

Horticulture Award 2010

The above award was first made on 3 April 2009 [[PR986369](#)]

This consolidated version of the award includes variations made on 11 September 2009 [[PR988417](#)]; 21 September 2009 [[PR989302](#)]; 10 December 2009 [[PR990537](#)]; 23 December 2009 [[PR991930](#)]; 5 March 2010 [[PR994305](#)]

NOTE: Transitional provisions may apply to certain clauses – see clause 2 and Schedule A

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Part 1—Application and Operation

1. Title

This award is the *Horticulture Award 2010*.

2. Commencement and transitional

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 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, Fair Work Australia may make any order it considers appropriate to remedy the situation.

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

2.6 Fair Work Australia 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 [PR994305](#)]

3.1 In this award, unless the contrary intention appears:

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

[Definition of **agreement-based transitional instrument** inserted by [PR994305](#) 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 [PR994305](#) from 01Jan10]

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

[Definition of **employee** substituted by [PR994305](#) from 01Jan10]

employee means a national system employee as defined in sections [13](#) and [30C](#) of the Act

[Definition of **employer** substituted by [PR994305](#) from 01Jan10]

employer means a national system employer as defined in sections [14](#) and [30D](#) of the Act

[Definition of **enterprise award-based instrument** inserted by [PR994305](#) from 01Jan10]

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

[Definition of **enterprise NAPSA** deleted by [PR994305](#) from 01Jan10]

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

horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a **broadacre field crop** in the *Pastoral Award 2010*

[Definition of **NAPSA** deleted by [PR994305](#) 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 [PR994305](#) 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

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

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

standard rate means the minimum hourly wage for a Level 2 in clause 14.1. This rate is to be used for the purposes of calculating various allowances that require a designated standard rate

[Definition of **transitional minimum wage instrument** inserted by [PR994305](#) from 01Jan10]

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

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

wine industry means:

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

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

4. Coverage

[Varied by [PR994305](#)]

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

4.2 Horticulture industry means:

- (a) agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or
- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.

4.3 Horticulture industry does not mean:

- (a) the wine industry;
- (b) silviculture and afforestation;
- (c) sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals;
- (d) any work in or in connection with cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed;
- (e) plant nurseries; or
- (f) a broadacre mixed farming enterprise as defined in the *Pastoral Award 2010*.

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

[4.5 substituted by [PR994305](#) from 01Jan10]

4.5 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 4.6, 4.7 and 4.8 inserted by [PR994305](#) from 01Jan10]

4.6 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.

4.7 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.

4.8 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.

[4.6 renumbered as 4.9 by [PR994305](#) from 01Jan10]

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

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

5. Access to the award and the National Employment Standards

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

6. The National Employment Standards and this award

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

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

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

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

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

(e) state the date the agreement commences to operate.

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

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

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

7.8 The agreement may be terminated:

(a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

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

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

(a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

(b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

(a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

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

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 General

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

- (a) full-time employees;
- (b) part-time employees; or

- (c) casual employees.

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.

10.2 Full-time employment

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

10.3 Part-time employment

- (a) A part-time employee is an employee who:
- (i) is engaged to work an average of fewer than 38 ordinary hours per week; and
 - (ii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) For each ordinary hour worked, a part-time employee will be paid no less than 1/38th of the minimum weekly rate of pay for the relevant classification in clause 14—Minimum wages.
- (c) An employer must inform a part-time employee of their ordinary hours of work and starting and finishing times.
- (d) All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.

10.4 Casual employment

- (a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.
- (b) For each hour worked, a casual employee will be paid no less than 1/38th of the minimum weekly rate of pay for an employee in that classification in clause 14—Minimum wages, plus a casual loading of 25%.
- (c) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment provided for in this award.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

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

amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

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

12. Redundancy

[Varied by [PR994305](#)]

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

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

12.3 Employee leaving during notice period

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

12.4 Job search entitlement

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

12.5 Transitional provisions

[12.5 substituted by [PR994305](#) from 01Jan10]

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a notional agreement preserving a State award:

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- (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the notional agreement preserving a State award is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
 - (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
 - (d) Clause 12.5 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications

Employees will be classified in accordance with the classification descriptions contained in Schedule B—Classification Structure and Definitions, of this award.

14. Minimum wages

14.1 Adult employee minimum wages

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

Classification	Minimum weekly wage \$	Minimum hourly wage \$
Level 1	543.90	14.31
Level 2	560.50	14.75
Level 3	577.20	15.19
Level 4	600.10	15.79
Level 5	637.60	16.78

- (b) For the purposes of clause 14.1(a), any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.

