

# Restaurant Industry Award 2010

The above award was first made on 4 December 2009 [[PR991086](#)]

This consolidated version of the award includes variations made on 12 March 2010 [[PR994479](#)]; 4 June 2010 [[PR997772](#)]; 18 June 2010 [[PR998158](#)]; 18 June 2010 [[PR998019](#)]; 29 June 2010 [[PR998748](#)]; 6 December 2010 [[PR503644](#)]; 20 May 2011 [[PR508273](#)]; 20 June 2011 [[PR509150](#)]; 21 June 2011 [[PR509271](#)]; 21 June 2011 [[PR510670](#)]; 14 May 2012 [[PR523709](#)]; 18 June 2012 [[PR522981](#)]; 18 June 2012 [[PR525068](#)]; 19 June 2012 [[PR523101](#)]; 23 October 2012 [[PR530251](#)]; 21 December 2012 [[PR532630](#)]; 19 June 2013 [[PR536784](#)]; 20 June 2013 [[PR536904](#)]; 20 June 2013 [[PR537893](#)]; 10 October 2013 [[PR543062](#)]; 13 November 2013 [[PR544519](#)]; 22 November 2013 [[PR544294](#)]; 4 December 2013 [[PR542239](#)]; 11 December 2013 [[PR545333](#)]; 17 December 2013 [[PR545787](#)]; 24 December 2013 [[PR546288](#)]; 30 December 2013 [[PR546124](#)]; 4 June 2014 [[PR551382](#)]; 19 June 2014 [[PR551707](#)]; 19 June 2014 [[PR551827](#)]; 27 June 2014 [[PR551831](#)]

Applications for Review of award: [AM2014/47](#), [AM2014/190](#), [AM2014/192](#)

NOTE: **Transitional provisions** may apply to certain clauses – see [clause 2](#) and [Schedule A](#)

To determine the transitional amount or loading, go to the version of this modern award in operation [prior to 1 July 2010](#) which does **not** include:

- (a) variations to minimum wages resulting from the Annual Wage Review 2009-10; or
- (b) variations in expense related allowances operative from 1 July 2010.

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## Part 1—Application and Operation

### 1. Title

This award is the *Restaurant Industry Award 2010*.

### 2. Commencement and transitional

[Varied by [PR542239](#)]

**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 [PR542239](#) 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 [PR542239](#) 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 [PR542239](#) ppc 04Dec13]

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

- (a) on its own initiative; or
- (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](#), [PR503644](#), [PR544294](#), [PR546124](#)]

3.1 In this award, unless the contrary intention appears:

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

[Definition of **adult apprentice** inserted by [PR544294](#) 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)

**appropriate level of training** means that an employee:

- (a) has completed an appropriate training program that meets the training and assessment requirements of a qualification or one or more designated units of competency from a Training Package;
- (b) has been assessed by a qualified skills assessor to have skills at least equivalent to those attained in an appropriate training course; and/or
- (c) at 31 December 2009 (except for a Food and beverage attendant grade 2 as defined in Schedule B—Classification Structure and Definitions) has been doing the work of a particular classification for a period of at least three months,

(however, to avoid doubt, the minimum classification rate for an employee who has completed AQF Certificate III or higher qualifications relevant to the classification in which they are employed is Level 4 in clause 20.1. For Food and beverage attendants grade 2, classification at grade 3 is subject to the employee having completed AQF Certificate II qualifications relevant to the grade 3 classification)

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

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

[Definition of **default fund employee** inserted by [PR546124](#) ppc 01Jan14]

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

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[Definition of **defined benefit member** inserted by [PR546124](#) 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 [PR503644](#) 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 [PR503644](#) 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)

[Definition of **exempt public sector superannuation scheme** inserted by [PR546124](#) ppc 01Jan14]

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

[Definition of **MySuper product** inserted by [PR546124](#) ppc 01Jan14]

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

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

**relevant apprenticeship legislation** means any awards and/or regulations made by any State Apprenticeship Authority

**restaurant industry** means restaurants, reception centres, night clubs, cafes and roadhouses, and includes any tea room, café, and catering by a restaurant business but does not include a restaurant operated in or in connection with premises owned or operated by employers covered by any of the following awards:

- (a) *Hospitality Industry (General) Award 2010*;
- (b) *Registered and Licensed Clubs Award 2010*; or
- (c) *Fast Food Industry Award 2010*

**spread of hours** means the period of time elapsing from the time an employee commences duty to the time the employee ceases duty within any period of 24 hours

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**standard hourly rate** means the minimum hourly wage for a Level 4 classification (Cook grade 3 (tradesperson)) in clause 20.1

**standard rate** means the minimum wage for a Level 4 classification (Cook grade 3 (tradesperson)) in clause 20.1

**standard weekly rate** means the minimum weekly wage for a Level 4 classification (Cook grade 3 (tradesperson)) in clause 20.1

**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 This industry award covers employers throughout Australia in the restaurant industry and their employees in the classifications listed in Schedule B—Classification Structure and Definitions to the exclusion of any other modern award.

4.2 The award does not cover an employee excluded from award coverage by the Act.

4.3 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.

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

4.5 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for apprentices and trainees engaged in the industry and/or parts of industry set out at clause 4.1 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.

