

The Exposure Draft was first published on 17 May 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
19 May 2016	Correct rates in table B.2.2	B.2.2
3 January 2017	Incorporate changes resulting from <a href="#">PR580863</a>	Schedule G
	Incorporate changes resulting from <a href="#">[2016] FWCFB 3500</a> , <a href="#">PR579779</a> , <a href="#">PR579523</a> and <a href="#">PR581528</a>	15, 18, Schedule B, Schedule C, Schedule D
	Tables corrected and reformatted by amod	Schedule B
	Incorporate changes resulting from <a href="#">PR582952</a>	23, Schedule H, Schedule I
	Incorporate changes resulting from <a href="#">PR584066</a>	22.3, Schedule J
	Rates tables corrected and reformatted by AMOD	Schedule B
	Incorporates feedback from the parties at the hearing on 6 December 2016 ( <a href="#">Transcript</a> )	2, 7, 11.1, 15.3(a), 15.7(a), 15.7(b), 16.1(a), 17, 17.5(f)(ii), 17.6(a), 18.2(b)(ii), 18.3(d)(iii), 20.3, 21, 22.2(a), 23.2, Schedule B, Schedule C
10 July 2017	Incorporates changes summarised in the <a href="#">Final Report</a> to the Full Bench 17 March 2017. NB some of the changes indicated in this report have not been made due to <a href="#">[2017] FWCFB 3433</a>	2, 4, 11.3, 12.2, 14.4(c), 15.5, 16.1(a), 17.1, 17.4(d), 17.7, 18.2(a), 18.2(a)(i), 18.2(b)(ii), 18.3(a)(i), 18.3(a)(ii), 18.3(a)(iv), 18.3(d)(i), 20.3, 21.2, 22.1(b), 22.2(b), 22.5(a), 22.6, 23.2(a)(i), 23.2(a)(ii), B.1.1, B.2.3, B.3.1, B.3.2, B.4, B.5
	Note added	Schedule B
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3500</a> , <a href="#">PR592114</a> , <a href="#">PR592276</a> , <a href="#">PR592689</a> and <a href="#">PR593814</a> .	17.1, 17.10, 18.3(b), 18.3(c), Schedule D, Schedule F
	Incorporate changes resulting from <a href="#">[2017] FWCFB 3541</a>	11
	Incorporate changes resulting from <a href="#">[2017] FWCFB 3433</a>	1, 2, 4, 23.5, 23.6, 23.7
	<a href="#">Exposure Draft</a>	
23 March 2018	Incorporate change resulting from <a href="#">PR582952</a>	23.8(a)

	Typographical error corrected	26.3(c)
	Incorporate changes resulting from <a href="#">PR598110</a>	Schedule G
	Incorporates change resulting from <a href="#">[2018] FWCFB 1548</a>	7.2, 14.4, 22.4, Schedule B, Schedule C
Changes agreed to by parties appear in red text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.		

## EXPOSURE DRAFT

### Aged Care Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Aged Care Award 2010* as at 17 May 2016. This exposure draft does not seek to amend any entitlements under the Aged Care Award 2010 but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/251](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

No examples have been included in this exposure draft. Parties are asked to submit [examples](#) that clarify the operation of particular provisions.

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## Part 1—Application and Operation of this Award

### 1. Title and commencement

- 1.1 This award is the *Aged Care Award 2016*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since then.
- 1.3 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. Definitions

Placement of the *definitions* to be determined by Plain Language Process. See [\[2017\] FWCFB 3433](#) at [333].

In this award, unless the contrary intention appears:

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

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

**aged care industry** has the meaning given in clause 4.2

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

**apprentice** means an employee who is bound by a contract of training registered with the appropriate State or Territory training authority

~~**casual ordinary hourly rate** means the hourly rate for a casual employee for the employee's classification specified in clause 17, plus any allowances specified as being included in the employee's ordinary hourly rate~~

**day shift** means a shift worked between 6.00 am and 6.00 pm Monday to Friday

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

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

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

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

**minimum hourly rate** means the minimum hourly rate for the employee's classification specified in clause 17

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

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

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

**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 17, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

**standard rate** means the minimum weekly rate for an Aged care employee—level 6 in clause 17.1—Minimum wages

### 3. The National Employment Standards and this award

- 3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.
- 3.3 The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

### 4. Coverage

- 4.1 This industry award covers employers throughout Australia in the aged care industry and their employees in the classifications listed in clause 17—Minimum wages, to the exclusion of any other modern award.

Definition of Aged care industry retained in coverage clause in accordance with [\[2017\] FWCFB 3433](#) at [339]

- 4.2 **Aged care industry** means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility
- 4.3 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 and 4.2 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.

- 4.4** 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 4.2 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 clause operates subject to the exclusions from coverage in this award.
- 4.5** The award does not cover:
- (a) an employee excluded from award coverage by the Act;
  - (b) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
  - (c) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.
- 4.6** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

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

## **5. Effect of variations made by the Fair Work Commission**

A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

## **6. Award flexibility for individual arrangements**

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

- 6.2** 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.
- 6.3** 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 6.1; and
  - (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.
- 6.4** 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.
- 6.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 6.6** Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 6.7** 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.
- 6.8** The agreement may be terminated:
- (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: 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 Act).



- 6.9** The notice provisions in clause 6.8(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 6.8(a), subject to four weeks’ notice of termination.
- 6.10** 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.

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

**7.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

**7.2** Facilitative provisions in this award are contained in the following clauses:

<b>Clause</b>	<b>Provision</b>	<b>Agreement between an employer and:</b>
14.2(b)	Rest breaks between rostered work	An individual employee
<u>16.2</u>	<u>Paid rest breaks</u>	<u>An individual employee</u>
<u>22.3</u>	<u>Time off instead of payment for overtime</u>	<u>An individual employee</u>
<u>23.4</u>	Annual leave in advance	<u>An individual employee</u>
<u>23.5</u>	Cashing out of annual leave	<u>An individual employee</u>

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

**8. Types of employment**

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

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

**8.2** At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis.

**8.3** An employer may direct an employee to carry out such duties that are within the limits of the employee’s skill, competence and training, consistent with the respective classification.

## 9. Full-time employment

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to clause 13.1 of this award.

## 10. Part-time employment

**10.1** A part-time employee is an employee who is engaged to work less than an average of 38 hours per week and has reasonably predictable hours of work.

**10.2** Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day.

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

**10.4** The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.

**10.5** Payment in respect of personal/carer's leave (where an employee has accumulated an entitlement) for a part-time employee will be on a pro rata basis made according to the number of ordinary hours the employee would have worked on the day or days on which the leave was taken.

## 11. Casual employment

Casual employment provisions may be affected by [AM2014/197](#).

**11.1** A casual employee is an employee engaged as such on an hourly basis, other than as a part-time, full-time or fixed term employee, to work up to and including 38 ordinary hours per week.

**11.2** A casual employee will be paid per hour worked:

- (a) the ordinary hourly rate appropriate to the employee's classification; and
- (b) a loading of 25% of that rate.

**11.3** The casual loading is paid instead of the paid leave entitlements, ~~accrued by full-time and part time employees.~~

## 12. Classifications

**12.1** All employees covered by this award must be classified according to the structure and definitions set out in Schedule A—Classification Definitions.

**12.2** Employers must provide written advice to employees of: ~~advise their employees in writing of their~~

- (a) the employee's classification ~~upon~~ commencement; and
- (b) ~~of~~ any subsequent changes to their classification.

