

Restaurant Industry Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 23 January 2020 ([PR716106](#)).

Clause(s) affected by the most recent variation(s):

- 7—Individual flexibility arrangements
- 14—Apprentices
- 20—Minimum wages
- 24—Allowances
- 32—Breaks
- 39—Deductions for breakages or cashiering underings

Current review matter(s): [AM2014/47](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/284](#); [AM2014/300](#); [AM2014/301](#); [AM2014/305](#); [AM2015/1](#); [AM2015/2](#); [AM2016/8](#); [AM2016/13](#); [AM2016/15](#); [AM2016/17](#)

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[Varied by [PR994479](#), [PR532630](#), [PR544519](#), [PR546288](#), [PR557581](#), [PR573679](#), [PR583068](#), [PR609453](#), [PR610285](#), [PR701522](#)]

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Part 1—Application and Operation

1. Title

This award is the *Restaurant Industry Award 2010*.

2. Commencement and transitional

[Varied by [PR542239](#)]

2.1 This award commences on 1 January 2010.

2.2 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

[2.4 varied by [PR542239](#) ppc 04Dec13]

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

[2.5 varied by [PR542239](#) ppc 04Dec13]

2.5 The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

[2.6 varied by [PR542239](#) ppc 04Dec13]

2.6 The Fair Work Commission may review the transitional arrangements:

- (a) on its own initiative; or
- (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or

- (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

[Varied by [PR997772](#), [PR503644](#), [PR544294](#), [PR546124](#)]

3.1 In this award, unless the contrary intention appears:

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

[Definition of **adult apprentice** inserted by [PR544294](#) ppc 01Jan14]

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

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

appropriate level of training means that an employee:

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

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

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

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

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

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

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[Definition of **defined benefit member** inserted by [PR546124](#) ppc 01Jan14]

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

[Definition of **Division 2B State award** inserted by [PR503644](#) ppc 01Jan11]

Division 2B State award has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **Division 2B State employment agreement** inserted by [PR503644](#) ppc 01Jan11]

Division 2B State employment agreement has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **employee** substituted by [PR997772](#) from 01Jan10]

employee means national system employee within the meaning of the Act

[Definition of **employer** substituted by [PR997772](#) from 01Jan10]

employer means national system employer within the meaning of the Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

transitional minimum wage instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

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

4. Coverage

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

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

4.3 The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

4.4 The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

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

4.6 This award covers employers which provide group training services for apprentices and trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

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

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

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

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

5. Access to the award and the National Employment Standards

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

6. The National Employment Standards and this award

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

7. Individual flexibility arrangements

[Varied by [PR542239](#); 7—Award flexibility renamed and substituted by [PR610285](#) ppc 01Nov18; varied by [PR716106](#)]

7.1 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:

[7.1(a) varied by [PR716106](#) ppc 23Jan20]

- (a) arrangements for when work is performed, excluding clause 32; or
- (b) overtime rates; or

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- (c) penalty rates; or
 - (d) allowances; or
 - (e) annual leave loading.
- 7.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 7.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 7.4** 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.
- 7.5** 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.
- 7.6** 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.
- 7.7** 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.
- 7.8** Except as provided in clause 7.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 7.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 7.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 7.11** 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 s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the [Act](#)).

- 7.12 An agreement terminated as mentioned in clause 7.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 7.13 The right to make an agreement under clause 7 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.

Part 2—Consultation and Dispute Resolution

8. Consultation about major workplace change

[8—Consultation regarding major workplace change renamed and substituted by [PR546288](#), 8—Consultation renamed and substituted by [PR610285](#) ppc 01Nov18]

- 8.1 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.
- 8.2 For the purposes of the discussion under clause 8.1(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.
- 8.3 Clause 8.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

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- 8.4** 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 8.1(b).
- 8.5** In clause 8:
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.
- 8.6** Where this award makes provision for alteration of any of the matters defined at clause 8.5, such alteration is taken not to have significant effect.

8A. Consultation about changes to rosters or hours of work

[8A inserted by [PR610285](#) ppc 01Nov18]

- 8A.1** Clause 8A 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.
- 8A.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 8A.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 8A.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.
- 8A.4** The employer must consider any views given under clause 8A.3(b).
- 8A.5** Clause 8A is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

9. Dispute resolution

[Varied by [PR542239](#); substituted by [PR610285](#) ppc 01Nov18]

- 9.1** Clause 9 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).
- 9.2** 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.
- 9.3** If the dispute is not resolved through discussion as mentioned in clause 9.2, 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.
- 9.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 9.2 and 9.3, a party to the dispute may refer it to the Fair Work Commission.
- 9.5** 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.
- 9.6** 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.
- 9.7** 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 9.
- 9.8** While procedures are being followed under clause 9 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.
- 9.9** Clause 9.8 is subject to any applicable work health and safety legislation.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

- 10.1** Employees under this award will be employed in one of the following categories:
- (a) full-time;
 - (b) part-time; or
 - (c) casual.
- 10.2** At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual.

