

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

Publication date	Reason for amendments	Clauses affected
15 January 2016	Exposure Draft	
7 November 2016	Incorporate changes resulting from PR580863	Schedule G
	Incorporate changes resulting from [2016] FWCFB 3500 , PR579917 and PR579629	10, 11, 12, Schedule A, Schedule B, Schedule C, Schedule D
	Incorporate changes agreed to by parties and changes made by AMOD following conference of 4 August 2016	8, 10, Schedule B, Schedule H
8 November 2016	Exposure Draft	
18 July 2017	Incorporate changes resulting from PR588751	5, 14, 15, Schedule E, Schedule F
	Incorporate changes resulting from [2017] FWCFB 3500 , PR592225 , PR592375	10, 11, 12, Schedule A, Schedule B Schedule C, Schedule D
	Incorporate changes resulting from [2017] FWCFB 3176 , PR593890	10, Schedule D
	Incorporate changes resulting from [2017] FWCFB 3433	1, 3, 15, 24, Schedule H
	Exposure Draft	
08 March 2019	Incorporate changes resulting from PR598110	Schedule G
	Incorporate changes resulting from [2018] FWCFB 3500 , PR606448 , PR606598	10, 11, 12, Schedule A, Schedule C
	Incorporates changes resulting from [2018] FWCFB 3936 , PR609456	20
	Incorporates changes resulting from PR701683	Schedule G
	Incorporates changes resulting from [2018] FWCFB 6863 , PR701525	4A
	Incorporate changes resulting from [2016] FWC 7768 and [2017] FWCFB 3433	8.5(a), 10.2, Schedule C, Schedule H
	Incorporate changes resulting from [2018] FWCFB 4704 ; PR610289	4, 21, 23, 23A, 24
	Administrative changes by Modern Awards team	10.4 (deleted), 10.4, 10A
	Incorporates changes resulting from [2018] FWCFB 4735 , PR610157	10A

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Publication date	Reason for amendments	Clauses affected
A text box indicates that the Exposure Draft has been amended.		
Changes agreed to by parties appear in red text.		
Underlined text indicates new text that is to be included as a result of a technical and drafting decision.		
Strikethrough text indicates existing text that is to be deleted as a result of a technical and drafting decision.		
Changes resulting from a determination are incorporated without any underlined text or strikethrough text.		

EXPOSURE DRAFT

Seagoing Industry Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Seagoing Industry Award 2010* (the Seagoing award) as at 7 November 2016. This exposure draft does not seek to amend any entitlements under the Seagoing 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 [AM2014/243](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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Part 1—Application and Operation

1. Title and commencement

1.1 This award is the *Seagoing Industry Award 20XX*.

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

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

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

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

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

2. The National Employment Standards and this award

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

2.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.

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

3. Coverage

3.1 This industry award covers employers which are engaged in the seagoing industry and their employees in the classification listed in clause 10 and clause A.1.1—Classifications and minimum wage rates to the exclusion of any modern award.

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

3.2 For the purposes of clause 3.1, **seagoing industry** means the operation of vessels trading as cargo vessels, passenger vessels or operated as research vessels which, in

the course of such trade or operation, proceed to sea (on voyages outside the limits of bays, harbours or rivers).

- 3.3** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 3.4** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 3.1 and 3.2 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 3.5** This award does not cover:
- (a) 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;
 - (b) 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;
 - (c) an employee excluded from award coverage by the [Act](#);
 - (d) employers covered by the following awards:
 - (i) the *Coal Export Terminals Award 20XX*;
 - (ii) the *Dredging Industry Award 20XX*;
 - (iii) the *Marine Towing Award 20XX*;
 - (iv) the *Maritime Offshore Oil and Gas Award 20XX*;
 - (v) the *Port Authorities Award 20XX*;
 - (vi) the *Ports, Harbours and Enclosed Water Vessels Award 20XX*;
 - (vii) the *Stevedoring Industry Award 20XX*; or
 - (e) maintenance contractors covered by the *Manufacturing and Associated Industries and Occupations Award 20XX*.
- 3.6** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

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

4. Individual flexibility arrangements

Clause 4 substituted in accordance with [PR610289](#).

- 4.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:
- (a) arrangements for when work is performed; or
 - (b) overtime rates; or
 - (c) penalty rates; or
 - (d) allowances; or
 - (e) annual leave loading.
- 4.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 4.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 4.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 4.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 4.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
 - (b) identify the award term, or award terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and
 - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
 - (e) state the date the agreement is to start.

- 4.7** An agreement must be:
- (a) in writing; and
 - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.
- 4.8** Except as provided in clause 4.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 4.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 4.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 4.11** An agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee; or
 - (b) by the employer or employee giving 13 weeks’ written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).
- NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](#)).
- 4.12** An agreement terminated as mentioned in clause 4.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 4.13** The right to make an agreement under clause 4 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

4A. Requests for flexible working arrangements

Clause 4A inserted in accordance with [PR701525](#).

4A.1 Employee may request change in working arrangements

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

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

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

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

4A.2 Responding to the request

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

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

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

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

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

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

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

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

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

4A.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 4A, can be dealt with under clause 24—Dispute resolution.

5. Facilitative provisions

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

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

Clause 5.2 amended in accordance with [PR588751](#).

Clause	Provision	Agreement between an employer and:
A.4.2(c)	Public holidays substitute days (Vessels Granted a Temporary Licence only)	An individual
<u>15.2</u>	<u>Annual leave in advance</u>	<u>An individual</u>
<u>15.3</u>	<u>Cashing out of annual leave</u>	<u>An individual</u>

6. Effect of Temporary Licences

Claims relating to clause 6.1 (see [submission](#)) and 6.2 (see [submission](#) at p 2) remain outstanding and will be dealt with shortly.