## **Part 3—Hours of Work**

### **13. Ordinary hours of work**

#### **13.1 Ordinary hours**

- (a) The ordinary hours of work are:
- (i) 38 hours per week; or
  - (ii) an average of 38 hours per week worked over:
    - 76 hours per fortnight;
    - 114 hours per 21 days; or
    - 152 hours per four week period.
- (b) Ordinary hours are worked in one of the following ways:
- (i) in a period of 28 calendar days of not more than 20 work days in a roster cycle;
  - (ii) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO); or
  - (iii) eight hours on a day shift or 10 hours on a night shift.

#### **13.2 Span of hours**

The ordinary hours of work for a day worker are worked between 6.00 am and 6.00 pm, Monday to Friday.

### **14. Rostering arrangements**

#### **14.1 Rostered days off**

- (a) An employee, other than a casual employee, will be free from duty for at least:
- (i) two full days in each week;
  - (ii) four full days in each fortnight; or
  - (iii) eight full days in each 28 day cycle.
- (b) Where practicable, days off will be consecutive.

#### **14.2 Rest breaks between rostered work**

- (a) An employee will be allowed a break of at least 10 hours between the termination of one shift or period of duty and the start of another.
- (b) By mutual agreement, the 10 hour rest break may be reduced to eight hours.

### 14.3 Accumulation and taking of accrued days off (ADOs)

- (a) This clause only applies to full-time employees.
- (b) If an employee is entitled to an ADO in accordance with the arrangement of ordinary hours of work as set out in clause 13.1, ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- (c) If an employee is terminated for any reason, accumulated ADOs will be paid to the employee at ordinary rates.
- (d) The taking of an employee's ADO will be determined, by mutual agreement between the employee and the employer, having regard to the needs of the place of employment or sections thereof. The ADO will, where practicable, be consecutive with the rostered days off prescribed in clause 14.1.
- (e) ADOs will not be rostered on public holidays.

### 14.4 Rosters

- (a) The ordinary hours of work for each employee will be displayed on a roster in a place conveniently accessible to employees. The roster will be displayed at least two weeks before the first working day of the roster period subject to clause 14.4(b).
- (b) It is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.
- (c) ~~Subject to clause 30, s~~ Seven days' notice will be given of a change in a roster. However, a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency.
- (d) Clause 14.4 does not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight.
- (e) Where practicable, ADOs will be displayed on the roster.
- (f) This clause does not apply to hostel supervisors.

### 14.5 Minimum engagements

- (a) Full-time employees will receive a minimum payment of four hours for each engagement in respect of ordinary hours of work.
- (b) Part-time and casual employees will receive a minimum payment of two hours for each engagement.
- (c) Subject to clause 14.6, except for meal breaks, the hours of work on any day will be continuous.

### 14.6 Broken shifts

- (a) For the purposes of this clause, **broken shift** means a shift worked by a casual or part-time employee that includes breaks (other than a meal break) totalling

not more than four hours and where the span of hours is not more than 12 hours.

- (b) A broken shift may be worked where there is mutual agreement between the employer and employee.
- (c) Payment for a broken shift will be at the ordinary hourly rate of pay plus any applicable penalty rates and shift allowances in accordance with clauses 21—Shiftwork and 22—Overtime.
- (d) Shift allowances will be determined according to the starting time of the broken shift.
- (e) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at **200%** of the ordinary hourly rate.
- (f) An employee must receive a break of at least 10 hours between broken shifts rostered on successive days.

## 15. Sleepovers

Monetary amounts in this clause adjusted as a result of AWR 2017
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**15.1** Employees may, in addition to normal rostered shifts, be required to sleepover.

**15.2** A **sleepover** means sleeping in at night in order to be on call for emergencies.

**15.3** The following conditions will apply to each night of sleepover:

- (a) The span for a sleepover will be ~~between eight and ten hours~~ not less than eight hours and not more than 10 hours on any one night.
- (b) Employees will be provided with free board and lodging for each night on which they are required to sleepover.
- (c) Employees will be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.
- (d) In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of **\$45.84** for each night on which they sleep over.
- (e) No work other than that of an emergency nature will be required to be performed during any sleepover. For the purposes of this clause an **emergency** is any unplanned occurrence or event requiring prompt action.
- (f) An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 15.3(d).

#### 15.4 Payment for time worked during sleepover

(a) All time worked during any sleepover will count as time worked and be paid for in accordance with the provisions of clause 15.4.

##### (b) Full-time employees

All time worked by a full-time employee during any sleepover will be paid for at overtime rates.

Terminology issue has been considered separately, see [3] of [\[2018\] FWC 1544](#).

##### (c) Part-time employees

(i) All time worked by a part-time employee during any sleepover will be paid for at the ordinary hourly rate plus applicable shift and weekend penalties.

(ii) Overtime rates in clause 22.2(a) will be paid for all hours worked:

- in excess of the total number of hours worked on any day by full-time employees or in excess of 11 hours where there are no full-time employees; and
- in excess of 38 hours in one week or in excess of 76 hours in a fortnight.

##### (d) Casual employees

(i) All time worked by a casual employee during any sleepover will be paid for at the ordinary hourly rate plus applicable shift and weekend penalties.

(ii) If the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, the excess hours worked in that week or fortnight will be paid for at overtime rates.

(iii) If the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of clause 15.7 will apply.

**15.5** ~~A sleepover must be rostered:~~ Where a sleepover is rostered, it must commence:

(a) immediately at the conclusion of the employee's shift and continuous with that shift; and/or

(b) immediately prior to the employee's shift and continuous with that shift.

**15.6** No employee will be required to sleepover during any part of their rostered days off or ADOs.

#### 15.7 Breaks between shifts

(a) If an employee performs so much work during the sleepover periods between the end of their ordinary work on one day or shift and the start of their ordinary work on the next day or shift that they do not receive at least eight consecutive hours off duty, the employer must:

- (i) release the employee ~~after the sleepover~~ after the completion of such work until the employee has had at least eight consecutive hours off duty without loss of pay; and
  - (ii) pay the employee for any ordinary working time that falls within this period of absence.
- (b) If the employer requires the employee to resume or continue work, and the employee has not had eight consecutive hours off duty, the employer must:
- (i) pay the employee at **200%** of the ordinary hourly rate until the employee is released for eight consecutive hours; and
  - (ii) once the employee is released from duty, allow the employee 10 consecutive hours off duty without loss of pay and pay the employee for any ordinary working time that falls within the period of absence.

**15.8** Casual employees may only be used for sleepovers when full-time employees or part-time employees are not available for that duty. In no case will casual employees be used exclusively, or almost exclusively, for sleepovers.

**15.9** Nothing in this clause will stop the employer from rostering an employee to work shiftwork instead of undertaking sleepovers.

## **16. Breaks**

### **16.1 Unpaid meal breaks**

- (a) An employee who works ~~more than five hours will be entitled to an unpaid meal break of between 30 and 60 minutes~~ in excess of five hours will be entitled to a unpaid meal break of not less than 30 minutes and not more than 60 minutes duration, to be taken at a mutually agreed time after commencing work.
- (b) If an employee is required to remain available to attend to duty or is on duty during their meal break, the employee will be paid at overtime rates for all time worked from the commencement of that meal break until such time that a meal break free from duty is taken by the employee or the employee's shift ends (whichever occurs first).
- (c) The time worked until the meal break is taken will be counted as an employee's ordinary time.

### **16.2 Paid rest breaks**

- (a) In addition to meal breaks, an employee who works an ordinary shift of 7.6 hours or more is entitled to two separate 10 minute rest breaks.
- (b) Where less than 7.6 ordinary hours are worked, employees are entitled to one 10 minute rest break in each four hour period worked.

