



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

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

(AM2014/90)

## **STEVEDORING INDUSTRY AWARD 2010**

[MA000053]

Stevedoring industry

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

*4 yearly review of modern awards – Stevedoring Industry 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 *Stevedoring Industry 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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# Stevedoring Industry Award 20XX

## Table of Contents

	Page
<b>Part 1— Application and Operation of this Award .....</b>	<b>3</b>
1. Title and commencement .....	3
2. Definitions .....	3
3. The National Employment Standards and this award .....	5
4. Coverage.....	5
5. Individual flexibility arrangements .....	6
6. Requests for flexible working arrangements.....	8
7. Facilitative provisions .....	9
<b>Part 2— Types of Employment and Classifications .....</b>	<b>9</b>
8. Types of employment.....	9
9. Full-time employees .....	10
10. Guaranteed wage employees .....	10
11. Casual employees .....	10
12. Classifications .....	12
<b>Part 3— Hours of Work.....</b>	<b>13</b>
13. Ordinary hours of work .....	13
14. Rostering arrangements .....	14
15. Breaks .....	15
<b>Part 4— Wages and Allowances .....</b>	<b>16</b>
16. Minimum rates .....	16
17. Payment of wages.....	19
18. Allowances .....	20
19. Accident pay.....	26
20. Superannuation.....	27
<b>Part 5— Overtime and Penalty Rates.....</b>	<b>28</b>
21. Overtime .....	28
22. Double header.....	33
23. Penalty rates .....	34

<b>Part 6— Leave and Public Holidays .....</b>	<b>35</b>
24. Annual leave .....	35
25. Personal/carer’s leave and compassionate leave .....	40
26. Parental leave and related entitlements.....	40
27. Community service leave.....	40
28. Leave for attendance at repatriation centres .....	41
29. Unpaid family and domestic violence leave .....	41
30. Public holidays.....	41
<b>Part 7— Consultation and Dispute Resolution .....</b>	<b>42</b>
31. Consultation about major workplace change.....	42
32. Consultation about changes to rosters or hours of work.....	43
33. Dispute resolution .....	43
<b>Part 8— Termination of Employment and Redundancy .....</b>	<b>44</b>
34. Termination of employment .....	44
35. Redundancy .....	45
<b>Schedule A —Classification Definitions.....</b>	<b>47</b>
<b>Schedule B —Summary of Monetary Allowances .....</b>	<b>51</b>
<b>Schedule C —School-based apprentices .....</b>	<b>54</b>
<b>Schedule D —Supported Wage System .....</b>	<b>55</b>
<b>Schedule E —Agreement for Time Off Instead of Payment for Overtime.....</b>	<b>58</b>
<b>Schedule F —Agreement to Take Annual Leave in Advance.....</b>	<b>59</b>
<b>Schedule G —Agreement to Cash Out Annual Leave.....</b>	<b>60</b>
<b>Schedule H —Part-day Public Holidays .....</b>	<b>61</b>

## Part 1—Application and Operation of this Award

### 1. Title and commencement

- 1.1 This award is the *Stevedoring Industry 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:

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

**adult apprentice** means an apprentice who is 21 years of age or over at the commencement of their apprenticeship

**all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance or loading, when calculating any penalties, loadings or payment while they are on annual leave (see clause 18.1(a))

**cargo** includes ships stores, fuel oil (whether for bunkers or not), passengers' luggage or mails

**day shift** means a shift which commences between 6.00 am and 9.00 am

**day work** means work performed by employees other than shiftworkers, where the ordinary hours of work are worked between 7.00 am and 5.00 pm Monday to Friday inclusive

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

**double header** is where a shiftwork employee works 2 consecutive shifts

**employee** means national system employee within the meaning of the [Act](#)

**employer** means national system employer within the meaning of the [Act](#)

**evening shift** means a shift which commences between 1.00 pm and 5.00 pm

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

**maintenance tradesperson** means a person who holds a Trade Certificate or Tradesperson's Rights Certificate as:

**Stevedoring Industry Award 20XX**

- (a) an engineering tradesperson—level 1 as defined in the *Manufacturing and Associated Industries and Occupations Award 20XX*; or
- (b) a mechanical fitter, motor mechanic, boilermakers, shipwright, welder, electrical fitter, electrical mechanic, automotive electrician, or mechanical engineering tradesperson;

and who exercises the skills and knowledge of that trade to the level of his or her training.

**maintenance tradesperson special class** means an employee who is a maintenance tradesperson who has completed additional training to the level of an engineering/manufacturing tradesperson—special class level II as defined in the *Manufacturing And Associated Industries and Occupations Award 20XX*, and who exercises the skills and knowledge required of an engineering/manufacturing tradesperson—special class level II

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

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

**night shift** means a shift which commences at or after 10.00 pm

**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 hourly rate** means the hourly rate for an employee's classification specified in clause 16—Minimum rates, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

**outport** means any port other than that at which the employee was engaged to work

**7 day continuous shiftwork** means work performed on shifts on each of the 7 days of the week and may be worked over one, 2 or 3 shifts on each day

**shiftwork employee** means a person who performs shiftwork in accordance with clause 13.3 of this award

**ship** includes a barge, lighter, hulk or other vessel

**standard rate** means the minimum weekly wage for a Stevedoring employee Grade 4 in clause 16—Minimum rates

**stevedoring industry** has the meaning given in clause 4.2

**wharf** includes a pier, jetty, ramp, or shed, storage or stacking area comprising part of the wharf area used for stevedoring industry activities

### 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 stevedoring industry and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award.
- 4.2 **Stevedoring industry** means the loading and unloading of cargo into or from a ship including its transporting and storage at or adjacent to a wharf.
- 4.3 The award does not cover:
- (a) employers and employees wholly or substantially covered by the following awards:
    - (i) the *Port Authorities Award 20XX*;
    - (ii) the *Coal Export Terminals Award 20XX*; and
    - (iii) the *Sugar Industry Award 20XX*; or
  - (b) maintenance contractors covered by the following awards:
    - (i) the *Manufacturing and Associated Industries and Occupations Award 20XX*; or
    - (ii) the *Electrical, Electronic and Communications Contracting Award 20XX*.
- 4.4 This award covers any employer which supplies labour on an on-hire basis in the stevedoring industry 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 apprentices and/or trainees engaged in the stevedoring industry and/or parts of that industry and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clauses 4.1 and 4.2 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 33—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 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:

- (a) clause 14.1(b)—Rostering arrangements—shiftwork;
- (b) clause 21.13—Time off instead of payment for overtime;
- (c) clause 22.5(c)—Employees working double headers;
- (d) clause 24.8—Annual leave in advance; and
- (e) clause 24.9—Cashing out of annual leave.

## **Part 2—Types of Employment and Classifications**

### **8. Types of employment**

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

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

**8.2** The type of employment must be established at or prior to the commencement of employment.

## 9. Full-time employees

A full-time employee is engaged to perform a full week's work each week.

## 10. Guaranteed wage employees

**10.1** A guaranteed wage employee is an employee who is guaranteed a minimum number or an average number of full shifts each week, or instead of that engagement, is provided the equivalent payment.

**10.2** For the purposes of leave accruals under the [NES](#), a guaranteed wage employee's ordinary hours of work will be deemed to be the hours actually worked by the employee over the qualifying period for the leave.

## 11. Casual employees

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

**11.2** The minimum payment for a casual employee will be for one shift on any one day that the employee is required to work.