4.7 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

**4.8** This award does not cover employers in the following industries or activities or their employees:

- (a) contract caterers whose principal and substantial business activity is that of providing catering services and/or accommodation services on a contract or fee-for-service basis;
- (b) retail industry;
- (c) fast food industry;
- (d) in-flight catering for airlines;
- (e) catering services provided by aged care employers;
- (f) hotels, motels, hostels and boarding establishments;
- (g) clubs registered or recognised under State or Territory legislation;
- (h) boarding schools, residential colleges, hospitals or orphanages; or
- (i) restaurants operated in or in connection with hotels, motels, hostels and boarding establishments, and/or clubs registered or recognised under State or Territory legislation.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

## **5. 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 [PR542239](#)]

**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;



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- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

[7.2 varied by [PR542239](#) 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 [PR542239](#) 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 [PR542239](#) 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
- (b) at any time, by written agreement between the employer and the individual employee.

[Note inserted by [PR542239](#) 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 [PR542239](#) 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 [PR542239](#) 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 [PR542239](#)]

**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 [PR542239](#) 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 [PR542239](#) 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 [PR542239](#) 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 under this award will be employed in one of the following categories:

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

**10.2** At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual.

## **11. Full-time employment**

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

## **12. Part-time employment**

**12.1** An employer may employ part-time employees in any classification in this award.

**12.2** A part-time employee is an employee who:

- (a) works less than full-time hours of 38 per week;
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

**12.3** At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

**12.4** Any agreed variation to the hours of work will be recorded in writing.

**12.5** An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

**12.6** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13—Casual employment.

**12.7** All time worked in excess of the hours as agreed under clause 12.3 or varied under clause 12.4 will be overtime and paid for at the rates prescribed in clause 33—Overtime.

**12.8** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed in clause 20—Minimum wages, for the work performed.

## **13. Casual employment**

**13.1** A casual employee is an employee engaged as such and must be paid a casual loading of 25%. The casual loading is paid as compensation for annual leave, unpaid personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.

**13.2** On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work.

**13.3** A casual employee must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.

## **14. Apprentices**

- 14.1** Apprentices will be engaged in accordance with relevant apprenticeship legislation and be paid in accordance with clause 20.2.
- 14.2** An apprentice under the age of 18 years must not, without their consent, be required to work overtime.

## **15. Junior employees**

- 15.1** Junior employees will be paid in accordance with clause 20.3. Where the law permits, junior employees may be employed in the bar or other places where liquor is sold. Junior employees working as liquor service employees must be paid at the adult rate of pay in clause 20.1 for the classification for the work being performed.
- 15.2** An employer may at any time demand the production of a birth certificate or other satisfactory proof for the purpose of ascertaining the correct age of a junior employee. If a birth certificate is required, the cost of it must be borne by the employer.
- 15.3** No employee under the age of 18 years will be required to work more than 10 hours in a shift.

## **16. Termination of employment**

- 16.1** Notice of termination is provided for in the NES.

### **16.2 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.

### **16.3 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.

## **17. Redundancy**

[Varied by [PR503644](#)]

- 17.1** Redundancy pay is provided for in the NES.

### **17.2 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 new ordinary time rate for the number of weeks of notice still owing.

**17.3 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 will be 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 will not be entitled to payment instead of notice.

**17.4 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy will 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 will, at the request of the employer, be required to produce proof of attendance at an interview or they will not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (c) This entitlement applies instead of clause 16.3.

**17.5 Transitional provisions – NAPSA employees**

[17.5 renamed by [PR503644](#) ppc 01Jan11]

- (a) Subject to clause 17.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with terms of a notional agreement preserving a State award:
  - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
  - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the notional agreement preserving a State award is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 17.5 ceases to operate on 31 December 2014.

## 17.6 Transitional provisions – Division 2B State employees

[17.6 inserted by [PR503644](#) ppc 01Jan11]

- (a) Subject to clause 17.6(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a Division 2B State award:
  - (i) that would have applied to the employee immediately prior to 1 January 2011, if the employee had at that time been in their current circumstances of employment and no Division 2B State employment agreement or enterprise agreement had applied to the employee; and
  - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the Division 2B State award is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 17.6 ceases to operate on 31 December 2014.

## Part 4—Minimum Wages and Related Matters

### 18. Work organisation

Employees must undertake duties as directed within the limits of their competence and may undertake duties across the different streams contained in the classification definitions in Schedule B—Classification Structure and Definitions.

### 19. Classifications

The definitions of the classification levels in clause 20—Minimum wages, are contained in Schedule B—Classification Structure and Definitions.

### 20. Minimum wages

[Varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR544294](#), [PR551707](#)]

#### 20.1 General

[20.1 varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR551707](#) ppc 01Jul14]

An adult employee within a level specified in the following table (other than an apprentice) will be paid not less than the rate per week assigned to the classification, as defined in Schedule B—Classification Structure and Definitions, for the area in which such employee is working.