- (c) Subject to mutual agreement, two 10 minute rest breaks may be taken as one 20 minute rest break.
- (d) Rest breaks are paid and will count as time worked.

## Part 4—Wages and Allowances

### 17. Minimum wages

Rates updated as a result of AWR 2017

An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:

See [19]–[22] of [\[2018\] FWC 1544](#).

#### 17.1 Minimum wages—Aged Care Employee

Employee classification	Minimum weekly rate <b>(full-time employee)</b> \$	Minimum hourly rate \$
Aged care employee—level 1	\$738.80	\$19.44
Aged care employee—level 2	\$769.40	\$20.25
Aged care employee—level 3	\$799.60	\$21.04
Aged care employee—level 4	\$809.10	\$21.29
Aged care employee—level 5	\$836.40	\$22.01
Aged care employee—level 6	\$881.50	\$23.20
Aged care employee—level 7	\$897.40	\$23.62

See Schedule B for a summary of hourly rates of pay including overtime and penalties.

#### 17.2 Cooking apprentices

An employee apprenticed in the cooking trade will be paid the percentage of Level 4 set out in the following table:

Year of apprenticeship	% of Level 4 rate
1st year	55%
2nd year	65%
3rd year	80%
4th year	95%



### 17.3 Gardening apprentices

- (a) An employee apprenticed in the gardening and landscaping trade prior to 1 January 2015 will be paid the percentage of Level 4 set out in the following table:

Year of apprenticeship	Apprentices who have not completed year 12	Apprentices who have completed year 12
	<b>% of Level 4 rate</b>	
1st year	50%	52.5%
2nd year	60%	65%
3rd year	75%	75%
4th year	95%	95%

- (b) An employee apprenticed in the gardening and landscaping trade on or after 1 January 2015 will be paid the percentage of Level 4 set out in the following table:

Year of apprenticeship	Apprentices who have not completed year 12	Apprentices who have completed year 12
	<b>% of Level 4 rate</b>	
1st year	50%	55%
2nd year	60%	65%
3rd year	75%	75%
4th year	95%	95%

### 17.4 Adult apprentices

- (a) An adult apprentice who commenced their apprenticeship on or after 1 January 2014 and is in the first year of their apprenticeship must be paid the greater of:
- (i) **80%** of the minimum wage for Level 4; or
  - (ii) the rate prescribed by clause 17.2 or 17.3 for the relevant year of the apprenticeship
- (b) An adult apprentice who commenced their apprenticeship on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the greater of:
- (i) the rate for the lowest adult classification in clause 17.1; or
  - (ii) the rate prescribed by the relevant apprenticeship clause 17.2 or 17.3 for the relevant year of the apprenticeship.
- (c) 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:

- (i) six months as a full-time employee; or
  - (ii) 12 months as a part-time or regular and systematic casual employee, immediately prior to commencing the apprenticeship.
- (d) Where clause 17.4(c) applies, 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 17.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

## 17.5 Apprentice conditions of employment

- (a) Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.

### (b) Payment for block release training

- (i) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training.
- (ii) Clause 17.5(b)(i) will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- (iii) For the purposes of clause 17.5(b)(i), excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work.
- (iv) For the purposes of clause 17.5(b)(i), excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

### (c) Reduction in payment for block release training

The amount payable by an employer under clause 17.5(b) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.

- (d) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice shall be reimbursed by the employer within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

- (e) An employer may meet its obligations under 17.5(d) by paying any fees and/or cost of textbooks directly to the RTO.
- (f) **Attendance at ~~block~~ release training**
  - (i) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
  - (ii) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This subclause operates subject to the provisions of ~~clause 2—Definitions~~ Schedule E—School-based Apprentices.
- (g) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

#### 17.6 Payment of wages

- (a) Wages must be paid weekly or fortnightly, no later than payday, by:
  - (i) cash; or
  - (ii) electronic funds transfer into the bank or financial institutional account nominated by the employee.

Payment of wages on termination is being considered in matter [AM2016/8](#), see [draft determination \(at attachment A of Statement\)](#)

- (b) Where an employee resigns or is terminated, payment of all wages and other monies owing to an employee will be made to the employee by no later than the last day of the formal notice period.
- (c) The employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of clause 17.6, for example bank error or delay.

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

#### 17.7 Higher duties

~~(a) An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed, for two hours or less, in any one day or shift will be paid at the higher wage rate for the time so worked at the higher classification.~~

~~(b) An employee engaged at a higher classification for more than two hours in any day or shift will be paid the higher rate for the full day or shift.~~

- (a) An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:
  - (i) the time so worked for two hours or less; or
  - (ii) a full day or shift where the time so worked exceeds two hours.

**17.8 Supported wage system**

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

**17.9 School-based apprentices**

For school-based apprentices, see Schedule E—School-based Apprentices.

**17.10 National training wage**

Clause 17.10 substituted per [PR593814](#).

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2017. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Aged Care Award 2010* and not the *Miscellaneous Award 2010*.

**18. Allowances**

**18.1** Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.

**18.2 Wage related allowances**

Monetary amounts in this clause adjusted as a result of AWR 2017

~~(a) All purpose allowances~~

~~Allowances paid for all purposes are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The leading hand allowance (clause 18.2(a)) is paid for all purposes under this award.~~

(a) ~~(b)~~Leading hand allowance

- (i) A leading hand is an employee whose classification does not ~~include~~ indicate supervisory responsibility and who is placed in charge of two or more employees of a substantially similar classification.
- (ii) A leading hand will be paid a weekly allowance, based on the number of employees supervised, according to the following scale:

Leading hand in charge of:	\$ per week
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<b>Leading hand in charge of:</b>	<b>\$ per week</b>
2–5 other employees	<u>\$23.54</u>
6–10 other employees	<u>\$33.59</u>
11–15 other employees	<u>\$42.40</u>
16 or more other employees	<u>\$51.83</u>

- (iii) This allowance will be part of salary for all purposes of this award.
- (iv) An employee who works less than 38 hours per week will be entitled to the allowance on a pro rata basis.

**(b) ~~(e)~~ Nauseous work allowance**

- (i) An allowance of **\$0.44** per hour or part hour is payable to an employee engaged in:
  - handling linen of a nauseous nature that is not sealed in airtight containers; and/or
  - work that is of an unusually dirty or offensive nature having regard to the duties normally performed by employees in the same classification.
- (ii) An employee entitled to the allowance in clause 18.2(b)(i) must be paid a minimum weekly payment of **\$2.38** for work performed in any week.

**18.3 Expense related allowances**

Monetary amounts in this clause adjusted as a result of AWR 2017

**(a) Clothing and equipment**

- (i) Where the employer requires an employee to wear a uniform, the employer must:
  - supply the employee with an adequate number of uniforms ~~free of cost~~ appropriate to the occupation free of cost; and
  - launder and maintain the uniforms.
- (ii) Any uniforms provided by the employer to an employee remain the property of the employer ~~and must be provided to the employee and laundered free of charge~~.

**(iii) Uniform allowance**

Instead of providing uniforms to employees under clause 18.3(a)(i), the employer and employee may agree that the employer will pay the employee the lesser of:

- **\$1.23** per shift or part shift on duty; or
- **\$6.24** per week.

**(iv) Laundry allowance**

Where the uniform is not laundered by or at the expense of the employer, under clause 18.3(a)(i), the employee will be paid the lesser of:

- **\$0.32** per shift or part shift on duty; or
- **\$1.49** per week.

(v) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days.

(vi) Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.

(vii) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must provide the special clothing or safety equipment or reimburse the employee for the cost of purchasing the special clothing or safety equipment.