6.1 A **temporary licence** is a temporary licence granted under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

6.2 The provisions contained within Schedule A—Vessels Granted a Temporary Licence, apply exclusively to vessels granted a temporary licence.

6.3 The following parts of this award do not apply to vessels granted a temporary licence:

- (a) Part 2—Types of Employment;
- (b) Part 3—Hours of Work;
- (c) Part 4—Wages and Allowances;
- (d) Part 5—Leave, Public Holidays and Other NES Entitlements;
- (e) Schedule D—National Training Wage; and
- (f) Schedule G—Part-day Public Holidays.

Part 2—Types of Employment

7. Types of employment

7.1 General

- (a) Employees under this award will be employed in one of the following categories:
 - (i) full-time employment; or
 - (ii) relief employment.
- (b) 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 or relief employee.

7.2 Full-time employees

A full-time employee is engaged to work at least 38 ordinary hours per week, plus reasonable additional hours.

7.3 Relief employees

- (a) A relief employee is specifically engaged as a relief employee.
- (b) A relief employee receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees.

Part 3—Hours of Work

8. Ordinary hours of work and rostering

- 8.1 This clause provides industry specific detail and supplements the [NES](#) provisions which deal with maximum weekly hours.
- 8.2 For the purposes of the [NES](#) an employee's weekly hours may be averaged over a period of up to 52 weeks.
- 8.3 The ordinary hours for operational and maintenance work will be eight hours per day each day of the week. Employees may be required to work in excess of the ordinary hours to meet the requirements of the vessel.
- 8.4 In port, cargo duties or gear turns will be worked in shifts of not more than 12 hours' duration, except where it is impractical due to crew shortages.

8.5 Minimum hours of rest

Clause 8.5(a) amended and moved to 8.5(d) in accordance with Statement [\[2016\] FWC 7768](#) (attachment 5 at [2]) and Decision [\[2017\] FWCFB 3433](#) at [308] – [309].

- (a) For the purpose of clause 8.5, **seafarer** means a seaman as defined in ~~subsection 6(1)~~14 of the *Navigation Act 2012* (Cth) or the master of a ship.
- (b) An employer shall comply with the requirements of Marine Order 28 that states that unless AMSA has granted an exemption under section 6 or emergency or drill or other overriding operational conditions as defined in section 13 exist:
- (i) The minimum hours of rest for a seafarer must be:
- 10 hours in any 24 hours; and
 - 77 hours in any 7 days.
- (ii) The minimum hours of rest may be divided into two periods, of which one period must be at least 6 hours.
- (iii) The interval between consecutive periods of rest must not exceed 14 hours.
- (c) **Joining a vessel overseas**
- An employee required to travel overseas to join a vessel will be provided with adequate rest before commencing duties.

8.6 Swing cycle

- (a) **Swing cycle work** (or work cycle) means a cycle made up of working and non-working days.
- (b) Notwithstanding any other provision of this award, employees who go to sea may be engaged to work on a swing cycle.

9. Breaks

- 9.1 Meal breaks will be one hour and uninterrupted where practical.
- 9.2 Employees may be required to shorten their meal breaks to meet the operational requirements of the vessel.
- 9.3 No employee will be required to work for more than six hours without being allowed a break for a meal.
- 9.4 Meal breaks will be provided to employees, other than catering employees, during the following span of hours:

Meal break	Span of meal break
Breakfast	7.00 am – 9.00 am
Lunch	12.00 pm – 2.00 pm
Dinner	5.00 pm – 7.00 pm

- 9.5** Meal breaks may only be shortened or altered where the Master or another officer deems it necessary to meet the operational requirements of the vessel.
- 9.6** Catering employees will take their meal breaks within the spread of hours in clause 9.4 where practical.

Part 4—Wages and Allowances

10. Classifications and minimum wage rates

Monetary amounts adjusted as a result of AWR 2018.

Classification issue referred to the Full Bench in matter [AM2016/5](#), see [\[2017\] FWCFB 3433](#) at [310].

- 10.1** An employee under this award, except as otherwise stated, will be paid at the rate of the aggregate annual salary prescribed in accordance with this clause appropriate to that employee’s classification. For the purposes of the following tables, **18** means vessels manned at 18 or below.

(a) Dry cargo vessels of up to 19,000 tonnes (D.C. Cat 1)

Classification	Manning	Minimum salary	Aggregate overtime component	Aggregate annual salary
		\$	\$	\$
Master	18	71,794	27,169	98,963
	AOV	70,077	26,517	96,594
Chief engineer	18	70,616	26,722	97,338
	AOV	68,933	26,085	95,018
First mate/First engineer	18	61,190	23,156	84,346
	AOV	59,785	22,623	82,408
Second mate/Second engineer	18	56,607	21,421	78,028
	AOV	55,338	20,941	76,279
Third mate/Third engineer	18	54,251	20,529	74,780
	AOV	53,050	20,075	73,125

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Chief integrated rating/Chief cook/Chief steward	18	51,308	19,416	70,724
	AOV	50,190	18,991	69,181
Second cook	AOV	46,877	17,739	64,616
Integrated rating/Assistant steward/Catering attendant	18	46,726	17,682	64,408
	AOV	45,734	17,304	63,038*
* Standard rate = annual integrating rate (AOV) rate/52				

(b) Dry cargo vessels of between 19,000 and 39,000 tonnes (D.C. Cat 2)

