

EXPOSURE DRAFT

Pest Control Industry Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Pest Control Industry Award 2010** (the Pest award) as at 3 November 2016. This exposure draft does not seek to amend any entitlements under the Pest 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 [AM2014/279](#). 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 *Pest Control Industry 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:

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

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

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

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

leading hand is an employee who is directed to control, supervise and take responsibility for the work performed by two or more employees

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

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

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

pest control industry means the industry of the control and/or eradication of pests, vermin, feral animals and weeds in domestic, commercial and civic buildings or facilities and includes:

- (a) the inspection of buildings, structures, trees, commodities and stored products or items for pest activity, and reporting on pest activity in domestic, commercial and civic buildings or any situation where pest activity may be of concern; and

- (b) the installation, maintenance or inspection of termite, bird or other pest barriers or management systems in new or existing buildings or structures including the use of fumigants in all forms

standard rate means the minimum weekly wage for a Level 3 employee in clause 16.1—Minimum wages.

3. The National Employment Standards and this award

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

4. Coverage

- 4.1 This industry award covers employers throughout Australia in the pest control industry and their employees in the classifications listed in clause 12—Classifications to the exclusion of any other modern award.
- 4.2 **Pest control industry** means the industry of the control and/or eradication of pests, vermin, feral animals and weeds in domestic, commercial and civic buildings or facilities and includes:
 - (a) the inspection of buildings, structures, trees, commodities and stored products or items for pest activity, and reporting on pest activity in domestic, commercial and civic buildings or any situation where pest activity may be of concern; and
 - (b) the installation, maintenance or inspection of termite, bird or other pest barriers or management systems in new or existing buildings or structures including the use of fumigants in all forms.
- 4.3 The award does not cover employers covered by the following modern awards:
 - (a) *Clerks—Private Sector Award 2016*;
 - (b) *Local Government Industry Award 2016*; or
 - (c) *Manufacturing and Associated Industries and Occupations Award 2016*.
- 4.4 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 4.1 and 4.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

- 4.5** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of the industry set out at clauses 4.1 and 4.2 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 4.6** This industry award does not cover:
- (a)** an employee excluded from award coverage by the Act;
 - (b)** employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
 - (c)** employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- 4.7** 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 agreements

- 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:
14.1(b)	Rostering	The majority of employees
14.4	Substitution of public holidays	An individual
14.5	Twelve-hour shifts	The majority of employees
19.8	Time off instead of payment for overtime	An individual
22.5	Annual leave in advance	An individual
22.10	Cashing out of annual leave	An individual
25	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 employment;
 - (b)** part-time employment; or
 - (c)** casual employment.
- 8.2** At the time of engagement an employer must inform each employee in writing of the terms of their engagement and in particular whether they are to be full-time, part-time or casual. This will be recorded in the time and wages record of the employee.

9. Full-time employment

- 9.1** A full-time employee is engaged to work 38 ordinary hours per week.
- 9.2** Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in the award.

10. Part-time employment

Part-time employment provisions may be affected by [AM2014/196](#)

- 10.1** A part-time employee:
- (a)** is engaged to work less than 38 ordinary hours per week;
 - (b)** has reasonably predictable hours of work; and
 - (c)** receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- 10.2** At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least:
- (a)** the hours worked each day;
 - (b)** which days of the week the employee will work; and
 - (c)** the actual starting and finishing times for each day.
- 10.3** Any agreed variation to the hours of work in clause 10.2 will be in writing.
- 10.4** A part-time employee must be engaged for a minimum of three consecutive hours per start including if called in for a separate engagement for overtime.
- 10.5** All time worked in excess of the hours agreed under clause 10.2 or varied under clause 10.3 will be overtime and paid for at the overtime rates prescribed in clause 19—Overtime.
- 10.6** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 11—Casual employment.
- 10.7** A part-time employee under the provisions of this clause must be paid for each ordinary hour worked at the minimum hourly rate prescribed for the appropriate classification.

11. Casual employment

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

- 11.1** A casual employee is an employee who is engaged and paid as a casual employee.

- 11.2 A casual employee is engaged to work less than 38 hours per week.
- 11.3 An employer or casual employee may terminate the employment relationship with one hour's notice by either party.
- 11.4 A casual employee must be paid at the minimum hourly rate prescribed for the appropriate classification plus a loading of 25% for all ordinary hours worked.
- 11.5 The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment provided for in this award.
- 11.6 A casual employee must be paid for a minimum of three hours for each start on any day.