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<b>Classification</b>	<b>Minimum weekly wage</b>	<b>Minimum hourly wage</b>
	<b>\$</b>	<b>\$</b>
Introductory level	640.90	16.87
<b>Level 1:</b>	659.40	17.35
Food and beverage attendant grade 1		
Kitchen attendant grade 1		
<b>Level 2:</b>	684.70	18.02
Food and beverage attendant grade 2		
Cook grade 1		
Kitchen attendant grade 2		
Clerical grade 1		
Storeperson grade 1		
Door person/security officer grade 1		
<b>Level 3:</b>	708.20	18.64
Food and beverage attendant grade 3		
Cook grade 2		
Kitchen attendant grade 3		
Clerical grade 2		
Storeperson grade 2		
Timekeeper/security officer grade 2		
Handyperson		
<b>Level 4:</b>	746.20	19.64
Food and beverage attendant grade 4 (tradesperson)		
Cook grade 3 (tradesperson)		
Clerical grade 3		
Storeperson grade 3		
<b>Level 5:</b>	793.00	20.87
Food and beverage supervisor		
Cook grade 4 (tradesperson)		
Clerical supervisor		
<b>Level 6:</b>	814.20	21.43
Cook grade 5 (tradesperson)		

## 20.2 Apprentices

### (a) Minimum wages

[20.2(a) varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR551707](#) ppc 01Jul14]

	Percentage of the rate prescribed in clause 20.1 for a Cook grade 3	Minimum weekly wage	Minimum hourly wage
	%	\$	\$
1st year	55	410.41	10.80
2nd year	65	485.03	12.76
3rd year	80	596.96	15.71
4th year	95	708.89	18.66

### (b) Completion of full apprenticeship

Any person who has completed a full apprenticeship as a qualified tradesperson must be paid not less than the [standard rate](#).

### (c) Proficiency pay

#### (i) Application

Proficiency pay as set out in this clause will apply to apprentices who have successfully completed their schooling in a given year.

#### (ii) Payments

Apprentices will receive the rate of pay of a qualified cook during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:

- **On one occasion only**

- the first nine months of the fourth year of the normal fourth year rate of pay;
- thereafter, the qualified cook's award rate of pay.

- **On two occasions**

- for the first six months of the fourth year of apprenticeship, the normal year rate of pay;
- thereafter, the qualified cook's award rate of pay.

- **On three occasions**

- for the entire fourth year, the qualified cook's award rate of pay.

**(d) Adult apprentices**

[20.2(d) inserted by [PR544294](#) ppc 01Jan14]

- (i) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the rate prescribed for a Cook grade 3, or the rate prescribed by clause 20.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (ii) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 20.1, or the rate prescribed by clause 20.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (iii) 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 applies to the classification specified in clause 20.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

**20.3 Juniors—minimum wages**

- (a) The minimum rate of wages for junior employees will be the percentages as set out below of the rate prescribed for the adult classification appropriate to the work performed for the area in which the employee is working.

<b>Age</b>	<b>%</b>
16 years and under	50
17 years and under	60
18 years of age	70
19 years of age	85
20 years of age	100

- (b) The wage will be calculated to the nearest \$0.10. Any broken part of \$0.10 in the result not exceeding \$0.05 is to be disregarded.

**21. Supported wage system**

See Schedule C

**22. National training wage**

See Schedule D

## 23. School-based apprentices

See Schedule E

## 24. Allowances

[Varied by [PR994479](#), [PR998158](#), [PR509271](#), [PR523101](#), [PR536904](#), [PR551827](#)]

### 24.1 Meal allowance

[24.1(a) varied by [PR998158](#), [PR509271](#), [PR523101](#), [PR536904](#), [PR551827](#) ppc 01Jul14]

- (a) A full-time or part-time employee required to work overtime for more than two hours without being notified on the previous day or earlier that the employee will be so required to work will be supplied with a meal by the employer or paid a meal allowance of \$12.05.
- (b) If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the amount advised, the employee will be paid as above prescribed for the meal which the employee has provided but which is surplus.

### 24.2 Split shift allowance

[24.2 substituted by [PR994479](#) from 01Jan10]

Full-time and part-time employees who have a broken work day will receive an additional allowance of 0.5% of the weekly [standard rate](#) for each separate work period of two hours or more.

### 24.3 Clothing, equipment and tools allowance

[24.3(a) varied by [PR998158](#) ppc 01Jul10]

- (a) Where an apprentice cook is required to use their own tools (and is not in receipt of a tool allowance), the employer must pay an allowance of \$1.66 per day or part thereof up to a maximum of \$8.16 per week.
- (b) Where the employer requires an employee to wear any special clothing such as coats, dresses, caps, aprons, cuffs and any other articles of clothing, the employer must reimburse the employee for the cost of purchasing such special clothing. The provisions of this clause do not apply where the special clothing is paid for by the employer.
- (c) Where the employee is responsible for laundering the special clothing, the employer must reimburse the employee for the demonstrated costs of laundering it.
- (d) The employer and the employee may agree on an arrangement under which the employee will wash and iron the special clothing for an agreed sum of money, which reflects the cost of laundering the items, to be paid by the employer to the employee each week.
- (e) For the purposes of this clause, black and white attire (not being dinner suit or evening dress), shoes, hose and/or socks are not special clothing.

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- (f) Where it is necessary that an employee wear waterproof or other protective clothing such as waterproof boots, aprons or gloves, the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the protective clothing is paid for by the employer.
- (g) An employer may require an employee on commencing employment to sign a receipt for item/s of uniform and property. This receipt must list the item/s of uniform and property and the value of them. If, when an employee ceases employment, the employee does not return the item/s of uniform and property (or any of them) in accordance with the receipt, the employer will be entitled to deduct the value as stated on the receipt from the employee's wages.
- (h) In the case of genuine wear and tear, damage, loss or theft that is not the employee's fault the provisions of clause 24.3(g) will not apply.
- (i) Where the employer requires an employee to provide and use any towels, tools, knives, choppers, implements, utensils and materials, the employer must reimburse the employee for the cost of purchasing such equipment. The provisions of this clause do not apply where these items are paid for by the employer.

