

# Fast Food Industry Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 1 July 2021 ([PR729255](#), [PR729443](#) and [PR729672](#)).

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

17—Minimum weekly wages

19—Allowances

24—National training wage

Schedule C—Supported Wage System

Current review matter(s): [AM2014/47](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/267](#); [AM2014/300](#); [AM2014/301](#); [AM2014/305](#); [AM2015/1](#); [AM2015/2](#); [AM2016/8](#); [AM2016/15](#); [AM2016/17](#); [AM2016/36](#)

**Long service leave** – an order [[PR506544](#)] has been issued to preserve long service leave entitlements under the Division 2B State award titled *Broken Hill Commerce and Industry Consent Award 2008* [[RA120088](#)].

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# Part 1—Application and Operation

## 1. Title

This award is the *Fast Food Industry Award 2010*.

## 2. Commencement and transitional

[Varied by [PR988389](#), [PR542123](#)]

**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 [PR542123](#) 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 [PR542123](#) 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 [PR542123](#) 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 [PR994446](#), [PR997772](#), [PR503606](#), [PR545958](#), [PR719480](#)]

#### 3.1 In this award, unless the contrary intention appears:

[Definition of **Act** substituted by [PR994446](#) from 01Jan10]

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

[Definition of **agreement-based transitional instrument** inserted by [PR994446](#) from 01Jan10]

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

[Definition of **award-based transitional instrument** inserted by [PR994446](#) from 01Jan10]

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

[Definition of **Commission** deleted by [PR994446](#) from 01Jan10]

[Definition of **default fund employee** inserted by [PR545958](#) ppc 01Jan14]

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

[Definition of **defined benefit member** inserted by [PR545958](#) 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 [PR503606](#) 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 [PR503606](#) 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 [PR994446](#), [PR997772](#) from 01Jan10]

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

[Definition of **employer** substituted by [PR994446](#), [PR997772](#) from 01Jan10]

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

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[Definition of **enterprise award** deleted by [PR994446](#) from 01Jan10]

[Definition of **enterprise award-based instrument** inserted by [PR994446](#) from 01Jan10]

**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 [PR545958](#) ppc 01Jan14]

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

**fast food industry** means the industry of taking orders for and/or preparation and/or sale and/or delivery of:

- meals, snacks and/or beverages, which are sold to the public primarily to be consumed away from the point of sale;
- take away foods and beverages packaged, sold or served in such a manner as to allow their being taken from the point of sale to be consumed elsewhere should the customer so decide; and/or
- food and/or beverages in food courts and/or in shopping centres and/or in retail complexes, excluding coffee shops, cafes, bars and restaurants providing primarily a sit down service inside the catering establishment

[Definition of **Jobkeeper payment** inserted by [PR719480](#) ppc 19May20]

**Jobkeeper payment** means a jobkeeper payment payable to an entity under section 14 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*

[Definition of **MySuper product** inserted by [PR545958](#) ppc 01Jan14]

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

[Definition of **NAPSA** deleted by [PR994446](#) from 01Jan10]

[Definition of **NES** substituted by [PR994446](#) from 01Jan10]

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

[Definition of **on-hire** inserted by [PR994446](#) from 01Jan10]

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

**standard rate** means the minimum weekly wage for a Fast Food Employee Level 2 in clause 17—Minimum weekly wages. Where an allowance is provided for on an hourly basis, a reference to **standard rate** means 1/38th of the weekly wage referred to above.

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[Definition of **transitional minimum wage instrument** inserted by [PR994446](#) from 01Jan10]

**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

[Varied by [PR994446](#)]

**4.1** This industry award covers employers throughout Australia in the fast food industry and their employees in the classifications listed in clause 17—Minimum weekly wages to the exclusion of any other modern award. The award does not cover employers in the following industries:

- the hospitality industry; or
- the general retail industry.

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

[4.3 substituted by [PR994446](#) from 01Jan10]

**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.

[New 4.4 inserted by [PR994446](#) from 01Jan10]

**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 inserted by [PR994446](#) from 01Jan10]

**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 inserted by [PR994446](#) from 01Jan10]

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

[4.4 renumbered as 4.7 by [PR994446](#) from 01Jan10]

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

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and 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 [PR994446](#), [PR542123](#); 7—Award flexibility renamed and substituted by [PR610160](#) ppc 01Nov18]

- 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:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (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



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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 [PR610160](#) 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.
- 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 [PR610160](#) 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 [PR994446](#), [PR542123](#); substituted by [PR610160](#) 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. Employment categories**

- 10.1** Employees under this award will be employed in one of the following categories:
- full-time employees;
  - part-time employees; or
  - casual employees.
- 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 employees**

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

## **12. Part-time employees**

[Varied by [PR992813](#), [PR601532](#); substituted by [PR712899](#) ppc 11Oct19; corrected by [PR717503](#) ppc 11Oct19]

**12.1** A part-time employee is an employee who:

- (a) works less than 38 hours per week; and
- (b) has reasonably predictable hours of work.

**12.2** At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:

- (a) the number of hours worked each day;
- (b) which days of the week the employee will work;
- (c) the actual starting and finishing times of each day;
- (d) that any variation will be in writing, including by any electronic means of communication (for example, by text message);
- (e) that the daily engagement is a minimum of 3 consecutive hours; and
- (f) the times of taking and the duration of meal breaks.