14.2 Supported wage system

See Schedule C

14.3 National training wage

See Schedule D

15. Pieceworkers

- 15.1** An employer and a full-time, part-time or casual employee may enter into an agreement for the employee to be paid a piecework rate. An employee on a piecework rate is a pieceworker.
- 15.2** The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.
- 15.3** The calculation of piecework rates in clause 15.2 for casual employees will include the casual loading prescribed in clause 10.4(b).
- 15.4** An agreed piecework rate is paid instead of the minimum wages specified in clause 14—Minimum wages.
- 15.5** The following clauses of this award do not apply to an employee on a piecework rate:
- (a) Clause 22—Ordinary hours of work and rostering;
 - (b) Clause 24—Overtime; and
 - (c) Clause 24.5—Meal allowance.
- 15.6** The employer and the individual employee must have genuinely made the piecework agreement without coercion or duress.
- 15.7** The piecework agreement between the employer and the individual employee must be in writing and signed by the employer and the employee.
- 15.8** The employer must give the individual employee a copy of the piecework agreement and keep it as a time and wages record.
- 15.9** Nothing in this award guarantees an employee on a piecework rate will earn at least the minimum ordinary time weekly or hourly wage in this award for the type of employment and the classification level of the employee, as the employee's earnings are contingent on their productivity.
- 15.10** For the purposes of the NES:
- (a) The base rate of pay for a pieceworker is the base rate of pay as defined in the NES.
 - (b) The full rate of pay for a pieceworker is the full rate of pay as defined in the NES.

16. Juniors

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

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

- 16.2** The wage payable to a junior will, in the case of a weekly employee, be calculated to the nearest \$0.10, and in the case of an hourly employee, be calculated to the nearest quarter of one cent.

17. Allowances

[Varied by [PR994305](#)]

17.1 All-purpose allowances

The following allowances apply for all purposes of this award:

(a) Leading hand allowance

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

In charge of:	% of the standard rate per week
2 to 6 employees	115%
7 to 10 employees	134%
11 to 20 employees	191%
More than 20 employees	240%

(b) Wet work allowance

An employee who, on any one day, is required to work in a wet place must be paid an amount of 10% of the standard rate for each hour that they are required to work in the wet place, unless provided with adequate protection. A **wet place** will mean a place where the clothing of the employee becomes saturated or a place where the employee has to stand in water or slush so that the employee's feet become wet.

(c) Tool and equipment allowance

Where the employer requires an employee to supply their own tools and equipment, the employer must reimburse the employee for the cost of

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supplying such tools and equipment. The provisions of this clause do not apply where the tools and equipment are paid for by the employer.

(d) First aid allowance

An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St John Ambulance or similar body must be paid an allowance, per week, equal to 51% of the standard rate per week if they are appointed by the employer to perform first aid duty.

(e) Travelling allowance

Where an employee is required to travel from one place to another, the time occupied in travelling will be counted as time worked and paid for as such. Where an employee is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee's normal place of sleeping during employment) the employer will reimburse the employee for the demonstrable cost of suitable accommodation. The provisions of this clause will not apply where the employer provides the employee with suitable accommodation free of charge.

17.2 District allowances

(a) Northern Territory

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

[17.2(a)(i) substituted by [PR994305](#) from 01Jan10]

- (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
- (ii) that would have entitled the employee to payment of a district allowance.

(b) Western Australia

[17.2(b) substituted by [PR994305](#) from 01Jan10]

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

- (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and
 - (ii) that would have entitled the employee to payment of a district allowance.
- (c) Clause 17.2 ceases to operate on 31 December 2014.

17.3 Adjustment of expense related allowances

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

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

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

18. Higher duties

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

19. Payment of wages

19.1 Period of payment

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

19.2 Method of payment

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

19.3 Payment of wages on termination of employment

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.

20. Accident pay

[Varied by [PR994305](#)]

20.1 Subject to clause 0, an employee is entitled to accident pay in accordance with the terms of:

[20.1(a) substituted by [PR994305](#) from 01Jan10]

- (a) a notional agreement preserving a State award that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in

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their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and

- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

[20.2 substituted by [PR994305](#) from 01Jan10]

20.2 The employee's entitlement to accident pay under the notional agreement preserving a State award or the award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

20.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.