### 24.4 Allowance for distant work

- (a) The special rate to be paid to employees who work away from their employer's place of business for the time occupied in travelling between the employer's place of business and work or between the employee's residence and work will be at ordinary rates.
- (b) Where an employee is engaged for country or seaside work and has to travel 80 kilometres or more to take up service the employee will be paid for transport, both ways, if:
  - (i) the employee has performed to the employer's satisfaction for up to a period of four weeks; and
  - (ii) the employee is willing to complete the full period of engagement.

### 24.5 Adjustment of expense related allowances

[24.5 varied by [PR523101](#) ppc 01July12]

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.

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

**Allowance**

**Applicable Consumer Price Index figure**

Tools allowance

Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

**25. District allowances**

**25.1 Northern Territory**

An employee in the Northern Territory is entitled to payment of a district allowance in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth):

- (a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

**25.2 Western Australia**

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a notional agreement preserving a State award or an award made under the *Workplace Relations Act 1996* (Cth):

- (a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

**25.3** This clause ceases to operate on 31 December 2014.

**26. Accident pay**

[Varied by [PR503644](#)]

[26.1 substituted by [PR503644](#) ppc 01Jan11]

**26.1** Subject to clause 26.2, an employee is entitled to accident pay in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, a notional agreement preserving a State award that would have applied to the employee immediately prior to 1 January 2010 or a Division 2B State award that would have applied to the employee immediately prior to 1 January 2011:

- (a) if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument, enterprise

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agreement or Division 2B State employment agreement had applied to the employee; and

- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

[26.2 substituted by [PR503644](#) ppc 01Jan11]

- 26.2 The employee's entitlement to accident pay under the award, the notional agreement preserving a State award or the Division 2B State award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.
- 26.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.
- 26.4 This clause ceases to operate on 31 December 2014.

## 27. Payment of wages

- 27.1 Except upon the termination of employment, all wages including overtime must be paid on any day other than Friday, Saturday or Sunday in each week. However, by agreement between the employer and the majority of employees in the workplace, in a week where a holiday occurs payment of wages may be made on Friday.
- 27.2 The employer will pay the employee's wages, penalties and allowances weekly, fortnightly or, by agreement, monthly by cash, cheque or by electronic funds transfer into the employee's nominated bank account, without cost to the employee.
- 27.3 Employees whose rostered day off falls on pay day must be paid their wages, if they so desire, before going off duty on the working day prior to their day off. Provided that this provision will not apply to employees paid by electronic funds transfer.
- 27.4 When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages due must be made during working time, prior to the employee leaving their employment.
- 27.5 Where an employee is dismissed for misconduct the employee must be paid within one hour of their dismissal or as soon as practicable thereafter.

## 28. Annualised salary arrangements

### 28.1 Alternative method of payment—annual salary

- (a) As an alternative to being paid by the week, by agreement between the employer and an individual employee, an employee other than a casual, can be paid at a rate equivalent to an annual salary of at least 25% or more above the weekly rate prescribed in clause 20—Minimum wages, multiplied by 52 for the work being performed. In such cases, there is no requirement under clauses 24.2, 33—Overtime, 34.1 and 34.2 to pay overtime and penalty rates in addition to the weekly wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.

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- (b) Provided further that in the event of termination of employment prior to completion of a year, the salary paid during such period of employment must be sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.
- (c) An employee being paid according to this clause will be entitled to a minimum of eight days off per four week cycle. Further, if an employee covered by this clause is required to work on a public holiday, such employee will be entitled to a day off instead of public holidays or a day added to the annual leave entitlement.

**28.2** The employer must keep all records relating to the starting and finishing times of employees to whom this clause applies. This record must be signed weekly by the employee. This is to enable the employer to carry out a reconciliation at the end of each year comparing the employee's ordinary wage under this award and the actual payment. Where such a comparison reveals a shortfall in the employee's wages, then the employee must be paid the difference between the wages earned under the award and the actual amount paid.

## **29. Higher duties**

**29.1** Any employee who is employed for two or more hours of one day on duties carrying a higher rate than the employee's ordinary classification must be paid the higher rate for each day.

**29.2** Any employee engaged for less than two hours on one day on duties carrying a higher rate than the employee's ordinary classification must be paid at the higher rate for the time so worked.

**29.3** A higher paid employee must, when necessary, temporarily relieve a lower paid employee without loss of pay.

## **30. Superannuation**

[Varied by [PR523709](#), [PR530251](#), [PR546124](#)]

### **30.1 Superannuation legislation**

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



**30.2 Employer contributions**

- (a) An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.
- (b) The employer must make contributions for each employee for such month where the employee earns \$350.00 or more in a calendar month.

**30.3 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 30.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 30.3(a) or 30.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 30.3(a) or 30.3(b) was made.

