

The Restaurant Industry Award—plain language exposure draft was last published on 29 March 2019. Changes since that date are as follows:

Publication date	Amendments	Clauses affected
29 March 2019	Clause 1—Title and commencement updated in accordance with [2015] FWCFB 4658 at [4] and [2015] FWCFB 6656 at [74]	1.3
	Clause 2—Definitions updated to include new definition in accordance with [2018] FWCFB 6709	2
	Definition of “restaurant industry” moved to clause 4.2 and signpost definition added in accordance with [2017] FWCFB 3433 at [339]	2, 4.2
	Clause 6A—Requests for flexible working arrangements inserted in accordance with PR701522	6A
	Clause 11—Casual employment updated in accordance with [2018] FWCFB 6709 and to insert a new subclause in accordance with PR700607	11.2, 11.7
	Clause 12—Apprentices updated in accordance with [2018] FWCFB 6709	12.3, 12.4, 12.6, 12.7, 12.8
	Clause 14—Classifications updated in accordance with [2018] FWCFB 6709	14
	Clause 16—Breaks updated in accordance with [2018] FWCFB 6709	16.1
	Note inserted in accordance with [2015] FWCFB 4658 at [57].	19
	Clause 22—Payment of wages updated in accordance with [2018] FWCFB 6709	19.4
	Clause 24—Allowances updated in accordance with [2018] FWCFB 6709	21.5
	Clause 26—Overtime updated in accordance with [2018] FWCFB 6709	23.1
	Clause 28—Annual leave updated in accordance with [2018] FWCFB 6709	25.2
	Clauses 39 – 41 – Redundancy provisions structure is subject to further consideration by the Full Bench in accordance with [2018] FWCFB 6439	36
Schedule H—Part-day Public Holidays updated in accordance with PR701683	Schedule H	
	Exposure Draft	
14 October 2019	Incorporating changes resulting from [2015] FWCFB 4658 at [57]	21
	Incorporating changes resulting from [2019] FWCFB 1333 at [35]	1.4 and 1.5 (deleted)

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Publication date	Amendments	Clauses affected
	Incorporating changes resulting from [2019] FWCFB 2548, PR707026	36
	Incorporating changes resulting from AWR 2018–19 Decision [2019] FWCFB 3500, PR707538, PR707764, PR709080	18, 21, Schedule B, Schedule C, Schedule E
	Incorporating changes resulting from [2019] FWCFB 5144	29
	Incorporating changes resulting from [2019] FWCFB 5145, PR712266	7, 30, Schedule H
	Incorporating changes resulting from [2019] FWCFB 5409	18
	Incorporating changes resulting from [2019] FWCFB 5868, PR711633	19
	Incorporating changes resulting from [2019] FWCFB 6953	B.1.4, B.2.4
	Administrative changes made by Modern Awards team to the document structure, Part and clause titles, and content in accordance with [2019] FWCFB 5409 at [6] and Attachment A	5 (relocated at 1.3), 9, 10, 11
	Administrative changes made by Modern Awards team	18.1
	Administrative changes made by Modern Awards team to incorporate previous A clauses into the numbering of the exposure draft	6
	Administrative change by Modern Awards team	11.2, 25.9, 23.4, Schedule B

PLAIN LANGUAGE EXPOSURE DRAFT

Restaurant Industry Award 20XX

This plain language exposure draft has been prepared by staff of the Fair Work Commission based on the *Restaurant Industry Award 2010* (Restaurant Award) as at 21 April 2017 and incorporates award updates up to 20 September 2019. This exposure draft does not seek to amend any entitlements under the Restaurant Award. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques to award-specific provisions.

The review of this award in accordance with section 156 of the *Fair Work Act 2009* is being dealt with in matter [AM2016/15 and AM2014/284](#). Additionally, a number of common issues

are being dealt with by the Commission which may affect this award. Some transitional provisions have been deleted as a result of decisions made during the review.

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

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Part 1—Application and Operation of this Award

1. Title and commencement

Clauses 1.4 and 1.5 deleted in accordance with [\[2019\] FWCFB 1333](#) at [35].

- 1.1 This is the *Restaurant Industry Award 20XX*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- ~~1.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take home pay of employees covered by this award.~~
- ~~1.5 On application by or on behalf of an employee who suffers a reduction in take home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.~~

2. Definitions

In this award:

Act means the [Fair Work Act 2009](#) (Cth).

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

adult employee means an employee who is 21 years of age or over.

appropriate level of training, in relation to an employee, means that the employee:

- (a) has completed an appropriate training program that meets the training and assessment requirements of a qualification or one or more appropriate units of competency forming part of a training package; or
- (b) has been assessed by a qualified skills assessor as having skills at least equivalent to those attained in an appropriate training program; or
- (c) other than a Food and beverage attendant grade 2 as defined in Schedule A—Classification Structure and Definitions, as at 31 December 2009, had been doing the work of a particular classification for a period of at least 3 months.

NOTE 1: The minimum classification level for an employee who has completed AQF Certificate III or higher qualifications relevant to the classification in which they are employed and who makes use of skills and knowledge derived from

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Certificate III competencies relevant to the work undertaken is Level 4 specified in clause 18.1—Adult rates. Any dispute about an employee’s entitlement to be paid at Level 4 must be dealt with in accordance with clause 34—Dispute resolution.

NOTE 2: In order for a Food and beverage attendant grade 2 to be classified at grade 3, the employee must have completed AQF Certificate II qualifications relevant to the grade 3 classification.

catering by a restaurant business means the provision by a restaurant of catering services for any social or business function where those services are incidental to the major business of the restaurant.

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

employee means a national system employee as defined by section 13 of the [Act](#).

employer means a national system employer as defined by section 14 of the [Act](#).

enterprise instrument has the meaning given by subitem 2(1) of Schedule 6 to the [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009](#) (Cth).

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

Fair Work Regulations means the *Fair Work Regulations 2009* (Cth).

junior employee means an employee who is less than 21 years of age.

liquor service employee means a person employed to sell or dispense liquor in bars, bottle departments or shops and includes a cellar employee.

long term casual employee has the meaning given by section 12 of the [Act](#).

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

National Employment Standards, see Part 2-2 of the [Act](#). Divisions 3 to 12 of Part 2-2 of the [Act](#) constitute the *National Employment Standards*. An extract of section 61 of the [Act](#) is reproduced below.

The National Employment Standards are minimum standards applying to employment of employees. The minimum standards relate to the following matters:

- (a) maximum weekly hours (Division 3);
- (b) requests for flexible working arrangements (Division 4);
- (c) parental leave and related entitlements (Division 5);
- (d) annual leave (Division 6);
- (e) personal/carer's leave and compassionate leave and unpaid family and domestic violence leave (Division 7);

- (f) community service leave (Division 8);
- (g) long service leave (Division 9);
- (h) public holidays (Division 10);
- (i) notice of termination and redundancy pay (Division 11);
- (j) Fair Work Information Statement (Division 12).

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

restaurant industry is defined in clause 4.2.

rostered day off means a continuous 24 hour period between the end of the last ordinary shift, and the start of the next ordinary shift, on which an employee is rostered for duty.

shiftworker, see clause 25.2 (Annual leave).

spread of hours means the period between when an employee starts and finishes work within any period of 24 hours.

standard hourly rate means the minimum hourly rate for a Level 4 classification (Cook grade 3 (tradesperson)) in **Table 2—Minimum rates**.

standard rate means the minimum rate for a Level 4 classification (Cook grade 3 (tradesperson)) in **Table 2—Minimum rates**.

standard weekly rate means the minimum weekly rate for a Level 4 classification (Cook grade 3 (tradesperson)) in **Table 2—Minimum rates**.

State reference public sector modern award has the meaning given by subitem 3(2) of Schedule 6A to the [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009 \(Cth\)](#).

State reference public sector transitional award has the meaning given by subitem 2(1) of Schedule 6A to the [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009 \(Cth\)](#).

Table 1—Facilitative provisions means the Table in clause 7.2.

Table 2—Minimum rates means the Table in clause 18.1.

Table 3—Junior rates means the Table in clause 18.2(a).

Table 4—Junior cooking apprentice minimum rates means the Table in clause 18.3(a).

Table 5—Overtime rates means the Table in clause 23.4.

Table 6—Penalty rates means the Table in clause 24.2(c).

Table 7—Period of notice means the Table in clause 35.1(b).

training agreement means the apprenticeship training arrangement, however termed, relevant to the State and Territory apprenticeship legislation entered into by an apprentice and an employer.

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 of the [NES](#) are available to all employees to whom they apply, either on a notice board conveniently located at or near the workplace or through accessible electronic means.

4. Coverage

- 4.1 This industry award covers, to the exclusion of any other modern award:
- (a) employers in the restaurant industry throughout Australia; and
 - (b) employees (with a classification defined in Schedule A—Classification Structure and Definitions) of employers mentioned in ~~paragraph (a)~~ clause 4.1(a).
- 4.2 In this award **restaurant industry** means restaurants, reception centres, night clubs, cafés or roadhouses and includes catering by a restaurant business and a tea room operated in, or in connection with, a restaurant business but does not include a restaurant operated in, or in connection with, premises owned or operated by an employer covered by any of the following awards:
- (a) *Hospitality Industry (General) Award 20XX*; or
 - (b) *Registered and Licensed Clubs Award 20XX*; or
 - (c) *Fast Food Industry Award 20XX*.
- 4.3 This industry award also covers:
- (a) on-hire employees working in the restaurant industry (with a classification defined in Schedule A—Classification Structure and Definitions) and the on-hire employers of those employees; and
 - (b) apprentices or trainees employed by a group training employer and hosted by an employer covered by this award to work in the restaurant industry (with a classification defined in Schedule A—Classification Structure and Definitions) and the group training employers of those apprentices or trainees.
- 4.4 However, this industry award does not cover any of the following:

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- (a) employees excluded from award coverage by the [Act](#); or
- NOTE: See section 143(7) of the [Act](#).
- (b) employees covered by a modern enterprise award or an enterprise instrument or their employers; or
- (c) employees covered by a State reference public sector modern award or a State reference public sector transitional award or their employers; or
- (d) employers in the following industries or activities or their employees:
- (i) contract caterers whose principal business activity is providing catering services or accommodation services on a contract or fee-for-service basis; and
 - (ii) retail industry; and
 - (iii) fast food industry; and
 - (iv) in-flight catering for airlines; and
 - (v) catering services provided by employers in the aged care industry; and
 - (vi) boarding schools and residential colleges; and
 - (vii) hospitals; and
 - (viii) orphanages; and
 - (ix) hotels, motels, hostels and boarding establishments; and
 - (x) clubs registered or recognised under State or Territory legislation; and
 - (xi) restaurants operated in or in connection with hotels, motels, hostels and boarding establishments, or clubs registered or recognised under State or Territory legislation.

4.5 If an employer is covered by more than one award, an employee of that employer is covered by the award containing the classification that is most appropriate to the work performed by the employee and the industry in which they work.

NOTE: An employee working in the restaurant industry who is not covered by this industry award may be covered by an award with occupational coverage.

~~Effect of variations made by the Fair Work Commission~~

Clause 5 deleted as a result of re-structure [\[2019\] FWCFB 5409](#) at [6].