### 11.3 Casual loading

For each hour worked, a casual employee must be paid:

- (a) the ordinary hourly rate; and
  - (b) a loading of 25% of the ordinary hourly rate,
- for the classification in which they are employed.

### 11.4 Right to request casual conversion

- (a) An employee engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or guaranteed wage 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 guaranteed wage 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 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, but has worked at least 28 hours per month in 10 of the preceding 12 months, may request to have their employment converted to guaranteed wage employment, with a guaranteed minimum number or average number of full shifts each week corresponding to the average number of hours the employee has worked over the preceding period of 12 months.

- (e) Any request under clause 11.4 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or guaranteed wage employment, the employer may agree to or refuse the request. The request may only be refused on reasonable grounds and after consultation with the employee.
- (g) Reasonable grounds for refusal may 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 guaranteed wage 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 11.4(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 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 33—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 guaranteed wage employment as provided for in clause 11.4, the employer and employee must discuss and record in writing the conversion to full-time or guaranteed wage employment.
- (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 guaranteed wage 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 11.4.
- (o) Nothing in clause 11.4 obliges a regular casual employee to convert to full-time or guaranteed wage employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.4 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or guaranteed wage employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.4 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 15 April 2019, an employer must provide such employees with a copy of the provisions of clause 11.4 by 15 July 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 11.4(q).

## **12. Classifications**

**12.1** The classification structure and descriptors for the classifications under this award are set out at Schedule A—Classification Definitions.

### **12.2 Re-grading**

- (a) An employee who does not retain the competency, skills or qualifications necessary for the employee's grade may be re-graded downwards to the next grade below for which the employee qualifies, provided that:
  - (i) there is notice in writing to the employee of the intention to apply clause 12.2 containing particulars of the lost competency, skills or qualifications;
  - (ii) a re-grading under clause 12.2 will not take place before the employee has had a reasonable opportunity to recover the lost competency, skills or qualifications; and
  - (iii) if the employee raises with the employer a grievance concerning the re-grading within 3 days after it is to take effect the re-grading will be deemed not to have taken effect until it has been determined under clause 33—Dispute resolution
- (b) Clause 12.2 will not apply to an employee:
  - (i) whose loss of competency, skills or qualifications results directly from an injury or illness for which the employee is entitled to workers compensation; or
  - (ii) who, upon the written advice of a medical practitioner is no longer capable of performing the duties or functions for which the employee is classified, provided that in these circumstances the employer may nominate the

medical practitioner and in addition the employer may require, or the employee may request, periodic medical reviews which may include reference to a specialist medical practitioner.

- (c) In circumstances where clause 12.2(b) applies, the employee will retain the higher rate of pay.

## Part 3—Hours of Work

### 13. Ordinary hours of work

#### 13.1 Ordinary hours of work

- (a) The ordinary hours of work for a full-time employee are an average of 35 hours per week.
- (b) The ordinary hours of work for a guaranteed wage or casual employee will be in accordance with clause 8—Types of employment.

#### 13.2 Day workers—other than shiftworkers

- (a) **Day work** means work performed by employees other than shiftworkers, where the ordinary hours of work are worked between 7.00 am and 5.00 pm Monday to Friday inclusive.
- (b) Ordinary hours for day workers are worked between 7.00 am to 5.00 pm, Monday to Friday.

#### 13.3 Ordinary hours for shiftworkers

- (a) Shiftwork means where the ordinary hours of work are work between the commencement of night shift on Sunday and either:
  - (i) the end of the evening shift on the following Friday;
  - (ii) the end of the evening shift on the following Saturday; or
  - (iii) the end of the evening shift the following Sunday (which is 7 day continuous shiftwork).
- (b) There are 3 types of shifts:
  - (i) **day shift** commences between 6.00 am and 9.00 am;
  - (ii) **evening shift** commences between 1.00 pm and 5.00 pm; and
  - (iii) **night shift** commences at or after 10.00 pm.
- (c) **7 day continuous shiftwork** means work performed on shifts on each of the 7 days of the week and may be worked for one, 2 or 3 shifts on each day.
- (d) Unless otherwise agreed in accordance with clause 14.1(b)(ii), the normal length of each shift will be 7 hours.

- (e) Except in the case of emergency:
  - (i) an employee who has worked a night shift will not be required to work the next succeeding evening shift; and
  - (ii) an employee who has worked a day shift will not be required to work the next succeeding night shift.
- (f) Where 12 hour shifts are introduced, the ordinary hours must not exceed an average of 35 hours per week. Twelve hour shifts are inclusive of meal breaks and rest periods.

## **14. Rostering arrangements**

### **14.1 Rostering arrangements—shiftwork**

- (a) An employer may roster employees to perform shiftwork in accordance with this award.
- (b) The employer may agree with the union or a majority of affected employees at the workplace the following:
  - (i) 5, 6 or 7 day shift arrangements with either irregular or regular rostering;
  - (ii) changes to the length of each shift provided that the ordinary hours of work will not exceed a weekly average of 35 hours;
  - (iii) where a 7 day continuous shiftwork roster is to be worked, inclusion in the ordinary hours of work of shifts worked on public holidays, as prescribed by clause 30—Public holidays, as well as Saturdays and Sundays, provided that payment for such shifts is in accordance with this award;
  - (iv) provisions for the timing of meal breaks or rest periods;
  - (v) provisions for the extension of shifts provided that all such extensions will be paid at overtime rates;
  - (vi) notification and cancellation arrangements; and
  - (vii) staggering of shift start and finish times.
- (c) No rostering arrangement will require an employee to change shifts if the change would necessitate the working of 2 consecutive shifts, or to work more than one shift on any one day.

### **14.2 Day and shiftwork interchange**

- (a) Where day work has been implemented, the employer may change employees from day work to shiftwork or from shiftwork to day work on 7 days' notice.
- (b) Where an employee is changed from shiftwork to day work, they will not forfeit any shiftwork conditions including paid meal breaks and additional annual leave in clauses 14.1, 14.2, 15.2, 18.2(f) and 24.2.

**14.3** An employee working day work may not work in a relieving capacity for shiftworkers except by agreement between the employer and an individual employee.

**14.4 Travelling and washing time**

Travelling and washing time, where applicable, will be paid and taken before or after the normal commencing or finishing times of a shift or the usual working hours and will be paid at the rate applicable to the shift.

**15. Breaks**

**15.1 Paid/unpaid meal/rest breaks—day workers**

- (a) Except as provided in clause 15.1(b), an employee who is working day work is entitled to:
  - (i) an unpaid meal break of 30 minutes; and
  - (ii) a paid rest break of 15 minutes.
- (b) An employee who was engaged in the stevedoring industry on 25 November 1991 maintains their entitlement to paid meal breaks and rest breaks.
- (c) A day work employee required to continue working during a break will be paid overtime at **100% of the ordinary hourly rate** in addition to the rate applicable to the hours worked. The employee will continue to be paid overtime until the break is taken.

**15.2 Paid rest breaks—shiftworkers**

- (a) A paid rest break (or breaks) must be provided as follows during the ordinary hours of work:

Length of shift	Length of breaks
7 hours	45 minutes
8 hours	60 minutes

- (b) Where an employee who is working shiftwork is required to work more than one hour's overtime prior to the commencement, or following the conclusion, of their normal starting or finishing time, the employee is entitled to an additional 15 minute paid rest break.
- (c) Meal and rest breaks will be taken at a time and manner agreed between the employer and the employee and may be staggered.
- (d) An employee required to continue working during a rest break will be paid overtime at **100% of the ordinary hourly rate** in addition to the rate applicable to the shift worked. The employee will continue to be paid overtime until the break is taken.