20.4 This clause ceases to operate on 31 December 2014.

21. Superannuation

[Varied by [PR994305](#)]

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 substituted by [PR994305](#) 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) AustSafe Super;
- (b) Prime Super;
- (c) Tasplan;
- (d) Sunsuper;
- (e) Asset Limited; or
- (f) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

Part 5—Hours of Work and Related Matters

22. Ordinary hours of work and rostering

22.1 The ordinary hours of work for all full-time and part-time employees other than shiftworkers will not exceed 152 hours over a four week period provided that:

- (a) The ordinary hours will be worked between Monday and Friday inclusive except by arrangement between the employer and the majority of employees in the section/s concerned that the ordinary hours will be worked between Monday and Saturday inclusive.
- (b) The ordinary hours will be worked between 6.00 am and 6.00 pm except if varied by arrangement between the employer and the majority of the employees in the section/s concerned.
- (c) The ordinary hours will not exceed eight hours per day except by arrangement between the employer and the majority of employees in the section/s concerned in which case ordinary hours should not exceed 12 hours on any day.
- (d) All time worked by full-time and part-time employees in excess of the ordinary hours will be deemed overtime.

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

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- (a) The ordinary hours will be worked between Monday and Friday inclusive.
- (b) For the purposes of this award:
 - (i) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight; and
 - (ii) **night shift** means any shift finishing after midnight and at or before 8.00 am.
- (c) If an employee is directed to work on shifts the shift must not exceed eight hours without the payment of overtime.
- (d) Shiftworkers whilst on afternoon and night shifts will be paid 15% more than the ordinary rates for such shifts.
- (e) Where shiftwork is adopted, shifts will, as far as practicable, rotate regularly where two shifts are worked one will be regarded as day shift and the second the afternoon or night shift. Where three shifts are worked they will be divided into day, afternoon and night shifts.
- (f) The employer has the right to decide before the commencement of such shiftwork which of the shifts will be the day shift and will notify each employee accordingly.
- (g) The employer will keep a roster at the workplace that specifies the times which each shift will commence and finish and which shifts are deemed to be day shift.
- (h) All time worked in excess of the ordinary hours will be deemed overtime.

23. Breaks

23.1 Meal break

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

23.2 Rest break

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

23.3 Ten hour break after ceasing work for the day

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

24. Overtime

24.1 Time off instead of payment for overtime

- (a) An employee will be allowed time off duty, with pay for a period equal to the overtime worked. Such time allowed off duty will be given and taken within the succeeding three weeks unless the employer and employee mutually agree that it be taken at some other time; or
- (a) instead of taking time off duty the employee may elect to be paid for the overtime worked provided that this election is made clear to the employer or the employer's representative at the time that overtime is offered.

24.2 Payment of overtime

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

24.3 For packing house employees, overtime will be paid for at the rate of 150% for the first two hours and 200% thereafter, except on Sunday when the rate will be 200%.

24.4 All employees required to work overtime on a Sunday will be paid for a minimum of four hours.

24.5 Meal allowance

An employee required to work overtime for more than two hours after the employee's ordinary ceasing time without having been notified before leaving work on the previous day that the employee will be required to work overtime, will be entitled to a payment of \$9.65 for each meal not supplied or will be provided a

suitable meal without cost. If the work extends into a second or subsequent meal break, this meal allowance will again apply.

Part 6—Leave and Public Holidays

25. Annual leave

[Varied by [PR994305](#)]

25.1 Annual leave is provided for in the NES.

25.2 Annual leave does not apply to a casual employee.

25.3 This clause contains additional and supplementary provisions.

25.4 Conversion to hourly entitlement

[25.4 substituted by [PR994305](#) from 01Jan10]

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

25.5 Payment for period of annual leave

[25.5 substituted by [PR994305](#) from 01Jan10]

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

25.6 Annual leave loading

During a period of annual leave an employee must also be paid an annual leave loading equal to 17.5% of the wages prescribed in clause 25.5.

25.7 Excessive leave

[25.7 substituted by [PR994305](#) from 01Jan10]

Notwithstanding s.88 of the Act, if an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take annual leave by giving not less than four weeks notice of the time when such leave is to be taken if:

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

25.8 Paid leave in advance of accrued entitlement

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

25.9 Transfer of business

[25.9 substituted by [PR994305](#) from 01Jan10]

Where a business is transferred from one employer to another, the period of continuous service that an employee had with the old employer must be deemed to be service with the new employer and taken into account when calculating annual leave. However an employee is not entitled to leave or payment instead for any period in respect of which leave has been taken or paid for.

