



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards**

(AM2014/211)

## **ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD 2010**

[MA000039]

Road transport industry

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

*4 yearly review of modern awards – Road Transport (Long Distance Operations) Award 2010 – modern award varied.*

A. Further to the decision [[YEAR] FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX MONTH YEAR, the *Road Transport (Long Distance Operations) Award 2010* is varied as follows:

1. By deleting all clauses, schedules and appendices.
2. By inserting the clauses and schedules attached.

B. This determination comes into operation from [XX MONTH YEAR]. In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect until the start of the first full pay period that starts on or after [XX MONTH YEAR].

PRESIDENT

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# Road Transport (Long Distance Operations) 20XX

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## Part 1—Application and Operation of this Award

### 1. Title and commencement

- 1.1 This award is the *Road Transport (Long Distance Operations) Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

### 2. Definitions

In this award, unless the contrary intention appears:

**accredited Fatigue Management Plan** means any program which is approved under an Act of a Commonwealth, State or Territory parliament for the purposes of managing driver fatigue.

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

**articulated vehicle** means a vehicle with three or more axles, comprising a power unit (called tractor truck, prime mover etc.) and semi-trailer which is superimposed on the power unit and coupled together by means of a king-pin and revolving on a turntable and is articulated whether automatically detachable or permanently coupled

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

**double-articulated vehicle** means a vehicle with 4 or more axles, comprising a power unit (called tractor truck, prime mover etc.) and semi-trailer (called dolly trailer) which is superimposed on the power unit, which in turn has a load carrying semi-trailer superimposed upon the dolly trailer, both semi-trailers and power unit and are articulated together by means of king-pins and revolving on turntables and are articulated whether automatically detachable or permanently coupled

**driving time** means all time driving the vehicle between destinations but not including rest breaks

**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)

**fatigue management rules/regulations** means Commonwealth, State or Territory laws controlling driving and working hours of heavy vehicle operators or fatigue management

**furniture** means any article of household and/or office furniture or whitegoods which are completely manufactured and ready for use, and will include furniture being transported from a manufacturer to a retail store, unless such furniture is crated, cartonised, or otherwise covered

**gross combination mass (GCM)** means the maximum permissible mass (whether described as the gross train mass or otherwise) for the motor vehicle and the trailer(s) or semi-trailer(s) attached to it, together with the load carried on each, as stated in any certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant authority or by the corresponding authority of another State or Territory or that is required by law to be painted or displayed on the motor vehicle

**gross vehicle mass (GVM)** means the maximum permissible mass (whether described as the gross train vehicle mass or otherwise) for the motor vehicle and its load (but excluding any trailer and its load) as stated in a certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant authority or by the corresponding authority of another State or Territory or that is required by the law to be painted or displayed on the motor vehicle

**home base** will be the employer's base at which the contract of employment was entered into and out of which the employee normally operates. This will not affect the right of any employer and any employee to agree that some other base will be substituted during the period of employment.

**interstate operation** has the meaning given in clause 4.2(c)

**livestock** means horses, cattle, sheep, pigs, goats or poultry

**loading or unloading** means being physically engaged in the loading or unloading of the vehicle and includes tarping, installing and removing gates and operation of on board cranes

**long distance operation** has the meaning given in clause 4.2(b)

**low loader articulated vehicle** means a vehicle consisting of a tandem drive prime mover and a gooseneck semi-trailer (not being a drop deck semi-trailer) with a loading area of the semi-trailer a maximum of one metre off the ground. The prime mover and gooseneck semi-trailer being designed and manufactured and plated to operate at the required mass limits.

**maker's capacity** means the capacity shown on the certificate of registration issued for the vehicle under any Act of the State or any Act of the Commonwealth. Where no such capacity is shown on the certificate of registration maker's capacity means the capacity attributed to the vehicle by the manufacturer as a maximum gross rating less the tare of the vehicle. Provided that on any day that the maximum weight of any load exceeds such capacity by one third or more such maximum weight will, for the purposes of assessing the wages to be paid for that day, be deemed to be the maker's capacity.

**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 Act](#)

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

**ordinary weekly rate** means the appropriate rate of pay listed in clause 16.1

**private transport industry** has the meaning given in clause 4.2(a)

**road train vehicle** means a rigid vehicle to which is coupled 2 or more trailers, or an articulated vehicle to which is coupled one or more trailers

**standard rate** means the minimum weekly rate prescribed for Grade 6 in clause 16.1

**weekly employee** means an employee on weekly hiring

### 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 this 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 private transport industry engaged in long distance operations and their employees in the classifications listed in clause 12—Classifications to the exclusion of any other modern award.
- 4.2 In this award, the following applies to the **private transport industry engaged in long distances operations**:
  - (a) **private transport industry** means the transportation by road of all materials whether in a raw or manufactured state, or of livestock, throughout Australia;
  - (b) **long distance operation** means any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres and the operation involves a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement to a principal point of destination. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city;

(c) **interstate operation** means an operation involving a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement in one State or Territory to a principal point of destination in another State or Territory. Provided that to be an interstate operation the distance involved must exceed 200 kilometres, for any single journey. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city.

4.3 This award does not cover an employee while they are temporarily required by their employer to perform driving duties which are not on a long distance operation, provided the employee is covered by the *Road Transport and Distribution Award 20XX* while performing such duties.

4.4 This award covers any employer which supplies labour on an on-hire basis in the private transport industry engaged in long distance operations 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. Clause 4.4 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 private transport industry engaged in long distance operations and/or parts of that industry and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause 4.1 are being performed. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award does not cover:

- (a) employees 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. Individual flexibility arrangements

- 5.1 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.
- 5.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 5.3 An agreement may only be made after the individual employee has commenced employment with the employer.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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.



- 5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 5.11** 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](#)).