**12.3** The employer and employee may agree to vary an agreement made under clause 12.2 in relation to a particular rostered shift provided that:

- (a) any agreement to vary the regular pattern of work for a particular rostered shift must be recorded at or by the end of the affected shift; and
- (b) the employer must keep a copy of the agreed variation, in writing, including by any electronic means of communication and provide a copy to the employee, if requested to do so.

**12.4** In the event that no record of an agreed variation to a particular rostered shift under clause 12.3 is kept by the employer the employee is to be paid at overtime rates for any hours worked in excess of their regular pattern of work.

**12.5** The employer and employee may agree to vary an agreement made under clause 12.2, in respect of the regular pattern of work on an ongoing basis or for a specified period of time, provided that any such agreement is recorded in writing (including by any electronic means of communication) before the variation occurs.

**12.6** The employer must keep a copy of any agreement made under clause 12.2 and any agreed variation made under clause 12.5 and provide a copy to the employee.

- 12.7** An employer is required to roster a part-time employee for a minimum of 3 consecutive hours on any shift.
- 12.8** 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—Casual employment.
- 12.9** A part-time employee employed under the provisions of this clause will be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed. All time worked in excess of the hours as agreed under clause 12.2 or varied under clause 12.3 or 12.5 will be overtime and paid for at the rates prescribed in clause 26—Overtime.

### **13. Casual employment**

[Varied by [PR992813](#), [PR700563](#), [PR723898](#)]

- 13.1** A casual employee is an employee engaged as such.

[13.2 substituted by [PR723898](#) ppc 20Nov20]

- 13.2** For each ordinary hour worked, a casual will be paid both the ordinary hourly rate paid to a full-time employee and an additional loading of 25% of the ordinary hourly rate for a full-time employee.

[New 13.3 inserted by [PR723898](#) ppc 20Nov20]

- 13.3** When a casual employee works overtime, they must be paid the overtime rates in clauses 26.1(b) and 26.4.

[13.3 renumbered as 13.4 by [PR723898](#) ppc 20Nov20]

- 13.4** Casual employees will be paid at the termination of each engagement, or weekly or fortnightly in accordance with pay arrangements for full-time employees.

[13.4 renumbered as 13.5 by [PR723898](#) ppc 20Nov20]

- 13.5** The minimum daily engagement of a casual is three hours.

#### **13.6 Right to request casual conversion**

[13.5 renumbered as 13.6 by [PR723898](#) ppc 20Nov20]

- (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.

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- (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.
- (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 12.2.
- (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. Termination of employment

[14 substituted by [PR610160](#) ppc 01Nov18]

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

### 14.1 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	Column 2
<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period of notice</b>



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

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

- (c) In 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.

#### **14.2 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.

- 14.3** The time off under clause 14.2 is to be taken at times that are convenient to the employee after consultation with the employer.

### **15. Redundancy**

[Varied by [PR994446](#), [PR503606](#); [PR561478](#); substituted by [PR706948](#) ppc 03May19]

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

#### **15.1 Transfer to lower paid duties on redundancy**

- (a) Clause 15.1 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:

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- (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, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

### 15.2 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 15 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.

### 15.3 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 14.2 and 14.3.

## Part 4—Classifications and Wage Rates

### 16. Classifications

[Varied by [PR988389](#)]

- 16.1** All employees covered by this award must be classified according to the structure set out in Schedule B—Classifications. Employers must advise their employees in writing of their classification and of any changes to their classification.
- 16.2** The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

### 17. Minimum weekly wages

[17 varied by [PR997880](#), [PR509034](#), [PR522865](#), [PR536668](#), [PR551591](#), [PR566668](#), [PR579748](#), [PR592098](#); [PR606327](#), [PR707413](#), [PR718820](#), [PR729255](#) ppc 01Jul21]

<b>Classifications</b>	<b>Per week \$</b>
Level 1	848.50
Level 2	899.50
Level 3—In charge of one or no persons	913.40
Level 3—In charge of two or more persons	924.60

### 18. Junior rates

Junior employees will be paid the following percentage of the appropriate wage rate in clause 17—Minimum weekly wages:

<b>Age</b>	<b>% of weekly wage</b>
Under 16 years of age	40
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

## 19. Allowances

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

[Varied by [PR992813](#), [PR994446](#), [PR998032](#), [PR509157](#), [PR522987](#), [PR536790](#), [PR539921](#), [PR548428](#), [PR551713](#), [PR561203](#), [PR566812](#), [PR579508](#), [PR592261](#), [PR606484](#), [PR704141](#), [PR707608](#), [PR718976](#), [PR729443](#)]

### 19.1 Meal allowance

[19.1(a) varied by [PR998032](#), [PR509157](#), [PR522987](#), [PR536790](#), [PR551713](#), [PR566812](#), [PR579508](#), [PR592261](#), [PR606484](#), [PR704141](#), [PR707608](#), [PR718976](#), [PR729443](#) ppc 01Jul21]

- (a) An employee required to work more than one hour of overtime after the employee's ordinary time of ending work, without being given 24 hours' notice, will be either provided with a meal or paid a meal allowance of \$13.81. Where such overtime work exceeds four hours a further meal allowance of \$12.47 will be paid.
- (b) No meal allowance will be payable where an employee could reasonably return home for a meal within the period allowed.

