

EXPOSURE DRAFT

Racing Clubs Events Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Racing Clubs Events Award 2010** (the Racing Clubs award) as at 18 November 2016. This exposure draft does not seek to amend any entitlements under the Racing Clubs award 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 [AM2014/282](#). 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 *Racing Clubs Events Award 2016*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010.
- 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

In this award, unless the contrary intention appears:

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

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

employee in charge of tractor plant means:

- (a) when two or more employees are employed at the plant at the one time, the employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility;
- (b) an employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility over one or more employees; or
- (c) when an employee is the only person of their class employed on the plant, the employee who does the general repair work of the plant in addition to the work of operating, but not when the employee merely assists a fitter or engineer to do such work

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)

leading hand means an employee who is required to supervise, direct or be in charge of another employee or employees

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

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

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

standard rate means the minimum weekly rate for a Grade 4 racecourse attendant in clause 17.1

3. The National Employment Standards and this award

- 3.1** The [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 and their employees throughout Australia engaged in the staging of events at horse and greyhound racing venues, including but not limited to thoroughbred, harness, trotting and greyhound racing clubs, and their employees in the classifications listed in clauses 13 and 14 to the exclusion of any other modern award.
- 4.2** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.
- 4.3** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- 4.4** This industry 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.

4.5 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 agreements

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:

Clause	Provision	Agreement between an employer and:
11.4	Frequency of payment – casual	An individual
16.3(b)	Tea breaks – other than casual employees	The majority of employees
22.6	Time off instead of payment for overtime	An individual
23.2(c)	Penalty rates – public holiday	An individual
24.4	Annual leave in advance	An individual
24.7	Cashing out of annual leave	An individual
27.2	Substitution of public holidays by agreement	The majority of employees

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

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

9. Full-time employment

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

10. Part-time employment

Part-time employment provisions may be affected by [AM2014/196](#)

- 10.1** A part-time employee:
- (a) works less than full-time hours of 38 per week;
 - (b) has predictable hours of work; and
 - (c) receives, on a pro rata basis, equivalent pay and conditions to full-time employees in the same classification.
- 10.2** At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work including:
- (a) the hours to be worked; and
 - (b) the starting and finishing times on each day.
- 10.3** These hours, once fixed, can only be varied by mutual agreement.
- 10.4** Any agreed variation to the regular pattern of work will be recorded in writing.
- 10.5** **Minimum engagement**
- An employer is required to roster a part-time employee for a minimum of four consecutive hours on any shift.
- 10.6** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 11—Casual employment—other than liquor employees or 12—Casual employment—liquor employees.
- 10.7** All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 22—Overtime.
- 10.8** A part-time employee must be paid for ordinary hours worked at the minimum hourly rate prescribed for the relevant classification.
- 10.9** A part-time employee will receive a minimum of eight full days off for each four week period.

11. Casual employment—other than liquor employees

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

- 11.1** This clause applies to employees in the classifications in clause 13—Classifications—other than liquor employees.
- 11.2** A casual employee is an employee who is engaged and paid as a casual employee.

11.3 Casual loading

- (a) Except as provided in clause 11.6, a casual employee is to be paid the minimum hourly rate for the relevant classification in clause 17—Minimum wages, plus a loading of **25%**.
- (b) The casual loading is instead of all paid leave including annual leave, personal/carer’s leave and public holidays not worked whether prescribed in this award or the NES.

11.4 Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly, fortnightly or monthly.

11.5 Minimum engagement

A casual employee who reports for work and is not allowed to start will be paid for four hours at the minimum rate for the relevant classification.

11.6 Sunday and public holiday rates

- (a) For work on Sundays a casual employee is to be paid **200%** of the minimum hourly rate prescribed in clause 17 for the relevant classification.
- (b) For work on a public holiday a casual employee is to be paid **250%** of the minimum hourly rate prescribed in clause 17 for the relevant classification.

11.7 Night cleaning duties

A casual employee engaged on night cleaning duties between the hours of 11.00 pm and 7.00 am will be paid **155%** of the minimum hourly rate (inclusive of a casual loading of **25%** and a shift allowance of **30%**) for all time worked. The provisions of clauses 15—Ordinary hours of work and 22—Overtime do not apply to night cleaning duties.

