

# Miscellaneous Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 29 July 2016 ([PR583035](#)).

Clause(s) affected by the most recent variations:

23—Annual leave

Schedule G—Agreement to Take Annual Leave in Advance

Schedule H—Agreement to Cash Out Annual Leave

Current review matter(s): [AM2014/47](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/237](#); [AM2014/300](#); [AM2014/301](#); [AM2014/306](#); [AM2015/1](#); [AM2015/2](#)

## Table of Contents

[Varied by [PR532630](#), [PR544519](#), [PR546288](#), [PR557581](#), [PR573679](#), [PR583035](#)]

<b>Part 1— Application and Operation.....</b>	<b>3</b>
1. Title .....	3
2. Commencement and transitional .....	3
3. Definitions and interpretation.....	4
4. Coverage.....	5
5. Access to the award and the National Employment Standards .....	6
6. The National Employment Standards and this award .....	6
7. Award flexibility .....	6
<b>Part 2— Consultation and Dispute Resolution.....</b>	<b>8</b>
8. Consultation.....	8
9. Dispute resolution.....	10
<b>Part 3— Types of Employment and Termination of Employment.....</b>	<b>10</b>
10. Types of employment.....	10
11. Termination of employment .....	11
12. Redundancy .....	12
<b>Part 4— Minimum Wages and Related Matters .....</b>	<b>12</b>
13. Classifications .....	12
14. Minimum wages .....	13

Miscellaneous Award 2010

15. Allowances.....16

16. District allowances.....17

17. Accident pay .....17

18. Payment of wages .....17

19. Superannuation .....17

**Part 5— Hours of Work and Related Matters .....18**

20. Ordinary hours of work and rostering.....18

21. Breaks .....18

22. Overtime and penalty rates .....18

**Part 6— Leave and Public Holidays .....19**

23. Annual leave .....19

24. Personal/carer’s leave and compassionate leave .....23

25. Community service leave.....23

26. Public holidays.....23

**Schedule A —Transitional Provisions.....24**

**Schedule B —Classification Structure and Definitions .....30**

**Schedule C —Supported Wage System .....31**

**Schedule D —School-based Apprentices .....34**

**Schedule E —National Training Wage .....36**

**Appendix E1: Allocation of Traineeships to Wage Levels .....44**

**Schedule F —2016 Part-day Public Holidays.....49**

**Schedule G —Agreement to Take Annual Leave in Advance .....51**

**Schedule H —Agreement to Cash Out Annual Leave.....52**

## Part 1—Application and Operation

### 1. Title

This award is the *Miscellaneous Award 2010*.

### 2. Commencement and transitional

[Varied by [PR542224](#)]

**2.1** This award commences on 1 January 2010.

**2.2** The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

**2.3** This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

[2.4 varied by [PR542224](#) ppc 04Dec13]

**2.4** 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 the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

[2.5 varied by [PR542224](#) ppc 04Dec13]

**2.5** The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

[2.6 varied by [PR542224](#) ppc 04Dec13]

**2.6** The Fair Work Commission may review the transitional arrangements:

- (a) on its own initiative; or

## Miscellaneous Award 2010

- (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or
- (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

### 3. Definitions and interpretation

[Varied by [PR997772](#), [PR503694](#), [PR544268](#), [PR546097](#)]

**3.1** In this award, unless the contrary intention appears:

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

[Definition of **adult apprentice** inserted by [PR544268](#) ppc 01Jan14]

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

**agreement-based transitional instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

**award-based transitional instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **default fund employee** inserted by [PR546097](#) ppc 01Jan14]

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

[Definition of **defined benefit member** inserted by [PR546097](#) ppc 01Jan14]

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

[Definition of **Division 2B State award** inserted by [PR503694](#) ppc 01Jan11]

**Division 2B State award** has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **Division 2B State employment agreement** inserted by [PR503694](#) ppc 01Jan11]

**Division 2B State employment agreement** has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **employee** substituted by [PR997772](#) from 01Jan10]