11. Full-time employment

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

12. Part-time employment

[12 substituted by [PR598487](#) ppc 01Jan18; corrected by [PR599064](#) ppc 01Jan18]

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

12.2 A part-time employee is an employee who is employed in a classification in **Schedule B—Classification Structure and Definitions** and who:

- (a) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

12.3 At the time of engagement the employer and the part-time employee will agree in writing upon:

- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
- (b) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (**the employee's availability**).

12.4 Any change to the guaranteed hours may only occur with the written consent of the part-time employee.

12.5 The employer may roster the working of the employee's guaranteed hours and any additional hours in accordance with clause 31.6, provided that:

- (a) the employee may not be rostered for work for any hours outside the employee's availability;
- (b) the employee must not be rostered to work in excess of eleven and a half or less than 3 hours in a day; and
- (c) the employee must have two days off each week.

12.6 Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.

- 12.7** Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's availability on 14 days' written notice to the employer. If the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 12.4, those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).
- 12.8** All time worked in excess of:
- (a) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
 - (b) the maximum hours limitations specified in clause 31.2; or
 - (c) the employee's rostered hours;
- will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**.
- 12.9** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.
- 12.10** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- 12.11** A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.3.

13. Casual employment

[13 substituted by [PR598487](#) ppc 01Jan18; varied by [PR700607](#)]

- 13.1** A casual employee is an employee engaged as such and must be paid a casual loading of 25%. The casual loading is paid as compensation for annual leave, unpaid personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.
- 13.2** A casual employee may be engaged to work:
- (a) for a maximum of 12 hours per day or per shift;
 - (b) for a maximum of 38 hours per week or, where the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).
- 13.3** On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work.
- 13.4** A casual employee must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.

13.5 All time worked in excess of the hours prescribed in clause 13.2 will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**

13.6 Right to request casual conversion

[13.6 inserted by [PR700607](#) ppc 01Oct18]

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under this subclause must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.

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- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 9. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 12.3.
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- (n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.
- (q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).

14. Apprentices

[14 varied by [PR559300](#), [PR716106](#)]

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

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[14.3 to 14.11 inserted by [PR559300](#) ppc 01Jan15]

- 14.3** No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.
- 14.4** Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- 14.5** Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that this clause will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- 14.6** For the purposes of clause 14.5, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- 14.7** The amount payable by an employer under clause 14.5 may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
- 14.8** All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.
- 14.9** An employer may meet its obligations under clause 14.8 by paying any fees and/or cost of textbooks directly to the RTO.
- 14.10** An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- 14.11** Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This subclause operates subject to the provisions of Schedule E—School-based Apprentices.

14.12 Competency based progression

[14.12 inserted by [PR716106](#) ppc 23Jan20]

- (a) For the purpose of competency based wage progression in clause 20.2 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:
 - (i) competency has been achieved in the relevant proportion of the total units of competency specified in clause 20.2 for that stage of the apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and
 - (ii) any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and
 - (iii) either:
 - (A) the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or
 - (B) the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.
- (b) If the employer disagrees with the assessment of the RTO referred to in clause 14.12(a)(iii)(B) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the matter may be referred to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.
- (c) For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship, sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of “competency” utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
- (d) The apprentice will be paid the wage rate referred to in clause 14.12(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 14.12(a)(iii)

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or on a date as determined under the dispute resolution process in clause 14.12(b).

- (e) If the apprentice disagrees with the assessment of the RTO referred to in clause 14.12(a), and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the apprentice may refer the matter to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.

15. Junior employees

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

16. Termination of employment

[16 substituted by [PR610285](#) ppc 01Nov18]

Note: The [NES](#) sets out requirements for notice of termination by an employer. See ss.117 and 123 of the [Act](#).

16.1 Notice of termination by an employee

- (a) This clause applies to all employees except those identified in ss.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

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
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 paragraph (b) **continuous service** has the same meaning as in s.117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under paragraph (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 paragraph (b), then no deduction can be made under paragraph (d).
- (f) Any deduction made under paragraph (d) must not be unreasonable in the circumstances.

16.2 Job search entitlement

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.

- 16.3 The time off under clause 16.2 is to be taken at times that are convenient to the employee after consultation with the employer.

