

Horticulture Award 2020

2020 Award Operative: 13 November 2020

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Part 1—Application and Operation of this Award

1. Title and commencement

- 1.1** This award is the *Horticulture Award 2020*.
- 1.2** This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3** 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.

2. Definitions

In this award, unless the contrary intention appears:

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

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave (see clause 18.2(a)).

casual employee has the meaning given by section 15A of the Act.

NOTE: Section 15A of the Act was amended with effect from 26 August 2024. Under clause 102(3) of Schedule 1 to the Act, an existing employee who was a casual employee of an employer under section 15A as it was immediately before that date is taken to be a casual employee of the employer for the purposes of section 15A after that date.

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 organisation has the meaning given by section 12 of Act.

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

enterprise means a business, activity, project or undertaking, and includes:

- An employer that is engaged with others in a joint venture or common enterprise; or
- Employers that are related bodies corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth) or associated entities within the meaning of section 50AAA of the *Corporations Act 2001* (Cth).

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

harvest period means the period of time during which the employees of the particular employer are engaged principally in the harvesting, grading or packing of horticultural crops.

horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a **broadacre field crop** in the *Pastoral Award 2020*.

horticultural enterprise means an enterprise which as an important part of its enterprise engages in the raising of horticultural crops.

horticulture industry has the meaning given in clause 4.2.

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

NES means the National Employment Standards as contained in sections 59 to 131 of the Act.

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

ordinary hourly rate means the hourly rate for the employee's classification specified in this award, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.

plant nurseries means the principal business of the employer is the preparation of growing media for the growing of plant material, propagation, preparation and presentation of plant material for sale.

silviculture and afforestation means the planting, pruning, fertilising and any other activities in or in connection with the establishment or cultivation of trees in forests.

small business employer has the meaning given by section 23 of the Act.

standard rate means the minimum hourly rate for a Level 2 in clause 15—Minimum rates. This rate is to be used for the purposes of calculating various allowances that require a designated standard rate.

vineyard means a place where wine grapes are grown exclusively or predominantly for processing into wine.

wine industry means the industry of growing and processing wine grapes and includes:

- (a) the preparation of land for the planting of wine grape vines, the planting of wine grape vines, the pruning of wine grape vines, the care, growing, treating, picking, harvesting and forwarding of wine grapes and other activities associated with a wine grape vineyard; and/or
- (b) processing wine grapes, producing wine juice or grape spirit, the bottling, packaging, storage or dispatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice and other activities associated with a winery or wine distillery including but not limited to cellar door sales, laboratory activities and making or repairing barrels, vats, casks and like articles; and/or
- (c) packaging, storing and dispatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery.

workplace delegate has the meaning given by section 350C(1) of the Act.

3. The National Employment Standards and this award

- 3.1** The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2** Where this award refers to a condition of employment provided for in the NES, the NES definition applies.
- 3.3** The employer must ensure that copies of the award and the NES are available to all employees to whom they apply. This may be achieved by making them available

electronically, on a noticeboard which is conveniently located at or near the workplace, or through some other reasonable accessible means.

4. Coverage

4.1 This industry award covers employers throughout Australia in the horticulture industry and their employees in the classifications listed in Schedule A—Classification Definitions, to the exclusion of any other modern award.

4.2 **Horticulture industry** means:

- (a) the sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops in connection with a horticultural enterprise; or
- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land or property in connection with the activities listed at 4.2(a).

4.3 Horticulture industry **does not mean**:

- (a) the wine industry;
- (b) silviculture and afforestation;
- (c) sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals;
- (d) any work in or in connection with cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed; or
- (e) plant nurseries.

4.4 This award does not cover:

- (a) employees 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 This award covers any employer which supplies labour on an on-hire basis in the horticulture industry 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. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.6 This award covers employers which provide group training services for trainees engaged in the horticulture industry 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. Clause 4.6 operates subject to the exclusions from coverage in this award.

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

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. Individual flexibility arrangements

- 5.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

- 5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

- 5.3** An agreement may only be made after the individual employee has commenced employment with the employer.

- 5.4** An employer who wishes to initiate the making of an agreement must:

- (a) give the employee a written proposal; and
- (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

- 5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

- 5.6** An agreement must do all of the following:

- (a) state the names of the employer and the employee; and
- (b) identify the award term, or award terms, the application of which is to be varied; and
- (c) set out how the application of the award term, or each award term, is varied; and
- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

- 5.7** An agreement must be:

- (a) in writing; and

- (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

5.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.

5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

5.11 An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).

5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under clause 5.11(b).

5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6. Requests for flexible working arrangements

Requests for flexible working arrangements are provided for in the NES.

NOTE: Disputes about requests for flexible working arrangements may be dealt with under clause 30—Dispute resolution and/or under section 65B of the Act.

7. Facilitative provisions

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:
13.1(a)(ii)	Ordinary hours of work—span of hours	The majority of employees
13.1(a)(iii)	Ordinary hours of work—number per day	The majority of employees
14.1(a)	Meal breaks	An individual

Clause	Provision	Agreement between an employer and:
14.2(b)	Rest breaks	An individual
21.2(a)	Time off instead of payment for overtime	An individual
21.3(c)	Payment of overtime—work on a Saturday	The majority of employees
22.3	Annual leave—conversion to hourly entitlement	The majority of employees
22.10	Annual leave—paid leave in advance	An individual
22.12	Cashing out of annual leave	An individual
27.2	Substitution of certain public holidays by agreement	An individual

Part 2—Types of Employment and Classifications

8. Types of employment

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

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

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

9. Full-time employees

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

10. Part-time employees

10.1 A part-time employee is an employee who:

- (a) is engaged to work an average of less than 38 ordinary hours per week; and
- (b) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

10.2 Subject to clause 15.2, for each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate for the relevant classification.

10.3 An employer must inform a part-time employee of their ordinary hours of work and starting and finishing times.

10.4 All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate in accordance with clause 21—Overtime.

11. Casual employees

11.1 A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours the employer requires the employee to work.

11.2 Casual loading

- (a) Subject to clause 15.2, for each hour worked, a casual employee must be paid:
- (i) the ordinary hourly rate; and
 - (ii) a loading of 25% of the hourly rate,
- for the classification in which they are employed.
- (b) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment under this award.

11.3 A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

11.4 Change to casual employment status

A pathway for employees to change from casual employment to full-time or part-time employment is provided for in the NES. See sections 66A to 66MA of the Act.