**30.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 30.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 30.2 and pay the amount authorised under clauses 30.3(a) or 30.3(b) to one of the following superannuation funds or its successor:

- (a) The Hospitality Industry Portable Liquor Union Superannuation Trust Deed (HOST-PLUS);

[30.4(b) substituted by [PR523709](#) ppc 14May12]

- (b) InTrust Super;
- (c) AustralianSuper;

[30.4(d) substituted by [PR530251](#) ppc 26Oct12]

- (d) CareSuper;
- (e) Sunsuper;
- (f) MTAA Industry Superannuation Fund;

[30.4(g) deleted by [PR546124](#) ppc 01Jan14]

[30.4(h) deleted by [PR546124](#) ppc 01Jan14]

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[30.4(i) renumbered as 30.4(g) and varied by [PR546124](#) ppc 01Jan14]

- (g) Retail Employees Superannuation Trust;

[30.4(j) renumbered as 30.4(h) by [PR546124](#) ppc 01Jan14]

- (h) Tasplan;

[30.4(k) deleted by [PR546124](#) ppc 01Jan14]

[30.4(l) renumbered as 30.4(i) and varied by [PR546124](#) ppc 01Jan14]

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

[New 30.4(j) inserted by [PR546124](#) ppc 01Jan14]

- (j) a superannuation fund or scheme which the employee is a defined benefit member of.

### 30.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 30.2 and pay the amount authorised under clauses 30.3(a) or 30.3(b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—in respect of any employee entitled to accident pay, pursuant to clause 26—Accident pay or the period of absence from work of the employee due to work-related injury or work-related illness provided that:
  - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
  - (ii) the employee remains employed by the employer.

## Part 5—Hours of Work and Related Matters

### 31. Hours of work

**31.1** The hours of work of a full-time employee are an average of 38 per week over a period of no more than four weeks.

**31.2** The arrangement of ordinary hours must meet the following conditions:

- (a) a minimum of six hours and a maximum of 11 and a half hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals;
- (b) an employee cannot be rostered to work for more than 10 hours per day on more than three consecutive days without a break of at least 48 hours;

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- (c) no more than eight days of more than 10 hours may be worked in a four week period;
- (d) an employee must be given a minimum break of 10 hours between the finish of ordinary hours of work on one day and the commencement of ordinary hours of work on the next day. In the case of a changeover of rosters the minimum break must be eight hours;
- (e) an employee must be given a minimum of eight full days off per four week period; or
- (f) an employee under the age of 18 years must not be required to work more than 10 hours in a shift.

**31.3 Make-up time** means an arrangement under which an employee takes time off during the employee's ordinary hours of work and makes up that time later. The employer and a majority of employees in a workplace may agree to introduce make-up time subject to the following conditions:

- (a) subject to such agreement, an employee may elect, with the consent of the employer, to work make-up time;
- (b) make-up time arrangements must comply with the conditions set out in clause 32—Breaks and clause 34—Penalty rates;
- (c) the employer must record make-up time arrangements as time and wages records; and
- (d) any disputes in relation to the practical application of this clause may be dealt with in accordance with clause 9—Dispute resolution.

### **31.4 Spread of hours**

Where broken shifts are worked the spread of hours can be no greater than 12 hours per day.

### **31.5 Minimum break between shift**

The roster for all employees other than casuals will provide for a minimum 10 hour break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day. In the case of changeover of rosters, eight hours will be substituted for 10 hours.

### **31.6 Roster**

- (a) A roster for full-time and part-time employees showing normal starting and finishing times and the surname and initials of each employee will be prepared by the employer and will be posted in a conspicuous place accessible to the employees concerned.
- (b) The roster will be alterable by mutual consent at any time or by amendment of the roster on seven days' notice. Where practicable, two weeks' notice of rostered day or days off should be given provided that the days off may be changed by mutual consent or through sickness or other cause over which the employer has no control.

## **32. Breaks**

- 32.1** If an employee, including a casual employee, is required to work for five or more hours in a day the employee must be given an unpaid meal break of no less than 30 minutes. The break must be given no earlier than one hour after starting work and no later than six hours after starting work.
- 32.2** If the unpaid meal break is rostered to be taken after five hours of starting work, the employee must be given an additional 20 minute paid meal break. The employer must allow the employee to take this additional meal break no earlier than two hours after starting work and no later than five hours after starting work.
- 32.3** If an employee is not given the unpaid meal break at the time the employer has told the employee it will be given, the employer must pay the employee 150% of the employee's ordinary base rate of pay from the time the meal break was to commence until either the meal break is given or the shift ends.
- 32.4** If clause 32.3 does not apply and an employee is not given a meal break in accordance with clause 32.1 the employer must pay the employee 150% of the employee's ordinary base rate of pay from the end of six hours until either the meal break is given or the shift ends.
- 32.5** If an employee is required to work more than five hours after the employee is given the unpaid meal break, the employee must be given an additional 20 minute paid break.
- 32.6** If a full-time or regular part-time employee is required to work more than 10 ordinary hours in the day, the employee will be given two additional 20 minute paid breaks. In rostering for these breaks, the employer must make all reasonable efforts to ensure an even mix of work time and breaks.
- 32.7** If an employee is required to work more than two hours' overtime after completion of the employee's rostered hours, the employee must be given an additional 20 minute paid break.

## **33. Overtime**

### **33.1 Requirement to pay overtime rates**

- (a) Full-time and part-time employees are paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in clause 31—Hours of work.
- (b) In addition, part-time employees are paid at overtime rates in the circumstances specified in clause 12.7.

### **33.2 Overtime rates**

The overtime rate payable to an employee depends on the time at which the overtime is worked.

- (a) **Monday to Friday:** 150% of the employee's ordinary base rate of pay for the first two hours of overtime then 200% of the employee's ordinary base rate of pay for the rest of the overtime.