**15.3 Paid meal breaks for employees who work a double header**

An employee who works a double header will be entitled to a paid meal break of one hour to be taken immediately following the conclusion of the first shift. The meal break will be paid as time worked. An employee who is unable to take a meal break will be paid an additional 3 hours at the ordinary hourly rate.

**15.4 Minimum rest periods**

- (a) A minimum rest period after overtime is provided in clause 21.11.
- (b) A minimum rest period after call back is provided in clause 21.12(c).

**Part 4—Wages and Allowances**

**16. Minimum rates**

**16.1** An employer must pay employees the following minimum rates for ordinary hours worked by the employee:

Stevedoring employee	Minimum weekly rate (full-time employee)	Minimum hourly rate <sup>1</sup>
	\$	\$
Grade 1	740.80	21.17
Grade 2	767.90	21.94
Grade 3	808.60	23.10
Grade 4	856.20	24.46
Grade 5	874.20	24.98
Grade 6	932.20	26.63
Grade 7	1049.50	29.99

<sup>1</sup> Minimum hourly rate is based on a 35 hour week.

**16.2 Hourly rate**

The applicable hourly rate of pay will be determined by dividing the total weekly wage for the classification by 35.

**16.3 Apprentice rates**

(a) Apprentices who commenced before 1 January 2014 will be paid as follows:

Year of apprenticeship	Percentage of Grade 4 rate
	%
1st year	42
2nd year	55

Year of apprenticeship	Percentage of Grade 4 rate
3rd year	75
4th year	88

- (b) Apprentices who commenced on or after 1 January 2014 will be paid as follows:

Year of apprenticeship	Percentage of Grade 4 rate per week for apprentices who have not completed year 12	Percentage of Grade 4 rate per week for apprentices who have completed year 12
	%	%
1st year	50.4	55.4
2nd year	60.44	65.48
3rd year	75	75
4th year	88	88

- (c) Apprentices will receive the same conditions of employment which apply to tradespersons.
- (d) Apprentices will be paid allowances in accordance with the provisions of this award.
- (e) Apprentices will receive full day time training without loss of pay. The employer will pay all technical college fees.
- (f) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that clause 16.3(f) will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- (g) For the purposes of 16.3(f) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of 16.3(f), excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (h) The amount payable by an employer under 16.3(f) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
- (i) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the

employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

- (j) An employer may meet its obligations under 16.3(i) by paying any fees and/or cost of textbooks directly to the RTO.
- (k) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. Clause 16.3 operates subject to the provisions of Schedule C—School-based apprentices.
- (l) **Adult apprentice rates**
- (i) An **adult apprentice** is an apprentice who is 21 years of age or over at the commencement of their apprenticeship.
- (ii) A person who has been employed by an employer for at least 6 months as a full-time employee or 12 months as a part-time or regular and systematic casual employee immediately prior to entering into a training agreement as an adult apprentice with the employer, must not suffer a reduction in their minimum wage by virtue of entering into the training agreement. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 16.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.
- (iii) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be:
- 80% of the [standard rate](#); or
  - the rate prescribed by clause 16.3(b) for the relevant year of the apprenticeship,
- whichever is the greater.
- (iv) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be:
- the rate for the lowest adult classification in clause 16.1; or
  - the rate prescribed by clause 16.3(b) for the relevant year of the apprenticeship,
- whichever is the greater.

#### 16.4 School based apprentices

For school-based apprentices, see Schedule C—School-based apprentices.

## 16.5 Supported wage system

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

## 16.6 National training wage

- (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 *Stevedoring Industry Award 20XX* and not the *Miscellaneous Award 20XX*.

## 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 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:
  - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under clause 17.1(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: Clause 17.1 allows the Commission to make an order delaying the requirement to make a payment under clause 17.1. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

## 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.

Employers must pay to an employee such allowances as 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.

### 18.1 Wage-related allowances

#### (a) All-purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) Electrician's licence allowance (clause 18.1(b)); and
- (ii) Specialist functions allowance (clause 18.1(c)).

#### (b) Electrician's licence allowance

An electrician's licence allowance of **\$38.96** per week is payable to an electrical mechanic who holds, and in the course of their duties may be required to use, an unrestricted licence.

#### (c) Specialist functions allowance

- (i) A stevedoring employee Grade 3 or 4 will be paid an allowance of **\$24.57** per week where the employee is trained, competent and required to perform specialist functions of both an operational and clerical nature undertaken by employees within that grade.
- (ii) The specialist functions allowance is not payable merely for the performance of incidental clerical functions by an operational employee and vice versa.
- (iii) The allowance is payable for all purposes of the award.

#### (d) First aid allowance

- (i) An employee who has been trained to provide first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body will be paid an allowance of **\$18.24** per week if required by their employer to perform first aid duties.
- (ii) This allowance will not be payable to an employee who is classified as a stevedoring employee Grade 3 who performs first aid duties as a primary function.

#### (e) Leading hand tradesperson

A tradesperson placed in charge of others will be paid the following:

In charge of	\$ per week
3–10 employees	34.93
11–20 employees	51.97
more than 20 employees	66.44

**(f) Maintenance tradesperson undertaking accredited training**

A maintenance tradesperson employed as a stevedoring employee Grade 4 who is undertaking accredited training towards an appropriate post-trade certificate which would justify reclassification to stevedoring employee Grade 6 will be eligible for the following weekly rates:

- (i) upon completion of 33% of the modules required—**\$899.00** (105% of Grade 4 (\$856.20)); and
- (ii) upon completion of 66% of the modules required—**\$941.80** (110% of Grade 4 (\$856.20)).

**(g) Roll-on and roll-off vessel allowance**

An allowance of **\$1.54** per hour is payable to an employee who works on a roll-on and roll-off vessel to compensate for noise to which the employee is exposed.

**(h) Stevedoring operations allowance—other than in terminal operations**

Employees engaged in stevedoring operations other than in terminal operations will receive the following extra rates per hour when working on the cargoes or in the circumstances referred to below.

Nature of work	\$ per hour
Explosives	2.23
Bulk grain – barley and oats	3.00
Bulk grain – others	2.31
Freezer cargoes - the temperature in the place of work is below -12°C	1.97
Freezer cargoes - the temperature in the place of work is -12°C and above	0.94
Nickel concentrates	6.34
First aid employees	4.11

**(i) Telephone allowance**

A telephone allowance of **\$11.64** per week is payable to an employee who is required to telephone for allocation or cancellation or to be available for contact by telephone.