12. Casual employment—liquor employees

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

- 12.1** This clause applies to liquor employees in the classifications set out in clause 14—Classifications—liquor employees. A casual employee is an employee who is engaged and paid as a casual employee.
- 12.2** Casual employees 19 years of age or over must be paid the minimum hourly rates in clause 12.4.
- 12.3** The formula set out in clause A.2.4 is used to adjust the hourly rates.

12.4 Penalty rates—adult employees

Bar attendants, cashiers and adults engaged in picking up glasses must be paid the rate for work performed on any one day as follows:

Day	Minimum hourly rate \$	Minimum payment \$
Monday to Saturday	25.56	102.24
Sunday	34.59	138.38
Public holiday	43.25	173.04

12.5 Penalty rates—junior employees

Employees 18 years of age or under engaged in picking up glasses must be paid the rate for work performed on any one day as follows:

Day	Minimum hourly rate \$	Minimum payment \$
Monday to Saturday	20.45	81.78
Sunday	27.68	110.71
Public holiday	34.60	138.42

12.6 Employees in charge of, or supervising the work of, bar attendants or cashiers must be paid an allowance of **\$18.80** per week.

Employees working on a ‘shop day’, that is preparing for a function on the day before such function or cleaning up on the day after the function, must be paid as follows:

Day	Minimum hourly rate \$
Monday to Saturday	25.56
Sunday	34.59
Public holiday	43.25

12.7 Employees must be paid an allowance of **\$4.12** per engagement where the employee finishes after 10.00 pm.

12.8 The rates of pay in clause 12 have been loaded to compensate employees for the casual nature of the work, weekend and holiday penalties and benefits otherwise available to full-time employees including annual leave, personal/carer’s leave, etc.

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

13. Classifications—other than liquor employees

13.1 Introductory level

- (a) Introductory level employee means an employee who enters the industry and who has not demonstrated the competency requirements of a Grade 1 racecourse attendant.
- (b) An employee at this level will undergo training for up to three months before progressing to grade 1.
- (c) Progression to grade 1 may be delayed for a further period of up to three months where it is agreed that further training is required.

13.2 Grade 1 Racecourse Attendant

Grade 1 racecourse attendant includes the following classifications:

- cloakroom attendant (not handling cash);
- door attendant;
- gate person;
- general attendant;
- parking attendant (not handling cash);
- cleaning and utility person;
- catching pen attendant;
- kennel attendant;
- numbers room attendant;
- parade official;
- ticket examiner;
- ticket taker;
- turnstile attendant (not handling cash);
- usher.

13.3 Grade 2 Racecourse Attendant

Grade 2 racecourse attendant includes the following classifications:

- assistant judge (greyhound fixtures);
- jockey room attendant;
- parking attendant (handling cash);
- bookmakers' price clerk;

- cloak room attendant (handling cash);
- programme seller;
- raceday office assistant;
- scratching board attendant;
- teleprint semaphore board operator;
- ticket/token seller, timekeeper (greyhound fixtures);
- turnstile attendant (handling cash);
- EFTPOS operator;
- general administration;
- general sales person;
- tour guide.

13.4 Grade 3 Racecourse Attendant

Grade 3 racecourse attendant includes the following classifications:

- assistant starter;
- banker;
- barrier attendant;
- crowd controller;
- hare driver;
- kennel supervisor;
- raceday office assistant handling acceptances or wages;
- early gates;
- raceday veterinary assistant;
- starter (greyhounds);
- swab attendant;
- ticket seller operating a computer terminal with advance bookings facilities; and
- supervisor of one to nine employees.

13.5 Grade 4 racecourse attendant

Grade 4 racecourse attendant includes the following classifications:

- farrier;
- starter;

- mobile barrier driver;
- stewards patrol video camera operator; and
- supervisor of 10 or more employees.

13.6 Grade 1 Raceday Official

Grade 1 raceday official includes the following classifications:

- ground announcer; and
- bird cage attendant.

13.7 Grade 2 Raceday Official

Grade 2 raceday official includes the following classifications:

- racecourse inspector;
- betting supervisor;
- assistant clerk of scales;
- identification official,
- assistant clerk of the course; and
- timekeeper.