- 5.12** An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 5.13** The right to make an agreement under clause 5 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.

## **6. Requests for flexible working arrangements**

### **6.1 Employee may request change in working arrangements**

Clause 6 applies where an employee has made a request for a change in working arrangements under section 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 section 65(1A). Clause 6 supplements or deals with matters incidental to the [NES](#) provisions.

NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 6 is an addition to section 65.

### **6.2 Responding to the request**

Before responding to a request made under section 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 section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)).

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

### **6.3 What the written response must include if the employer refuses the request**

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 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.
- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 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.

### **6.4 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 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

### **6.5 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 6, can be dealt with under clause 28—Dispute resolution.

## **7. Facilitative provisions**

- 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:
13.5(b)	Rostered days off—cashing out	An individual
13.5(e)	Rostered days off— alteration of days off	An individual
16.6(b)	Loading or unloading	An individual
20.9	Annual leave in advance	An individual
20.10	Cashing out of annual leave	An individual
25.2	Substitution of certain public holidays by agreement at the enterprise	An individual

## Part 2—Types of Employment and Classifications

### 8. Types of employment

8.1 Employees will be engaged in one of the following categories:

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

8.2 At the time of engagement the employer will inform each employee of their terms of engagement.

### 9. Full-time employees

A full-time employee is an employee engaged by an employer for an average of 38 ordinary hours per week over 28 days.

### 10. Part-time employees

10.1 A part-time employee is an employee engaged by an employer for an average of less than 38 ordinary hours per week over 28 days.

10.2 Before commencing part-time employment, the employee and employer must agree upon:

- (a) the days of the week on which the employee will be required by the employer to commence work on a long distance operation, and

- (b) either the maximum number of ordinary hours of work per week, or the maximum weekly average number of ordinary hours of work calculated over a period of not more than 28 days, that the employee may perform.
- 10.3** The terms of any agreement made under clause 10.2 may be varied by genuine agreement of both the employer and employee.
- 10.4** The terms of any agreement made under clause 10.2, or any variation to it, must be recorded in writing and retained by the employer. A copy of any such record must be provided to the employee by the employer.
- 10.5** The maximum number of days per week that may be agreed upon under clause 10.2 or 10.3 is 3.
- 10.6** An employer must not direct a part-time employee to work on days that are not agreed upon in accordance with clause 10.2 or 10.3.
- 10.7** A part-time employee may agree to an employer request for them to work on days other than those agreed under clause 10.2 or 10.3. A part-time employee must be paid an additional **15%** on:
- (a) the cents per kilometre (CPK) rates set out in clause 16.4;
  - (b) the hourly driving rates set out in clause 16.5; and
  - (c) any amount payable under clause 16.6;
- for driving or loading and unloading duties that is undertaken in accordance with an employer request on days not agreed in accordance with clause 10.2 or 10.3.
- 10.8** A part-time employee who is paid by the cents per kilometre method of clause 16.4 must receive a minimum payment per day for 500 km. Where the employee is engaged according to the hourly driving rate method the minimum payment per day must be 8 hours' pay.
- 10.9** A part-time employee's ordinary hours of work will be 8 hours per day, unless the employer and employee agree in writing upon a greater number.
- 10.10** For the purpose of clause 10, a day will mean the 24 hour period from the time the employee commences work.
- 11. Casual employees**
- 11.1** A casual employee is an employee who is engaged and paid as a casual employee.
- 11.2** A casual employee while driving must be paid an additional **15%** on the cents per kilometre (CPK) rates set out in clause 16.4 and the hourly driving rates set out in clause 16.5.
- 11.3** Where a casual employee is engaged in loading or unloading duties, the casual employee will be paid the relevant loading and unloading rate for their classification plus a loading of **25%**.

#### 11.4 Minimum payment and engagement

- (a) A casual employee who is paid by the cents per kilometre method of clause 16.4 must receive a minimum payment per engagement for 500 km.
- (b) Where the employee is engaged according to the hourly driving rate method the minimum engagement must be 8 hours.

#### 11.5 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under clause 11.5 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
  - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in clause 11.5(b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
  - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
  - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be

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accommodated within the days and/or hours during which the employee is available to work.

- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 28—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.5, the employer and employee must discuss and record in writing:
  - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.2.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.5.
- (o) Nothing in clause 11.5 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.5 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.5 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.5 by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.5(q).

## 12. Classifications

Employees are to be classified in accordance with the following grades:

Grade	Description
1 and 2	NOTE: Grade levels in this award align with equivalent grade levels in the <i>Road Transport and Distribution Award 20XX</i> . Grades 1 and 2 are not applicable to this award.
3	Driver of 2 axle rigid vehicle up to 13.9 tonnes GVM. Capacity up to 8 tonnes.
4	Driver of 3 axle rigid vehicle over 13.9 tonnes GVM. Capacity over 8 and up to 12 tonnes.
5	Driver of 4 axle rigid vehicle over 13.9 tonnes GVM. Driver of rigid vehicle and heavy trailer combination with GCM of 22.4 tonnes or less. Driver of articulated vehicle with GCM of 22.4 tonnes or less. Capacity over 12 tonnes.
6	Driver of rigid vehicle and heavy trailer combination with GCM over 22.4 tonnes but not more than 42.5 tonnes. Driver of articulated vehicle with GCM over 22.4 tonnes. Driver of low loader (as defined) with GCM of 43 tonnes or less. Capacity up to 24 tonnes.
7	Driver of rigid vehicle and heavy trailer combination with GCM over 42.5 tonnes but not more than 53.4 tonnes. Driver of double articulated vehicle with GCM 53.4 tonnes or less (includes B-doubles). Driver of low loader (as defined) with GCM over 43 tonnes.
8	Driver of rigid vehicle and trailer(s) or double articulated vehicle with GCM over 53.4 tonnes (includes B-doubles). Multi-axle trailing equipment up to 70 tonnes capacity.
9	Driver of road train or triple articulated vehicle exceeding 94 tonnes GCM.
10	Multi-axle trailing equipment.