NOTE: Disputes about changes to casual employment status may be dealt with under sections 66M and 66MA of the Act and/or under clause 30—Dispute resolution.

12. Classifications

Employees will be classified in accordance with the classification descriptions contained in Schedule A—Classification Definitions.

Part 3—Hours of Work

13. Ordinary hours of work and rostering arrangements

13.1 Ordinary hours and roster cycles

- (a) The ordinary hours of work for all full-time and part-time employees other than shiftworkers will not exceed 152 hours over a 4 week period provided that:
- (i) The ordinary hours will be worked:
 - between Monday and Friday inclusive; or
 - between Monday and Saturday inclusive by arrangement between the employer and the majority of employees in the section/s concerned.
 - (ii) The ordinary hours will be worked between 6.00 am and 6.00 pm except if varied by arrangement between the employer and the majority of the employees in the section/s concerned.
 - (iii) The ordinary hours will not exceed 8 hours per day except by arrangement between the employer and the majority of employees in the section/s concerned in which case ordinary hours should not exceed 12 hours on any day.

- (iv) All time worked by full-time and part-time employees in excess of the ordinary hours or outside of the ordinary hours will be deemed overtime.

13.2 The ordinary hours of work for casual employees other than shiftworkers will not exceed 304 ordinary hours over an 8 week period provided that:

- (a) Ordinary hours of work for casual employees can be worked at any time.
- (b) Each ordinary hour of work worked by a casual employee on any day of the week (excluding public holidays) between 5.00 am and 8.30 pm will be paid at the employee's ordinary hourly rate for his or her classification plus a casual loading of **25%**.
- (c) In a State or Territory that does not observe daylight saving time, by agreement between the employer and a majority of affected casual employees, the 5.00 am to 8.30 pm daily spread of hours can be moved forward one hour (4.00 am to 7.30 pm) for the period of daylight saving time in other States and Territories.
- (d) Each ordinary hour worked by a casual employee on any day of the week (excluding public holidays) between 8.31 pm and 4.59 am (or 7.31 pm and 3.59 am in accordance with clause 13.2(c)) will attract a loading of 15% of the employee's ordinary hourly rate for his or her classification (in addition to the casual loading of 25%).
- (e) The maximum number of ordinary hours which a casual employee may work per engagement, or on any day, is 12 ordinary hours.
- (f) All time worked in excess of 12 hours per engagement, 12 hours in a single day or 304 ordinary hours over an eight week period will be deemed overtime.

13.3 The ordinary hours of work for a shiftworker will not exceed 152 hours over a 4 week period provided that:

- (a) The ordinary hours will be worked between Monday and Friday inclusive.
- (b) For the purposes of this award:
 - (i) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight; and
 - (ii) **night shift** means any shift finishing after midnight and at or before 8.00 am.
- (c) If an employee is directed to work on shifts the shift must not exceed 8 hours without the payment of overtime.
- (d) Shiftworkers whilst on afternoon and night shifts will be paid **115%** of the ordinary hourly rate.
- (e) Where shiftwork is adopted, shifts will, as far as practicable, rotate regularly so that:
 - (i) where 2 shifts are worked, one will be regarded as day shift and the second as the afternoon or night shift; or
 - (ii) where 3 shifts are worked they will be divided into day, afternoon and night shifts.
- (f) The employer has the right to decide before the commencement of such shiftwork which of the shifts will be the day shift and will notify each employee accordingly.
- (g) The employer will keep a roster at the workplace that specifies the times which each shift will commence and finish and which shifts are deemed to be day shift.

- (h) All time worked in excess of the ordinary hours will be deemed overtime paid in accordance with clause 21—Overtime.

13A. Employee right to disconnect

13A.1 Clause 13A provides for the exercise of an employee's right to disconnect under section 333M of the Act.

NOTE:

- (a) Section 333M provides that, unless it is unreasonable to do so, an employee may refuse to monitor, read or respond to contact, or attempted contact, from:
 - (1) their employer outside of the employee's working hours,
 - (2) a third party if the contact or attempted contact relates to, their work and is outside of the employee's working hours.
- (b) Section 333M(3) lists matters that must be taken into account in determining whether an employee's refusal is unreasonable.
- (c) Section 333M(5) provides that an employee's refusal will be unreasonable if the contact or attempted contact is required under a law of the Commonwealth, a State or a Territory.
- (d) Section 333N provides for the resolution of disputes about whether an employee's refusal is unreasonable and about the operation of section 333M.
- (e) The general protections in Part 3–1 of the Act prohibit an employer taking adverse action against an employee because of the employee's right to disconnect under section 333M of the Act.

13A.2 Clause 13A applies from the following dates:

- (a) 26 August 2024—for employers that are not small business employers on this date and their employees.
- (b) 26 August 2025—for employers that are small business employers on 26 August 2024 and their employees.

13A.3 An employer must not directly or indirectly prevent an employee from exercising their right to disconnect under the Act.

14. Breaks

14.1 Meal break

- (a) A meal break of not less than 30 minutes and not more than one hour will be allowed each day, to be taken not later than 5 hours after commencing ordinary hours of work. Provided that where there is agreement between the employer and an individual employee, the meal break may be taken at a time agreed.
- (b) All work performed on the instruction of the employer during a recognised meal break will be paid for at **200%** of the appropriate ordinary hourly rate. Such payment will continue until the employee is released for a meal break of not less than 30 minutes.

14.2 Rest break

- (a) Employees will be allowed a paid rest break of 10 minutes each day or shift.
- (b) Where agreement is reached between the employer and employee for an additional rest break, such rest break will be unpaid and in addition to the employee's ordinary hours of work.

14.3 10 hour break after ceasing work for the day

- (a) An employee is entitled to a break of 10 hours between finishing work on one day and commencing work on the next day or shift.
- (b) Overtime rates will be paid in accordance with clause 21—Overtime for work required to be performed where an employee has not had the 10 hour break until such time as the employee is released and able to take the 10 hour break.

Part 4—Wages and Allowances

Further information on current wage rates and allowances are available in the latest AFEI Wage Rate Schedule — [view here](#).

15. Minimum rates

15.1 Adult employee minimum rates

- (a) The classifications and minimum rates for an adult employee are set out in the following table:

Classification	Minimum weekly rate (full-time employee)	Minimum hourly rate ¹
	\$	\$
Level 1	891.50	23.46
Level 2	915.90	24.10
Level 3	940.90	24.76
Level 4	974.90	25.66
Level 5	1032.30	27.17

¹ Consistent with the definition for **ordinary hourly rate** in clause 2—Definitions all-purpose allowances need to be added to the rates in the table where they are applicable.