12. Classifications

- 12.1 All employees covered by this award must be classified according to the following structure:

- (a) **Level 1**

- A Level 1 employee is a person who has entered the industry with no previous experience and has yet to apply for a licence. An employee at this level has been employed in the industry for less than six months.

- (b) **Level 2**

- A Level 2 employee is a person who has applied for a licence pursuant to relevant government regulation as either a Fumigator or a Pest Control Technician but has yet to be examined or licensed other than provisionally. Such an employee is presently undertaking an accredited course to obtain a pest operator's certificate.

- (c) **Level 3**

- A Level 3 employee is a person who has successfully obtained a pest operator's certificate and has been granted a licence to operate as either a Fumigator or Pest Control Technician.

- (d) **Level 4**

- A Level 4 employee is a person who has been granted licences to operate as both a Fumigator and a Pest Control Technician.

- (e) **Level 5**

- A Level 5 employee is a person who is qualified to operate as a Pest Inspector.

- 12.2 Employers must advise their employees in writing of their classification and any changes to their classification.
- 12.3 The classification must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

Part 3— Hours of Work

13. Ordinary hours of work and rostering

13.1 The ordinary hours of work will be an average of 38 hours per week over a maximum work cycle of four weeks.

13.2 Day workers

- (a) Except where ordinary hours of work are performed under an averaging system, ordinary hours of work for day workers will not exceed 38 hours per week.
- (b) The ordinary hours are to be worked in up to five shifts of 7.6 hours on any day.
- (c) Ordinary hours may be worked on Monday to Sunday, between the hours of 6.00 am and 6.00 pm.

13.3 Shiftworkers

- (a) The standard ordinary hours of work for shiftworkers will not, except as provided elsewhere in this clause, exceed 38 hours per week.
- (b) The ordinary hours are to be worked in up to five shifts of 7.6 hours on any day, Monday to Sunday.
- (c) These ordinary hours will be worked continuously except for meal breaks, crib breaks and rest periods as provided for in clause 15—Breaks.

14. Rostering

14.1 Where there is agreement between the employer and employee ordinary hours may be worked in one of the ways set out in clauses 14.1(a)–(d).

- (a) Employees may work a 19 day, four week cycle of eight hours per day, with 15 minutes per day worked accruing as an entitlement to take a rostered day off on what would otherwise be a working day in each four week cycle.
- (b) An employer and the majority of employees in an establishment may mutually agree to a roster providing for more than one rostered day off in a normal four week cycle. In these circumstances, an employer and employee may agree to working more than the standard daily hours and up to 10 ordinary hours in any one day to enable a rostered day off on a Monday to Friday to be taken more frequently than one per four week cycle.
- (c) Employees may work shorter hours on each day.
- (d) Employees may work shorter hours on one or more days of each week.

14.2 The employer will notify the employee of their starting and finishing times. Work done outside the hours notified will be paid at overtime rates.

14.3 Once set, the starting and finishing times will not be altered unless one week's notice is given. Changes to rosters or hours of work are subject to clause 28—Consultation about changes to rosters or hours of work.

14.4 Where a rostered day off falls on a public holiday as prescribed in clause 25—Public holidays the next working day will be taken as the rostered day off. Another day may be substituted by agreement between the employer and employee.

14.5 Twelve-hour shifts

By agreement between an employer, and the majority of employees in an establishment or the work location concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- (a) proper health monitoring procedures being introduced;
- (b) suitable rostering arrangements being made; and
- (c) proper supervision being provided (where applicable).

15. Breaks

15.1 Meal and crib breaks

- (a) An employee will be entitled to an unpaid meal break of at least 30 minutes per day or shift. The break must commence no later than five hours after the start of the employee's ordinary working hours.
- (b) An employee who is required to work for more than two hours beyond their normal finishing time on any day will be allowed a crib break of 20 minutes at ordinary rates. After each further four hours worked an employee will be entitled to a further crib break of 20 minutes without deduction of pay, if the employee continues working after such crib break.
- (c) An employer may organise breaks to be taken at times that will not interfere with the continuity of work provided that the requirements of clause 15.1(a) are observed.

15.2 Rest breaks

An employee will be entitled to one paid rest break of 10 minutes to be taken before the meal break and a further rest break of 10 minutes after the meal break where the employee is required to work more than six hours on any day or shift. The rest breaks will be taken at times that will not interfere with the continuity of work. These breaks are to be counted as time worked.

15.3 Washing time

An employee will be entitled to 10 minutes before each meal break and a further 10 minutes before finishing work each day for the purpose of washing and changing their clothes. These periods are to be counted as time worked.