### 19.2 Special clothing

- (a) Where the employer requires an employee to wear any protective or special clothing such as a uniform, dress or other clothing, the employer will reimburse the employee for any cost of purchasing such clothing and the cost of replacement items when replacement is due to normal wear and tear. This provision will not apply where the special clothing is supplied and/or paid for by the employer.

[19.2(b) substituted by [PR992813](#) ppc 29Jan10]

- (b) Where an employee is required to launder any special uniform, dress or other clothing, the employee will be paid the following applicable allowance:
  - (i) For a full-time employee—\$6.25 per week;
  - (ii) For a part-time or casual employee—\$1.25 per shift.

### 19.3 Excess travelling costs

Where an employee is required by their employer to move temporarily from one branch or shop to another for a period not exceeding three weeks, all additional transport costs so incurred will be reimbursed by the employer.

### 19.4 Travelling time reimbursement

- (a) An employee who on any day is required to work at a place away from their usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from their home to their usual place of employment and returning), will be paid travelling time and also any fares reasonably incurred in excess of those

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normally incurred in travelling between their home and their usual place of employment.

- (b) Where the employer provides transport from a pick up point, an employee will be paid travelling time for all time spent travelling from such pick up point and return thereto.
- (c) The rate of pay for travelling time will be the ordinary time rate except on Sundays and public holidays when it will be time and a half.

### 19.5 Transfer of employee reimbursement

Where any employer transfers an employee from one township to another, the employer will be responsible for and will pay the whole of the moving expenses, including fares and transport charges, for the employee and their family.

### 19.6 Transport allowance

[19.6 varied by [PR522987](#), [PR536790](#); substituted by [PR548428](#) ppc 17Mar14]

[19.6(a) varied by [PR551713](#), [PR729443](#) ppc 01Jul21]

- (a) Other than as provided in clause 19.6(b), where an employer requests an employee to use their own motor vehicle in the performance of their duties such employee will be paid an allowance of \$0.80 per kilometre.

[19.6(b) varied by [PR551713](#), [PR729443](#) ppc 01Jul21]

- (b) Where an employee is engaged primarily to perform delivery duties of the employer's products to customers using their own motor vehicle, such employee will be paid an allowance of \$0.42 per kilometre.

### 19.7 Transport of employee reimbursement

- (a) Where an employee commences and/or ceases work after 10.00 pm on any day or prior to 7.00 am on any day and the employee's regular means of transport is not available and the employee is unable to arrange their own alternative transport, the employer will reimburse the employee for the cost of a taxi fare from the place of employment to the employee's usual place of residence. This will not apply if the employer provides or arranges proper transportation to and/or from the employee's usual place of residence, at no cost to the employee.

- (b) Provided always that an employee may elect to provide their own transport.

[19.7(c) varied by [PR994446](#) from 01Jan10; deleted by [PR539921](#) ppc 01Oct13]

### 19.8 Cold work disability allowance

- (a) Employees principally employed on any day to enter cold chambers and/or to stock and refill refrigerated storages such as dairy cases or freezer cabinets will be paid an allowance per hour, while so employed, of 1.3% of the [standard rate](#).

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[19.8(b) substituted by [PR992813](#) ppc 29Jan10]

- (b) An employee required to work in a cold chamber where the temperature is below 0°C will in addition to the allowance in clause 19.8(a) also be paid an additional allowance per hour, while so employed, of 2% of the [standard rate](#).

### 19.9 Broken Hill

[19.9 varied by [PR992813](#), [PR994446](#); renamed and substituted by [PR561203](#) ppc 07May15]

An employee in the County of Yancowinna in New South Wales (Broken Hill) will in addition to all other payments be paid an allowance for the exigencies of working in Broken Hill of 4.28% of the [standard rate](#).

### 19.10 Adjustment of expense related allowances

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

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

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Meal allowance	Take away and fast foods sub-group
Special clothing	Clothing and footwear group
Transport allowance	Private motoring sub-group

## 20. Accident pay

[Varied by [PR994446](#), [PR503606](#); deleted by [PR561478](#) ppc 05Mar15; new 20 inserted by [PR571822](#) ppc 15Oct15]

An employee in receipt of weekly payments under the provisions of applicable workers' compensation legislation will be entitled to receive accident pay from the employer subject to the following conditions and limitations:

### 20.1 Definitions

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation the employee is entitled to receive pursuant to the applicable workers' compensation legislation and the employee's weekly wage payable under this Award for the classification of work if the employee had been performing their normal duties (not including over award payments, shift loadings, overtime, attendance bonus payments, special rates, fares and travelling allowance or other similar payments).

- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

## **20.2 Entitlement to accident pay**

- (a) The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation. The maximum period of accident pay is 26 weeks.
- (b) Accident pay shall not apply:
  - (i) In respect of an injury during the first seven consecutive days (including non-working days) of incapacity.
  - (ii) To any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks.

## **20.3 Calculation of the period**

- (a) The 26 week period commences from the first day of incapacity for work, which may be subsequent to the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.
- (b) The entitlement to accident pay continues on termination of an employee's employment where such termination:
  - (i) is by the employer other than for reasons of the employee's serious and/or wilful misconduct; or
  - (ii) arises from a declaration of bankruptcy or liquidation of the employer, in which case the employee's entitlement will be referred to the Fair Work Commission to determine.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

## **20.4 When not entitled to payment**

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

## **20.5 Return to work**

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

## **20.6 Redemptions**

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the

employer to pay accident pay will cease from the date the employee receives that payment.