**employee** means national system employee within the meaning of the Act

[Definition of **employer** substituted by [PR997772](#) from 01Jan10]

**employer** means national system employer within the meaning of the Act

**enterprise award-based instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

**NES** means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

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

**standard rate** means the minimum weekly wage for Level 3 in clause 14—Minimum wages

**transitional minimum wage instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

**3.2** Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

## **4. Coverage**

**4.1** Subject to clauses 4.2, 4.3, 4.4, 4.5 and 4.6 this award covers employers throughout Australia and their employees in the classifications listed in clause 14—Minimum wages who are not covered by any other modern award.

**4.2** The award does not cover those classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.

**4.3** The award does not cover employees:

(a) in an industry covered by a modern award who are not within a classification in that modern award; or

(b) in a class exempted by a modern award from its operation,

or employers in relation to those employees.

**4.4** The award does not cover employees excluded from award coverage by the Act.

**4.5** The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

**4.6** The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the

## Miscellaneous Award 2010

meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

- 4.7** This award covers any employer which supplies on-hire employees in classifications set out in Schedule B and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. This subclause operates subject to the exclusions from coverage in this award.
- 4.8** This award covers employers which provide group training services for apprentices and trainees under this award and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

### **5. Access to the award and the National Employment Standards**

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

### **6. The National Employment Standards and this award**

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

### **7. Award flexibility**

[Varied by [PR542224](#)]

- 7.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:
- (a) arrangements for when work is performed;
  - (b) overtime rates;
  - (c) penalty rates;
  - (d) allowances; and
  - (e) leave loading.

## Miscellaneous Award 2010

[7.2 varied by [PR542224](#) ppc 04Dec13]

**7.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

**7.3** The agreement between the employer and the individual employee must:

(a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and

[7.3(b) varied by [PR542224](#) ppc 04Dec13]

(b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

**7.4** The agreement between the employer and the individual employee must also:

(a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

(b) state each term of this award that the employer and the individual employee have agreed to vary;

(c) detail how the application of each term has been varied by agreement between the employer and the individual employee;

(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and

(e) state the date the agreement commences to operate.

**7.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

**7.6** Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

**7.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

**7.8** The agreement may be terminated:

[7.8(a) varied by [PR542224](#) ppc 04Dec13]

(a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

## Miscellaneous Award 2010

- (b) at any time, by written agreement between the employer and the individual employee.

[Note inserted by [PR542224](#) ppc 04Dec13]

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).

[New 7.9 inserted by [PR542224](#) ppc 04Dec13]

- 7.9** The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.

[7.9 renumbered as 7.10 by [PR542224](#) ppc 04Dec13]

- 7.10** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

## Part 2—Consultation and Dispute Resolution

### 8. Consultation

[8—Consultation regarding major workplace change renamed and substituted by [PR546288](#) ppc 01Jan14]

#### 8.1 Consultation regarding major workplace change

(a) **Employer to notify**

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.



**(b) Employer to discuss change**

- (i)** The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii)** The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a).
- (iii)** For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

**8.2 Consultation about changes to rosters or hours of work**

- (a)** Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b)** The employer must:
  - (i)** provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (ii)** invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (iii)** give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c)** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d)** These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## **9. Dispute resolution**

[Varied by [PR542224](#)]

**9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

[9.2 varied by [PR542224](#) ppc 04Dec13]

**9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

[9.3 varied by [PR542224](#) ppc 04Dec13]

**9.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.

[9.4 varied by [PR542224](#) ppc 04Dec13]

**9.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

**9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

**9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

## **Part 3—Types of Employment and Termination of Employment**

### **10. Types of employment**

**10.1** Employees may be engaged on a full-time, part-time or casual basis.

#### **10.2 Full-time employment**

The ordinary hours of full-time employees are an average of 38 per week.