**(b) Meal allowance**

(i) Where an employee is required to work at least one hour past the usual finishing time or, in the case of shiftworkers, where overtime work on any shift is more than one hour, the employee will be paid:

- a meal allowance of **\$12.62**; and
- if the overtime work exceeds four hours, another meal allowance of **\$11.37**.

(ii) The allowances in clause 18.3(b)(i) will be paid in addition to any overtime payments.

(iii) Clause 18.3(b)(i) will not apply when:

- the employee could reasonably return home for a meal within the meal break; or
- the employer has adequate cooking and dining facilities and provides the employee with an adequate meal.

(iv) If requested by the employee, the meal allowance will be paid on the same day as the overtime is worked.

**(c) Tool allowance**

A chef or cook will be paid **\$11.45** per week for the supply and maintenance of tools if the employer does not provide that chef or cook with all necessary tools.

**(d) Travelling, transport and fares**

- (i) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than \$0.78 per kilometre.
- (ii) When an employee is involved in travelling on duty, and the employer cannot provide appropriate transport, all reasonably incurred expenses for fares, meals and accommodation will be paid for by the employer. The employer will reimburse the employee upon production of receipted account(s) or other evidence acceptable to the employer.
- (iii) ~~An employee is not entitled to reimbursement for expenses incurred under clause 18.3(d)(ii) if the expenses incurred exceed the mode of transport, meals or standard of accommodation that was agreed to with the employer.~~  
Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 18.3(d)(ii) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

See Schedule C for a summary of monetary allowances.

## **19. Superannuation**

### **19.1 Superannuation legislation**

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

### **19.2 Employer contributions**

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

### **19.3 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 19.2.

- (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 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

#### **19.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) First State Super;
- (b) Health Industry Plan (HIP);
- (c) Health Employees Superannuation Trust of Australia (HESTA);
- (d) Catholic Super (CSF);
- (e) Mercy Super;
- (f) Sunsuper;
- (g) Tasplan;
- (h) CareSuper;
- (i) NGS Super;
- (j) AustralianSuper;
- (k) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (l) a superannuation fund or scheme which the employee is a defined benefit member of.

## **Part 5—Overtime and Penalty Rates**

### **20. Weekend penalties**

**20.1** An employee whose ordinary hours include work on a weekend will be paid for all ordinary hours worked on the weekend at the following rates:



- (a) between midnight Friday and midnight Saturday—**150%** of the ordinary hourly rate; and
- (b) between midnight Saturday and midnight Sunday—**175%** of the ordinary hourly rate.

**20.2** The penalty rates in clause 20.1 are in substitution for and not cumulative upon the shift premiums prescribed in clause 21—Shiftwork.

**20.3** Casual employees will be paid in accordance with clause 20.1 and 20.2. The rates prescribed in clause 20.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 11.2.

## **21. Shiftwork**

**21.1** A **shiftworker** is an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker, as defined in clause 13.2.

### **21.2 Shiftwork rates**

Shiftwork provisions being considered by the Full Bench dealing with plain language re-drafting as per [592] of [\[2017\] FWCFB 5536](#). Cited in [\[2018\] FWCFB 1548](#) at [38].

- ~~(a) Subject to 0, employees working afternoon or night shift will be paid at the following rates for all shiftwork:
  - ~~(i) Afternoon shift starting between 10.00 am and 12:59 pm **110%** of the ordinary hourly rate~~
  - ~~(ii) Afternoon shift starting between 1.00 pm and 3:59 pm **112.5%** of the ordinary hourly rate~~
  - ~~(iii) Night shift starting between 4.00 pm and 3:59 am **115%** of the ordinary hourly rate~~
  - ~~(iv) Night shift starting between 4.00 am and 5:59 am **110%** of the ordinary hourly rate~~~~
- ~~(b) Employees who work less than 38 hours per week will only be entitled to the shiftwork rates where their shift starts before 6.00 am or finishes after 6.00 pm.~~
- (a) Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week will only be entitled to the additional rates where their shift commence prior to 6.00 am or finish subsequent to 6.00 pm.
- (b) Afternoon shift commencing at 10.00 am and before 1.00 pm—10% of the ordinary hourly rate
- (c) Afternoon shift commencing at 1.00 pm and before 4.00 pm—12.5% of the ordinary hourly rate

- (d) Night shift commencing at 4.00 pm and before 4.00 am—15% of the ordinary hourly rate
- (e) Night shift commencing at 4.00 am and before 6.00 am—10% of the ordinary hourly rate

**21.3** An employee entitled to a shift allowance under clause 21.2, will be paid the shift allowance for the entire shift.

## **22. Overtime**

22 amended in accordance with [PR584066](#) (22.3 substituted)

### **22.1 Full-time employees**

- (a) A full-time employee will be paid the following for all work done in addition to their rostered ordinary hours on any day:
  - (i) for all authorised overtime on Monday to Friday, payment will be made at the rate of **150%** of the ordinary hourly rate for the first two hours and **200%** of the ordinary hourly rate thereafter;
  - (ii) for all authorised overtime on a Saturday or Sunday, payment will be made at the rate of **200%** of the ordinary hourly rate; and
  - (iii) for all authorised overtime on a public holiday, payment will be made at the rate of **250%** of the ordinary hourly rate.
- (b) Overtime rates under this clause are in substitution for, and not cumulative upon, the shift premiums prescribed in clause ~~21.1~~ 21.2.

### **22.2 Part-time and casual employees**

- (a) ~~All time worked by a part-time or casual employee who works more than 38 hours per week or 76 hours per fortnight must be paid at the following rates:~~
  - (i) Monday to Friday—**150%** of the ordinary hourly rate for the first two hours and **200%** of the ordinary hourly rate thereafter;
  - (ii) Saturday or Sunday—**200%** of the ordinary hourly rate; and
  - (iii) Public holidays—**250%** of the ordinary hourly rate.
- (b) All time worked by a part-time or casual employee who works more than in excess of 10 hours per day will be paid at the following rates:
  - (i) Monday to Saturday—**150%** of the ordinary hourly rate for the first two hours and **200%** of the ordinary hourly rate thereafter;
  - (ii) Saturday or Sunday—**200%** of the ordinary hourly rate; and
  - (iii) Public holidays—**250%** of the ordinary hourly rate.
- (c) For a part-time employee, all time worked in excess of their rostered hours on any one day (unless an agreement has been entered into under clause 10.3), will be overtime and paid at the rates prescribed by clause 22.2(a).

### 22.3 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 22.3.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule J. There is no requirement to use the form of agreement set out at Schedule J. An agreement under clause 22.3 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 22.3 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 22.3 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 22.3 as an employee record.

- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 22.3 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 22.3 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.3.

By mutual agreement, a full-time or a part-time employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

- (l) Time off instead of payment for overtime must be taken at ordinary rates within three months of it being accrued.
- (m) Where it is not possible for an employee to take the time off, instead of payment for overtime, within the three month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (n) An employee cannot be compelled to take time off instead of receiving payment for overtime.