17. Redundancy

[Varied by [PR503644](#), [PR561478](#); substituted by [PR707026](#) ppc 03May19]

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119–123 of the [Act](#).

17.1 Transfer to lower paid duties on redundancy

- (a) Clause 17.1 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 paragraph (c).
- (c) If the employer acts as mentioned in paragraph (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 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 and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

17.2 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 17 or under sections 119–123 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.

17.3 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 paragraph (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 paragraph (b).
- (d) An employee who fails to produce proof when required under paragraph (b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clauses 16.2 and 16.3.

Part 4—Minimum Wages and Related Matters

18. Work organisation

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

19. Classifications

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

20. Minimum wages

[Varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR544294](#), [PR551707](#), [PR566799](#), [PR579913](#), [PR592222](#), [PR606445](#), [PR707538](#), [PR716106](#)]

20.1 General

[20.1 varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR551707](#), [PR566799](#), [PR579913](#), [PR592222](#), [PR606445](#), [PR707538](#) ppc 01Jul19]

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

Classification	Minimum weekly wage \$	Minimum hourly wage \$
Introductory level	740.80	19.49
Level 1:	762.10	20.06
Food and beverage attendant grade 1		
Kitchen attendant grade 1		
Level 2:	791.30	20.82
Food and beverage attendant grade 2		
Cook grade 1		
Kitchen attendant grade 2		
Clerical grade 1		
Storeperson grade 1		
Door person/security officer grade 1		
Level 3:	818.50	21.54
Food and beverage attendant grade 3		
Cook grade 2		
Kitchen attendant grade 3		
Clerical grade 2		
Storeperson grade 2		
Timekeeper/security officer grade 2		
Handyperson		
Level 4:	862.50	22.70
Food and beverage attendant grade 4 (tradesperson)		
Cook grade 3 (tradesperson)		
Clerical grade 3		
Storeperson grade 3		

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Classification	Minimum weekly wage	Minimum hourly wage
	\$	\$
Level 5:	916.60	24.12
Food and beverage supervisor		
Cook grade 4 (tradesperson)		
Clerical supervisor		
Level 6:	941.10	24.77
Cook grade 5 (tradesperson)		

20.2 Apprentice wages

[20.2 varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR551707](#), [PR566799](#), [PR579913](#), [PR592222](#), [PR606445](#), [PR707538](#); substituted by [PR716106](#) ppc 23Jan20]

(a) Minimum wages

- (i) A person who has completed a full apprenticeship for which there is a trade qualified classification provided for in this award, must be paid no less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.2(a)(iii) is applicable an employee will be paid in accordance with the following table:

	Percentage of the rate prescribed in clause 20.1 for a Cook grade 3	Minimum weekly wage	Minimum hourly wage
	%	\$	\$
1st year	55	474.38	12.48
2nd year	65	560.63	14.75
3rd year	80	690.00	18.16
4th year	95	819.38	21.56

(iii) Competency based wage progression

Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise, an employee apprenticed in a trade after 23 January 2020 will be paid the percentage of the standard weekly rate divided by 38 for each hour worked, in accordance with the following table:

(A) Four year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard weekly rate
Stage 1	On commencement and prior to the	55

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Stage of apprenticeship	Minimum training requirements on entry	% of the standard weekly rate
	attainment of the minimum training requirements specified for Stage 2	
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing the apprenticeship, whichever is the earlier	65
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 2, whichever is the earlier	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 3, whichever is the earlier.	95

(b) Proficiency payments – cooking trade

(i) Application

Proficiency pay as set out in clause 20.2(b)(ii) will apply to apprentices who have successfully completed their schooling in a given year.

(ii) Payments

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

(1) one occasion only:

- for the first nine months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(2) on two occasions:

- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(3) on all three occasions:

- for the entire fourth year, the standard hourly rate.

(c) Adult apprentices

- (i)** The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the rate prescribed for a Cook grade 3, or the rate prescribed by clause 20.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (ii)** The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 20.1, or the rate prescribed by clause 20.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (iii)** A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 20.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

20.3 Juniors—minimum wages

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

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

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

21. Supported wage system

See Schedule C

22. National training wage

[22 substituted by [PR593889](#) ppc 01Jul17; varied by [PR606445](#), [PR707538](#)]

- 22.1** Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.

[22.2 varied by [PR606445](#), [PR707538](#) ppc 01Jul19]

- 22.2** This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Restaurant Industry Award 2010* and not the *Miscellaneous Award 2010*.

23. School-based apprentices

See Schedule E

24. Allowances

To view the current monetary amounts of work-related allowances refer to the [Allowances Sheet](#).