**(j) Terminal operation allowance**

- (i) Each employee engaged in a terminal operation will receive the following allowance per week:

**Stevedoring Industry Award 20XX**

<b>Classification</b>		<b>Per week</b>
		<b>\$</b>
Grade 1 to 5	Operational	21.23
Grade 3 to 5	Clerical	11.04
Grade 4, 6 and 7	Maintenance	37.76
Grade 6 and 7	Supervisory	21.23
Grade 3	Security	16.35

- (ii) The terminal operation allowances in clause 18.1(j)(i) are consolidated disability allowances which compensate employees for disabilities incurred in the performance of their work, including, but not limited to the following:
- (iii) An allowance of **\$21.23** per week is payable to stevedoring employees Grades 1 to 5 Operational and Grades 6 and 7 Supervisory for working in the rain, wearing wet weather clothing, working on hot or cold days, working in dirty or obnoxious conditions, working where a danger rate would normally apply, working oiling or greasing and to cover abnormal costs incurred by the employee where, due to irregularity of public transport, the employee is involved in excess payments in order to present themselves for work at the place of employment.
- (iv) An allowance of **\$11.04** per week is payable to stevedoring employees Grades 3 to 5 Clerical, working on hot or cold days for working in dirty or obnoxious conditions and to cover abnormal costs incurred by the employee where, due to irregularity of public transport, the employee is involved in excess payments in order to present themselves for or return from work at the place of employment.
- (v) An allowance of **\$37.76** per week is payable to stevedoring employees Grades 4, 6 and 7 Maintenance for unusually dirty work, confined spaces, heights, weather conditions (working in wet and windy conditions), hazardous working positions, for example outside safety rails, activating limit switches and or releasing spreaders on stacked containers, etc., working in hours of darkness, for example in relation only to the hazards of working in hours of darkness, working in or near live equipment, vertical climbs to towers, working under pressure when ships are loading, using explosive powered tools, soot from ship's funnels, noisy conditions in machinery houses, workshops, portainer cranes, and ro/ro vessels, working in and about areas containing insulwool, periodic heavy lifts when equipment is in such a position that it is only possible for one employee to work in the area and not possible to place lifting gear, travelling and fares allowance to cover call backs and other overtime, the supply and maintenance of tools ordinarily required in the performance of their work and any other job disabilities that may occur that would normally attract a disability allowance.
- (vi) An allowance of **\$16.35** per week is payable to stevedoring employees Grade 3 Security for working in wet, hot, cold and windy conditions,

wearing wet weather gear, patrol work in hours of darkness, noise and fumes from heavy vehicles, etc., transport difficulties associated with travelling on shiftwork.

**(k) Allowances to apply only when employee available for or works in the stevedoring industry**

The allowances prescribed for operational, clerical and maintenance stevedoring employees will only apply in respect of a week or part thereof in which the employee is available for or performs work in the stevedoring industry.

**18.2 Expense-related allowances**

**(a) Transport home**

When an employee working on the evening shift ceases duty at a time when the usual or reasonable means of transport home are not available, the employer will pay or alternatively reimburse the cost associated with providing such transport. Payment or reimbursement is not payable where the employer provides reasonable transport home.

**(b) Vehicle allowance**

Where an employee is required by the employer to use their own vehicle on the employer's business, the employer will pay the employee **\$0.78** per kilometre travelled.

**(c) Expenses for stevedoring employees Grade 7**

In addition to other allowances in clause 18, Stevedoring employees Grade 7 will receive:

- (i)** a vehicle allowance of **\$76.00** per week where the employee is required by the employer to use their own vehicle whilst on company business;
- (ii)** reimbursement for telephone rental, business local and business long distance calls; and
- (iii)** any other reasonable expense incurred on behalf of, or in the services of, the employer.

**(d) Laundry allowance**

A laundry allowance of **\$9.20** per week is payable to an employee for each set of overalls or other clothing issued by the employer, up to a maximum of 2 sets of such clothing. This allowance is payable instead of a laundry or cleaning allowance.

**(e) Meal allowance—day worker working overtime**

A meal allowance of **\$19.80** is payable to a day work employee who works overtime on a Saturday, Sunday or public holiday, unless the employer provides a reasonable hot meal.



**(f) Meal allowance—shiftworker and double header**

A meal allowance of **\$14.17** per meal is payable (in addition to overtime payment) to a shiftwork employee who works:

- (i) more than one hour before or after their normal commencing or finishing time;
- (ii) a double header; or
- (iii) overtime on a day shift on a Saturday or any shift on a Sunday or public holiday,

unless the employer provides a reasonable hot meal.

**(g) Licences, trade certificates and other qualifications allowance**

Employees who are required by the employer to obtain or maintain a licence, trades certificate or other qualification, will be reimbursed for the cost associated with obtaining and maintaining such licence, trades certificate or qualification. An employee so required will not suffer loss of pay.

**(h) Safety footwear and clothing allowance**

The employer must reimburse the employee for the cost of purchasing protective clothing, provided that there will be no reimbursement for protective clothing over and above:

- (i) one pair of safety boots or shoes each year;
- (ii) 2 pairs of overalls each year which, at the employee's discretion, may be replaced by shorts and a shirt or trousers and a shirt;
- (iii) a winter jacket every 2 years;
- (iv) a wide brimmed summer hat every 3 years;
- (v) a hard hat and safety vest as a personal issue replaced on a needs basis; and
- (vi) 3 pairs of general duties gloves, plus a pair of driving gloves each year.

Clause 18.2(h) will not apply where the protective clothing and other articles are provided by the employer.

**18.3 Training costs**

- (a) Costs in connection with off-the-job training required by the employer, including prescribed fees and text books will be reimbursed by the employer.
- (b) Travel costs incurred by an employee undertaking training required by the employer which exceed those normally incurred in travelling to and from work will be reimbursed by the employer.

- (c) Clause 18.3 does not apply to costs associated with training that in connection with an apprentice's training contract. Such costs are subject to clause 16.3 and not clause 18.3.

#### 18.4 Expense-related allowances—Outports

- (a) An employee may be required to transfer to work in an outport.
- (b) Where an employee is required to stay overnight in an outport, the employer will:
- (i) where accommodation and necessary meals are provided by the employer:
    - reimburse the employee **\$35.00** per day to cover out of pocket expenses;
  - (ii) where accommodation and necessary meals are not provided by the employer:
    - pay the employee an allowance of **\$120.56** per day in circumstances where the transfer is for a defined number of days; or
    - pay the employee an allowance of **\$164.15** per day in circumstances where the transfer is for a flexible number of days.
- (c) Where an employer requires an employee to remain in an outport on a Saturday, Sunday or public holiday, but does not require the employee to work, the employee:
- (i) will be paid an allowance of **\$105.26** per day; or
  - (ii) may, at the employer's discretion, be returned to their home port at the employer's expense.
- (d) The time occupied in travelling to and from an outport will be paid at the ordinary rate of pay or, in circumstances where the transfer is for a flexible number of days, be paid at the rate appropriate to the first shift worked for the outward journey, and at the rate appropriate to the last shift worked on the homeward journey.
- (e) An employee required to travel on the day shift in excess of 3 hours and work an evening shift will be paid for the second shift as if working a double header in accordance with clause 22—Double header.
- (f) An employee required by the employer to use their own motor vehicle will be paid an allowance of **\$0.78** per kilometre while travelling to and from the outport.
- (g) Employees other than Grade 7 employees will not be required to stay in an outport for longer than 7 days. A Grade 7 employee will not be required to stay in an outport beyond 10 days provided this period may be extended by 24 hours to complete a vessel including travelling time to the employee's home port.

## **19. Accident pay**

### **19.1 Definitions**

For the purposes of clause 19, the following definitions will apply:

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

### **19.2 Entitlement to accident pay**

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 52 weeks.

### **19.3 Calculation of the period**

- (a) The 52 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 52 week period.
- (b) The termination by the employer of the employee's employment within the 52 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

### **19.4 When not entitled to payment**

An employee will not be entitled to any payment under clause 19 in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

### **19.5 Return to work**

If an employee entitled to accident pay under clause 19 returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

### **19.6 Redemptions**

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the employer to pay accident pay will cease from the date the employee receives that payment.

### **19.7 Damages independent of the Acts**

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of

accident pay which the employer has paid under clause 19 and the employee will not be entitled to any further accident pay thereafter.