22.4 varied by <a href="#">[2018] FWCFB 1548</a> at [40].
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#### **22.4 Rest period after overtime**

- (a) An employee, other than a casual, who works so much overtime between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- (b) If on the instructions of the employer, such an employee resumes or continues work without having had 10 consecutive hours off duty, they will be paid 200% of the ordinary hourly rate until they are released from duty for such rest period and they will then be entitled to be absent until they have had 10

consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

~~(a) If a full-time or part-time employee works so much overtime between the end of ordinary hours on one day and the start of ordinary hours on the next day that they do not have a break of at least 10 consecutive hours, the employer must:~~

~~(i) release the employee after the end of the overtime until the employee has had at least 10 consecutive hours off duty; and~~

~~(ii) pay the employee for any ordinary working time that falls within the period of absence.~~

~~(b) If the employer requires the employee to resume or continue work, and the employee has not had 10 consecutive hours off duty, the employer must:~~

~~(i) pay the employee at **200%** of the ordinary hourly rate until the employee is released for 10 consecutive hours; and~~

~~(ii) once the employee is released from duty, pay the employee for any ordinary working time that falls within the period of absence.~~

#### 22.5 Recall to work overtime

- (a) An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours' work at the appropriate rate for each time they are so recalled.
- (b) If the work required is completed in less than four hours, the employee will be released from duty.

#### 22.6 Meal breaks during overtime

- (a) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours will be entitled to a 20 minute ~~meal~~ break to have a meal.
- (b) The employee will be entitled to an additional 20 minute ~~meal~~ break to have a meal after each subsequent four hours of overtime.
- (c) Meal breaks taken during overtime will be paid and counted as time worked.
- ~~(d) Meal allowances are payable in accordance with clause 18.3(b). Where the facility provides the employee with a meal, the meal must be provided to the employee free of charge.~~
- (d) The meals referred to in clause 22.6(a) and 22.6(b) will be provided to the employee free of charge. Where the facility is unable to provide such meals, a meal allowance as described in clause 18.3(b) will be paid to the employee concerned.

## Part 6—Leave and Public Holidays

### 23. Annual leave

23 amended in accordance with [PR582952](#). (23.4-23.8 inserted; 23.8(a) deleted)

**23.1** Annual leave is provided for in the NES. This clause contains additional provisions.

#### 23.2 Additional leave for certain shiftworkers

- (a) For the purposes of the NES a shiftworker is defined as an employee who:
- (i) is regularly rostered to work their ordinary hours outside the ordinary hours of work as a day worker as defined in clause 13.2; and/or
  - (ii) works for more than four ordinary hours on 10 or more weekends during the yearly period in respect of which their annual leave accrues.

See [final report](#) of 17 March 2017.

- (b) For the purpose of the clause 23.2(a), a weekend means work in ordinary time on a Saturday and/or a Sunday in any one calendar week.

#### 23.3 Annual leave loading

- (a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of **17.5%** of their ordinary rate of pay.
- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
- (i) annual leave loading of **17.5%** of their ordinary rate of pay; or
  - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

NOTE: Where an employee is receiving overaward payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).

#### 23.4 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
- (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 23.4 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 23.4 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 23.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

### **23.5 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 23.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 23.5.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 23.5 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 23.5 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 23.5 as an employee record.

Note 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 23.5.

Note 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 23.5.

Note 3: An example of the type of agreement required by clause 23.5 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

### 23.6 Excessive leave accruals: general provision

Note: Clauses 23.6 to 23.8 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 23.2(a)).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 23.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 23.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

### 23.7 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 23.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 23.6, 23.7 or 23.8 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.



Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 23.7(b)(i).

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

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

~~(a) Clause 23.8 comes into operation from 29 July 2017.~~

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 23.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 23.7(a) that, when any other paid annual leave arrangements (whether made under clause 23.6, 23.7 or 23.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 23.6, 23.7 or 23.8 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 23.2(a)) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

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

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

## 25. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the NES.

## 26. Public holidays

This public holiday provision may be affected by [AM2014/301](#).

**26.1** Public holiday entitlements are provided for in the NES. This clause contains additional provisions.

### 26.2 Full-time and part-time employees

- (a) A full-time or part-time employee who works on a public holiday will elect to receive one of the following:
  - (i) payment at the rate of **250%** of the ordinary hourly rate for all hours worked; or
  - (ii) the same number of hours worked added to their annual leave.
- (b) The election in clause 26.2(a) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
- (c) A part-time employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.
- (d) A full-time employee who does not work on a public holiday and a part-time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.
- (e) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

### 26.3 Casual employees

- (a) A casual employee will be paid only for those public holidays they work at **250%** of the ordinary hourly rate for hours worked.
- (b) Payments under clause 26.3(a) are instead of and replace any casual loading otherwise payable under this award.
- (c) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

### 26.4 Part-day public holidays

For provisions in relation to part-day public holidays see Schedule G—2017 Part-day Public Holidays.

## **27. Community service leave**

Community service leave is provided for in the NES.

## **28. Ceremonial leave**

An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer.

# **Part 7—Consultation and Dispute Resolution**

## **29. Consultation about major workplace change**

### **29.1 Employers to notify**

- (a) 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.
- (b) **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.

### **29.2 Employers to discuss change**

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 29.1, 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.
- (b) 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 29.1.
- (c) 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.

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

- 30.1** 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.
- 30.2** The employer must:
- (a) 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);
  - (b) 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
  - (c) 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.
- 30.3** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- 30.4** These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

### **31. Dispute resolution**

- 31.1** 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.
- 31.2** 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 31.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 31.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 31.4** 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.
- 31.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 31.6** 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 8—Termination of Employment and Redundancy**

### **32. Termination of employment**

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

#### **32.2 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.

### **33. Redundancy**

Redundancy pay is provided for in the NES.

### **34. Transfer to lower paid job on redundancy**

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

### **35. Employee leaving during redundancy notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under clause 33—Redundancy had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

### **36. Job search entitlement**

#### **36.1 Job search entitlement for notice of termination of employment**

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.

**36.2 Job search entitlement—redundancy**

**(a) Time off for seeking other employment**

An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

**(b) Proof of attendance**

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

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## Schedule A—Classification Definitions

### A.1 Aged care employee—level 1

**Entry level:**

An employee who has less than three months’ work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>
General clerk	Food services assistant
Laundry hand	
Cleaner	
Assistant gardener	

### A.2 Aged care employee—level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
General clerk/Typist (between 3 months’ and less than 1 years’ service)	Food services assistant	Personal care worker grade 1
Laundry hand		
Cleaner		
Gardener (non-trade)		
Maintenance/Handyperson (unqualified)		
Driver (less than 3 ton)		

### A.3 Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
General clerk/Typist (second and subsequent years of service)	Cook	Personal care worker grade 2
Receptionist		Recreational/Lifestyle activities officer (unqualified)
Pay clerk		
Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate		

### A.4 Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.



Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
Senior clerk Senior receptionist Maintenance/Handyperson (qualified) Driver (3 ton and over) Gardener (trade or TAFE Certificate III or above)	Senior cook (trade)	Personal care worker grade 3

### **A.5 Aged care employee—level 5**

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
Secretary interpreter (unqualified)	Chef	Personal care worker grade 4

## A.6 Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>
Maintenance tradesperson (advanced)	Senior chef
Gardener (advanced)	

## A.7 Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
Clerical supervisor Interpreter (qualified) Gardener superintendent General services supervisor	Chef /Food services supervisor	Personal care worker grade 5

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**Schedule B—Summary of Hourly Rates of Pay**

Rates updated as a result of AWR 2017
B.1.2 amended and note added to the tables.

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

**B.1 Ordinary hourly rate**

**B.1.1** Ordinary hourly rate means the hourly rate for the employee’s classification specified in clause 17, plus any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes.

~~Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 0, this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.~~

**B.1.2** The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 17. Consistent with clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.

**B.2 Full-time and part-time employees**

**B.2.1 Full-time and part-time employees other than shift workers—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holiday
	% of <u>minimum ordinary hourly rate</u> <sup>1</sup>			
	100%	150%	175%	250%
Level 1	\$18.82	\$28.23	\$32.94	\$47.05
Level 2	\$19.60	\$29.40	\$34.30	\$49.00
Level 3	\$20.37	\$30.56	\$35.65	\$50.93
Level 4	\$20.61	\$30.92	\$36.07	\$51.53
Level 5	\$21.31	\$31.97	\$37.29	\$53.28
Level 6	\$22.46	\$33.69	\$39.31	\$56.15
Level 7	\$22.86	\$34.29	\$40.01	\$57.15
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.				