Classification	Manning	Minimum salary	Aggregate overtime component	Aggregate annual salary
		\$	\$	\$
Master	18	74,003	28,003	102,006
	AOV	72,222	27,327	99,549
Chief engineer	18	72,780	27,542	100,322
	AOV	71,036	26,880	97,916
First mate/First engineer	18	63,001	23,841	86,842
	AOV	61,539	23,289	84,828
Second mate/Second engineer	18	58,112	21,991	80,103
	AOV	56,927	21,540	78,467
Third mate/Third engineer	18	55,798	21,115	76,913
	AOV	54,552	20,644	75,196
Chief integrated rating/Chief cook/Chief steward	18	52,132	19,728	71,860
	AOV	50,993	19,297	70,290
Second cook	AOV	47,570	18,002	65,572
Integrated rating/Assistant steward/Catering attendant	18	47,397	17,934	65,331
	AOV	46,384	17,553	63,937

(c) Dry cargo vessels over 39,000 tonnes (D.C. Cat 3)

Classification	Manning	Minimum salary	Aggregate overtime component	Aggregate annual salary
		\$	\$	\$
Master	18	76,598	28,985	105,583
	AOV	74,746	28,283	103,029
Chief engineer	18	75,325	28,504	103,829
	AOV	73,509	27,818	101,327
First mate/First engineer	18	65,130	24,645	89,775
	AOV	63,609	24,071	87,680
Second mate/Second engineer	18	60,034	22,717	82,751
	AOV	58,662	22,199	80,861
Third mate/Third engineer	18	56,979	21,562	78,541
	AOV	55,700	21,078	76,778
Chief integrated rating/Chief cook/Chief steward	18	52,518	19,874	72,392
	AOV	51,367	19,438	70,805
Second cook	AOV	48,438	18,331	66,769
Integrated rating/Assistant steward/Catering attendant	18	47,605	18,013	65,618
	AOV	46,582	17,627	64,209

(d) Crude tankers

Classification	Manning	Minimum salary	Aggregate overtime component	Aggregate annual salary
		\$	\$	\$
Master	18	86,808	32,849	119,657
	AOV	83,964	31,773	115,737
Chief engineer	18	85,333	32,290	117,623
	AOV	82,545	31,236	113,781
First mate/First engineer	18	72,765	27,535	100,300
	AOV	70,464	26,663	97,127
Second mate/Second engineer	18	67,589	25,577	93,166
	AOV	65,487	24,780	90,267

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Third mate/Third engineer	18	63,155	23,898	87,053
	AOV	61,221	23,166	84,387
Chief integrated rating/Chief cook/Chief steward	18	56,632	21,428	78,060
	AOV	54,954	20,795	75,749
Second cook	AOV	51,398	19,448	70,846
Integrated rating/Assistant steward/Catering attendant	18	50,717	19,192	69,909
	AOV	48,812	18,472	67,284

(e) Other (product) tankers

Classification	Manning	Minimum salary	Aggregate overtime component	Aggregate annual salary
		\$	\$	\$
Master	18	90,193	34,129	124,322
	AOV	86,512	32,737	119,249
Chief engineer	18	88,648	33,543	122,191
	AOV	85,038	32,179	117,217
First mate/First engineer	18	74,733	28,279	103,012
	AOV	71,788	27,166	98,954
Second mate/Second engineer	18	69,320	26,231	95,551
	AOV	66,631	25,214	91,845
Third mate/Third engineer	18	65,455	24,770	90,225
	AOV	62,951	23,821	86,772
Chief integrated rating/Chief cook/Chief steward	18	58,494	22,135	80,629
	AOV	56,457	21,362	77,819
Second cook	AOV	52,776	19,970	72,746
Integrated rating/Assistant steward/Catering attendant	18	53,218	20,139	73,357
	AOV	51,302	19,412	70,714

(f) Gas carriers

Classification	Manning	Minimum salary	Aggregate overtime component	Aggregate annual salary
		\$	\$	\$
Master	18	88,162	33,360	121,522
	AOV	87,084	32,951	120,035
Chief engineer	18	87,781	33,215	120,996
	AOV	85,602	32,392	117,994
First mate/First engineer	18	74,025	28,012	102,037
	AOV	72,245	27,338	99,583
Second mate/Second engineer	18	68,678	25,989	94,667
	AOV	67,051	25,372	92,423
Third mate/Third engineer	18	65,999	24,975	90,974
	AOV	64,454	24,390	88,844
Chief integrated rating/Chief cook/Chief steward	18	60,267	22,806	83,073
	AOV	58,887	22,283	81,170
Second cook	AOV	56,052	21,212	77,264
Integrated rating/Assistant steward/Catering attendant	18	55,049	20,831	75,880
	AOV	53,824	20,370	74,194

(g) Research vessels

Classification	Minimum salary	Aggregate overtime component	Aggregate annual salary
	\$	\$	\$
Master	66,612	23,407	90,019
Chief engineer	65,412	22,983	88,395
First mate/First engineer	55,718	19,576	75,294
Second mate/Second engineer/ Electrical engineer	50,975	17,911	68,886
Third mate/Third engineer	48,886	17,177	66,063

Bosun/Chief steward/Chief cook/Chief integrated rating	46,714	16,322	63,036
Integrated rating/ AB/Greaser/Second cook	43,078	15,135	58,213

Clause 10.2 amended in accordance with Statement [\[2016\] FWC 7768](#) (attachment 5 at [2]) and Decision [\[2017\] FWC FB 3433](#) at [308]-[309].

- 10.2** The training, qualifications, roles and responsibilities of the classification of employees included in the tables above are incorporated in Australian Marine Orders—Part 3 70–73, the *Navigation Act 2012* (Cth) and other relevant State Flag requirements.
- 10.3** The annual salaries have been fixed on an aggregate basis taking into account all aspects and conditions of employment. The aggregate salaries are based on work for 10 hours per day (70 hours per week) for 27 weeks per year over seven days a week with:
- (a) eight hours per day at the minimum hourly rate;
 - (b) two hours per day at **200%** of the minimum hourly rate; and
 - (c) the balance of hours above 38 ordinary hours per week (56 hours less 38 ordinary hours) at **200%** of the minimum hourly rate.