## Part 3—Hours of Work

### 13. Ordinary hours of work and rostering

#### 13.1 Ordinary hours and start times

- (a) The ordinary hours of work will be an average of 38 hours per week averaged over a period of not more than 28 days.
- (b) The scheduling of start times is at the discretion of the employer.
- (c) A roster must be set up and displayed so that an employee, as far as it is practicable, will know the hours of duty they are required to perform.

#### 13.2 Hours of work and fatigue management

- (a) Where applicable, hours of work will be in accordance with fatigue management rules/regulations (as defined in 2—Definitions)
- (b) Where clause 8.2(a) is not applicable hours of work will be as follows:

Except where driving hours have been delayed because of accidents or in circumstances over which the employer has no control, the employee must not work and the employer must not require the employee to work:

- (i) more than a total of 120 hours in any fortnight exclusive of any unpaid intervals for meals.
- (ii) in any one day more than 12 hours, with a break of half an hour after each 5 1/2 hours worked; provided that every employee must have 10 hours off duty immediately after the working period is completed.
- (iii) a roster of work which provides for more than 120 hours to be worked in any fortnight.

#### 13.3 Requirement to work reasonable additional hours

- (a) An employer may require an employee to work reasonable additional hours at the rates of pay in this award.
- (b) An employee may refuse hours of work which are unreasonable.
- (c) In determining whether additional hours are reasonable or unreasonable the following must be taken into account:
  - (i) any risk to employee health and safety from working the additional hours;
  - (ii) the employee's personal circumstances including family responsibilities;
  - (iii) the needs of the workplace or enterprise in which the employee is employed;



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- (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
- (v) any notice given by the employer of any request or requirement to work the additional hours;
- (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
- (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- (viii) the nature of the employee's role and level of responsibility;
- (ix) whether the additional hours are in accordance with averaging terms included in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee, in accordance with sections [63](#) or [64](#) of the [Act](#); and
- (x) any other relevant matter.

**13.4** Time must be computed from the time the employee is rostered or registers for duty, whichever is the later, and until the employee has been effectively released from duty.

### **13.5 Rostered days off (RDOs)**

- (a) Each full-time employee, in addition to days off elsewhere provided, is entitled to a rostered day off on the basis of one day for each month of employment (subject to suspension of the entitlement during any period of annual leave, personal/carer's leave, compassionate leave, workers compensation and long service leave, as elsewhere provided).
- (b) RDOs must be taken by employees in accordance with the roster, but may be accumulated and taken consecutively in order to meet the requirements of work. Alternatively, subject to mutual agreement in writing between the employer and an individual employee, any number of accrued rostered days off may be cashed out at the time the employee accesses annual leave. Any payment for a rostered day off will be at 20% of the applicable minimum weekly rate.
- (c) In the event that RDOs are accumulated, employees are entitled to one RDO for each month of employment on and after 2 months' employment provided that the maximum accumulation of RDOs will be 10 over a period of 10 months' employment, exclusive of periods of leave as provided.
- (d) Employees must be paid for RDOs at 20 % of the applicable rate prescribed by clause 16.1.
- (e) RDOs may be changed by agreement between the employer and the employee or, in the absence of agreement, by the giving of 48 hours' notice of the change.

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- (f) Where an employer is required to service a particular industry, plant or section during closure due to annual close down, industrial action, compulsory closure as a result of a legislative direction, other circumstances beyond the control of the employer or in the event of machinery or plant breakdown, an employer may:
- (i) require the employees to take a rostered day or days off to coincide with the day or days that the operations are closed, up to a maximum of 10 days; and
  - (ii) in this event, a rostered day or days off which would normally become due to the employee must not become due for the number of days taken under clause 13.5(f)(i).
- (g) An employee disadvantaged in terms of leisure time by a rostered day or days off normally falling on a Friday or a Monday being required to be taken on a Tuesday, Wednesday or Thursday must be rostered to take a Friday or a Monday off on the earliest practicable opportunity upon the normal roster being resumed.

### 13.6 Absence from duty

- (a) Where an employee is absent from duty (other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, compassionate leave or jury service) the employer may deduct **20%** of the employee's average weekly wage rate for each day the employee is absent.
- (b) An employee absent for part of a day will lose average pay for each hour absent by dividing the average weekly wage rate by 38.
- (c) An employee absent from duty is not entitled to payment for rostered days off as provided in clause 13.5(e). Such employee must take the day or days off as rostered but must be paid, in respect of the week during which the rostered day off is taken, the wage as provided less an amount calculated according to the following formula:
- |   |   |   |
|---|---|---|
| No. of days absent<br>during period<br>x 0.39 hours | x | Average<br>fortnightly<br>pay (76<br>hours) |
|---|---|---|
- (d) An absence of less than half a day will not be counted for the purposes of clause 13.6.

### 13.7 Call-back

On every occasion on which the employer calls back an employee after leaving the depot or home base such employee must be entitled to payment for a minimum of 4 hours at the rate prescribed by clause 16.1.

## 14. Unpaid meal breaks

- 14.1** Employees will not be required to work for less than 3 hours or more than 5 1/2 hours without a meal break subject to clause 13—Ordinary hours of work and rostering. An unpaid meal break must not be less than 30 minutes or more than one hour.
- 14.2** The provisions of clause 14 do not apply where meal breaks are taken in accordance with fatigue management rules/regulations (as defined in clause 2—Definitions)

## 15. Delays, breakdown or impassable highways

An employee must be paid for all time up to a maximum of 8 hours in any period of 24 hours at the rate prescribed by clause 16.1 where a long distance operation is delayed because of breakdowns or impassable highways. Provided that the employee must take all reasonable steps to minimise the period of delay.

