



DRAFT ORDER

Fair Work Act 2009
s 285—Annual wage review

Annual wage review 2022-23 (C2023/1)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT CATANZARITI
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT HAMPTON
MS LABINE-ROMAINE
PROFESSOR BAIRD
MR CULLY

SYDNEY, XX JUNE 2023

Annual Wage Review 2022-23 – National Minimum Wage Order 2023.

[1] Further to the decision issued by the Expert Panel for annual wage reviews on 2 June 2023, it is ordered that the National Minimum Wage Order 2023 be made in the form of Appendix A and that the order come into operation on 1 July 2023.

PRESIDENT

Appendix A

NATIONAL MINIMUM WAGE ORDER 2023

1. Title

This is the National Minimum Wage Order 2023.

2. Commencement

2.1 This order comes into operation on 1 July 2023 and takes effect in relation to a particular employee from the start of the employee's first full pay period that starts on or after 1 July 2023.

2.2 This order, which replaces the National Minimum Wage Order 2022, continues in operation until the next national minimum wage order comes into operation.

3. Definitions and interpretation

3.1 In this order, unless the contrary intention appears, the following expressions have the meaning in the *Fair Work Act 2009* (Cth) (Act):

award/agreement free employee

base rate of pay

employee with a disability

junior employee

training arrangement

3.2 In this order, unless the contrary intention appears:

employee means a national system employee as defined in the Act

employer means a national system employer as defined in the Act.

4. National minimum wage

4.1 The national minimum wage is \$882.80 per week, calculated on the basis of a week of 38 ordinary hours, or \$23.23 per hour.

4.2 The national minimum wage applies to an award/agreement free employee other than:

(a) a junior employee;

(b) an employee to whom a training arrangement applies; or

(c) an employee with a disability.

4.3 An employer of an employee to whom the national minimum wage applies must pay the employee a base rate of pay that at least equals the national minimum wage.

5. Casual loading

5.1 The casual loading for award/agreement free employees is 25 per cent.

5.2 An employer of an award/agreement free casual employee must pay the employee a casual loading that at least equals the casual loading for award/agreement free employees (as applied to the employee's base rate of pay).

6. Special national minimum wage 1

6.1 Special national minimum wage 1 applies to an award/agreement free employee with a disability whose disability does not affect their productivity.

6.2 Special national minimum wage 1 is:

(a) for an adult, \$882.80 per week, calculated on the basis of a week of 38 ordinary hours, or \$23.23 per hour; or

(b) for a junior, an amount equal to special national minimum wage 3; or

(c) for an apprentice, an amount equal to special national minimum wage 4; or

(d) for a trainee, an amount equal to special national minimum wage 5.

6.3 An employer of an employee to whom special national minimum wage 1 applies must pay the employee a base rate of pay that at least equals special national minimum wage 1.

7. Special national minimum wage 2

7.1 Special national minimum wage 2 applies to an award/agreement free employee with a disability who is:

(a) unable to perform the range of duties to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of a disability on their productive capacity; and

(b) who meets the impairment criteria for receipt of the Disability Support Pension.

7.2 Special national minimum wage 2 does not apply to an award/agreement free employee with a disability who is an existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation.

7.3 An employer of an employee to whom special national minimum wage 2 applies must pay the employee a base rate of pay that at least equals special national minimum wage 2, calculated in accordance with Schedule A.

8. Special national minimum wage 3

8.1 Special national minimum wage 3 applies to an award/agreement free junior employee.

8.2 An employer of an employee to whom special national minimum wage 3 applies must pay the employee a base rate of pay that at least equals the following percentage of the wage rate in cl.4.1 of this order:

Age	% of rate of pay in cl. 4.1
Under 16 years of age	36.8
At 16 years of age	47.3
At 17 years of age	57.8
At 18 years of age	68.3
At 19 years of age	82.5
At 20 years of age	97.7

9. Special national minimum wage 4

9.1 Special national minimum wage 4 applies to an award/agreement free employee who is an apprentice.

9.2 An employer of an employee to whom special national minimum wage 4 applies must pay the employee a base rate of pay that at least equals the amount set out in cl.15.2—Apprentice minimum rates of the *Miscellaneous Award 2020*; or for school-based apprentices, cl.15.7—School-based apprentices of that award.

10. Special national minimum wage 5

10.1 Special national minimum wage 5 applies to an award/agreement free employee to whom a training arrangement applies (but not an apprentice).

10.2 An employer of an employee to whom special national minimum wage 5 applies must pay the employee a base rate of pay that at least equals the relevant wage applicable in Schedule E—National Training Wage of the *Miscellaneous Award 2020*.

Schedule A—Special national minimum wage 2

A.1 Schedule A deals with the calculation of special national minimum wage 2 in relation to an employee to whom that wage applies.

A.2 In Schedule A:

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

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

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

A.3 Supported wage rates

A.3.1 Special national minimum wage 2 must be calculated as a percentage of the national minimum wage in cl.4.1 of the National Minimum Wage Order 2023 according to the following table:

Assessed capacity (cl.A.4)	National minimum wage in cl.4.1
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

A.3.2 Provided that the minimum amount payable to an employee to whom special national minimum wage 2 applies is not less than \$102 per week.

A.3.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

A.4 Assessment of capacity

A.4.1 For the purpose of establishing the applicable percentage in cl.A.3.1, 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.

A.4.2 All assessments made under Schedule A must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

A.5 Lodgement of SWS wage assessment agreement

A.5.1 All SWS wage assessment agreements under Schedule A, including the applicable percentage of the national minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

A.5.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment.

A.6 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.

A.7 Workplace adjustment

An employer wishing to employ a person under the provisions of special national minimum wage 2 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.

A.8 Trial period

A.8.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of special national minimum wage 2 for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

A.8.2 During that trial period the assessment of capacity will be undertaken and the applicable percentage of the national minimum wage for a continuing employment relationship will be determined.

A.8.3 The minimum amount payable to the employee during the trial period must be no less than \$102 per week.

A.8.4 Work trials should include induction or training as appropriate to the job being trialled.

A.8.5 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 cl. A.4.