



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/68

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

AWARD MODERNISATION

**MATTERS NO. AM2008/83 – INDUSTRIES NOT OTHERWISE
ASSIGNED – BUILDING SERVICES**

1. AFEI has earlier provided written and oral submissions to the Commission concerning Award Modernisation in a wide range of matters.
2. AFEI notes that the Commission has included the Pest Control Industry for consideration in AM 2008/83 Industries Not Otherwise Assigned - Building Services.
3. The Commission's list of relevant awards for AM 2008/83 are predominantly awards applicable to the commercial car parking industry and the pest control industry. Each industry, however, is subject to its own awards.
4. AFEI submits that the commercial car parking industry and the pest control industry should be covered by separate modern awards.
5. The pest control industry is currently covered by the following industry specific awards:
 - a. Pest Control Industry (Victoria) Award 2000 (the Victorian Award);
 - b. Pest Control Industry (Northern Territory) Award 2002 (the NT Award);
 - c. Pest Control Industry (State) Award (the NSW NAPSA);

AFEI Draft (July 2009): Pest Control Award 2010

- d. Pest Control Industry Award - State 2003 (the Qld NAPSA);
 - e. Pest Control Award (the SA NAPSA);
 - f. Pest Control Industry Award 1982 (the WA NAPSA).
6. AFEI submits that the pest control industry should be covered by a separate modern award, in the terms of the following draft award.

24 July 2009

AFEI Draft Award — July 2009

Pest Control Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Pest Control Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth)

Commission means the Australian Industrial Relations Commission or its successor

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

enterprise NAPSA means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or part of a single business

leading hand is an employee who is directed to control, supervise and take responsibility for the work performed by two or more employees

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

standard hourly rate means 1/38th of the standard weekly rate

standard weekly rate means the minimum wage for a Licenced Fumigator/Licenced Pest Control Technician in clause 14—Minimum wages.

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

4. Coverage

4.1 This industry award covers employers throughout Australia in the pest control industry and their employees in the classifications listed in Schedule A Classifications.

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

- 4.3** The award does not cover an employer bound by an enterprise award or enterprise NAPSA with respect to any employee who is covered by the enterprise award or enterprise NAPSA.
- 4.4** 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.

5. Access to the award and the National Employment Standards

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

6. The National Employment Standards and this award

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

7. Award flexibility

- 7.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:
- (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances; and
 - (e) leave loading.
- 7.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- 7.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
 - (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.
- 7.4** The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

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

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

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

7.8 The agreement may be terminated:

- (a) by the employer or the individual employee giving four 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.

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

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer 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.

8.2 Employer 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 8.1, 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 8.1.
- (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.

9. Dispute resolution

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a

direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 Employees may be employed in one of the following categories:

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

10.2 At the time of commencing employment an employer must inform an employee, in writing, of the category of their employment; whether it is full-time, part-time or casual.

10.3 Full-time employees

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

10.4 Part-time employees

- (a) A part-time employee is an employee who:
 - (i) Works not less than 3 hours on any one day;
 - (ii) works less than 38 hours per week; and
 - (iii) works a regular number of ordinary hours each week.
- (b) At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:
 - (i) the hours worked each day;
 - (ii) which days of the week the employee will work; and
 - (iii) the actual starting and finishing times of each day.
- (c) Any agreement to vary the regular pattern of work will be made, in writing, before the variation occurs.
- (d) The agreement and variation will be retained by the employer and a copy given to the employee.
- (e) 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 10.5.
- (f) A part-time employee employed under the provisions of this clause will be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

10.5 Casual employees

- (a) A casual employee is an employee employed and paid as such.
- (b) A casual employee:
 - (i) must be paid an hourly rate of 1/38th of the weekly ordinary time rate of pay for the classification in which they are employed in, plus a casual loading of 25% for ordinary hours worked; and
 - (ii) must be paid for a minimum of three hours each day they are employed.
- (c) The casual loading is instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment provided for in this award.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

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

11.3 Job search entitlement

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

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

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

12.3 Employee leaving during notice period

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

12.4 Job search entitlement

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

12.5 Transitional provisions

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 12.5 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications

- 13.1** All employees covered by this award must be classified according to the structure set out in Schedule A Classifications. Employers must advise their employees in writing of their classification and any changes to their classification.