## Part 4—Wages and Allowances

### 16. Minimum rates

#### 16.1 Minimum weekly rates of pay

- (a) The minimum weekly rates of pay for ordinary hours of work are as follows:

<b>Grade</b>	<b>Minimum weekly rate (full-time employee) \$</b>
<b>1</b>	<b>These grades are not used to classify employees covered by this Award</b>
<b>2</b>	<b>These grades are not used to classify employees covered by this Award</b>
3	814.20
4	829.20
5	839.60
6	849.20
7	861.60
8	886.60
9	901.50
10	923.80

- (b) The agreed minimum weekly rate of pay for ordinary hours of work performed by a part-time employee will be the minimum weekly rate of pay specified in

clause 16.1(a) divided by 38 and multiplied by the number of ordinary hours per week that the employee is engaged to perform under clause 10.2.

See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalties.

## 16.2 Guaranteed minimum payment

- (a) A full-time or part-time employee is entitled to a guaranteed minimum fortnightly payment which must be twice the minimum weekly rate of pay prescribed by clause 16.1 for the classification under which the employee is working. Provided that, to become entitled to this payment, the employee must be ready, willing and available to perform such duties covered by this award which the employer may from time to time require. The fortnightly payment must be calculated by reference to consecutive fortnightly periods.
- (b) Any amount that a part-time employee earns under this award in relation to work undertaken in accordance with an employer request to work on days other than those agreed in accordance with clause 10.2, or varied in accordance with clause 10.3, will not be taken into consideration when calculating the guaranteed minimum fortnightly payment referred to in clause 16.2. Nor will such amounts form part of the agreed minimum weekly rate of pay for ordinary hours of work performed by a part-time employee. Such amounts will instead be a payment in respect of work performed outside of an employee's ordinary hours.
- (c) A casual employee is entitled to a guaranteed minimum payment per engagement as set out in clause 11.4.
- (d) A full-time or part-time employee, having already earned the guaranteed fortnightly payment, and held on-call for any part of the second week, must be paid on an hourly basis for the period during which the employee remains on-call at the rate prescribed for the appropriate classification of this award, in addition to the guaranteed fortnightly payment.
- (e) An employee travelling by sea or rail in company with a vehicle on a long distance operation must be paid 8 hours' ordinary pay in any day. Provided that if any working period less than 8 hours otherwise covered by this award has been worked, the employee must be entitled to the balance of the difference paid between 8 hours' and actual hours worked. The cost of transport must be borne by the employer.

## 16.3 Rates of pay

- (a) An employer of an employee engaged in a long distance operation must nominate, at the commencement of the employee's employment, whether the employee is to be paid pursuant to:
  - (i) the cents per kilometre method set out in clause 16.4; or
  - (ii) the hourly rate method set out in clause 16.5.

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- (b) Where no method has been nominated in accordance with clause 16.3(a), the cents per kilometre method will apply.
- (c) The method of payment may be changed from one to the other upon the provision of 4 weeks' notice to the employee in writing.
- (d) The minimum driving rate must be either the cents per kilometre rate set out in clause 16.4 or the hourly rate set out in clause 16.5, depending upon which method is applicable under clauses 16.3(a) and (b).
- (e) In addition to the appropriate minimum driving rate, a long distance driver must be paid:
  - (i) the rate or allowance for any loading or unloading duties calculated in accordance with clause 16.6;
  - (ii) the travelling allowance as prescribed by clause 18.3(c); and
  - (iii) any other allowances required to be paid by the award.

### 16.4 Rates of pay—kilometre driving method

- (a) An employee engaged in a long distance operation may be paid for the driving component of a particular journey by multiplying the number of kilometres travelled by the cents per kilometre rate for the relevant vehicle, subject to clause 16.4(b).

The minimum cents per kilometre rate for each grade is as follows:

Grade	Minimum cents per kilometre
3	42.34
4	43.12
5	43.66
6	44.16
7	44.8
8	46.1
9	46.88
10	48.04

### (b) Schedule of agreed distances

The following schedule shows the agreed distances for long distance journeys between the listed centres. Where an employee performs a journey and that journey is specified in this schedule, the number of kilometres is deemed to be the number indicated in the schedule for that journey.

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<b>From/To</b>	<b>Route</b>	<b>Kilometres</b>
Sydney/Brisbane	New England Highway	950
Sydney/Melbourne	Hume Highway	858
Sydney/Adelaide	Bathurst/Sturt Highway	1367
Sydney/Perth	Broken Hill	4044
Sydney/Darwin	Charleville/Dubbo	3987
Melbourne/Brisbane	Newell Highway	1682
Melbourne/Sydney	Hume Highway	858
Melbourne/Adelaide	Dukes/Western Highway	731
Melbourne/Perth	Western/Eyre Highway	3407
Melbourne/Darwin	Stuart/Western Highway	3749
Adelaide/Brisbane	Broken Hill/Newell Highway	2015
Adelaide/Sydney	Bathurst/Sturt Highway	1367
Adelaide/Perth	Eyre Highway	2677
Adelaide/Melbourne	Dukes/Western Highway	731
Adelaide/Darwin	Stuart Highway	3019
Brisbane/Sydney	New England	950
Brisbane/Melbourne	Pacific/Hume Highway	1790
Brisbane/Adelaide	Broken Hill/Newell Highway	2015
Brisbane/Perth	New England/Newell/Barrier	4314
Brisbane/Darwin	Roma	3417
Perth/Adelaide	Eyre Highway	2677
Perth/Melbourne	Western/Eyre Highway	3407
Perth/Sydney	Broken Hill	4044
Perth/Brisbane	New England/Newell/Barrier	4314
Perth/Darwin	North West Coastal	4027
Darwin/Brisbane	Roma	3417
Darwin/Sydney	Charleville/Dubbo	3978
Darwin/Melbourne	Stuart/Western Highway	3749