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[Varied by [PR994479](#), [PR998158](#), [PR509271](#), [PR523101](#), [PR536904](#), [PR551827](#), [PR566928](#), [PR579626](#), [PR592372](#), [PR598487](#), [PR606595](#), [PR704203](#), [PR707764](#), [PR716106](#)]

24.1 Meal allowance

[24.1(a) varied by [PR998158](#), [PR509271](#), [PR523101](#), [PR536904](#), [PR551827](#), [PR566928](#), [PR579626](#), [PR592372](#), [PR598487](#) ppc 01Jan18, [PR606595](#), [PR704203](#), [PR707764](#) ppc 01Jul19]

- (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that the employee will be so required to work will be supplied with a meal by the employer or paid a meal allowance of \$13.38.
- (b) If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the amount advised, the employee will be paid as above prescribed for the meal which the employee has provided but which is surplus.

24.2 Split shift allowance

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

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

24.3 Clothing, equipment and tools allowance

[24.3(a) varied by [PR998158](#), [PR579626](#), [PR592372](#) ppc 01Jul17; substituted by [PR716106](#) ppc 23Jan20]

- (a) Where a cook or apprentice cook is required to use their own tools (and is not in receipt of a tool allowance), the employer must pay an allowance of \$1.73 per day or part thereof up to a maximum of \$8.49 per week.
- (b) Where the employer requires an employee to wear any special clothing such as coats, dresses, caps, aprons, cuffs and any other articles of clothing, the employer must reimburse the employee for the cost of purchasing such special clothing. The provisions of this clause do not apply where the special clothing is paid for by the employer.
- (c) Where the employee is responsible for laundering the special clothing, the employer must reimburse the employee for the demonstrated costs of laundering it.
- (d) The employer and the employee may agree on an arrangement under which the employee will wash and iron the special clothing for an agreed sum of money, which reflects the cost of laundering the items, to be paid by the employer to the employee each week.
- (e) For the purposes of this clause, black and white attire (not being dinner suit or evening dress), shoes, hose and/or socks are not special clothing.
- (f) Where it is necessary that an employee wear waterproof or other protective clothing such as waterproof boots, aprons or gloves, the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the protective clothing is paid for by the employer.

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

24.4 Allowance for distant work

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

24.5 Adjustment of expense related allowances

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

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

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Tools allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

25. District allowances

[Deleted by [PR561478](#) ppc 05Mar15]

26. Accident pay

[Varied by [PR503644](#); deleted by [PR561478](#) ppc 05Mar15]

27. Payment of wages

[27 varied by [PR711633](#)]

- 27.1** Except upon the termination of employment, all wages including overtime must be paid on any day other than Friday, Saturday or Sunday in each week. However, by agreement between the employer and the majority of employees in the workplace, in a week where a holiday occurs payment of wages may be made on Friday.
- 27.2** The employer will pay the employee's wages, penalties and allowances weekly, fortnightly or, by agreement, monthly by cash, cheque or by electronic funds transfer into the employee's nominated bank account, without cost to the employee.
- 27.3** Employees whose rostered day off falls on pay day must be paid their wages, if they so desire, before going off duty on the working day prior to their day off. Provided that this provision will not apply to employees paid by electronic funds transfer.
- 27.4 Payment on termination of employment**

[27.4 substituted by [PR711633](#) ppc 06Sep19]

- (a) Subject to paragraph (b), the employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
- (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) Where a casual employee is paid at the end of each engagement pursuant to clause 13.4 of this Award, and that employee's employment is terminated, the employer must pay the employee their wages due under the award at the end of their last engagement.
- (c) The requirement to pay wages and other amounts under paragraph (a) 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: Paragraph (c) allows the Commission to make an order delaying the requirement to make a payment under clause 27.4. 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 s.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.

[27.5 deleted by [PR711633](#) ppc 06Sep19]

28. Annualised salary arrangements

28.1 Alternative method of payment—annual salary

- (a) As an alternative to being paid by the week, by agreement between the employer and an individual employee, an employee other than a casual, can be paid at a rate equivalent to an annual salary of at least 25% or more above the weekly rate prescribed in clause 20—Minimum wages, multiplied by 52 for the work being performed. In such cases, there is no requirement under clauses 24.2, 33—Overtime, 34.1 and 34.2 to pay overtime and penalty rates in addition to the weekly wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.
- (b) Provided further that in the event of termination of employment prior to completion of a year, the salary paid during such period of employment must be sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.
- (c) An employee being paid according to this clause will be entitled to a minimum of eight days off per four week cycle. Further, if an employee covered by this clause is required to work on a public holiday, such employee will be entitled to a day off instead of public holidays or a day added to the annual leave entitlement.

