry; or
  - (iv) a decision by a company to cease providing a particular service performed by its employees in a locality or from a site or depot.
- (c) **Retrenchment** means termination of an employee who is made redundant in accordance with any of the circumstances covered by clause 33.2(b).
- (d) For the purpose of this clause, **continuous service** means service that will be deemed to be continuous notwithstanding an employee's absence from work for any of the following reasons:
- annual leave, personal leave or parental leave;
  - illness or accident up to a maximum of four weeks after the expiration of paid sick leave;
  - jury service;
  - injury received during the course of employment and up to a maximum of 26 weeks for which the employee received workers compensation;
  - where called up for military service for up to three months in any qualifying period;
  - long service leave;
  - any reason satisfactory to the employer, provided that the reason will not be deemed satisfactory unless the employee has informed the employer within 24 hours of the time when the employee was due to attend for work, or as soon as practicable thereafter, of the reason for the absence and probable duration.

### 33.3 Payment instead of notice

In supplementation of the NES, this subclause provides additional notice entitlements, to operate to the extent that the entitlements exceed those in the NES.

- (a) Employees with more than 12 months' continuous service will be entitled to receive four weeks' pay at ordinary rates instead of notice.
- (b) Employees with less than 12 months continuous service, other than casuals will be entitled to notice on the following basis:
  - (i) up to three months—one week;
  - (ii) more than three months up to six months—two weeks;
  - (iii) more than six months up to nine months—three weeks; or
  - (iv) over nine months—four weeks.
- (c) An employee will be paid instead of such notice or be required to work one week of such notice and be paid any balance instead.

### **33.4 Retrenchment payments**

- (a) Retrenched employees with more than 12 months service, will be entitled to three weeks pay, at the ordinary rate of pay for each completed year of service and pro rata payments for any uncompleted final year up to a maximum of 27 weeks' pay.
- (b) Provided that any employee who had at 16 September 1994 accrued any entitlements of more than 27 weeks' pay will be entitled to the number of weeks entitlement accrued at that date with payment at the ordinary rate of pay applicable at the date of retrenchment.

### **33.5 Other entitlements**

In addition to the entitlements prescribed in clauses 33.3 and 33.4, retrenched employees are entitled to the following additional benefits:

- (a) payment of public holidays occurring within 20 working days of the final day of employment;
- (b) pro rata annual leave plus loading of 17.5%; and
- (c) accumulated sick leave to a maximum of 10 days.

### **33.6 Transfer of business**

- (a) Except where an employee has received redundancy benefits, where a business is transferred from an employer (in this subclause called the old employer) to another employer (in this subclause called the new employer) and an employee who at the time of such transfer was an employee of the old employer in that business becomes an employee of the new employer.
  - (i) the continuity of the employment of the employee will be deemed not to have been broken by reasons of such transfer; and
  - (ii) the period of employment which the employee has had with the old employer or any prior old employer will be deemed to be service of the employee with the new employer.
- (b) In this subclause, business includes trade, process, business or occupation and includes part of any such business and transfer includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transferred has a corresponding meaning.



## **Schedule A—Classification Structure**

### **A.1 Classifications**

#### **A.1.1 Mobile Crane Employee Level 1 (MCE1)**

##### **(a) Skills and duties**

An employee at MCE1 level may perform the following tasks:

- Dogger
- Counterweight/Gear Truck Driver
- Mobile Hydraulic Platform Operator—up to 17m
- up to 20 tonne Slew Crane Operator

##### **(b) Minimum qualifications**

An employee at MCE1 level must have successfully obtained the following minimum qualification:

- Dogging License; or
- Boom-type elevating work platform License (WP); or
- Heavy Rigid License (HR); and
- Slew Crane License of up to 20 tonnes

#### **A.1.2 Mobile Crane Employee Level 2 (MCE2)**

##### **(a) Skills and duties**

An employee at MCE2 level may perform the following tasks:

- 21t–60t Slew Crane Operator (C2 & C6)
- Non Slew (Franna) Operator (CN)
- Basic Rigger (structural steel frames erection or assembly of mobile cranes)
- Mobile Hydraulic Platform Operator - 17m and up to 28m

##### **(b) Minimum qualifications**

An employee at MCE2 level must have successfully obtained the following minimum qualification:

- Heavy Rigid License (HR); and
- Slew Crane License of up to 60 tonne; or
- Non Slew Crane Operator License; or
- Basic Rigger ticket; or

- Boom-type elevating work platform license (WP).