10.4—Payment of wages

Clause 10.4 renumbered as clause 10A.

- ~~(a) The employer will pay the employee’s wages, penalties and allowances at a frequency of not longer than monthly by electronic funds transfer into the employee’s nominated bank or other recognised financial institution account.~~

~~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.~~

- ~~(b) An employer may deduct from any amount required to be paid to an employee under this clause the amount of any overpayment of wages or allowances.~~
- ~~(c) Salaries will be calculated in the following way:~~
- ~~(i) the monthly rate by dividing the annual rate by 12;~~
 - ~~(ii) the fortnightly rate by dividing the annual rate by 26; and~~
 - ~~(iii) the daily rate for fortnightly paid employees by dividing the fortnightly rate by 14.~~

~~(d) Withholding of wages~~

- ~~(i) An employee will not be entitled to payment of any wages or salary or any other allowance or payment for any period during which a refusal or failure to work as required continues.~~
- ~~(ii) The non-entitlement will be at the hourly rate of each hour or part of an hour that the employee refuses or fails to work.~~
- ~~(iii) The hourly rate for the purposes of this clause will be 1/24th of the appropriate daily rate.~~

10.4 10.5 National training wage

Clause 10.5 substituted per [PR593890](#); varied by [PR606448](#); error corrected

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2018. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Seagoing Industry Award 2010* ~~2016~~ and not the *Miscellaneous Award 2010*.

10A. Payment of wages

Clause 10.4 renumbered as clause 10A; Note moved; Clause 10A varied in accordance with [PR610157](#).

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.

- 10A.1** The employer will pay the employee’s wages, penalties and allowances at a frequency of not longer than monthly by electronic funds transfer into the employee’s nominated bank or other recognised financial institution account.
- 10A.2** An employer may deduct from any amount required to be paid to an employee under this clause the amount of any overpayment of wages or allowances.
- 10A.3** Salaries will be calculated in the following way:
 - (a) the monthly rate—by dividing the annual rate by 12;
 - (b) the fortnightly rate—by dividing the annual rate by 26; and
 - (c) the daily rate for fortnightly paid employees—by dividing the fortnightly rate by 14.

10A.4 Withholding of wages

- (a) An employee will not be entitled to payment of any wages or salary or any other allowance or payment for any period during which a refusal or failure to work as required continues.

- (b) The non-entitlement will be at the hourly rate of each hour or part of an hour that the employee refuses or fails to work.
- (c) The hourly rate for the purposes of this clause will be 1/24th of the appropriate daily rate.

10A.5 Payment on termination of employment

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

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

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

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

11. Allowances—wage related

Monetary amounts adjusted as a result of AWR 2018.

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

11.1 Tanker allowance

- (a) An employee will receive a tanker allowance of **\$10.06** for each day of duty on a tanker.
- (b) This payment includes a travelling allowance and is instead of any other such allowance.

11.2 Handling/securing cargo allowances

An employee who is required to perform manual work involving handling cargo in port (handling), or work consisting of the securing or lashing of cargo (securing or lashing), will be paid an allowance under this clause.

(a) Handling/securing cargo between 7.00 am and 5.00 pm on Monday to Friday

Unless watches are being kept and work is done outside an employee's watch on duty:

- (i) handling cargo—**\$14.18** per hour; or
- (ii) securing or lashing cargo—**\$4.97** per hour,

(b) At any other time Monday to Friday; or where watches are being kept and work is outside an employees' watch on duty; or on Saturdays, Sundays or public holidays (except where work is performed in the circumstances outlined in clause 11.2(c)):

- (i) handling cargo—**\$18.06** per hour; or
- (ii) securing or lashing cargo—**\$5.82** per hour,

(c) Handling/securing cargo between 11.00 pm and 7.00 am

The allowances in clauses 11.2(d) and 11.2(e)(i) are payable:

- (i) for work performed after 11.00 pm on any day where the work has already extended for at least four hours at 11.00 pm;
- (ii) where the work has extended for four hours ending at any time between 11.00 pm and 7.00 am or the commencement of ordinary duty on the following day; or
- (iii) for work after 11.00 pm where watches are being kept and four hours' work has already been performed off watch after 11.00 pm.

(d) Handling/securing cargo between 11.00 pm and 7.00 am

In the circumstances of clause 11.2(c):

- (i) handling cargo—**\$22.67** per hour; or
- (ii) securing or lashing cargo—**\$6.91** per hour.

(e) Handling/securing cargo—mail, passengers' luggage or motor cars

For work where the cargo is mail, passengers' luggage or passengers' motor cars, the following allowances are payable:

- (i) in circumstances outline in clause 11.2(c):

	\$ per hour
Handling	18.67
Securing or lashing	5.94

(ii) at any other time:

	\$ per hour
Handling	14.18
Securing or lashing	4.97

11.3 Disturbance of sleep allowance

- (a) When the rest of an employee sleeping onboard a vessel is seriously disturbed by noise from cargo operations between the hours of 11.00 pm and 6.00 am, or during an eight hour rest period, the employee will be paid an allowance of **\$22.67** per night or rest period affected.
- (b) In determining the applicability of this allowance, the Master or officer in charge will carefully assess the merits of each claim.

11.4 Vessels wrecked or stranded allowance

If a vessel becomes wrecked or stranded in the course of a voyage and an employee is called upon for special efforts while the vessel is still wrecked or stranded, the employee will, for the time during which the employee so assists, be paid at the rate of **\$15.76** per hour in addition to any other entitlement under this award.

See Schedule C for a summary of monetary allowances

12. Allowances—expense related

Monetary amounts adjusted as a result of AWR 2018.

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.