### **10.3 Part-time employment**

- (a) A part-time employee:
  - (i) works less than full-time hours of 38 per week;
  - (ii) has predictable hours of work; and
  - (iii) receives, on a pro rata basis, equivalent pay and conditions to full-time employees in the same classification.
- (b) At the time of engagement the employer and the part-time employee must agree in writing on a regular pattern of work including the hours to be worked and the starting and finishing times on each day. These hours once fixed can be varied at any time by agreement.
- (c) Any agreed variation to the regular pattern of hours will be recorded in writing.

### **10.4 Casual employment**

A casual employee is one engaged as such. Casual employees must be paid a loading of 25% in addition to the relevant minimum wage in clause 14. This loading is instead of the leave to which full-time employees are entitled under the NES and this award.

## **11. Termination of employment**

**11.1** Notice of termination is provided for in the NES.

### **11.2 Notice of termination by an employee**

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

### **11.3 Job search entitlement**

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

## **12. Redundancy**

[Varied by [PR503694](#), [PR561478](#)]

**12.1** Redundancy pay is provided for in the NES.

### **12.2 Transfer to lower paid duties**

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

### **12.3 Employee leaving during notice period**

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

### **12.4 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 11.3.

### **12.5 Transitional provisions – NAPSA employees**

[12.5 renamed by [PR503694](#), deleted by [PR561478](#) ppc 05Mar15]

### **12.6 Transitional provisions – Division 2B State employees**

[12.6 inserted by [PR503694](#), deleted by [PR561478](#) ppc 05Mar15]

## **Part 4—Minimum Wages and Related Matters**

## **13. Classifications**

The classifications to which the award applies are in Schedule B—Classification Structure and Definitions.

**14. Minimum wages**

[Varied by [PR998004](#), [PR509135](#), [PR522966](#), [PR536769](#), [PR544268](#), [PR551692](#), [PR559289](#), [PR566784](#), [PR579893](#)]

**14.1 Adult minimum wages**

[14.1 varied by [PR998004](#), [PR509135](#), [PR522966](#), [PR536769](#), [PR551692](#), [PR566784](#), [PR579893](#) ppc 01Jul16]

Classification	Minimum wage	Minimum wage
	per week	per hour
	\$	\$
Level 1	672.70	17.70
Level 2	718.60	18.91
Level 3	783.30	20.61
Level 4	854.60	22.49

**14.2 Apprentice minimum wages**

[14.2 substituted by [PR544268](#) ppc 01Jan14]

- (a) An apprentice must be paid a minimum of the following percentage of the standard rate:

Year	% of <u>standard rate</u>
First	55
Second	65
Third	80
Fourth	95

- (b) An adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be paid 80% of the minimum wage for Level 3 in clause 14.1, or the rate prescribed by clause 14.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (c) An adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the rate for the lowest adult classification in clause 14.1, or the rate prescribed by clause 14.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (d) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that

## Miscellaneous Award 2010

applies to the classification specified in clause 14.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

[New 14.3 inserted by [PR559289](#) ppc 01Jan15]

### 14.3 Apprentice conditions of employment

- (a) Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- (b) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that this clause will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- (c) For the purposes of clause 14.3(b) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (d) The amount payable by an employer under clause 14.3(b) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
- (e) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.
- (f) An employer may meet its obligations under clause 14.3(e) by paying any fees and/or cost of textbooks directly to the RTO.
- (g) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- (h) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time

## Miscellaneous Award 2010

worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This subclause operates subject to the provisions of Schedule D—School-based Apprentices.

- (i) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

### **14.4 Junior minimum wages**

[14.3 renumbered as 14.4 by [PR559289](#) ppc 01Jan15]

The minimum wages for juniors are:

<b>Age</b>	<b>% of relevant adult minimum wage</b>
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

### **14.5 Higher duties**

[14.4 renumbered as 14.5 by [PR559289](#) ppc 01Jan15]

An employee engaged for more than four hours on any one day or shift on the duties of a higher classification must be paid the minimum wage for that classification for the whole day or shift.