13.2 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

14. Minimum wages

14.1 Weekly rates

A full-time employee must be paid a minimum weekly rate for their classification as set out in the table below:

| Classification | Rate per hour |
|---|----------------------|
| | \$ |
| Probationer/Trainee | 14.31 |
| Provisionally Licenced Fumigator/Assistant Fumigator/Provisionally Licenced Pest Control Technician | 14.98 |
| Licenced Fumigator/Licenced Pest Control Technician | 15.32 |
| Licenced Pest Control Technician and Fumigator | 15.73 |

14.2 Supported wage system

See Schedule B

14.3 National training wage

See Schedule C

15. Allowances

15.1 Transfer from job to job

An employee transferred by the employer from one job to another job on the same day will be paid for the time spent in travelling as for time worked.

15.2 Leading hand allowance

(a) A leading hand will be paid the higher of the rate prescribed for the highest class of work supervised or their own classification rate together with the following additional allowance:

| | % of standard weekly rate |
|-------------------------------------|----------------------------------|
| In charge of 3 to 10 employees | 3.99% |
| In charge of 11 to 21 employees | 5.97% |
| In charge of more than 21 employees | 8.11% |

15.3 Overtime meal allowance

An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be required to work will either

be supplied with a meal by the employer or paid \$10.94 for the first and subsequent meals. If an employee pursuant to notice has provided their own meal and is not required to work overtime or is required to work less than the amount advised, they will be paid the above allowance for those meals they have provided themselves.

15.4 First aid allowance

Any employee appointed by the employer to perform first aid duty, in addition to ordinary duties, will be paid 2.1% of the standard weekly rate per day in addition to their ordinary rate.

15.5 Adjustment of expense related allowances

At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

| Allowance | Applicable Consumer Price Index Figure |
|------------------|---|
| Meal allowance | Take away and fast foods sub-group |

16. District allowance (Western Australia)

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

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

16.2 This clause ceases to operate on 31 December 2014.

17. Accident pay

17.1 Subject to clause 17.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

- 17.2** The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.
- 17.3** This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.
- 17.4** This clause ceases to operate on 31 December 2014.

18. Higher duties

An employee engaged for more than four hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift. An employee undertaking such duties for four hours or less during one day or shift, must be paid the higher minimum wage for the time so worked.

19. Payment of wages

19.1 Frequency of pay

Wages, including overtime, any penalties and allowances, must be paid weekly or, by agreement between the employer and the employee, fortnightly.

19.2 Method of payment

An employer may pay an employee's wages by electronic funds transfer into a bank or financial institution nominated by the employee or by cash or cheque.

19.3 Time of payment, cash or cheque

If payment is by cash or cheque, wages will be paid during ordinary working hours.

19.4 Electronic funds transfer wages fail to be deposited

When an employee is paid by way of electronic funds transfer and their wages are not in their nominated account on the designated pay day, the employer, if requested to do so by the employee, must provide their wages in cash by conclusion of the next day's shift.

20. Superannuation

20.1 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.

20.2 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.

20.3 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 20.2.
- (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 20.3(a) or 20.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or 20.3(b) was made.

20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b) to:

- (a) Australian Public Superannuation Fund;
- (b) Asset Super; or
- (c) 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.

20.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b) while the employee is on any paid leave;

Part 5—Hours of Work and Related Matters

21. Ordinary hours of work

- 21.1** The ordinary hours of work will be an average of 38 per week to be worked over a maximum work cycle of four weeks.

- 21.2** The ordinary hours of work may be worked on any weekday or all weekdays, Monday to Sunday, and will be worked continuously, except for meal breaks, between 5.00 am and 8.00 pm in respect of day work and in respect of shiftwork as prescribed in clause 24—Shiftwork.
- 21.3** Provided that work done outside the spread of hours fixed in accordance with this clause for which overtime rates are payable will be deemed to be part of the ordinary hours of work when otherwise the ordinary hours worked would be less than those prescribed.
- 21.4** The ordinary hours of work will not exceed 10 hours on any day.