12.1 Study allowance

- (a) An **approved course of study** is a Certificate of Competency, including an Endorsement, as prescribed by the *Navigation Act 2012* (Cth) or regulations made thereunder, conducted by the Australian Maritime College or an approved technical institution or academy.

(b) Eligibility

This allowance will apply to:

- (i) a Deck officer who goes ashore to study and sit for an approved course of study qualifying the employee as a First mate (Chief deck officer) or Master of a ship; and
- (ii) a Marine engineer, Marine electrician or Electrical engineer who goes ashore to study and sit for an approved course of marine engineering study.

(c) Conditions for accessing entitlement

The entitlements prescribed in clause 12.1(d) will only be payable by the employer if the following conditions are met:

- (i) an application has been made by the employee in writing and has been approved in writing by the employer;
- (ii) the employee has been employed by the employer for the 12 months prior to commencing the period of study;
- (iii) if the employer desires, the employee will enter into a written undertaking that the employee will remain in the employer's employment for a period of at least 12 months after sitting for the certificate in question;
- (iv) the entitlement will be confined to the first attempt to obtain the certificate in question; and
- (v) the employee will provide the employer with reasonable proof of satisfactory attendance at the course of study and examination.

(d) Entitlement

- (i) For approved study outside period of accrued leave—**75%** of the eligible employee's salary or wages for the authorised period of study.
- (ii) For approved study during period of accrued leave—a period of additional leave (immediately following the sitting for each certificate), equal to **75%** of the authorised period of study.
- (iii) An employer and an employee may agree to grant the additional leave under clause 12.1(d)(ii) as payment instead of leave.
- (iv) Where an application by an employee to undertake an approved course of study has been approved by the employer, and the employee is subsequently retrenched, the employee will be entitled to payment in accordance with clause 12.1(d)(i). For these purposes, the employee's salary rate will be the rate applicable at the date of termination.

(e) Living away from home

When it is necessary for an employee to take up temporary residence away from their home port to undertake the approved study, the employee will be entitled to the following living away from home allowance during the authorised period of study:

- (i) \$121.40** per week; or
- (ii) \$171.19** per week (if the employee has a spouse or de facto partner and/or dependent children).

(f) Authorised period of study

The authorised period of study for eligible employees under this clause will consist of:

- (i)** the period of their attendance at the course of study for each certificate;
- (ii)** the prescribed examination times; and
- (iii)** vacation times or holidays of not more than seven consecutive days (including Saturdays, Sundays and public holidays).

12.2 Meal and accommodation allowance

(a) An employee will be entitled to the relevant meal or accommodation allowance set out in clause 12.2(d), in the following circumstances:

- (i)** an employee in a vessel is required by the employer to take a meal ashore and/or be accommodated ashore at a port other than at the employee's home port; or
- (ii)** subject to clause 12.2(c) an employee is directly travelling to their home port at the employer's expense pursuant to clause 12.2(a) or any applicable legislation; or
- (iii)** an employee is undertaking travel in accordance with clause 12.3.

(b) Employees in their home port

Employees in a vessel in their home port will only be entitled to the accommodation allowance set out in clause 12.2(d) when:

- (i)** their usual place of residence is not actually located in their home port;
- (ii)** accommodation is not provided; and
- (iii)** they produce evidence to the reasonable satisfaction of the employer that they properly incurred the particular expenditure.

(c) Meals while travelling by air

An employee will only be entitled to payment of the respective meal allowance set out in clause 12.2(d) when:

- (i) the employee is travelling at the employer’s expense in accordance with clause 12.2(a); and
- (ii) an in-flight airline meal is not available to the employee whilst travelling during breakfast hours (7.00 am to 9.00 am) and/or lunch hours (12.00 pm to 2.00 pm) and/or dinner hours (5.00 pm to 7.00 pm).

(d) Entitlement

- (i) An employee’s entitlement under clause 12.2 will be as follows:

Daily rates	\$
Breakfast	20.94
Lunch	25.26
Dinner	41.84
Accommodation	143.48
Accommodation and meals	231.52
Weekly rates	\$
Meals	440.30
Accommodation	717.47

- (ii) This clause will not apply where the employer provides meals and accommodation.

12.3 Travel expenses

Subject to the employee producing evidence to the reasonable satisfaction of the employer that expenditure claimed was properly incurred by the employee, the employer will reimburse the reasonable travel expenses of an employee when the employee is travelling:

- (a) as required by and for the purposes of the employer; or
- (b) to and/or from the employee’s home port in the following circumstances:
 - (i) incidentally to the taking of leave as required by the employer;
 - (ii) pursuant to the application of the *Navigation Act 2012* (Cth);
 - (iii) when the employee’s employment is terminated by the employer, except where the employee is dismissed for misconduct and the dismissal is not subsequently overturned; or
 - (iv) when the employee terminates their employment at the same time that articles of agreement expire through the passing of time at any port other than at the employee’s home port.
- (c) Clause 12.3 will not apply where the employer provides free travel.

12.4 Personal effects allowance

An employee who sustains damage or loss of their personal effects or equipment due to fire, explosion, foundering, shipwreck, collision or stranding, will be compensated by the employer for the damage or loss by a payment equivalent to the value thereof, not exceeding \$4352.00.

12.5 Conveyance

- (a) Where a vessel lies at anchorage or at any buoy within port limits and is not duly treated as being at sea while there, the employer will reimburse the employee the cost of conveyance between the vessel and a safe landing place.
- (b) Clause 12.5(a) will not apply where the employer provides the conveyance or the Master considers it unreasonable in the circumstances at the time.

12.6 Medical expenses

An employee who undergoes a medical examination by a medical inspector of seamen, at the requirement of the employer, or pursuant to requirements under the *Navigation Act 2012* (Cth) and relevant Marine Orders, will be reimbursed the cost of the applicable fees by the employer.