13.8 Grade 3 Raceday Official

Grade 3 raceday official includes the following classifications:

- chief course inspector;
- clerk of scales;
- chief betting supervisor;
- clerk of the course; and
- assistant judge.

13.9 Grade 4 Raceday Official

Grade 4 raceday official includes the following classifications:

- raceday judge; and
- raceday racecaller.

14. Classifications—liquor employees

14.1 Liquor employees include the following classifications:

- bar attendant;

- cashier;
- adult picking up glasses; and
- employees 18 years of age or under picking up glasses.

14.2 Liquor employees are engaged on a casual basis as set out in clause 12—Casual employment—liquor employees.

Part 3—Hours of Work

15. Ordinary hours of work

15.1 Except as provided elsewhere in this award the ordinary working hours are:

- (a) 38 hours per week; or
- (b) an average of 38 hours per week over a four week period.

15.2 Once fixed, the starting and finishing times of employees other than casuals must not be altered except by agreement or by the employer on 14 days' notice.

15.3 The provisions in clause 15.2 are subject to the requirements in clause 30—Consultation about changes to rosters or hours of work.

15.4 All employees must be engaged for a minimum of four hours.

15.5 Where a casual employee is required by their employer to attend an inquiry conducted under the Rules of Racing on a day other than that of a racing fixture at which they are employed, they must be paid for the time of such attendance at ordinary rates with a minimum of two hours pay, plus reasonable expenses.

16. Breaks

16.1 Rest breaks—casual employees

- (a) Casual employees engaged for a minimum of five hours must be allowed a rest break of 20 minutes without deduction of pay.
- (b) Casual employees required to continue working for a further five hours must be allowed a further rest break of 20 minutes without deduction of pay.
- (c) Both of the above rest breaks must be taken at a time convenient to the employer but not at the beginning or the end of the period of duty.

16.2 Meal breaks—other than casual employees

- (a) An employee other than a casual employee must be allowed an unpaid meal break of not less than 30 minutes, not later than five hours after commencing work.

- (b) An employee other than a casual employee required to work through their normal meal break must be paid at the rate of **150%** of the minimum hourly rate until they receive a meal break of not less than 30 minutes.

16.3 Tea breaks—other than casual employees

- (a) An employee other than a casual employee must be allowed a tea break of 10 minutes' duration without deduction of pay during the morning and afternoon periods of each working day at a time to be arranged by the employer.
- (b) The afternoon tea break is not to be taken in any establishment where the majority of employees agree not to take the break and instead cease normal work 10 minutes earlier each day.

Part 4—Wages and Allowances

17. Minimum wages

17.1 Adult employees

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

Employee classification	Minimum weekly rate \$	Minimum hourly rate \$
Introductory level employee	672.70	17.70
Grade 1 racecourse attendant	692.10	18.21
Grade 2 racecourse attendant	718.60	18.91
Grade 3 racecourse attendant	743.30	19.56
Grade 4 racecourse attendant	783.30	20.61
Grade 1 raceday official	783.30	20.61
Grade 2 raceday official	807.70	21.26
Grade 3 raceday official	832.20	21.90
Grade 4 raceday official	854.60	22.49

17.2 Junior employees

Junior employees in the classifications in clause 13—Classifications—other than liquor employees must be paid a percentage of the Introductory level rate determined according to this table:

Age	% of Introductory level rate
18 years and under	75
19 years and over	100

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

17.3 Supported wage system for employees with a disability

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

17.4 School-based apprentices

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

As this award does not provide for apprentices, parties are asked whether this schedule is required.

17.5 National training wage

For employees undertaking a traineeship, see Schedule E—National Training Wage.

18. Higher duties

18.1 An employee required by the employer to perform work in a position for which a higher rate is fixed for more than four hours on any day, must be paid the rate applicable to that higher level for all work done on that day.

18.2 An employee required by the employer to perform work in a position for which a higher rate is fixed for up to four hours, must be paid the higher rate for the actual time worked at that higher level.

19. Payment of wages

Wages must be paid either by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the employee.

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.

20. Allowances

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

20.1 Wage-related allowances

(a) Tractor plant

An employee in charge of a tractor plant (as defined in clause 2—Definitions) must receive an additional payment of **\$23.50** per week or **\$0.62** per hour as the case may be.