~~A variation to this award made by the Fair Work Commission does not affect any right, privilege, obligation or liability acquired, accrued or incurred under this award as in force before that variation.~~

5. Individual flexibility arrangements

Clause 5 being reviewed in [AM2017/57](#). See [\[2019\] FWCFB 6092](#) at [9] to [17] and [\[2019\] FWCFB 6898](#) (see draft determination at Attachment 1).

- 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 should reasonably 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 of the [Act](#) 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 34—Dispute resolution.

7. Facilitative provisions ~~for flexible working practices~~

Clause 7 amended in accordance with [\[2019\] FWCFCB 5145](#) at [50]. Consequential amendment as a result of [PR712266](#)

7.1 This award contains facilitative provisions which allow agreement between an employer and an individual employee, or the majority of employees, on how specific award provisions are to apply at the workplace.

7.2 The following clauses have facilitative provisions:

Table 1—Facilitative provisions

Clause	Provision	Agreement between an employer and:
15.2(a)	Make-up time (introduction of system of make-up time)	the majority of employees
15.2(b)	Make-up time (agreement to take make-up time)	an individual employee
19.1	Payment of wages	an individual employee
19.2	Payment of wages	the majority of employees
23.5	Time off instead of payment for overtime	an individual employee
24.4(c)	Alternative payment for work on public holiday	an individual employee
25.8	Annual leave in advance	an individual employee
25.9	Cashing out of annual leave	an individual employee
30.2	Substitution of public holidays by agreement	the majority of employees an individual employee

7.3 The agreement must be kept by the employer as a time and wages record.

Part 2—Types of Employment and Classifications

8. Types of employment

8.1 An employee covered by this award must be one of the following:

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

8.2 At the time of engaging an employee, the employer must inform the employee of the terms of their engagement, including whether they are engaged as a full-time, part-time or casual employee.

9. Full-time employees employment

An employee who is engaged to work an average of 38 ordinary hours per week over a period of no more than 4 weeks is a full-time employee.

10. Part-time employees employment

10.1 Classifications

An employer may employ a part-time employee in any classification defined in Schedule A—Classification Structure and Definitions.

10.2 Definition of part-time employee

A part-time employee is an employee who:

- (a) is engaged to work at least 8 and fewer than 38 ordinary hours per week (or, if the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle); and
- (b) has reasonably predictable hours of work.

10.3 A part-time employee is entitled, on a proportionate basis, to the same pay and conditions as those of full-time employees who do the same kind of work.

10.4 Setting guaranteed hours and availability

At the time of engaging a part-time employee, the employer must agree in writing with the employee on all of the following:

- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
- (b) the days of the week on which, and the hours on those days during which, the employee is available to work the guaranteed hours (**the employee's availability**).

10.5 Any change to a part-time employee's guaranteed hours may only be made with the written consent of the employee.

10.6 Rostering

The employer may roster a part-time employee to work their guaranteed hours and any additional hours in accordance with clause 15.3—Rosters (full-time and part-time employees).

10.7 However, a part-time employee:

- (a) must not be rostered to work any hours outside the employee's availability; and
- (b) the employee must not be rostered to work in excess of 11.5 hours or fewer than 3 hours in a day; and

- (c) must have 2 days off each week.

10.8 Increasing guaranteed hours to match regular work pattern

If a part-time employee has regularly worked a number of ordinary hours in excess of their guaranteed hours for at least 12 months, then they may request in writing that the employer agree to increase their guaranteed hours.

- 10.9** If the employer agrees to a request under clause 10.8, then the employer and the part-time employee must vary the agreement made under clause 10.4 to reflect the employee's new guaranteed hours. The variation must be recorded in writing before it occurs.

- 10.10** The employer may only refuse a request under clause 10.8 on reasonable business grounds. The employer must notify the part-time employee in writing of a refusal and the grounds for it.

10.11 Change in employee's circumstances that changes their availability

If there is a genuine and ongoing change in the part-time employee's personal circumstances, then they may alter the times they are available by giving 14 days' written notice of the alteration to the employer.

- 10.12** If the employer cannot reasonably accommodate the alteration to the part-time employee's availability under clause 10.11, then (regardless of clause 10.5):

- (a) the part-time employee's guaranteed hours agreed under clause 10.4 cease to apply; and
- (b) the employer and the part-time employee must agree a new set of guaranteed hours under clause 10.4.

10.13 Payment rates

- (a) An employer must pay a part-time employee for ordinary hours worked in accordance with clause 18—Minimum rates.
- (b) An employer must pay a part-time employee at the rates prescribed in clause 23.4—Overtime rate for all time worked in excess of:
 - (i) 38 hours per week (or, if the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle); or
 - (ii) the maximum daily hours limitations specified in clause 15.1 (Ordinary hours of work); or
 - (iii) the employee's rostered hours.

10.14 Pre 1 January 2018 agreed pattern of work

A part-time employee who immediately before 1 January 2018 had a written agreement with their employer on a regular pattern of work is entitled to continue to be rostered in accordance with that agreement but may enter into a new written agreement under clause 10.4.

11. **Casual ~~employee~~employment**

Administrative change to clause 11.2 by Modern Awards team.

- 11.1** An employee is a casual employee if they are engaged as a casual employee.
- 11.2** An employer must pay a casual employee for each ~~ordinary~~ hour worked a loading of **25%** in addition to the minimum hourly rate otherwise applicable under clause 18—Minimum rates.
- 11.3** A casual employee may be engaged to work:
- (a) a maximum of 12 hours per day or per shift;
 - (b) a maximum of 38 hours per week or, if the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).
- 11.4** A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.
- 11.5** An employer must pay a casual employee at the end of each engagement unless the employer and the employee have agreed that the pay period of the employee is either weekly or fortnightly.
- 11.6** An employer must pay a casual employee at the rates prescribed in clause 23.4—Overtime rate for all time worked in excess of the hours prescribed in clause 11.3.
- 11.7 Right to request casual conversion**
- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
 - (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
 - (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
 - (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
 - (e) Any request under this subclause must be in writing and provided to the employer.
 - (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request

may only be refused on reasonable grounds and after there has been consultation with the employee.

- (g) Reasonable grounds for refusal include that:
- (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award—that is, the casual employee is not truly a regular casual employee as defined in ~~paragraph (b)~~ clause 11.7(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 34—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.7, the employer and employee must discuss and record in writing:
- (i) the form of employment to which the employee will convert—that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.4.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.7.
- (o) Nothing in clause 11.7 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.7 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.7(q).

12. Apprentices

Clause 12 being reviewed in [AM2017/57](#). See [\[2019\] FWCFB 6092](#) at [41] to [47] and [\[2019\] FWCFB 6898](#) (see draft determination at Attachment 1).

- 12.1 An employer may engage apprentices.
- 12.2 Any engagement must be in accordance with the law regulating apprenticeships in force in the place in which the apprentice is engaged.
- 12.3 This award applies to an apprentice in the same way that it applies to an employee except as otherwise expressly provided by this award.
- 12.4 An employer must pay an apprentice in accordance with clauses 18.3—Junior cooking apprentice rates, 18.4—Proficiency payments and 18.5—Adult apprentices.
- 12.5 An employer must not require an apprentice under the age of 18 to work overtime. However, such an apprentice may agree to work overtime if requested to do so.
- 12.6 Except in an emergency, an employer must not require an apprentice to work overtime or shiftwork at any time that would prevent their attendance at training in accordance with their training agreement.
- 12.7 **Training**
 - (a) An employer must release an apprentice from work to attend training or any assessment in accordance with their training agreement without loss of pay or continuity of employment.

- (b) Subject to Schedule D—School-based Apprentices, time spent by an apprentice in attending training or any assessment in accordance with their training agreement is to be regarded as time worked for the employer for the purpose of calculating the apprentice's wages and determining the apprentice's employment conditions.
- (c) An employer must reimburse an apprentice for all fees paid by the apprentice themselves to a registered training organisation (RTO) for courses that the apprentice is required to attend, and all costs incurred by the apprentice in purchasing textbooks (not provided or otherwise made available by the employer) that the apprentice is required to study, for the purposes of the apprenticeship.
- (d) The employer must make any reimbursement required under ~~paragraph (e) clause~~ 12.7(c) by whichever of the following is the later:
 - (i) 6 months after the start of the apprenticeship; or
 - (ii) 6 months after the relevant stage of the apprenticeship; or
 - (iii) 3 months after the start of the training provided by the RTO.
- (e) Reimbursement under ~~paragraph (e) clause~~ 12.7(c) is subject to the employer being satisfied that the apprentice is making satisfactory progress in the apprenticeship.

12.8 Block release training

- (a) Clause 12.8 applies to an apprentice who is required to attend block release training in accordance with their training agreement.
- (b) If the training requires an overnight stay, the employer must pay for the reasonable travel costs incurred by the apprentice in travelling to and from the training.
- (c) The employer is not obliged to pay costs under ~~paragraph (b) clause~~ 12.8(b) if the apprentice could have attended training at a closer venue and attending the more distant training had not been agreed between the employer and the apprentice.
- (d) Reasonable travel costs in ~~paragraph (b) clause~~ 12.8(b) include:
 - (i) the total cost of reasonable transportation (including transportation of tools, where required) to and from the training; and
 - (ii) accommodation costs; and
 - (iii) reasonable expenses, including for meals, incurred which exceed those incurred in the normal course of travelling to and from the workplace.
- (e) Reasonable costs in ~~paragraph (b) clause~~ 12.8(b) do not include payment for travelling time or expenses incurred while not travelling to and from the block release training.

- (f) The amount an employer must pay under ~~paragraph (b) clause~~ 12.8(b) may be reduced by any amount that the apprentice has received, or was eligible to receive, for travel costs to attend block release training under a Government apprentice assistance scheme.
- (g) The employer may only make a reduction under ~~paragraph (f) clause~~ 12.8(f) for an amount that an apprentice was eligible to receive, but did not receive, if the employer advised the apprentice in writing of the availability of the assistance and the apprentice chose not to seek it.

13. Junior employees

NOTE: Junior employee is defined in clause 2—Definitions.

- 13.1 An employer may engage junior employees.
- 13.2 An employer must pay a junior employee in accordance with **Table 3—Junior rates**.
- 13.3 An employer must not require an employee under 18 years of age to work more than 10 hours in a shift.
- 13.4 Where the law permits, junior employees may work in a bar or other place where liquor is sold or dispensed.
- 13.5 Junior employees working as liquor service employees must be paid as an adult in accordance with **Table 2—Minimum rates** at the classification rate for the work being performed.
- 13.6 An employer may at any time demand that a junior employee produce a birth certificate or other satisfactory proof of age. If the employer demands a birth certificate, the employer must pay the cost of obtaining the certificate.

14. Classifications

An employer must classify an employee covered by this award in accordance with Schedule A—Classification Structure and Definitions.

NOTE: The minimum rates applicable to the classifications in this award are in clause 18—Minimum rates.

Part 3—Hours of Work

15. Ordinary hours of work and rostering arrangements

NOTE: A full-time employee must work an average of 38 ordinary hours per week in a period of no more than 4 weeks. See clause 9—Full-time .