22. Breaks

- 22.1** Employees will be entitled to a meal break of not less than 30 minutes and not more than one hour which must be commenced within the fourth to sixth hours from the commencement of ordinary working hours.
- 22.2** The employer may in appropriate circumstances reasonably require an employee to change the time of taking the meal break to ensure continuity of production.
- 22.3** An employee required to defer the meal break beyond the sixth hour of the shift will be paid at the rate of time and a half until the meal break is taken or the end of the shift, whichever first occurs.
- 22.4** An employee who is required to work for more than two hours beyond their normal ceasing time in any day will be allowed a crib break of 20 minutes at ordinary rates. After each further four hours worked an employee will be entitled to a further crib break of 20 minutes without deduction of pay, if the employee continues working after such crib break.
- 22.5** The employee and employer may agree to any variation of these provisions to suit the circumstances of the work in hand. Provided that the employer will not be required to make payment in respect of any crib break in excess of 20 minutes.
- 22.6** The employer may organise meal breaks to be taken at such times that they will not interfere with the continuity of work.

22.7 Rest periods

An employee will be entitled to one rest interval of 10 minutes duration to be taken prior to the meal interval and a further rest interval of 10 minutes duration will be taken after the meal interval where the employee is required to work more than six hours on any day or shift. The rest intervals will be taken at such times that will not interfere with the continuity of work. Such intervals are to be counted as time worked.

23. Overtime, Weekend Work and Public Holidays

23.1 Payment for working overtime

- (a) For all work done outside of the span of ordinary hours of work or in addition to the ordinary hours of work, on any one day or shift Monday to Saturday

inclusive, at the rate of time and one half for the first two hours and double time thereafter will be paid.

- (b) For all work done outside of the span of ordinary hours of work or in addition to the ordinary hours of work, on any Sunday, at the rate of double time.
- (c) The assignment of overtime by an employer to an employee will be based on specific work requirements and the practice of one in, all in overtime will not apply.

23.2 Payment for working Saturdays

An employee who works ordinary hours on a Saturday will be paid for a minimum of three hours' work at the rate of time and one half.

23.3 Payment for working Sundays

An employee who works ordinary hours on a Sunday will be paid with a minimum payment as for three hours' work at the rate of double time.

23.3 Public Holidays

An employee who works on a public holiday will be paid at the rate of double time and a half with a minimum payment of four hours.

23.4 Call-back

An employee recalled to work overtime, Monday to Sunday inclusive after leaving the employer's business premises, whether notified before or after leaving the premises, will be paid for a minimum of four hours' work at the appropriate overtime rate for each time so recalled.

23.5 Rest period after overtime

- (a) When overtime work is necessary it will, wherever reasonably practicable be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days. An employee, other than a casual employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times will, subject to this subclause, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (b) If, on the instructions of the employer, an employee resumes or continues work without having had the 10 consecutive hours off duty the employee will be paid at double rates until they are released from duty for such period. The employee is then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence
- (c) The provisions of this subclause will apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purpose of changing shift rosters; or

- (ii) where a shift is worked by arrangement between the employees themselves.

24. Shiftwork

24.1 Definitions

In this award, unless the contrary intention appears:

afternoon shift means a shift at or after 12.00 noon and before 6 pm;

night shift means a shift commencing at or after 6 pm and before 6.00 am.

24.2 Hours

- (a) The ordinary hours of shiftworkers will average 38 per week inclusive of crib time and will not exceed 152 hours in 28 consecutive days. Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days. Subject to the provisions of this subclause, shiftworkers will work at such times as the employer may require.
- (b) A shift will consist of not more than 10 hours inclusive of crib time.
- (c) Except at the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.
- (d) Twenty minutes will be allowed to shiftworkers each shift for a crib break which will be counted as time worked.

24.3 Rosters

Shift rosters will specify the commencing and finishing times of ordinary working hours of the respective shifts.