### **14.6 Supported wage system**

[14.5 renumbered as 14.6 by [PR559289](#) ppc 01Jan15]

See Schedule C

### **14.7 School-based apprentices**

[14.6 renumbered as 14.7 by [PR559289](#) ppc 01Jan15]

See Schedule D

### **14.8 National training wage**

[14.7 renumbered as 14.8 by [PR559289](#) ppc 01Jan15]

See Schedule E

## 15. Allowances

To view the current monetary amounts of work-related allowances refer to the [Allowances Sheet](#).

[Varied by [PR998126](#), [PR509256](#), [PR523086](#), [PR536889](#), [PR551812](#), [PR566913](#), [PR566913](#), [PR579610](#)]

### 15.1 Clothing reimbursement

An employee required to provide special clothing or a uniform must be reimbursed by the employer for the cost of such clothing.

### 15.2 First aid allowance

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from St John Ambulance or similar body must be paid an extra 2% of the [standard rate](#) per week if appointed by their employer to perform first aid duties.

### 15.3 Leading hand/in charge allowance

A team leader or leading hand in charge of three or more employees must be paid:

In charge of	% of <a href="#">standard rate</a> extra per week
3–10 employees	4.4
11–20 employees	6.5
More than 20 employees	8.3

### 15.4 Meal allowance

[15.4 varied by [PR998126](#), [PR509256](#), [PR523086](#), [PR536889](#), [PR551812](#), [PR566913](#), [PR579610](#) ppc 01Jul16]

An employee required to work more than one hour of overtime after the employee's ordinary time of ending work without being given 24 hours' notice must be either provided with a meal or paid a meal allowance of \$17.73. If the overtime exceeds four hours a further meal allowance of \$16.05 must be paid.

### 15.5 Vehicle allowance

[15.5 varied by [PR523086](#), [PR536889](#), [PR551812](#) ppc 01Jul14]

An employee who agrees with their employer to use their own motor vehicle on the employer's business must be paid an allowance of \$0.78 per kilometre.

### 15.6 Reimbursement of expenses

An employee must be reimbursed all reasonable expenses incurred at the direction of the employer.

### 15.7 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:

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

## **16. District allowances**

[16 deleted by [PR561478](#) ppc 05Mar15]

## **17. Accident pay**

[17 varied by [PR503694](#); deleted by [PR561478](#) ppc 05Mar15]

## **18. Payment of wages**

Payment of wages is dealt with in s.323 of the Act.

## **19. Superannuation**

[Varied by [PR546097](#)]

[Preamble renumbered as 19.1 by [PR546097](#) ppc 01Jan14]

**19.1** Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund.

### **19.2 Superannuation contributions for defined benefit members**

[19.2 inserted by [PR546097](#) from 01Jan10]

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

## **Part 5—Hours of Work and Related Matters**

### **20. Ordinary hours of work and rostering**

- 20.1** The ordinary hours fixed in accordance with clause 10—Types of employment, for employees other than casuals are to be worked on a regular basis with fixed starting and finishing times over a maximum of six days per week, provided that on average an employee must not be required to work ordinary hours on more than 20 days in any 28 day period. Once fixed, the starting and finishing times can be varied by agreement at any time or by the employer on seven days' notice.
- 20.2** Ordinary hours are not to exceed 10 hours on any day or shift except by agreement in which case the maximum number of ordinary hours is 12.

### **21. Breaks**

An employee must not be required to work for more than five hours without an unpaid break of at least 30 minutes for a meal.

### **22. Overtime and penalty rates**

#### **22.1 Overtime**

All time worked in excess of an average of 38 hours per week by a full-time employee or in excess of the agreed number of hours per week by a part-time employee is overtime and must be paid at the rate of 150% of the relevant minimum wage for the first three hours and 200% of the relevant minimum wage thereafter. In the case of part-time employees, the agreed number of hours means the number of hours agreed in writing either at the commencement of employment or subsequently.