From/To	Route	Kilometres
Darwin/Adelaide	Stuart Highway	3019
Darwin/Perth	North West Coastal	4027

### 16.5 Rates of pay—hourly driving method

- (a) An employee engaged in a long distance operation may be paid for the driving component of a particular journey by means of an hourly driving rate for the relevant grade of the vehicle. The hourly driving rate may only be applied as follows:
- (i) where the journey to be performed by the driver is listed in the schedule in clause 16.5(c) the number of driving hours for that journey is deemed for the purposes of this award to be no fewer than the number indicated in the schedule for that journey; or
  - (ii) where the journey to be completed is not listed in clause 16.5(c) payment must be for actual hours worked and must not be pursuant to a trip rate which provides for a fixed amount per trip; or
  - (iii) where the employer has an accredited Fatigue Management Plan (FMP) in place, the hourly rate may be used to calculate a trip rate for any journey by multiplying the hourly rate by the number of driving hours specified in the FMP for that journey. For the purposes of clause 16.5 **accredited Fatigue Management Plan** means any program which is approved under an Act of a Commonwealth, State or Territory parliament for the purposes of managing driver fatigue.
- (b) The minimum hourly driving rate is calculated by dividing the minimum weekly rate prescribed by clause 16.1 by 40, and multiplying by 1.3 (industry disability allowance as defined in clause 18.2(a)) and 1.2 (overtime allowance as defined in clause 18.2(b)).

Grade	Minimum hourly driving rate <sup>1</sup> \$
3	31.75
4	32.34
5	32.74
6	33.12
7	33.60
8	34.58
9	35.16
10	36.03

<sup>1</sup> Minimum hourly driving rate includes industry disability allowance and overtime component.

See Schedule A—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalties.

(c) **Schedule of agreed driving hours**

The following schedule shows the agreed driving hours for Grade 4 6 long distance journeys between the listed centres, as referred to in clause 16.5(a)(i).

<b>From/To</b>	<b>Route</b>	<b>Driving hours</b>
Sydney/Brisbane	New England Highway	11.6
Sydney/Melbourne	Hume Highway	10.5
Sydney/Adelaide	Bathurst/Sturt Highway	16.7
Sydney/Perth	Broken Hill	47.6
Sydney/Darwin	Charleville/Dubbo	46.8
Melbourne/Brisbane	Newell Highway	18.5
Melbourne/Sydney	Hume Highway	10.5
Melbourne/Adelaide	Dukes/Western Highway	8.9
Melbourne/Perth	Western/Eyre Highway	40.0
Melbourne/Darwin	Stuart/Western Highway	44.1
Adelaide/Brisbane	Broken Hill/Newell Highway	24.6
Adelaide/Sydney	Bathurst/Sturt Highway	16.7
Adelaide/Perth	Eyre Highway	31.5
Adelaide/Melbourne	Dukes/Western Highway	8.9
Adelaide/Darwin	Stuart Highway	35.5
Brisbane/Sydney	New England	11.6
Brisbane/Melbourne	Pacific/Hume Highway	21.8
Brisbane/Adelaide	Broken Hill/Newell Highway	24.6
Brisbane/Perth	New England/Newell/Barrier	50.7
Brisbane/Darwin	Roma	40.2
Perth/Adelaide	Eyre Highway	31.5
Perth/Melbourne	Western/Eyre Highway	40.0
Perth/Sydney	Broken Hill	47.6



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From/To	Route	Driving hours
Perth/Brisbane	New England/Newell/Barrier	50.7
Perth/Darwin	North West Coastal	47.4
Darwin/Brisbane	Roma	40.2
Darwin/Sydney	Charleville/Dubbo	46.8
Darwin/Melbourne	Stuart/Western Highway	44.1
Darwin/Adelaide	Stuart Highway	35.5
Darwin/Perth	North West Coastal	47.4

### 16.6 Loading or unloading

- (a) Where an employee is engaged on loading or unloading duties, that employee must be paid for such duties at an hourly rate calculated by dividing the weekly award rate prescribed by clause 16.1 by 40 and multiplying by 1.3 (industry disability allowance), provided that a minimum payment of one hour loading and one hour unloading per trip must be made where loading and/or unloading duties are required.
- (b) As an alternative to clause 16.6(a), where there is a written agreement between the employer and the employee a fixed allowance based on the hourly rate in clause 16.6(a) may be paid to cover loading and unloading duties, provided that such written agreement is attached to the time and wages record.
- (c) A casual employee attending to the loading or unloading of the vehicles must be paid a loading of 25% in addition to the rates prescribed by clause 16.6.

### 16.7 Higher duties

Where an employee is required to perform 2 or more grades of work on any one day the employee is to be paid the minimum wage for the highest grade for the whole day.

### 16.8 National Training Wage

- (a) Schedule E to the *Miscellaneous Award 20XX* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 20XX* as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 20XX* is to be read as referring to the *Road Transport (Long Distance Operations) Award 20XX* and not the *Miscellaneous Award 20XX*.

### 16.9 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.

**16.10 Penalty rates**

See clause 25—Public holidays for provisions relating to penalty rates payable for work performed on a public holiday.

**16.11 Overtime**

See clause 18.2(b) for provisions relating to overtime rates.

**17. Payment of wages**

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.

- 17.1** All earnings, including overtime, must be paid in the employer's time on a day to be fixed by the employer, but not later than Thursday of each week. Once fixed, the day must not be altered more than once in 3 months.
- 17.2** All earnings, including overtime, must be paid within 4 business days of the expiration of the week in which they accrue.
- 17.3** Notwithstanding anything contained in clause 17, the employer must pay to an employee who leaves or is dismissed all money due to the employee immediately.
- 17.4** The employer may pay an employee by electronic funds transfer to a bank account nominated by an employee.
- 17.5** An employee who is entitled to a rostered day off which falls on a pay day must be paid the wages due on the next ordinary working day following the rostered day off.