#### **A.1.3 Mobile Crane Employee Level 3 (MCE3)**

##### **(a) Skills and duties**

An employee at MCE3 level may perform the following tasks:

- 61t–100t Slew Crane Operator (C1);
- Intermediate Rigger (Tower Crane erecting or Pre CastConcrete component erection);
- Mobile Hydraulic Platform Operator–28m and above.

##### **(b) Minimum qualifications**

An employee at MCE3 level must have successfully obtained the following minimum qualification:

- Heavy Combination License (HC); and
- Slew Crane License of up to 100 tonne; or
- Intermediate Riggers License; or
- Boom-type elevating work platform license (WP).

#### **A.1.4 Mobile Crane Employee Level 4 (MCE4)**

##### **(a) Skills and duties**

An employee at MCE4 level may perform the following tasks:

- 101t–200t Slew Crane Operator (No boom trailer) (CO);
- Advanced Rigger; or
- Heavy Low Bed Transport Operator.

##### **(b) Minimum qualifications**

An employee at MCE4 level must have successfully obtained the following minimum qualification:

- Heavy Combination License (HC); and
- Doggers ticket; and
- Slew Crane License of over 100 tonne; or
- Advanced Rigger; or
- Multi Combination License.

**A.1.5 Mobile Crane Employee Level 5 (MCE5)**

**(a) Skills and duties**

An employee at MCE5 level may perform the following tasks:

- 201t - 300t Slew Crane (CO);
- less than 100t Slew Crane with Boom Trailer; or
- less than 100t Slew Crane with Luffing Fly Jib.

**(b) Minimum qualifications**

An employee at MCE5 level must have successfully obtained the following minimum qualification:

- Slew Crane License of over 100 tonne; and
- Heavy Combination License (HC); and
- Doggers ticket.

**A.1.6 Mobile Crane Employee level 6 (MCE6)**

**(a) Skills and duties**

An employee at MCE6 level may perform the following tasks:

- 301t–400t Slew Crane Operator (CO); or
- less than 200t Crane Operator with Luffing Fly Jib.

**(b) Minimum qualifications**

An employee at MCE6 level must have successfully obtained the following minimum qualification:

- Slew Crane License of over 100 tonne; and
- Heavy Combination License (HC); and
- Riggers ticket.

**A.1.7 Mobile Crane Employee level 7 (MCE7)**

**(a) Skills and duties**

An employee at MCE7 level may perform the following tasks:

- 401t or greater Slew Crane (CO); or
- less than 200t with Superlift type attachment.

**(b) Minimum qualifications**

An employee at MCE7 level must have successfully obtained the following minimum qualification:

- Slew Crane License of over 100 tonne; and

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- Heavy Combination License (HC); and
- Intermediate Rigger.

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## Schedule B—Summary of Hourly Rates of Pay

### B.1 Ordinary hourly rate

**Ordinary hourly rate** includes the industry allowance (clause 16.2) which is payable for all purposes.

### B.2 Full-time employees

#### B.2.1 Full-time employees other than shiftworkers—ordinary rates

	Ordinary hours
	% of ordinary hourly rate
	100%
	\$
Level 1 (MCE1)	21.28
Level 2 (MCE2)	21.91
Level 3 (MCE3)	22.54
Level 4 (MCE4)	23.11
Level 5 (MCE5)	24.23
Level 6 (MCE1)	24.70
Level 7 (MCE7)	25.33

#### B.2.2 Full-time shiftworkers—shiftwork rates

	Day shift <sup>1</sup>	Afternoon shift <sup>2</sup>	Night shift <sup>3</sup>	Sunday	Public holiday	Non-successive afternoon or night shifts	
						First 2 hours	After 2 hours
	% of ordinary hourly rate						
	115%	115%	115%	200%	250%	150%	200%
	\$	\$	\$	\$	\$	\$	\$
Level 1 (MCE1)	24.47	24.47	24.47	42.56	53.20	31.92	42.56
Level 2 (MCE2)	25.20	25.20	25.20	43.82	54.78	32.87	43.82