25.10 Proportionate leave on termination

On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 25.5.

26. Personal/carer's leave and compassionate leave

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

27. Community service leave

27.1 Community service leave is provided for in the NES.

27.2 Reimbursement for jury service

- (a) A full-time employee required to attend for jury service during their ordinary hours of work must be reimbursed by the employer an amount equal to the difference between the amount paid to the employee in respect of the employee's attendance for such jury service and the wages the employee would have received in respect of the ordinary hours the employee would have worked had the employee not been on jury service.
- (b) Where a part-time employee is required to attend for jury service and such attendance coincides with a day on which the employee would normally be required to work, payment must be made to the employee in accordance with clause 27.2(a).

28. Public holidays

28.1 Public holidays are provided for in the NES.

28.2 Substitution of certain public holidays by agreement at the enterprise

- (a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days.
- (b) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.

28.3 Public holiday rates of pay

All work performed on public holidays will be paid for at the rate of 200% of the ordinary rate.

Schedule A—Transitional Provisions

[Varied by [PR994305](#)]

A.1 General

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

[A.1.2 substituted by [PR994305](#) 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 [PR994305](#) 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 [PR994305](#) 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.

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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 [PR994305](#) 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

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.

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[A.5.2 substituted by [PR994305](#) 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 0 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 [PR994305](#) 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 [PR994305](#) 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.

[A.6.3 substituted by [PR994305](#) 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.

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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 [PR994305](#) 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 [PR994305](#) 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.

Schedule B—Classification Structure and Definitions

B.1 Level 1

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

B.1.2 General description

An employee at this level:

- undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance;
- performs routine duties essentially of a manual nature and to the level of their training;
- exercises minimal judgment;
- works under direct supervision;
- is responsible for the quality of their own work;
- is a new employee; or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2.

B.1.3 Indicative duties

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

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

B.2 Level 2 employee

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

B.2.2 General description

An employee at this level:

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

B.2.3 Indicative duties

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

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

B.3 Level 3 employee

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

B.3.2 General description

An employee at this level:

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

B.3.3 Indicative duties

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

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

B.4 Level 4 employee

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

B.4.2 General description

An employee at this level:

- performs work above and beyond the skills of an employee at Level 3 and to the level of their training;
- coordinates work in a team environment or works individually under general supervision;
- exercises discretion with their level of skills and training;

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- is responsible for the quality of their own work;
- has knowledge of the employer's operation as it relates to the production process;
- monitors the application of occupational health and safety standards in work areas relevant to the site and appropriate to this level;
- may perform any lower level task as required without loss of pay.

B.4.3 Indicative duties

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

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

B.5 Level 5 employee

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

B.5.2 General description

An employee at this level:

- works above and beyond the skills of an employee at Level 4 and to the level of their training;
- performs work under minimal supervision either individually or in a team environment;

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- coordinates and schedules approved work in a team environment;
- exercises good interpersonal communication skills;
- exercises discretion within the scope of this grade;
- possesses and uses a trade qualification in the course of their duties;
- has a sound knowledge of the employer's operation as it relates to the production process;
- undertakes lower level tasks as required without loss of pay.

B.5.3 Indicative duties

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

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

Schedule C—Supported Wage System

[Varied by [PR994305](#)]

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

C.2 In this schedule:

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

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

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

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

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

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

[C.4.2 varied by [PR994305](#)]

C.4.2 Provided that the minimum amount payable must be not less than \$71 per week.

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

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

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 Fair Work Australia to the union by certified mail and the agreement will take effect unless an objection is notified to Fair Work Australia 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 [PR994305](#)]

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$71 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 inserted by [PR994305](#)]

D.1 Title

This is the *National Training Wage Schedule*.

D.2 Definitions

In this schedule:

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

approved training means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

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

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

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

year 10 includes any year before Year 10

D.3 Coverage

D.3.1 Subject to clauses D.3.2 to D.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by Appendix D1 to this schedule or by clause D.5.4 of this schedule.

D.3.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in Appendix D1 to this schedule.

D.3.3 This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.

D.3.4 This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.