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- (b) **Between midnight Friday and midnight Saturday:** 175% of the employee's ordinary base rate of pay for the first two hours of overtime then 200% of the employee's ordinary base rate of pay for the rest of the overtime.
- (c) **Between midnight Saturday and midnight Sunday:** 200% of the employee's ordinary base rate of pay for all time worked.
- (d) **On a rostered day off:** 200% of the employee's ordinary base rate of pay for all time worked. The employee must be paid for at least four hours even if the employee works for less than four hours.

**33.3** Overtime worked on any day stands alone.

### **33.4 Breaks after working overtime**

If starting work at the employee's next rostered starting time would mean that the employee did not receive a full eight hour break then:

- (a) the employee may, without loss of pay, start work at such a later time as is necessary to ensure that the employee receives a break of at least eight hours; or
- (b) the employer must pay the employee overtime rates for all work performed until the employee has received a break of at least eight hours.

### **33.5 Time off instead of payment for overtime**

- (a) Despite clause 33.1 an employee may choose, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer. This agreement must be in writing. The employee must take the time off within four weeks of working the overtime.
- (b) If an employee takes time off instead of payment for overtime then the amount of time off is to be equivalent to the pay the employee would have otherwise received for working the overtime.
- (c) If requested by an employee an employer must, within one week of receiving a request, pay the employee for any overtime worked. The employee must be paid at overtime rates.

## **34. Penalty rates**

[Varied by [PR543062](#), [PR551382](#)]

### **34.1 Penalty rates for work on weekends and public holidays**

[34.1 substituted by [PR551382](#) pcc 01Jul14]

An employee working ordinary time hours on the following days will be paid the following percentage of the minimum wage in clause 20—Minimum wages for the relevant classification:

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<b>Type of employment</b>	<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Public holidays</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Full-time and part-time	100	125	150	250
Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)	125	150	150	250
Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	250

**34.1A Special condition regarding existing employees**

No existing employee classified as Level 3 or above shall be moved down to pay grade Levels 1 or 2 or be discriminated against in the allocation of work as a result of the variation of clause 34.1 by the Full Bench of the Fair Work Commission in proceedings number C2013/6610.

**34.2 Additional payment for work done between the hours of 10.00 pm to 7.00 am on Monday to Friday**

(a) An employee, including a casual, who is required to work any of their ordinary hours between the hours of 10.00 pm and midnight Monday to Friday inclusive, or between midnight and 7.00 am Monday to Friday inclusive, must be paid an additional amount per hour calculated according to the following:

**(i) Between 10.00 pm and midnight**

- For each hour or part of an hour worked during such times—10% of the standard hourly rate per hour extra.

**(ii) Between midnight and 7.00 am**

- For each hour or part of an hour worked during such times—15% of the standard hourly rate per hour extra.

(b) For the purposes of this clause midnight will include midnight Sunday.

**34.3 Penalty rates not cumulative**

Except as provided in clause 32—Breaks, where time worked is required to be paid at more than the ordinary rate such time will not be subject to more than one penalty, but will be subjected to that penalty which is to the employee’s greatest advantage.

**34.4 Additional provisions for work on public holidays**

- (a) An employee other than a casual working on a public holiday must be paid for a minimum of four hours’ work.
- (b) A casual employee working on a public holiday must be paid for a minimum of two hours’ work.

- (c) Employees who work on a prescribed holiday may, by agreement, perform such work at a rate of 150% of the relevant minimum wage in clause 20— Minimum wages, rather than the penalty rate prescribed in clause 34.1, provided that equivalent paid time is added to the employee’s annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls. Provided further that such holiday may be allowed to the employee within 28 days of such holiday falling due.

[34.4(d) varied by [PR543062](#) ppc 10Oct13]

- (d) An employee other than a casual working on Christmas Day when it falls on a weekend and it is not a prescribed public holiday must be paid an additional loading of 50% of their ordinary time rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

## Part 6—Leave and Public Holidays

### 35. Annual leave

#### 35.1 Leave entitlement

- (a) Annual leave is provided for in the NES. It does not apply to casual employees.
- (b) For the purpose of the additional week of leave provided by the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven hours a shift.

#### 35.2 Payment for annual leave

- (a) The NES prescribes the basis for payment for annual leave, including payment for untaken leave upon the termination of employment.
- (b) In addition to the payment provided for in the NES, an employer is required to pay an additional leave loading of 17.5% of that payment.

#### 35.3 Requirement to take leave notwithstanding terms of the NES

An employer may require an employee to take annual leave by giving at least four weeks’ notice in the following circumstances:

- (a) as part of a close-down of its operations; or
- (b) where more than eight weeks’ leave is accrued, provided that the employee can choose to retain an accrual of at least four weeks’ leave.

### 36. Personal/carer’s leave and compassionate leave

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

**37. Community service leave**

Community service leave is provided for in the NES.

**38. Public holidays**

**38.1 Public holidays are provided for in the NES**

By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday instead of any of the days prescribed in the NES.

**38.2 Additional arrangements for full-time employees:**

A full-time employee whose rostered day off falls on a public holiday must, subject to clause 34.4:

- (a) be paid an extra day's pay;
- (b) be provided with an alternative day off within 28 days; or
- (c) receive an additional day's annual leave.

**38.3** A full-time employee who works on a public holiday which is subject to substitution as provided for in the NES will be entitled to the benefit of the substitute day.