NOTE: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalty rates

- (b) For the purposes of clause 15.1(a), any entitlement to a minimum rate expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.

15.2 Piece rates

- (a) In clause 15.2:
 - (i) the **average productivity of a pieceworker competent at the piecework task** over a period is calculated by dividing the total output of the pieceworkers competent at the piecework task over that period by the total of the hours worked on the piecework task by the pieceworkers competent at the piecework

task over that period (where output is measured in the same unit used to specify the piece rate for example, a punnet, bucket or kilogram);

- (ii) **hourly rate for the pieceworker** means the minimum hourly rate for the pieceworker's classification level plus for a casual pieceworker the **25%** casual loading under clause 11.2;

NOTE: The minimum hourly rate for a junior pieceworker is worked out under clause 15.3.

- (iii) **pieceworker** means an employee being paid a piece rate; and
- (iv) pieceworker competent at the piecework task means a pieceworker who has at least 76 hours' experience performing the task (for example, picking apples, picking strawberries or pruning grape vines).

NOTE: A pieceworker can use the employee records kept under clause 15.2(j) as evidence of their experience performing a piecework task.

- (b) The following clauses of this award do not apply to a pieceworker:

- (i) Clause 13—Ordinary hours of work and rostering arrangements;
- (ii) Clause 18.3(c)—Meal allowance; and
- (iii) Clause 21—Overtime.

- (c) An employer may pay a full-time, part-time or casual employee a piece rate for performing a task.

- (d) The employer must fix the piece rate at a level such that a pieceworker working at the average productivity of a pieceworker competent at the piecework task will earn at least **15%** more per hour than the hourly rate for the pieceworker.

NOTE: A pieceworker is paid **200%** of the piece rate for work on a public holiday (see clause 27.3).

- (e) If a pieceworker does any work in addition to the task for which they are being paid a piece rate, the pieceworker must be paid for that additional work at the hourly rate for the pieceworker.

- (f) Despite any other provision of clause 15.2 a pieceworker must be paid for each day on which they work no less than the hourly rate for the pieceworker multiplied by the number of hours worked on that day.

- (g) Pieceworkers are paid allowances under clause 18—Allowances (other than meal allowance) in addition to the rates payable under clauses 15.2(d), (e) and (f).

- (h) Before a pieceworker begins a piecework task for an employer, the employer must give the pieceworker a written record signed by the employer (a **piecework record**) that must:

- (i) state the date and time the piecework is to commence;
- (ii) describe the task for which the piece rate will be paid;
- (iii) state the amount of the piece rate;
- (iv) include the following statement:

'Under the *Horticulture Award 2020* a pieceworker must be paid for each day on which they work no less than their hourly rate under the award (including the

25% casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.'

and

(v) state the hourly rate for the pieceworker.

NOTE 1: A piecework record can cover more than one piecework task.

NOTE 2: An example of a piecework record is at Schedule I—Piecework Record. There is no requirement to use the form of record set out in Schedule I—Piecework Record.

- (i) If an employer proposes to change the piece rate for a piecework task the employer must first give the pieceworker a further piecework record including the new rate.
- (j) The employer must keep the following as employee records:
 - (i) a copy of each piecework record given to the pieceworker; and
 - (ii) a record of all hours worked by the pieceworker and the applicable piece rate at the time those hours were worked.
- (k) An employer must give a pieceworker or former pieceworker a copy of the employee record in clause 15.2(j)(ii) upon request.
- (l) For the purposes of the NES the base rate of pay and full rate of pay of a pieceworker are the same and are worked out as follows:
 - (i) By dividing the total amount payable to the pieceworker under this award during the relevant period by the total hours worked by the pieceworker during the relevant period.
 - (ii) If the pieceworker was continuously employed by the employer for a period of 12 months or more immediately before the rate of pay is to be worked out—the **relevant period** is the 12 months before the rate is to be worked out. If the pieceworker was continuously employed by the employer for a period of less than 12 months immediately before the rate of pay is to be worked out—the **relevant period** is that period.

15.3 Junior rates

- (a) The minimum rate payable to a junior employee will be the percentage of the adult rate prescribed for the classification upon which the employee is employed as set out in the following table:

Age	Percentage of appropriate adult rate %
Under 16 years of age	50
16 years of age	60
17 years of age	70
18 years of age	80
19 years of age	90
20 years of age	100

- (b) The rate payable to a junior will, in the case of a weekly employee, be calculated to the nearest **\$0.10**, and in the case of an hourly employee, be calculated to the nearest cent.

15.4 Higher duties

- (a) An employee engaged for more than 2 hours during one day or shift on duties carrying a higher minimum rate than their ordinary classification must be paid the higher minimum rate for such day or shift.
- (b) If an employee is engaged for 2 hours or less during one day or shift on duties carrying a higher minimum rate than their ordinary classification, they must be paid the higher minimum rate for the time worked at the higher level.

15.5 Supported wage system

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

15.6 National training wage

- (a) Schedule E to the [Miscellaneous Award 2020](#) sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2020* as at 1 July 2024. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2020* is to be read as referring to the *Horticulture Award 2020* and not the *Miscellaneous Award 2020*.

16. Payment of wages

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.

16.1 Period of payment

Wages must be paid weekly or fortnightly according to the actual hours worked each week or fortnight, or according to the applicable piecework payment.

16.2 Method of payment

Wages must be paid by cash, cheque or electronic funds transfer into the employee’s bank or other recognised financial institution account.

16.3 Payment on termination of employment

- (a) If the employment of an employee terminates, the employer must pay an employee the following amounts in accordance with clause 16.3:
 - (i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of the termination; and
 - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) The amounts described at clause 16.3(a)(i) must be paid to the employee:
 - (i) By cash or cheque on the day of termination or forwarded to the employee by post on the next working day; or

- (ii) By electronic funds transfer no later than 7 days after the day on which the employee's employment terminates.
- (c) The amounts described at clause 16.3(a)(ii) must be paid to the employee:
 - (i) By cash or cheque on the day of termination or forwarded to the employee by post as soon as reasonably practicable and by no later than 7 days after the day on which the employee's employment terminates; or
 - (ii) By electronic funds transfer by no later than 7 days after the day on which the employee's employment terminates.
- (d) The requirement to pay wages and other amounts under clause 16.3 is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

NOTE 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: Clause 16.3(d) allows the Commission to make an order delaying the requirement to make a payment under clause 16.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