#### **22.2 Penalty rates**

- (a) All work performed by an employee, other than a casual, outside the hours of 7.00 am and 7.00 pm Monday to Friday and on Saturday which is not overtime must be paid at the rate of 120% of the relevant minimum wage.
- (b) All work performed by an employee, other than a casual, on Sunday which is not overtime must be paid at the rate of 150% of the relevant minimum wage.
- (c) All work performed by a casual employee outside the hours of 7.00 am and 7.00 pm Monday to Friday and on Saturday which is not overtime must be paid at the rate of 145% of the relevant minimum wage.
- (d) All work performed by a casual employee on Sunday which is not overtime must be paid at the rate of 175% of the relevant minimum wage.
- (e) All work performed by an employee on a public holiday is to be paid at the rate of 250% of the relevant minimum wage.

## Part 6—Leave and Public Holidays

### 23. Annual leave

[Varied by [PR567240](#), [PR583035](#)]

**23.1** Annual leave is provided for in the NES.

[23.2 varied by [PR567240](#) ppc 27May15]

**23.2** For the purpose of the additional week of annual leave provided for in s.87(1)(b) of the Act, a **shiftworker** is an employee who works ordinary hours over seven days of the week and is regularly rostered to work on Sundays and public holidays.

**23.3** When taking a period of paid annual leave an employee must be paid a loading of 17.5% in addition to the payment required by the NES or the ordinary pay they would have received for the period of the leave, whichever is the greater.

### 23.4 Annual close down

(a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.

[23.4(b) substituted by [PR546340](#) ppc 24Jan14]

- (b) Where an employee has been given notice pursuant to clause 23.4(a) and the employee has:
- (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
  - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
  - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.

[23.4(c) substituted by [PR546340](#) ppc 24Jan14]

(c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

### 23.5 Annual leave in advance

[23.5 inserted by [PR583035](#) ppc 29Jul16]

- (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 23.5 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

- (c) The employer must keep a copy of any agreement under clause 23.5 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 23.5, 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.

### 23.6 Cashing out of annual leave

[23.6 inserted by [PR583035](#) ppc 29Jul16]

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 23.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 23.6.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 23.6 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 23.6 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.

## Miscellaneous Award 2010

- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 23.6 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 23.6.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 23.6.

Note 3: An example of the type of agreement required by clause 23.6 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

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

[23.7 inserted by [PR583035](#) ppc 29Jul16]

Note: Clauses 23.7 to 23.9 contain provisions, additional to the National Employment Standards, 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 Fair Work 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 23.2).
- (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 23.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 23.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

### **23.8 Excessive leave accruals: direction by employer that leave be taken**

[23.8 inserted by [PR583035](#) ppc 29Jul16]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 23.7(b) but agreement is not reached (including because the employee

## Miscellaneous Award 2010

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):
  - (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 23.7, 23.8 or 23.9 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) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (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) may result in the direction ceasing to have effect. See clause 23.8(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

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

[23.9 inserted by [PR583035](#) ppc 29Jul16]

- (a) Clause 23.9 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 23.7(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.
- (c) However, an employee may only give a notice to the employer under paragraph (b) 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 23.8(a) that, when any other paid annual leave arrangements (whether made under

## Miscellaneous Award 2010

clause 23.7, 23.8 or 23.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.

- (d) A notice given by an employee under paragraph (b) 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 23.7, 23.8 or 23.9 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.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 23.2) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

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

Personal/carer's leave and compassionate leave are provided for in the NES.

### **25. Community service leave**

Community service leave is provided for in the NES.

### **26. Public holidays**

**26.1** Public holidays are provided for in the NES.

**26.2** By agreement between an employer and the majority of employees in an enterprise another day may be substituted for a public holiday provided for in the NES.

**26.3** An employer and an employee may agree on the substitution of another day for a day substituted under clause 26.2.