**18. Allowances**

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

- 18.1** Employers must pay to an employee the allowances the employee is entitled to under clause 18. See Schedule B—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

**18.2 Wage-related allowances**

**(a) Industry disability allowance**

The minimum hourly driving rates, rates per kilometre and loading or unloading rates are inclusive of an industry disability allowance of 1.3 times the ordinary rate, which compensates for the following:

- (i)** shiftwork and related conditions;
- (ii)** necessity to work during weekends;

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- (iii) lack of normal depot facilities, e.g. lunch room, wash rooms, toilets, tea making facilities;
- (iv) necessity to eat at roadside fast food outlets;
- (v) absence of normal resting facilities and normal bed at night;
- (vi) additional hazards arising from driving long distances at night and alone;
- (vii) handling dirty material;
- (viii) handling money;
- (ix) extra responsibility associated with arranging loads, purchasing spare parts, tyres, etc.;
- (x) irregular starting and finishing times; and
- (xi) work in rain.

### (b) Overtime allowance

The minimum hourly driving rates and rates per kilometre are inclusive of an overtime allowance of 1.2 times the ordinary rate, which takes into account an overtime factor of 2 hours in 10 at double time.

### (c) Other allowances

- (i) An employee engaged as a local driver under the terms and conditions of the *Road Transport and Distribution Award 2015* and who is required by the employer to temporarily transfer to duties covered by this award must be paid an allowance of **\$10.53** on each occasion.
- (ii) Any employee required to drive a motor vehicle which is in excess of the limit in length prescribed by or under any State or Commonwealth Act must receive an additional **\$3.74** per day.
- (iii) Any employee required to drive a motor vehicle which is in excess of 3.5 metres in width or transport a load in excess of that width must receive an additional **\$3.74** per day.
- (iv) Any employee who is a recognised furniture carter engaged in removing and/or delivering furniture as defined must receive an additional **\$20.55** per week.
- (v) Any employee who is a recognised livestock carter, carting livestock as defined must receive an additional **\$20.55** per week.

### (d) Dangerous goods allowance

- (i) A driver engaged in the transport of bulk dangerous goods or carting explosives in accordance with the Australian Explosives Code by Public Road must receive an allowance of **\$19.28** per day. Bulk dangerous goods are those goods defined as such in the Australian Dangerous Goods Code as amended from time to time.

- (ii) A driver engaged in the transport of packaged dangerous goods which require placarding by public road must receive an allowance of **\$8.07** per day. Packaged goods which require placarding are those goods defined as such in the Australian Dangerous Goods Code as amended from time to time.

### 18.3 Expense-related allowances

#### (a) Work diary

A weekly employee required to purchase a work diary must be reimbursed by the employer for the cost of the work diary.

#### (b) Articles of clothing

- (i) Where the employer requires an employee to wear any special clothing such as any special uniform, cap, overall or other article, the employer must reimburse the employee for the cost of purchasing such special clothing unless the special clothing is provided by the employer.
- (ii) Where an employee is required by the employer to work continuously in conditions in which, because of their nature, the clothing would otherwise become saturated, the employer must reimburse the employee for the cost of purchasing protective clothing unless the protective clothing is provided by the employer.
- (iii) Protective clothing remains the property of the employer and the employee is liable for the cost of replacing any article of protective clothing which is lost, destroyed or damaged through their own negligence.

#### (c) Travelling allowance

- (i) An employee engaged in ordinary travelling on duty or on work which the employee is unable to return home and takes their major rest break under the applicable driving hours regulations away from home must be paid **\$40.44** per occasion. This will not be payable where an employee is provided with suitable accommodation away from the vehicle.
- (ii) In exceptional circumstances, where amounts greater than those specified are claimed, an employee will need to demonstrate why the claim is necessary and gain approval from a representative of the employer. Approval will not be unreasonably withheld.
- (iii) If an employee is engaged in more than one long distance operation or part thereof in a fortnight, the allowance due for each long distance operation or part thereof must be separately calculated in accordance with clause 18.3(c).

#### (d) Housing allowance

- (i) Any employee required by the employer to live at a depot, yard or garage must be paid an allowance equal to the amount of the rent charged by the employer for the accommodation at the depot, yard or garage.

- (ii) If an employer provides housing for an employee and the employee's family, and requires the employee to live there and charges rent, the employer must pay the employee an allowance of **\$3.36** less than the amount of rent charged by the employer for the accommodation.

**(e) Training allowance**

- (i) Where, as a result of consultation, it is agreed by the employer that additional training should be undertaken by an employee, that training may be undertaken either on or off the job. If the training is undertaken during ordinary working hours the employee concerned must not suffer any loss of pay. The employer must not unreasonably withhold paid training leave.
- (ii) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training must be reimbursed by the employer upon production of evidence of such expenditure. Reimbursement of standard fees may be made at the completion of the prescribed course or annually, whichever is the earlier, subject to reports of attendance at such courses.
- (iii) Travel costs incurred by an employee undertaking training in accordance with clause 18.3(e) which exceed those normally incurred in travelling to and from work must be reimbursed by the employer.

## **19. Superannuation**

### **19.1 Superannuation legislation**

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

### **19.2 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.

### 19.3 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 19.2.
- (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 19.3(a) or 19.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or 19.3(b) was made.

### 19.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or 19.3(b) to one of the following superannuation funds or its successor:

- (a) TWUSUPER;
- (b) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (c) a superannuation fund or scheme which the employee is a defined benefit member of.

### 19.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or 19.3(b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
  - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
  - (ii) the employee remains employed by the employer.