15.1 An arrangement for working ordinary hours must satisfy all of the following conditions:

- (a) the minimum number of ordinary hours that may be worked by a full-time employee on any day is 6 (excluding meal breaks); and
- (b) the maximum number of ordinary hours that may be worked on any day is 11.5 (excluding meal breaks); and
- (c) an employee who is rostered to work more than 10 ordinary hours on more than 3 consecutive days is entitled to a break of at least 48 hours after the last consecutive day on which the employee works more than 10 ordinary hours; and
- (d) the maximum number of days on which an employee may work more than 10 ordinary hours in a 4 week cycle is 8; and
- (e) an employee (other than a casual employee) must have a minimum break of 10 hours between when the employee finishes ordinary hours on one day and starts ordinary hours on the next and a minimum break of 8 hours for a changeover of rosters; and
- (f) an employee must have a minimum of 8 full days off work in a 4 week period; and
- (g) the maximum spread of hours for an employee who works split shifts is 12.

NOTE: An employee under the age of 18 years must not be required to work more than 10 hours in a shift. See clause 13.3 (Junior employees).

15.2 Make-up time

- (a) The employer and the majority of employees at a workplace may agree to introduce an arrangement at the workplace under which an employee takes time off during the employee's ordinary hours of work and makes up that time later.
- (b) If an agreement under ~~paragraph (a)~~ clause 15.2(a) has been made for a workplace, an employee may elect, with the consent of the employer, to take time off and make up that time later.
- (c) An employee working make-up time is entitled to breaks in accordance with clause 16—Breaks.
- (d) If make-up time is worked at a time when penalty rates are applicable under clause 24—Penalty rates, the employer must pay the employee in accordance with **Table 6—Penalty rates** for that time.
- (e) The employer must keep a record of make-up time arrangements as a time and wages record.

15.3 Rosters (full-time and part-time employees)

- (a) The following rostering provisions apply to full-time and part-time employees.

- (b) The employer must prepare a roster showing for each employee their name and the times at which they start and finish work.
- (c) The employer must post the roster in a conspicuous place that is easily accessible by the employees.
- (d) The roster of an employee may be changed at any time by the employer and employee by mutual agreement or by the employer giving the employee 7 days' notice of the change.

15.4 Notice of days off (including rostered days off)

- (a) An employer must, where practicable, give an employee a minimum of 2 weeks' notice of any rostered day off.
- (b) A rostered day off may be changed by the employer and employee by mutual agreement or for any reason beyond the control of the employer (including sickness).

16. Breaks

Clause 16 being reviewed in [AM2017/57](#). See [\[2019\] FWCFB 6092](#) at [18] – [21], [68] and [\[2019\] FWCFB 6898](#) (see draft determination at Attachment 1).

- 16.1 Clause 16 deals with meal breaks and rest breaks and gives an employee an entitlement to them in specified circumstances..
- 16.2 An employee who is required to work for 5 hours or more in a day is entitled to an unpaid meal break of at least 30 minutes.
- 16.3 An unpaid meal break must not be taken within the first hour of work or later than the first 6 hours of work.
- 16.4 An employee who is rostered to take their unpaid meal break later than 5 hours after starting work is entitled to an additional paid meal break of 20 minutes (to be taken after the first 2 hours of work and within the first 5 hours of work).
- 16.5 If an employee is not allowed to take an unpaid meal break at the rostered time, the employer must pay the employee at the rate of **150%** of the employee's minimum hourly rate from when the meal break was due to be taken until either the employee is allowed to take it or the shift ends.
- 16.6 If there is no rostered time for an employee to take an unpaid meal break and the employee is not allowed to take a meal break in accordance with clause 16.3, the employer must pay the employee at the rate of **150%** of the employee's minimum hourly rate from the end of 6 hours after starting work until either the employee is allowed to take it or the shift ends.

16.7 Additional rest break

- (a) An employer must give an employee an additional paid rest break of 20 minutes in any of the following circumstances:
 - (i) the employee is required to work more than 5 continuous hours after an unpaid meal break; or
 - (ii) the employee is required to work more than 2 hours' overtime after finishing their rostered hours.
- (b) A full-time or part-time employee who is required to work more than 10 ordinary hours in the day is entitled to 2 additional paid rest breaks of 20 minutes.
- (c) In rostering for the 2 additional paid rest breaks of 20 minutes to which an employee is entitled under ~~paragraph (b)~~ clause 16.7(b), the employer must make all reasonable efforts to ensure that breaks are spread evenly across the shift.

Part 4—Wages and Allowances

17. Work organisation

An employer may require an employee to perform duties across the different classification streams set out in Schedule A—Classification Structure and Definitions that they are competent to perform.

18. Minimum rates

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.
Minimum rates table amended in accordance with [\[2019\] FWCFB 5409](#) at [114].
Administrative changes made to clause 19.1 to ensure consistency with Schedule A—Classification Structure and Definitions.

18.1 Adult rates

An employer must pay an adult employee (other than an apprentice) the rate applicable to the employee classification specified in column 1 of **Table 2—Minimum rates** for ordinary hours of work as follows:

- (a) for a full-time employee, the minimum weekly rate specified in column ~~32 of~~ **Table 2—Minimum rates**; or
- (b) for a part-time employee, the minimum hourly rate specified in column ~~43 of~~ **Table 2—Minimum rates**.

NOTE 1: Adult employee is defined in clause 2—Definitions.

NOTE 2: Provisions for calculating rates for a junior employee are at clause 18.2.

Table 2—Minimum rates

Column 1 Employee classification	Column 2 Employee stream and grade	Column 3 Minimum weekly rate (full-time employee)	Column 4 Minimum hourly rate
		\$	\$
Introductory level		740.80	19.49
Level 1	Food and beverage attendant grade 1; Kitchen attendant grade 1	762.10	20.06
Level 2	Food and beverage attendant grade 2; Cook grade 1; Kitchen attendant grade 2; Clerical grade 1; Storeperson grade 1; Door person/security officer grade 1	791.30	20.82
Level 3	Food and beverage attendant grade 3; Cook grade 2; Kitchen attendant grade 3; Clerical grade 2; Storeperson grade 2 Timekeeper/security officer grade 2; Handyperson	818.50	21.54
Level 4	Food and beverage attendant grade 4 (tradesperson); Cook grade 3 (tradesperson); Clerical grade 3; Storeperson grade 3	862.50	22.70
Level 5	Food and beverage supervisor; Cook grade 4 (tradesperson); Clerical supervisor	916.60	24.12
Level 6	Cook grade 5 (tradesperson)	941.10	24.77

NOTE 3: Provisions for calculating rates for casual employees are at clause 11—Casual .

NOTE 4: Schedule B—Summary of Hourly Rates of Pay contains a summary of hourly rates of pay including casual, overtime and penalty rates.

18.2 Junior rates

NOTE: Junior employee is defined in clause 2—Definitions.

- (a) An employer must pay a junior employee aged as specified in column 1 of **Table 3—Junior rates** the minimum percentage specified in column 2 of the minimum rate that would otherwise be applicable under **Table 2—Minimum rates**:

Table 3—Junior rates

Column 1 Age	Column 2 Minimum % of minimum rate
16 years of age and under	50
17 years of age	60
18 years of age	70
19 years of age	85
20 years of age	100

- (b) A minimum rate calculated in accordance with **Table 3—Junior rates** must be rounded to the nearest **\$0.10**.
- (c) An amount that is in dollars and a number of cents is rounded to the nearest **\$0.10**:
- (i) if the amount of cents is **\$0.06** or more, by increasing that amount to the next **\$0.10**; or
 - (ii) if the number of cents is **\$0.05** or less, by deducting those cents from that amount.

18.3 Junior cooking apprentice rates

Clauses 18.3 to 18.5 being reviewed in [AM2017/57](#). See [\[2019\] FWCFB 6092](#) at [41] to [47] and [\[2019\] FWCFB 6898](#) (see draft determination at Attachment 1).

- (a) An employer must pay an apprentice the rate applicable to the year of the apprenticeship specified in column 1 of **Table 4—Junior cooking apprentice minimum rates** as follows:
- (i) for a full-time employee, the minimum weekly rate specified in column 3; or
 - (ii) for a part-time employee, the minimum hourly rate specified in column 4.

Table 4—Junior cooking apprentice minimum rates

Column 1 Year of apprenticeship	Column 2 % of the standard rate	Column 3 Minimum weekly rate <i>(full-time employee)</i>	Column 4 Minimum hourly rate
		\$	\$
1st year	55	474.38	12.48
2nd year	65	560.63	14.75
3rd year	80	690.00	18.16
4th year	95	819.38	21.56

NOTE: The minimum rates are the percentage of the standard rate specified in column 2 of **Table 4—Junior cooking apprentice minimum rates**.

- (b) An employer must pay an employee who has completed a full apprenticeship as a qualified tradesperson at not less than the standard rate.

18.4 Proficiency payments

An employer must pay a 4th year apprentice as follows:

- (a) at the 4th year apprentice rate specified in **Table 4—Junior cooking apprentice minimum rates** for the first 9 months of the year and the standard rate for the rest of the year if the apprentice has successfully completed their schooling for a year on one occasion only;
- (b) at the 4th year apprentice rate specified in **Table 4—Junior cooking apprentice minimum rates** for the first 6 months of the year and the standard rate for the rest of the year if the apprentice has successfully completed their schooling for a year on 2 occasions;
- (c) at the standard rate for the entire 4th year if the apprentice has successfully completed their schooling for a year on 3 occasions.

18.5 Adult apprentices

NOTE: Adult apprentice is defined in clause 2—Definitions.

- (a) An employer must pay a first year adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship at not less than whichever of the following is the greater:
 - (i) 80% of the standard rate; or
 - (ii) the rate in **Table 4—Junior cooking apprentice minimum rates** for the first year of the apprenticeship.
- (b) An employer must pay an adult apprentice who commenced on or after 1 January 2014 and is in the second or a subsequent year of the apprenticeship at not less than whichever of the following is the greater:

- (i) the lowest rate in **Table 2—Minimum rates**; or
 - (ii) the rate in **Table 4—Junior cooking apprentice minimum rates** for the relevant year of the apprenticeship.
- (c) ~~Paragraph (d) Clause~~ 18.5(d) applies to an employee who, immediately before entering into a training agreement as an adult apprentice with an employer, had been employed by the employer as a full-time employee for not less than 6 months, or as a part-time or long term casual employee for not less than 12 months.
- (d) The minimum rate that was applicable to the employee immediately before the person entered into the training agreement continues to be applicable to the employee throughout the apprenticeship.

18.6 Supported wage system

For employees eligible for a supported wage, see Schedule E— Supported Wage System.

18.7 National training wage

- (a) Schedule E to the *Miscellaneous Award 20XX+0* 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+0* as at 1 July 2019-2018. For that purpose, any reference to “this award” in Schedule E to the *Miscellaneous Award 20XX+0* is to be read as referring to the *Restaurant Industry Award 20XX+0* and not the *Miscellaneous Award 20XX+0*.

18.8 Higher duties

- (a) An employer must pay an employee who performs for 2 or more hours on any particular day duties of a classification higher than the employee’s ordinary classification the minimum hourly rate specified in column 34 of **Table 2—Minimum rates** for that higher classification for the whole of that day.
- (b) An employer must pay an employee who performs for less than 2 hours on any particular day duties of a classification higher than the employee’s ordinary classification the minimum hourly rate specified in column 3-4 of **Table 2—Minimum rates** for that higher classification for the time during which those duties were performed.
- (c) An employer may require an employee to temporarily perform the duties of a classification lower than the employee’s ordinary classification without loss of pay.