12.7 Passports/travel document expenses

The employer will reimburse an employee for all reasonable charges, fees and expenses incurred by an employee who is required by the employer to have and maintain:

- (a) a valid passport;
- (b) any necessary visas; and
- (c) any necessary vaccinations.

12.8 Reimbursement of expenses

Upon production of evidence to the reasonable satisfaction of the employer that the expenditure claimed was properly incurred by the employee, the employer will reimburse an employee any expenses reasonably incurred by the employee in the performance of their duties and on behalf of the employer, including:

- (a) expenses in respect of fees incurred by a Master or Deck officer in obtaining or renewing a pilotage exemption certificate in the course of their service with the employer;
- (b) expenses associated with enquiries as to casualties or as to the conduct of employees and to proceedings for any alleged breach of any maritime or port or other regulations; and
- (c) reimbursement of reasonable legal costs incurred or fines imposed by a competent tribunal under any applicable environmental legislation provided that the expenses incurred were not due to, or arising from, the employee's personal default or misconduct.

12.9 Industrial clothing

(a) Uniforms

If the employer requires an employee to wear a uniform, the employer must reimburse the employee for two-thirds of the cost of purchasing the clothing.

(b) Trappings

If an employer requires an employee to purchase any trappings, the employer must reimburse the employee for the full cost of purchasing the items. Any trappings will remain the property of the employer.

(c) Safety shoes and protective clothing

If an employer requires an employee to purchase any safety shoes and protective clothing (including overalls), the employer must reimburse the employee for the full cost of purchasing such items. Any such clothing will remain the property of the employer.

(d) Clause 12.9 will not apply where the industrial clothing is supplied to the employee wholly at the employer's expense.

See Schedule C for a summary of monetary allowances

13. Superannuation

13.1 Superannuation contributions for defined benefit members

An employer is permitted to make superannuation contributions to a superannuation fund or scheme in relation to a default fund employee who is a defined benefit member of the fund or scheme.

Part 5—Leave, Public Holidays and Other NES Entitlements

14. Leave

14.1 Leave factor and entitlement to leave

(a) Subject to clause 14.1(c), for each day of duty on a vessel or a day during which the employee is involved in travelling to or from a vessel or place of work as required by the employer, an employee will accrue an entitlement to 0.926 of a day's leave without loss of pay.

(b) Where leave granted is less or more than that actually due, it will be debited or credited to the employee as less or additional leave.

(c) Leave will not accrue:

(i) on a day when an employee is on leave;

- (ii) on a day, or that part of a day, during which an employee fails or refuses to attend for or perform work as lawfully required by the employer;
- (iii) on any day on which the employee is undertaking an approved course of study or training ashore;
- (iv) when an employee's engagement is less than one day;
- (v) on a day when an employee accepts shore-based secondment; or
- (vi) where a leave ratio higher than that contained in clause 14.1(a) operates, in order to give effect to an employee's leave entitlement:
 - days of joining or leaving a vessel; and
 - days of travel to and from a vessel or required place of work despite that work is performed on any such day.

14.2 Calculation of leave entitlement

The leave entitlement in clause 14.1(a) gives effect to, amongst other things:

- (a) leave with pay for weekends and public holidays worked;
- (b) annual leave with pay of five weeks per year;
- (c) personal/carer's leave;
- (d) compassionate leave; and
- (e) a 35 hour working week.

14.3 Taking of leave

- (a) The taking of leave will, as far as practicable, be arranged to suit the running of the vessel in which the employee is engaged.
- (b) The period of leave granted will approximate as closely as possible both to the actual amount of leave due to the employee and to the date and time when the employee can most conveniently return to duty.
- (c) Unless otherwise agreed between the employer and the employee, the leave to which an employee is entitled under this clause will be granted by the employer and taken by the employee not later than eight months after it has commenced to accrue.

14.4 Leave in advance: employer direction

Clause 14.4 renamed in accordance with [PR588751](#).

- (a) Where an employee's leave has expired, an employer may require an employee to take up to 14 days of leave in advance. An employee will not be required to take more than 14 days of leave in advance unless:
 - (i) there has been prior consent by the employee; or

- (ii) a swing cycle agreement applying to the employee provides otherwise.
- (b) The giving and taking of leave will be arranged having regard to:
 - (i) avoidance of delays to a vessel’s schedule, the voyaging pattern of the employee’s regular vessel and urgent needs or demands of the employer’s service;
 - (ii) the need to correct imbalances in leave and duty periods;
 - (iii) the employee’s home port;
 - (iv) the need to reduce costs of travel; and
 - (v) whether the employee has a right to accumulate leave under clause 14.5.

14.5 Accumulation of leave for study

A Deck officer or Marine engineer who wishes to take leave for the purposes of an approved course of study in circumstances where the study allowance provisions in clause 12.1 do not apply (e.g. for a second or subsequent attempt at a Certificate of Competency), may accumulate and take their accrued leave in one period, at the time so desired by the employee, provided the employee has given reasonable notice of their intention to the employer.

14.6 Leave during dry docking

Whilst a vessel has ceased operation for the purpose of a survey, overhaul or docking, the employer may require an employee to proceed to their home port to take accrued leave and any leave in advance to the extent permitted by clause 14.4.

14.7 Payment of leave on termination of employment

Upon termination of employment, an employee’s leave entitlement under this clause will be paid at the salary rate for the last position in which the employee served.

15. Annual leave

Clause 15 amended in accordance with [PR588751](#).

15.1 Clause 14.1 of this award gives full effect to the [NES](#) entitlements to annual leave.

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](#)).

15.2 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 15.2 is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E.

- (c) The employer must keep a copy of any agreement under clause 15.2 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 15.2, 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.