17. Annualised wage arrangements

17.1 Annualised wage instead of award provisions

- (a) An employer and a full-time employee may enter into a written agreement for the employee to be paid an annualised wage in satisfaction, subject to clause 17.1(c), of any or all of the following provisions of the award:
 - (i) clause 13.3(d)—Ordinary hours of work and rostering—shiftworkers working afternoon and night shifts;
 - (ii) clause 15—Minimum rates;
 - (iii) clause 18—Allowances;
 - (iv) clause 21—Overtime;
 - (v) clause 22.6—Annual leave loading; and
 - (vi) clause 27.3—Public holiday rates—other than casual employees.
- (b) Where a written agreement for an annualised wage agreement is entered into, the agreement must specify:
 - (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;

- (iii) the method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and
 - (iv) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage in accordance with clause 17.1(c).
- (c) If in a pay period or roster cycle an employee works any hours in excess of either of the outer limit amounts specified in the agreement pursuant to clause 17.1(b)(iv), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.
- (d) The employer must give the employee a copy of the agreement and keep the agreement as a time and wages record.
- (e) The agreement may be terminated:
- (i) by the employer or the employee giving 12 months' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the individual employee.

17.2 Annualised wage not to disadvantage employees

- (a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases or the agreement terminates earlier, over such lesser period as has been worked).
- (b) The employer must each 12 months from the commencement of the annualised wage arrangement or, within any 12 month period upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.
- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement agreement for the purpose of undertaking the comparison required by clause 17.2(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.

17.3 Base rate of pay for employees on annualised wage arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 15—Minimum rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

18. Allowances

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.

18.1 Employers must pay to an employee the allowances the employee is entitled to under clause 18.

NOTE: See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

18.2 Wage-related allowances

(a) All-purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) leading hand allowance (clause 18.2(b));
- (ii) wet work allowance (clause 18.2(c)); and
- (iii) first aid allowance (clause 18.2(d))

(b) Leading hand allowance

A leading hand will be paid a leading hand allowance based upon the following:

In charge of:	\$ per week
2 to 6 employees	27.72
7 to 10 employees	32.29
11 to 20 employees	46.03
More than 20 employees	57.84

(c) Wet work allowance

- (i) An employee who, on any one day, is required to work in a wet place must be paid **\$2.41** for each hour that they are required to work in the wet place, unless provided with adequate protection.
- (ii) A **wet place** will mean a place where the clothing of the employee becomes saturated or a place where the employee has to stand in water or slush so that the employee's feet become wet.

(d) First aid allowance

An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St John Ambulance or similar body must be paid an allowance of **\$12.29** per week if they are appointed by the employer to perform first aid duty.

18.3 Expense-related allowances

(a) Travelling allowance

- (i) Where an employee is required to travel from one place to another, the time occupied in travelling will be counted as time worked and paid for as such.
- (ii) Where an employee is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee's normal place of sleeping during employment) the employer will reimburse the employee for the demonstrable cost of suitable accommodation, unless the employer provides the employee with suitable accommodation free of charge.

(b) Tool and equipment allowance

- (i) The employer must reimburse the employee for the cost of supplying tools and equipment if the employer requires the employee to supply their own tools and equipment.
- (ii) The provisions of clause 18.3(b) do not apply where the tools and equipment are paid for by the employer.

(c) Meal allowance

- (i) An employee will be entitled to a payment of **\$15.62** or will be provided a suitable meal without cost if the employee:
 - is required to work overtime for more than 2 hours after the employee's ordinary finishing time; and
 - was not notified before leaving work on the previous day that the employee will be required to work overtime.
- (ii) If the work extends into a second or subsequent meal break, this meal allowance will again apply.

19. Accident pay

19.1 Definitions

For the purposes of clause 19, the following definitions will apply:

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

19.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 26 weeks.

19.3 Calculation of the period

- (a) The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.
- (b) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

19.4 When not entitled to payment

An employee will not be entitled to any payment under clause 19 in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

19.5 Return to work

If an employee entitled to accident pay under clause 19 returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

19.6 Redemptions

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the employer to pay accident pay will cease from the date the employee receives that payment.

19.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under clause 19 and the employee will not be entitled to any further accident pay thereafter.

19.8 Casual employees

For a casual employee, the weekly payment referred to in clause 19.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over-award payments.

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 one of the following superannuation funds or its successor:

- (a) AustSafe Super;
- (b) Prime Super;
- (c) Tasplan;
- (d) Sunsuper;
- (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

21. Overtime

21.1 Definition

All time worked by employees in excess of their ordinary hours will be deemed overtime.

21.2 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 all overtime that is worked by the employee under this agreement.
- (b)** An agreement made under clause 21.2 will remain in place unless the agreement is terminated. The agreement can be terminated by the employer or employee at any time by notice in writing.
- (c)** An agreement made under clause 21.2 must be in writing and must state each of the following:
 - (i)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (ii)** that the agreement can be terminated at any time by notice in writing;
 - (iii)** that overtime worked after the agreement is terminated will be paid at the overtime rate applicable to the overtime when worked;
 - (iv)** that time off instead of overtime must be taken within 6 months of it being worked, at a time or times agreed by the employee and employer;
 - (v)** that, if time off is not taken as mentioned in clause 21.2(c)(iv), 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.

NOTE: An example of the type of agreement required by clause 21.2 is set out at Schedule E—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule E—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 21.2 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 21.2 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 time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 21.2(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 unless the employer agrees to pay out the accrued overtime earlier.

- (g) The employer must keep a copy of any agreement under clause 21.2 as an employee record.
- (h) The employer must keep a record of the number of overtime hours worked by the employee, when those hours were worked and an updated record of the employee's time off instead of payment for overtime balance.
- (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 21.2 will apply, including the requirement for a written agreement under clause 21.2(c) 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 65A(3) of the Act).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.2 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 21.2.

21.3 Payment of overtime—other than casual employees.

- (a) The rate of pay for overtime on Monday to Saturday will be **150%** of the ordinary hourly rate.
- (b) The rate of pay for overtime worked on a Sunday, except during harvest period, will be **200%** of the ordinary hourly rate.
- (c) Should employees be required to work on a Saturday and the majority of such employees elect not to work on the Saturday but rather on the Sunday then such work performed on that Sunday will be paid for at the rate prescribed for Saturday work.
- (d) During harvest period, the first 8 hours of overtime in a week may include 5 hours' work on a Sunday at the rate of **150%** of the ordinary hourly rate but all Sunday work in excess of the 8th overtime hour worked in the week, or in excess of 5 hours on a Sunday, will be paid at the rate of **200%** of the ordinary hourly rate.
- (e) All employees required to work on a Sunday will be paid for a minimum of 3 hours.