(b) Loss of clothing

The employer must reimburse an employee up to a maximum of **\$744.14** per single claim if an employee's clothing is destroyed by fire in an employer's changing house or other shelter, provided that the destruction is not caused in any way by the employee's own wilful act or neglect.

Parties are asked whether the loss of clothing allowance would more appropriately be treated as an expense-related allowance.

(c) First aid attendant

- (i) An employee will be paid an allowance of **\$15.67** per week or **\$0.41** per hour if they:
- hold a first aid qualification from the St John Ambulance or a similar body; and
 - are appointed by the employer to perform first aid duty.

20.2 Expense-related allowances

(a) Footwear for wet work

An employee required to work in the rain or in wet conditions underfoot at a race meeting must be paid an allowance of **\$6.00** per meeting to a maximum of **\$12.00** per week for the purpose of purchasing suitable footwear for such duties. Clause 20.2(a) does not apply where waterproof footwear is supplied by the employer.

(b) Protective clothing and equipment

Where an employee is required to wear protective clothing (e.g. oilskins, gumboots, overalls, goggles, safety boots, etc.), the employer must reimburse the employee on proof of purchase for the cost of purchasing such special clothing and equipment. The employee is responsible for maintaining these items in a serviceable condition. The provisions of clause 20.2(b) do not apply where the clothing and equipment is paid for by the employer.

(c) Accommodation

Where an employee is required by the employer to live on the premises and is required to act as caretaker, the employee must be paid an allowance equal to the amount of the rental charged by the employer for the accommodation at the said premises.

(d) Meal allowance

An employee who is required to work overtime for one and a half hours or more immediately after the completion of their ordinary hours of work on an ordinary working day or immediately after the completion of eight hours of work on a Saturday, Sunday or public holiday, must be paid a meal allowance of **\$10.74** unless the employer provides a meal.

(e) Horse and saddlery

- (i)** Where an employer requires a clerk of the course or an assistant clerk of the course to supply their own horses and saddlery, the employer must pay the employee for an additional two hours at the minimum hourly rate per engagement.
- (ii)** Where an employer requires a clerk of the course or an assistant clerk of the course to provide their own riding apparel, the employer must either reimburse the employee for the cost of providing and maintaining the riding apparel or pay the employee for an additional hour at the appropriate minimum hourly rate per engagement.

See Schedule B for a summary of monetary allowances.

21. Superannuation

21.1 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.

21.2 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.

21.3 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 25.2.
- (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 25.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 25.3(a) or (b) was made.

21.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 25.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 25.2 and pay the amount authorised under clauses 25.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) HOSTPLUS;
- (c) SunSuper;
- (d) AMP Superannuation Savings Trust;
- (e) CareSuper;
- (f) 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
- (g) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Overtime and Penalty Rates

22. Overtime

22.1 All time worked in excess of 38 hours a week or in excess of eight hours per day will be overtime.

22.2 Overtime is payable at the rate of **150%** of the minimum hourly rate for the first two hours and **200%** of the minimum hourly rate after two hours.

22.3 Except as provided in clause 22.4, in computing overtime each day's work will stand alone.

22.4 Rest period after overtime

When overtime work is necessary it will be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days.

- (a) Where an employee (other than a casual employee) works so much overtime that there is less than 10 hours between finishing work on one day and starting work on the next day, the employee must be released, subject to clause 22.4(b)

until they have had at least 10 consecutive hours off without loss of pay for ordinary working time occurring during such absence.

- (b) If, on the instructions of the employer, the employee resumes work or continues work without having had 10 consecutive hours off duty they will be paid at **200%** of the minimum hourly rate until the employee is released from duty for the period and the employee can then be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

22.5 Transport after overtime work

When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available the employer must provide the employee with transportation to their home.

22.6 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 22.6.
- (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 F. There is no requirement to use the form of agreement set out at Schedule F. An agreement under clause 22.6 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 22.6 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 22.6 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 22.6 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 22.6 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 22.6 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 22.6.

23. Penalty rates

23.1 Penalty rates for casual employees are dealt with in clauses 11—Casual employment—other than liquor employees and 12—Casual employment—liquor employees.