~~Supported wage system~~

~~National training wage~~

~~Higher duties~~

19. Payment of wages

Clause 19 amended in accordance with [\[2019\] FWCFB 5868](#) and [PR711633](#).

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.

- 19.1** The employer may determine the pay period of an employee as being either weekly or fortnightly. However, the employer and an individual employee may agree to a monthly pay period.
- 19.2** Except on termination of employment, wages may be paid on any day of the week other than a Friday, Saturday or Sunday. However, if the employer and the majority of employees at a workplace agree, wages may be paid on the Friday of a week during which there is a public holiday.
- 19.3** Wages may be paid, without cost to the employee, by cash, cheque or electronic funds transfer into a bank account nominated by the employee.
- 19.4** An employee paid by cash or cheque who has a rostered day off on a pay day is entitled, at the employee's election, to be paid on their last day at work before their rostered day off.
- ~~**19.5** On termination of employment (whether as a result of the employee giving notice of termination of employment or their employment being terminated by the employer) the employer must pay all wages due during working hours before the employee leaves the workplace.~~
- ~~**19.6** However, if the employee is dismissed for misconduct, the employer must pay all wages due within one hour after the dismissal or as soon as practicable after that time.~~

19.5 Payment on termination of employment

- (a) Subject to clause 19.5(b), 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) Where a casual employee is paid at the end of each engagement pursuant to clause 11.5 of this Award, and that employee's employment is terminated, the

employer must pay the employee their wages due under the award at the end of their last engagement.

(c) The requirement to pay wages and other amounts under clause 19.5(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 19.5(c) allows the Commission to make an order delaying the requirement to make a payment under clause 19.5. 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.

20. Annualised salary arrangements

Annualised salaries are being reviewed in [AM2016/13](#).

- 20.1 Clause 20 applies to all employees other than casual employees.
- 20.2 An individual employee may agree with their employer to be paid an annualised salary. An agreement must be one that is genuinely made without coercion or duress.
- 20.3 An annualised salary must be at least **125%** of the minimum weekly rate that would otherwise be applicable under **Table 2—Minimum rates** over the year.
- 20.4 An annualised salary satisfies this award in relation to penalty rates and overtime.
- 20.5 An annualised salary must not result in an employee being paid less over a year (or, if the employee’s employment is terminated before a year is completed, over the period of that employment) than would have been the case if an annualised salary had not been agreed and the employee had instead been paid their weekly rate and any other amounts satisfied by the annualised salary.
- 20.6 An employee who has entered into an agreement under clause 20.2 must be rostered to have a minimum of 8 days off duty during each 4 week cycle of work.
- 20.7 An employee who has entered into an agreement under clause 20.2 and who is required to work on a public holiday is entitled to paid time off of equal length to the time worked on the public holiday.

- 20.8** The paid time off mentioned in clause 20.7 may be taken on another day agreed between the employee and the employer or added to the employee’s annual leave entitlement.
- 20.9** The employer must keep a record of hours worked each day by an employee who has entered into an agreement under clause 20.2 showing the date and the times at which the employee started and finished work that day.
- 20.10** A record mentioned in clause 20.9 must be countersigned weekly by the employee and kept at the place of employment for 7 years.
- 20.11** If an annualised salary paid to an employee has the result mentioned in clause 20.5 at the end of a year or period of employment, the employer must pay the employee the difference.

21. Allowances

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

Note inserted in accordance with [\[2015\] FWCFB 4658](#) at [57].

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.

- 21.1** Clause 21 gives employees an entitlement to monetary allowances of specified kinds in specified circumstances.

NOTE Schedule C—Summary of Monetary Allowances contains a summary of monetary allowances and methods of adjustment.

21.2 Meal allowance

- (a)** An employer must supply an employee with a meal, or pay an employee a meal allowance of **\$13.38**, if the employee is required to work overtime for more than 2 hours without being notified of that requirement on or before the previous day.
- (b)** The employer must pay the employee a meal allowance of **\$13.38** if all of the following applies:
- (i)** the employee is advised on or before the previous day of a requirement to work overtime; and
 - (ii)** the employer provides a meal; and
 - (iii)** after providing the meal, the employee is no longer required to work overtime at all or only to work overtime of 2 hours or less.

21.3 Split shift allowance

- (a)** ~~Paragraph (b) Clause~~ 21.3(b) applies to any full-time or part-time employee who has a broken working day.

- (b) The employer must pay the employee an allowance of **\$4.31** for each separate work period of 2 hours or more.

21.4 Tool and equipment allowance

Clause 21.4 being reviewed in [AM2017/57](#). See [\[2019\] FWCFB 6092](#) at [3] and [\[2019\] FWCFB 6898](#) (see draft determination at Attachment 1).

- (a) The employer must pay an apprentice cook who is required to provide and use their own tools a daily tool and equipment allowance of **\$1.73** up to a maximum of **\$8.49** per week.
- (b) The employer must reimburse an employee for the cost of purchasing any towels, tools, knives, choppers, implements, utensils or other materials that the employee is required to provide and use and that are not supplied or paid for by the employer and in respect of which a tool and equipment allowance is not payable under ~~paragraph (a) clause~~ 21.4(a).

21.5 Special clothing allowance

- (a) In clause 21.5 **special clothing** means any item of clothing (including waterproof or other protective clothing) that the employer requires the employee to wear or that it is necessary for the employee to wear but does not include shoes, hosiery, socks and any black and white attire (other than a dinner suit or evening dress) that is not part of a uniform or formal clothing.
- (b) The employer must reimburse an employee who is required to wear special clothing for the cost of purchasing any such clothing that is not supplied or paid for by the employer.
- (c) If the employee is responsible for laundering any special clothing that is required to be worn by them, the employer must:
 - (i) pay the employee a weekly laundry allowance of an amount agreed between the employer and the employee; or
 - (ii) in the absence of an agreement mentioned in ~~subparagraph (i) clause~~ 21.5(c)(i), reimburse the employee for the cost of laundering any item of special clothing. For this purpose the employer may require the employee to show evidence of that cost.
- (d) The employer may require an employee on commencing employment to sign a receipt for any special clothing supplied or paid for by the employer that lists it and its value.
- (e) The employer is entitled to deduct from any wages owed to the employee on the employee ceasing employment the value (as stated on the receipt but allowing for fair wear and tear) of any item of special clothing not returned to the employer unless it was damaged, lost or stolen otherwise than because of the fault of the employee.

21.6 Allowance for distance work

- (a) An employer must pay an employee who works away from their employer's workplace at their minimum hourly rate for time spent travelling both ways between the employee's residence and their place of work.
- (b) ~~Paragraph (e)~~ Clause 21.6(c) applies to an employee to whom all of the following apply:
 - (i) the employee is engaged for work that requires the employee to travel 80 kilometres from their usual place of work or more to take up the engagement; and
 - (ii) the employee performs their work to the satisfaction of their employer for a period of up to 4 weeks; and
 - (iii) the employee is willing to complete the full period of the engagement.
- (c) The employer must pay the employee for transport both ways between the employee's residence and their place of work.

22. Superannuation

This clause has not been drafted in plain language in accordance with section 156(2)(c) of the [Act](#).

22.1 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.
- (b) 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.
- (c) The rights and obligations in these clauses supplement those in superannuation legislation.

22.2 Employer contributions

- (a) 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.
- (b) The employer must make contributions for each employee for such month where the employee earns **\$350.00** or more in a calendar month.

22.3 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 22.2.
- (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 3 months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 22.3(a) or 22.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 22.3(a) or 22.3(b) was made.

22.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 22.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or 22.3(b) to one of the following superannuation funds or its successor:

- (a) The Hospitality Industry Portable Liquor Union Superannuation Trust Deed (HOST-PLUS);
- (b) InTrust Super;
- (c) AustralianSuper;
- (d) CareSuper;
- (e) Sunsuper;
- (f) MTAA Industry Superannuation Fund;
- (g) Retail Employees Superannuation Trust;
- (h) Tasplan;
- (i) 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
- (j) a superannuation fund or scheme which the employee is a defined benefit member of.

22.5 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 22.2 and pay the amount authorised under clauses 22.3(a) or 22.3(b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—in respect of any employee entitled to accident pay for the period of absence from work 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

23. Overtime

Administrative change by Modern Awards team to wording in clauses 23.3 and 23.4 for clarity

NOTE: Under the [NES](#) (see section 62 of the [Act](#)) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.

23.1 Requirement to pay overtime rates

- (a) An employer must pay a full-time employee at overtime rates for any work done outside of the spread of hours or rostered hours set out in clause 15—Ordinary hours of work.
- (b) An employer must pay a part-time employee at overtime rates in the circumstances specified in clause 10.13—Payment rates.
- (c) An employer must pay a casual employee at overtime rates in the circumstances specified in clause 11.6 (Casual employment).
- (d) An employer must pay an employee at the overtime rate for any time that the employee is required to work on a rostered day off.
- (e) The employee is entitled to be paid for a minimum of 4 hours' work on a rostered day off even if the employee is only required to work for a shorter time. However, this entitlement does not apply if the work is part of, or continuous on, a normal roster that started the day before.

23.2 Break after working overtime

- (a) Clause 23.2 applies to an employee who works overtime and is next rostered to start work less than 8 hours after the employee finishes working overtime.

- (b) The employee may delay the start of their next rostered shift until 8 hours after the employee finished working overtime without loss of pay for the rostered ordinary hours not worked.
- (c) If the employee does not have an 8 hour break, the employer must pay the employee at the overtime rate until the employee has a break of at least 8 hours.

23.3 In ~~computing~~ calculating overtime payments, overtime worked on any day stands alone from overtime worked on any other day.

23.4 Overtime rate

The overtime rate mentioned in clauses 23.1, and 23.2(c) is the relevant percentage specified in column 2 of **Table 5—Overtime rates** (depending on when the overtime was worked as specified in column 1) of the employee’s minimum hourly rate.

Table 5—Overtime rates

Column 1 For overtime worked on	Column 2 Overtime rate (% of minimum hourly rate)
Monday to Friday—first 2 hours	150
Monday to Friday—after 2 hours	200
Saturday—first 2 hours	175
Saturday—after 2 hours	200
Sunday—all <u>daytime worked</u>	200
Rostered day off <u>– all time worked</u>	200

NOTE: Schedule B—Summary of Hourly Rates of Pay sets out the hourly overtime rate for all employee classifications according to when overtime is worked.

23.5 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) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 23.5 an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours’ time off.

- (c) 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.
- (d) If the employee requests at any time to be paid for overtime covered by an agreement under clause 23.5 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.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in ~~paragraph (e)~~ clause 23.5(c), 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.
- (f) 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.
- (g) 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 23.5 will apply in relation to 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](#)).

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 23.5 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 23.5.