Part 4—Wages and Allowances

16. Minimum wages

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

Employee classification	Minimum weekly rate	Minimum hourly rate
	\$	\$
Level 1	679.90	17.89
Level 2	696.60	18.33
Level 3	718.60	18.91
Level 4	733.60	19.31
Level 5	790.30	20.80

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

16.2 Payment of wages

(a) Frequency of pay

Wages including overtime, penalties and allowances must be paid weekly or fortnightly.

(b) Method of payment

The employer may pay an employee's wages by electronic funds transfer (EFT) into a bank or financial institution nominated by the employee or by cash or cheque.

(c) Time of payment—cash or cheque

If payment is by cash or cheque, wages will be paid during ordinary working hours.

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.

16.3 Supported wage system

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

16.4 National training wage

For employees undertaking a traineeship, see Schedule D—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 B for a summary of monetary allowances and method of adjustment.

17.2 Wage-related allowances

(a) Leading hand allowance

A leading hand will be paid the rate prescribed for the highest class of work supervised or their own classification rate plus the following additional allowance, whichever is higher:

In charge of:	\$ per week
2 to 10 employees	28.67
11 to 21 employees	42.90
More than 21 employees	58.28

(b) Verminous/decomposed human body allowance

An employee required to treat a verminous or decomposed human body will be paid an additional **\$85.94** on each occasion.

(c) Work performed in fumigation depot allowance

An additional **\$6.68** will be paid for each day on which work is performed in, or in connection with, fumigation depots carrying out the process of tent, vacuum tank or container fumigation. This allowance is paid in recognition of all disabilities encountered by employees working in fumigation depots.

(d) First aid allowance

(i) A full-time employee will be paid an additional **\$5.23** per week if they:

- have been trained to perform first aid;
- hold a current first aid qualification; and
- are appointed by the employer to perform first aid duty.

(ii) Employees will be reimbursed for the cost of maintenance of a first aid kit upon presentation of receipts, if the kit is not provided by the employer.

17.3 Expense-related allowances

(a) Meal allowance

(i) The employer will either supply a meal or pay a meal allowance of **\$13.66** for the first and subsequent meals to an employee where the employee is required to work overtime for more than two hours without being notified on the previous day or earlier that they will be required to work.

- (ii) If notice has been provided and the employee is not required to work overtime or is required to work less than the amount advised, the employer will pay the employee the meal allowance in clause 17.3(a)(i) for each meal the employee has provided themselves.

(b) Motor vehicle allowance

An employee who by agreement with the employer uses the employee's own motor vehicle in the course of the employer's business will be paid an allowance of **\$0.78** per kilometre travelled.

(c) Country work

- (i) **Country work** means employment at a place which requires the employee to live away from their usual place of residence.
- (ii) An employee sent to country work will be paid an allowance of **\$90.44** per night to cover the costs of lodging and all meals or provided with board and lodging as agreed between the employer and employee.
- (iii) Time occupied in travelling to and from country work will be paid for at ordinary rates in addition to wages otherwise earned, provided that an employee will not be paid for more than eight hours occupied in travelling on any one day. A day for the purposes of clause 17.3(c) means from midnight on one day to midnight on the next day.
- (iv) An employee sent from one place to another as prescribed in clause 17.3(c) will be paid a meal allowance of **\$8.45** for each meal. This allowance will not be payable if the employee is otherwise entitled to a meal allowance pursuant to clause 17.3(a).

Parties are asked to clarify when the allowance in (iv) is payable. Is it for each trip or between different country work locations?

- (v) Where transport is not provided by the employer, all employees will be entitled to travel to and from country work on terms agreed between the employer and the employee.

17.4 Safety clothing and equipment

- (a) An employer will provide and maintain all equipment required for carrying out a job.
- (b) The equipment will include suitable respirators, goggles, boots and/or gloves, where reasonably required.
- (c) This equipment will remain the property of the employer and will be replaced by the employer if lost by them or destroyed through the employee's negligence. Reasonable facilities are to be made available by the employer for the safe keeping of such equipment.
- (d) The employer will provide, and maintain free of charge, all necessary protective clothing for the use of employees. This clothing will be issued in good condition and be retained by the employees during the period of their

employment. It will be replaced by the employer when required. Such protective clothing will, among other things, include overalls and/or dust coats.

- (e) Employees will use the appropriate protective clothing and equipment provided and required to be used by the employer in the proper manner, and will comply with any other specified safe working requirements.