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

	Monday to Friday <sup>1</sup>		Monday to Saturday <sup>2</sup>		Saturday and Sunday <sup>1</sup>	Public holiday <sup>1</sup>
	First 2 hours	After first 2 hours	First 2 hours	After first two hours		
	<b>% of <u>minimum ordinary</u> hourly rate<sup>3</sup></b>					
	<b>150%</b>	<b>200%</b>	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
Level 1	\$28.23	\$37.64	\$28.23	\$37.64	\$37.64	\$47.05
Level 2	\$29.40	\$39.20	\$29.40	\$39.20	\$39.20	\$49.00
Level 3	\$30.56	\$40.74	\$30.56	\$40.74	\$40.74	\$50.93
Level 4	\$30.92	\$41.22	\$30.92	\$41.22	\$41.22	\$51.53
Level 5	\$31.97	\$42.62	\$31.97	\$42.62	\$42.62	\$53.28
Level 6	\$33.69	\$44.92	\$33.69	\$44.92	\$33.69	\$56.15
Level 7	\$34.29	\$45.72	\$34.29	\$45.72	\$34.29	\$57.15

<sup>1</sup> Paid in accordance with clauses 22.1 and 22.2.

<sup>2</sup> Paid to part-time employee who work more than 10 hours per day in accordance with clause 22.2(b)

<sup>3</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

**B.2.3 Full-time and part-time shiftworkers—ordinary and penalty rates**

	Day	Afternoon shift		Night shift		Saturday	Sunday	Public holiday	
		<u>Commencing at 10.00am and before 1.00pm</u>	<u>Commencing at 1.00pm and before 4.00pm</u>	<u>Commencing at 4.00pm and before 4.00am</u>	<u>Commencing at 4.00am and before 6.00am</u>				
		<b>% of <u>minimum ordinary</u> hourly rate<sup>1</sup></b>							
		<b>100%</b>	<b>110%</b>	<b>112.5%</b>	<b>115%</b>	<b>110%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
Level 1	\$18.82	\$20.70	\$21.17	\$21.64	\$20.70	\$28.23	\$32.94	\$47.05	
Level 2	\$19.60	\$21.56	\$22.05	\$22.54	\$21.56	\$29.40	\$34.30	\$49.00	
Level 3	\$20.37	\$22.41	\$22.92	\$23.43	\$22.41	\$30.56	\$35.65	\$50.93	
Level 4	\$20.61	\$22.67	\$23.19	\$23.70	\$22.67	\$30.92	\$36.07	\$51.53	
Level 5	\$21.31	\$23.44	\$23.97	\$24.51	\$23.44	\$31.97	\$37.29	\$53.28	
Level 6	\$22.46	\$24.71	\$25.27	\$25.83	\$24.71	\$33.69	\$39.31	\$56.15	

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	Day	Afternoon shift		Night shift		Saturday	Sunday	Public holiday
		<u>Commencing at 10.00am and before 1.00pm</u>	<u>Commencing at 1.00pm and before 4.00pm</u>	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
<b>% of <u>minimum ordinary</u> hourly rate <sup>1</sup></b>								
	<b>100%</b>	<b>110%</b>	<b>112.5%</b>	<b>115%</b>	<b>110%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
Level 7	\$22.86	\$25.15	\$25.72	\$26.29	\$25.15	\$34.29	\$40.01	\$57.15

<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

### B.3 Casual employees

#### B.3.1 Casual employees other than shiftworkers—ordinary and penalty rates

	Day	Saturday	Sunday	Public holiday
<b>% of <u>minimum ordinary</u> hourly rate <sup>1</sup></b>				
	<b>125%</b>	<b>150%</b>	<b>175%</b> <del>200%</del>	<b>250%</b>
Level 1	\$23.53	\$28.23	\$32.94	\$47.05
Level 2	\$24.50	\$29.40	\$34.30	\$49.00
Level 3	\$25.46	\$30.56	\$35.65	\$50.93
Level 4	\$25.76	\$30.92	\$36.07	\$51.53
Level 5	\$26.64	\$31.97	\$37.29	\$53.28
Level 6	\$28.08	\$33.69	\$39.31	\$56.15
Level 7	\$28.58	\$34.29	\$40.01	\$57.15

<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

#### B.3.2 Casual shiftworkers—ordinary and penalty rates

	Day	Afternoon shift		Night shift		Saturday	Sunday	Public holiday
		<u>Commencing at 10.00am and before 1.00pm</u>	<u>Commencing at 1.00pm and before 4.00pm</u>	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
<b>% of <u>minimum ordinary</u> hourly rate <sup>1</sup></b>								
	<b>125%</b>	<b>135%</b>	<b>137.5%</b>	<b>140%</b>	<b>135%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
Level 1	\$23.53	\$25.41	\$25.88	\$26.35	\$25.41	\$28.23	\$32.94	\$47.05
Level 2	\$24.50	\$26.46	\$26.95	\$27.44	\$26.46	\$29.40	\$34.30	\$49.00
Level 3	\$25.46	\$27.50	\$28.01	\$28.52	\$27.50	\$30.56	\$35.65	\$50.93

	Day	Afternoon shift		Night shift		Saturday	Sunday	Public holiday
		Commencing at 10.00am and before 1.00pm	Commencing at 1.00pm and before 4.00pm	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
<b>% of <u>minimum ordinary</u> hourly rate <sup>1</sup></b>								
	<b>125%</b>	<b>135%</b>	<b>137.5%</b>	<b>140%</b>	<b>135%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
Level 4	\$25.76	\$27.82	\$28.34	\$28.85	\$27.82	\$30.92	\$36.07	\$51.53
Level 5	\$26.64	\$28.77	\$29.30	\$29.83	\$28.77	\$31.97	\$37.29	\$53.28
Level 6	\$28.08	\$30.32	\$30.88	\$31.44	\$30.32	\$33.69	\$39.31	\$56.15
Level 7	\$28.58	\$30.86	\$31.43	\$32.00	\$30.86	\$34.29	\$40.01	\$57.15

<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

#### **B.4 Apprentice rates—apprentices other than adult apprentices commencing on or after 1 January 2014**

The apprentice rate is based on a percentage of the Level 4 adult rate, in accordance with clauses 17.2 and 17.3.

##### **B.4.1 Cooking apprentices—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holidays
<b>% of apprentice hourly rate <sup>1</sup></b>				
	<b>100%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
1st year	\$11.34	\$17.01	\$19.85	\$28.35
2nd year	\$13.40	\$20.10	\$23.45	\$33.50
3rd year	\$16.49	\$24.74	\$28.86	\$41.23
4th year	\$19.58	\$29.37	\$34.27	\$48.95

<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

##### **B.4.2 Cooking apprentices—shiftwork rates**

	Afternoon shift		Night shift		Saturday	Sunday	Public holidays
	Commencing at 10.00am and before 1.00pm	Commencing at 1.00pm and before 4.00pm	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
<b>% of apprentice hourly rate <sup>1</sup></b>							
	<b>110%</b>	<b>112.5%</b>	<b>115%</b>	<b>110%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
1st year	\$12.47	\$12.76	\$13.04	\$12.47	\$17.01	\$19.85	\$28.35

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	Afternoon shift		Night shift		Saturday	Sunday	Public holidays
	Commencing at 10.00am and before 1.00pm	Commencing at 1.00pm and before 4.00pm	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
	<b>% of apprentice hourly rate <sup>1</sup></b>						
	<b>110%</b>	<b>112.5%</b>	<b>115%</b>	<b>110%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
2nd year	\$14.74	\$15.08	\$15.41	\$14.74	\$20.10	\$23.45	\$33.50
3rd year	\$18.14	\$18.55	\$18.96	\$18.14	\$24.74	\$28.86	\$41.23
4th year	\$21.54	\$22.03	\$22.52	\$21.54	\$29.37	\$34.27	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.							