21.4 Payment for overtime—casual employees

Each hour worked in excess of 12 hours per engagement, 12 hour in a single day or 304 ordinary hours over an eight week period will be paid at a rate of **175%** of the employee's ordinary hourly rate for his or her classification (inclusive of the casual loading).

Part 6—Leave and Public Holidays

22. Annual leave

22.1 Annual leave is provided for in the NES. Annual leave does not apply to a casual employee.

22.2 Clause 22 contains additional and supplementary provisions.

22.3 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in section 87 of the Act to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to 4 weeks' annual leave).

22.4 Payment for period of annual leave

Instead of the base rate of pay as referred to in section 90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

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

22.5 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 22, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

22.6 Annual leave loading

During a period of annual leave an employee must also be paid an annual leave loading equal to **17.5%** of the wages prescribed in clause 22.4.

22.7 Excessive leave accruals: general provision

NOTE: Clauses 22.7 to 22.9 contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (a)** An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b)** If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c)** Clause 22.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d)** Clause 22.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

22.8 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 22.7(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 22.8(a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.7, 22.8 or 22.9 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 22.8(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 22.8(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 22.8(d) may result in the direction ceasing to have effect. See clause 22.8(b)(i).

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

22.9 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 22.7(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under clause 22.9(a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 22.8(a) that, when any other paid annual leave arrangements (whether made under clause 22.7, 22.8 or 22.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 22.9(a) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.7, 22.8 or 22.9 or otherwise agreed by the employer and employee) are taken into account; or

- (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under clause 22.9(a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 22.9(a).

22.10 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 22.10 is set out at Schedule F—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 22.10 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 22.10, 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.

22.11 Proportionate leave on termination

On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 22.4.

22.12 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.12.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.12.
- (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 22.12 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 22.12 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 22.12 as an employee record.

NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.12.

NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.12.

NOTE 3: An example of the type of agreement required by clause 22.12 is set out at Schedule G—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Cash Out Annual Leave.

23. Personal/carer's leave and compassionate leave

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

24. Parental leave and related entitlements

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

NOTE: Disputes about requests for extensions to unpaid parental leave may be dealt with under clause 30—Dispute resolution and/or under section 76B of the Act.

25. Community service leave

25.1 Community service leave is provided for in the NES.

25.2 Reimbursement for jury service

- (a) A full-time employee required to attend for jury service during their ordinary hours of work must be reimbursed by the employer an amount equal to the difference between the amount paid to the employee in respect of the employee's attendance for such jury service and the wages the employee would have received in respect of the ordinary hours the employee would have worked had the employee not been on jury service.

- (b) Where a part-time employee is required to attend for jury service and such attendance coincides with a day on which the employee would normally be required to work, payment must be made to the employee in accordance with clause 25.2(a).

26. Family and domestic violence leave

Family and domestic violence leave is provided for in the NES.

NOTE 1: Information provided to employers concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers are subject to confidentiality requirements regarding the handling of this information under section 106C of the Act and requirements as to what can be reported on payslips pursuant to regulations 3.47 and 3.48 of the Fair Work Regulations 2009.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

27. Public holidays

27.1 Public holidays are provided for in the NES.

27.2 Substitution of certain public holidays by agreement at the enterprise

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

27.3 Public holiday rates—other than casual employees

All work performed on public holidays will be paid for at the rate of **200%** of the ordinary hourly rate or **200%** of the piece rate for a pieceworker.

27.4 Public holiday rates—casual employees

All hours worked by a casual employee on a public holiday (both ordinary hours and any overtime) will be paid at a rate of **225%** of the employee's ordinary hourly rate for his or her classification (inclusive of the casual loading).

Part 7—Workplace Delegates, Consultation and Dispute Resolution

27A. Workplace delegates' rights

27A.1 Clause 27A provides for the exercise of the rights of workplace delegates set out in section 350C of the Act.

NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 27A.

27A.2 In clause 27A:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and
- (c) **eligible employees** means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.

27A.3 Before exercising entitlements under clause 27A, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

27A.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

27A.5 Right of representation

A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:

- (a) consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work;
- (c) resolution of disputes;
- (d) disciplinary processes;
- (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and
- (f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.

27A.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause 27A.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.
- (b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.

27A.7 Entitlement to reasonable access to the workplace and workplace facilities

- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;
 - (ii) a physical or electronic noticeboard;

- (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause 27A.7(a) if:
- (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

27A.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.
- (b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.
- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

27A.9 Exercise of entitlements under clause 27A

- (a) A workplace delegate's entitlements under clause 27A are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with their duties and obligations as an employee;
 - (ii) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
 - (iii) not hinder, obstruct or prevent the normal performance of work; and
 - (iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.
- (b) Clause 27A does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.
- (c) Clause 27A does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the Act, the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or clause 27A.

28. Consultation about major workplace change

28.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

- 28.2** For the purposes of the discussion under clause 28.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
 - (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 28.3** Clause 28.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 28.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 28.1(b).
- 28.5** In clause 28 **significant effects**, on employees, includes any of the following
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or
 - (f) the need for employees to be retrained or transferred to other work or locations; or
 - (g) job restructuring.
- 28.6** Where this award makes provision for alteration of any of the matters defined at clause 28.5, such alteration is taken not to have significant effect.

29. Consultation about changes to rosters or hours of work

- 29.1** Clause 29 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 29.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 29.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 29.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 29.4** The employer must consider any views given under clause 29.3(b).

29.5 Clause 29 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

30. Dispute resolution

30.1 Clause 30 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES.

30.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

30.3 If the dispute is not resolved through discussion as mentioned in clause 30.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

30.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 30.2 and 30.3, a party to the dispute may refer it to the Fair Work Commission.

30.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.

30.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.

30.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 30.

30.8 While procedures are being followed under clause 30 in relation to a dispute:

- (a)** work must continue in accordance with this award and the Act; and
- (b)** an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

30.9 Clause 30.8 is subject to any applicable work health and safety legislation.

NOTE: In addition to clause 30, the Act contains dispute resolution procedures as follows:

For a dispute about rights under the Act to	Section
Request flexible working arrangements	65B
Change casual employment status	66M
Request an extension to unpaid parental leave	76B
Exercise an employee's right to disconnect	333N

Part 8—Termination of Employment and Redundancy

31. Termination of employment

NOTE: The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.