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	<b>Day shift<sup>1</sup></b>	<b>Afternoon shift<sup>2</sup></b>	<b>Night shift<sup>3</sup></b>	<b>Sunday</b>	<b>Public holiday</b>	<b>Non-successive afternoon or night shifts</b>	
						<b>First 2 hours</b>	<b>After 2 hours</b>
	<b>% of ordinary hourly rate</b>						
	<b>115%</b>	<b>115%</b>	<b>115%</b>	<b>200%</b>	<b>250%</b>	<b>150%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Level 3 (MCE3)</b>	25.92	25.92	25.92	45.08	56.35	33.81	45.08
<b>Level 4 (MCE4)</b>	26.58	26.58	26.58	46.22	57.78	34.67	46.22
<b>Level 5 (MCE5)</b>	27.86	27.86	27.86	48.46	60.58	36.35	48.46
<b>Level 6 (MCE1)</b>	28.41	28.41	28.41	49.40	61.75	37.05	49.40
<b>Level 7 (MCE7)</b>	29.13	29.13	29.13	50.66	63.33	38.00	50.66
<sup>1</sup> <b>Day shift</b> means any shift starting at or after 6.00 am and before 10.00 am							
<sup>2</sup> <b>Afternoon shift</b> means any shift starting at or after 10.00 am and before 8.00 pm							
<sup>3</sup> <b>Night shift</b> means any shift starting at or after 8.00 pm and before 6.00 am							

**B.2.3 Full-time employees—overtime**

	Other than shiftworkers			Shiftworkers only			All employees	
	Monday–Friday & Saturday before 12 noon		Saturday after 12 noon	All work outside the ordinary hours of shiftwork	Saturday before 12 noon	Saturday	Sunday	Public holiday
	First 2 hours	After 2 hours	All time worked		First 2 hours	All time worked	All time worked	
	% of ordinary hourly rate							
	150%	200%	200%	200%	150%	200%	200%	250%
	\$	\$	\$	\$	\$	\$	\$	\$
Level 1 (MCE1)	31.92	42.56	42.56	42.56	31.92	42.56	42.56	53.20
Level 2 (MCE2)	32.87	43.82	43.82	43.82	32.87	43.82	43.82	54.78

	Other than shiftworkers			Shiftworkers only			All employees	
	Monday–Friday & Saturday before 12 noon		Saturday after 12 noon	All work outside the ordinary hours of shiftwork	Saturday before 12 noon	Saturday	Sunday	Public holiday
	First 2 hours	After 2 hours	All time worked		First 2 hours	All time worked	All time worked	
	% of ordinary hourly rate							
	150%	200%	200%	200%	150%	200%	200%	250%
	\$	\$	\$	\$	\$	\$	\$	\$
Level 3 (MCE3)	33.81	45.08	45.08	45.08	33.81	45.08	45.08	56.35
Level 4 (MCE4)	34.67	46.22	46.22	46.22	34.67	46.22	46.22	57.78
Level 5 (MCE5)	36.35	48.46	48.46	48.46	36.35	48.46	48.46	60.58
Level 6 (MCE1)	37.05	49.40	49.40	49.40	37.05	49.40	49.40	61.75
Level 7 (MCE7)	38.00	50.66	50.66	50.66	38.00	50.66	50.66	63.33

### B.3 Casual employees

#### B.3.1 Casual employees—ordinary rates

	Ordinary hours
	% of ordinary hourly rate
	125%
	\$
<b>Level 1 (MCE1)</b>	26.60
<b>Level 2 (MCE2)</b>	27.39
<b>Level 3 (MCE3)</b>	28.18
<b>Level 4 (MCE4)</b>	28.89
<b>Level 5 (MCE5)</b>	30.29
<b>Level 6 (MCE1)</b>	30.88
<b>Level 7 (MCE7)</b>	31.66