#### **20.7 Damages independent of the Acts**

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

#### **20.8 Casual employees**

For a casual employee, the weekly payment referred to in clause 20.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments, shift loadings, overtime, attendance bonus payments, special rates, fares and travelling allowance or other similar payments.

### **21. Superannuation**

[Varied by [PR992746](#), [PR994446](#), [PR530448](#), [PR545958](#)]

#### **21.1 Superannuation legislation**

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

#### **21.2 Employer contributions**

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

#### **21.3 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the



employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 21.2.

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

## 21.4 Superannuation fund

[21.4 varied by [PR994446](#) from 01Jan10]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 21.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Retail Employees Superannuation Trust (REST);

[21.4(b) inserted by [PR992746](#) from 25Jan10; varied by [PR530448](#) from 01Jan10]

- (b) Sunsuper;

[New 21.4(c) inserted by [PR530448](#) from 01Jan10]

- (c) Intrust Super;

[21.4(b) renumbered as 21.4(c) by [PR992746](#) from 25Jan10, renumbered as 21.4(d) by [PR530448](#); varied by [PR545958](#) ppc 01Jan14]

- (d) 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

[21.4(e) inserted by [PR545958](#) ppc 01Jan14]

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

## 21.5 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 21.2 and pay the amount authorised under clauses 21.3(a) or (b):

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

- (b) **Work-related injury or illness**—For the period of absence from work (subject to a maximum of 52 weeks) 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 statutory requirements; and
  - (ii) the employee remains employed by the employer.

## 22. Payment of wages

[Varied by [PR992813](#), [PR610033](#)]

[Paragraph numbered as 22.1 by [PR610033](#) ppc 01Nov18]

**22.1** Wages will be paid weekly or fortnightly according to the actual hours worked for each week or fortnight or may be averaged over a period of a fortnight.

### 22.2 Payment on termination of employment

[22.2 inserted by [PR610033](#) ppc 01Nov18]

- (a) 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) 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 (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.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.

## 23. Supported wage

[Varied by [PR988389](#)]

See Schedule C

## 24. National training wage

[Varied by [PR988389](#); substituted by [PR593801](#) ppc 01Jul17; varied by [PR606327](#), [PR707413](#), [PR720159](#), [PR723829](#), [PR718820](#), [PR726419](#), [PR729255](#)]

[24.1 varied by [PR720159](#) ppc 18Jun20]

**24.1** Schedule E to the *Miscellaneous Award 2020* sets out minimum wage rates and conditions for employees undertaking traineeships.

[24.2 varied by [PR606327](#), [PR707413](#), varied by [PR720159](#) ppc 18Jun20, [PR718820](#), [PR729255](#) ppc 01Jul21]

**24.2** This award incorporates the terms of Schedule E to the *Miscellaneous Award 2020* as at 1 July 2021. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2020* is to be read as referring to the *Fast Food Industry Award 2010* and not the *Miscellaneous Award 2020*.

[Note inserted by [PR723829](#); deleted by [PR726419](#) ppc 01Feb21]

## Part 5—Ordinary Hours of Work

### 25. Hours of work

[Varied by [PR516760](#), [PR517415](#), [PR539921](#), [PR593952](#)]

**25.1** This clause does not operate to limit or increase or in any way alter the trading hours of any employer as determined by the relevant State or Territory legislation.

#### 25.2 Ordinary hours

[25.2(a) varied by [PR517415](#) ppc 01Dec11]

- (a) The ordinary hours of work are an average of 38 per week over a period of no more than four weeks.
- (b) Hours of work on any day will be continuous, except for rest pauses and meal breaks.

#### 25.3 Maximum hours on a day

[25.3 varied by [PR516760](#) ppc 01Dec11]

An employee may be rostered to work up to a maximum of 11 ordinary hours on any day.

**25.4 38 hour week rosters**

A full-time employee will be rostered for an average of 38 hours per week, worked in any of the following forms:

- (a) 38 hours in one week;
- (b) 76 hours in two consecutive weeks;
- (c) 114 hours in three consecutive weeks; or
- (d) 152 hours in four consecutive weeks.

**25.5 Penalty rates**

[26.5 renumbered as 25.5 by [PR539921](#) ppc 01Oct13]

**(a) Evening work Monday to Friday**

[26.5(a) clause heading substituted by [PR539921](#) ppc 01Oct13]

[25.5(a)(i) varied by [PR593952](#) ppc 01Jul17]

- (i) A loading of 10% will apply for ordinary hours of work within the span of hours between 10.00 pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.

[25.5(a)(ii) varied by [PR593952](#) ppc 01Jul17]

- (ii) A loading of 15% will apply for ordinary hours of work between midnight and 6.00 am, and for casual employees this loading will apply in addition to their 25% casual loading.

**(b) Saturday work**

[26.5(b) clause heading substituted by [PR539921](#) ppc 01Oct13]

[25.5(b) substituted by [PR593952](#) ppc 01Jul17]

- (i) A 25% loading will apply for all hours of work on a Saturday for full-time and part-time employees.
- (ii) A 50% loading will apply for all hours of work on a Saturday for casual employees, inclusive of the casual loading.