24. Penalty rates

- 24.1 Clause 24 sets out penalty rates for hours worked at specified times or on specified days that are not required to be paid at the overtime rate mentioned in clause 23.4—Overtime rate.
- 24.2 An employer must pay an employee as follows for hours worked by the employee during a period, or on a day, specified in Column 1 of **Table 6—Penalty rates**:
 - (a) for a full-time or part-time employee, at the percentage specified in column 2 of that Table of the minimum hourly rate of the employee under **Table 2—Minimum rates** plus the additional amount specified in that column for hours worked between 10.00 pm and 6.00 am on a Monday to Friday; or
 - (b) for a casual employee (not classified at Level 3 to 6), at the percentage specified in column 3 of that Table of the minimum hourly rate of the

employee under **Table 2—Minimum rates** plus the additional amount specified in that column for hours worked between 10.00 pm and 6.00 am on a Monday to Friday; or

- (c) for a casual employee classified at Level 3 to 6, at the percentage specified in column 4 of that Table of the minimum hourly rate of the employee under **Table 2—Minimum rates** plus the additional amount specified in that column for hours worked between 10.00 pm and 6.00 am on a Monday to Friday.

Table 6—Penalty rates

Column 1 Time of ordinary hours worked	Column 2 Full-time and part-time employees	Column 3 Casual employees—Introductory to Level 2	Column 4 Casual employees – Level 3 to Level 6
	% of minimum hourly rate	% of minimum hourly rate (inclusive of casual loading)	% of minimum hourly rate (inclusive of casual loading)
Monday to Friday—6.00 am to 10.00 pm	100%	125%	125%
Monday to Friday—10.00 pm to midnight	100% plus \$2.27 per hour or part of an hour	125% plus \$2.27 per hour or part of an hour	125% plus \$2.27 per hour or part of an hour
Monday to Friday—midnight to 6.00 am	100% plus \$3.41 per hour or part of an hour	125% plus \$3.41 per hour or part of an hour	125% plus \$3.41 per hour or part of an hour
Saturday	125%	150%	150%
Sunday	150%	150%	175%
Public holiday	225%	250%	250%

NOTE: Schedule B—Summary of Hourly Rates of Pay sets out the hourly penalty rate for all employee classifications.

24.3 Penalty rates not cumulative

- (a) Clause 24.3 applies where more than one penalty would be payable for hours worked at a particular time, the employer must pay the employee the higher of the penalties, but not more than one.
- (b) However, any penalty payable under clause 16.5 (Breaks) is payable in addition to the higher of any other penalties payable in accordance with ~~paragraph (a)~~ clause 24.3(a).

24.4 Additional provisions for work on public holidays

This provision is subject to application [AM2014/301](#).

- (a) A full-time or part-time employee who works on a public holiday is entitled to be paid for a minimum of 4 hours' work even if the employee works for a shorter time.
- (b) A casual employee who works on a public holiday is entitled to be paid for a minimum of 2 hours' work even if the employee works for a shorter time.
- (c) An employer and employee may agree that, instead of the employee being paid at **225%** (as specified in clause 24.2) of the minimum hourly rate of the employee under **Table 2—Minimum rates** for hours worked on a public holiday, the following arrangements are to apply:
 - (i) the employee is to be paid at **125%** of the minimum hourly rate of the employee under **Table 2—Minimum rates** for hours worked on the public holiday; and
 - (ii) an amount of paid time equivalent to the hours worked on the public holiday is to be added to the employee's annual leave or the employee is to be allowed to take a day off during the week in which the public holiday falls or within a period of 28 days after the public holiday.
- (d) ~~Paragraph (e)~~ Clause 24.4(e) applies to a full-time or part-time employee who is required to work on Christmas Day when it falls on a weekend and is not a public holiday.
- (e) The employer must pay the employee at **125%** of the employee's minimum hourly rate for hours worked on Christmas Day and also allow the employee to take a substitute day off.

Part 6—Leave and Public Holidays

25. Annual leave

NOTE: Where an employee is receiving over-award payments resulting in the employee's base rate of pay being 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](#)).

25.1 Annual leave is provided for in the [NES](#). It does not apply to casual employees.

25.2 Additional paid annual leave for certain shiftworkers

- (a) Clause 25.2 applies to an employee who is a 7 day shiftworker regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week.

- (b) The employee is a shiftworker for the purposes of the [NES](#) (entitlement to an additional week of paid annual leave).

25.3 Payment for annual leave

An employer must pay an employee a loading of **17.5%** on the amount payable to the employee under the [NES](#) for a period of paid annual leave, including a period of untaken paid annual leave when the employment of the employee ends.

25.4 Temporary close-down

Issue remains outstanding with further decision to be issued – see [\[2019\] FWCFB 5409](#) at [247].

- (a) Clause 25.4 applies if an employer:
 - (i) intends to close down its operations at all or part of a workplace for a particular period (**temporary close down period**); and
 - (ii) wishes to require affected employees to take paid annual leave during that period.
- (b) The employer must give the affected employees at least 4 weeks' notice of a temporary close down period.
- (c) The employer may require any affected employee to take a period of paid annual leave during a temporary close down period.

25.5 Excessive leave accruals: general provision

NOTE: Clauses 25.5 to 25.7 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 25.2).
- (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 25.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 25.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

25.6 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 25.5(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

- (b) However, a direction by the employer under ~~paragraph (a) clause~~ 25.6(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 25.5, 25.6 or 25.7 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under ~~paragraph (a) clause~~ 25.6(a) that is in effect.
- (d) An employee to whom a direction has been given under ~~paragraph (a) clause~~ 25.6(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in ~~paragraph (d) clause~~ 25.6(d) may result in the direction ceasing to have effect. See ~~paragraph (b)(i) clause~~ 25.6(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.

25.7 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 25.5(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 ~~paragraph (a) clause~~ 25.7(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 25.6(a) that, when any other paid annual leave arrangements (whether made under clause 25.5, 25.6 or 25.7 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 ~~paragraph (a) clause~~ 25.7(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 25.5, 25.6 or 25.7 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 ~~paragraph (a) clause 25.7(a)~~ more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker as defined by clause 25.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under ~~paragraph (a) clause 25.7(a)~~.

25.8 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 25.8 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 25.8 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 25.8, 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.

25.9 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under ~~paragraph (e) clause~~ 25.9(c).
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under ~~paragraph (e) clause~~ 25.9(c).
- (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 ~~paragraph (e) clause~~ 25.9(c) 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 ~~paragraph (e) clause~~ 25.9(c) 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 ~~paragraph (e) clause~~ 25.9(c) 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 ~~paragraph (e) clause~~ 25.9(c).

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 25.9.

NOTE 23: An example of the type of agreement required by ~~paragraph (e) clause~~ 25.9(c) 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.

26. Personal/carer's leave and compassionate leave

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

27. Parental leave and related entitlements

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

28. Community service leave

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

29. Unpaid family and domestic violence leave

Clause 29 inserted in accordance with [\[2019\] FWCFB 5144](#) at [13].

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

Clause 30 amended in accordance with [\[2019\] FWCFB 5145](#) at [50] and [PR712266](#)

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

30.2 Substitution of public holidays by agreement

~~The employer and the majority of employees at a workplace, or section of a workplace, may agree to substitute another day for a public holiday.~~

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

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

30.3 Additional public holiday arrangements for full-time employees

An employer must, if the rostered day off of a full-time employee falls on a public holiday, do one of the following:

- (a) pay the employee an extra day's pay; or
- (b) give the employee an alternative day off within 28 days; or
- (c) give the employee an additional day's annual leave.

30.4 When a full-time employee works on a public holiday which has been substituted for another day they will be entitled to the benefit of the substitute day.

30.5 Part-day public holidays

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

Part 7—Industry Specific Provisions

31. No deduction for breakages or cashiering underings

Clause 31 is being reviewed in [AM2017/57](#). See [\[2019\] FWCFB 6092](#) at [25] to [40] and [67]

31.1 Unless they arise out of wilful misconduct, an employer must not deduct any sum from the wages or other money payable to an employee for any the following:

- (a) breakages; or
- (b) cashiering underings.

Part 8—Consultation and Dispute Resolution

32. Consultation about major workplace change

32.1 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.

32.2 For the purposes of the discussion under clause 32.1(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.
 - 32.3 Clause 32.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
 - 32.4 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 32.1(b).
 - 32.5 In clause 32 **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.
 - 32.6 Where this award makes provision for alteration of any of the matters defined at clause 32.5, such alteration is taken not to have significant effect.
- 33. Consultation about changes to rosters or hours of work**
- 33.1 Clause 33 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.
 - 33.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).
 - 33.3 For the purpose of the consultation, the employer must:
 - (a) provide to the employees and representatives mentioned in clause 33.2 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.
 - 33.4 The employer must consider any views given under clause 33.3(b).

33.5 Clause 33 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

34. Dispute resolution

34.1 Clause 34 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

34.2 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.

34.3 If the dispute is not resolved through discussion as mentioned in clause 34.2, 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.

34.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 34.2 and 34.3, a party to the dispute may refer it to the Fair Work Commission.

34.5 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.

34.6 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.

34.7 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 34.

34.8 While procedures are being followed under clause 34 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.

34.9 Clause 34.8 is subject to any applicable work health and safety legislation.

Part 9—Termination of Employment and Redundancy

35. Termination of employment

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

35.1 Notice of termination by an employee

- (a) ~~This clause~~ Clause 35.1 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 7—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 7—Period of notice

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

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

- (c) In ~~paragraph (b)~~ clause 35.1(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 ~~paragraph (b)~~ clause 35.1(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 ~~paragraph (b)~~ clause 35.1(b), then no deduction can be made under ~~paragraph (d)~~ clause 35.1(d).
- (f) Any deduction made under ~~paragraph (d)~~ clause 35.1(d) must not be unreasonable in the circumstances.

35.2 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 35.2 is to be taken at times that are convenient to the employee after consultation with the employer.

36. Redundancy

Clause 36 amended in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR707026](#).

NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.

36.1 Transfer to lower paid duties on redundancy

- (a) Clause 36.1 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 36.1(c).
- (c) If the employer acts as mentioned in clause 36.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

36.2 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 36 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.

36.3 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 36.3(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 36.3(b).
- (d) An employee who fails to produce proof when required under clause 36.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 35.2.

DRAFT

Schedule A—Classification Structure and Definitions

A.1 Introductory level

Introductory level is for an employee who enters the restaurant industry and does not demonstrate the competency requirements of level 1. The employee remains at Introductory level for up to 3 months while undertaking appropriate training and being assessed for competency to move to level 1. At the end of that period, the employee moves to level 1 unless the employee and the employer mutually agree that further training of up to 3 months is required for the employee to achieve the necessary competency.

NOTE: Any disagreement arising from this provision must be dealt with in accordance with clause 34—Dispute resolution.

A.2 Food and beverage stream

A.2.1 Food and beverage attendant grade 1 means an employee who is engaged in any of the following:

- (a) picking up glasses; or
- (b) providing general assistance to food and beverage attendants of a higher classification not including service to customers; or
- (c) removing food plates; or
- (d) setting or wiping down tables; or
- (e) cleaning and tidying associated areas; or
- (f) receiving money.

A.2.2 Food and beverage attendant grade 2 means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- (a) supplying, dispensing or mixing liquor; or
- (b) assisting in the cellar; or
- (c) undertaking general waiting duties for food or beverages, including cleaning tables; or
- (d) receiving money; or
- (e) attending a snack bar; or
- (f) performing delivery duties; or
- (g) taking reservations and greeting and seating guests.