## Schedule A—Transitional Provisions

[Varied by [PR503694](#)]

### A.1 General

**A.1.1** The provisions of this schedule deal with minimum obligations only.

**A.1.2** The provisions of this schedule are to be applied:

- (a) when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;
- (b) when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;
- (c) when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or
- (d) when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

### A.2 Minimum wages – existing minimum wage lower

**A.2.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

**A.2.2** In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.



## Miscellaneous Award 2010

**A.2.3** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

**A.2.4** The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.

**A.2.5** From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.2.6** The employer must apply any increase in minimum wages in this award resulting from an annual wage review.

**A.2.7** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.3 Minimum wages – existing minimum wage higher**

**A.3.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

**A.3.2** In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

**A.3.3** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

## Miscellaneous Award 2010

**A.3.4** The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.

**A.3.5** From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.3.6** The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.

**A.3.7** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.4 Loadings and penalty rates**

For the purposes of this schedule loading or penalty means a:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- shift allowance/penalty.

### **A.5 Loadings and penalty rates – existing loading or penalty rate lower**

**A.5.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

## Miscellaneous Award 2010

**A.5.2** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

**A.5.3** The difference between the loading or penalty in this award and the rate in clause A.5.2 is referred to as the transitional percentage.

**A.5.4** From the following dates the employer must pay no less than the loading or penalty in this award minus the specified proportion of the transitional percentage:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.5.5** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.6 Loadings and penalty rates – existing loading or penalty rate higher**

**A.6.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

**A.6.2** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

**A.6.3** The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.

## Miscellaneous Award 2010

**A.6.4** From the following dates the employer must pay no less than the loading or penalty in this award plus the specified proportion of the transitional percentage:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.6.5** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.7 Loadings and penalty rates – no existing loading or penalty rate**

**A.7.1** The following transitional arrangements apply to an employer not covered by clause A.5 or A.6 in relation to a particular loading or penalty in this award.

**A.7.2** Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

**A.7.3** From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

**First full pay period on or after**

1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

**A.7.4** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.8 Former Division 2B employers**

[A.8 inserted by [PR503694](#) ppc 01Jan11]

**A.8.1** This clause applies to an employer which, immediately prior to 1 January 2011, was covered by a Division 2B State award.

**A.8.2** All of the terms of a Division 2B State award applying to a Division 2B employer are continued in effect until the end of the full pay period commencing before 1 February 2011.

**A.8.3** Subject to this clause, from the first full pay period commencing on or after 1 February 2011 a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under this Schedule if it had been a national system employer immediately prior to 1 January 2010.

**A.8.4** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the

### Miscellaneous Award 2010

corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

- A.8.5** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.
- A.8.6** In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.

## **Schedule B—Classification Structure and Definitions**

### **Level 1**

An employee at this level has been employed for a period of less than three months and is not carrying out the duties of a level 3 or level 4 employee.

### **Level 2**

An employee at this level has been employed for more than three months and is not carrying out the duties of a level 3 or level 4 employee.

### **Level 3**

An employee at this level has a trade qualification or equivalent and is carrying out duties requiring such qualifications.

### **Level 4**

An employee at this level has advanced trade qualifications and is carrying out duties requiring such qualifications or is a sub-professional employee.

## Schedule C—Supported Wage System

[Varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542224](#), [PR551831](#), [PR568050](#), [PR581528](#)]

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

[C.2 varied by [PR568050](#) ppc 01Jul15]

**C.2** In this schedule:

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

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

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

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

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

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

### **C.3 Eligibility criteria**

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

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

## **C.4 Supported wage rates**

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

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

[C.4.2 varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#) ppc 01Jul16]

**C.4.2** Provided that the minimum amount payable must be not less than \$82 per week.

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

## **C.5 Assessment of capacity**

**C.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

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

## **C.6 Lodgement of SWS wage assessment agreement**

[C.6.1 varied by [PR542224](#) ppc 04Dec13]

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

[C.6.2 varied by [PR542224](#) ppc 04Dec13]

**C.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the



award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

### **C.7 Review of assessment**

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

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

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

### **C.9 Workplace adjustment**

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

### **C.10 Trial period**

**C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

**C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

[C.10.3 varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#) ppc 01Jul16]

**C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$82 per week.

**C.10.4** Work trials should include induction or training as appropriate to the job being trialled.

**C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

## Schedule D—School-based Apprentices

[Varied by [PR544268](#)]

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- 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** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.