**(c) Sunday work– Level 1 employees**

[25.5(c) substituted by [PR593952](#) ppc 01Jul17]

**(i) From 1 July 2017 to 30 June 2018**

A 45% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 70% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

**(ii) From 1 July 2018 to 30 June 2019**

A 35% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 60% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

**(iii) From 1 July 2019**

A 25% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 50% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

**(d) Sunday work – Level 2 and 3 employees**

[25.5(d) inserted by [PR593952](#) ppc 01Jul17]

A 50% loading will apply for all hours of work on a Sunday for full-time and part-time Level 2 or 3 employees. A 75% loading will apply for all hours of work on a Sunday for casual Level 2 or 3 employees (inclusive of the casual loading).

## **26. Overtime**

[Varied by [PR992813](#); substituted by [PR516760](#) ppc 01Dec11; varied by [PR539921](#), [PR585795](#), substituted by [PR598497](#) ppc 01Jan18; varied by [PR712678](#), [PR712899](#); corrected by [PR717503](#); varied by [PR723898](#)]

### **26.1 Rate of overtime**

[26.1 substituted by [PR723898](#) ppc 20Nov20]

- (a) The rate of overtime for full time and part-time employees shall be **150%** of the ordinary hourly rate for the first two hours on any one day and at the rate of **200%** of the ordinary hourly rate after two hours, except on a Sunday which shall be paid for at the rate of **200%** of the ordinary hourly rate and on a Public Holiday which shall be paid for at the rate of **250%** of the ordinary hourly rate.
- (b) The rate of overtime for casual employees shall be **175%** of the ordinary hourly rate for the first two hours on any one day and **225%** of the ordinary hourly rate after two hours, except on a Sunday which shall be **225%** of the ordinary hourly rate and **275%** on a Public Holiday.

NOTE: The overtime rates for casual employees have been calculated by adding the casual loading prescribed by clause 13.2 to the overtime rates for full-time and part-time employees prescribed by clause 26.1(a).

[26.2 substituted by [PR712899](#) ppc 11Oct19; corrected by [PR717503](#) ppc 11Oct19]

**26.2** A full-time or part-time employee shall be paid overtime for all work as follows:

- (a) in excess of:

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- (i) 38 hours per week or an average of 38 hours per week averaged over a four week period; or
- (ii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or
- (iii) eleven hours on any one day; or
- (b) before an employee's rostered commencing time on any one day; or
- (c) after an employee's rostered ceasing time on any one day; or
- (d) outside the ordinary hours of work; or
- (e) hours worked by part-time employees in excess of:
  - (i) the agreed hours in clause 12.2; or
  - (ii) the agreed hours as varied under clause 12.3 or 12.5; or
- (f) any hours worked by a part-time employee in excess of their regular pattern of work in circumstances where there is no written record of an agreed variation to a particular rostered shift.

**26.3** A casual employee shall be paid overtime for all work in excess of:

- (a) 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle; or
- (b) eleven hours on any one day.

[26.4 substituted by [PR723898](#) ppc 20Nov20]

**26.4** Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid **200%** of the ordinary hourly rate with a minimum payment of four hours at such rate. The rate for a casual employee shall be **225%** of the ordinary hourly rate of pay.

NOTE: The overtime rates for casual employees have been calculated by adding the casual loading prescribed by clause 13.2 to the overtime rates for full-time and part-time employees prescribed by clause 26.1(a).

### **26.5 Time off instead of payment for overtime**

- (a) An employee and employer may agree 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 26.5 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 26.5 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 26.5 will apply for overtime that has been worked.

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

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 26.5 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 26.5.

## **26.6 Reasonable overtime**

[26.6 substituted by [PR712678](#) ppc 04Oct19]

- (a) Subject to s.62 of the Act and this clause, an employer may require an employee to work reasonable overtime hours at overtime rates.
- (b) An employee may refuse to work overtime hours if they are unreasonable.
- (c) In determining whether overtime hours are reasonable or unreasonable for the purpose of this clause the following must be taken into account:
  - (i) any risk to employee health and safety from working the additional hours;

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- (ii) the employee's personal circumstances, including family responsibilities;
- (iii) the needs of the workplace or enterprise in which the employee is employed;
- (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
- (v) any notice given by the employer of any request or requirement to work the additional hours;
- (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
- (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- (viii) the nature of the employee's role, and the employee's level of responsibility;
- (ix) whether the additional hours are in accordance with averaging terms of clause 25 in this award inserted pursuant to s.63 of the Act, that applies to the employee; and
- (x) any other relevant matter.

## 27. Breaks

[Varied by [PR539921](#), [PR712899](#); corrected by [PR717503](#)]

### 27.1 Breaks during work periods

- (a) Breaks will be given as follows:

<b>Hours worked</b>	<b>Rest break</b>	<b>Meal break</b>
Less than 4 hours	No rest break	No meal break
4 hours but less than 5 hours	One 10 minute rest break	No meal break
5 hours but less than 9 hours	One 10 minute rest break	One meal break of at least 30 minutes but not more than 60 minutes



<b>Hours worked</b>	<b>Rest break</b>	<b>Meal break</b>
9 hours or more	One or two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours, two rest breaks will be given unless a second meal break is provided	One or two meal breaks of at least 30 minutes but not more than 60 minutes

- (b) The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.
- (c) An employee cannot be required to take a rest break or meal break within one hour of commencing or ceasing work. An employee cannot be required to take a rest break(s) combined with a meal break.