31.1 Notice of termination by an employee

- (a) Clause 31.1 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

Column 1 Employee's period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In clause 31.1(b) **continuous service** has the same meaning as in section 117 of the Act.
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 31.1(b) then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 31.1(b), then no deduction can be made under clause 31.1(d).
- (f) Any deduction made under clause 31.1(d) must not be unreasonable in the circumstances.

31.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 31.2 is to be taken at times that are convenient to the employee after consultation with the employer.

32. Redundancy

NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.

32.1 Transfer to lower paid duties on redundancy

- (a)** Clause 32.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b)** The employer may:
 - (i)** give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or
 - (ii)** transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 32.1(c).
- (c)** If the employer acts as mentioned in clause 32.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

32.2 Employee leaving during redundancy notice period

- (a)** An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act.
- (b)** The employee is entitled to receive the benefits and payments they would have received under clause 32 or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice.
- (c)** However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

32.3 Job search entitlement

- (a)** Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment.
- (b)** If an employee is allowed time off without loss of pay of more than one day under clause 32.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c)** A statutory declaration is sufficient for the purpose of clause 32.3(b).
- (d)** An employee who fails to produce proof when required under clause 32.3(b) is not entitled to be paid for the time off.
- (e)** This entitlement applies instead of clause 31.2.

Schedule A—Classification Definitions

A.1 Level 1

A.1.1 Level 1 employee means an employee classified in accordance with the following criteria:

A.1.2 General description

An employee at this level:

- undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance;
- performs routine duties essentially of a manual nature and to the level of their training;
- exercises minimal judgment;
- works under direct supervision;
- is responsible for the quality of their own work;
- is a new employee; or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2;
- will progress to Level 2 after no more than 3 months' industry experience.

A.1.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties;
- fruit or vegetable picking, thinning or pruning;
- operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- performing a range of housekeeping tasks in premises and grounds;
- sorting, packing or grading of produce where this requires the exercise of only minimal judgment;
- performing basic recording functions related to work performed at this level;
- providing assistance within the scope of this level to other employees as required;
- undertaking structured training so as to enable advancement to Level 2.

A.2 Level 2 employee

A.2.1 Level 2 employee means an employee classified in accordance with the following criteria:

A.2.2 General description

An employee at this level:

- has 3 months' industry experience to enable the performance of work within the scope of this level;
- works under general supervision either individually or in a team environment;
- works with established routines, methods and procedures;
- performs a range of tasks involving the use of skills above and beyond those of Level 1 and to the level of their training;
- exercises limited discretion;
- is responsible for the quality of their own work;
- receives training in work health and safety standards and practices relevant to the site;
- performs lower level tasks as required without loss of pay unless re-engaged to perform tasks at predominantly a lower skill level.

A.2.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties;
- fruit or vegetable picking, thinning or pruning;
- operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- performing a range of housekeeping tasks in premises and grounds;
- performing basic recording functions related to work performed at this level;
- performing a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment;
- repetition work on automatic, semi-automatic or single purpose machines or equipment;
- assembling/dismantling components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- irrigation, spraying or pruning under general supervision;
- sorting, packing and grading beyond the scope of Level 1 duties;
- maintaining simple records;
- using hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence;
- operating tractors with engine capacity of up to 70 kW;
- general and routine product testing;
- providing assistance within the scope of this level to other employees as required.
- assisting in the provision of on-the-job training in conjunction with supervisors, tradespersons or trainers;
- undertaking further training so as to enable advancement to Level 3.

A.3 Level 3 employee

A.3.1 Level 3 employee means an employee classified in accordance with the following criteria:

A.3.2 General description

An employee at this level:

- performs work above and beyond the skills of an employee at Level 2 and to the level of their training;
- works under routine supervision either individually or in a team environment;
- exercises discretion with their level of skills and training;
- is responsible for the quality of their own work;
- receives training in work health and safety standards and practices in work areas relevant to the site and appropriate to this award;
- may perform any lower level task as required without loss of pay.

A.3.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- driving motor lorries or mechanical harvesters or forklifts;
- operating tractors with engine capacity of over 70 kW;
- minor maintenance of plant;
- irrigation, spraying, pruning without supervision;
- assisting in the training, instruction and coordination of employees;
- recording detailed information on production and quality indicators;
- providing assistance within the scope of this level to other employees;
- undertaking further training so as to enable advancement to Level 4.

A.4 Level 4 employee

A.4.1 Level 4 employee means an employee classified in accordance with the following criteria:

A.4.2 General description

An employee at this level:

- performs work above and beyond the skills of an employee at Level 3 and to the level of their training;
- coordinates work in a team environment or works individually under general supervision;
- exercises discretion with their level of skills and training;
- is responsible for the quality of their own work;
- has knowledge of the employer's operation as it relates to the production process;
- monitors the application of work health and safety standards in work areas relevant to the site and appropriate to this level;
- may perform any lower level task as required without loss of pay.

A.4.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- using precision measuring instruments;
- machine setting, loading and operation;
- inventory and store control;
- licensed operation of all appropriate materials handling equipment;
- basic engineering and fault handling;
- basic non-trades maintenance involving the use of tools and equipment within the scope of this award;
- licensed and certified to operate forklifts, engine driving and crane driving operation;
- furnace/boiler operator;
- performing quality checks on the work of others;
- quality assurance/control;
- assisting in provision of on-the-job training;
- monitoring variables affecting production yields, detecting errors, investigating causes and recommending collective/preventative action;
- providing assistance within the scope of this level to other employees;
- undertaking further training so as to enable advancement to Level 5.

A.5 Level 5 employee

A.5.1 Level 5 employee means an employee classified in accordance with the following criteria:

A.5.2 General description

An employee at this level:

- works above and beyond the skills of an employee at Level 4 and to the level of their training;
- performs work under minimal supervision either individually or in a team environment;
- coordinates and schedules approved work in a team environment;
- exercises good interpersonal communication skills;
- exercises discretion within the scope of this grade;
- possesses and uses a trade qualification in the course of their duties;
- has a sound knowledge of the employer's operation as it relates to the production process;
- undertakes lower level tasks as required without loss of pay.

A.5.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- inspecting products and/or materials for conformity with established operational standards and approves/passes first off samples;
- operating, setting up and adjusting maintenance functions including (but not limited to):
 - removing equipment fastenings including use of destructive cutting equipment;
 - running adjustments to production equipment;
- operating all lifting equipment;
- basic production scheduling and materials handling within the scope of production process or directly related functions;
- exercising high level stores and inventory responsibilities;
- providing on-the-job training;
- providing assistance within the scope of this level to other employees.