A.2.3 Food and beverage attendant grade 3 means an employee who has the appropriate level of training and is engaged in any of the following:

- (a) supplying, dispensing or mixing liquor; or
- (b) assisting in the cellar; or
- (c) undertaking general waiting duties for both food and liquor, including cleaning tables; or
- (d) receiving money; or
- (e) assisting in the training and supervision of food and beverage attendants of a lower classification; or
- (f) delivery duties; or
- (g) taking reservations and greeting and seating guests.

A.2.4 Food and beverage attendant grade 4 (tradesperson) means an employee who has the appropriate level of training and who carries out specialised skilled duties in a fine dining room or a restaurant.

A.2.5 Food and beverage supervisor means an employee who has the appropriate level of training, including a supervisory course, and who has responsibility for the supervision, training and co-ordination of food and beverage staff or for stock control for one or more bars.

A.3 Kitchen stream

A.3.1 Kitchen attendant grade 1 means an employee engaged in any of the following:

- (a) general cleaning duties within a kitchen or food preparation area and scullery, including cleaning cooking and general utensils used in a kitchen and restaurant; or
- (b) assisting employees who are cooking; or
- (c) assembling and preparing ingredients for cooking; or
- (d) general pantry duties.

A.3.2 Kitchen attendant grade 2 means an employee who has the appropriate level of training, and who is engaged in specialised non-cooking duties in a kitchen or food preparation area, or supervision of kitchen attendants of a lower classification.

A.3.3 Kitchen attendant grade 3 means an employee who has the appropriate level of training, including a supervisory course, and who has responsibility for the supervision, training and co-ordination of kitchen attendants of a lower classification.

A.3.4 Cook grade 1 means an employee who is engaged in cooking breakfasts and snacks, baking, pastry cooking or butchering.

A.3.5 Cook grade 2 means an employee who has the appropriate level of training and who performs cooking duties such as baking, pastry cooking or butchering.

A.3.6 Cook grade 3 (tradesperson) means a commi chef or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate

level of training, and who is engaged in cooking, baking, pastry cooking or butchering duties.

A.3.7 Cook grade 4 (tradesperson) means a demi chef or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties or supervises and trains other cooks and kitchen employees.

A.3.8 Cook grade 5 (tradesperson) means a chef de partie or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training in cooking, butchering or pastry cooking and who performs any of the following:

- (a) general and specialised duties, including supervision or training of kitchen employees; or
- (b) ordering and stock control; or
- (c) supervising other cooks and kitchen employees in a single kitchen establishment.

A.4 Administrative and general stream

A.4.1 Clerical grade 1 means an employee who is required to perform basic clerical and routine office duties such as collating, filing, photocopying, and delivering messages.

A.4.2 Clerical grade 2 means an employee who is engaged in general clerical or office duties, such as typing, filing, basic data entry and calculating functions.

A.4.3 Clerical grade 3 means an employee who has the appropriate level of training and who performs any of the following:

- (a) operates switchboard, paging system and office equipment; or
- (b) uses knowledge of keyboard and function keys to enter and retrieve data through a computer terminal; or
- (c) copy types at 25 words per minute with at least 98% accuracy; or
- (d) maintains mail register and records; or
- (e) maintains established paper-based filing/records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested and monitoring file locations; or
- (f) transcribes information into records, completes forms and takes telephone messages; or
- (g) acquires and applies a working knowledge of office or sectional operating procedures and requirements; or
- (h) acquires and applies a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locates appropriate

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staff in different sections, relays internal information, responds to or redirects inquiries and greets visitors; or

- (i) keeps appropriate records; or
- (j) sorts, processes and records original source financial documents (for example, invoices, cheques and correspondence) on a daily basis, maintains and records petty cash; prepares bank deposits and withdrawals and does banking,

and who has the appropriate level of training and also performs any of the following:

- (k) operates computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer or dictaphone equipment; or
- (l) produces documents and correspondence using knowledge of standard formats, touch types at 40 words per minute with at least 98% accuracy, audio types; or
- (m) uses one or more software packages developed for a micro/ personal computer to operate and populate a database, spreadsheet/worksheet to achieve a desired result; graph previously prepared spreadsheet; use simple menu utilities of personal computer; or
- (n) follows standard procedures or template for the preceding functions using existing models/fields of information; or
- (o) creates and maintains and generates simple reports; or
- (p) uses a central computer resource to an equivalent standard; or
- (q) uses one or more software packages to create, format, edit, proof read, spell check, correct, print and save text documents, for example, standard correspondence and business documents; or
- (r) takes shorthand notes at 70 wpm and transcribed with 95% accuracy; or
- (s) arranges travel bookings and itineraries, makes appointments, screens telephone calls, follows visitors protocol procedures, establishes telephone contact on behalf of executive; or
- (t) applies a working knowledge of the organisation's products/services, functions, locations and clients; or
- (u) responds to and acts upon most internal/external inquiries in own function area; or
- (v) uses and maintains a computer-based record management system to identify, access and extract information from internal sources, maintains circulation, indexing and filing systems for publications, reviews files, closes files, archives files; or
- (w) maintains financial records and journals, collects and prepares time and wage records, prepares accounts queries from debtors, posts transactions to ledger.

A.4.4 Clerical supervisor means an employee who has the appropriate level of training including a supervisory course and who co-ordinates other clerical staff.

A.5 Stores stream

A.5.1 Storeperson grade 1 means an employee who receives and stores general and perishable goods and cleans the store area.

A.5.2 Storeperson grade 2 means an employee who, in addition to the duties for a storeperson grade 1, may also operate mechanical lifting equipment such as a fork-lift or who may perform duties of more complex nature.

A.5.3 Storeperson grade 3 means an employee who has the appropriate level of training and who:

- (a) implements quality control techniques and procedures; and
- (b) understands and is responsible for a stores/warehouse area or a large section of such an area; and
- (c) has a highly developed level of interpersonal and communication skills; and
- (d) is able to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction; and

who may perform indicative tasks such as:

- (e) liaising with management, suppliers and customers with respect to stores operations; detailing and co-ordinating activities of other storepersons and acting in a leading hand capacity for in excess of 10 storepersons; and
- (f) maintaining control registers including inventory control and being responsible for preparation and reconciliation of regular reports or stock movements, dispatches, etc.; and
- (g) supervising the receipt and delivery of goods, records, outgoing goods, responsible for the contents of a store.

A.6 Security stream

A.6.1 Doorman/security officer grade 1 means a person who assists in the maintenance of dress standards and good order at an establishment.

A.6.2 Timekeeper/security officer grade 2 means a person who is responsible for the timekeeping of employees, the security of keys, the checking in and out of delivery vehicles or the supervision of doorman/security officer grade 1 employees.

A.7 Handyperson

Handyperson means a person who is not a tradesperson and whose duties include performing routine repair work and maintenance for the employer's workplace.

Schedule B—Summary of Hourly Rates of Pay

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.
 Clauses B.1.4 and B.2.4 inserted as a result of [2019] FWCFB 6953 at [2] – [11]
 Administrative change by Modern Awards team to clauses B.1.2, B.2.2, B.3.2 and B.4.3 for consistency with change to wording in Table 5 at clause 23

See also clause Part 4—Wages and Allowances and Part 5—Overtime and Penalty Rates.

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

B.1 Adult employees

B.1.1 Full-time and part-time adult employees—ordinary and penalty rates

	Ordinary hours ¹	Saturday	Sunday	Public holiday	Public holiday ²
	% of minimum hourly rate				
	100%	125%	150%	225%	125%
	\$	\$	\$	\$	\$
Introductory Level	19.49	24.36	29.24	43.85	24.36
Level 1	20.06	25.08	30.09	45.14	25.08
Level 2	20.82	26.03	31.23	46.85	26.03
Level 3	21.54	26.93	32.31	48.47	26.93
Level 4	22.70	28.38	34.05	51.08	28.38
Level 5	24.12	30.15	36.18	54.27	30.15
Level 6	24.77	30.96	37.16	55.73	30.96

Commented [FWC1]: Minimum hourly rate in cl 18.1.

Commented [FWC2]: Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC3]: Relevant percentage in cl 24.2, Table 6.

Commented [FWC4]: See cl 24.4.

¹ Additional shift penalties may apply in accordance with Table 6—Penalty rates

² By agreement with equivalent paid time added to employee’s annual leave or one day instead of public holidays (Table 6—Penalty rates)

B.1.2 Full-time and part-time adult employees—overtime rates

	Monday to Friday		Saturday		Sunday = all time worked ⁺	Rostered day off – all hours time worked ¹
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of minimum hourly rate					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
Introductory Level	29.24	38.98	34.11	38.98	38.98	38.98
Level 1	30.09	40.12	35.11	40.12	40.12	40.12

Commented [FWC5]: Minimum hourly rate in cl 18.1.

Commented [FWC6]: Relevant percentage in cl 23.4, Table 5.

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	Monday to Friday		Saturday		Sunday – <u>all time worked</u> ⁺	Rostered day off – all <u>hours-time</u> worked
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of minimum hourly rate					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
Level 2	31.23	41.64	36.44	41.64	41.64	41.64
Level 3	32.31	43.08	37.70	43.08	43.08	43.08
Level 4	34.05	45.40	39.73	45.40	45.40	45.40
Level 5	36.18	48.24	42.21	48.24	48.24	48.24
Level 6	37.16	49.54	43.35	49.54	49.54	49.54

Commented [FWC5]: Minimum hourly rate in cl 18.1.

Commented [FWC6]: Relevant percentage in cl 23.4, Table 5.

⁺All work done outside the spread of hours or rostered hours

B.1.3 Casual adult employees—ordinary and penalty rates

	Ordinary hours ¹	Saturday	Sunday – Introductory to Level 2	Sunday – Level 3 to Level 6	Public holiday
	% of minimum hourly rate				
	125%	150%	150%	175%	250%
	\$	\$	\$	\$	\$
Introductory Level	24.36	29.24	29.24		48.73
Level 1	25.08	30.09	30.09		50.15
Level 2	26.03	31.23	31.23		52.05
Level 3	26.93	32.31		37.70	53.85
Level 4	28.38	34.05		39.73	56.75
Level 5	30.15	36.18		42.21	60.30
Level 6	30.96	37.16		43.35	61.93

Commented [FWC7]: Minimum hourly rate in cl 18.1.

Commented [FWC8]: Minimum hourly rate in cl 18.1.+ 25% casual loading in cl 11.2.

Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC9]: Relevant percentage in cl 24.2, Table 6.

¹ Additional shift penalties may apply in accordance with **Table 6—Penalty rates**

B.1.4 Casual adult employees—overtime rates

	Monday to Friday		Saturday		Sunday – <u>all time worked</u>	Rostered day off – all <u>time worked</u>
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of minimum hourly rate					

Commented [FWC10]: Minimum hourly rate in cl 18.1.