See Schedule B for a summary of monetary allowances.

18. Superannuation

18.1 Superannuation legislation

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

18.2 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.

18.3 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 18.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 18.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or (b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another

superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or (b) to one of the following superannuation funds or its successor:

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

Part 5—Overtime and Penalty Rates

19. Overtime

19.1 All time worked in excess of, or outside the ordinary hours of work will be paid for at **150%** of the minimum hourly rate for the first two hours and **200%** of the minimum hourly rate after two hours.

19.2 In calculating overtime each day's work will stand alone.

19.3 Work done outside the hours notified in accordance with clause 14.2 will be paid at overtime rates.

19.4 An employee required to work overtime which is not continuous with ordinary hours will be paid a minimum of four hours at the appropriate overtime rate.

19.5 An employee required to work during their meal break will be paid at overtime rates until the meal break is taken.

19.6 Rest period after overtime

(a) When overtime work is necessary it will, wherever reasonably practicable be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) An employee, other than a casual employee, who works so much overtime between finishing work on one day and starting work on the next day that the employee has not had at least 10 consecutive hours off duty between those times will, subject to clause 19.6, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the rest period.

- (c) If, on the instructions of the employer, an employee resumes or continues work without having had the 10 consecutive hours off duty the employee will be paid at **200%** of the minimum hourly rate until they are released from duty for such period. The employee is then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.
- (d) The provisions of clause 19.6 will apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked in the following circumstances:
 - (i) for the purpose of changing shift rosters; or
 - (ii) where a shift is worked by arrangement between the employees themselves.

19.7 Call-back

An employee recalled to work overtime after leaving the employer's business premises, whether notified before or after leaving the premises, will be paid for a minimum of four hours' work at the appropriate overtime rate for each time they are recalled.

19.8 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.8.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E. An agreement under clause 19.8 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 19.8 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.8 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 19.8 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.8 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.8 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.8.

20. Penalty rates

20.1 Weekend work

- (a) An employee who works ordinary hours on a Saturday will be paid at **150%** of the minimum hourly rate. The employee will be paid for a minimum of three hours' work.

- (b) An employee who works ordinary hours on a Sunday will be paid at **200%** of the minimum hourly rate. The employee will be paid for a minimum of four hours' work.

20.2 Public holiday work

An employee who works on a public holiday will be paid at **250%** of the minimum hourly rate. The employee will be paid for a minimum of four hours' work.

21. Shiftwork

21.1 Definitions

- (a) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.
- (b) **Night shift** means any shift finishing after midnight and at or before 8.00 am or where the majority of time worked is between the hours of midnight and 8.00 am.

21.2 An employee who works an afternoon shift must be paid at **115%** of the minimum hourly rate.

21.3 An employee who works a night shift must be paid at **120%** of the minimum hourly rate.

21.4 An employee who works a night shift which does not rotate or alternate with another shift or day work must be paid at **125%** of the minimum hourly rate.

21.5 The shiftwork penalties in clauses 21.2, 21.3 and 21.4 are not payable where an employee is entitled to another penalty for overtime, weekends or public holidays.

Parties are asked to comment on the following issue raised by the FWO in their [correspondence dated 2 March 2015](#):

It may be unclear under what circumstances an employee should be considered a shiftworker (as this is not a defined term). For example, it may be unclear what entitlements apply to an employee working from 10.00 am to 7.00 pm (that is, whether the employee should receive one hour of overtime as a day worker or afternoon shift rates as a shiftworker).

Part 6—Leave and Public Holidays

22. Annual leave

22.1 Annual leave is provided for in the NES. This clause supplements or deals with matters incidental to the NES provisions.

22.2 Seven day shiftworkers

For the purpose of the additional week of annual leave for shiftworkers provided for in the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.

22.3 Payment and loading

Parties are asked to clarify:

1. Is the loading under clause 22.3(b):
 - (17.5% of the minimum rate) + the industry & first aid allowance; or
 - 17.5% of (the minimum rate + the industry & first aid allowance)?
2. Are shiftworkers entitled to first aid allowance (where applicable) while on annual leave?
3. What is the 'industry' allowance referred to in clause 22.3(b)?

Before the start of an employee's annual leave the employer must pay the employee:

- (a) instead of the base rate of pay referred to in the NES, the amount the employee would have earned for working their ordinary hours had they not been on leave; and
- (b) an additional loading of **17.5%** of the employee's minimum hourly rate prescribed in clause 16—Minimum wages, plus industry and first aid allowances where appropriate or, if they were a shiftworker prior to entering leave, their shift penalty, whichever is greater.