## **19.8 Casual employees**

For a casual employee, the weekly payment referred to in clause 19.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

## **20. Superannuation**

### **20.1 Superannuation legislation**

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

### **20.2 Employer contributions**

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

### **20.3 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 20.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 20.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or (b) was made.

## 20.4 Superannuation fund

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

- (a) Maritime Super;
- (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.

## 20.5 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 20.2 and pay the amount authorised under clauses 20.3(a) or (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—Overtime and Penalty Rates

## 21. Overtime

### 21.1 Definition of overtime—day work employees

- (a) For a day work employee overtime is any time worked:
  - (i) outside the span of the employee's ordinary hours as defined in clause 13.2(a); or
  - (ii) in excess of an average of 35 hours per week.

### 21.2 Definition of overtime—shiftwork employees

Overtime work is any work performed:

- (a) before or after a shift during which the employee's ordinary hours of work are performed; or
- (b) in excess of an average of 35 hours per week.

**21.3 Overtime rates—day workers**

- (a) A day worker required to work overtime on Monday to Saturday will be paid **200% of the ordinary hourly rate** for all hours worked.
- (b) A day worker required to work overtime on Sunday or a public holiday will be paid **250% of the ordinary hourly rate**.

**21.4 Overtime rates—shiftwork employees**

- (a) A shiftwork employee required to work overtime that is continuous with the commencement or conclusion of a shift in which their ordinary hours of work are performed will be paid **100% of the ordinary hourly rate** in addition to the rate appropriate to the shift in which the overtime is worked.
- (b) A shiftworker required to work overtime that is not continuous with the commencement or conclusion of a shift in which their ordinary hours of work are performed will be paid:
  - (i) **200% of the ordinary hourly rate** for Monday to Saturday;
  - (ii) **250% of the ordinary hourly rate** for Sunday;
  - (iii) **250% of the ordinary hourly rate** for day and evening shifts worked on a public holiday; and
  - (iv) **300% of the ordinary hourly rate** of the ordinary hourly rate on a night shift on a public holiday.

**21.5 Minimum payment for overtime**

An employer who requires an employee to work overtime continuous with the employee's ordinary hours of work must pay the employee the following minimum payments:

**(a) Day work employees**

One, 2 or 3 hours

**(b) Shiftwork employees—overtime continuous with a day shift**

- (i) one or 2 hours where a 7 hour shift is worked, provided that the shift may be extended up to 3 hours by agreement; or
- (ii) one hour where a shift of less than 7 hours is worked, provided that the shift may be extended up to 2 or 3 hours by agreement; and
- (iii) for shiftwork employees for overtime continuous with the evening or night shift – one hour, provided that the shift may be extended up to 2 or 3 hours by agreement.

**(c) Overtime not continuous**

An employer who requires an employee to work overtime which is not continuous with the ordinary hours of work must pay the employee a minimum payment of 7 hours.

**(d) Employee required to start earlier/finish later**

Where an employee is required to start work earlier than their normal commencement time or continue working after their normal finishing time for the purpose of:

- (i) preparatory work such as removing hatches and unlash cargo, and closing work such as replacing hatches and lashing cargo;
- (ii) providing continuity between shifts including preparatory work and handover to reliefs; or
- (iii) refuelling and or starting up machines or equipment or carrying out minor repairs forming part of any necessary preparatory work,

the minimum overtime payment will be 30 minutes at the appropriate overtime rate.

**21.6 Maximum duration of overtime**

An employee will not, unless working a double header (see clause 22—Double header), be required to work for a period in excess of:

- (a) 10 hours, where the overtime attaches to a day shift; or
- (b) 8 hours, where the overtime attaches to an evening shift; or
- (c) 9 hours, where the overtime attaches to a night shift.

**21.7 Employees not required to work overtime**

An employee who has worked 2 hours or more overtime prior to the commencement of the shift or the ordinary working hours may elect not to work overtime at the end of a shift.

**21.8 Grade 7 employees**

A Grade 7 employee who is required to present at or liaise with a pickup centre to implement labour orders outside their ordinary shift hours, must be paid a minimum payment of 4 hours at the appropriate rate. If such payment is made for Saturday, Sunday or a public holiday, the outports allowance provided in clause 18.4(c)(i) does not apply.

**21.9 Additional day off/day work**

Where an employee works overtime on a Saturday or Sunday and has worked on 7 consecutive days (including the overtime) the employee will be entitled to a day of paid leave on a working day in the following 14 days, or any other working day by agreement between the employee and employer.

**21.10 Normal transport not available**

When an employee ceases duty after working overtime and at a time when the usual or reasonable means of transport home is not available, the employer will provide or alternatively reimburse the costs associated with providing such transport to the employee's place of residence. Payment or reimbursement is not payable where the employer provides reasonable transport home.

**21.11 Rest period after overtime**

An employee who has worked overtime (including a double header) must not be required to report for duty for at least 9 hours after the employee ceased work on overtime.

**21.12 Call back**

Call back occurs when a maintenance employee is recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) but does not include where an employee is notified and works overtime in accordance with the overtime provisions of this award.

**(a) Minimum payment for a call back**

The minimum payment for each time the employee is recalled is as follows:

- (i) 4 hours at the appropriate overtime rate;
- (ii) if the call back is for a period of between 4 and 6 hours, 6 hours at the appropriate overtime rate; or
- (iii) if the call back is for a period of more than 6 hours, the minimum payment is for a full shift at the appropriate overtime rate. If the job for which the employee was recalled to perform is completed within a shorter period, the employee will not be required to work the full shift, except in the case of unforeseen circumstances arising.

**(b)** For the purposes of calculating an employee's payment when recalled, an employee will be paid from the time the employee leaves home until the time they return home.

**(c) Rest periods**

An employee must have a 10 hour rest period after each call back before 5.00 am unless:

- (i) it is customary for an employee to return to their employer's premises to perform a specific job outside their reasonable working hours; or
- (ii) the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.



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

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 21.13.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in clause 21.13 must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 21.13 is set out at Schedule E—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule E—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 21.13 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 21.13 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 21.13 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 21.13(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

- (h) The employer must keep a copy of any agreement under clause 21.13 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 21.13 will apply, including the requirement for separate written agreements under 21.13(b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.13 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.13.

## 22. Double header

22.1 **Double header** is where a shiftwork employee works 2 consecutive shifts. A double header may only be worked where there is no suitable relief available.

22.2 An employee may only work a double header following a day shift.

### 22.3 Double header eligibility

- (a) An employee who has worked overtime prior to the commencement of a shift may elect not to work a double header.
- (b) An employee may only be required to work 2 double headers a week.
- (c) An employee must not work double headers on consecutive days.

### 22.4 Payment for double headers

- (a) Double headers will be paid as follows:
  - (i) Monday to Friday, **100% of the ordinary hourly rate** plus the rate appropriate to the additional shift worked; and
  - (ii) Saturdays, Sundays and public holidays, **50% of the ordinary hourly rate** and the rate appropriate to the additional shift worked.

- (b) Where employees work a second double header in a week, they can elect to be paid only the rate appropriate to the additional shift worked (not including the penalty in clause 22.4(a)) and accrue a day of paid leave.

## 22.5 Additional conditions

- (a) Where confirmation of a requirement to work a double header has been given, such requirement cannot be cancelled without payment for the double header as though worked.
- (b) No employee will be required to work a double header against the employee's will if there is another suitably skilled employee available in the appropriate classification who is willing to work the double header.
- (c) Unless otherwise agreed by the employer and the employees, no employee will be required to work any further overtime following the double header.