[D.8 substituted by [PR544268](#) ppc 01Jan14]

- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency based progression if provided for in this award.

[D.9 substituted by [PR544268](#) ppc 01Jan14]

- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration) or stages of competency based progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

[D.10 substituted by [PR544268](#) ppc 01Jan14]

- D.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time

## Miscellaneous Award 2010

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.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule E—National Training Wage

[Varied by [PR998004](#), [PR509135](#), [PR522966](#); [PR536769](#), [PR545787](#), [PR551692](#), [PR566784](#), [PR579893](#)]

### E.1 Title

This is the *National Training Wage Schedule*.

### E.2 Definitions

In this schedule:

**adult trainee** is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

**approved training** means the training specified in the training contract

**Australian Qualifications Framework (AQF)** is a national framework for qualifications in post-compulsory education and training

**out of school** refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (c) not include any period during a calendar year in which a year of schooling is completed

**relevant State or Territory training authority** means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

**relevant State or Territory vocational education and training legislation** means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

**trainee** is an employee undertaking a traineeship under a training contract

**traineeship** means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

**training contract** means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

**training package** means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

**year 10** includes any year before Year 10

### **E.3 Coverage**

- E.3.1** Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by Appendix E1 to this schedule or by clause E.5.4 of this schedule.
- E.3.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in Appendix E1 to this schedule.
- E.3.3** This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.
- E.3.4** This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.5** Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.
- E.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

### **E.4 Types of Traineeship**

The following types of traineeship are available under this schedule:

- E.4.1** a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

**E.4.2** a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

**E.5 Minimum Wages**

[E.5 substituted by [PR998004](#), [PR509135](#), [PR522966](#), [PR536769](#), [PR551692](#), [PR566784](#), [PR579893](#) ppc 01Jul16]

**E.5.1 Minimum wages for full-time traineeships**

**(a) Wage Level A**

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10 per week</b>	<b>Year 11 per week</b>	<b>Year 12 per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

**(b) Wage Level B**

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10 per week</b>	<b>Year 11 Per week</b>	<b>Year 12 per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	

**Miscellaneous Award 2010**

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>Per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Plus 5 or more years out of school	593.60		

**(c) Wage Level C**

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per week</b>	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

**(d) AQF Certificate Level IV traineeships**

**(i)** Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

**(ii)** Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per week</b>	<b>per week</b>
	<b>\$</b>	<b>\$</b>
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70
Wage Level C	560.60	581.80

**E.5.2 Minimum wages for part-time traineeships****(a) Wage Level A**

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

**(b) Wage Level B**

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

**(c) Wage Level C**

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:



**Miscellaneous Award 2010**

	<b>Highest year of schooling completed</b>		
	<b>Year 10</b>	<b>Year 11</b>	<b>Year 12</b>
	<b>per hour</b>	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78
Plus 4 years out of school	15.95	17.78	
Plus 5 or more years out of school	17.78		

**(d) School-based traineeships**

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix E1 are as follows when the trainee works ordinary hours:

<b>Year of schooling</b>	
<b>Year 11 or lower</b>	<b>Year 12</b>
<b>per hour</b>	<b>per hour</b>
<b>\$</b>	<b>\$</b>
9.94	10.96

**(e) AQF Certificate Level IV traineeships**

(i) Subject to clauses E.5.2(f)E.5.1(a) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

<b>Wage level</b>	<b>First year of traineeship</b>	<b>Second and subsequent years of traineeship</b>
	<b>per hour</b>	<b>per hour</b>
	<b>\$</b>	<b>\$</b>
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03

## Miscellaneous Award 2010

<b>Wage level</b>	<b>First year of traineeship  per hour \$</b>	<b>Second and subsequent years of traineeship  per hour \$</b>
Wage Level C	18.44	19.15

### **(f) Calculating the actual minimum wage**

- (i)** Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.
- (ii)** Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.
- (iii)** Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

### **E.5.3 Other minimum wage provisions**

- (a)** An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b)** If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

### **E.5.4 Default wage rate**

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by Appendix E1 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

## **E.6 Employment conditions**

- E.6.1** A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer's leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.
- E.6.2** A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- E.6.3** Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

[Note inserted by [PR545787](#) ppc 01Jan14]

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause E.5.2(f)(ii) and not by this clause.