22.4 Electronic funds transfer (EFT) payment of annual leave

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

22.5 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 22.5 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 22.5 as an employee record.

- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 22.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

22.6 Excessive leave accruals: general provision

Note: Clauses 22.6 to 22.8 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 22.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 22.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 22.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.

- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 22.7(b)(i).

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

22.8 Excessive leave accruals: request by employee for leave

- (a) Clause 22.8 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 22.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 22.7(a) that, when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.6, 22.7 or 22.8 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 22.2) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

22.9 Close-down

- (a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, among others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause.
- (b) In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.
- (c) Where an employee has been given notice pursuant to clauses 22.9(a) or (b) and the employee has:
 - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
 - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
 - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.
- (d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

22.10 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.10.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 22.10 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 22.10 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 22.10 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.10.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.10.

Note 3: An example of the type of agreement required by clause 22.10 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

23. Personal/carer's leave and compassionate leave

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

24. Parental leave and related entitlements

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

25. Public holidays

25.1 Public holiday entitlements are provided for in the NES. This clause supplements or deals with matters incidental to the NES provisions.

25.2 Substitution of public holidays by agreement

By agreement between the employer and the majority of employees in an enterprise, another day may be substituted for a public holiday.

25.3 Part-day public holidays

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

25.4 An employee required to work on a public holiday will be paid in accordance with clause 20.2.

26. Community service leave

Community service leave is provided for in the NES.

Part 7—Consultation and Dispute Resolution

27. Consultation about major workplace change

(a) Employers to notify

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

(b) Employers to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 27(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 27(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

28. Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:

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

29. Dispute resolution

- 29.1** 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.
- 29.2** 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 29.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 29.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 29.4** 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.
- 29.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 29.6** 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

30. Termination of employment

30.1 Notice of termination is provided for in the NES.

30.2 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.

31. Redundancy

Redundancy pay is provided for in the NES.

32. Transfer to lower paid job on redundancy

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

33. Employee leaving during redundancy notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under clause 31 had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

34. Job search entitlement

34.1 Job search entitlement for notice of termination of employment

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

34.2 Job search entitlement—redundancy

(a) Time off for seeking other employment

An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) Proof of attendance

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

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Schedule A—Summary of Hourly Rates of Pay

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

A.1 Full-time and part-time employees

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

	Ordinary hours	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	100%	150%	200%	250%
	\$	\$	\$	\$
Level 1	17.89	26.84	35.78	44.73
Level 2	18.33	27.50	36.66	45.83
Level 3	18.91	28.37	37.82	47.28
Level 4	19.31	28.97	38.62	48.28
Level 5	20.80	31.20	41.60	52.00

A.1.2 Full-time and part-time shiftworkers—ordinary and penalty rates

	Day shift	Afternoon shift	Night shift	Permanent night shift	Saturday	Sunday	Public holiday
	% of minimum hourly rate						
	100%	115%	120%	125%	150%	200%	250%
	\$	\$	\$	\$	\$	\$	\$
Level 1	17.89	20.57	21.47	22.36	26.84	35.78	44.73
Level 2	18.33	21.08	22.00	22.91	27.50	36.66	45.83
Level 3	18.91	21.75	22.69	23.64	28.37	37.82	47.28
Level 4	19.31	22.21	23.17	24.14	28.97	38.62	48.28
Level 5	20.80	23.92	24.96	26.00	31.20	41.60	52.00

A.1.3 Full-time and part-time employees—overtime—all employees

	Monday to Sunday		Public holiday
	First 2 hours	After 2 hours	
	% of minimum hourly rate		
	150%	200%	250%
	\$	\$	\$
Level 1	26.84	35.78	44.73
Level 2	27.50	36.66	45.83
Level 3	28.37	37.82	47.28
Level 4	28.97	38.62	48.28
Level 5	32.43	43.24	54.05

A.2 Casual employees**A.2.1 Casual employees other than shiftworkers—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	125%	175%	225%	275%
	\$	\$	\$	\$
Level 1	22.36	31.31	40.25	49.20
Level 2	22.91	32.08	41.24	50.41
Level 3	23.64	33.09	42.55	52.00
Level 4	24.14	33.79	43.45	53.10
Level 5	26.00	36.40	46.80	57.20