**Part 7—Industry specific provisions**

**39. No deduction for breakages or cashiering underings**

An employer must not deduct any sum from the wages or income of an employee in respect of breakages or cashiering underings except in the case of wilful misconduct.



## Schedule A—Transitional Provisions

[Varied by [PR503644](#)]

### 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.

**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.

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**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.

**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.

## Restaurant Industry Award 2010

**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.

**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.

## Restaurant Industry Award 2010

**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.

**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 [PR503644](#) 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 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

[Schedule B varied by [PR508273](#), [PR551382](#)]

### B.1 Introductory level

Introductory level means a worker who enters the industry and is unable to meet the competency requirements of Level 1. Such an employee will remain in this level for a maximum of three months. Provided that an additional three months may be served at this level by mutual agreement between the employer and the employee. Further, if any disagreement arises from this provision it will be determined in accordance with clause 9—Dispute resolution.

### B.2 Food and beverage

[B.2.1 substituted by [PR551382](#) ppc 01Jul14]

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

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

[B.2.2 varied by [PR508273](#); substituted by [PR551382](#) ppc 01Jul14]

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

- (a) supplying, dispensing or mixing of liquor;
- (b) assisting in the cellar;
- (c) undertaking general waiting duties of both food and/or beverage including cleaning of tables;
- (d) receipt of monies;
- (e) attending a snack bar;
- (f) delivery duties;
- (g) taking reservations, greeting and seating guests.

**Note: Special condition regarding existing employees.**

No existing employee shall have his or her classification reduced as a result of the variation of B.2.1 and B.2.2 of this Schedule B by the Full Bench of the Fair Work Commission in proceedings number C2013/6610.

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

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

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

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

**B.3 Kitchen**

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

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

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

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

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- B.3.4 Cook grade 1** means an employee who carries out cooking of breakfasts and snacks, baking, pastry cooking or butchering.
- B.3.5 Cook grade 2** means an employee who has the appropriate level of training and who performs cooking duties such as baking, pastry cooking or butchering.
- B.3.6 Cook grade 3 (tradesperson)** means a commi chef or equivalent who has completed an apprenticeship or who has passed the appropriate trade test or who has the appropriate level of training, and who is engaged in cooking, baking, pastry cooking or butchering duties.
- B.3.7 Cook grade 4 (tradesperson)** means a demi chef or equivalent who has completed an apprenticeship or who has passed the appropriate trade test or who has the appropriate level of training and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties and/or supervises and trains other cooks and kitchen employees.
- B.3.8 Cook grade 5 (tradesperson)** means a chef de partie or equivalent who has completed an apprenticeship or has passed the appropriate trade test or who has the appropriate level of training in cooking, butchering or pastry cooking and who performs any of the following:
- (a) general and specialised duties including supervision or training of other kitchen staff;
  - (b) ordering and stock control; and
  - (c) solely responsible for other cooks and other kitchen employees in a single kitchen establishment.

## **B.4 Administrative and general**

- B.4.1 Clerical grade 1** means an employee who is required to perform basic clerical and routine office duties such as collating, filing, photocopying, and delivering messages.
- B.4.2 Clerical grade 2** means an employee who is engaged in general clerical or office duties, such as typing, filing, basic data entry and calculating functions.
- B.4.3 Clerical grade 3** means an employee who has the appropriate level of training and who performs any of the following:
- (a) operates adding machines, switchboard, paging system and calculator;
  - (b) uses knowledge of keyboard and function keys to enter and retrieve data through computer terminal;
  - (c) copy types at 25 words per minute with 98% accuracy;
  - (d) maintains mail register and records;
  - (e) maintains established paper-based filing/records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations;
  - (f) transcribes information into records, completes forms, takes telephone messages;



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- (g)** acquires and applies a working knowledge of office or sectional operating procedures and requirements;
- (h)** acquires and applies a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locates appropriate staff in different sections, relays internal information, responds to or redirects inquiries, greets visitors;
- (i)** keeps appropriate records; and
- (j)** sorts, processes and records original source financial documents (e.g. invoices, cheques, correspondence) on a daily basis, maintains and records petty cash; prepares bank deposits and withdrawal and does banking,

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

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

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

### **B.5 Stores**

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

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

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

- (a) implements quality control techniques and procedures;
- (b) understands and is responsible for a stores/warehouse area or a large section of such an area;
- (c) has a highly developed level of interpersonal and communication skills;
- (d) is able to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction;
- (e) exercises discretion within the scope of this grade; and
- (f) may exercise skills attained through the successful completion of an appropriate warehousing certificate,

and may perform indicative tasks at this level such as:

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

### **B.6 Security**

**B.6.1 Doorperson/security officer grade 1** means a person who assists in maintenance of dress standards and good order at an establishment.

**B.6.2 Timekeeper/security officer grade 2** means a person who is responsible for timekeeping of staff, for the security of keys, for the checking in and out of delivery vehicles and/or for the supervision of doorperson/security officer grade 1 personnel.

### **B.7 Handyperson**

Handyperson means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises.

## Schedule C—Supported Wage System

[Varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542239](#), [PR551831](#)]

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

**C.2** In this schedule:

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

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

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

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

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

**SWS wage assessment agreement** means the document in the form required by the Department of Education, Employment and Workplace Relations 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>
<b>%</b>	<b>%</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](#) ppc 01Jul14]

**C.4.2** Provided that the minimum amount payable must be not less than \$80 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 [PR542239](#) 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 [PR542239](#) 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

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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](#) ppc 01Jul14]

**C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$80 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—National Training Wage

[Varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR545787](#), [PR551707](#)]

### D.1 Title

This is the *National Training Wage Schedule*.