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

29. Higher duties

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

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

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

30. Superannuation

[Varied by [PR523709](#), [PR530251](#), [PR546124](#), [PR561478](#)]

30.1 Superannuation legislation

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

30.2 Employer contributions

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

30.3 Voluntary employee contributions

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

30.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 30.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 30.2 and pay the amount

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authorised under clauses 30.3(a) or 30.3(b) to one of the following superannuation funds or its successor:

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

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

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

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

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

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

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

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

- (g) Retail Employees Superannuation Trust;

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

- (h) Tasplan;

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

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

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

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

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

30.5 Absence from work

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

- (a) **Paid leave**—while the employee is on any paid leave;

[30.5(b) varied by [PR561478](#) ppc 05Mar15]

- (b) **Work-related injury or illness**—in respect of any employee entitled to accident pay for the period of absence from work of the employee due to work-related injury or work-related illness provided that:

- (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
- (ii) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

31. Hours of work

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

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

- (a) a minimum of six hours and a maximum of 11 and a half hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals;
- (b) an employee cannot be rostered to work for more than 10 hours per day on more than three consecutive days without a break of at least 48 hours;
- (c) no more than eight days of more than 10 hours may be worked in a four week period;
- (d) an employee must be given a minimum break of 10 hours between the finish of ordinary hours of work on one day and the commencement of ordinary hours of work on the next day. In the case of a changeover of rosters the minimum break must be eight hours;
- (e) an employee must be given a minimum of eight full days off per four week period; or
- (f) an employee under the age of 18 years must not be required to work more than 10 hours in a shift.

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

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

31.4 Spread of hours

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

31.5 Minimum break between shift

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

31.6 Roster

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

32. Breaks

[32 substituted by [PR716106](#) ppc 23Jan20]

32.1 Clause 32 deals with meal breaks and rest breaks and gives an employee an entitlement to them in specified circumstances.

32.2 Frequency of breaks

An employee who works the number of hours in any one shift specified in column 1 of **Table 2—Entitlements to meal and rest break(s)** is entitled to a break or breaks as specified in column 2.

Table 2—Entitlements to meal and rest break(s)

Column 1 Ordinary Hours worked per day	Column 2 Breaks
5 or more and up to 10	An unpaid meal break of at least 30 minutes (to be taken after the first hour of work and within the first 6 hours of work or in accordance with clause 32.4). If the employee is rostered to take an unpaid meal break later than 5 hours after starting work, one additional 20 minute paid meal break (to be taken after the first 2 hours of work and within the first 5 hours of work).

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Column 1 Ordinary Hours worked per day	Column 2 Breaks
More than 10	<p>An unpaid meal break of at least 30 minutes (to be taken after the first hour of work and within the first 6 hours of work or in accordance with clause 32.4).</p> <p>If the employee is rostered to take an unpaid meal break later than 5 hours after starting work, one additional 20 minute paid meal break (to be taken after the first 2 hours of work and within the first 5 hours of work).</p> <p>2 additional 20 minute paid rest breaks.</p>

32.3 When the employer rosters an employee’s rest breaks, they must make all reasonable efforts to ensure that breaks are spread evenly across the employee’s shift.

32.4 Agreement as to time of unpaid meal break

- (a) An employer and an employee may agree that an unpaid meal break is to be taken after the first hour of work and within the first 6 and a half hours of work (a ‘facilitation agreement’).
- (b) An agreement must be made after the start of the employee’s shift and within the first 5 hours of the work to which it applies.
- (c) The employee or the employer may withdraw from an agreement within the first 5 hours of the work to which it applies.

NOTE: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make an agreement under clause 32.4(a).

32.5 Employer to pay higher rate if break not allowed at rostered time

If the employer does not allow the employee to take an unpaid meal break at the rostered time (or at the time agreed under clause 32.4), then the employer must pay the employee **50%** of the employee’s ordinary hourly rate extra:

- (a) from when the meal break was due to be taken;
- (b) until either the employee is allowed to take the break or the shift ends.

32.6 Employer to pay higher rate if break not allowed and no rostered time

If the employer does not allow the employee to take an unpaid meal break and there is no rostered time for the break, then the employer must pay the employee **50%** of the employee’s ordinary hourly rate extra:

- (a) unless an agreement under clause 32.4 applies, from the end of 6 hours after starting work until either the employee is allowed to take the break or the shift ends; or

- (b) if an agreement under clause 32.4 applies, from the end of 6 and a half hours after starting work until either the employee is allowed to take the break or the shift ends.