A.2.2 Casual shiftworkers—ordinary and penalty rates

	Day shift	Afternoon shift	Night shift	Permanent night shift	Saturday	Sunday	Public holiday
	% of minimum hourly rate						
	125%	140%	145%	150%	175%	225%	275%
	\$	\$	\$	\$	\$	\$	\$
Level 1	22.36	25.05	25.94	26.84	31.31	40.25	49.20
Level 2	22.91	25.66	26.58	27.50	32.08	41.24	50.41
Level 3	23.64	26.47	27.42	28.37	33.09	42.55	52.00

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	Day shift	Afternoon shift	Night shift	Permanent night shift	Saturday	Sunday	Public holiday
	% of minimum hourly rate						
	125%	140%	145%	150%	175%	225%	275%
	\$	\$	\$	\$	\$	\$	\$
Level 4	24.14	27.03	28.00	28.97	33.79	43.45	53.10
Level 5	26.00	29.12	30.16	31.20	36.40	46.80	57.20

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Schedule B—Summary of Monetary Allowances

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

B.1 Wage-related allowances:

The wage-related allowances in this award are based on the standard rate as defined in clause 2 as the minimum weekly wage for a Level 3 employee in clause 16.1= **\$718.60**

Allowance	Clause	% of standard rate \$718.60	\$ per week unless stated otherwise
Leading hand allowance:	17.2(a)		
2 to 10 employees		3.99	28.67
11 to 21 employees		5.97	42.90
More than 21 employees		8.11	58.28
Verminous/decomposed human body allowance	0	11.96	85.94 per occasion
Work performed in fumigation depot allowance	17.2(c)	0.93	6.68 per day
First aid allowance	17.2(d)	2.12	15.23

B.1.1 Adjustment of wage-related allowances

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

B.2 Expense-related allowances

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

Allowance	Clause	\$
Meal allowance—overtime for more than two hours without proper notice	17.3(a)	13.66 per meal
Motor vehicle allowance	17.3(b)	0.78 per km
Country work:	17.3(c)	
Board and lodging	17.3(c)(i)	90.44 per night
Meal allowance	17.3(c)(iv)	8.45 per meal

B.2.1 Adjustment of expense-related allowances

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

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Motor vehicle allowance	Private motoring sub-group
Country work—Board and lodging	Holiday travel and accommodation sub-group

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Schedule C—Supported Wage System

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

C.2 In this schedule:

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

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

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

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

C.4.2 Provided that the minimum amount payable must be not less than \$82 per week.

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

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

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

C.7 Review of assessment

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

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

- C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$82 per week.
- C.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

Schedule D—National Training Wage

D.1 Title

This is the *National Training Wage Schedule*.

D.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

D.3 Coverage

D.3.1 Subject to clauses D.3.2 to D.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 D.7 to this schedule or by clause D.5.4 of this schedule.

D.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 D.7 to this schedule.

D.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.

D.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.

D.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.

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

D.4 Types of Traineeship

The following types of traineeship are available under this schedule:

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

D.5 Minimum Wages

D.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause D.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 D.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

(b) Wage Level B

Subject to clause D.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 D.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

(c) Wage Level C

Subject to clause D.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 D.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

(d) AQF Certificate Level IV traineeships

- (i) Subject to clause D.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 D.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:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level C	560.60	581.80

D.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses D.5.2(f) and D.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 D.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

(b) Wage Level B

Subject to clauses D.5.2(f) and D.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 D.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

(c) Wage Level C

Subject to clauses D.5.2(f) and D.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 D.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78
Plus 4 years out of school	15.95	17.78	
Plus 5 or more years out of school	17.78		

(d) School-based traineeships

Subject to clauses D.5.2(f) and D.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 D.7 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.94	10.96

(e) AQF Certificate Level IV traineeships

- (i) Subject to clauses D.5.2(f) and D.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 D.5.2(f) and D.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:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

(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 D.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 D.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 D.5.2(a)-(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

D.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.

D.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 D.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.

D.6 Employment conditions

D.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.

D.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.

D.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 D.5.2(f)(ii) and not by this clause.

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

D.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:

D.7.1 Wage Level A

Training package	AQF certificate level
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

Training package	AQF certificate level
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
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

D.7.2 Wage Level B

Training package	AQF certificate level
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
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

Training package	AQF certificate level
Transport and Logistics	II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

D.7.3 Wage Level C

Training package	AQF certificate level
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 E—Agreement for Time Off Instead of Payment for Overtime

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Schedule F—Agreement to Take Annual Leave in Advance

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule G—Agreement to Cash Out Annual Leave

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—2016 Part-day Public Holidays

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

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

- H.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause H.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
 - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause H.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

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