24.4 Variation by agreement

- (a) Subject to clauses 7—Award flexibility and 8—Consultation regarding major workplace change, the method of working shifts may in any case be varied by agreement between the employer and the majority of employees concerned.
- (b) The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or in the absence of agreement by seven days' notice of alteration given by the employer to the employees.

24.5 Afternoon or night shift allowances

- (a) A shiftworker, whilst on afternoon shift will be paid 15% for such shift in addition to their ordinary rate.
- (b) A shiftworker, whilst on rotating night shifts will be paid 15% for such shift in addition to their ordinary rate.

- (c) A shiftworker, whilst on permanent night work will be paid 25% for such shifts in addition to their ordinary rate.

24.6 Shift penalties and extra rates

Extra rates for Saturdays, Sundays, public holidays and periods of overtime will be in substitution for and not in addition to the shift allowances prescribed in clause 24.5.

Part 6—Leave and Public Holidays

25. Annual leave

25.1 Annual leave is provided for in the NES.

25.2 Seven day shiftworkers

- (a) For the purpose of the additional week of annual leave provided for in s.32(1)(b) of the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.
- (b) Where an employee with 12 months' continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

25.3 Leave in advance

By agreement between an employer and an employee a period of annual leave may be taken in advance of the entitlement accruing. Provided that if leave is taken in advance and the employment terminates before the entitlement has accrued the employer may make a corresponding deduction from any money due to the employee on termination.

25.4 Close-down

- (a) Where an employer intends temporarily to close (or reduce to nucleus) the quarry, operation or a section of the quarry or operation 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.
- (b) In the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.
- (c) An employee who has accrued sufficient annual leave at the date of closing must be:
 - (i) given annual leave commencing from the date of closing; and
 - (ii) paid 1/12th of their ordinary pay for any period of employment between accrual of the employee's right to the annual leave and the date of closing.
- (d) Any employee who has not accrued sufficient annual leave at the date of closing must be:

- (i) given leave without pay from the date of closing; and
- (ii) paid for any public holiday during such leave for which the employee is entitled to payment.

25.5 Excessive leave accrual

Notwithstanding s.33 of the NES, if an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take annual leave by giving not less than four weeks' notice of the time when such leave is to be taken if:

- (a) at the time the direction is given, the employee has eight weeks or more of annual leave accrued; and
- (b) the amount of annual leave the employee is directed to take is less than or equal to a quarter of the amount of leave accrued.

25.6 Payment and loading

Before the start of an employee's annual leave the employer must pay the employee:

- (a) instead of the base rate of pay referred to in s.35(1) of the NES, the amount the employee would have earned for working their ordinary hours had they not been on leave; and
- (b) an additional loading of 17.5% of the employee's minimum rate prescribed in clause 14—Minimum wages plus leading hand, industry and first aid allowances where appropriate or if they were a shiftworker prior to entering leave, their shift penalty, which ever is greater.

26. Personal/carer's leave and compassionate leave

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

27. Community service leave

Community service leave is provided for in the NES.

28. Public holidays

28.1 Public holidays are provided for in the NES.

28.2 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.

Schedule A—Supported Wage System

A.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.

A.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

SWS wage assessment agreement means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

A.3 Eligibility criteria

A.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.

A.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.

A.4 Supported wage rates

A.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 A.5) | Relevant minimum wage |
|---------------------------------------|------------------------------|
| % | % |
| 10 | 10 |
| 20 | 20 |
| 30 | 30 |
| 40 | 40 |
| 50 | 50 |
| 60 | 60 |
| 70 | 70 |
| 80 | 80 |
| 90 | 90 |

A.4.2 Provided that the minimum amount payable must be not less than \$69 per week.

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

A.5 Assessment of capacity

A.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.

A.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.

A.6 Lodgement of SWS wage assessment agreement

A.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 Commission.

A.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 Industrial Registrar to the union by certified mail and the agreement will take effect unless an objection is notified to the Commission within 10 working days.

A.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.

A.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.

A.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.

A.10 Trial period

A.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.

A.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.

A.10.3 The minimum amount payable to the employee during the trial period must be no less than \$69 per week.

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

A.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 A.5.

Schedule B—National Training Wage