32.7 Additional rest break

An employer must give an employee an additional paid rest break of 20 minutes if the employer requires the employee to work more than 5 continuous hours after an unpaid meal break.

32.8 Additional rest break after overtime

An employer must give an employee an additional 20 minute paid break if the employer requires the employee to work more than two hours' overtime after completion of the employee's rostered hours.

33. Overtime

[Varied by [PR585805](#), [PR598487](#)]

33.1 Requirement to pay overtime rates

[33.1 substituted by [PR598487](#) ppc 01Jan18]

- (a) Full-time employees shall be paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in **clause 31—Hours of work**.
- (b) Part-time employees shall be paid at overtime rates in the circumstances specified in clause 12.8.
- (c) Casual employees shall be paid at overtime rates in the circumstances specified in clause 13.5.

33.2 Overtime rates

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

- (a) **Monday to Friday:** 150% of the employee's ordinary base rate of pay for the first two hours of overtime then 200% of the employee's ordinary base rate of pay for the rest of the overtime.
- (b) **Between midnight Friday and midnight Saturday:** 175% of the employee's ordinary base rate of pay for the first two hours of overtime then 200% of the employee's ordinary base rate of pay for the rest of the overtime.
- (c) **Between midnight Saturday and midnight Sunday:** 200% of the employee's ordinary base rate of pay for all time worked.
- (d) **On a rostered day off:** 200% of the employee's ordinary base rate of pay for all time worked. The employee must be paid for at least four hours even if the employee works for less than four hours.

33.3 Overtime worked on any day stands alone.

33.4 Breaks after working overtime

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

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

33.5 Time off instead of payment for overtime

[33.5 substituted by [PR585805](#) ppc 14Dec16]

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 33.5 an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

- (c) 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.
- (d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 33.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (c), 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.
- (f) 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.
- (g) 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 33.5 will apply for overtime that has been worked.

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

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 33.5 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 33.5.

34. Penalty rates

[Varied by [PR543062](#), [PR551382](#), [PR593956](#)]

34.1 Penalty rates for work on weekends and public holidays

[34.1 substituted by [PR551382](#) ppc 01Jul14; varied by [PR593956](#) ppc 01Jul17]

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

Type of employment	Monday to Friday	Saturday	Sunday	Public holidays
	%	%	%	%
Full-time and part-time	100	125	150	225
Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)	125	150	150	250
Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	250

34.1A Special condition regarding existing employees

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

34.2 Additional payment for work done between the hours of 10.00 pm to 6.00 am on Monday to Friday

[34.2 renamed and varied by [PR593956](#) ppc 01Jul17]

- (a) An employee, including a casual, who is required to work any of their ordinary hours between the hours of 10.00 pm and midnight Monday to Friday inclusive, or between midnight and 6.00 am Monday to Friday inclusive, must be paid an additional amount per hour calculated according to the following:

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

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

(ii) **Between midnight and 6.00 am**

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

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

34.3 Penalty rates not cumulative

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

34.4 Additional provisions for work on public holidays

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

[34.4(c) varied by [PR593956](#) ppc 01Jul17]

- (c) Employees (other than casuals) who work on a prescribed holiday may, by agreement, perform such work at a rate of 125% of the relevant minimum wage in clause 20—Minimum wages, rather than the penalty rate prescribed in clause 34.1, provided that equivalent paid time is added to the employee's annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls. Provided further that such holiday may be allowed to the employee within 28 days of such holiday falling due.

[34.4(d) varied by [PR543062](#) ppc 10Oct13, [PR593956](#) ppc 01Jul17]

- (d) An employee other than a casual working on Christmas Day when it falls on a weekend and it is not a prescribed public holiday must be paid an additional loading of 25% of their ordinary time rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

34A. Requests for flexible working arrangements

[34A inserted by [PR701522](#) ppc 01Dec18]

34A.1 Employee may request change in working arrangements

Clause 34A applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](#).

Note 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

Note 2: An employer may only refuse a s.65 request for a change in working arrangements on 'reasonable business grounds' (see s.65(5) and (5A)).

Note 3: Clause 34A is an addition to s.65.

34A.2 Responding to the request

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

Note 1: The employer must give the employee a written response to an employee's s.65 request within 21 days, stating whether the employer grants or refuses the request (s.65(4)).

Note 2: If the employer refuses the request, the written response must include details of the reasons for the refusal (s.65(6)).

34A.3 What the written response must include if the employer refuses the request

Clause 34A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 34A.2.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause 34A.2, the written response under s.65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

34A.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 34A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

34A.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 34A, can be dealt with under clause 9—Dispute resolution.