**B.4.3 Cooking apprentices—overtime rates**

	Monday to Friday		Saturday and Sunday	Public holidays
	First 2 hours	After 2 hours	All hours	All hours
	<b>% of apprentice hourly rate <sup>1</sup></b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
1st year	\$17.01	\$22.68	\$22.68	\$28.35
2nd year	\$20.10	\$26.80	\$26.80	\$33.50
3rd year	\$24.74	\$32.98	\$32.98	\$41.23
4th year	\$29.37	\$39.16	\$39.16	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.				

**B.4.4 Gardening apprentices commencing before 1 January 2015—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holidays
	<b>% of apprentice hourly rate <sup>1</sup></b>			
	<b>100%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
<b>Have not completed year 12</b>				
1st year	\$10.31	\$15.47	\$18.04	\$25.78
2nd year	\$12.37	\$18.56	\$21.65	\$30.93
3rd year	\$15.46	\$23.19	\$27.06	\$38.65
4th year	\$19.58	\$29.37	\$34.27	\$48.95



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	Ordinary hours	Saturday	Sunday	Public holidays
	<b>% of apprentice hourly rate <sup>1</sup></b>			
	<b>100%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
<b>Have completed year 12</b>				
1st year	<u>\$10.82</u>	\$16.23	\$18.94	<u>\$27.05</u>
2nd year	<u>\$13.40</u>	\$20.10	\$23.45	<u>\$33.50</u>
3rd year	<u>\$15.46</u>	\$23.19	\$27.06	<u>\$38.65</u>
4th year	<u>\$19.58</u>	\$29.37	\$34.27	<u>\$48.95</u>
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.				

**B.4.5 Gardening apprentices commencing before 1 January 2015—shiftwork rates**

	Afternoon shift		Night shift		Saturday	Sunday	Public holidays
	Commencing at 10.00am and before 1.00pm	Commencing at 1.00pm and before 4.00pm	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
	<b>% of apprentice hourly rate <sup>1</sup></b>						
	<b>110%</b>	<b>112.5%</b>	<b>115%</b>	<b>110%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
<b>Have not completed year 12</b>							
1st year	<u>\$11.34</u>	<u>\$11.60</u>	<u>\$11.86</u>	<u>\$11.34</u>	<u>\$15.47</u>	<u>\$18.04</u>	<u>\$25.78</u>
2nd year	<u>\$13.61</u>	<u>\$13.92</u>	<u>\$14.23</u>	<u>\$13.61</u>	<u>\$18.56</u>	<u>\$21.65</u>	<u>\$30.93</u>
3rd year	<u>\$17.01</u>	<u>\$17.39</u>	<u>\$17.78</u>	<u>\$17.01</u>	<u>\$23.19</u>	<u>\$27.06</u>	<u>\$38.65</u>
4th year	<u>\$21.54</u>	<u>\$22.03</u>	<u>\$22.52</u>	<u>\$21.54</u>	<u>\$29.37</u>	<u>\$34.27</u>	<u>\$48.95</u>
<b>Have completed year 12</b>							
1st year	<u>\$11.90</u>	<u>\$12.17</u>	<u>\$12.44</u>	<u>\$11.90</u>	<u>\$16.23</u>	<u>\$18.94</u>	<u>\$27.05</u>
2nd year	<u>\$14.74</u>	<u>\$15.08</u>	<u>\$15.41</u>	<u>\$14.74</u>	<u>\$20.10</u>	<u>\$23.45</u>	<u>\$33.50</u>
3rd year	<u>\$17.01</u>	<u>\$17.39</u>	<u>\$17.78</u>	<u>\$17.01</u>	<u>\$23.19</u>	<u>\$27.06</u>	<u>\$38.65</u>
4th year	<u>\$21.54</u>	<u>\$22.03</u>	<u>\$22.52</u>	<u>\$21.54</u>	<u>\$29.37</u>	<u>\$34.27</u>	<u>\$48.95</u>
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.							

**B.4.6 Gardening apprentices commencing before 1 January 2015—overtime rates**

	Monday to Friday		Saturday and Sunday	Public holidays
	First 2 hours	After 2 hours	All hours	All hours
	% of apprentice hourly rate <sup>1</sup>			
	150%	200%	200%	250%
<b>Have not completed year 12</b>				
1st year	\$15.47	\$20.62	\$20.62	\$25.78
2nd year	\$18.56	\$24.74	\$24.74	\$30.93
3rd year	\$23.19	\$30.92	\$30.92	\$38.65
4th year	\$29.37	\$39.16	\$39.16	\$48.95
<b>Have completed year 12</b>				
1st year	\$16.23	\$21.64	\$21.64	\$27.05
2nd year	\$20.10	\$26.80	\$26.80	\$33.50
3rd year	\$23.19	\$30.92	\$30.92	\$38.65
4th year	\$29.37	\$39.16	\$39.16	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.				

**B.4.7 Gardening apprentices commencing on or after 1 January 2015—ordinary and penalty rates**

	Ordinary hours	Saturday	Sunday	Public holidays
	% of apprentice hourly rate <sup>1</sup>			
	100%	150%	175%	250%
<b>Have not completed year 12</b>				
1st year	\$10.31	\$15.47	\$18.04	\$25.78
2nd year	\$11.34	\$17.01	\$19.85	\$28.35
3rd year	\$15.46	\$23.19	\$27.06	\$38.65
4th year	\$19.58	\$29.37	\$34.27	\$48.95
<b>Have completed year 12</b>				
1st year	\$12.37	\$18.56	\$21.65	\$30.93
2nd year	\$13.40	\$20.10	\$23.45	\$33.50
3rd year	\$15.46	\$23.19	\$27.06	\$38.65
4th year	\$19.58	\$29.37	\$34.27	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses				

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	Ordinary hours	Saturday	Sunday	Public holidays
	% of apprentice hourly rate <sup>1</sup>			
	100%	150%	175%	250%
<u>B.1.1 and B.1.2.</u>				

**B.4.8 Gardening apprentices commencing on or after 1 January 2015—shiftwork rates**

	Afternoon shift		Night shift		Saturday	Sunday	Public holidays
	Commencing at 10.00am and before 1.00pm	Commencing at 1.00pm and before 4.00pm	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
	% of apprentice hourly rate <sup>1</sup>						
	110%	112.5%	115%	110%	150%	175%	250%
<b>Have not completed year 12</b>							
1st year	\$11.34	\$11.60	\$11.86	\$11.34	\$15.47	\$18.04	\$25.78
2nd year	\$12.47	\$12.76	\$13.04	\$12.47	\$17.01	\$19.85	\$28.35
3rd year	\$17.01	\$17.39	\$17.78	\$17.01	\$23.19	\$27.06	\$38.65
4th year	\$21.54	\$22.03	\$22.52	\$21.54	\$29.37	\$34.27	\$48.95
<b>Have completed year 12</b>							
1st year	\$13.61	\$13.92	\$14.23	\$13.61	\$18.56	\$21.65	\$30.93
2nd year	\$14.74	\$15.08	\$15.41	\$14.74	\$20.10	\$23.45	\$33.50
3rd year	\$17.01	\$17.39	\$17.78	\$17.01	\$23.19	\$27.06	\$38.65
4th year	\$21.54	\$22.03	\$22.52	\$21.54	\$29.37	\$34.27	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.							