15.3 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 15.3.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 15.3.
- (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 15.3 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 15.3 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 15.3 as an employee record.

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

Note 1: Under section 344 of the ~~Act 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 15.3.

Note 2: Under section 345(1) of the ~~Act 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 15.3.

Note 3: An example of the type of agreement required by clause 15.3 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

16. Parental leave and related entitlements

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

17. Personal/carer’s leave and compassionate leave

17.1 Clause 14.1 of this award gives full effect to the [NES](#) entitlements to personal/carer’s leave and compassionate leave.

17.2 Arrangements for taking of personal leave will be governed by the *Navigation Act 2012* (Cth).

18. Community service leave

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

19. Public holidays

19.1 Clause 14.1 of this award gives full effect to the [NES](#) entitlements to public holidays.

19.2 Part-day public holidays

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

20. Leave to deal with family and domestic violence

Clause 20 inserted in accordance with [PR609456](#).

20.1 This clause applies to all employees, including casuals.

20.2 Definitions

(a) In this clause:

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

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member in clause 20.2(a) includes a former spouse or de facto partner.

20.3 Entitlement to unpaid leave

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

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

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

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

20.4 Taking unpaid leave

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

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

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

20.5 Service and continuity

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

20.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 20. The notice:

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

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause 20 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 20.4.

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

20.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 20.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 20 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

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

20.8 Compliance

An employee is not entitled to take leave under clause 20 unless the employee complies with clause 20.

21. Termination of employment

Clause 21 substituted in accordance with [PR610289](#).

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

21.1 Notice of termination by an employee

- (a) Clause 21.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

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

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

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

21.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 21.2 is to be taken at times that are convenient to the employee after consultation with the employer.

22. Redundancy

- 22.1 Redundancy arrangements are provided for in the [NES](#).

22.2 Transfer to lower paid duties

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

22.3 Employee leaving during notice period

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

Part 6—Consultation and Dispute Resolution

This part applies to all employers to which this award applies irrespective of whether the vessel was granted a temporary licence.

23. Consultation about major workplace change

Clause 23 substituted in accordance with [PR610289](#).

23.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

23.2 For the purposes of the discussion under clause 23.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and

- (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 23.3** Clause 23.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer’s interests.
- 23.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 23.1(b).
- 23.5** In clause 23 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer’s workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or
 - (f) the need for employees to be retrained or transferred to other work or locations; or
 - (g) job restructuring.
- 23.6** Where this award makes provision for alteration of any of the matters defined at clause 23.5, such alteration is taken not to have significant effect.

23A. Consultation about changes to rosters or hours of work

Clause 23A inserted in accordance with [PR610289](#).

- 23A.1** Clause 23A applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 23A.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 23A.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 23A.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 23A.4** The employer must consider any views given under clause 23A.3(b).

23A.5 Clause 23A is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

24. Dispute resolution

Clause 24 substituted in accordance with [PR610289](#).

- 24.1** Clause 24 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).
- 24.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 24.3** If the dispute is not resolved through discussion as mentioned in clause 24.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 24.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 24.2 and 24.3, a party to the dispute may refer it to the Fair Work Commission.
- 24.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 24.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 24.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 24.
- 24.8** While procedures are being followed under clause 24 in relation to a dispute:
- (a)** work must continue in accordance with this award and the [Act](#); and
 - (b)** an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 24.9** Clause 24.8 is subject to any applicable work health and safety legislation.

Schedule A—Vessels Granted a Temporary Licence

Monetary amounts adjusted as a result of AWR 2018.

The following provisions are to apply to vessels granted a temporary licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

A.1 Minimum Wages and Related Matters

A.1.1 Classifications and minimum wage rates

Classification	Minimum weekly wage ¹
	\$
Master	1,376.30
Chief engineer	1,353.70
First mate/First engineer	1,173.60
Second mate/Second engineer/Radio Officer/Electrical Engineer	1,086.30
Third mate/Third engineer	1,041.20
Chief integrated rating/Bosun/ Chief cook/Chief steward/Carpenter/ Fitter/ Repairer/Donkeyman/Electrician	985.10
Integrated rating/Able seaman/ Fireman/Motorman/Pumpman/ Oiler greaser/Steward	897.80
OS/Wiper/Deckboy/Catering Boy/2nd Cook/Messroom Steward	757.20*
¹ Based on 40 hour week	

A.2 Allowances

A.2.1 If, by fire, explosion, foundering, shipwreck, collision or stranding, an employee should sustain damage to or loss of their personal effects or equipment, the employer will compensate them for such damage or loss by a payment equivalent to the value thereof, not exceeding **\$4352.00**.

A.2.2 The monetary amount in A.2.1 will be treated as a personal effects allowance and will be adjusted in accordance with clause C.2.

A.3 Hours of Work and Related Matters

A.3.1 Ordinary hours of work

Alleged NES inconsistency referred to Full Bench in matter [AM2014/1](#), see [\[2017\] FWCFB 3433](#) at [310].

- (a) The ordinary hours of work will be eight hours per day from Monday to Friday.
- (b) All hours worked in excess of eight hours per day from Monday to Friday will be paid as overtime.

(c) All hours worked on Saturdays, Sundays and public holidays will be paid for as overtime.

(d) Overtime

All overtime worked will be paid at **125%** of the minimum rate.

A.3.2 Rest periods

(a) Each employee will have a minimum of 10 hours' rest in any 24 hour period and 77 hours in any seven day period.

(b) This period of 24 hours will begin at the time an employee starts work immediately after having had a period of at least 6 consecutive hours off duty.

(c) The hours of rest may be divided into no more than two periods, one of which will be at least six hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.

A.4 Leave and Public Holidays

A.4.1 Leave

A claim to clarify clause A.4.1 remains outstanding and will be dealt with shortly (see [MUA submission](#)).