**B.3.2 Casual shiftworkers—shiftwork rates**

	Day shift <sup>1</sup>	Afternoon shift <sup>2</sup>	Night shift <sup>3</sup>	Sunday	Public holiday	Non-successive afternoon or night shifts	
						First 2 hours	After 2 hours
	% of ordinary hourly rate						
	140%	140%	140%	225%	275%	175%	225%
	\$	\$	\$	\$	\$	\$	\$
Level 1 (MCE1)	29.79	29.79	29.79	47.88	58.52	37.24	47.88
Level 2 (MCE2)	30.67	30.67	30.67	49.30	60.25	38.34	49.30
Level 3 (MCE3)	31.56	31.56	31.56	50.72	61.99	39.45	50.72
Level 4 (MCE4)	32.35	32.35	32.35	52.00	63.55	40.44	52.00
Level 5 (MCE5)	33.92	33.92	33.92	54.52	66.63	42.40	54.52
Level 6 (MCE1)	34.58	34.58	34.58	55.58	67.93	43.23	55.58
Level 7 (MCE7)	35.46	35.46	35.46	56.99	69.66	44.33	56.99
<sup>1</sup> Day shift means any shift starting at or after 6.00 am and before 10.00 am							
<sup>2</sup> Afternoon shift means any shift starting at or after 10.00 am and before 8.00 pm							
<sup>3</sup> Night shift means any shift starting at or after 8.00 pm and before 6.00 am							



## Schedule C—Summary of Monetary Allowances

See clause 17—Allowances for full details of allowances payable under this award.

### C.1 Wage-related allowances

The following wage-related allowances, defined in clause 2—Definitions as the minimum hourly rate for a mobile crane employee (MCE) level 1 in clause 16.1 = **\$20.13**

Allowance	Clause	% of standard rate	\$ per day unless stated otherwise
All-purpose industry allowance <sup>1</sup>	16.2	216.6	43.60 per week
Multi crane lift allowance:			
Where 2 cranes are engaged	17.2(b)	16.1	3.24
Where 3 cranes are engaged	17.2(b)	31.9	6.42
Where 4 cranes are engaged	17.2(b)	47.7	9.60
Where more than 4 cranes are engaged	17.2(b)	63.8	12.84
Pile driving allowance	17.2(c)	78.1	15.72 per day or part thereof
<sup>1</sup> This allowance applies for all purposes of this award			

### C.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clause 17.3.

Allowance	Clause	\$
Protective clothing—purchase of safety footwear	17.3(a)(ii)	62.27 per occasion
Protective clothing—purchase of Bluey Jacket	17.3(a)(v)	62.27 per occasion
Fares and travel allowance—travel patterns	17.3(c)(i)	17.43 per day
Car allowance	17.3(d)(i)	0.78 per km
Accommodation and overnight allowance	17.3(e)(ii)	14.77 per night
Meal allowance—overtime for more than 1.5 hours after ordinary hours	15.2(d)	14.27 per meal
Meal allowance—start work 2 or more hours prior to normal commencement	15.2(e)	14.27 per meal

### C.3 Adjustment of monetary allowances

**C.3.1** This award contains wage-related allowances and expense-related (or reimbursement) allowances.

- C.3.2** All wage-related allowances are expressed as a percentage of the [standard rate](#) and will be re-calculated at the time of any change in the [standard rate](#).
- C.3.3** At the time of each adjustment to [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.
- C.3.4** 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:

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Protective clothing	All groups
Meal allowance	Meals out and take away foods sub-group
Overnight allowance	Domestic holiday travel and accommodation sub-group
Fares and travel	Transport group
Car allowance	Private motoring sub-group

## Schedule D—Supported Wage System

**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](http://www.jobaccess.gov.au)

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

### D.3 Eligibility criteria

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

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

### D.4 Supported wage rates

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

Assessed capacity (clause D.5)	Relevant minimum wage
%	%
10	10
20	20

Assessed capacity (clause D.5)	Relevant minimum wage
%	%
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 \$81 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 \$81 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

### E.1 Title

This is the *National Training Wage Schedule*.