23.2 Full-time and part-time employees are entitled to the following penalty rates:

- (a) for all time worked between midnight Saturday and midnight Sunday—**200%** of the relevant minimum hourly rate;
- (b) for all time worked on a public holiday—**250%** of the relevant minimum hourly rate with a minimum of four hours pay; or

- (c) by agreement, an employee who works on a public holiday will be paid **150%** of the minimum hourly rate, and either:
 - (i) receive the equivalent paid time, added to the employee’s annual leave, provided that the holiday is taken within 28 days of the public holiday; or
 - (ii) receive one day off instead of the public holiday during the week in which the public holiday falls.

Part 6—Leave and Public Holidays

24. Annual leave

24.1 Annual leave is provided for in the NES. Annual leave does not apply to casual employees.

24.2 Before the start of the employee’s annual leave the employer must pay the employee:

- (a) instead of the base rate of pay referred to in s.90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime, had they not been on leave; and
- (b) an additional loading of **17.5%** of the relevant minimum wage in clause 19—Minimum wages.

24.3 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in this clause, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

24.4 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 24.4 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G

- (c) The employer must keep a copy of any agreement under clause 24.4 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 24.4, 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.

24.5 Temporary close-down

- (a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month’s notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.
- (b) Where an employee has been given notice pursuant to clause 24.5(a) and the employee has:
 - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
 - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
 - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.
- (c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

Clause 24.6 is the subject of AM2014/47. The Full Bench has proposed replacing clause 24.6 with the model excessive leave term. See [draft determination](#).

- 24.6 Annual leave must be taken within 18 months of the entitlement accruing. For the purpose of ensuring accrued annual leave is taken within that period, and in the absence of agreement as provided for in s.88 of the Act, an employer may require an employee to take a period of annual leave from a particular date provided the employee is given at least 28 days’ notice.

24.7 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.7.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.7.
- (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 24.7 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 24.7 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 24.7 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.7.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.7.

Note 3: An example of the type of agreement required by clause 24.7 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

25. Personal/carer's leave and compassionate leave

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

26. Parental leave and related entitlements

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

27. Public holidays

27.1 Public holiday entitlements are provided for in the NES.

27.2 Substitution of public holidays by agreement

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

27.3 An employee who works on a public holiday will be paid in accordance with clause 11.6, 12 or 23.2.

27.4 Part-day public holidays

For provisions relating to part-day public holidays see Schedule I—2016 Part-day Public Holidays.

28. Community service leave

Community service leave is provided for in the NES.

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.

Schedule A—Summary of Hourly Rates of Pay

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

A.1 Full-time and part-time adult employees

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

	Ordinary hours	Sunday	Public holiday
	% of minimum hourly rate		
	100%	200%	250%
	\$	\$	\$
Introductory level employee	17.70	35.40	44.25
Grade 1 racecourse attendant	18.21	36.42	45.53
Grade 2 racecourse attendant	18.91	37.82	47.28
Grade 3 racecourse attendant	19.56	39.12	48.90
Grade 4 racecourse attendant	20.61	41.22	51.53
Grade 1 raceday official	20.61	41.22	51.53
Grade 2 raceday official	21.26	42.52	53.15
Grade 3 raceday official	21.90	43.80	54.75
Grade 4 raceday official	22.49	44.98	56.23

A.1.2 Full-time and part-time employees—overtime rates

	Monday to Saturday – first 2 hours	Monday to Saturday – after 2 hours	Sunday	Public holiday
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Introductory level employee	26.55	35.40	35.40	44.25
Grade 1 racecourse attendant	27.32	36.42	36.42	45.53
Grade 2 racecourse attendant	28.37	37.82	37.82	47.28
Grade 3 racecourse attendant	29.34	39.12	39.12	48.90
Grade 4 racecourse attendant	30.92	41.22	41.22	51.53
Grade 1 raceday official	30.92	41.22	41.22	51.53
Grade 2 raceday official	31.89	42.52	42.52	53.15
Grade 3 raceday official	32.85	43.80	43.80	54.75
Grade 4 raceday official	33.74	44.98	44.98	56.23