### D.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

### **D.3 Coverage**

- D.3.1** Subject to clauses D.3.2 to D.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 D1 to this schedule or by clause D.5.4 of this schedule.
- D.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 D1 to this schedule.
- D.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.
- D.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.
- D.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.
- D.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

### **D.4 Types of Traineeship**

The following types of traineeship are available under this schedule:

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

## D.5 Minimum Wages

[D.5 substituted by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR551707](#) ppc 01Jul14]

### D.5.1 Minimum wages for full-time traineeships

#### (a) Wage Level A

Subject to clause D.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 D1 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	287.90	317.10	377.80
Plus 1 year out of school	317.10	377.80	439.60
Plus 2 years out of school	377.80	439.60	511.60
Plus 3 years out of school	439.60	511.60	585.80
Plus 4 years out of school	511.60	585.80	
Plus 5 or more years out of school	585.80		

#### (b) Wage Level B

Subject to clause D.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 D1 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	287.90	317.10	367.60
Plus 1 year out of school	317.10	367.60	422.80
Plus 2 years out of school	367.60	422.80	495.80
Plus 3 years out of school	422.80	495.80	565.60
Plus 4 years out of school	495.80	565.60	
Plus 5 or more years out of school	565.60		

#### (c) Wage Level C

Subject to clause D.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 D1 are:



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	<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>
	\$	\$	\$
School leaver	287.90	317.10	367.60
Plus 1 year out of school	317.10	367.60	413.80
Plus 2 years out of school	367.60	413.80	462.20
Plus 3 years out of school	413.80	462.20	515.00
Plus 4 years out of school	462.20	515.00	
Plus 5 or more years out of school	515.00		

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

- (i) Subject to clause D.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 D.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>	
		\$		\$
Wage Level A	608.30		631.90	
Wage Level B	586.90		609.50	
Wage Level C	534.10		554.30	

**D.5.2 Minimum wages for part-time traineeships**

**(a) Wage Level A**

Subject to clauses D.5.2(f) and D.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 D1 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>
	\$	\$	\$
School leaver	9.47	10.44	12.43
Plus 1 year out of school	10.44	12.43	14.47

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	<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>
	\$	\$	\$
Plus 2 years out of school	12.43	14.47	16.83
Plus 3 years out of school	14.47	16.83	19.26
Plus 4 years out of school	16.83	19.26	
Plus 5 or more years out of school	19.26		

**(b) Wage Level B**

Subject to clauses D.5.2(f) and D.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 D1 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>
	\$	\$	\$
School leaver	9.47	10.44	12.10
Plus 1 year out of school	10.44	12.10	13.91
Plus 2 years out of school	12.10	13.91	16.32
Plus 3 years out of school	13.91	16.32	18.61
Plus 4 years out of school	16.32	18.61	
Plus 5 or more years out of school	18.61		

**(c) Wage Level C**

Subject to clauses D.5.2(f) and D.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 D1 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>
	\$	\$	\$
School leaver	9.47	10.44	12.10
Plus 1 year out of school	10.44	12.10	13.61
Plus 2 years out of school	12.10	13.61	15.20
Plus 3 years out of school	13.61	15.20	16.94
Plus 4 years out of school	15.20	16.94	
Plus 5 or more years out of school	16.94		

**(d) School-based traineeships**

Subject to clauses D.5.2(f) and D.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 D1 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>
9.47	10.44

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

- (i) Subject to clauses D.5.2(f) and D.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 D.5.2(f) and D.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	20.01	20.79
Wage Level B	19.29	20.04
Wage Level C	17.57	18.24

**(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 D.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 D.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

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minimum wage in clauses D.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

### D.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.

### D.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 D1 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.

## D.6 Employment conditions

- D.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.
- D.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.
- D.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 D.5.2(f)(ii) and not by this clause.

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

## Appendix D1: Allocation of Traineeships to Wage Levels

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

### D1.1 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

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<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

**D1.2 Wage Level B**

<b>Training package</b>	<b>AQF certificate level</b>
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
Local Government (Operational Works)	I II

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<b>Training package</b>	<b>AQF certificate level</b>
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



**D1.3 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 E—School-based Apprentices

[Varied by [PR544294](#), [PR545333](#)]

- E.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.
- E.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.
- E.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.
- E.4** For the purposes of clause E.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.
- E.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.
- E.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.
- E.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.

[E.8 substituted by [PR544294](#) ppc 01Jan14; corrected by [PR545333](#) ppc 01Jan14]

- E.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.

[E.9 substituted by [PR544294](#) ppc 01Jan14; corrected by [PR545333](#) ppc 01Jan14]

- E.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.

[E.10 substituted by [PR544294](#) ppc 01Jan14; corrected by [PR545333](#) ppc 01Jan14]

- E.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- E.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule F—2013 Part-day public holidays

[Sched F inserted by [PR532630](#) ppc 23Nov12; renamed and varied by [PR544519](#) ppc 21Nov13]

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 7.00pm and midnight on Christmas Eve (24 December 2013) or New Year's Eve (31 December 2013) 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 7.00pm 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 7.00pm 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 7.00pm 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 7.00pm 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 7.00pm 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 7.00pm and midnight.
- (g) An employee not rostered to work between 7.00pm 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.