## 22.6 Meal breaks and allowances

- (a) An employee who works a double header will be entitled to a paid meal break of one hour to be taken immediately following the conclusion of the first shift. The meal break will be paid as time worked. An employee who is unable to take a meal break will be paid an additional 3 hours at the ordinary rate of pay.
- (b) An employee who works a double header will be paid a meal allowance as prescribed by clause 18.2(f).

## 23. Penalty rates

### 23.1 Definitions

- (a) There are 3 types of shift work:
  - (i) **day shift** commences between 6.00 am and 9.00 am;
  - (ii) **evening shift** commences between 1.00 pm and 5.00 pm; and
  - (iii) **night shift** commences at or after 10.00 pm.
- (b) **7 day continuous shiftwork** means work performed on shifts on each of the 7 days of the week and may be worked over one, 2 or 3 shifts on each day.

### 23.2 Payment for shiftworkers

An employee will be paid the following penalty rates for all ordinary hours worked by the employee during the following periods:

- (a) day shift on Monday to Friday—**100% of the ordinary hourly rate;**
- (b) day shift on Saturday—200% of the ordinary hourly rate;
- (c) day shift on Sunday—250% of the ordinary hourly rate;
- (d) evening shift on Monday to Friday—**150% of the ordinary hourly rate;**

- (e) evening shift on Saturday—200% of the ordinary hourly rate;
- (f) evening shift on Sunday—250% of the ordinary hourly rate;
- (g) night shift on Sunday to Friday—**200% of the ordinary hourly rate**; and
- (h) night shift on Saturday—250% of the ordinary hourly rate.

### 23.3 Additional requirements

- (a) An employee who, by direction of the employer, reports at the commencing time of the day shift but is not employed and is instructed to report back for work on the following evening or night shift, will be paid for 4 hours at the ordinary hourly rate of pay to compensate for reporting at the commencement of the day shift in addition to their weekly wage.
- (b) An employee who, by direction of the employer, reports for work at the commencing time of the evening or night shift, will be paid the shift penalty for the full shift.
- (c) An employee who, by direction of the employer, reports for work on a Saturday, Sunday or public holiday will be paid for a minimum of 7 hours at the appropriate rate.
- (d) Except in the case of emergency:
  - (i) an employee who has worked a night shift will not be required to work the next succeeding evening shift; and
  - (ii) an employee who has worked a day shift will not be required to work the next succeeding night shift.

### 23.4 12 hour shifts

Where 12 hour shifts are introduced, the ordinary hours must not exceed an average of 35 hours per week. Twelve hour shifts are inclusive of meal breaks and rest periods.

## Part 6—Leave and Public Holidays

### 24. Annual leave

24.1 Annual leave is provided for in the [NES](#). The following provisions supplement Division 6 of the [NES](#).

#### 24.2 Shiftworkers

For the purpose of Division 6 of the [NES](#) a shiftworker is an employee who is available to work on any shift Monday to Sunday and who actually attends for work as required from time to time on both Saturday and Sunday.

**24.3 Additional leave for employees engaged in stevedoring industry on 25 November 1991**

An employee who was engaged in the stevedoring industry on 25 November 1991 maintains their entitlement to an additional week's annual leave.

**24.4 Annual leave may be taken in separate periods**

An employee may elect to take annual leave in 3 separate periods each of at least one week's duration if agreed by the employer.

**24.5 Public holidays falling during annual leave**

- (a) If a public holiday falls during an employee's annual leave, and is on a day which the employee would otherwise have worked as ordinary time, then:
  - (i) an extra day should be added to the employee's annual leave; or
  - (ii) an extra day may be taken separately at a mutually agreed time within the following 12 months.
- (b) The employee will not receive the extra day instead of the public holiday unless:
  - (i) the employee is available to start work at the next rostered shift on the first working day after their annual leave ends; or
  - (ii) the employee has reasonable cause for not being available.

**24.6 Payment for annual leave**

- (a) During a period of annual leave, the employer must pay the employee at the employee's ordinary hourly rate of pay for the employee's ordinary hours in the period.
- (b) A loading of 27.5% is payable in addition to the payment for the 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](#)).

**24.7 Pay rises occurring during a period of annual leave**

In the event that a pay increase commences during an employee's annual leave, the employee is entitled to be paid the additional entitlement for the period of the annual leave occurring on or after the date of the increase at the new rate plus the loading (in clause 24.6(b)).

**24.8 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 24.8 is set out at Schedule F—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 24.8 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 24.8, 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.

#### **24.9 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.9.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.9.
- (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 24.9 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 24.9 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 24.9 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 24.9.

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 24.9.

NOTE 3: An example of the type of agreement required by clause 24.9 is set out at Schedule G—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Cash Out Annual Leave.

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

NOTE: Clauses 24.10 to 24.12 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 (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 24.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 24.11 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 24.12 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

#### **24.11 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 24.10(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 24.11(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 24.10, 24.11 or 24.12 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and

- (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 24.11(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 24.11(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 24.11(d) may result in the direction ceasing to have effect. See clause 24.11(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.

#### **24.12 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 24.10(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 24.12(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 24.11(a) that, when any other paid annual leave arrangements (whether made under clause 24.10, 24.11 or 24.12 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 24.12(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 24.10, 24.11 or 24.12 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 24.12(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 24.2) in any period of 12 months.



- (e) The employer must grant paid annual leave requested by a notice under clause 24.12(a).

#### **24.13 Payment of accrued annual leave on termination**

The [NES](#) provides for payment of accrued annual leave upon termination. For the full [NES](#) entitlement see [section 90\(2\)](#) of the [Act](#).

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

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

#### **25.2 Payment for accrued personal/carer's leave on retirement**

Where an employee:

- (a) dies, retires, is made redundant or resigns their employment after 10 years' service; or
- (b) is accepted by their superannuation fund as totally or permanently disabled;

the employee (or in the case of death, the employee's personal legal representative) will be paid an amount equivalent to the employee's unused accumulated personal/carer's leave entitlement at the ordinary rate of pay.

#### **25.3 Payment for excess accrued sick leave**

Where an employee has accumulated as at 1 July of any year more than 28 days unused sick leave, the employee may elect to receive an amount equivalent to all or part of the accumulated sick leave in excess of 28 days at the ordinary rate of pay instead of actual leave.

#### **25.4 Evidence requirements**

- (a) The employee will, if required by the employer, establish by the production of a statutory declaration, that the employee was unable to work because of injury or personal illness.
- (b) In the case where the period of absence is extensive or where the employee failed to report for duty in circumstances where, in the employer's opinion, a requirement for confirmation for the reason for the absence is justified, the employer may require the employee to produce a legally qualified medical practitioner's certificate that the employee was unable, in the medical practitioner's opinion, to attend for work through personal illness or injury.

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

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

### **27. Community service leave**

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

## **28. Leave for attendance at repatriation centres**

**28.1** An employee, being ex-service personnel, will be allowed, as time worked, lost time incurred while attending repatriation centres for medical examination and or treatment, provided that:

- (a) such lost time does not exceed 4 hours; and
- (b) an employee produces evidence, satisfactory to the employer, that the employee is so required and/or does attend a repatriation centre.

## **29. 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.

## **30. Public holidays**

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

**30.2** Where an employee works on a public holiday they will be paid in accordance with clause 21.3(b) or 21.4(b).

### **30.3 Rostered day off for a shiftworker on a public holiday**

A shiftworker who is rostered off on the day on which a public holiday prescribed by clause 30 falls will be paid at the ordinary rate for the public holiday in addition to the ordinary weekly wage.