### E.2 Definitions

In this schedule:

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

**approved training** means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

**trainee** is an employee undertaking a traineeship under a training contract

**traineeship** means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training

package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

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

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

**Year 10** includes any year before Year 10

### **E.3 Coverage**

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

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

**E.3.3** This schedule does not apply to:

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

Parties are asked to identify “any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997” that they consider should not be covered by this Schedule.

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

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

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

### **E.4 Types of Traineeship**

The following types of traineeship are available under this schedule:

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

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

## **E.5 Minimum Wages**

### **E.5.1 Minimum wages for full-time traineeships**

#### **(a) Wage Level A**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	295.10	325.00	387.20
Plus 1 year out of school	325.00	387.20	450.60
Plus 2 years out of school	387.20	450.60	524.40
Plus 3 years out of school	450.60	524.40	600.40
Plus 4 years out of school	524.40	600.40	
Plus 5 or more years out of school	600.40		

#### **(b) Wage Level B**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>Per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	295.10	325.00	376.80
Plus 1 year out of school	325.00	376.80	433.40
Plus 2 years out of school	376.80	433.40	508.20
Plus 3 years out of school	433.40	508.20	579.70
Plus 4 years out of school	508.20	579.70	
Plus 5 or more years out of school	579.70		



**(c) Wage Level C**

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

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	295.10	325.00	376.80
Plus 1 year out of school	325.00	376.80	424.10
Plus 2 years out of school	376.80	424.10	473.80
Plus 3 years out of school	424.10	473.80	527.90
Plus 4 years out of school	473.80	527.90	
Plus 5 or more years out of school	527.90		

**(d) AQF Certificate Level IV traineeships**

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

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>
Wage Level A	623.50	647.70
Wage Level B	601.60	624.70
Wage Level C	547.50	568.20

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

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.71	10.70	12.74
Plus 1 year out of school	10.70	12.74	14.83
Plus 2 years out of school	12.74	14.83	17.25
Plus 3 years out of school	14.83	17.25	19.74
Plus 4 years out of school	17.25	19.74	
Plus 5 or more years out of school	19.74		

**(b) Wage Level B**

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.71	10.70	12.40
Plus 1 year out of school	10.70	12.40	14.26
Plus 2 years out of school	12.40	14.26	16.73
Plus 3 years out of school	14.26	16.73	19.08
Plus 4 years out of school	16.73	19.08	
Plus 5 or more years out of school	19.08		

**(c) Wage Level C**

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.71	10.70	12.40
Plus 1 year out of school	10.70	12.40	13.95
Plus 2 years out of school	12.40	13.95	15.58

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Plus 3 years out of school	13.95	15.58	17.36
Plus 4 years out of school	15.58	17.36	
Plus 5 or more years out of school	17.36		

**(d) School-based traineeships**

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

<b>Year of schooling</b>	
<b>Year 11 or lower</b>	<b>Year 12</b>
<b>per hour</b>	<b>per hour</b>
<b>\$</b>	<b>\$</b>
9.71	10.70

**(e) AQF Certificate Level IV traineeships**

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

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

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>
Wage Level A	20.51	21.31
Wage Level B	19.77	20.54
Wage Level C	18.01	18.70

**(f) Calculating the actual minimum wage**

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

schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

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

### **E.5.3 Other minimum wage provisions**

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

### **E.5.4 Default wage rate**

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

## **E.6 Employment conditions**

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

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

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

## **E.7 Allocation of Traineeships to Wage Levels**

Parties are asked to review the packages listed to ensure the lists are complete and up-to-date.

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

### **E.7.1 Wage Level A**

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

<b>Training package</b>	<b>AQF certificate level</b>
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Logistics	III
Water Industry (Utilities)	III

**E.7.2 Wage Level B**

<b>Training package</b>	<b>AQF certificate level</b>
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III

<b>Training package</b>	<b>AQF certificate level</b>
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

**E.7.3 Wage Level C**

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

## Schedule F—2015 Part-day Public Holidays

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

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

**F.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2015) or New Year's Eve (31 December 2015) 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) Where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
- (f) 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.
- (g) 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.

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