## Part 5—Leave and Public Holidays

### 20. Annual leave

20.1 Annual leave is provided for in the [NES](#).

#### 20.2 Payment for period of annual leave

- (a) Before the start of an employee's annual leave, an employee must be paid wages calculated in accordance with clause 20.2(b), for the period of leave the employee takes.
- (b) The wages referred to in clause 20.2(a) will be calculated to include the following:
  - (i) A proportion of the applicable minimum weekly rate prescribed by clause 16.1 which corresponds to the amount of leave taken, and
  - (ii) An additional loading of **30%**. The loading prescribed by clause 20.2(b) will not apply to proportionate leave on termination.
- (c) For the purposes of clause 20.2(b)(i) the applicable minimum rate prescribed by clause 16.1 must be that applicable to the classification which the employee would have worked in had they not taken the period of leave.

NOTE: Where an employee is receiving over-award 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 sections 16 and 90 of the [Act](#)).

#### 20.3 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 20, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

#### 20.4 Annual close down

An employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that:

- (a) the employer gives not less than one month's notice of its intention to do so;
- (b) an employee who has accrued sufficient leave to cover the period of the close down is allowed leave and also paid for that leave at the appropriate wage;
- (c) an employee who has not accrued sufficient leave to cover part or all of the close down, is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close down; and



- (d) any leave taken by an employee as a result of a close down pursuant to clause 20.4 also counts as service by the employee with their employer.

#### **20.5 Rostered day off falling during annual leave**

Upon an employee taking annual leave, the work cycle under which the employee becomes entitled to a weekly accrual for an RDO will be suspended and the employee will not be entitled to further accrual until their return from leave. Upon returning to work, the entitlement period for accrual will resume and the employee will be entitled to be rostered to take a day off and must take an RDO upon completing the balance of the work cycle.

#### **20.6 Excessive leave accruals: general provision**

NOTE: Clauses 20.6 to 20.8 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 20.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 20.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

#### **20.7 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 20.6(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 clause 20.7(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 20.6, 20.7 or 20.8 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



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- (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 clause 20.7(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 20.7(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 clause 20.7(d) may result in the direction ceasing to have effect. See clause 20.7(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

**20.8 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.6(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.
- (b) However, an employee may only give a notice to the employer under clause 20.8(a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 20.7(a) that, when any other paid annual leave arrangements (whether made under clause 20.6, 20.7 or 20.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 20.8(a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 20.6, 20.7 or 20.8 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.
- (d) An employee is not entitled to request by a notice under clause 20.8(a) more than 4 weeks' paid annual leave in any period of 12 months.

- (e) The employer must grant paid annual leave requested by a notice under clause 20.8(a).

**20.9 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 20.9 is set out at Schedule D—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule D—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 20.9 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 20.9, 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.

**20.10 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.10.
- (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 20.10 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 20.10 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 20.10 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 20.10.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.10.

NOTE 3: An example of the type of agreement required by clause 20.10 is set out at Schedule E—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Cash Out Annual Leave.

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

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

### **21.2 Rate of pay for a period of paid personal/carer's leave and compassionate leave**

The rate of pay for an employee who accesses a period of paid personal/carer's leave or compassionate leave must be a portion of the applicable minimum rate prescribed by clause 16.1 which corresponds to the amount of leave taken. The applicable minimum rate must be that applicable to the classification which the employee would have worked in had they not taken the period of leave.

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

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

## **23. Community service leave**

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

## **24. Unpaid family and domestic violence leave**

Unpaid family and domestic violence leave is provided for in the [NES](#).

NOTE 1: 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.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

## **25. Public holidays**

**25.1** Public holidays are provided for in the [NES](#).

### **25.2 Substitution of certain public holidays by agreement at the enterprise**

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the [NES](#).
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).

### **25.3 Payment for work on a public holiday—full-time and part-time employees**

- (a) For all time worked by a full-time or part-time employee on a public holiday, payment must be made at the following rates:
  - (i) on Good Friday and the Christmas Day holiday—**30%** of the applicable minimum weekly rate specified in clause 16.1(a) plus payment for the work performed in accordance with the designated method of payment specified in clause 16—Minimum rates.
  - (ii) on any other holiday—**20%** of the applicable minimum weekly rate specified in clause 16.1(a), plus payment for the work performed in accordance with the designated method of payment specified in clause 16—Minimum rates.
- (b) An employee must be paid for a minimum of 4 hours' work.

### **25.4 Payment for work on a public holiday—casual employees**

For all time worked by a casual employee on a public holiday, payment must be made at the following rates:

- (a) on Good Friday and the Christmas Day holiday—**30%** of the applicable minimum weekly rate specified in clause 16.1(a) plus payment for the work performed in accordance with the designated method of payment specified in clause 16—Minimum rates.
- (b) on any other holiday—**20%** of the applicable minimum weekly rate specified in clause 16.1(a) plus payment for the work performed in accordance with the designated method of payment specified in clause 16—Minimum rates.

**25.5** An employee will only be entitled to the payments specified in clauses 25.3 and 25.4 in circumstances where the majority of the work undertaken by an employee on a particular journey or long distance operation is undertaken on a public holiday.

**25.6 Part-day public holidays**

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

## **Part 6—Consultation and Dispute Resolution**

### **26. Consultation about major workplace change**

**26.1** 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.

**26.2** For the purposes of the discussion under clause 26.1(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.

**26.3** Clause 26.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

**26.4** 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 26.1(b).

**26.5** In clause 26 **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.

**26.6** Where this award makes provision for alteration of any of the matters defined at clause 26.5, such alteration is taken not to have significant effect.

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

**27.1** Clause 27 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.

**27.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**27.3** For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 27.2 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.

**27.4** The employer must consider any views given under clause 27.3(b).

**27.5** Clause 27 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **28. Dispute resolution**

**28.1** Clause 28 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**28.2** 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.