D.3.5 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

D.3.6 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

D.4 Types of Traineeship

The following types of traineeship are available under this schedule:

D.4.1 a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

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

D.5 Minimum Wages**D.5.1 Minimum wages for full-time traineeships****(a) Wage Level A**

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix D1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	245.00	270.00	323.00
Plus 1 year out of school	270.00	323.00	375.00
Plus 2 years out of school	323.00	375.00	437.00
Plus 3 years out of school	375.00	437.00	500.00
Plus 4 years out of school	437.00	500.00	
Plus 5 or more years out of school	500.00		

(b) Wage Level B

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix D1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	245.00	270.00	313.00
Plus 1 year out of school	270.00	313.00	360.00
Plus 2 years out of school	313.00	360.00	423.00
Plus 3 years out of school	360.00	423.00	482.00
Plus 4 years out of school	423.00	482.00	
Plus 5 or more years out of school	482.00		

(c) Wage Level C

Subject to clause D.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix D1 are:

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	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	245.00	270.00	312.00
Plus 1 year out of school	270.00	312.00	351.00
Plus 2 years out of school	312.00	351.00	392.00
Plus 3 years out of school	351.00	392.00	437.00
Plus 4 years out of school	392.00	437.00	
Plus 5 or more years out of school	437.00		

(d) AQF Certificate Level IV traineeships

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

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	519.00	539.00
Wage Level B	500.00	519.00
Wage Level C	454.00	471.00

D.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix D1 are:

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	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.06	8.88	10.63
Plus 1 year out of school	8.88	10.63	12.34
Plus 2 years out of school	10.63	12.34	14.38
Plus 3 years out of school	12.34	14.38	16.45
Plus 4 years out of school	14.38	16.45	
Plus 5 or more years out of school	16.45		

(b) Wage Level B

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix D1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.06	8.88	10.30
Plus 1 year out of school	8.88	10.30	11.84
Plus 2 years out of school	10.30	11.84	13.91
Plus 3 years out of school	11.84	13.91	15.86
Plus 4 years out of school	13.91	15.86	
Plus 5 or more years out of school	15.86		

(c) Wage Level C

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix D1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.06	8.88	10.26
Plus 1 year out of school	8.88	10.26	11.55
Plus 2 years out of school	10.26	11.55	12.89
Plus 3 years out of school	11.55	12.89	14.38

	Highest year of schooling completed		
	Year 10 per hour \$	Year 11 per hour \$	Year 12 per hour \$
Plus 4 years out of school	12.89	14.38	
Plus 5 or more years out of school	14.38		

(d) School-based traineeships

Subject to clauses D.5.2(f) and D.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix D1 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower per hour \$	Year 12 per hour \$
8.06	8.88

(e) AQF Certificate Level IV traineeships

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

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

Wage level	First year of traineeship per hour \$	Second and subsequent years of traineeship per hour \$
Wage Level A	17.07	17.73
Wage Level B	16.45	17.07
Wage Level C	14.93	15.49

(f) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

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- (ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.
- (iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses D.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

D.5.3 Other minimum wage provisions

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

D.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by Appendix D1 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

D.6 Employment conditions

- D.6.1 A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer's leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.
- D.6.2 A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- D.6.3 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.
- D.6.4 Subject to clause D.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

Appendix D1: Allocation of Traineeships to Wage Levels

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

D1.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I
	II
	III
Beauty	III
Business Services	I
	II
	III
Chemical, Hydrocarbons and Refining	I
	II
	III
Civil Construction	III
Coal Training Package	II
	III
Community Services	II
	III
Construction, Plumbing and Services Integrated Framework	I
	II
	III
Correctional Services	II
	III
Drilling	II
	III
Electricity Supply Industry—Generation Sector	II
	III (in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I
	II
	III (in Western Australia only)
Financial Services	I
	II
	III
Floristry	III
Food Processing Industry	III

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

D1.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I II III
Asset Maintenance	I II III
Australian Meat Industry	I II III
Automotive Industry Manufacturing	II III
Automotive Industry Retail, Service and Repair	I II III
Beauty	II
Caravan Industry	II III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I II III
Extractive Industries	II III
Fitness Industry	III
Floristry	II
Food Processing Industry	I II
Forest and Forest Products Industry	I II III
Furnishing	I II III
Gas Industry	I II
Health	II III
Local Government (Operational Works)	I II

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Training package	AQF certificate level
Manufactured Mineral Products	I II
Metal and Engineering (Production)	II III
Outdoor Recreation Industry	I II III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II III
Property Services	I II III
Public Safety	I II
Pulp and Paper Manufacturing Industries	I II
Retail Services	I II
Screen and Media	I II III
Sport Industry	II III
Sugar Milling	I II III
Textiles, Clothing and Footwear	I II
Transport and Logistics	I II
Visual Arts, Craft and Design	I II III
Water Industry	I II

D1.3 Wage Level C

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