Part 6—Leave and Public Holidays

35. Annual leave

[Varied by [PR583068](#)]

35.1 Leave entitlement

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

35.2 Payment for annual leave

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

35.3 Close-down

[35.3 renamed and substituted by [PR583068](#) ppc 29Jul16]

An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.

35.4 Excessive leave accruals: general provision

[35.4 inserted by [PR583068](#) ppc 29Jul16]

Note: Clauses 35.4 to 35.6 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by 35.1(b).
- (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 35.5 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

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- (d) Clause 35.6 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

[35.5 inserted by [PR583068](#) ppc 29Jul16]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 35.4(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 35.4, 35.5 or 35.6 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 35.5(b)(i).

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

35.6 Excessive leave accruals: request by employee for leave

[35.6 inserted by [PR583068](#); substituted by [PR583068](#) ppc 29Jul17]

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 35.4(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

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- (ii) the employee has not been given a direction under clause 35.5(a) that, when any other paid annual leave arrangements (whether made under clause 35.4, 35.5 or 35.6 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 35.4, 35.5 or 35.6 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by 35.1(b) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

35.7 Annual leave in advance

[35.7 inserted by [PR583068](#) ppc 29Jul16]

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

- (c) The employer must keep a copy of any agreement under clause 35.7 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 35.7, the employer may deduct

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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.

35.8 Cashing out of annual leave

[35.8 inserted by [PR583068](#) ppc 29Jul16]

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 35.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 35.8.
- (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 35.8 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 35.8 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 35.8 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 35.8.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 35.8.

Note 3: An example of the type of agreement required by clause 35.8 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

36. Personal/carer's leave and compassionate leave

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

37. Community service leave

Community service leave is provided for in the NES.

38. Public holidays

[Varied by [PR712266](#)]

38.1 Public holidays are provided for in the NES

[38.1 substituted by [PR712266](#) ppc 04Oct19]

- (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.

38.2 Additional arrangements for full-time employees:

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

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

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

[Note inserted by [PR712266](#) ppc 04Oct19]

NOTE: For provisions relating to part-day public holidays see Schedule F—Part-day Public Holidays.

38A. Leave to deal with Family and Domestic Violence

[38A inserted by [PR609453](#) ppc 01Aug18]

38A.1 This clause applies to all employees, including casuals.

38A.2 Definitions

- (a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or

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- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member in clause 38A.2(a) includes a former spouse or de facto partner.

38A.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (c) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (d) the leave does not accumulate from year to year; and
- (e) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

38A.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (f) is experiencing family and domestic violence; and
- (g) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

38A.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

38A.6 Notice and evidence requirements

- (h) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 38A. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

(i) Evidence

An employee who has given their employer notice of the taking of leave under clause 38A must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 38A.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

38A.7 Confidentiality

(j) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 38A.6 is treated confidentially, as far as it is reasonably practicable to do so.

(k) Nothing in clause 38A prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

38A.8 Compliance

An employee is not entitled to take leave under clause 38A unless the employee complies with clause 38A.

Part 7—Industry specific provisions

39. Deductions for breakages or cashiering underings

[39 substituted by [PR716106](#) ppc 23Jan20]

39.1 Right to make deductions

Subject to clauses 39.2 and 39.3, an employer must not deduct any sum from the wages due to an employee under this award in respect of breakages or cashiering underings except in the case of wilful misconduct.

39.2 Deductions to be reasonable and proportionate

Any deduction made under clause 39 must be reasonable in the circumstances and proportionate to the loss suffered by the employer.

39.3 Deductions for employees under 18 years of age

Deductions must not be made under clause 39 from the wages of an employee who is under 18 years of age unless the deductions have been agreed to in writing by the employee's parent or guardian.

Schedule A—Transitional Provisions

[Varied by [PR503644](#)]

A.1 General

A.1.1 The provisions of this schedule deal with minimum obligations only.

A.1.2 The provisions of this schedule are to be applied:

- (a) when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;
- (b) when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;
- (c) when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or
- (d) when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

A.2 Minimum wages – existing minimum wage lower

A.2.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

A.2.2 In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

A.2.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

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A.2.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.

A.2.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.2.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review.

A.2.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.3 Minimum wages – existing minimum wage higher

A.3.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

A.3.2 In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

A.3.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.3.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.

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A.3.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.3.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.

A.3.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.4 Loadings and penalty rates

For the purposes of this schedule loading or penalty means a:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- shift allowance/penalty.

A.5 Loadings and penalty rates – existing loading or penalty rate lower

A.5.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

A.5.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

A.5.3 The difference between the loading or penalty in this award and the rate in clause A.5.2 is referred to as the transitional percentage.