### **30.4 Outports**

An employee required to work in an outport on a day on which a public holiday occurs in their home port will be paid public holiday rates for such work. An employee who works in an outport on a day which is a public holiday in the outport but is not a public holiday in the employee's home port will be paid at the rate applicable in the employee's home port.

### **30.5 Day instead of holiday for 7-day continuous shiftworkers**

Tradespersons who are 7-day continuous shiftworkers will accrue a day instead of a holiday to be taken by mutual agreement between the employer and employee in respect of any shift worked on a public holiday.

### 30.6 Part-day public holidays

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

## Part 7—Consultation and Dispute Resolution

### 31. Consultation about major workplace change

**31.1** 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.

**31.2** For the purposes of the discussion under clause 31.1(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.

**31.3** Clause 31.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

**31.4** 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 31.1(b).

**31.5** In clause 31 **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.

**31.6** Where this award makes provision for alteration of any of the matters defined at clause 31.5, such alteration is taken not to have significant effect.

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

**32.1** Clause 32 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.

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

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

- (a) provide to the employees and representatives mentioned in clause 32.2 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.

**32.4** The employer must consider any views given under clause 32.3(b)

**32.5** Clause 32 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **33. Dispute resolution**

**33.1** Clause 33 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**33.2** 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.

**33.3** If the dispute is not resolved through discussion as mentioned in clause 33.2, 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.

**33.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 33.2 and 33.3, a party to the dispute may refer it to the Fair Work Commission.

**33.5** 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.

- 33.6** 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.
- 33.7** 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 33.
- 33.8** While procedures are being followed under clause 33 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.
- 33.9** Clause 33.8 is subject to any applicable work health and safety legislation.

## Part 8—Termination of Employment and Redundancy

### 34. Termination of employment

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

#### 34.1 Notice of termination by an employee

- (a) Clause 34.1 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
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 34.1(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 34.1(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 34.1(b), then no deduction can be made under clause 34.1(d).
- (f) Any deduction made under clause 34.1(d) must not be unreasonable in the circumstances.

#### **34.2 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 34.2 is to be taken at times that are convenient to the employee after consultation with the employer.

### **35. Redundancy**

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

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

- (a) Clause 35.1 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 35.1(c).
- (c) If the employer acts as mentioned in clause 35.1(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, shift rates 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, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

#### **35.2 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 35 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.

### 35.3 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 35.3(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 35.3(b).
- (d) An employee who fails to produce proof when required under clause 35.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 34.2.

## Schedule A—Classification Definitions

### A.1 Grade 1

A Grade 1 employee is an employee who is undergoing induction and initial training prior to appointment as a stevedoring employee Grade 2.

### A.2 Grade 2

A Grade 2 employee is an employee who has completed induction and initial training, has demonstrated competence and who performs such functions as required by the employer from time to time in relation to:

- (a) the operation of ITV's, small fork-lifts, bobcats and other small mechanical equipment;
- (b) shipboard and wharf duties, lashing and unlashings, packing and unpacking of containers, and other general duties;
- (c) basic servicing of equipment incidental to the performance of functions at this grade;
- (d) basic security duties incidental to the performance of functions at this grade;
- (e) clerical tasks incidental to the performance of functions at this grade;
- (f) other basic clerical tasks; and
- (g) where appropriate, functions associated with a higher grade as part of a training program.

### A.3 Grade 3

A Grade 3 employee is an employee who has attained the level of stevedoring employee Grade 2 and who has:

- (a) completed additional training and has demonstrated competence in clerical and/or operational skills at this grade, and performs such functions as required by the employer from time to time in relation to:
  - (i) operation of heavy mechanical equipment such as heavy fork-lifts, straddle carriers, transtainers, front-end loaders, excavators or fuel trucks;
  - (ii) the operation of ships gear;
  - (iii) basic servicing of equipment incidental to the performance of functions at this grade;
  - (iv) clerical tasks incidental to the performance of functions at this grade;
  - (v) semi-skilled maintenance such as equipment and vehicle servicing and the use of hand tools in relation to that maintenance, and incidental tasks;
  - (vi) general and routine clerical duties requiring the exercise of limited initiative, performed under supervision involving functions such as the processing of information or documents associated with the receipt and



delivery of cargo/containers; the loading and discharge of ships, the location of cargo in sheds or the wharf; the sorting and stacking of cargo/containers; time keeping;

- (vii) security/watching duties where this is required to be carried out as a primary function of an employee;
  - (viii) first aid duties where this is required to be carried out as a primary function of an employee;
  - (ix) where appropriate in respect to clauses A.3(a)(ii), A.3(a)(iii), A.3(a)(iv), A.3(a)(v) or A.3(a)(vi) functions associated with a higher grade as part of a training program;
- (b) been trained and selected for appointment to the classification of stevedoring employee Grade 3 in accordance with the operational requirements of the employer's enterprise.

## **A.4 Grade 4**

**A.4.1** A Grade 4 employee is an employee who has attained the level of stevedoring employee Grade 3 and who has:

- (a) completed additional training and has demonstrated competence in clerical, operational and or mechanical skills at this grade and performs such functions as are required by the employer from time to time in relation to:
  - (i) operation of specialised and complex ship's gear and or heavy shorebased cranes or gantry cranes such as a portainer crane or heavy-lift mobile wharf cranes; and
  - (ii) basic servicing of equipment incidental to the performance of functions at this grade; and
  - (iii) clerical tasks incidental to the performance of functions at this grade; or
  - (iv) clerical duties performed under general supervision requiring the exercise of initiative and a sound knowledge and experience of the tasks and procedures performed within the work area involving duties such as the processing of information and documents relating to a wide range of cargo handling functions and/or cargo availability, labour allocation and payroll; or
  - (v) is a maintenance tradesperson as defined and performs operational and or clerical functions on an incidental basis as required; or
  - (vi) monitoring and controlling the operation of refrigeration plant and its ancillary equipment under general supervision and the performance of routine mechanical maintenance in connection therewith, and any work incidental thereto; or
  - (vii) where appropriate in respect to clauses A.4.1(a)(i), A.4.1(a)(ii), A.4.1(a)(iii) or A.4.1(a)(iv) functions associated with a higher grade as part of a training program;

- (b) been trained and selected for appointment to the classification of stevedoring employee Grade 4 in accordance with the operational requirements of the employer's enterprise.

#### **A.4.2 Maintenance tradesperson**

- (a) an engineering tradesperson—level 1 as defined in the Manufacturing and Associated Industries and Occupation Award 20XX; or
- (b) a mechanical fitter, motor mechanic, boilermakers, shipwright, welder, electrical fitter, electrical mechanic, automotive electrician, or mechanical engineering tradesperson;

A maintenance tradesperson is defined in 2—Definitions.

### **A.5 Grade 5**

A Grade 5 employee is an employee who has attained the level of stevedoring employee Grade 3 or 4 and who has:

- (a) completed additional training and has demonstrated competence in the skills required at this grade and performs such functions as are required by the employer from time to time; and
  - (i) is the, or one of the key operational employees engaged on a shift and is experienced in the operation of equipment, assists and co-ordinates the work of others; works from a work plan or sequence, liaises with supervisory employees, and performs operational and incidental clerical tasks as required; or
  - (ii) in the case of an employee who works primarily in clerical functions, assists, co-ordinates or directs the work of other clerical employees, monitors the work flow in the area of responsibility, liaises with supervisory employees; performs clerical functions as required;
  - (iii) in relation to clause A.5(a)(i) and (ii) where appropriate, performs functions associated with a higher grade as part of a training program;
- (b) been trained and selected for appointment to the classification of stevedoring employee Grade 5 in accordance with the operational requirements of the employer's enterprise.