[27.1(d) substituted by [PR712899](#) ppc 11Oct19; corrected by [PR717503](#) ppc 11Oct19]

- (d) The time of taking rest and meal breaks and the duration of meal breaks form part of the roster and are subject to any agreement reached under clause 12.2 regarding a part-time employee's regular pattern of work. An agreed variation pursuant to clause 12.3 or 12.5 may include a variation to the time of taking rest and meal breaks.

[27.1(e) varied by [PR539921](#) ppc 01Oct13]

- (e) Rest breaks are paid breaks and meal breaks are unpaid breaks.
- (f) An employee cannot work more than five hours without a meal break.

## **27A. Requests for flexible working arrangements**

[27A inserted by [PR701394](#) ppc 01Dec18]

### **27A.1 Employee may request change in working arrangements**

Clause 27A 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 27A is an addition to s.65.

### **27A.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)).

### **27A.3 What the written response must include if the employer refuses the request**

Clause 27A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 27A.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 27A.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.

### **27A.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 27A.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.

### **27A.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 27A, can be dealt with under clause 9—Dispute resolution.

## Part 6—Leave and Public Holidays

### 28. Annual leave

[Varied by [PR583001](#)]

**28.1** Annual leave is provided for in the NES.

#### **28.2 Definition of shiftworker**

For the purpose of the additional week of annual leave provided for in 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 days a week.

#### **28.3 Annual leave loading**

(a) During a period of annual leave an employee will receive a loading calculated on the wage rate prescribed in clause 17—Minimum weekly wages. Annual leave loading is payable on leave accrued.

(b) The loading will be as follows:

##### **(i) Day work**

Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.

##### **(ii) Shiftwork**

Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates), whichever is the greater but not both.

#### **28.4 Annual leave in advance**

[28.4 renamed and substituted by [PR583001](#) 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 28.4 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 28.4 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 28.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

## **28.5 Cashing out of annual leave**

[28.5 inserted by [PR583001](#) ppc 29Jul16]

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 28.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 28.5.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 28.5 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 28.5 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 28.5 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 28.5.

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 28.5.

Note 3: An example of the type of agreement required by clause 28.5 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

## **28.6 Excessive leave accruals: general provision**

[28.6 inserted by [PR583001](#) ppc 29Jul16]

Note: Clauses 28.6 to 28.8 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the 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 clause 28.2).
- (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 28.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 28.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

## **28.7 Excessive leave accruals: direction by employer that leave be taken**

[28.7 inserted by [PR583001](#) ppc 29Jul16]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 28.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 28.6, 28.7 or 28.8 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.

- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 28.7(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.

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

[28.8 inserted by [PR583001](#); substituted by [PR583001](#) ppc 29Jul17]

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 28.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 28.7(a) that, when any other paid annual leave arrangements (whether made under clause 28.6, 28.7 or 28.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 28.6, 28.7 or 28.8 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 28.2) in any period of 12 months.

- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

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

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

### **29.2 Casual employees**

- (a) Casual employees are entitled to be not available for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency.
- (b) Such leave is unpaid. A maximum of 48 hours' absence is allowed by right with additional absence by agreement.

**29.3** An employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under this clause.

## **30. Public holidays**

[Varied by [PR539921](#) ([PR539921](#) quashed in part by [PR549301](#)), [PR593952](#), [PR712221](#)]

**30.1** Public holidays are provided for in the NES.

[30.2 varied by [PR712221](#) ppc 04Oct19]

**30.2** An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.

[New 30.3 inserted by [PR712221](#) ppc 04Oct19]

**30.3** 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. If an employee works on either the part-day public holiday or the substitute part-day public holiday penalties apply. If both part-days are worked, the public holiday penalties must be paid on one part-day chosen by the employee.

[30.3 substituted by [PR593952](#) ppc 01Jul17; 30.3 renumbered as 30.4 by [PR712221](#) ppc 04Oct19]

**30.4** Work on a public holiday must be compensated by payment at the rate of 225% (250% for casual employees, inclusive of the casual loading).

[Note inserted by [PR712221](#) ppc 04Oct19]

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

### **31. Community service leave**

Community service leave is provided for in the NES.

### **32. Leave to deal with Family and Domestic Violence**

[32 inserted by [PR609316](#) ppc 01Aug18]

**32.1** This clause applies to all employees, including casuals.

#### **32.2 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
- (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 32.2(a) includes a former spouse or de facto partner.

#### **32.3 Entitlement to unpaid leave**

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

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) 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.

#### **32.4 Taking unpaid leave**

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



- (a) is experiencing family and domestic violence; and
- (b) 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.

### **32.5 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.

### **32.6 Notice and evidence requirements**

#### **(a) Notice**

An employee must give their employer notice of the taking of leave by the employee under clause 32. 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.

#### **(b) Evidence**

An employee who has given their employer notice of the taking of leave under clause 32 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 32.4.

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.

### **32.7 Confidentiality**

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 32.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 32 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.

**32.8 Compliance**

An employee is not entitled to take leave under clause 32 unless the employee complies with clause 32.

## Schedule A—Transitional Provisions

[Varied by [PR988389](#), [PR994446](#), [PR503606](#)]

### A.1 General

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

[A.1.2 substituted by [PR994446](#) from 01Jan10]

**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,

[A.2.1(b) substituted by [PR994446](#) from 01Jan10]

- (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.

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**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.

**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,

[A.3.1(b) substituted by [PR994446](#) from 01Jan10]

(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.