Schedule B—Summary of Hourly Rates of Pay

B.1 Ordinary hourly rate

B.1.1 Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 18.2(a), this forms part of the employee's ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

B.1.2 The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 15.1(a). Consistent with clause B.1.1, all-purpose allowances need to be added to the rates in the table where they are applicable.

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

B.2.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Public holidays
	% of ordinary hourly rate ¹	
	100%	200%
	\$	\$
Level 1	23.46	46.92
Level 2	24.10	48.20
Level 3	24.76	49.52
Level 4	25.66	51.32
Level 5	27.17	54.34

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

B.2.2 Full-time and part-time shiftworkers—ordinary and penalty rates

	Ordinary hours	Afternoon shift	Night shift	Public holidays
	% of ordinary hourly rate ¹			
	100%	115%	115%	200%
	\$	\$	\$	\$
Level 1	23.46	26.98	26.98	46.92
Level 2	24.10	27.72	27.72	48.20
Level 3	24.76	28.47	28.47	49.52
Level 4	25.66	29.51	29.51	51.32
Level 5	27.17	31.25	31.25	54.34

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

B.2.3 Full-time and part-time employees—overtime rates

	Monday to Saturday	Sunday outside of harvest season	Sunday during harvest season		Public holidays
			5 hours within the first 8 hours of overtime	Overtime in excess of 8 hours in the week or 5 hours on Sunday	
	% of ordinary hourly rate ¹				
	150%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
Level 1	35.19	46.92	35.19	46.92	46.92
Level 2	36.15	48.20	36.15	48.20	48.20
Level 3	37.14	49.52	37.14	49.52	49.52
Level 4	38.49	51.32	38.49	51.32	51.32
Level 5	40.76	54.34	40.76	54.34	54.34

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

B.3 Casual adult employees

B.3.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Public holidays
	% of ordinary hourly rate ¹	
	125%	225%
	\$	\$
Level 1	29.33	52.79
Level 2	30.13	54.23
Level 3	30.95	55.71
Level 4	32.08	57.74
Level 5	33.96	61.13

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

B.3.2 Casual employees—overtime rates

	In excess of 12 hours per engagement or 12 hours in a single day	In excess of 304 ordinary hours in an 8 week period	Public holidays
	% of ordinary hourly rate ¹		
	175%	175%	225%
	\$	\$	\$
Level 1	41.06	41.06	52.79
Level 2	42.18	42.18	54.23
Level 3	43.33	43.33	55.71
Level 4	44.91	44.91	57.74
Level 5	47.55	47.55	61.13

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

B.4 Junior employees

The **junior hourly rate** is based on a percentage of the appropriate adult weekly rate and rounded to the nearest 10 cents in accordance with clause 15.2, then divided by 38. Adult rates apply from 20 years of age in accordance with clause 15.2.

B.4.1 Full-time and part-time junior employees—ordinary and penalty rates

Age	Junior weekly rate	Junior hourly rate—ordinary hours	Shiftworkers		All employees
			Afternoon shift	Night shift	Public holidays
		% of junior hourly rate ¹			
	100%	115%	115%	200%	
	\$	\$	\$	\$	\$
Level 1					
Under 16 years	445.80	11.73	13.49	13.49	23.46
16 years	534.90	14.08	16.19	16.19	28.16
17 years	624.10	16.42	18.88	18.88	32.84
18 years	713.20	18.77	21.59	21.59	37.54
19 years	802.40	21.12	24.29	24.29	42.24
Level 2					
Under 16 years	458.00	12.05	13.86	13.86	24.10
16 years	549.50	14.46	16.63	16.63	28.92
17 years	641.10	16.87	19.40	19.40	33.74
18 years	732.70	19.28	22.17	22.17	38.56
19 years	824.30	21.69	24.94	24.94	43.38

Age	Junior weekly rate	Junior hourly rate—ordinary hours	Shiftworkers		All employees
			Afternoon shift	Night shift	Public holidays
			% of junior hourly rate ¹		
			100%	115%	200%
	\$	\$	\$	\$	\$
Level 3					
Under 16 years	470.50	12.38	14.24	14.24	24.76
16 years	564.50	14.86	17.09	17.09	29.72
17 years	658.60	17.33	19.93	19.93	34.66
18 years	752.70	19.81	22.78	22.78	39.62
19 years	846.80	22.28	25.62	25.62	44.56
Level 4					
Under 16 years	487.50	12.83	14.75	14.75	25.66
16 years	584.90	15.39	17.70	17.70	30.78
17 years	682.40	17.96	20.65	20.65	35.92
18 years	779.90	20.52	23.60	23.60	41.04
19 years	877.40	23.09	26.55	26.55	46.18
Level 5					
Under 16 years	516.20	13.58	15.62	15.62	27.16
16 years	619.40	16.30	18.75	18.75	32.60
17 years	722.60	19.02	21.87	21.87	38.04
18 years	825.80	21.73	24.99	24.99	43.46
19 years	929.10	24.45	28.12	28.12	48.90

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

B.4.2 Full-time and part-time junior employees—overtime rates

Age	Monday to Saturday	Sunday outside of harvest season	Sunday during harvest season		Public holidays
			First 5 hours within the first 8 hours of overtime	Overtime in excess of 8 hours in the week or 5 hours on Sunday	
	% of junior hourly rate ¹				
	150%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
Level 1					
Under 16 years	17.60	23.46	17.60	23.46	23.46
16 years	21.12	28.16	21.12	28.16	28.16
17 years	24.63	32.84	24.63	32.84	32.84
18 years	28.16	37.54	28.16	37.54	37.54
19 years	31.68	42.24	31.68	42.24	42.24
Level 2					
Under 16 years	18.08	24.10	18.08	24.10	24.10
16 years	21.69	28.92	21.69	28.92	28.92
17 years	25.31	33.74	25.31	33.74	33.74
18 years	28.92	38.56	28.92	38.56	38.56
19 years	32.54	43.38	32.54	43.38	43.38
Level 3					
Under 16 years	18.57	24.76	18.57	24.76	24.76
16 years	22.29	29.72	22.29	29.72	29.72
17 years	26.00	34.66	26.00	34.66	34.66
18 years	29.72	39.62	29.72	39.62	39.62
19 years	33.42	44.56	33.42	44.56	44.56
Level 4					
Under 16 years	19.25	25.66	19.25	25.66	25.66
16 years	23.09	30.78	23.09	30.78	30.78
17 years	26.94	35.92	26.94	35.92	35.92
18 years	30.78	41.04	30.78	41.04	41.04
19 years	34.64	46.18	34.64	46.18	46.18
Level 5					
Under 16 years	20.37	27.16	20.37	27.16	27.16
16 years	24.45	32.60	24.45	32.60	32.60
17 years	28.53	38.04	28.53	38.04	38.04
18 years	32.60	43.46	32.60	43.46	43.46
19 years	36.68	48.90	36.68	48.90	48.90