**B.4.9 Gardening apprentices commencing on or after 1 January 2015—overtime rates**

	Monday to Friday		Saturday and Sunday	Public holidays
	First 2 hours	After 2 hours	All hours	All hours
	% of apprentice hourly rate <sup>1</sup>			
	150%	200%	200%	250%
<b>Have not completed year 12</b>				
1st year	\$15.47	\$20.62	\$20.62	\$25.78
2nd year	\$17.01	\$22.68	\$22.68	\$28.35

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	<b>Monday to Friday</b>		<b>Saturday and Sunday</b>	<b>Public holidays</b>
	<b>First 2 hours</b>	<b>After 2 hours</b>	<b>All hours</b>	<b>All hours</b>
	<b>% of apprentice hourly rate <sup>1</sup></b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
3rd year	\$23.19	\$30.92	\$30.92	\$38.65
4th year	\$29.37	\$39.16	\$39.16	\$48.95
<b>Have completed year 12</b>				
1st year	\$18.56	\$24.74	\$24.74	\$30.93
2nd year	\$20.10	\$26.80	\$26.80	\$33.50
3rd year	\$23.19	\$30.92	\$30.92	\$38.65
4th year	\$29.37	\$39.16	\$39.16	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.				

**B.5 Apprentice rates—adult apprentices commencing on or after 1 January 2014**

The following adult apprentice rates apply to adult apprentices commencing on or after 1 January 2014 and are calculated in based on the lowest adult classification or a percentage of the Level 4 adult rate, whichever is the greater, in accordance with clause 17.4.

**B.5.1 Cooking and gardening adult apprentices—ordinary and penalty rates**

		<b>Ordinary hours</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Public holidays</b>
		<b>% of apprentice hourly rate <sup>1</sup></b>			
		<b>100%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
1st year	80% of level 4 adult rate	\$16.49	\$24.74	\$28.86	\$41.23
2nd year	level 1 adult rate	\$18.82	\$28.23	\$32.94	\$47.05
3rd year	level 1 adult rate	\$18.82	\$28.23	\$32.94	\$47.05
4th year	95% of level 4 adult rate	\$19.58	\$29.37	\$34.27	\$48.95
<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.					

**B.5.2 Cooking and gardening adult apprentices—shiftwork rates**

	Afternoon shift		Night shift		Saturday	Sunday	Public holidays
	Commencing at 10.00am and before 1.00pm	Commencing at 1.00pm and before 4.00pm	Commencing at 4.00pm and before 4.00am	Commencing at 4.00am and before 6.00am			
	<b>% of apprentice hourly rate <sup>1</sup></b>						
	<b>110%</b>	<b>112.5%</b>	<b>115%</b>	<b>110%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>
1st year	\$18.14	\$18.55	\$18.96	\$18.14	\$24.74	\$28.86	\$41.23
2nd year	\$20.70	\$21.17	\$21.64	\$20.70	\$28.23	\$32.94	\$47.05
3rd year	\$20.70	\$21.17	\$21.64	\$20.70	\$28.23	\$32.94	\$47.05
4th year	\$21.54	\$22.03	\$22.52	\$21.54	\$29.37	\$34.27	\$48.95

<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

**B.5.3 Cooking and gardening adult apprentices—overtime rates**

	Monday to Friday		Saturday and Sunday	Public holidays
	First 2 hours	After 2 hours	All hours	All hours
	<b>% of apprentice hourly rate <sup>1</sup></b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
1st year	\$24.74	\$32.98	\$32.98	\$41.23
2nd year	\$28.23	\$37.64	\$37.64	\$47.05
3rd year	\$28.23	\$37.64	\$37.64	\$47.05
4th year	\$29.37	\$39.16	\$39.16	\$48.95

<sup>1</sup> Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

## Schedule C—Summary of Monetary Allowances

Rates updated as a result of AWR 2017

See clause 18 for full details of allowances payable under this award.

### C.1 Wage related allowances

The wage related allowances in this award are based on the standard rate as defined in clause 2 as the minimum weekly rate for an Aged care employee—level 6 in clause 17.1 = **\$881.50**

Allowance	Clause	% of standard rate	\$ per week unless stated otherwise
Sleepover allowance	15.3(d)	5.20%	\$45.84 per night
Leading hand allowance <sup>1</sup>	18.2(a)(ii)		
2 to 5 employees		2.67%	\$23.54
6 to 10 employees		3.81%	\$33.59
11 to 15 employees		4.81%	\$42.40
16 or more employees		5.88%	\$51.83
Nauseous work allowance	18.2(b)		
Per hour or part thereof		0.05%	0.44 per hour or part thereof
Minimum payment per week		0.27%	\$2.38

<sup>1</sup>This allowance applies for all purposes of this award.

#### C.1.1 Adjustment of wage related allowances

Wage related allowance are adjusted in accordance with increased to wages and are based on a percentage of the standard rate as specified.

### C.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clause 18.3:

Allowance	Clause	\$
Uniform allowance—the lesser of	18.3(a)(iii)	
Per shift or part thereof; or		\$1.23 per shift or part thereof
Per week		\$6.24 per week
Laundry allowance—the lesser of	18.3(a)(iv)	
Per shift or part thereof; or		\$0.32 per shift or part thereof
Per week		\$1.49 per week

<b>Allowance</b>	<b>Clause</b>	<b>\$</b>
Meal allowance—overtime	18.3(b)(i)	\$12.62 per occasion
Further four hours' overtime		\$11.37 per occasion
Tool allowance—chefs and cooks who are not provided with necessary tools by employer	18.3(c)	\$11.45 per week
Vehicle allowance	18.3(d)(i)	\$0.78 per km

### C.2.1 Adjustment of expense related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

<b>Allowance</b>	<b>Applicable CPI figure</b>
Meal allowance	Take away and fast foods sub-group
Clothing and equipment allowance	Clothing and footwear group
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group

## Schedule D—Supported Wage System

Monetary amounts adjusted as a result of [PR592689](#)

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

**D.2** In this schedule:

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

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

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

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

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

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

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

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

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



## D.4 Supported wage rates

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

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

D.4.2 Provided that the minimum amount payable must be not less than **\$84** per week.

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

## D.5 Assessment of capacity

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

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

## D.6 Lodgement of SWS wage assessment agreement

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

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

## **D.7 Review of assessment**

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

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

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

## **D.9 Workplace adjustment**

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

## **D.10 Trial period**

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

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

**D.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$84** per week.

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

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

## **Schedule E—School-based Apprentices**

- 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** 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** 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** 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—National Training Wage**

This schedule was reviewed in matter [AM2016/17](#)

The schedule was deleted by [PR593814](#).

DRAFT

## Schedule G—2017 Part-day Public Holidays

The part-day public holidays schedule may be affected by [AM2014/301](#).

Schedule G amended in accordance with [PR598110](#)

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

- G.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2017) or New Year’s Eve (31 December 2017) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
  - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
  - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
  - (e) Excluding annualised salaried employees to whom clause G.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
  - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause G.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.

**Exposure draft – Aged Care Award 2016**

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

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

DRAFT

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

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

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

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

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

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

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

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

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

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

*[If the employee is under 18 years of age - include:]*

**I agree that:**

**if, on termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

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

## Schedule I—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

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

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

**The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

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

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

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

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

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

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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