### **A.6 Grade 6**

**A.6.1** A Grade 6 employee is an employee who has attained the level of either stevedoring employee Grade 4 or 5 and who has:

- (a) completed additional training and has demonstrated competence in the skills required at this grade and performs such functions as are required by the employer from time to time in relation to:
  - (i) co-ordinating and supervising stevedoring operations and personnel as required by the employer, and compiles records, reports and information in connection therewith; or

- (ii) in the case of an employee who works primarily in clerical functions, supervising the overall operation of clerical work area(s), including any planning or organising in connection therewith; or
  - (iii) is a maintenance tradesperson special class as defined;
  - (iv) as required in respect to clause A.6.1(a)(i), (ii) or (iii), performs operational and or clerical functions on an incidental basis;
  - (v) as required in respect to clause A.6.1(a)(i), (ii) or (iii), performs functions associated with a higher grade as part of a training program;
- (b) been trained and selected for appointment to the classification of stevedoring employee Grade 6 in accordance with the operational requirements of the employer's enterprise.

#### **A.6.2 Maintenance Tradesperson Special Class**

A maintenance tradesperson special class is defined in 2—Definitions

#### **A.7 Grade 7**

A Grade 7 employee is an employee who has attained the level of stevedoring employee Grade 6 and who has:

- (a) completed additional training and has demonstrated competence in the skills required at this grade and performs such functions as are required by the employer from time to time in relation to:
  - (i) planning, controlling, co-ordinating and integrating stevedoring operations (including maintenance operations) and stevedoring employees in connection with vessels and or cargoes as allocated by the employer from time to time and compiles records, reports and information in connection therewith; and
  - (ii) operational, clerical and maintenance functions on an incidental basis; and
  - (iii) where appropriate, performs functions associated with a higher grade as part of a training program;
- (b) been trained and selected for appointment to the classification of stevedoring employee Grade 7 in accordance with the operational requirements of the employer's enterprise.

## 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 following wage-related allowances are based on the weekly [standard rate](#) defined in 2—Definitions as the minimum weekly wage for a Stevedoring employee Grade 4 in clause 16—Minimum rates=**\$856.20**. These rates are to be paid in accordance with clauses 18—Allowances and 18.2

Allowance	Clause	% of standard rate	\$	Payable
Specialist functions allowance <sup>1</sup>	18.1(c)(i)	2.87	24.57	per week
Electrician's licence allowance <sup>1</sup>	18.1(b)	4.55	38.96	per week
First aid allowance	18.1(d)	2.13	18.24	per week
Leading hand tradesperson in charge of—3 to 10 employees	18.1(e)	4.08	34.93	per week
Leading hand tradesperson in charge of—11 to 20 employees	18.1(e)	6.07	51.97	per week
Leading hand tradesperson in charge of—More than 20 employees	18.1(e)	7.76	66.44	per week
Roll-on and roll-off vessel allowance	18.1(g)	0.18	1.54	per hour
Stevedoring operations—other than in terminal operations—Explosives	18.1(h)	0.26	2.23	per hour
Stevedoring operations—other than in terminal operations—Bulk grain—barley and oats	18.1(h)	0.35	3.00	per hour
Stevedoring operations—other than in terminal operations—Bulk grain—others	18.1(h)	0.27	2.31	per hour
Stevedoring operations—other than in terminal operations—Freezer cargoes—below -12 <sup>0</sup> C	18.1(h)	0.23	1.97	per hour
Stevedoring operations—other than in terminal operations—Freezer cargoes—12 <sup>0</sup> C and above	18.1(h)	0.11	0.94	per hour
Stevedoring operations—other than in terminal operations—Nickel concentrates	18.1(h)	0.74	6.34	per hour

Allowance	Clause	% of standard rate	\$	Payable
Stevedoring operations—other than in terminal operations—First aid employees	18.1(h)	0.48	4.11	per hour
Telephone allowance	18.1(i)	1.36	11.64	per week
Terminal operation allowance—Grade 1 to 5—Operational	18.1(j)(i)	2.48	21.23	per week
Terminal operation allowance—Grade 3 to 5—Clerical	18.1(j)(i)	1.29	11.04	per week
Terminal operation allowance—Grade 4, 6 and 7—Maintenance	18.1(j)(i)	4.41	37.76	per week
Terminal operation allowance—Grade 6 and 7—Supervisory	18.1(j)(i)	2.48	21.23	per week
Terminal operation allowance—Grade 3—Security	18.1(j)(i)	1.91	16.35	per week

<sup>1</sup> These allowances apply for all purposes of this award.

### B.1.2 Adjustment of wage-related allowances

Wage-related allowances are adjusted in accordance with increases to wages and are based on percentage of the [standard rate](#) as specified.

## B.2 Expense-related allowances

B.2.1 The following expense-related allowances will be payable to employees in accordance with clause 18.2:

Allowance	Clause	\$	Payable
Vehicle allowance	18.2(b)	0.78	per km
Expenses for stevedoring employees Grade 7—car allowance	18.2(c)	76.00	per week
Laundry allowance—limited to 2 sets of overalls	18.2(d)	9.20	per week per set of overalls or other issued clothing
Day work—overtime meal allowance—Saturday, Sunday or public holiday	18.2(e)	19.80	per occasion
Shiftwork—meal allowance	18.2(f)	14.17	per occasion

Allowance	Clause	\$	Payable
Outports allowance— Overnight stay—out of pocket expenses	18.4(b)(i)	35.00	per day
Outports allowance— Overnight stay—transfer for defined number of days	18.4(b)(ii)	120.56	per day
Outports allowance— Overnight stay—transfer for flexible number of days	18.4(b)(ii)	164.15	per day
Outports allowance— Saturday, Sunday or holiday	18.4(c)(i)	105.26	per day
Outports allowance—Use of own motor vehicle	18.4(f)	0.78	per km

### 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 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:

Allowance	Applicable Consumer Price Index figure
Outports allowance	All groups
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group
Laundry allowance	Clothing and footwear group

## Schedule C—School-based apprentices

- C.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- C.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- C.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- C.4** For the purposes of clause C.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- C.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- C.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- C.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.
- C.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice or at the rate of competency-based progression, if provided for in this award.
- C.9** The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration) or stages of competency based progression, if provided for in this award. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- C.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- C.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule D—Supported Wage System

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

**D.2** In this schedule:

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

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

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (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

### **D.3 Eligibility criteria**

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

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



**D.4 Supported wage rates**

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

<b>Assessed capacity (clause D.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

**D.4.2** Provided that the minimum amount payable must be not less than \$87 per week.

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

**D.5 Assessment of capacity**

**D.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the 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.

**D.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the [Act](#).

**D.6 Lodgement of SWS wage assessment agreement**

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

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

**D.7 Review of assessment**

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

## **D.8 Other terms and conditions of employment**

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

## **D.9 Workplace adjustment**

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

## **D.10 Trial period**

- D.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- D.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.

## Schedule E—Agreement for Time Off Instead of Payment for Overtime

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

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

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

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

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ \_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ \_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

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

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

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

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

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

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

## Schedule F—Agreement to Take Annual Leave in Advance

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 G—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 H—Part-day Public Holidays

- H.1** This schedule operates in conjunction with award provisions dealing with public holidays.
- H.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 H.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 H.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.
  - (h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.
- H.3** This schedule is not intended to detract from or supplement the [NES](#).