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

B.4.3 Casual junior employees—ordinary and penalty rates

Age	Casual hourly rate	Public holidays
	% of junior hourly rate ¹	
	125%	225%
	\$	\$
Level 1		
Under 16 years	14.66	26.39
16 years	17.60	31.68
17 years	20.53	36.95
18 years	23.46	42.23
19 years	26.40	47.52
Level 2		
Under 16 years	15.06	27.11
16 years	18.08	32.54
17 years	21.09	37.96
18 years	24.10	43.38
19 years	27.11	48.80
Level 3		
Under 16 years	15.48	27.86
16 years	18.58	33.44
17 years	21.66	38.99
18 years	24.76	44.57
19 years	27.85	50.13
Level 4		
Under 16 years	16.04	28.87
16 years	19.24	34.63
17 years	22.45	40.41
18 years	25.65	46.17
19 years	28.86	51.95
Level 5		
Under 16 years	16.98	30.56
16 years	20.38	36.68
17 years	23.78	42.80
18 years	27.16	48.89
19 years	30.56	55.01

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

B.4.4 Casual junior employees—overtime rates

Age	In excess of 12 hours per engagement or 12 hours in a single day	In excess of 304 ordinary hours in an 8 week period	Public holidays
	% of junior hourly rate ¹		
	175%	175%	225%
	\$	\$	\$
Level 1			
Under 16 years	20.53	20.53	26.39
16 years	24.64	24.64	31.68
17 years	28.74	28.74	36.95
18 years	32.85	32.85	42.23
19 years	36.96	36.96	47.52
Level 2			
Under 16 years	21.09	21.09	27.11
16 years	25.31	25.31	32.54
17 years	29.52	29.52	37.96
18 years	33.74	33.74	43.38
19 years	37.96	37.96	48.80
Level 3			
Under 16 years	21.67	21.67	27.86
16 years	26.01	26.01	33.44
17 years	30.33	30.33	38.99
18 years	34.67	34.67	44.57
19 years	38.99	38.99	50.13
Level 4			
Under 16 years	22.45	22.45	28.87
16 years	26.93	26.93	34.63
17 years	31.43	31.43	40.41
18 years	35.91	35.91	46.17
19 years	40.41	40.41	51.95
Level 5			
Under 16 years	23.77	23.77	30.56
16 years	28.53	28.53	36.68
17 years	33.29	33.29	42.80
18 years	38.03	38.03	48.89
19 years	42.79	42.79	55.01

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

Schedule C—Summary of Monetary Allowances

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

C.1 Wage-related allowances

C.1.1 The wage-related allowances in this award are based on the standard rate as defined in clause 2—Definitions as the minimum hourly rate for a Level 2 in clause 15.1(a) = **\$24.10**.

Allowance	Clause	% of standard rate	\$	Payable
Leading hand allowance—2 to 6 employees ¹	18.2(b)	115.0	27.72	per week
Leading hand allowance—7 to 10 employees ¹	18.2(b)	134.0	32.29	per week
Leading hand allowance—11 to 20 employees ¹	18.2(b)	191.0	46.03	per week
Leading hand allowance—more than 20 employees ¹	18.2(b)	240.0	57.84	per week
Wet work allowance—unless provided with adequate protection ¹	18.2(c)(i)	10.0	2.41	per hour
First aid allowance ¹	18.2(d)	51.0	12.29	per week

¹ These allowances apply for all purposes of this award.

C.1.2 Automatic adjustment of wage-related allowances

The amount of each wage-related allowance is the percentage of the standard rate specified for the allowance and will automatically adjust to reflect the specified percentage when the standard rate is varied.

C.2 Expense-related allowances

Allowance	Clause	\$	Payable
Meal allowance—more than 2 hours' overtime after ordinary ceasing time without a day's notification	18.3(c)(i)	15.62	per meal

C.2.1 Adjustment of expense related allowances

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

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

Schedule D—Supported Wage System

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

D.2 In this schedule:

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

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

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (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.

D.3 Eligibility criteria

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

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

D.4 Supported wage rates

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

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

D.4.2 Provided that the minimum amount payable must be not less than **\$106** per week.

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

D.5 Assessment of capacity

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

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

D.6 Lodgement of SWS wage assessment agreement

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

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

D.7 Review of assessment

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

D.8 Other terms and conditions of employment

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

D.9 Workplace adjustment

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

D.10 Trial period

- D.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- D.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$106** per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.

Schedule E—Agreement for Time Off Instead of Payment for Overtime

Name of employee: _____

Name of employer: _____

1. The employer and employee agree that the employee will take time off instead of being paid for all overtime that is worked by the employee under this agreement.
2. Time off must be taken within 6 months of the overtime being worked at a time or times agreed by the employee and employer. If time off is not taken within 6 months of it being worked then 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, unless the employer agrees to pay out the accrued overtime earlier.
3. This agreement will remain in place until the agreement is terminated. The agreement may be terminated by the employer or employee at any time by notice in writing.
4. If the agreement is terminated, the employer must pay the employee for overtime worked at the overtime rate applicable to the overtime when it was worked.

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Schedule F—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 G—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 H—Piecework record

Name of pieceworker: _____

Name of employer: _____

The piecework will commence on: ____/____/20____ at _____ am/pm

Piecework Task 1

The piecework task is: _____

The pieceworker will be paid for this task the amount of \$_____ per _____

Piecework Task 2

The piecework task is: _____

The pieceworker will be paid for this task the amount of \$_____ per _____

Piecework Task 3

The piecework task is: _____

The pieceworker will be paid for this task the amount of \$_____ per _____

Under the *Horticulture Award 2020* a pieceworker must be paid for each day on which they work no less than their hourly rate under the award (including the 25% casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.

The pieceworker's hourly rate under the award is \$_____ per hour.

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

Schedule X—Additional Measures During the COVID-19 Pandemic

NOTE: Schedule X was deleted under FWC Determination PR746868 dated 17 October 2022