Restaurant Industry Award 2010

A.5.4 From the following dates the employer must pay no less than the loading or penalty in this award minus the specified proportion of the transitional percentage:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.5.5 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.6 Loadings and penalty rates – existing loading or penalty rate higher

A.6.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

A.6.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

A.6.3 The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.

A.6.4 From the following dates the employer must pay no less than the loading or penalty in this award plus the specified proportion of the transitional percentage:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.6.5 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.7 Loadings and penalty rates – no existing loading or penalty rate

A.7.1 The following transitional arrangements apply to an employer not covered by clause A.5 or A.6 in relation to a particular loading or penalty in this award.

A.7.2 Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

A.7.3 From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

First full pay period on or after

1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

A.7.4 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.8 Former Division 2B employers

[A.8 inserted by [PR503644](#) ppc 01Jan11]

A.8.1 This clause applies to an employer which, immediately prior to 1 January 2011, was covered by a Division 2B State award.

A.8.2 All of the terms of a Division 2B State award applying to a Division 2B employer are continued in effect until the end of the full pay period commencing before 1 February 2011.

A.8.3 Subject to this clause, from the first full pay period commencing on or after 1 February 2011 a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under this Schedule if it had been a national system employer immediately prior to 1 January 2010.

A.8.4 Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

A.8.5 Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.

A.8.6 In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.

Schedule B—Classification Structure and Definitions

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

B.1 Introductory level

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

B.2 Food and beverage

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

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

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

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

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

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

Note: Special condition regarding existing employees.

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

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

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

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

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

B.3 Kitchen

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

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

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

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

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

B.4 Administrative and general

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

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

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

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

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

B.5 Stores

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

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

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

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

and may perform indicative tasks at this level such as:

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

B.6 Security

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

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

B.7 Handyperson

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

Schedule C—Supported Wage System

[Varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542239](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#)]

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

[C.2 varied by [PR568050](#) ppc 01Jul15]

C.2 In this schedule:

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

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

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

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

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

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

[C.4.2 varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#) ppc 01Jul19]

C.4.2 Provided that the minimum amount payable must be not less than \$87 per week.

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

[C.6.1 varied by [PR542239](#) ppc 04Dec13]

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

[C.6.2 varied by [PR542239](#) ppc 04Dec13]

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

C.7 Review of assessment

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

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

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

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

[C.10.3 varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#) ppc 01Jul19]

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$87 per week.

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

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

Schedule D—National Training Wage

[Varied by [PR998019](#), [PR509150](#), [PR522981](#), [PR536784](#), [PR545787](#), [PR551707](#), [PR566799](#), [PR579913](#); deleted by [PR593889](#) ppc 01Jul17]

Schedule E—School-based Apprentices

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

- E.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- E.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- E.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- E.4** For the purposes of clause E.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- E.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- E.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- E.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.

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

- E.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency based progression if provided for in this award.

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

- E.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration) or stages of competency based progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

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

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

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Schedule F—Part-day Public Holidays

[Sched F inserted by [PR532630](#) ppc 23Nov12; renamed and varied by [PR544519](#) ppc 21Nov13; renamed and varied by [PR557581](#), [PR573679](#), [PR580863](#), [PR598110](#), [PR701683](#) ppc 21Nov18; varied by [PR712266](#), [PR715158](#)]

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

[F.1 varied by [PR715158](#) ppc 18Nov19]

F.1 Where a part-day public holiday is declared or prescribed between 6.00 pm and midnight, or 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

[F.1(b) varied by [PR715158](#) ppc 18Nov19]

- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

[F.1(c) substituted by [PR715158](#) ppc 18Nov19]

- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of being on annual leave does not work, they will be taken not to be on annual leave during the hours of the declared or prescribed part-day public holiday that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

[F.1(d) varied by [PR715158](#) ppc 18Nov19]

- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

[F.1(e) varied by [PR715158](#) ppc 18Nov19]

- (e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

[F.1(f) varied by [PR715158](#) ppc 18Nov19]

- (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or

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pro-rata annual leave equivalent to the time worked on the declared or prescribed part-day public holiday.

[F.1(g) varied by [PR715158](#) ppc 18Nov19]

- (g) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

[F.2 inserted by [PR712266](#) ppc 04Oct19]

- F.2** 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.

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

Schedule G—Agreement to Take Annual Leave in Advance

[Sched G inserted by [PR583068](#) ppc 29Jul16]

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

Name of employee: _____

Name of employer: _____

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

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

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement to Cash Out Annual Leave

[Sched H inserted by [PR583068](#) ppc 29Jul16]

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

Name of employee: _____

Name of employer: _____

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

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

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

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___