**28.3** If the dispute is not resolved through discussion as mentioned in clause 28.2, 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.

- 28.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 28.2 and 28.3, a party to the dispute may refer it to the Fair Work Commission.
- 28.5** 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.
- 28.6** 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.
- 28.7** 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 28.
- 28.8** While procedures are being followed under clause 28 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.
- 28.9** Clause 28.8 is subject to any applicable work health and safety legislation.

## Part 7—Termination of Employment and Redundancy

### 29. Termination of employment

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

#### 29.1 Notice of termination by an employee

- (a) Clause 29.1 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**

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



<b>Column 1</b>	<b>Column 2</b>
<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period of notice</b>
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 clause 29.1(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 clause 29.1(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 clause 29.1(b), then no deduction can be made under clause 29.1(d).
- (f) Any deduction made under clause 29.1(d) must not be unreasonable in the circumstances.

## **29.2 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 29.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## **29.3 Termination away from home base**

Where an employer decides to terminate the employment of an employee and the employee is away from their home base, the employer shall provide the employee with the means of returning to home base or reimburse the employee for the cost of any fares reasonably incurred in returning home.

## **30. Redundancy**

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119 to 123 of the [Act](#).

### **30.1 Transfer to lower paid duties on redundancy**

- (a) Clause 30.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:



- (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
  - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 30.1(c).
- (c) If the employer acts as mentioned in clause 30.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

### 30.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 30 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

### 30.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 30.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 30.3(b).
- (d) An employee who fails to produce proof when required under clause 30.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 29.2.

**Schedule A—Summary of Hourly Rates of Pay****A.1 Full-time employees—ordinary rates, loading and unloading rates and penalties**

<b>Grade</b>	<b>Hourly driving method</b>	<b>Kilometre driving method</b>	<b>Loading or unloading</b>	<b>Public holiday<sup>1</sup></b>	<b>Christmas or Good Friday<sup>1</sup></b>
	<b>\$ per hour</b>	<b>Minimum cents per kilometre</b>	<b>\$ per hour</b>	<b>\$ per shift<sup>2</sup></b>	<b>\$ per shift<sup>2</sup></b>
3	31.75	42.34	26.47	162.84	244.26
4	32.34	43.12	26.95	165.84	248.76
5	32.74	43.66	27.29	167.92	251.88
6	33.12	44.16	27.60	169.84	254.76
7	33.60	44.8	28.00	172.32	258.48
8	34.58	46.1	28.82	177.32	265.98
9	35.16	46.88	29.30	180.30	270.45
10	36.03	48.04	30.03	184.76	277.14

<sup>1</sup> See clause 25.3.

<sup>2</sup> This amount is payable in addition to the relevant hourly or cents per kilometre rate (see clause 25.3).

## A.2 Casual employees—ordinary rates, loading and unloading rates and penalties

Grade	Hourly driving method	Kilometre driving method	Loading or unloading	Public holiday <sup>1</sup>	Christmas or Good Friday <sup>1</sup>
	\$ per hour	Minimum cents per kilometer	\$ per hour	\$ per shift <sup>2</sup>	\$ per shift <sup>2</sup>
3	36.52	48.69	33.09	162.84	244.26
4	37.19	49.59	33.69	165.84	248.76
5	37.66	50.21	34.11	167.92	251.88
6	38.09	50.78	34.50	169.84	254.76
7	38.64	51.52	35.00	172.32	258.48
8	39.76	53.02	36.03	177.32	265.98
9	40.43	53.91	36.63	180.30	270.45
10	41.43	55.25	37.54	184.76	277.14

<sup>1</sup> See clause 25.4.

<sup>2</sup> This amount is payable in addition to the relevant hourly or cents per kilometre rate (see clause 16.4).

## Schedule B—Summary of Monetary Allowances

See clause 18—Allowances for full details of allowances payable under this award.

### B.1 Wage-related allowances

**B.1.1** The wage-related allowances in this award are based on the standard rate as defined in clause 2—Definitions as the minimum weekly rate for Grade 6 in clause 16.1 = **\$849.20**

Allowance	Clause	% of standard rate	\$	Payable
Temporary transfer of duties—local driver (under terms of <i>Road Transport and Distribution Award 2015</i> )	18.2(c)(i)	1.24	10.53	per occasion
Motor vehicle—length in excess of legislated limit	18.2(c)(ii)	0.44	3.74	per day
Motor vehicle—width (and/or load) in excess of 3.5m	18.2(c)(iii)	0.44	3.74	per day
Furniture carter	18.2(c)(iv)	2.42	20.55	per week
Livestock carter	18.2(c)(v)	2.42	20.55	per week
Bulk dangerous goods allowance	18.2(d)(i)	2.27	19.28	per day
Packaged dangerous goods allowance	18.2(d)(ii)	0.95	8.07	per day

### B.1.2 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

**B.2.1** The expense-related allowances in this award will be payable to employees in accordance with clause 18.3:

Allowance	Clause	\$	Payable
Travelling allowance	18.3(c)(i)	40.44	per occasion

### B.2.2 Adjustment of expense-related allowances

(a) 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

**Road Transport (Long Distance Operations) Award 20XX**

index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

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

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Travelling allowance	Domestic holiday travel and accommodation sub-group
Housing allowance	Rents 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](http://www.jobaccess.gov.au)

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

### **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
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 \$87 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 SWS 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 SWS.



## **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 4 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 \$87 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—Agreement to Take Annual Leave in Advance

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

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

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

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

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

**I agree that:**

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

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule E—Agreement to Cash Out Annual Leave

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

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

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

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

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

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule F—Part-day Public Holidays

- F.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- F.2** 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 F.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
  - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause F.2(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.
- F.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).
- F.4** This schedule is not intended to detract from or supplement the [NES](#).