**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 substituted by [PR994446](#) from 01Jan10]

**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

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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 substituted by [PR994446](#) from 01Jan10]

**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.

**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 substituted by [PR994446](#) from 01Jan10]

**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 substituted by [PR994446](#) from 01Jan10]

**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.

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[A.6.3 substituted by [PR994446](#) from 01Jan10]

**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 substituted by [PR994446](#) from 01Jan10]

**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 substituted by [PR994446](#) from 01Jan10]

**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 [PR503606](#) 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.

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- 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—Classifications**

[Varied by [PR988389](#)]

### **B.1 Fast Food Employee Level 1**

**B.1.1** An employee engaged in the preparation, the receipt of orders, cooking, sale, serving or delivery of meals, snacks and/or beverages which are sold to the public primarily to take away or in food courts in shopping centres.

**B.1.2** A Fast Food Employee Level 1 will undertake duties as directed within the limits of their competence, skills and training including incidental cleaning and cleaning of toilets.

### **B.2 Fast Food Employee Level 2**

An employee who has the major responsibility on a day to day basis for supervising Fast Food employees Level 1 and/or training new employees or an employee required to exercise trade skills.

### **B.3 Fast Food Employee Level 3**

An employee appointed by the employer to be in charge of a shop, food outlet, or delivery outlet.

## Schedule C—Supported Wage System

[Varied by [PR988389](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542123](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#), [PR719661](#), [PR729672](#)]

[Sched C substituted by [PR994446](#) from 01Jan10]

**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](http://www.jobaccess.gov.au)

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

### **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:

<b>Assessed capacity (clause C.5)</b>	<b>Relevant minimum wage</b>
%	%
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](#), [PR719661](#), [PR729672](#) ppc 01Jul21]

**C.4.2** Provided that the minimum amount payable must be not less than \$90 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 [PR542123](#) 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 [PR542123](#) 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](#), [PR719661](#), [PR729672](#) ppc 01Jul21]

**C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$90 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**

[Sched D substituted by [PR994446](#) from 01Jan10; varied by [PR988389](#), [PR994446](#), [PR997880](#), [PR509034](#), [PR522865](#), [PR536668](#), [PR545787](#), [PR551591](#), [PR566668](#), [PR579748](#); deleted by [PR593801](#) ppc 01Jul17]

## Schedule E—Part-day Public Holidays

[Sched E inserted by [PR532632](#) ppc 23Nov12; renamed and varied by [PR544262](#), [PR558851](#), [PR573679](#), [PR580863](#), [PR598110](#), [PR701683](#) ppc 21Nov18; varied by [PR712221](#), [PR715204](#)]

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

[E.1 varied by [PR715204](#) ppc 18Nov19]

**E.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.

[E.1(b) varied by [PR715204](#) ppc 18Nov19]

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 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.

[E.1(c) substituted by [PR715204](#) 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.

[E.1(d) varied by [PR715204](#) ppc 18Nov19]

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 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.

[E.1(e) varied by [PR715204](#) ppc 18Nov19]

(e) Excluding annualised salaried employees to whom clause E.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.

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[E.1(f) varied by [PR715204](#) 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 pro-rata annual leave equivalent to the time worked between on the declared or prescribed part-day public holiday.

[E.2 inserted by [PR712221](#) ppc 04Oct19]

- E.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.

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

[Sched F inserted by [PR583001](#) 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 G—Agreement to Cash Out Annual Leave

[Sched G inserted by [PR583001](#) 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\_\_\_

## Schedule H—Award flexibility during the COVID-19 Pandemic

[Sched H inserted by [PR719480](#) ppc 19May20]

**H.1** The provisions of Schedule H are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date.

**H.2** Schedule H operates from 19 May 2020 until 31 July 2020.

**H.3** Schedule H applies to:

**H.3.1** employers who do not qualify for Jobkeeper payments and their employees; and

**H.3.2** employees who do not qualify for Jobkeeper payments and their employers in relation to those employees.

**H.4** If an employer or employee becomes entitled to Jobkeeper payments for an employee, the terms of Schedule H will not apply in relation to that employer and that employee.

**H.5** Schedule H is intended to assist in the continuing employment of employees.

**H.6** During the operation of Schedule H, the following provisions apply.

### **H.7 Flexible part-time employment**

While Schedule H is in operation and subject to written agreement between an employee and their employer in accordance with clause H.7.2, the following provisions will, in relation to that employee, operate instead of clause 12 of the award until 31 July 2020:

**H.7.1** A part time employee is an employee who:

- (a) Works at least 8 but less than 38 hours per week;
- (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.

**H.7.2** The employer and the part-time employee will agree in writing upon:

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

**H.7.3** The employer and the employee must have genuinely made the agreement mentioned in clause H.7.2 without coercion or duress.