Notwithstanding the [NES](#), each employee will be entitled to payment of leave of eight days for each completed month of service and pro rata for any shorter period.

A.4.2 Public holidays

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

(b) Where a public holiday falls on a Saturday or Sunday, the following working day(s) will be observed as a public holiday.

(c) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day provided in the [NES](#).

Schedule B—Summary of Hourly Rates of Pay

Schedule B deleted in accordance with Statement [\[2016\] FWC 7768](#) (attachment 5 at [2]) and Decision [\[2017\] FWCFB 3433](#) at [308]-[309].

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Schedule C—Summary of Monetary Allowances

Monetary amounts adjusted as a result of AWR 2018.

See clauses 11, 12 and A.2 for full details of allowances payable

C.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in Schedule H as the aggregate annual salary for the Integrated rating classification for dry cargo vessels of up to 19,000 tonnes (AOV) in clause 10.1 divided by 52 = **\$1212.27**

Allowance	Clause	% of standard rate \$1212.27	\$ per hour unless stated otherwise
Tanker allowance	11.1	0.83	10.06 per day
Cargo allowances	11.2		
Between 7.00am and 5.00pm, unless the work is done outside the employee's watch on duty if watches are being kept	Handling	1.17	14.18
	Securing or lashing	0.41	4.97
At any other time, or if the work is done outside the employee's watch on duty, if watches are being kept, or on Saturdays, Sundays or public holidays	Handling	1.49	18.06
	Securing or lashing	0.48	5.82
Between 11.00pm and 7.00am if certain prescribed conditions are met	Handling	1.87	22.67
	Securing or lashing	0.57	6.91
If the cargo is mail, passengers' luggage or passengers' motor cars	Handling	1.17	14.18
	Securing or lashing	0.41	4.97
Between 11.00pm and 7.00am if certain prescribed conditions are met and if the cargo is mail, passengers' luggage or passengers' motor cars	Handling	1.54	18.67
	Securing or lashing	0.49	5.94
Disturbance of sleep allowance	11.3	1.87	22.67 per night or rest period
Vessels wrecked or stranded allowance—special efforts	11.4	1.30	15.76

C.1.1 Adjustment of wage related allowances

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

C.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clauses 12 and A.2:

Allowance	Clause	\$
Personal effects allowance	12.4	Not exceeding 4352.00 per occasion
Living away from home allowance	12.1(e)(i)	121.40 per week
Living away from home (with spouse, etc) allowance	12.1(e)(ii)	171.19 per week
Meal and accommodation allowance— daily rates	12.2	
Breakfast		20.94 per occasion
Lunch		25.26 per occasion
Dinner		41.84 per occasion
Accommodation		143.48 per night
Total		Total of 231.52 per day
Meal and accommodation allowances— weekly rates	12.2	
Meals		440.30 per week
Accommodation		717.47 per week
Personal effects allowance—vessels granted a temporary licence	A.2.1	Not exceeding 4352.00 per occasion

C.2.1 Adjustment of expense related allowances payable under this award.

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

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

Allowance	Applicable Consumer Price Index figure
Accommodation allowance	Domestic holiday travel and accommodation sub-group
Living away from home allowance	Domestic holiday travel and accommodation sub-group
Meal allowance	Take away and fast foods sub-group
Personal effects allowance	All groups

Schedule D—National Training Wage

Schedule D deleted.

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Schedule E—Agreement to Take Annual Leave in Advance

Schedule E inserted in accordance with [PR588751](#).

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

Name of employee: _____

Name of employer: _____

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

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

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

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule F—Agreement to Cash Out Annual Leave

Schedule F inserted in accordance with [PR588751](#).

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule G—Part-day Public Holidays

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

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

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

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

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

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Schedule H—Definitions

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

This schedule applies to all employers to which this award applies irrespective of whether the vessel was granted a temporary licence.

In this award, unless the contrary intention appears:

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

AOV means all other vessels

approved course of study is a Certificate of Competency, including an Endorsement, as prescribed by the *Navigation Act 2012* (Cth) or regulations made thereunder, conducted by the Australian Maritime College or an approved technical institution or academy

cargo includes all freight carried in a ship but does not include bunker fuel and other articles carried for the vessel's use

day means from 12 midnight to the following 12 midnight

default fund employee means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (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](#)

home port means the port at which the employee is originally engaged or the port which is agreed upon between the employer and employee concerned

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

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

Definition of repatriation deleted in accordance with Statement [\[2016\] FWC 7768](#) (attachment 5 at [2]) and Decision [\[2017\] FWCFB 3433](#).

~~**repatriation** means the provision of transport to and from the home port of an employee at the employer's cost~~

research vessel means fisheries research vessels and vessels used by the CSIRO, universities and similar institutions or governments for oceanographic research and

which may carry non-maritime personnel engaged in research related activities including from time to time activities normally performed by maritime personnel

Definition of seafarer amended in accordance with Statement [\[2016\] FWC 7768](#) (attachment 5 at [2]) and Decision [\[2017\] FWCFB 3433](#) at [339].

seafarer means a seaman as defined in ~~subsection 6(1)~~¹⁴ of the *Navigation Act 2012* (Cth) or the master of a ship

seagoing industry has the meaning given in clause 3.2

standard rate means the aggregate annual salary for the Integrated rating classification for dry cargo vessels of up to 19 000 tonnes (AOV) in clause 10.1(a) divided by 52

swing cycle work means a cycle made up of working and non-working days

trappings means articles of equipment or dress, especially of an ornamental character, such as hats, epaulettes and lanyards and other than required uniforms and protective clothing

temporary licence means a temporary licence granted under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

vessel means any kind of vessel used in navigation other than air navigation