- E.6.4** Subject to clause E.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

## Appendix E1: Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

### E1.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I
	II
	III
Beauty	III
Business Services	I
	II
	III
Chemical, Hydrocarbons and Refining	I
	II
	III
Civil Construction	III
Coal Training Package	II
	III
Community Services	II
	III
Construction, Plumbing and Services Integrated Framework	I
	II
	III
Correctional Services	II
	III
Drilling	II
	III
Electricity Supply Industry—Generation Sector	II
	III (in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I
	II
	III (in Western Australia only)
Financial Services	I
	II
	III
Floristry	III
Food Processing Industry	III

Miscellaneous Award 2010

<b>Training package</b>	<b>AQF certificate level</b>
Gas Industry	III
Information and Communications Technology	I II III
Laboratory Operations	II III
Local Government (other than Operational Works Cert I and II)	I II III
Manufactured Mineral Products	III
Manufacturing	I II III
Maritime	I II III
Metal and Engineering (Technical)	II III
Metalliferous Mining	II III
Museum, Library and Library/Information Services	II III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I II III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

## E1.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I
	II
	III
Asset Maintenance	I
	II
	III
Australian Meat Industry	I
	II
	III
Automotive Industry Manufacturing	II
	III
Automotive Industry Retail, Service and Repair	I
	II
	III
Beauty	II
Caravan Industry	II
	III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I
	II
	III
Extractive Industries	II
	III
Fitness Industry	III
Floristry	II
Food Processing Industry	I
	II
Forest and Forest Products Industry	I
	II
	III
Furnishing	I
	II
	III
Gas Industry	I
	II
Health	II
	III

Miscellaneous Award 2010

<b>Training package</b>	<b>AQF certificate level</b>
Local Government (Operational Works)	I II
Manufactured Mineral Products	I II
Metal and Engineering (Production)	II III
Outdoor Recreation Industry	I II III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II III
Property Services	I II III
Public Safety	I II
Pulp and Paper Manufacturing Industries	I II
Retail Services	I II
Screen and Media	I II III
Sport Industry	II III
Sugar Milling	I II III
Textiles, Clothing and Footwear	I II
Transport and Logistics	I II
Visual Arts, Craft and Design	I II III
Water Industry	I II

### E1.3 Wage Level C

<b>Training package</b>	<b>AQF certificate level</b>
Agri-Food	I
Amenity Horticulture	I II III
Conservation and Land Management	I II III
Funeral Services	I II III
Music	I II III
Racing Industry	I II III
Rural Production	I II III
Seafood Industry	I II III



## Schedule F—2016 Part-day Public Holidays

[Sched F inserted by [PR532630](#) ppc 23Nov12; renamed and varied by [PR544519](#) ppc 21Nov13; renamed and varied by [PR557581](#), [PR573679](#), [PR580863](#) ppc 31May16]

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

- F.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
  - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
  - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
  - (e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.

**Miscellaneous Award 2010**

- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

This schedule is not intended to detract from or supplement the NES.

This schedule is an interim provision and subject to further review.

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

[Sched G inserted by [PR583035](#) ppc 29Jul16]

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 H—Agreement to Cash Out Annual Leave**

[Sched H inserted by [PR583035](#) ppc 29Jul16]

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\_\_\_

<p><i>Include if the employee is under 18 years of age:</i></p> <p>Name of parent/guardian: _____</p> <p>Signature of parent/guardian: _____</p> <p>Date signed: ___/___/20___</p>
--