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-	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
<u>Introductory Level</u>	<u>29.24</u>	<u>38.98</u>	<u>34.11</u>	<u>38.98</u>	<u>38.98</u>	<u>38.98</u>
<u>Level 1</u>	<u>30.09</u>	<u>40.12</u>	<u>35.11</u>	<u>40.12</u>	<u>40.12</u>	<u>40.12</u>
<u>Level 2</u>	<u>31.23</u>	<u>41.64</u>	<u>36.44</u>	<u>41.64</u>	<u>41.64</u>	<u>41.64</u>
<u>Level 3</u>	<u>32.31</u>	<u>43.08</u>	<u>37.70</u>	<u>43.08</u>	<u>43.08</u>	<u>43.08</u>
<u>Level 4</u>	<u>34.05</u>	<u>45.40</u>	<u>39.73</u>	<u>45.40</u>	<u>45.40</u>	<u>45.40</u>
<u>Level 5</u>	<u>36.18</u>	<u>48.24</u>	<u>42.21</u>	<u>48.24</u>	<u>48.24</u>	<u>48.24</u>
<u>Level 6</u>	<u>37.16</u>	<u>49.54</u>	<u>43.35</u>	<u>49.54</u>	<u>49.54</u>	<u>49.54</u>

Commented [FWC11]: Relevant percentage in cl 23.4, Table 5.

B.2 Junior employees

The **junior hourly rate** is based on a percentage of the appropriate adult rate in accordance with clause 18.2—Junior rates. Adult rates apply from 21 years of age in accordance with clause 18.1—Adult rates.

B.2.1 Full-time and part-time junior employees—ordinary and penalty rates

	Ordinary hours ¹	Saturday	Sunday	Public holiday	Public holiday ²
	% of junior hourly rate				
	100%	125%	150%	225%	125%
	\$	\$	\$	\$	\$
Introductory Level					
16 years of age and under	9.75	12.19	14.63	21.94	12.19
17 years of age	11.70	14.63	17.55	26.33	14.63
18 years of age	13.65	17.06	20.48	30.71	17.06
19 years of age	16.57	20.71	24.86	37.28	20.71
20 years of age	19.49	24.36	29.24	43.85	24.36
Level 1					
16 years of age and under	10.03	12.54	15.05	22.57	12.54
17 years of age	12.03	15.04	18.05	27.07	15.04
18 years of age	14.04	17.55	21.06	31.59	17.55
19 years of age	17.05	21.31	25.58	38.36	21.31
20 years of age	20.06	25.08	30.09	45.14	25.08

Commented [FWC12]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC13]: Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC14]: Relevant percentage in cl 24.2, Table 6.

Commented [FWC15]: See cl 24.4.

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	Ordinary hours ¹	Saturday	Sunday	Public holiday	Public holiday ²
	% of junior hourly rate				
	100%	125%	150%	225%	125%
	\$	\$	\$	\$	\$
Level 2					
16 years of age and under	10.41	13.01	15.62	23.42	13.01
17 years of age	12.49	15.61	18.74	28.10	15.61
18 years of age	14.58	18.23	21.87	32.81	18.23
19 years of age	17.70	22.13	26.55	39.83	22.13
20 years of age	20.82	26.03	31.23	46.85	26.03
Level 3					
18 years of age	15.08	18.85	22.62	33.93	18.85
19 years of age	18.31	22.89	27.47	41.20	22.89
20 years of age	21.54	26.93	32.31	48.47	26.93
Level 4					
18 years of age	15.89	19.86	23.84	35.75	19.86
19 years of age	19.29	24.11	28.94	43.40	24.11
20 years of age	22.70	28.38	34.05	51.08	28.38
Level 5					
18 years of age	16.88	21.10	25.32	37.98	21.10
19 years of age	20.50	25.63	30.75	46.13	25.63
20 years of age	24.12	30.15	36.18	54.27	30.15

Commented [FWC12]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC13]: Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC14]: Relevant percentage in cl 24.2, Table 6.

Commented [FWC15]: See cl 24.4.

¹ Additional shift penalties ~~may~~ apply in accordance with **Table 6—Penalty rates**

² By agreement with equivalent paid time added to employee’s annual leave or one day instead of public holidays (**Table 6—Penalty rates**)

B.2.2 Full-time and part-time junior employees—overtime rates

	Monday to Friday		Saturday		Sunday - <u>all time worked[†]</u>	Rostered day off – all- <u>hours time worked</u>
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of junior hourly rate					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
Introductory Level						
16 years of age and under	14.63	19.50	17.06	19.50	19.50	19.50
17 years of age	17.55	23.40	20.48	23.40	23.40	23.40
18 years of age	20.48	27.30	23.89	27.30	27.30	27.30
19 years of age	24.86	33.14	29.00	33.14	33.14	33.14
20 years of age	29.24	38.98	34.11	38.98	38.98	38.98
Level 1						
16 years of age and under	15.05	20.06	17.55	20.06	20.06	20.06
17 years of age	18.05	24.06	21.05	24.06	24.06	24.06
18 years of age	21.06	28.08	24.57	28.08	28.08	28.08
19 years of age	25.58	34.10	29.84	34.10	34.10	34.10
20 years of age	30.09	40.12	35.11	40.12	40.12	40.12
Level 2						
16 years of age and under	15.62	20.82	18.22	20.82	20.82	20.82
17 years of age	18.74	24.98	21.86	24.98	24.98	24.98
18 years of age	21.87	29.16	25.52	29.16	29.16	29.16
19 years of age	26.55	35.40	30.98	35.40	35.40	35.40
20 years of age	31.23	41.64	36.44	41.64	41.64	41.64
Level 3						
18 years of age	22.62	30.16	26.39	30.16	30.16	30.16
19 years of age	27.47	36.62	32.04	36.62	36.62	36.62
20 years of age	32.31	43.08	37.70	43.08	43.08	43.08
Level 4						
18 years of age	23.84	31.78	27.81	31.78	31.78	31.78
19 years of age	28.94	38.58	33.76	38.58	38.58	38.58

Commented [FWC16]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC17]: Relevant percentage in cl 23.4, Table 5.

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	Monday to Friday		Saturday		Sunday - all time worked ⁺	Rostered day off – all- hours time worked
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of junior hourly rate					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
20 years of age	34.05	45.40	39.73	45.40	45.40	45.40
Level 5						
18 years of age	25.32	33.76	29.54	33.76	33.76	33.76
19 years of age	30.75	41.00	35.88	41.00	41.00	41.00
20 years of age	36.18	48.24	42.21	48.24	48.24	48.24

Commented [FWC16]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC17]: Relevant percentage in cl 23.4, Table 5.

⁺All work done outside the spread of hours or rostered hours

B.2.3 Casual junior employees—ordinary and penalty rates

	Ordinary hours ¹	Saturday	Sunday – Introductory to Level 2	Sunday – Level 3 to Level 6	Public holiday
	% of junior hourly rate				
	125%	150%	150%	175%	250%
	\$	\$	\$	\$	\$
Introductory Level					
16 years of age and under	12.19	14.63	14.63		24.38
17 years of age	14.63	17.55	17.55		29.25
18 years of age	17.06	20.48	20.48		34.13
19 years of age	20.71	24.86	24.86		41.43
20 years of age	24.36	29.24	29.24		48.73
Level 1					
16 years of age and under	12.54	15.05	15.05		25.08
17 years of age	15.04	18.05	18.05		30.08
18 years of age	17.55	21.06	21.06		35.10
19 years of age	21.31	25.58	25.58		42.63
20 years of age	25.08	30.09	30.09		50.15

Commented [FWC18]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC19]: Minimum hourly rate in cl 18.1.+ 25% casual loading in cl 11.2.

Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC20]: Relevant percentage in cl 24.2, Table 6.

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	Ordinary hours ¹	Saturday	Sunday – Introductory to Level 2	Sunday – Level 3 to Level 6	Public holiday
	% of junior hourly rate				
	125%	150%	150%	175%	250%
	\$	\$	\$	\$	\$
Level 2					
16 years of age and under	13.01	15.62	15.62		26.03
17 years of age	15.61	18.74	18.74		31.23
18 years of age	18.23	21.87	21.87		36.45
19 years of age	22.13	26.55	26.55		44.25
20 years of age	26.03	31.23	31.23		52.05
Level 3					
18 years of age	18.85	22.62		26.39	37.70
19 years of age	22.89	27.47		32.04	45.78
20 years of age	26.93	32.31		37.70	53.85
Level 4					
18 years of age	19.86	23.84		27.81	39.73
19 years of age	24.11	28.94		33.76	48.23
20 years of age	28.38	34.05		39.73	56.75
Level 5					
18 years of age	21.10	25.32		29.54	42.20
19 years of age	25.63	30.75		35.88	51.25
20 years of age	30.15	36.18		42.21	60.30

Commented [FWC18]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC19]: Minimum hourly rate in cl 18.1 + 25% casual loading in cl 11.2.

Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC20]: Relevant percentage in cl 24.2, Table 6.

¹ Additional shift penalties may apply in accordance with Table 6—Penalty rates

B.2.4 Casual junior employees—overtime rates

-	Monday to Friday		Saturday		Sunday – all time worked	Rostered day off – all time worked
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of junior hourly rate					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
Introductory Level						

Commented [FWC21]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC22]: Relevant percentage in cl 23.4, Table 5.

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	<u>Monday to Friday</u>		<u>Saturday</u>		<u>Sunday – all time worked</u>	<u>Rostered day off – all time worked</u>
	<u>First 2 hours</u>	<u>After 2 hours</u>	<u>First 2 hours</u>	<u>After 2 hours</u>		
	<u>% of junior hourly rate</u>					
	<u>150%</u>	<u>200%</u>	<u>175%</u>	<u>200%</u>	<u>200%</u>	<u>200%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>16 years of age and under</u>	<u>14.63</u>	<u>19.50</u>	<u>17.06</u>	<u>19.50</u>	<u>19.50</u>	<u>19.50</u>
<u>17 years of age</u>	<u>17.55</u>	<u>23.40</u>	<u>20.48</u>	<u>23.40</u>	<u>23.40</u>	<u>23.40</u>
<u>18 years of age</u>	<u>20.48</u>	<u>27.30</u>	<u>23.89</u>	<u>27.30</u>	<u>27.30</u>	<u>27.30</u>
<u>19 years of age</u>	<u>24.86</u>	<u>33.14</u>	<u>29.00</u>	<u>33.14</u>	<u>33.14</u>	<u>33.14</u>
<u>20 years of age</u>	<u>29.24</u>	<u>38.98</u>	<u>34.11</u>	<u>38.98</u>	<u>38.98</u>	<u>38.98</u>
<u>Level 1</u>						
<u>16 years of age and under</u>	<u>15.05</u>	<u>20.06</u>	<u>17.55</u>	<u>20.06</u>	<u>20.06</u>	<u>20.06</u>
<u>17 years of age</u>	<u>18.05</u>	<u>24.06</u>	<u>21.05</u>	<u>24.06</u>	<u>24.06</u>	<u>24.06</u>
<u>18 years of age</u>	<u>21.06</u>	<u>28.08</u>	<u>24.57</u>	<u>28.08</u>	<u>28.08</u>	<u>28.08</u>
<u>19 years of age</u>	<u>25.58</u>	<u>34.10</u>	<u>29.84</u>	<u>34.10</u>	<u>34.10</u>	<u>34.10</u>
<u>20 years of age</u>	<u>30.09</u>	<u>40.12</u>	<u>35.11</u>	<u>40.12</u>	<u>40.12</u>	<u>40.12</u>
<u>Level 2</u>						
<u>16 years of age and under</u>	<u>15.62</u>	<u>20.82</u>	<u>18.22</u>	<u>20.82</u>	<u>20.82</u>	<u>20.82</u>
<u>17 years of age</u>	<u>18.74</u>	<u>24.98</u>	<u>21.86</u>	<u>24.98</u>	<u>24.98</u>	<u>24.98</u>
<u>18 years of age</u>	<u>21.87</u>	<u>29.16</u>	<u>25.52</u>	<u>29.16</u>	<u>29.16</u>	<u>29.16</u>
<u>19 years of age</u>	<u>26.55</u>	<u>35.40</u>	<u>30.98</u>	<u>35.40</u>	<u>35.40</u>	<u>35.40</u>
<u>20 years of age</u>	<u>31.23</u>	<u>41.64</u>	<u>36.44</u>	<u>41.64</u>	<u>41.64</u>	<u>41.64</u>
<u>Level 3</u>						
<u>18 years of age</u>	<u>22.62</u>	<u>30.16</u>	<u>26.39</u>	<u>30.16</u>	<u>30.16</u>	<u>30.16</u>
<u>19 years of age</u>	<u>27.47</u>	<u>36.62</u>	<u>32.04</u>	<u>36.62</u>	<u>36.62</u>	<u>36.62</u>
<u>20 years of age</u>	<u>32.31</u>	<u>43.08</u>	<u>37.70</u>	<u>43.08</u>	<u>43.08</u>	<u>43.08</u>
<u>Level 4</u>						
<u>18 years of age</u>	<u>23.84</u>	<u>31.78</u>	<u>27.81</u>	<u>31.78</u>	<u>31.78</u>	<u>31.78</u>
<u>19 years of age</u>	<u>28.94</u>	<u>38.58</u>	<u>33.76</u>	<u>38.58</u>	<u>38.58</u>	<u>38.58</u>
<u>20 years of age</u>	<u>34.05</u>	<u>45.40</u>	<u>39.73</u>	<u>45.40</u>	<u>45.40</u>	<u>45.40</u>
<u>Level 5</u>						