A.2 Casual adult employees

A.2.1 Casual employees other than liquor employees—ordinary and penalty rates

	Ordinary hours	Sunday	Public holiday	Night cleaning duties ¹
	% of minimum hourly rate			
	125%	200%	250%	155%
	\$	\$	\$	\$
Introductory level employee	22.13	35.40	44.25	27.44
Grade 1 racecourse attendant	22.76	36.42	45.53	28.23
Grade 2 racecourse attendant	23.64	37.82	47.28	29.31
Grade 3 racecourse attendant	24.45	39.12	48.90	30.32
Grade 4 racecourse attendant	25.76	41.22	51.53	31.95
Grade 1 raceday official	25.76	41.22	51.53	31.95
Grade 2 raceday official	26.58	42.52	53.15	32.95
Grade 3 raceday official	27.38	43.80	54.75	33.95
Grade 4 raceday official	28.11	44.98	56.23	34.86

¹Night cleaning duties means cleaning duties between the hours of 11.00 pm and 7.00 am (see clause 11.7)

A.2.2 Casual employees other than liquor employees—overtime¹

	Monday to Saturday		Sunday	
	First 2 hours	After 2 hours	First 2 hours	After 2 hours
	% of minimum hourly rate			
	175%	225%	200%	225%
	\$	\$	\$	\$
Introductory level employee	30.98	39.83	35.40	39.83
Grade 1 racecourse attendant	31.87	40.97	36.42	40.97
Grade 2 racecourse attendant	33.09	42.55	37.82	42.55
Grade 3 racecourse attendant	34.23	44.01	39.12	44.01
Grade 4 racecourse attendant	36.07	46.37	41.22	46.37
Grade 1 raceday official	36.07	46.37	41.22	46.37
Grade 2 raceday official	37.21	47.84	42.52	47.84
Grade 3 raceday official	38.33	49.28	43.80	49.28
Grade 4 raceday official	39.36	50.60	44.98	50.60

	Monday to Saturday		Sunday	
	First 2 hours	After 2 hours	First 2 hours	After 2 hours
	% of minimum hourly rate			
	175%	225%	200%	225%

¹Overtime payable for work in excess of 38 hours a week or in excess of 8 hours per day (see clause 22)

A.2.3 Casual liquor employees—ordinary and penalty rates

	Ordinary hours	Sunday	Public holiday
	Casual rates according to clause 12.4		
	\$	\$	\$
Bar attendants, cashiers, adults picking up glasses	25.56	34.59	43.25

A.2.4 Method of adjustment

Where a general review of minimum rates results in an adjustment of a flat weekly amount:

- (a) adult hourly rates in this clause will be adjusted by dividing the dollar amount of the increase by 38 and adding the following loadings:
 - (i) Monday to Saturday—**50%**;
 - (ii) Sunday—**100%**;
 - (iii) public holiday—**150%**;
- (b) The rates for employees 18 years of age and under picking up glasses will be **80%** of the minimum hourly rates set out in clause 12.4 with a minimum payment of four hours.

Parties are asked whether the award should specify whether the minimum payments in clauses 12.4 and 12.5 should be 4 x minimum hourly rate or should they be separately adjusted by any Annual Wage review increase.

Schedule B— Summary of Monetary Allowances

See clause 20—Allowances for full details of allowances payable under this award.

B.1 Wage-related allowances:

B.1.1 Weekly wage-related allowances:

The wage-related allowances in this award are based on the standard rate as defined in clause 2—Definitions as the minimum weekly rate for a Grade 4 racecourse attendant in clause 17.1= **\$783.30**

Allowance	Clause	% of standard rate \$783.30	\$ per week unless stated otherwise
Supervising of bar attendants and/or cashiers	12.6	2.4	18.80
Employee in charge of tractor plant:	20.1(a)		
Per week; OR		3.0	23.50
Per hour		Weekly allowance / 38	0.62 per hour
Loss of clothing reimbursement (maximum)	20.1(b)	95.0	744.14 per single claim
First aid attendant allowance:	20.1(c)		
Per week; OR		2.0	15.67
Per hour		Weekly allowance / 38	0.41 per hour

B.1.2 Hourly wage-related allowances:

The hourly wage-related allowances in this award are based on the standard rate as defined in clause 2—Definitions as the minimum weekly rate for a Grade 4 racecourse attendant in clause 17.1 divided by 38 =**\$20.61**

Allowance	Clause	% of standard rate \$20.61	\$ per engagement
Engagements finishing after 10.00 pm	12.7	20.0	4.12

B.1.3 Adjustment of wage-related allowances

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

B.2 Expense-related allowances

B.2.1 The following expense-related allowances will be payable to employees in accordance with clause 20.