- H.7.4** An agreement made under clause H.7.2 is not valid unless:
- (a) the employee is also advised in writing that the employer consents to a dispute about the operation of this clause H.7 being settled by the Fair Work Commission through arbitration in accordance with clause 9.5—Dispute Resolution and section 739(4) of the [Act](#); and
  - (b) the agreement is made for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19 and is necessary to assist the employer to avoid or minimise the loss of employment.
- H.7.5** The employee must not be rostered to work less than 3 consecutive hours in any shift.
- H.7.6** The guaranteed minimum hours shall not be less than 8 hours per week.
- H.7.7** Any change to the guaranteed minimum hours may only occur with written consent of the part-time employee.
- H.7.8** An employee may be offered ordinary hours in addition to the guaranteed minimum hours (**additional hours**) within the employee’s agreed availability. The employee may agree to work those additional hours provided that:
- (a) The additional hours are offered in accordance with clause 25—Hours of work and clause 26—Overtime;
  - (b) The employee may not be rostered for work outside of the employee’s agreed availability;
  - (c) agreed additional hours are paid at ordinary rates (including any applicable penalties payable for working ordinary hours at the relevant times);
  - (d) An employee will accrue entitlements such as annual leave and personal/carer’s leave on agreed additional hours worked;
  - (e) The agreement to work additional hours may be withdrawn by a part-time employee with 14 days written notice;
  - (f) The employee can refuse to work additional hours when offered on any occasion;
  - (g) Additional hours worked in accordance with this clause are not overtime; and
  - (h) Where there is a requirement to work overtime in accordance with clause 26, overtime rates will apply.
- H.7.9** A part-time employee who immediately prior to the 19 May 2020 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 H.7.2. If a part-time employee agrees to such a change, they shall, when Schedule H ceases operation, revert to the previously agreed regular pattern of hours.

**H.7.10** If an employee is first employed as a part-time employee during the operation of Schedule H, their employment will be on a casual basis when Schedule H ceases operation unless:

- (a) the employer and employee agree that the employee will be engaged on a part-time basis beyond this period, and
- (b) the employer and employee reach agreement in writing on the matters identified in with clause 12.

## **H.8 Annual leave**

**H.8.1** Subject to clause H.8.3 and H.8.7 and despite clauses 28.6, 28.7 and 28.8 (Annual leave), an employer may, subject to considering an employee's personal circumstances, request the employee in writing to take paid annual leave. Such a request must be made a minimum of 72 hours before the date on which the annual leave is to commence.

**H.8.2** If the employer gives the employee a request to take paid annual leave, and complying with the request will not result in the employee having a balance of paid annual leave of fewer than 2 weeks, the employee must consider the request and must not unreasonably refuse the request.

**H.8.3** An employer may only make a request under clause H.8.1 where it is reasonable in all the circumstances.

**H.8.4** An employee is not required to take leave under clause H.8 unless the employee is advised in writing that the employer consents to a dispute about whether the employer's request is reasonable in all the circumstances being settled by the Fair Work Commission through arbitration in accordance with clause 9.5—Dispute resolution and section 739(4) of the [Act](#).

**H.8.5** A period of leave under clause H.8 must start before 16 June 2020 but may end after that date.

**H.8.6** Clause H.8.1 does not prevent an employer and an employee from agreeing to the employee taking annual leave at any time.

**H.8.7** An employer can only request that an employee take annual leave pursuant to this clause if the request is made for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19 and is necessary to assist the employer to avoid or minimise the loss of employment.

## **H.9 Dispute resolution**

Any dispute regarding the operation of Schedule H may be referred to the Fair Work Commission in accordance with clause 9—Dispute resolution.

NOTE 1: An employee covered by this award who is entitled to the benefit of the safeguards in clauses H.7 and H.8 has a workplace right under section 341(1)(a) of the [Act](#).

NOTE 2: Under section 340(1) of the [Act](#), an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a

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workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the [Act](#), an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the [Act](#), a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

## Schedule X—Additional Measures During the COVID-19 Pandemic

[Sched X inserted by [PR718141](#) ppc 08Apr20; varied by [PR720632](#), [PR721324](#), [PR723048](#), [PR728080](#)]

[X.1 varied by [PR720632](#), [PR721324](#), [PR723048](#), [PR728080](#) ppc 26Mar21]

**X.1** Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 8 April 2020 until 31 December 2021. The period of operation can be extended on application.

**X.2** During the operation of Schedule X, the following provisions apply:

### **X.2.1 Unpaid pandemic leave**

(a) Subject to clauses X.2.1(b), (c) and (d), any employee is entitled to take up to 2 weeks' unpaid leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.

(b) The employee must give their employer notice of the taking of leave under clause X.2.1(a) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).

(c) An employee who has given their employer notice of taking leave under clause X.2.1(a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause X.2.1(a).

[X.2.1(d) varied by [PR720632](#), [PR721324](#), [PR723048](#), [PR728080](#) ppc 26Mar20]

(d) A period of leave under clause X.2.1(a) must start before 31 December 2021, but may end after that date.

(e) Leave taken under clause X.2.1(a) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this award and the [NES](#).

NOTE: The employer and employee may agree that the employee may take more than 2 weeks' unpaid pandemic leave.

### **X.2.2 Annual leave at half pay**

(a) Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay.

(b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.

[X.2.2(c) varied by [PR720632](#), [PR721324](#), [PR723048](#), [PR728080](#) ppc 26Mar20]

(c) A period of leave under clause X.2.2(a) must start before 31 December 2021, but may end after that date.

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EXAMPLE: Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking 2 weeks' annual leave on half pay. In this example:

- the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under the Annual Leave clause of this award); and
- one week of leave is deducted from the employee's annual leave accrual.

NOTE 1: A employee covered by this award who is entitled to the benefit of clause X.2.1 or X.2.2 has a workplace right under section 341(1)(a) of the [Act](#).

NOTE 2: Under section 340(1) of the [Act](#), an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the [Act](#), an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the [Act](#), a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.