Commented [FWC21]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC22]: Relevant percentage in cl 23.4, Table 5.

	<u>Monday to Friday</u>		<u>Saturday</u>		<u>Sunday – all time worked</u>	<u>Rostered day off – all time worked</u>
	<u>First 2 hours</u>	<u>After 2 hours</u>	<u>First 2 hours</u>	<u>After 2 hours</u>		
	<u>% of junior hourly rate</u>					
	<u>150%</u>	<u>200%</u>	<u>175%</u>	<u>200%</u>	<u>200%</u>	<u>200%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>18 years of age</u>	<u>25.32</u>	<u>33.76</u>	<u>29.54</u>	<u>33.76</u>	<u>33.76</u>	<u>33.76</u>
<u>19 years of age</u>	<u>30.75</u>	<u>41.00</u>	<u>35.88</u>	<u>41.00</u>	<u>41.00</u>	<u>41.00</u>
<u>20 years of age</u>	<u>36.18</u>	<u>48.24</u>	<u>42.21</u>	<u>48.24</u>	<u>48.24</u>	<u>48.24</u>

Commented [FWC21]: (Relevant percentage in cl 18.2(a), Table 3, of the relevant adult weekly rate in cl 18.1, Table 2) ÷ 38.

Commented [FWC22]: Relevant percentage in cl 23.4, Table 5.

B.3 Full-time and part-time junior cooking apprentices

The **junior apprentice hourly rate** is based on a percentage of the Level 4 adult rate in accordance with clause 18.1—Adult rates.

B.3.1 Full-time and part-time junior cooking apprentices—ordinary and penalty rates

	<u>Ordinary hours¹</u>	<u>Saturday</u>	<u>Sunday</u>	<u>Public holiday</u>	<u>Public holiday²</u>
	<u>% of junior apprentice hourly rate</u>				
	<u>100%</u>	<u>125%</u>	<u>150%</u>	<u>225%</u>	<u>125%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
1 st year	12.48	15.60	18.72	28.08	15.60
2 nd year	14.75	18.44	22.13	33.19	18.44
3 rd year	18.16	22.70	27.24	40.86	22.70
4 th year – not attained standard of proficiency	21.56	26.95	32.34	48.51	26.95
4 th year – attained standard of proficiency	22.70	28.38	34.05	51.08	28.38

Commented [FWC23]: Minimum hourly rate (relevant percentage in c 18.3(a) of the standard rate, divided by 38) in cl 18.3(a), Table 4.

Commented [FWC24]: Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC25]: Relevant percentage in cl 24.2, Table 6.

Commented [FWC26]: See cl 24.4.

¹ Additional shift penalties ~~may~~ apply in accordance with **Table 6—Penalty rates**

² By agreement with equivalent paid time added to employee’s annual leave or one day instead of public holidays (**Table 6—Penalty rates**)

B.3.2 Full-time and part-time junior cooking apprentices—overtime rates

	Monday to Friday		Saturday		Sunday – <u>all time worked</u> ⁺	Rostered day off – <u>all hours-time worked</u>
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of <u>junior apprentice hourly rate</u>					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
1 st year	18.72	24.96	21.84	24.96	24.96	24.96
2 nd year	22.13	29.50	25.81	29.50	29.50	29.50
3 rd year	27.24	36.32	31.78	36.32	36.32	36.32
4 th year – not attained standard of proficiency	32.34	43.12	37.73	43.12	43.12	43.12
4 th year – attained standard of proficiency	34.05	45.40	39.73	45.40	45.40	45.40

Commented [FWC27]: Minimum hourly rate (relevant percentage in c 18.3(a) of the standard rate, divided by 38) in cl 18.3(a), Table 4.

Commented [FWC28]: Relevant percentage in cl 23.4, Table 5.

⁺All work done outside the spread of hours or rostered hours

B.4 Full-time and part-time adult cooking apprentices

NOTE: The adult apprentice cooking rate applies only to adult apprentices who started their apprenticeship on or after 1 January 2014. Adult apprentices who started their apprenticeship before 1 January 2014 are not entitled to the adult apprentice rates.

B.4.1 The **adult apprentice hourly rate** is calculated in accordance with clause 18.5—Adult apprentices.

B.4.2 Full-time and part-time adult cooking apprentices—ordinary and penalty rates

	Ordinary hours ¹	Saturday	Sunday	Public holiday	Public holiday ²
	% of <u>adult apprentice hourly rate</u>				
	100%	125%	150%	225%	125%
	\$	\$	\$	\$	\$
1 st year	18.16	22.70	27.24	40.86	22.70
2 nd year	19.49	24.36	29.24	43.85	24.36
3 rd year	19.49	24.36	29.24	43.85	24.36
4 th year – not attained standard of proficiency	21.56	26.95	32.34	48.51	26.95
4 th year – attained standard of proficiency	22.70	28.38	34.05	51.08	28.38

Commented [FWC29]: See cl 18.5(a) for first year of apprenticeship and cl 18.5(b) for second and subsequent years.

Commented [FWC30]: Additional amount applies for hours worked between 10.00 pm and 6.00 am on a Monday to Friday. See cl 24.2, Table 6.

Commented [FWC31]: Relevant percentage in cl 24.2, Table 6.

Commented [FWC32]: See cl 24.4.

¹ Additional shift penalties may apply in accordance with **Table 6—Penalty rates**

² By agreement with equivalent paid time added to employee’s annual leave or one day instead of public holidays (Table 6—Penalty rates)

B.4.3 Full-time and part-time adult cooking apprentices—overtime rates

	Monday to Friday		Saturday		Sunday – all time worked ¹	Rostered day off – all hours time worked
	First 2 hours	After 2 hours	First 2 hours	After 2 hours		
	% of adult apprentice hourly rate					
	150%	200%	175%	200%	200%	200%
	\$	\$	\$	\$	\$	\$
1 st year	27.24	36.32	31.78	36.32	36.32	36.32
2 nd year	29.24	38.98	34.11	38.98	38.98	38.98
3 rd year	29.24	38.98	34.11	38.98	38.98	38.98
4 th year – not attained standard of proficiency	32.34	43.12	37.73	43.12	43.12	43.12
4 th year – attained standard of proficiency	34.05	45.40	39.73	45.40	45.40	45.40

Commented [FWC33]: See cl 18.5(a) for first year of apprenticeship and cl 18.5(b) for second and subsequent years.

Commented [FWC34]: Relevant percentage in cl 23.4, Table 5.

⁺ All work done outside the spread of hours or rostered hours

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Schedule C—Summary of Monetary Allowances

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

See clause 21—Allowances for full details of allowances payable under this award.

C.1 Wage-related allowances

The following wage-related allowances are based on the standard rate as defined in clause 2—Definitions as the minimum rate for a Level 4 classification (Cook grade 3 (tradesperson)) in clause 18.1—Adult rates = **\$862.50**.

Allowance	Clause	% of standard rate	\$	Payable
Split shift allowance—full-time and part-time employees	22.3	0.5	4.31	per each separate work period of 2 hours or more

C.1.1 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.

C.2 Expense-related allowances

C.2.1 The following expense-related allowances will be payable to employees in accordance with clause 21—Allowances:

Allowance	Clause	\$	Payable
Meal allowance—overtime of more than 2 hours without a day's notification	22.2	13.38	per occasion
Clothing, equipment and tool allowance—apprentice cook—Per day or part thereof	22.4(a)	1.73	per day or part thereof
Clothing, equipment and tool allowance—apprentice cook—Maximum per week—an amount of up to	22.4(a)	8.49	per week

C.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
Meal allowance	Take away and fast foods sub-group
Tools allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

C.3 Penalty rates

The penalty rates in this award are based on the standard hourly rate as defined in clause 2—Definitions as the minimum hourly rate for a Level 4 classification (Cook grade 3 (tradesperson)) in clause 18.1—Adult rates = **\$22.70**.

Penalty	Clause	% of hourly standard rate	\$	Payable
Monday to Friday— 10.00 pm to midnight	25.2(c)	10	2.27	per hour or part thereof
Monday to Friday— midnight to 6.00 am	25.2(c)	15	3.41	per hour or part thereof

Schedule D—School-based Apprentices

D.1 In this Schedule:

D.1.1 **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; and

D.1.2 **school-based apprentice** is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.

D.2 A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement for an apprentice declared or recognised by the relevant State or Territory authority.

D.3 The relevant minimum hourly rates for full-time junior and adult apprentices provided for in this award apply to school-based apprentices for total hours worked, including time taken to be spent in off-the-job training.

D.4 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 time spent in training may be averaged over the semester or year.

D.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.

D.6 The duration of the apprenticeship must be as specified in the training agreement for each apprentice but must not exceed 6 years.

D.7 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.

D.8 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).

NOTE: 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.

D.9 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.

D.10 School-based apprentices are entitled to all of the other conditions in this award on a proportionate basis.

Schedule E— Supported Wage System

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

E.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.

E.2 In this schedule:

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

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

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

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

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

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

E.3 Eligibility criteria

E.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.

E.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.

E.4 Supported wage rates

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

Assessed capacity (clause E.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

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

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

E.5 Assessment of capacity

E.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.

E.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](#).

E.6 Lodgement of SWS wage assessment agreement

E.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.

E.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.

E.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.

E.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.

E.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.

E.10 Trial period

- E.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding ~~four~~ 4 weeks) may be needed.
- E.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.
- E.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.
- E.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- E.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 E.5.

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

Schedule H amended in accordance with [\[2019\] FWCFB 5145](#) at [52] and [PR712266](#)

- H.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- 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.3 An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).

H.3H.4 This schedule is not intended to detract from or supplement the [NES](#).

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