Allowance	Clause	\$
Footwear for wet work:	20.2(a)	
Per meeting		6.00 per meeting
Up to maximum per week		12.00 per week
Meal allowance—1.5 hours or more overtime	20.2(d)	10.98 per occasion

B.2.2 Adjustment of expense-related allowances

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take-away and fast foods sub-group
Footwear allowance	Clothing and footwear group

Schedule C—Supported Wage System

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

C.2 In this schedule:

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

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

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

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

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

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

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

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

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

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

C.7 Review of assessment

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

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

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

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

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

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

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

Schedule D—School-based Apprentices

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is **25%** of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- D.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- D.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- D.8** 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.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- D.10** If an apprentice converts from school-based to full-time, all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- D.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

Schedule E—National Training Wage

The National Training Wage schedule may be affected by [AM2016/17](#)

E.1 Title

This is the *National Training Wage Schedule*.

E.2 Definitions

In this schedule:

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

approved training means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

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

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

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

Year 10 includes any year before Year 10

E.3 Coverage

- E.3.1** Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by clause E.7 to this schedule or by clause E.5.4 of this schedule.
- E.3.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause E.7 to this schedule.
- E.3.3** This schedule does not apply to:
- (a) the apprenticeship system;
 - (b) qualifications not identified in training packages; or
 - (c) qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.4** This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.5** Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.
- E.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

E.4 Types of Traineeship

The following types of traineeship are available under this schedule:

- E.4.1** a full-time traineeship based on 38 ordinary hours per week, with **20%** of ordinary hours being approved training; and
- E.4.2** a part-time traineeship based on less than 38 ordinary hours per week, with **20%** of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

E.5 Minimum Wages

E.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause E.7 are:

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

(b) Wage Level B

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause E.7 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40

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	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

(c) **Wage Level C**

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause E.7 are:

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

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

- (i) Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of **3.8%** to those minimum wages.
- (ii) Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70

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Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level C	560.60	581.80

E.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause E.7 are:

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

(b) Wage Level B

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause E.7 are:

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

(c) Wage Level C

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause E.7 are:

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

(d) School-based traineeships

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by clause E.7 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.94	10.96

(e) AQF Certificate Level IV traineeships

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

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

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

(f) Calculating the actual minimum wage

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

E.5.3 Other minimum wage provisions

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

E.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by clause E.7 is the relevant minimum wage under this schedule for a

trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

E.6 Employment conditions

E.6.1 A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of **25%** on all ordinary hours worked instead of paid annual leave, paid personal/carer’s leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.

E.6.2 A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

E.6.3 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee’s wages and determining the trainee’s employment conditions.

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

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

E.7 Allocation of Traineeships to Wage Levels

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

E.7.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I, II, III
Beauty	III
Business Services	I, II, III
Chemical, Hydrocarbons and Refining	I, II, III
Civil Construction	III
Coal Training Package	II, III
Community Services	II, III
Construction, Plumbing and Services Integrated Framework	I, II, III
Correctional Services	II, III
Drilling	II, III
Electricity Supply Industry—Generation Sector	II, III

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Training package	AQF certificate level
	(III in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I, II, III (III in Western Australia only)
Financial Services	I, II, III
Floristry	III
Food Processing Industry	III
Gas Industry	III
Information and Communications Technology	I, II, III
Laboratory Operations	II, III
Local Government (other than Operational Works Cert I and II)	I, II, III
Manufactured Mineral Products	III
Manufacturing	I, II, III
Maritime	I, II, III
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Logistics	III
Water Industry (Utilities)	III

E.7.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I, II, III

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Training package	AQF certificate level
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	II

Training package	AQF certificate level
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

E.7.3 Wage Level C

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

Schedule F—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___

Schedule G—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 H—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 I—2016 Part-day Public Holidays

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

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

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

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

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